

THE BAIL PROJECT

# Beyond Bail

A National Survey of  
Pretrial Justice Reform  
in the United States



## About The Bail Project

The Bail Project is a national nonprofit that provides free bail assistance and pretrial support to thousands of low-income people every year while also advancing policy change at the local, state, and national levels. Our mission: to combat mass incarceration by eliminating reliance on cash bail and demonstrating that a more humane, equitable, and effective pretrial system is possible. Through our Community Release with Support model, we provide our clients with return-to-court services including court notifications, free transportation assistance, and referrals to voluntary services. To date, these interventions have helped nearly 38,000 people across 37 jurisdictions return to court 92% of the time with none of their own money on the line, preserving the presumption of innocence and demonstrating the efficacy of needs-based pretrial support. Learn more about The Bail Project at [bailproject.org](https://www.bailproject.org).

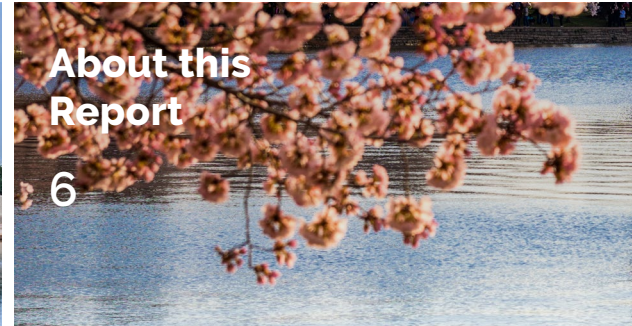
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# Introduction

**Across the United States,** nearly half a million people are incarcerated pretrial on any given day, the majority of whom are jailed only because they cannot afford to pay the bail amount set in their case. The disproportionately large jail population in the United States is primarily driven by cash bail: approximately 60% of people in jail can't pay their bail.<sup>1</sup> These are legally innocent people who have not been convicted of the crime they are charged with.

Cash bail creates a two-tiered system of justice: one where people with money are able to purchase their pretrial freedom, allowing them to maintain their jobs, contribute to the economy, and care for their families; and, another system for everyone else. The use of cash bail is unfair, affording benefits to people with financial resources, and punishing others.

Broadly, the pretrial systems of most American cities, counties, and states reinforce this system of wealth-based detention. Cash bail is set at amounts that are often unaffordable and people are punished before a verdict has been reached. If they are jailed pretrial, they are cut off from their lives and communities. Once incarcerated and isolated from their support networks, a person becomes more likely to lose their job, lose custody of their

children, experience violence in jail, or find symptoms associated with mental illness worsening.<sup>2,3</sup> Jails, which are full of people who are struggling with a mental illness or addiction, have become de facto psychiatric institutions, and although treatment services are more effective in-community, our states and counties have relegated these matters of public health to correctional facilities.<sup>4</sup>

The impacts of pretrial incarceration are devastating and increase the likelihood that a person will become incarcerated again in the future because they have lost the stability they need to improve their lives and thrive.<sup>5</sup> Cash bail and wealth-based detention force these harms upon the most vulnerable people in our communities.

A nationwide movement to replace cash bail has gained significant traction, emerging in jurisdictions across the country in response to the inequities, dangers, and unsustainable practices of the current pretrial system. This report, which provides an overview of modern bail and pretrial reforms, stems from that growing movement. Together, these reforms paint a picture of progress – highlighting the diversity of approaches, the momentum driving change, and the challenges that persist in the pursuit of a safer, fairer, and more equitable pretrial system.




# About this Report

**This report primarily focuses** on a descriptive analysis of legislative changes due to their enduring impact. However, this analysis also includes court decisions or rulings that substantially altered pretrial practices in a jurisdiction or state. To be included, a reform must have demonstrably shifted a jurisdiction away from wealth-based detention and toward a more equitable pretrial process that reduces unnecessary incarceration. We focused not only on reforms that restricted or minimized the use of cash bail altogether, but also those that: decreased the number of charges eligible for cash bail; prohibited courts from assigning bail amounts that are unaffordable, and/or increased the use of pretrial release without financial conditions.

*Beyond Bail* also contains, where applicable and based on the availability of data, an assessment of the impacts and consequences of the reforms analyzed in this report. These implementation effects are examined through key questions: Did the reform achieve its intended goal? Did the pretrial population decrease following implementation? Did racial and ethnic disparities narrow? A discussion of public safety impacts is provided in the appendix.

**Did the reform achieve its intended goal? Did the pretrial population decrease following implementation? Did racial and ethnic disparities narrow?**



The report is organized alphabetically by state and includes both local- and state-level reforms. The reforms are organized chronologically and fall into one or more main categories:

- **Bail Schedule Restrictions:** The use of bail schedules was limited or prohibited.
- **Elimination of Cash Bail:** The use of cash bail ended.
- **Partial Elimination of Cash Bail:** The use of cash bail for particular charges or under particular circumstances ended.
- **Presumption of Release:** The court was directed to release individuals by default under certain circumstances.
- **Strengthening Due Process:** The court was directed to strengthen the rigor of bail hearings and the attendant process, including scheduling initial bail hearings more quickly or requirements to assign counsel to indigent defendants at initial court hearings where bail decisions are made.
- **Unaffordable Bail Restrictions:** The assignment of cash bail by the court was limited or prohibited.

For some included reforms, the post-implementation period has seen attempts to undo or revise the initial changes aimed at creating a more effective pretrial system. This report also highlights cases where progress was followed by rollback legislation that repealed or modified parts of the original reform.

This report concludes by examining the common drivers of reform, the challenges encountered during implementation, and the lessons learned from these policy changes and their aftermath. A key takeaway is the enduring and widespread momentum for bail and pretrial system reforms across the country. The report highlights 36 modern examples of jurisdictions taking proactive steps to mitigate the harms of wealth-based detention. Even in cases where reforms fell short of their goals – reducing wealth-based detention or creating a more equitable pretrial system – valuable insights emerge to guide future efforts. Together, these developments provide a roadmap for understanding the history and shaping the future of pretrial reform.

## What This Report Excludes

This report does not include *discretionary* changes, which refers to informal executive actions or statements of policy made by elected officials during their tenure in office. While elected and appointed officials (including prosecutors and chief or administrative judges) within the criminal justice system are given wide discretion and flexibility to implement various practice changes, application of those changes is not explicitly enacted into law, is often applied

inconsistently, and can be abandoned in individual cases or as soon as a decisionmaker leaves office. Although these discretionary changes can and do meaningfully impact the lives of people charged with crimes, they are outside the scope of this report. Given their importance and impact, our hope is that other interested parties carry out further analysis of these discretionary actions.

## A Note on Terminology

Those most familiar with pretrial reform are aware of the highly technical and variable language that is used to describe components of the system. A word like *bond* can have multiple definitions. Similarly, some jurisdictions, like New York, use the term *remand* to describe what in most other jurisdictions is described as *preventative* or *pretrial*

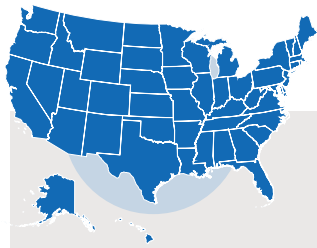
*detention*. We encourage readers to consult with The Bail Project's [Glossary of Bail-Related Terms](#) to aid their understanding and support interpretation of key terms associated with the reforms described in this report.<sup>6</sup>

# Index of Bail Reforms

Alphabetical by State







# Federal

## **BAIL REFORM ACT OF 1966 (PUBLIC LAW 89-465) (1966)**

*Federal Legislation  
Presumption of Release*

### **REFORM**

The [Bail Reform Act of 1966](#) severely curtailed the use of cash bail for those charged with federal crimes to ensure that individuals are not needlessly detained solely due to financial circumstances.<sup>7</sup> The Bail Reform Act of 1966 created a presumption that each defendant be released on their own recognizance or with an unsecured appearance bond, unless the individual has been charged with a capital offense, or the court determined that the individual posed a risk of flight, based on a list of factors enumerated in the law. In instances where flight risk was demonstrated, the court was directed to utilize increasingly restrictive nonfinancial conditions of release to mitigate that risk and to utilize cash bail only after all other nonfinancial conditions of release were deemed insufficient. Additionally, if any conditions of release could not be met and a person was incarcerated for 24 hours or more, the law allowed defense counsel to file a motion for a reconsideration hearing. Furthermore, the law outlined penalties that a defendant incurs for failing to appear after release.

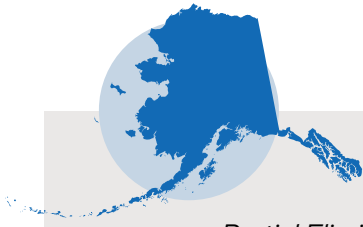
### **SUBSEQUENT CHANGES**

The [Bail Reform Act of 1966](#) was amended through the Bail Reform Act of 1984 to allow the court to consider public safety risk when making a release determination.<sup>8</sup> While the Bail Reform Act of 1984 maintained prohibitions against the court's use of cash bail that results in detention, it also created the first expansive charge-based preventative detention scheme. Whereas previously a defendant faced a presumptive right to pretrial release, the Bail Reform Act of 1984 shifted course, establishing circumstances where individuals charged with certain offenses had to rebut a presumption of preventative detention by proving that the defendant's release would not pose a risk to public safety or of flight. This change gave the court the power to use preventative detention for the first time in United States history. As a result, the court was allowed to detain individuals before trial after a finding that no conditions of release could assure court appearance or the safety of others and the community. Furthermore, it added factors that the court can consider when making a release determination, established additional penalties for offenses committed while a person was on pretrial release, and made it a crime to knowingly fail to appear.

The Bail Reform Act of 1984 was subsequently challenged in federal court for violating the Eighth and Fourteenth Amendments to the United States Constitution, which protect individual rights to freedom from excessive bail and to due process, respectively. The federal lawsuit was unsuccessful and the Bail Reform Act of 1984 was upheld by the United States Supreme Court in *United States v. Salerno* (1987).<sup>9</sup> The associated court ruling stated that preventative detention based on safety considerations is constitutional and permissible, though its use must be the "carefully limited exception."

### **IMPLEMENTATION**

The 1984 law substantially modified modern operations of federal criminal courts, establishing a practice whereby certain charges would almost certainly result in preventative detention. While the passage of the Bail Reform Act of 1966 resulted in the near total elimination of cash bail in the federal criminal court system, the use of preventative detention increased dramatically following the 1984 changes: in 1988, the federal pretrial detention rate was about 30%; by 1998 it was about 50%; and, by 2018 it was 73%. Rates of federal pretrial detention vary by gender, race, citizenship, offense type, and risk score, however.<sup>10</sup>



# Alaska

## SENATE BILL 91 (2016)

State Legislation

*Partial Elimination of Cash Bail | Strengthening Due Process | Unaffordable Bail Restrictions*

### REFORM

Alaska enacted [Senate Bill 91](#), a broad-reaching omnibus criminal justice reform package that included pretrial provisions alongside a number of other changes to criminal law, such as sentencing reform and improvements to reentry programming.<sup>11</sup> The pretrial provisions of the law required the court to provide each defendant with an individualized risk score under a statewide risk assessment tool and mandated release or detention based on that score. Those deemed low- to moderate-risk, depending on charge, were designated for release without cash bail, and individuals with high-risk scores were designated to be subject to more restrictive conditions of release, including the utilization of cash bail.

Prior to Senate Bill 91, existing law required the court to review an individual's release conditions if a person remained detained after 48 hours due to an inability to pay cash bail. Senate Bill 91 strengthened the procedure for these hearings on conditions of release by requiring the court to explicitly consider a person's inability to afford any cash bail set against them. It also required the court to adjust any conditions preventing release absent clear and convincing evidence that less restrictive conditions could not reasonably ensure court appearance or protect public safety.

### SUBSEQUENT CHANGES

In 2019, Alaska enacted [House Bill 49](#), which created new presumptions that defendants, who would have previously received mandatory release on their own recognizance under Senate Bill 91, be detained or subject to more onerous conditions of release.<sup>12</sup> For example, House Bill 49 established a presumption that there is substantial risk that an individual will not appear to court and that they pose a danger to the community if they are charged with a crime "against the person" – a list that includes violent felonies, sexual offenses, and lower-level offenses, such as coercion and misdemeanor assault – and have a similar prior conviction.



# California

## IN RE HUMPHREY (2021)

State Court Ruling

*Unaffordable Bail Restrictions*

### REFORM

The Supreme Court of California ruled in [In re Humphrey](#) that it is unconstitutional to condition release on whether an individual can pay bail; the court must first consider less restrictive, nonfinancial conditions of release before imposing cash bail; the court must consider a person's ability to pay and may only set cash bail at a level the individual can reasonably afford when the court determines that cash bail is reasonably necessary; and, courts may not cause individuals to be detained pretrial without a finding of clear and convincing evidence that no other less restrictive or nonfinancial conditions could sufficiently mitigate a threat to public safety or a risk of flight.<sup>13</sup>

## IMPLEMENTATION

The ruling by the Supreme Court of California established new due process protections, including what would be referred to in California as a “Humphrey hearing,” during which the court assesses an individual’s financial ability to pay cash bail and determines whether other nonfinancial conditions can reasonably protect public safety and ensure return to court.

The outcomes of these changes have been mixed. Researchers from the UCLA School of Law and UC Berkeley School of Law studied multiple counties and found no statewide reductions in the pretrial jail population, average bail amounts, or the average length of pretrial detention following the Humphrey ruling. They attributed these adverse outcomes to ambiguities in the ruling and a lack of clear judicial guidance on whether and when bail could be denied. Consequently, many courts disregarded the mandate to consider less restrictive conditions of release and instead detained individuals without bail based on any perceived risk, leading to an overall increase in pretrial detention.<sup>14</sup> In contrast, researchers from the California Policy Lab at the University of California, Berkeley, analyzed the reform’s impact in San Francisco County and found an 11% decrease in pretrial detention rates.<sup>15</sup>

### **URQUIDI V. LOS ANGELES (2023)**

*Local Court Ruling  
Bail Schedule Restrictions*

## REFORM

Pursuant to a class action lawsuit, the Los Angeles Superior Court ruled in [Urquidi v. Los Angeles](#) that Los Angeles County may not apply any cash bail schedule prior to arraignment that requires or has the effect of individuals being detained solely because they cannot afford to pay cash bail.<sup>16</sup> The ruling halted enforcement of Los Angeles County’s existing bail schedules and instructed the county to establish a new mechanism for making bail determinations upon arrest and before arraignment.

### **LOS ANGELES ANGELES COUNTY PRE-ARRAIGNMENT RELEASE PROTOCOLS (2023)**

*Local Judicial Rule  
Partial Elimination of Cash Bail*

## REFORM

In April 2020, the Judicial Council of California implemented a statewide emergency bail schedule in response to the COVID-19 pandemic. Under this schedule, cash bail was automatically set at \$0 for most misdemeanors and nonviolent felonies, while other offenses followed pre-established bail amounts based on their charges. In June 2020, the emergency schedule was rescinded, and the Judicial Council reinstated pre-pandemic bail schedules, ending the statewide mandate for automatic \$0 bail. However, local courts were encouraged to continue using the emergency bail schedule where necessary to protect public health, as well as the safety of court staff and incarcerated individuals.<sup>17</sup>

The Superior Court of Los Angeles County adopted the statewide emergency bail schedule for the county in October 2020 but reverted to its pre-COVID bail schedules in June 2022.<sup>18</sup> These pre-COVID schedules remained in effect until May 2023, when the *Urquidi* decision declared them unconstitutional. Following the *Urquidi* ruling, Los Angeles County was required to establish new bail schedules that avoided imposing bail amounts designed to detain individuals solely because they could not afford to pay. As a result, the Los Angeles County Superior Court adopted new schedules that reintroduced the pandemic-era practice of setting bail at \$0 for most misdemeanors and nonviolent felonies before arraignment.<sup>19,20</sup>



# Colorado

## HOUSE BILL 13-1236 (2013)

*State Legislation*

*Presumption of Release | Unaffordable Bail Restrictions*

### REFORM

Colorado enacted [House Bill 13-1236](#), which incorporated recommendations from the Colorado Commission on Criminal and Juvenile Justice's Bail Subcommittee and made substantial changes to Colorado's pretrial system.<sup>21,22</sup> The law redefined "bail" to encompass not only monetary payments but also nonfinancial conditions. It also established a presumption of release under the least restrictive conditions necessary, unless state law deems the individual ineligible for release. The law also required consideration of each defendant's financial condition when making bail determinations; prohibited unreasonable financial conditions; and, explicitly required that judges attempt to avoid unnecessary pretrial detention.

### IMPLEMENTATION

The law did not include an explicit presumption against cash bail for any defendants and therefore did not ultimately decrease the use of cash bail by the court.<sup>23</sup> The continued use of cash bail for misdemeanor cases inspired the public defender's office to file three lawsuits in state court, arguing that judges were not sufficiently considering individualized factors in bail determinations, nor were they giving defendants the ability to seek a lower bail amount.<sup>24</sup>

## HOUSE BILL 16-1309 (2016)

*State Legislation*

*Strengthening Due Process*

### REFORM

[House Bill 16-1309](#) required municipal courts to appoint counsel at first appearance when defendants faced potential jail time, bringing them in line with Colorado state courts, where appointment of counsel at first appearance was already required.<sup>25</sup>

## HOUSE BILL 17-1338 (2017)

*State Legislation*

*Strengthening Due Process*

### REFORM

[House Bill 17-1338](#) dictated that people held in jail solely on a municipal offense must either see a judge for arraignment within two calendar days of detention (unless it is a Sunday or a holiday) or be released on personal recognizance with no conditions.<sup>26</sup>

### SUBSEQUENT CHANGES

[House Bill 22-1067](#) improved upon House Bill 17-1338 by removing the Sunday and holiday exceptions from the timeline for arraignment.<sup>27</sup>

## HOUSE BILL 19-1225 (2019)

*State Legislation*  
*Partial Elimination of Cash Bail*

### REFORM

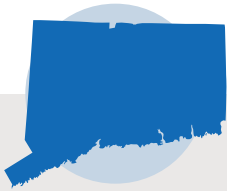
In 2019, Colorado unanimously passed [House Bill 19-1225](#), which eliminated the use of cash bail for traffic violations and petty offenses (i.e., offenses carrying a maximum punishment of six months in jail and/or \$500 in fines).<sup>28</sup>

## HOUSE BILL 21-1280 (2021)

*State Legislation*  
*Strengthening Due Process*

### REFORM

[House Bill 21-1280](#) required that state court bond hearings be set within 48 hours of a person's arrival at a jail or holding center, fixing a notable issue of people spending lengthy periods of time in detention for municipal court cases by requiring jail administrators to release defendants within six hours of being notified that they or their surety is prepared to post bond.<sup>29</sup> The bill also required sheriffs to comply with a 2019 law ([Senate Bill 19-191](#)), which reduced processing and release times after bond is posted.<sup>30</sup>



## Connecticut

## PUBLIC ACT NO. 17-145 (2017)

*State Legislation*  
*Presumption of Release | Unaffordable Bail Restrictions*

### REFORM

Connecticut enacted [Public Act No. 17-145](#) in response to recommendations made by the Connecticut Sentencing Commission prohibiting courts from imposing cash bail in misdemeanor cases except in limited circumstances (e.g., certain family violence cases; cases where there is a finding that the defendant poses a likely risk of failure to appear or of conduct that threatens the safety of themselves or others).<sup>31,32</sup> In instances where someone charged with a family violence misdemeanor has cash bail set and remains incarcerated after 14 days due to inability to pay, the court must remove those conditions unless the person is likely to not appear, obstruct justice, or harm others if released.



# Georgia

## SENATE BILL 407 (2018)

*State Legislation*  
*Unaffordable Bail Restrictions*

### REFORM

Georgia enacted [Senate Bill 407](#) requiring the court to hold individualized hearings “as soon as possible” when setting cash bail.<sup>33</sup> The law also required the court to evaluate an individual’s financial circumstances when setting cash bail, including an evaluation of their ability to pay, their outstanding debt, and other financial obligations. The United States Court of Appeals for the Eleventh Circuit in *Walker v. City of Calhoun* has suggested that the requirement for “as soon as possible” hearings is satisfied by a hearing within 48 hours of arrest.<sup>34</sup>

### SUBSEQUENT CHANGES

In 2024, Georgia enacted [Senate Bill 63](#), which mandates the setting of cash bail for 30 additional crimes, including nonviolent felonies and misdemeanors.<sup>35</sup> The bill also prohibits individuals, corporations, charities, organizations, nonprofits, or other groups from posting more than three cash bonds in a year. The required assessments of ability to pay and individual financial circumstances established by Senate Bill 407 remain in effect.

As of this writing, the section of Senate Bill 63 that limits people and organizations from posting more than three cash bonds in a year has been temporarily blocked by the United States District Court for the Northern District of Georgia.<sup>36</sup> This temporary injunction was the result of a federal lawsuit filed by the ACLU of Georgia and the Institute for Constitutional Advocacy and Protection at Georgetown University Law Center, on the basis that the three-bond limit is arbitrary and violates freedom of speech. The Georgia Attorney General’s Office has appealed the injunction.

### IMPLEMENTATION

According to research published in the *Georgia Law Review*, only nineteen counties provided hearings within 48 hours for people charged with misdemeanors and the majority of counties had not satisfied the requirement to evaluate ability to pay prior to setting cash bail following the enactment of Senate Bill 407.<sup>37</sup>

## ORDINANCE NO. 18-O-1045 (2018)

*Local Legislation*  
*Elimination of Cash Bail | Strengthening Due Process*

### REFORM

The City of Atlanta enacted an [ordinance](#) that eliminated the use of cash bail as a condition of release for those charged with city ordinance violations.<sup>38</sup> The local law also directed public defenders to provide increased services beyond legal representation, including jail discharge planning and the coordination of social services.



# Illinois

## GENERAL ORDER 18.8A (2017)

*Local Judicial Rule  
Presumption of Release*

### REFORM

In 2017, the Chief Judge of the Circuit Court of Cook County issued [an order](#) impacting the majority of defendants in Cook County that: established a presumption of release without cash bail and with the least restrictive conditions necessary to ensure future court return and protect public safety; required the court to evaluate a defendant's ability to pay and only set cash bail in an amount that is affordable; directed pretrial services to utilize a risk assessment tool to guide the court in determining appropriate release conditions; and, required the court to issue court date notifications for anyone charged with a felony offense.<sup>39</sup>

### IMPLEMENTATION

In the six months after the order was issued, the percentage of defendants released without the assignment of cash bail more than doubled from 26% to 57%, saving defendants \$31.4 million in bond costs.<sup>40</sup>

## SAFE-T ACT (PUBLIC ACT 101-0652) (2021)

*State Legislation  
Elimination of Cash Bail | Strengthening Due Process*

### REFORM

In 2021, Illinois enacted the omnibus [Safety, Accountability, Fairness and Equity Act](#) (SAFE-T Act). The SAFE-T Act includes the Pretrial Fairness Act, which prohibits courts from imposing cash bail in all circumstances. The Pretrial Fairness Act also establishes a process where hearings are held to determine the least restrictive nonfinancial conditions of release necessary to protect public safety and ensure that a defendant returns to court; constrains the use of preventative detention to certain offense types and scenarios; and, requires that all other conditions of release be exhausted before preventative detention is utilized. During the hearings newly established by the law, defense counsel is present, evidence is made available by the prosecution, and the court is required to ensure that the least restrictive conditions are applied. The Pretrial Fairness Act further clarifies that everyone is eligible for pretrial release and that the government has the burden to prove that someone should be preventatively detained.<sup>41</sup>

### IMPLEMENTATION

The legality of the Pretrial Fairness Act was challenged in court on the basis that the state constitution includes the "right to bail." The Supreme Court of Illinois ruled that the law did not violate the state constitution because a "right to bail" meant "a right to release," not a right to impose *cash* bail. The law went into effect in 2023 and rates of pretrial incarceration declined by 14% in Cook County and 25% in rural counties.<sup>42</sup>

In 2024 the Pretrial Success Act was passed as part of the state's budget, allocating funding to create a community-based network of care by ensuring that those released pretrial have access to mental health care, substance misuse treatment, case management, transportation, childcare, and other services.<sup>43</sup>



# Kentucky

## PUBLIC SAFETY AND OFFENDER ACCOUNTABILITY ACT (HOUSE BILL 463) (2011)

*State Legislation*  
*Presumption of Release*

### REFORM

Kentucky enacted the omnibus [Public Safety and Offender Accountability Act](#) in 2011, which included sentencing, probation, parole, and pretrial reform in response to recommendations from the General Assembly's Task Force on the Penal Code and Controlled Substances Act.<sup>44,45</sup> The section of the law related to pretrial reform required state courts to use a risk assessment tool when setting release conditions and made nonfinancial release the presumptive result for anyone with a low- or moderate-risk score. Those with moderate-risk scores were eligible for more restrictive nonfinancial conditions. While the law preserved judicial discretion to deny release where the court finds a risk of flight or danger to others, the legislation required a written order for such detention. The law also created a cash bail maximum for misdemeanors that did not involve physical injury or sexual contact, limiting the amount to no higher than the potential fines and fees associated with the individual's highest misdemeanor charge. Lastly, the law required courts to provide a \$100 credit towards bail for every day that a person is incarcerated prior to trial, unless they were found to present a risk of flight or danger to the community.

### IMPLEMENTATION

Despite the presumption against the use of cash bail established by the law, a report from the Justice Reinvestment Workgroup of Governor Andy Beshear's Criminal Justice Policy Assessment Council found that 34% of initial bond decisions in 2016 involved cash bail, including 31% among low-risk individuals – a 9% increase from 2011.<sup>46</sup> A 2018 article in the *Minnesota Law Review* found that only 29% of arrested Kentuckians were released without cash bail at their first bail hearing.<sup>47</sup>



# Louisiana

## MUNICIPAL COURT BAIL REFORM (2017)

*Local Legislation*  
*Partial Elimination of Cash Bail*

### REFORM

The New Orleans City Council unanimously approved an [ordinance](#) that eliminated the use of cash bail for most nonviolent municipal offenses.<sup>48</sup> For those deemed a flight risk or an imminent danger to another person, the ordinance requires the court to utilize the least restrictive nonfinancial conditions of release. The local law added to existing law that capped cash bail amounts at \$2,500 for people charged with violent municipal offenses.





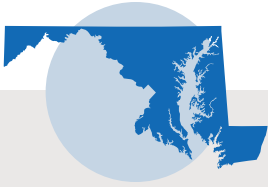
# Maine

## LEGISLATIVE DOCUMENT 1703 (2021)

*State Legislation*  
*Partial Elimination of Cash Bail*

### REFORM

Maine enacted [Legislative Document 1703](#), which eliminated cash bail for the lowest-level nonviolent misdemeanors, excluding crimes related to domestic violence, sexual assault, or where someone is alleged to have violated conditions of their release.<sup>49</sup> For all other offenses, the law requires bail commissioners, judges, and prosecutors to consider defendants' employment, caregiving responsibilities, and medical care needs when setting cash bail amounts.



# Maryland

## COURT OF APPEALS RULE 4-216 (2017)

*State Judicial Rule*  
*Unaffordable Bail Restrictions*

### REFORM

After years of attempts by advocates and lawmakers to reform the state's cash bail system, the Maryland Court of Appeals (the title of the state's Supreme Court until 2022) enacted a [major rule change](#) that prohibited judges from imposing cash bail amounts that people cannot afford and stated that the use of cash bail should be a measure of last resort.<sup>50</sup> The rule also required the court to consider nonfinancial conditions of release as an alternative to cash bail (e.g., community-based pretrial services).

### IMPLEMENTATION

Since the court rule was enacted, bail reform advocates argued that judges may be misinterpreting the rule by choosing to detain people instead of setting cash bail or releasing them with nonfinancial conditions.<sup>51</sup> While rates of release on recognizance increased by 6% and average cash bail amounts decreased significantly in 2017 following implementation of the rule, the use of preventative detention increased by 12% over that span.<sup>52</sup> Additionally, the gap in average cash bail amounts set for Black people compared to white people widened: before the rule change, Black people received an average bail amount 15% higher than white people; following the rule change, this disparity increased to 22%. The use of electronic monitoring, a more burdensome nonfinancial release condition, also increased in Maryland, but government funding to cover its administrative costs has been insufficient. If these costs are not covered by the government, they may shift to legally innocent individuals, who could face continued incarceration if unable to pay.<sup>53</sup>



# Michigan

## **ROSS V. BLOUNT AGREEMENT (2022)**

*Federal Court Settlement  
Presumption of Release | Unaffordable Bail Restrictions*

### **REFORM**

In 2022, the ACLU, The Bail Project, the NAACP, and Covington & Burling LLP [settled](#) a federal lawsuit filed in 2019 against the 36th District Court and the Wayne County Sheriff on behalf of seven defendants held in jail on unaffordable cash bail.<sup>54</sup> The agreement required the court to release people in Wayne County without cash bail unless there is evidence that they pose a risk of flight or danger to the public. In remaining instances where cash bail is assigned, the court may only set cash bail after determining how much a defendant can afford to pay. The agreement further clarifies that cash bail should not be set for anyone with a household income that is 200% or less of the federal poverty level – \$55,000 for a family of four – because it is presumed that they are unable to pay.



# Mississippi

## **SENATE BILL 2298 (2023)**

*State Legislation  
Strengthening Due Process | Unaffordable Bail Restrictions*

### **REFORM**

Mississippi enacted [Senate Bill 2298](#), which restricted the use of cash bail in municipal and state misdemeanor courts to only those instances where it is necessary and reasonable to protect the safety of others and ensure that the defendant returns to court.<sup>55</sup> The law also prohibited municipal and state misdemeanor courts from setting cash bail for the sole purpose of detention. In instances where cash bail is set and is unaffordable, defendants may file, and the court must rule within 48 hours, on motions to reduce or set aside the cash bail requirement. Further, if a defendant asserts that they are indigent, the court must determine if they can be released on recognizance. The law also states that anyone who is charged with a misdemeanor cannot be detained solely because they cannot post cash bail. Other “factors considered relevant” by the court can be used to justify pretrial incarceration, however.



# Nebraska

## LEGISLATIVE BILL 259 (2017)

*State Legislation  
Presumption of Release*

### REFORM

Nebraska enacted [Legislative Bill 259](#), which, for allailable offenses, required the court to consider all conditions of release to avoid pretrial incarceration, including cash bail.<sup>56</sup> In instances where the court determines that release on recognizance would be inappropriate, the court is required to consider an individual's ability to pay cash bail and impose the least restrictive conditions necessary to ensure return to court and minimize harm to others. The law also states that any fees or costs associated with pretrial supervision be waived for indigent individuals.

### SUBSEQUENT CHANGES

In 2020, the legislature enacted [Legislative Bill 881](#), which carved out new exceptions from the presumption of pretrial release, specifically for defendants with charges related to domestic violence; circumstances where an individual failed to appear at court at some point in the preceding six months; and, instances where a judge determines that an individual's release would pose some risk to the safety of witnesses, evidence, or others.<sup>57</sup>

### IMPLEMENTATION

Despite explicit restrictions on the use of cash bail and a requirement of presumptive release for most people arrested, a report by the ACLU found that courts continued to assign cash bail more than any other option, releasing only 18% of individuals on their own recognizance.<sup>58</sup> In 38% of observed cases, the court did not ask about ability to pay as required.



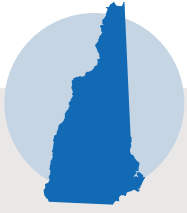
# Nevada

## VALDEZ-JIMENEZ V. EIGHTH JUDICIAL DISTRICT COURT (2020)

*State Court Ruling  
Presumption of Release | Strengthening Due Process | Unaffordable Bail Restrictions*

### REFORM

The Supreme Court of Nevada [ruled](#) that courts may only impose cash bail where they determine that it is necessary to ensure safety of the community and court appearance, except where someone is charged with a capital offense or first-degree murder. When setting cash bail amounts, the court must consider a defendant's financial condition, even though they are not prohibited from assigning cash bail amounts that are unaffordable. The ruling also required individualized hearings be held to detain someone pretrial, at which defendants have a right to counsel and to present evidence. Such individualized hearings are required in all instances where an individual is incarcerated after arrest, during which the State must prove, through clear and convincing evidence, that cash bail, rather than less restrictive conditions, is necessary to ensure a defendant's future appearance in court and to protect community safety.<sup>59</sup>



# New Hampshire

## THE CRIMINAL JUSTICE REFORM AND ECONOMIC FAIRNESS ACT (SENATE BILL 556) (2018)

*State Legislation*

*Presumption of Release | Unaffordable Bail Restrictions*

### REFORM

New Hampshire enacted the [Criminal Justice Reform and Economic Fairness Act](#), which established a presumption of release on recognizance or with conditions for people charged with most offenses; prohibited the setting of unaffordable cash bail that results in incarceration solely because of an individual's financial circumstances; and, required the court to account for a person's broader circumstances, such as whether they are the primary income provider for their family or a caretaker. The law also made explicit that homelessness cannot be interpreted as a guarantee that a person will not appear in court if released. For a limited list of offenses, a clear and convincing standard of evidence that a person will endanger the safety of the public must be met in order for preventative detention to be utilized, rather than the preponderance of evidence standard used for other charges; the law explicitly enumerates the conduct that can be utilized as evidence to meet this standard. The court is also required to state on-the-record reasons for any decisions that result in an individual being incarcerated pretrial.<sup>60</sup>

### SUBSEQUENT CHANGES

In 2024, New Hampshire enacted [House Bill 318](#), which established a new preventive detention scheme for enumerated serious felonies.<sup>61</sup> Under the new law, for those charged with one of the enumerated serious felonies automatic, preventive detention is required until the defendant is seen by a judicial official (usually within 24 hours of arrest). Additionally, for these listed felonies, the standard for ongoing preventative detention was lowered from the clear and convincing standard to a preponderance of evidence standard. The law also permits the revocation of release and the preventative detention of those accused of knowingly violating any conditions of release, as long as probable cause is found. Lastly, the law authorizes counties to establish criteria for determining indigency and permits a county to waive electronic monitoring fees if a person's indigency is confirmed.



# New Jersey

## S946/A1910 & SCR128 (2014)

*State Legislation | State Constitutional Amendment*

*Partial Elimination of Cash Bail | Presumption of Release*

### REFORM

In response to the recommendations made in 2013 by a Joint Committee on Criminal Justice created by the Chief Justice for the Supreme Court of New Jersey, New Jersey enacted [S946/A1910](#), which shifted the state from a money-based pretrial system to a risk-based pretrial system.<sup>62,63</sup> The law required the utilization of a risk assessment tool to inform decisions about pretrial release; established speedy trial requirements and a presumption that every person be eligible for release before trial unless charged with murder or an offense that carries a sentence of life imprisonment; allowed for

preventative detention only when the prosecution makes a formal motion requesting detention and the court finds that no conditions, financial or otherwise, would reasonably assure the person's appearance in court or protect community safety; and, permitted judges to impose cash bail as a condition of release in limited instances. Additionally, New Jersey voters approved an [amendment](#) to their constitution that allowed for the preventative detention of defendants found by the court to pose a risk of flight or danger to the community.<sup>64</sup> Together, these reforms substantially eliminated cash bail.

## IMPLEMENTATION

Between 2015 and 2022, following these reforms, New Jersey's pretrial jail population decreased by more than 20%.<sup>65</sup> Although New Jersey's pretrial reform has reduced pretrial incarceration, it has not decreased racial disparities within the pretrial jail population, which some argue are influenced by the required use of a risk assessment tool because it infuses racial bias.<sup>66</sup>



## New Mexico

### **STATE V. BROWN (2014)**

*State Court Ruling*

*Presumption of Release | Unaffordable Bail Restrictions*

## REFORM

In 2014, the Supreme Court of New Mexico [held](#) that the use of cash bail is unconstitutional when less restrictive nonfinancial conditions are adequate to ensure future appearance in court and the safety of the public.<sup>67</sup> The ruling further clarified that bail should not be set intentionally high to prevent an individual's release, nor should it be based solely on the nature of the charged offense.

### **SENATE JOINT RESOLUTION 1 (2016)**

*State Constitutional Amendment*

*Strengthening Due Process | Unaffordable Bail Restrictions*

## REFORM

The 2014 ruling in *State v. Brown* led the New Mexico Legislature, and the state's residents, to adopt an [amendment](#) to the state constitution in 2016.<sup>68,69</sup> The amendment restricts courts from preventatively detaining individuals in felony cases unless the prosecuting attorney requests a hearing and proves by clear and convincing evidence that no release conditions will reasonably protect public safety. Where individuals are not eligible for detention, the amendment also prohibits the court from imposing bail amounts that are unaffordable to them and establishes the right to an expedited appeal process for individuals who cannot afford cash bail amounts set against them.



# New York

## NEW YORK STATE FISCAL YEAR 2019-20 BUDGET AGREEMENT (2019)

*State Legislation*

*Partial Elimination of Cash Bail | Presumption of Release*

### REFORM

In 2019, lawmakers utilized New York's annual budget approval process to enact a [reform](#) that effectively eliminated the use of cash bail and preventative detention for most misdemeanors and many nonviolent felonies.<sup>70</sup> Under the law, judges were directed to release on recognizance or with nonfinancial conditions all but those who were charged with so-called "qualifying offenses," (which remained eligible for cash bail or remand). These qualifying offenses included: virtually all violent felony offenses; Class A felonies (except for most drug charges); sex offenses; crimes involving witness tampering; violations of an order of protection, and others.<sup>71</sup> When a defendant charged with one of the qualifying offenses was found to pose a risk of flight, the court was ordered to impose the least restrictive conditions necessary – including the use of cash bail and up to and including remand – to ensure that the defendant appears at future court dates. The 2019 reforms maintained the state's long-standing prohibition against the consideration of public safety (i.e., "dangerousness") when making detention and release decisions.

### SUBSEQUENT CHANGES

The state legislature has rolled back the 2019 reforms in three separate years – 2020, 2022, and 2023 – largely in response to political pressure.<sup>72</sup> Taken together, these modifications expanded the list of "qualifying offenses" to include more than 30 additional misdemeanors and nonviolent felonies; created a [range of additional circumstances](#) for which the court could remand a person to preventative detention; removed the requirement that judges impose only the least restrictive conditions necessary to ensure that the defendant returns to court; and, permitted additional nonfinancial conditions of release (i.e., mandated substance misuse treatment; maintaining employment or educational involvement).<sup>73</sup> These subsequent changes also required new statewide pretrial reporting.

### IMPLEMENTATION

New York's bail reforms have contributed to significant declines in the state's pretrial population: in the two years following enactment of the 2019 reforms, 24,000 fewer people had cash bail set and the statewide pretrial population decreased by 15% to its lowest levels in decades.<sup>74</sup> Pretrial incarceration rates decreased most in suburban counties and least in urban counties.<sup>75</sup>

Despite the rollbacks, future court appearance remained the court's sole evaluative criteria when considering pretrial release and associated conditions of release. While the courts are legally prohibited from considering public safety risk, arguably, the subsequent changes to the 2019 law – with their expansion of charges and scenarios eligible for cash bail and remand – effectively serve as a proxy for this consideration.



## Oregon

### SENATE BILL 48 (2021)

State Legislation

*Presumption of Release | Strengthening Due Process | Unaffordable Bail Restrictions*

#### REFORM

In 2021, following recommendations made by the legislature's Public Safety Task Force, Oregon enacted [Senate Bill 48](#), which increased the level of authority for pretrial decision making in the judiciary and reduced reliance on cash bail.<sup>76,77</sup> The law directed the Chief Justice of the Supreme Court to establish release guidelines that established a presumption of release (generally, on recognizance) for lower-level misdemeanors and felonies; a presumption of release with conditions, including cash bail, for some more serious charge categories within these classes; and, a presumption of detention for people charged with more serious felonies, sex offenses, and domestic violence offenses.<sup>78</sup> The law required release decisions be made "without undue delay," or at a release hearing no later than 48 hours after arraignment if good cause is shown. Finally, the law permitted judicial districts to appoint "release assistance officers" tasked with interviewing detainees, managing victim outreach, and making release recommendations.

The law also created several constraints around the utilization of cash bail: it eliminated the use of pre-arraignment cash bail and bail schedules; required the court to consider release on recognizance and other nonfinancial conditions before imposing cash bail; removed mandatory minimum cash bail amounts for methamphetamine charges and technical violations of pretrial release conditions (which were set at minimums of \$500,000 and \$250,000, respectively); and, required cash bail amounts be set in accordance with an individual's ability to pay.

#### IMPLEMENTATION

Early assessment by the National Center for State Courts refers to "anecdotal evidence" that pre-arraignment custody rates have decreased in some counties but increased in others, especially rural counties.<sup>79</sup> While the law authorized the appointment of release assistance officers and budget constraints delayed their hiring, budget requests are pending that would permit more widespread implementation of this provision.



## Texas

### ODONNELL V. HARRIS COUNTY (2019)

Federal Court Settlement

*Bail Schedule Restrictions | Partial Elimination of Cash Bail*

#### REFORM

In 2019, the United States District Court for the Southern District of Texas oversaw a [settlement](#) in *ODonnell v. Harris County* and the parties entered into a consent decree, resulting in the first federal court-supervised bail reform that effectively prohibited the utilization of cash bail at arrest and before an individualized bail hearing in misdemeanor cases.<sup>80</sup> Specifically, the consent decree eliminated the use of Harris County's bail schedule at arrest for most people charged with misdemeanors. The settlement also required the county to follow new rules to ensure that people arrested for most misdemeanor charges were released promptly on recognizance or with nonfinancial conditions.

## IMPLEMENTATION

After these reforms, the percentage of people charged with misdemeanor offenses who were released after arrest nearly doubled (80% in 2024 vs. 49% in 2015), with only a fraction (12%) required to post cash bail for their release. Despite higher release rates, missed first court appearances declined by 35%, likely because of court reminders, and the total number of misdemeanor arrests declined by 20% (from 50,000 in 2015 vs. 41,000 in 2024). Disparities in pretrial release rates also decreased across gender, race, and ethnicity.<sup>81</sup> The independent monitors overseeing the O'Donnell consent decree stated that "the entire misdemeanor system...shrunk."<sup>82</sup>

### **BOOTH V. GALVESTON COUNTY (2019)**

*Federal Court Ruling  
Strengthening Due Process*

## REFORM

The ACLU and Arnold & Porter filed a class action lawsuit in the United States District Court for the Southern District of Texas challenging the county's practice of automatically setting unaffordable cash bail that resulted in detention. During the pendency of the lawsuit, significant changes were made to Galveston County's bail setting practices with the expressed intent of bringing the county into line with the requirements outlined in *O'Donnell*: changes included a more detailed, individualized consideration of a person's financial circumstances and requirements that bail review hearings occur within 48 hours for those who cannot afford their initial bail. Additionally, the federal court [order](#) in *Booth v. Galveston County* required Galveston County to provide counsel at initial bail hearings when the defendant was arrested for a felony offense.<sup>83</sup>



## Utah

### **HOUSE BILL 206 (2020)**

*State Legislation  
Presumption of Release | Strengthening Due Process | Unaffordable Bail Restrictions*

## REFORM

In 2020, Utah enacted [House Bill 206](#), which overhauled the state's pretrial system by establishing a presumption that people will be released on recognizance, unless charged with certain serious felonies; requiring the court to utilize the least restrictive conditions of release necessary to ensure future appearance in court and to protect public safety; and, requiring the court to consider an individual's ability to pay prior to setting cash bail.<sup>84</sup> The law also created a robust process for detaining a defendant pretrial, including hearings where defense counsel is present (and appointed, if needed), and an opportunity to present and challenge admitted evidence used to substantiate preventative detention. Further, the law expedites trials by ordering the court to remove conditions of release for cases lasting longer than 120 days prior to indictment. The law also establishes reporting requirements related to court appearance rates, rates of new offenses committed while on release, fines and fees collected, and information about outstanding warrants and their associated charges.



## SUBSEQUENT CHANGES

In 2021, Utah enacted [House Bill 220](#), which repealed most of House Bill 206.<sup>85</sup> The only requirements preserved were that the court base decisions pertaining to cash bail on a person's ability to pay, that certain additional data be collected, and that conditions of release be removed when cases last for longer than 120 days before indictment.



## Vermont

### H.728 (2018)

*State Legislation*

*Partial Elimination of Cash Bail | Unaffordable Bail Restrictions*

## REFORM

In 2018, Vermont enacted [H.728](#), which expanded the list of misdemeanor charges for which assignment of cash bail is prohibited at first appearance to include those misdemeanor offenses that are ultimately eligible for expungement (i.e., most nonviolent misdemeanors).<sup>86</sup> At subsequent hearings, however, the court may choose to impose cash bail up to \$200 for those charged with one of the originally exempted misdemeanors if the court determines that financial conditions are necessary to mitigate the risk of flight from prosecution and after taking a person's financial situation into account. The law also alters terminology regarding court appearance to focus on intentional flight rather than accidental non-appearance, changing the words "ensure...appearance" to "flight from prosecution."



## Virginia

### SENATE BILL 1266 (2021)

*State Legislation*

*Presumption of Release*

## REFORM

In 2021, Virginia enacted [Senate Bill 1266](#), which removed a statutory presumption in favor of preventative detention for a number of offenses.<sup>87</sup> By removing this presumption, the law effectively guarantees all people arrested in Virginia a presumptive right to release with or without conditions, including cash bail. However, the court maintains the discretion to deny pretrial release in instances where it finds probable cause that an individual will not appear in court or represents a danger to the public.



# Washington, D.C.

## **BAIL REFORM AMENDMENT ACT OF 1992 (D.C. LAW 9-125) (1992)**

*State Legislation*

*Partial Elimination of Cash Bail | Presumption of Release*

### **REFORM**

The [Bail Reform Amendment Act of 1992](#) established a presumption of pretrial release without conditions for all defendants.<sup>88</sup> Under the law, if the court has reason to believe that an individual cannot be safely released on recognizance, the court must impose the least restrictive conditions necessary to ensure future court appearance and to protect public safety. The law permits the use of preventative detention in limited circumstances, including instances where individuals are charged with a violent crime, obstruction of justice, or where there is a finding of serious risk that the defendant will abscond or obstruct justice. However, such detention is only permitted after a hearing to determine whether there is clear and convincing evidence that no other condition or conditions will ensure future appearance and protect public safety. The law further states that the use of cash bail to address concerns about public safety is prohibited, and that its sole use is to ensure a defendant returns to court; however, when applied for this purpose, it cannot result in incarceration.

### **IMPLEMENTATION**

In Washington D.C. over 90% of people arrested are released without any financial conditions.<sup>89</sup>



# West Virginia

## **HOUSE BILL 2419 (2020)**

*State Legislation*

*Presumption of Release*

### **REFORM**

West Virginia enacted [House Bill 2419](#) in 2020, which created a presumption of release on recognizance for people charged with most misdemeanors.<sup>90</sup> Certain misdemeanor charges, however, are excluded from this presumption of release on recognizance: specifically, violent offenses; drug offenses; serious traffic offenses; and, offenses where use of a deadly weapon is alleged and where the alleged victim is a minor. The law also requires that any conditions of release set by the court be the least restrictive necessary to ensure future appearance and protect public safety, based on an assessment of several enumerated and individualized factors.



# Conclusion

**Pretrial decision making can be extremely consequential** for criminal justice system outcomes. The decisions made by and within the courts can increase or decrease jail populations, alter individual case outcomes, and collaterally impact families and communities across the country. Most Americans recognize that there are vital flaws in our current pretrial system: more than three-quarters of likely voters support criminal justice reform and almost the same amount support ending the practice of keeping people in jail pretrial if they've been charged with a nonviolent offense. Nearly two-thirds of likely voters say mass incarceration makes our communities less safe and that it worsens social problems, like homelessness and drug overdoses.<sup>91</sup>

Even with the majority of Americans favoring change, it can be difficult to agree on a shared vision for the future. The intricacy of criminal justice reform, which is replete with technicalities, legal jargon, and complex legislative processes, can be cumbersome to understand. The possibilities for pretrial and criminal justice reform are also complicated by local idiosyncrasies, with different jurisdictional practices, state statutes, and constitutional provisions obscuring the possibility for any one-size-fits-all approach. Nevertheless, the humanitarian crisis created by unaffordable cash bail, which effectively amounts to

wealth-based detention, should be enough to motivate change. Add to that the spirited national debate around the need for bail and pretrial reform and we should all be able to agree that it is critical to explore and develop new pathways towards pretrial fairness and justice.

Every year, state legislatures consider bills that modify the statutes and laws governing the functioning of their pretrial systems, actions which are sometimes considered progress and other times a regression. It is nevertheless evident, when viewed altogether, that our legislatures recognize their responsibility to improve the functioning of our pretrial systems.

*Beyond Bail* covers decades of changes to our pretrial systems, often driven by legislative bodies and other times by court actors. Together, our analysis describes 36 instances of jurisdictions taking steps to improve their pretrial system, largely through the elimination or minimization of cash bail and wealth-based detention. Because any reform effort depends on many local factors – such as differing statutory, legal, administrative, political, and practical circumstances – best practices vary dramatically at the state-level. To that end, this report does not make specific recommendations regarding which category of reform advocates should pursue.

Nevertheless, a broad examination of the modern bail reforms included in this report has much to teach us about the components of effective reform, the steps necessary to ensure thorough implementation, and ways to modify pretrial practices to respond pragmatically to public safety

concerns. Above all, this analysis reveals the unmistakably persistent momentum driving bail reform.

The remainder of this report explores key lessons drawn from the progress and challenges of the bail reform movement to date.

## Building Cumulative Change and Protecting Against Backlash

It is important to recognize how momentum is developed or maintained to build towards effective bail reform. In a number of states, legislative reform efforts were initiated as responses to task force recommendations, court decisions, or as outgrowth from local-, city-, or county-level reforms. In other instances, the reforms result from court decisions or decisions made by the general public through the process of amending state constitutions. The development of stakeholder buy-in, external system pressure from community members and advocates, and local evidence have often been sufficient to spur legislative action.

It is also evident that maintaining influence in both the public and political spheres following the passage of legislation is equally important to upholding a successful reform effort. There are numerous examples of bail reform successes followed by a swift backlash – such as in New York and Utah – with key provisions being repealed by subsequent legislation. Guarding against this by continuing to engage legislators, agency staff, stakeholders, and the general public is imperative. On the other hand, there are cases like Colorado where energy from successful reforms has been built upon to advance a series of harmonious bail reforms.

## Anticipating and Mitigating Implementation Challenges

The potency of reform efforts often lies in the effectiveness of implementation. The gap between legislation written on a page and making those words actionable is sometimes great, requiring additional work from different system actors to ensure effective roll-out. When such deliberate efforts are not undertaken, laws sometimes are not implemented or are implemented with only a fraction of the intended salience and impact. This has been particularly true when the reform is grounded in adjustments to subjective judicial determinations, such as the introduction of new considerations for judges when setting bail or shifting a presumption of detention to a presumption of release. This is particularly true where such presumptive outcome shifts were based on underlying subjective determinations, such as establishing a presumption of release that is rebuttable when the court decides that the individual poses a risk of flight.

California, Colorado, Georgia, Kentucky, Maryland, and Nebraska all saw judges fail to satisfy new legal requirements to shift presumptions or adjust the factors they used when setting bail. In the above examples, the disconnect between the intention of legislation and the actions taken by the judges may have resulted from inadequate training and guidance provided to relevant stakeholders, as well as a desire among some stakeholders to maintain the status quo. Implementation can be further complicated by local factors like diverse political environments and practical pressures, such as acquiring funding to increase the time and resources used for bail hearings or the lack of supportive pretrial infrastructure.

To mitigate against these sorts of implementation challenges, our analysis suggests that implementation must be kept in mind from the onset. At minimum, reformers must anticipate potential gaps between the legislative language and how it will be interpreted;

contemplate the necessity of training responsibilities and other opportunities to include system stakeholders in the process from the outset; and, develop strategies to address any resistance to change. Directives to system actors should be as explicit as possible and language should be scrutinized to ensure there is definitional clarity for terms and processes. For example, judges tasked with determining whether a bail amount is “affordable” have been more likely to reduce bail amounts where explicit income caps or calculations were provided (e.g., Detroit), compared to other jurisdictions where each court is given discretion to decide what constitutes “affordability.” Additionally, statutory changes that include presumptions of release have often failed to reduce pretrial detention rates, except when accompanied by mandatory explicit procedure, such as requiring written decisions for diverting from a presumption and when accompanied by

strengthened due process. Wherever possible, reformers should ensure that changes are clear – and enforceable.

Data collection and public reporting can also be a useful tool to support effective implementation. When implementation metrics are established, reformers are better able to monitor the outcomes and efficacy of particular changes. Effective data-driven monitoring also creates more opportunities for stakeholders to respond to any implementation obstacles and to identify opportunities where providing education or making implementation modifications are necessary. Data of this sort serves the dual purpose of providing information about the reform, which supports future efforts, and helps other stakeholders account for challenges.

These and other implementation challenges must be considered at the outset of any reform effort, for drafters, advocates, and stakeholders.

## Pretrial Reform as Community Safety

When considering the public safety impacts of bail reform, it is important to balance concerns about community safety (commonly measured utilizing crime data) against the harms imposed by unnecessarily incarcerating someone pretrial. The latter is often discounted when analyzing the outcomes of pretrial system reforms and the absence of consideration for the harms of unnecessary incarceration can result in a limited and inexact assessment of the impacts of pretrial policy changes.

Everyone deserves to be and feel safe and successful pretrial reforms can ensure that both public safety and individual rights are upheld. Despite the claims of bail reform opponents, there is considerable evidence that efforts to minimize the use of cash bail have not harmed public safety in reformed jurisdictions.<sup>92,93</sup> The appendix of this report identifies state-specific research that demonstrates that local reforms have not negatively impacted crime rates or court appearance in California, Connecticut, Illinois, Louisiana, New Hampshire, New Jersey, New Mexico, New York, Texas, and Washington D.C.

## Strong Momentum and the Future

Recent progressive reforms and pretrial policy changes highlight significant strides toward a more equitable justice system and provide a foundation for future advancements. This report identifies thirteen instances of bail reform from 2020 to 2023, initiated across diverse political landscapes and through varied processes, demonstrating the continued momentum for change. Notably, some of the most impactful and enduring reforms have included the elimination of cash bail. Illinois led the way as the

first state to abolish cash bail entirely, a landmark reform implemented in 2023.

Continued progress requires a unified effort and a careful examination of the successes and challenges of bail reform to date. By developing comprehensive strategies and drawing lessons from past initiatives, the movement to end cash bail can strengthen its impact, eliminate wealth-based detention, and promote equitable solutions to pretrial injustice.

# Appendix

## IMPACT OF BAIL REFORMS ON COURT APPEARANCE AND PUBLIC SAFETY

Crime trends and court appearance rates reflect countless mediating influences and often change without simple explanation. But time and time again, national reviews of data have concluded that bail reform is not a threat to public safety or appearance at court.<sup>94,95,96,97,98</sup>

This appendix catalogs instances where local, discrete analyses have been performed following enactment of pretrial reform. Such analysis does not exist or is not publicly available in every case where reform is enacted, but a review of the available evidence tends to show that pretrial reform does not pose a risk of harm or lead to systemwide inefficiencies.

### Impacts on Court Appearance

#### Illinois

##### **SAFE-T Act (Public Act 101-0652) (2021)**

A study published by researchers at the Loyola University Chicago found that overall failure to appear rates declined from 25.1% to 22.8% after the Pretrial Fairness Act was implemented.<sup>99</sup>

#### Louisiana

##### **New Orleans Municipal Court Bail Reform (2017)**

A study published in the *American Journal of Criminal Justice* examining the ordinance's impact found that releasing more individuals without a financial condition does not increase someone's likelihood of failure to appear or be rearrested.<sup>100</sup> The study determined that there will be no substantial impact on public safety with the local elimination of cash bail.

#### New Jersey

##### **S946/A1910 & SCR128 (2014)**

An analysis performed by the New Jersey Courts found that court appearance rates increased after bail reform, increasing from 91% when the reforms were first introduced to 97% in 2020.<sup>101</sup>

#### New Mexico

##### **Senate Joint Resolution 1 (2016)**

An analysis published by the New Mexico Courts found that there was no statistically significant change in court appearance for those released without financial conditions after the reforms went into effect.<sup>102</sup>

#### New York

##### **2019-20 Budget Agreement (2019)**

An analysis published by FWD.us found that, between 2019 and 2021, court appearance rates increased by 3 percentage points for cases where pretrial release without bail was required by bail reform.<sup>103</sup>

#### Washington, D.C.

##### **Bail Reform Amendment Act of 1992 (D.C. Law 9-125) (1992)**

Public reporting by the Pretrial Services Agency for the District of Columbia found that court appearance rates have remained consistently high in the decades following reform.<sup>104</sup> Over 90% of released defendants make all court dates.<sup>105</sup>

## Impacts on Public Safety

### California

#### **Urquidi/Emergency Bail Schedules (2022)**

Initial data collected and reported by the Los Angeles Superior Court shows that individuals released without bail were rearrested at a very low rate, with more than half represented by people who paid bail for their release.<sup>106</sup>

### Illinois

#### **Cook County General Order 18.8A (2017)**

An analysis produced for the Macarthur Safety and Justice Challenge found that, following the order, people charged with felonies were not more likely to be arrested while awaiting trial than they were prior to the order. There was no statistically significant change in the amount of crime in Chicago in the year following the order.<sup>108</sup>

#### **SAFE-T Act (Public Act 101-0652) (2021)**

Researchers at the Loyola University Chicago found that rates of crime did not increase after the Pretrial Fairness Act was implemented.

### Connecticut

#### **Public Act No. 17-145 (2017)**

Research conducted for the Harry Frank Guggenheim Foundation found that, in the year following passage of the 2017 legislation, the rate of violent crime dropped nearly 10% across Connecticut.<sup>107</sup>

### New Hampshire

#### **Senate Bill 556 (2018)**

The New Hampshire Department of Safety's data has shown that both crime and arrests dropped substantially in the years following the 2018 reform, falling as much as 20-30% across a variety of charge classifications.<sup>109</sup>

### New Jersey

#### **S946/A1910 & SCR128 (2014)**

A report published by the New Jersey Courts found that, following expansion of pretrial release, the rearrest rate stayed stable between 2017 and 2019.<sup>110</sup> Subsequent research published in the *Journal of the American Medical Association* has shown no change in fatal and nonfatal gun violence in New Jersey after substantial declines in jail incarceration under bail reform.<sup>111</sup>

### New Mexico

#### **Senate Joint Resolution 1 (2016)**

Reports issued by the legislature indicate that statewide crime rates declined in the years following the reform.<sup>112</sup> In Bernalillo County, an analysis conducted by the Administrative Office of the Courts of more than 10,000 felony cases found that 95% of felony defendants were not arrested for a violent crime while on pretrial release. Only 13 (0.1%) of the cases analyzed involved arrests for first-degree felonies while defendants awaited trial.<sup>113</sup>

### New York

#### **2019-20 Budget Agreement (2019)**

Numerous studies found that New York's bail reform did not have a negative impact on public safety: the share of people impacted by bail reform who were rearrested while awaiting trial in 2021 was roughly the same as those with similar charges in 2019.<sup>114</sup> Eliminating the option to set bail was not associated with a change in overall rearrest, felony rearrest, or violent felony rearrest within two years or during the pretrial period, according to research published by the Data Collaborative for Justice at John Jay College.<sup>115</sup> Research published in *Statistics and Public Policy* found that there was no significant impact of bail reform on aggregate crime for assault, theft, and drug crimes.<sup>116</sup> Research published in *Justice Quarterly* found that, ultimately, bail reform's effect on crime rate increases was negligible.<sup>117</sup>

## Texas

### ***ODonnell v. Harris County (2019)***

Independent monitors overseeing the ODonnell Consent Decree have reported significant benefits from reforms in Harris County, without a negative impact to public safety: specifically, the number of misdemeanor cases declined by nearly 20% between 2015 and 2023, and the share of misdemeanor defendants charged with a new crime within one year has seen a small decline since 2015.<sup>118</sup>

## Washington D.C.

### **Bail Reform Amendment Act of 1992 (D.C. Law 9-125) (1992)**

According to research published by the Pretrial Services Agency for the District of Columbia, approximately 87% of individuals released without bail remain arrest-free while out on pretrial release. Of those who are rearrested, less than 2% are accused of a violent crime.<sup>119</sup>



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