

SUPPORT GROWS FOR PRETRIAL JUSTICE REFORM

NATIONAL POLL SHOWS VOTERS WANT SAFETY, LIMITED USE OF DETENTION, AND ASSISTANCE TO ENSURE COURT APPEARANCE

Independent analyses of a nationwide survey of 1,400 registered voters conducted in May 2018 for the Pretrial Justice Institute (PJI) and the Charles Koch Institute (CKI) show that most Americans realize the current pretrial justice system is not working and are open to considering—and supporting—commonsense solutions, particularly as they learn more about how the system operates.

An overwhelming majority of Americans—across all partisan, regional, and demographic divides—would like the criminal justice system to become fairer and to reduce the use of incarceration, except when it is necessary to protect public safety. Ninety-one percent of survey respondents supported reform, with 19 percent of them calling for a complete overhaul of the system. Only 6 percent saw no need for change.

More than three-quarters of respondents said the current system favors the wealthy. African-American and Latinx voters were most emphatic in that assessment, with 86 and 89 percent, respectively, saying wealthier people enjoyed better outcomes. Seventy-seven percent of white respondents agreed. [See Figure 1]

FIGURE 1

Q: Do you feel that the criminal justice system in the U.S. basically treats everyone fairly, or do you feel the wealthy enjoy substantially better outcomes from the criminal justice system than poor and working-class Americans?

Wealthy Enjoy Better Outcomes:

Total: 79%
African American: 86%
Latinx: 89%
White: 77%

Money Bond: Unfair and Dangerous

More than 60 percent of the people in jail in the United States—nearly a half million on any given day—have not been convicted of a crime.^A Ninety percent of these legally innocent people are behind bars for one reason: They cannot afford to post money bond.^B Three out of four criminal cases in state trial courts are for misdemeanors that, if proved, would result in fines and/or less than a year in jail.^C

Compared to people arrested on comparable charges who are released before trial, a person who spends the full pretrial period in jail is much more likely to be sentenced to jail or prison and for longer periods of time.^D

However, the use of money bond is not only unfair. It is also dangerous. People who remain in jail before trial for more than three days become 40 percent more likely to be arrested on new charges during the pretrial period than are comparable people released within 24 hours.^E This is likely due to the negative effects of detention: lost jobs, income, housing, and even custody of children.

Meanwhile, in systems that use money bail, nearly half of the people who are least likely to succeed in the community are released before trial with little or no meaningful supervision.^F

- A. Zhen Zeng, Jail Inmates in 2016, Bureau of Justice Statistics (February 2018). <https://www.bjs.gov/content/pub/pdf/ji16.pdf>
- B. Brian A. Reaves, Felony Defendants in Large Urban Counties, 2009—Statistical Tables, Bureau of Justice Statistics (December 2013). See p. 15. <https://www.bjs.gov/content/pub/pdf/fdluc09.pdf>
- C. R. Schaffler, R. LaFountain, S. Strickland, K. Holt, and K. Genthon, Examining the Work of State Courts: An Overview of 2015 State Court Caseloads, National Center for State Courts (2016). http://www.courtstatistics.org/~/_media/Microsites/Files/CSP/Criminal/PDFs/EWSC-2016-CRIM-Page-2-Comp.ashx
- D. Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, The Hidden Costs of Pretrial Detention, Laura and John Arnold Foundation (November 2013). http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf
- E. Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, The Hidden Costs of Pretrial Detention, Laura and John Arnold Foundation (November 2013). http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf
- F. Developing A National Model For Pretrial Risk Assessment, Research Summary, Laura and John Arnold Foundation (November 2013). http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-research-summary_PSA-Court_4_1.pdf

Commonsense Solutions

Despite expanding media coverage in recent years, most Americans still have a limited understanding of the pretrial process and the money bail system.

Americans want the criminal justice system—and the pretrial system in particular—to focus on public safety, not on the default incarceration of people who come into contact with law enforcement.

However, researchers—who examined poll respondents’ attitudes toward a range of pretrial justice issues, ideas, and proposals—identified four areas where people were open to and even embraced change, particularly as they learned more about the pretrial justice system over the course of the survey. In sum, Americans

believe it is time to reset the default response—jail—and move to solutions that are fairer, safer, and more effective.

The four areas:

- Reducing arrests
- Restricting detention
- Replacing money bond
- Raising equity

Reducing arrests

Seventy-three percent of respondents favored reducing the number of arrests for low-level, nonviolent offenses. The figure was 87 percent among African Americans, 75 percent among Latinx voters, and 71 percent among whites.

Similarly, 76 percent of all respondents supported citations instead of arrests for low-level, nonviolent offenses. Seventy-eight percent of African Americans supported this idea, while the figure was 86 percent among Latinx voters and 73 percent among whites.

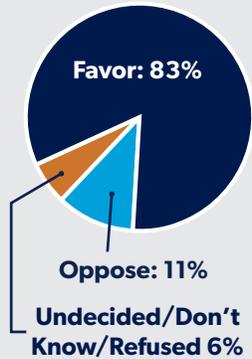
Restricting detention

Americans want the criminal justice system, and the pretrial system in particular, to focus on public safety, not on the default incarceration of people who come into contact with law enforcement.

While 83 percent of survey respondents would allow judges to detain a person charged with a serious violent crime without bail when there is no way to protect public safety (or to guarantee the person’s return to court), respondents also support clear limits on the system’s ability to detain. Only 36 percent would allow courts to hold arrested people regardless of the severity—or lack of severity—of their charges. [See Figure 2]

FIGURE 2

Q: Would you allow judges to detain people charged with a serious violent crime in jail without bail when it has been found in court that there are no options to get them back to court or to protect public safety?



Q: In most states, defendants currently have a right to bail for all but the most serious offenses. Would you favor or oppose doing away with that and instead allowing judges to detain anyone regardless of the charge?

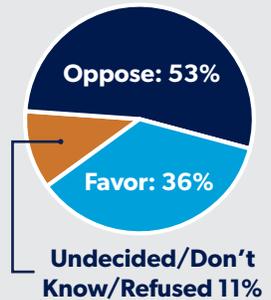
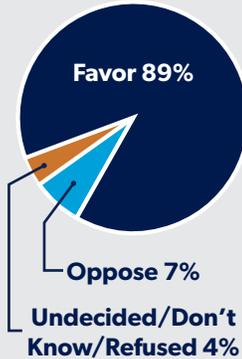


FIGURE 3

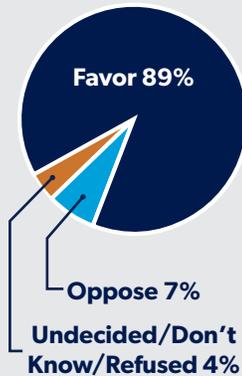
Q: Would you provide **support services** for people awaiting trial in the community who suffer from **drug or alcohol** addictions?



Q: Would you provide **support services** for people awaiting trial in the community who are **victims of domestic violence**?



Q: Would you provide **support services** for people awaiting trial in the community who suffer from **mental health issues**?



Americans also believe that many people who are arrested may be better served by community support services than by jail. Eighty-nine percent of respondents would provide supports for people who are victims of domestic violence, while 77 percent would help those with drug or alcohol dependencies. Eighty-nine percent of respondents also would provide support services for people who suffer from mental-health issues. [See Figure 3]

Replacing money bond

Seventy-two percent of poll respondents want to limit how many days people not charged with serious violent crimes can remain in jail before trial if they cannot afford money bond. Fifty-eight percent of voters said they favored the use of unsecured bond (where the arrested person is liable to forfeit the bond if he or she does not return for trial) instead of secured money bond (an amount paid upfront by the arrested person).

Raising equity

More than 60 percent¹ of the people in U.S. prisons and jails are black or Latinx, a high rate given the percentage of blacks (13 percent) and Hispanics/Latinos (18 percent) in the overall U.S. population.² Studies have found that African Americans face higher bail amounts and are less likely to be released on conditions that do not involve paying money.³ Other research indicates that being black can increase an arrested person's odds of being held in jail by 25 percent.⁴

More than half of all survey respondents, including a plurality of whites, believe white people enjoy better justice-system outcomes than do people of color. Overall, 56 percent of those polled said whites have better outcomes, with 78 percent of African-American, 74 percent of Latinx, and 50 percent of white voters in agreement.

Asked which was fairer to people of all races, money bail or community supports—such as court reminders and referrals to services, as well as supervision—nearly half of all respondents, or 48 percent, favored supports. Twenty-nine percent of all respondents said money bail was fairer, while 23 percent responded “both,” “neither,” or “don’t know.” African Americans (57 percent) were most in favor of community support services over money bail. Forty-seven percent of Latinx voters preferred support services to money bail, as did 49 percent of whites.

Impact

These findings hold important messages for system stakeholders and elected officials who determine pretrial policies and practices. The public wants change. People believe our systems use jail too much for people charged with nonviolent crimes, often in ways that do not serve public safety—survey respondents’ top priority. Voters also understand commonsense alternatives exist, and the more they learn about things like community-based support and services, the stronger their support for reducing the reliance on money bond.

Endnotes

1. Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *The Hidden Costs of Pretrial Detention*, Laura and John Arnold Foundation (November 2013). http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf
2. United States Census Bureau QuickFacts <https://www.census.gov/quickfacts/fact/table/US/PST045217>
3. Jonah B. Gelbach and Shawn D. Bushway, *Testing for Racial Discrimination in Bail Setting Using Nonparametric Estimation of a Parametric Model* (Aug. 20, 2011). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1990324
4. Jonah B. Gelbach and Shawn D. Bushway, *Testing for Racial Discrimination in Bail Setting Using Nonparametric Estimation of a Parametric Model* (Aug. 20, 2011). <https://ssrn.com/abstract=1990324>