What’s Happening in Pretrial Justice?

February 2020
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Introduction

Interest in pretrial justice reform continued unabated in 2019, with more system actors and policymakers speaking up in favor of moving away from wealth-based pretrial detention. This document is intended to help readers understand the variety of pretrial changes underway and where they are happening.

This report offers brief descriptions of a range of work currently happening or recently accomplished and is organized into several main categories: Changing Practice, Judiciary-Led Change, Pretrial Litigation, Pretrial Legislation, Executive Branch-Led Change, Community & Grassroots-Led Change, and State & Local-Level Reports. A state-by-state table is provided at the end of the document for quick reference. These sections reflect how dynamic many system actors have become. Under Changing Practice, which includes prosecutor-led change, we have several district attorneys implementing or calling for changes to the pretrial system. Many of them were elected on the promise of bail reform, and in some cases, their work is being closely followed by community groups to hold them accountable to their campaign promises. State supreme court justices are also lending their weight to the cause of pretrial reform, whether it is through pilot programs, task forces, or support of new legislation. Jurisdictions are also sharing data on how their bail reform efforts are contributing to decarceration without a negative impact on public safety. More information on county-based pretrial practices is available through the 2019 Scan of Pretrial Practices from PJI.

This publication, updated quarterly by the Pretrial Justice Institute, retains overall information over the course of a calendar year to ensure that this is a complete, standalone resource. New items are labeled after each quarter.

Changing Practice

There are many ways jurisdictions can improve pretrial systems and the outcomes they produce without introducing new laws or amending state constitutions. Changing practice within existing legal structures can create immediate and positive results. For example, some jurisdictions have seen success in diverting people with mental health or substance use disorders away from the criminal justice system and into treatment. Other places have chosen to issue non-custodial citations or summonses to people accused of low-level offenses, thus avoiding the harms of unnecessary detention. This section describes that work and more, but with the caveat that in many cases, data collection and analysis is necessary to determine whether the desired outcomes have been achieved. Desired outcomes should include a demonstration of reducing racial inequalities.

NEW The Indiana Supreme Court in partnership with the Indiana Criminal Justice Institute, Indiana Department of Correction, Indiana Prosecuting Attorneys Council, Indiana Public Defender Council, Indiana Sheriffs’ Association, and the Association of Indiana Counties, held a statewide pretrial summit to prepare jurisdictions for the implementation of Criminal Rule 26, effective January 1, 2020. The rule, which has been piloted by 11 counties since 2016, requires “If an arrestee does not present a substantial risk of flight or danger to self or others, the court should release the arrestee without money bail or surety” except when the charge is murder or treason, or the person is on supervised release. In cases where a person “presents a substantial risk of flight or danger to self or other persons or to the public,” the court should utilize an evidence-based assessment. Questions have been raised over whether there is enough money to hire staff to carry out the reforms, and whether issues of racial bias will be adequately addressed.
NEW A court reminder pilot program in Hennepin County will roll out to the rest of the state of Minnesota. The two-year pilot program showed a 25 percent decrease in bench warrants and people receiving the reminders were 35 percent more likely to show up for their court dates.

NEW Jail diversion programs in five counties of Montana report that 97 percent of people who were released from jail attended all court appointments and 95 percent remained arrest free. The program is for people who are charged for the first time with a non-violent offense. Montana's efforts are designed to address jail overcrowding, which is occurring throughout the state; 90 percent of people in jail are charged with an addiction-related offense.

Montana hosted legislators from 13 states to discuss rural jail reform. Attendees at the Rural Jail Reform in Big Sky Country meeting had the opportunity to discuss the particular challenges of rural jails, which have the highest rates of growth in pretrial detention in the country. Topics included jail reform in small jurisdictions through MacArthur Foundation’s Safety and Justice Challenge (SJC), the intersection of health and justice systems, culturally-responsive approaches, and housing. Materials from the meeting, carried out through an NCSL partnership with the John D. and Catherine T. MacArthur Foundation, can be found here.

NEW Three judicial districts in North Dakota will implement pretrial services programs as part of a pilot program designed to release more people. The program will conduct assessments, provide supervision and case management, and report to the courts. The North Dakota Supreme Court’s Pretrial Detention Reform Subcommittee, which helped select the sites is also planning to submit to the Supreme Court a proposed administrative rule to address pre-appearance release.

NEW As part of harm-reduction efforts to address opioid addiction, the Harris County (Texas) jail is giving out grant-funded kits of naloxone to people who are considered at-risk when they are released from jail.

Pre-Booking Deflection and Diversion

Pima County, Arizona will soon open a Pretrial Services Screening Annex to conduct pretrial assessments and behavioral health screenings, and to facilitate the release of people charged with misdemeanors without booking them into jail. The expectation is that 300-350 people per month will be released through the program. A more permanent building is planned that will also provide transitional housing and services.

The Denver Office of Behavioral Health (Colorado) has launched a Law Enforcement Assisted Diversion program (LEAD) to connect people suspected of low-level drug and prostitution crimes with services, rather than arrest them. The program is expected to serve 100 people in its first year, and it joins 36 operating LEAD sites across the country.

Following the settlement of a federal lawsuit brought by a woman who was jailed for 55 days for owing $1,030 in court debt, the city of Pendleton, Oregon, has revised its policies regarding people who owe court debt. The new policy states, “No person shall be incarcerated for the inability and lack of financial resources to pay financial obligations to the Court, including fines, costs and restitution.” The new policy also requires the court to consider ability to pay and appoint an attorney when detention is a possible outcome.

Prosecutor-Led change

The Yavapai County (Arizona) Attorney’s Office has announced plans for a pretrial diversion program for people who are charged with certain
offenses that have a connection to substance use disorder. The program will allow for dismissal of charges upon successful completion of the program.

**NEW** Chesa Boudin, a former public defender, won a hotly-contested race for San Francisco (California) District Attorney. Boudin, who helped initiate the challenge to San Francisco’s use of bail schedules as a defender in Buffin v. San Francisco, included the end of money bond in his platform, calling it, “morally, fiscally, and intellectually bankrupt.”

State’s Attorney Aisha N. Braveboy for Prince George’s County, Maryland, announced that her office will no longer seek money bond as a condition of release. Braveboy said that while her decision will not eliminate the money bond system, “we hope that the steps that we are taking will signal to other decision-makers that there are alternatives.”

Berkshire County (Massachusetts) District Attorney Andrea Harrington, who ran on a platform of criminal justice reform, announced in an op-ed that she has begun to implement policies that “replace the unjust and ineffective use of cash bail with a safer and more equitable model.” Harrington also noted that in 2015, the median bail amount for black people in Berkshire County was five times higher than the median bail amount for white people, and that part of her reforms include a system for tracking bail requests to ensure consistency and transparency.

Rachel Rollins, District Attorney for Suffolk County (Massachusetts), has issued a memo, laying out her vision and policies for the office. The memo calls for “reimagining how a modern prosecutor’s office can conduct business.” The memo includes a clear enunciation of a preference for release on recognizance, and a structure for factors in determining flight and requesting specific restrictive conditions.

At a meeting of prosecutors and state lawmakers, Tulsa County (Oklahoma) District Attorney Steve Kunzweiler decried the reliance on court fees to fund about half of his office’s $8.3 million annual budget, calling it “immoral” for a district attorney to be a “fee collector.”

Philadelphia District Attorney Larry Krasner (Pennsylvania) released the results of his policy decision to not seek cash bail for 25 misdemeanors and felonies, where courts had been setting extremely low bond amounts. The independent analysis showed that an additional 1,750 people were released as a result, with no changes to court appearance or public safety rates.

Dallas County District Attorney John Creuzot (Texas) has followed up on his promise to find alternatives to jailing people. In an open letter to the public, Creuzot outlined a number of new policies, including declining to prosecute first-time cases of misdemeanor marijuana possession, pro-actively expunging arrest records when people successfully complete a pretrial diversion program, shortening requested probation periods, and creating a presumption of pretrial release without conditions for all misdemeanor cases. Creuzot will also dismiss all pending misdemeanor trespassing cases that do not involve residential or physical intrusion, citing its negative impact on people who are homeless or have mental illnesses.

The Commonwealth’s Attorney for the City of Alexandria (Virginia), Bryan Porter, has announced that his office will no longer seek cash bail for misdemeanor cases. In the rare cases, Porter said, his office may seek pretrial detention. Porter is joining several other prosecutors in Virginia in moving away from cash bail.

**NEW** Commonwealth’s Attorneys for four of Virginia’s most populous counties won elections based on progressive platforms, including pledges to end or limit requests for cash bail. Steve Descano
won the Fairfax County race, the largest county in Virginia at over one million people; Parisa Dehghani-Tafti won Arlington County; Buta Biberaj won Loudoun County, the fastest-growing county in Virginia; and Amy Ashworth won Prince William County. Collectively, these four counties represent over one-quarter of the population of the state.

**Defender-led Change**

The UCLA School of Law (**California**) launched a joint program in collaboration with the Los Angeles County Public Defender’s office and the Bail Project, which seeks to lower or eliminate cash bail. In the program’s first semester, ten UCLA Law students worked with public defenders at the Los Angeles Superior Court in Compton; in six cases, clients who originally had monetary bond set at amounts between $30,000 and $70,000 were released on recognizance.

NEW The “police station representation unit” created by Cook County (**Illinois**) Public Defender Amy Campanelli has resulted in 100 people being released from police custody without charges, and Campanelli wants to expand the program. Campanelli says dropping the cases serves justice, saves money, and also brings credibility to the entire court system by having an attorney at the police station.

NEW The Louisville Criminal Justice Coalition has made bail reform part of its legislative platform for 2020. The coalition is made up of public defenders, prosecutors, judges, law enforcement, pretrial services officers, community group members and other representatives from criminal justice and public safety organizations. The **Kentucky** Department of Public Advocacy, the state’s public defender system, proposed the pretrial justice reforms, which include: using cash bail in fewer cases; raising the standard of proof judges use to evaluate defendants’ risk to the public and their likelihood of returning to court; and speeding up hearings and trials. Kentucky is a state that does not permit commercial bail bonding.

NEW Metropolitan Public Defender (MPD), **Oregon**’s largest provider of indigent defense services, has begun challenging the imposition of monetary bonds with the assistance of the Civil Rights Corps. A recent report from the W. Haywood Burns Institute found that Black adults in Multnomah County are eight times more likely to be held before trial than White adults. Oregon does not permit the operation of commercial bail agents; instead, people post a 10 percent deposit with the court.

NEW The Wyoming Supreme Court heard arguments in a case between state public defender Diane Lozano and Campbell County Circuit Judge Paul Phillips. In May, Lozano declared her office unavailable for misdemeanor cases due to heavy caseloads and an understaffing crisis; Phillips found Lozano in contempt of court and fined her $1500 a day in fines. The state supreme court will rule later on the meaning of ‘unavailable’ and who makes such a determination.

**Judiciary-led Change**

Judiciaries in some states have conducted studies to explore pretrial justice issues in depth and have adopted court rules and procedures that seek to reduce money-based detention. This section covers pretrial improvement work initiated and enacted by the courts.

Robert Brutinel, the newly-named chief justice of the **Arizona** Supreme Court, has announced his intention to pursue pretrial reforms, including automating data-driven systems to facilitate pretrial release and diverting people with mental health issues away from the justice system. “We want dangerous people to stay in jail, people who are a risk to the public,” said Brutinel in the Arizona
Capitol Times. “But we want people who are safe to release to be out working their jobs and being with their families.”

The Quorum Court of Washington County, Arkansas has hired an ombudsman as part of a strategy to explore alternatives to expanding the local jail. The ombudsman, a law professor and former parole officer, has been given the responsibility of reducing the population of the jail, and with the help of local law students, will identify people who can be released on recognizance or have their court dates moved up, and also provide monthly reports to the court. The ombudsman has also successfully introduced a resolution, passed by the Quorum Court by a vote of 13-1, that criminal justice agencies in the county should “adopt the principle no person should be detained in the Washington County Detention Center awaiting trial solely because of their inability to obtain pre-trial release through traditional bail/bond.”

Alaska Supreme Court Chief Justice Joel Bolger announced in his State of the Judiciary speech that he will focus on shortening the amount of time cases spend in pretrial proceedings, noting that extended case processing times benefit “no one in the system.”

The Judicial Council of California, which sets policies for the state’s courts, has identified 16 counties to receive $68 million to act as pilot sites to address pretrial detention populations while the statewide pretrial reform bill, SB 10 awaits approval by voter referendum. Under the grant, all counties must decrease the number of people held before trial, and all sites are planning to use pretrial assessment tools. Sites will also be collecting data on race/ethnicity and gender, as well as data on court appearance, public safety and the effectiveness of court reminders.

Broward County, Florida has released new court rules that state in the case of people charged with misdemeanors, “the presumption shall be in favor of release on non-monetary release conditions, including release on the defendant’s own recognizance.” The new court rules, which are already recognized under state law, received support from the county’s state’s attorney, sheriff, and public defender.

Kentucky Chief Justice John Minton made pretrial justice one of the topics of his State of the Judiciary speech, emphasizing his commitment to the 3DaysCount initiative and the need for members of the judiciary to be involved in the search for solutions. Minton also stated that pretrial reform would not solve the state’s jail overcrowding issues.

The judges of the Orleans Parish Juvenile Court (Louisiana) voted that they will no longer impose money bail as a condition of pretrial release. The change comes five months after the court adopted a policy to stop charging discretionary fees to youth and their families in the juvenile justice system. Louisiana law declares all youth indigent for the purpose of appointment of counsel, and juvenile court has expanded indigent status to all juveniles for the purpose of fees.

The Michigan Supreme Court launched a pretrial pilot program in five district courts to implement a pretrial assessment tool. “No Michigan residents should be sitting in jail just because they can’t afford to pay their bail,” said Chief Justice Bridget M. McCormack. “Our goal is to help judges make bond decisions that protect rights, enhance public safety, strengthen communities, and save money.”

The Chief Justice of the Missouri Supreme Court made pretrial reform a focus of his state of the judiciary remarks. Chief Justice Zel Fischer noted, “Too many who are arrested cannot afford bail even for low-level offenses and remain in jail awaiting a hearing. Though presumed innocent, they lose their jobs, cannot support their families...
and are more likely to reoffend. We all share a responsibility to protect the public – but we also have a responsibility to ensure those accused of crime are fairly treated according to the law, and not their pocket books. The Supreme Court also released new court rules that will de-emphasize the role of cash bail. The new rules, which took effect July 1, state that “[t]he court shall release the defendant on the defendant’s own recognizance” and “the court shall not set or impose any condition or combination of conditions of release greater than necessary to secure the appearance of the defendant at trial, or at any other stage of the criminal proceedings, or the safety of the community or other person, including but not limited to the crime victims and witnesses”.

The North Dakota Supreme Court authorized the Pretrial Detention Reform Subcommittee, comprising judges, prosecutors and defense attorneys, chaired by Justice Jon Jensen.

Ohio Supreme Court Justice Maureen O’Connor made pretrial justice reform one of the centerpieces of her speech to the Ohio Judicial Council, a meeting of over 500 of the state’s judges. O’Connor said, “Bail is a concept to allow for release from detention while awaiting resolution of your case, it is not a means to keep one in jail. Somehow the concept has gotten backward.” O’Connor encouraged judges to read the recommendations (see below) of the task force she convened to “examine Ohio’s bail system under Criminal Rule 46 and make recommendations that will ensure public safety and the accused’s appearance at future court hearings, while protecting the presumption of innocence.”

The Task Force to Examine the Ohio Bail System has released its report and recommendations. The nine recommendations set out in the report include: the availability of a validated risk assessment to every judge of a municipal, county or common pleas court when setting bond; amendment of the Ohio Rules of Criminal Procedure to require the presence of counsel for the defendant at the initial appearance for any offense carrying the potential penalty of confinement, unless the defendant is being released on an unsecured financial condition or on personal recognizance; and the implementation of a statewide, uniform data collection system to ensure a fair, effective, and fiscally efficient pretrial process.

The ACLU of Pennsylvania filed a suit, Philadelphia Community Bail Fund v. Bernard, with the Pennsylvania Supreme Court claiming Philadelphia’s use of bail is unconstitutional. The ACLU of PA, along with partners Arnold and Porter, observed more than 2,000 bail hearings in Philadelphia over the course of a year in order to track the court’s use of money bail. They found the Pennsylvania Rules of Criminal Procedure and the state constitution were routinely violated by disregarding the presumption of pretrial release and not reviewing a person’s ability to pay prior to setting a cash bail. The Pennsylvania Supreme Court has consequently invoked its King’s Bench jurisdiction to conduct an inquiry into how the cash-bail system is operated in Philadelphia, the First Judicial District. Under the King’s Bench jurisdiction, the court is allowed to take up any matter having to do with its superintendency over the court system.

Pretrial Litigation

In recent years, the constitutionality of existing pretrial practice has been challenged in lawsuits against counties and cities. Many of these cases have been settled, with jurisdictions agreeing to change practices that treat people differently because of their access to money. Some initial rulings have been appealed and these challenges continue to make their way through the courts. At the same time, as states adopt new rules and laws around pretrial practice, and as attorneys advocate
more vigorously at the pretrial stage, new case law is developing around issues such as the boundaries of preventive detention.

**NEW** The Arizona Court of Appeals has ruled that a person cannot be forced to pay for the costs of electronic monitoring before conviction in *Hiskett v. Lambert*. While Hiskett complied with the conditions of his release, he eventually returned to the court to request a modification of release in the form of assistance to pay for the $400/month monitoring charge, and also argued that Arizona law did not allow the cost of pretrial electronic location monitoring to be placed upon pretrial defendants. The court instead vacated the release and imposed a $100,000 bond. The Court of Appeals found that “the superior court here lacked the statutory authority to order that Petitioner bear the cost of electronic location monitoring during his pretrial release.”

**NEW** The Supreme Court of New Hampshire has ruled in *New Hampshire v. Hill* that a 2018 state law, which was drafted with the intention of preventing pretrial detention due solely to an inability to meet a financial condition of bail, still permitted the setting of an unaffordable bail amount if the court deems that person to be a flight risk.

**NEW** Multnomah County (Oregon) violated the Americans with Disabilities Act and the Vocational Rehabilitation Act when they failed to provide an ASL interpreter to a man who is Deaf and was held in jail for two days. Relying on written notes passed between the man and sheriff’s deputies and pretrial staff did not meet the standard of investigating the best way to communicate with a person who is Deaf; the jail had special communication devices and a contract for interpreters which they failed to employ. The jury in *Updike v. Multnomah County* awarded the man $125,000 in damages.

**System-Reform Litigation**

Four public interest law groups have filed an antitrust lawsuit against sureties and bail bond companies in California, alleging that the companies acted in concert to charge the maximum bond premium and avoid competitive pricing, and that industry associations were used to enforce ‘cartel pricing.’ The lawsuit, *Crain v. Accredited Surety et al.*, seeks damages for people who paid commercial bond premiums, relief for those who struggled to pay the debts incurred, and injunctive relief to correct misleading practices.
The parties in *Buffin v. San Francisco* (California) have negotiated a settlement, which has been approved by the court. Under the terms of the settlement, the sheriff’s department is no longer permitted to use a bond schedule. Instead, the city’s pretrial services program will conduct the Arnold Public Safety Assessment (PSA) tool for people charged with misdemeanors and nonviolent felonies, and submit the results to the judge within 8 hours of booking. If the court has not rendered a decision on release on recognizance and the PSA report does not indicate “release not recommended,” people must be released on own recognizance within 18 hours of arrest and booking. In some cases, release may be delayed by an additional 12 hours when a peace officer has a “reasonable cause to believe that an arrestee may not appear at arraignment, or poses a threat to public safety” or specific information is expected within the next 12 hours. Those released must sign an agreement to be bound by the recommendations in the assessment. The settlement also has a data-gathering requirement.

> **New** The MacArthur Justice Center and Civil Rights Corps filed a class action, *Moran v. Landrum-Johnson*, against all Orleans Parish (Louisiana) Criminal District Court judges, seeking a declaratory judgment that minimum constitutional standards apply to bail determinations made after charges have been accepted by the district attorney and that a financial conflict of interest still exists when judges set secured bail because the Judges Expense Fund receives a percentage of each bond set.

The appeals court for California has ruled in *People v. Dueñas* that before imposing court operations and court maintenance fees, courts must conduct an ability to pay hearing, and that for those unable to pay, such fees would constitute an additional punishment.

The Fines and Fees Justice Center, the Southern Poverty Law Center and the Cato Institute filed an amicus brief urging the Supreme Court of the United States to consider *Lovelace v. Illinois*, a case challenging bail bond fees. Although Curtis Lovelace, the petitioner, was indigent, wrongfully prosecuted, and ultimately acquitted, he was still charged a $35,000 bond fee for exercising his right to pretrial release. The brief, which includes a catalog of bond fees used across the country, can be found here. In May 2019, the Supreme Court of the United States declined to hear the case.

> **New** The MacArthur Justice Center and Civil Rights Corps filed a class action, *Moran v. Landrum-Johnson*, against all Orleans Parish (Louisiana) Criminal District Court judges, seeking a declaratory judgment that minimum constitutional standards apply to bail determinations made after charges have been accepted by the district attorney and that a financial conflict of interest still exists when judges set secured bail because the Judges Expense Fund receives a percentage of each bond set.

The Fifth Circuit has affirmed a lower court’s decision in *Caliste v. Cantrell* that an arrangement in Orleans Parish, Louisiana, where a portion of the value of a commercial surety bond goes into a fund for judges’ expenses and the judge allocates those expenses, is a violation of due process. The arrangement, according to the court, “creates a direct, personal, and substantial interest in the outcome of decisions that would make the average judge vulnerable to the ‘temptation . . . not to hold the balance nice, clear, and true’...The current arrangement pushes beyond what due process allows.”

A federal judge has ordered, through an agreement of the parties, a number of steps that Harry Cantrell, Magistrate Judge of Orleans Parish Criminal Court (Louisiana), must follow when determining conditions of pretrial release, including notification of the right to pretrial liberty, providing counsel at the hearing where release conditions are determined, and an inquiry into an ability to afford monetary bond. The lawsuit of *Caliste v. Cantrell* was filed by the ACLU and the MacArthur Justice Center.

> **New** The MacArthur Justice Center and Civil Rights Corps filed a class action, *Moran v. Landrum-Johnson*, against all Orleans Parish (Louisiana) Criminal District Court judges, seeking a declaratory judgment that minimum constitutional standards apply to bail determinations made after charges have been accepted by the district attorney and that a financial conflict of interest still exists when judges set secured bail because the Judges Expense Fund receives a percentage of each bond set.

The Massachusetts Supreme Court has struck down parts of the state’s pretrial detention statute.
in *Scione v. Commonwealth*. Under the statute, people who were charged with “felony that, by its nature, involves a substantial risk that physical force against the person of another may result” could be eligible for pretrial detention, but the court found this clause to be unconstitutionally vague. Other parts of the statute, which allow prosecutors to motion for pretrial detention on charges that are explicitly listed in the statute, along with any “felony offense that has as an element of the offense the use, attempted use or threatened use of physical force against the person of another” were upheld.

The ACLU of Michigan and Covington and Burling have filed a federal class action, *Ross v. Blount*, against the 36th District Court of Detroit for violating the constitutional rights of people who are locked up because they cannot afford to pay a monetary bond. Eighty-five percent of people who are arraigned while under arrest are required to pay monetary bail in order to be released; however, even though court rules require an ability to pay determination, these inquiries are not being made. In Detroit, one-third of residents live below the federal poverty line. The lawsuit also claims violations of the right to an attorney at a hearing where bail is set.

A federal judge issued a preliminary injunction in *Dixon v. St. Louis*, requiring the City of St. Louis (Missouri) to give a fair bail hearing to every person arrested within 48 hours of their arrest, and a hearing within one week to all those who are currently being held in jail awaiting trial. ArchCity Defenders along with the Advancement Project, the Institute for Constitutional Advocacy and Protection, and Civil Rights Corps had filed the original lawsuit, which claims the courts are failing to inquire about ability to pay, that people are subjected to de facto orders of detention because money bond is ordered in virtually all cases, and that people are not allowed any process to argue for liberty until they are assigned an attorney, typically four weeks after they have been arrested and charged. The judge also certified as a class “all arrestees who are or will be detained in the Medium Security Institution (the Workhouse) or the City Justice Center (CJC), operated by the City of St. Louis...because they are unable to afford to pay a monetary release condition.”

The Supreme Court of Missouri issued a unanimous opinion in *Missouri v. Richey* that courts lack the authority to tax jail ‘board’ bills as court costs, which is a widespread practice, and that courts should not require people to appear repeatedly before the court to account for these debts. Richey had received support from the state’s newly-elected Attorney General Eric Schmitt, who stated, “De facto debtors’ prisons have no place in Missouri, and I am proud to stand up against a system that seeks to treat its poorer citizens as ATMs.”

The ACLU and Terrell Marshall Law Group filed a federal lawsuit, *Mitchell and Meuchell v. First Call Bail and Surety*, in Montana, alleging that First Call Bail and Surety, its sureties and authorized bounty hunter organization committed violations of the federal Racketeer Influenced and Corrupt Organizations Act through “predicate acts of kidnapping, extortion, extortionate collection of extension of credit, extortionate extension of credit, and financing extortionate credit transactions.” A federal district judge has allowed the RICO claim to proceed, and declared that two portions of a standard bail contract are void against public policy. One provision requires signers to waive their rights under state and federal tort law, and another, a ‘hold harmless’ clause, requires people suing an insurance company to pay for all liability, costs, attorney’s fees, etc.
NEW The **Nevada** Supreme Court heard arguments in the case of **Valdez-Jiminez v. District Court**, which challenges the use of money bail to effectively detain people without regard to their ability to post bail or likelihood of returning to court. The case is part of a multi-year strategy by the Clark County Public Defender’s Office, working with Civil Rights Corps, to challenge unlawful pretrial practices in the state.

The 10th Circuit Court of Appeals granted a motion to dismiss in the case of **Collins v. Daniels** brought by the bail bond industry, on the grounds that an association of bail agents and legislators both lacked standing to sue and had failed to state a claim. While individual plaintiff, Darlene Collins, still had standing to sue, the court also found that the defendants, which included the **New Mexico** Supreme Court and its justices and other members of the judiciary, could not be sued under sovereign and legislative immunity.

> challenges to bail reform

In a **habeas corpus proceeding**, **New York** judge Maria Rosa ruled in **People Ex. Rel. Desgranges, Esq. On Behalf Of Kunkeli v. Anderson**, that “when imposing bail the court must consider the defendant’s ability to pay and whether there is any less restrictive means to achieve the State’s interest in protecting individuals and the public and to ‘reasonably assure’ the accused returns to court.”

> ability to pay

The city of **New York** has agreed to pay the family of Kalief Browder $3.3 million on claims of wrongful death and constitutional violations. Sixteen-year-old Browder was assigned a $3,000 bond, which he could not afford, after being accused of stealing a backpack. He subsequently spent three years on Rikers’ Island while refusing to plead guilty, much of that time in solitary confinement. Browder died by suicide two years after his release.

NEW The ACLU and Civil Rights Corps have filed a federal class action against court officials in Alamance County, **North Carolina**. The suit of **Allison v. Allen** asks the court to declare that the practices of setting bail without inquiring about ability to pay and failing to provide counsel at bail hearings are unconstitutional.

> ability to pay > access to counsel

NEW A federal judge in **Ohio** ruled that people with pretrial status in Ohio jails must be allowed the same amount of time to submit absentee ballot applications as people who are confined in hospitals. Under Ohio law, people held in jail had to submit an absentee ballot application by noon on the Saturday before Election Day, while people in hospitals were allowed to submit applications until 3 p.m. on Election Day. The judge noted in **Mays v. LaRose**, “The legislature cannot simply grant one class of voters more favorable terms because the legislature values their votes over the votes of others ... (that) is exactly what the Equal Protection clause forbids.”

> voting

NEW **ACLU of Oklahoma**, ACLU Criminal Law Reform Project, ACLU Disability Rights Program, Covington & Burling LLP, and Overman Legal Group filed a lawsuit on behalf of people incarcerated in the Canadian County jail. Claims in **White v. Hesse** include the absence of counsel when bail is set, the use of cash bail as a violation of the equal protection clause, failure to comply with disability rights laws, and an open courts First Amendment violation. The case is notable because it raises the issue of what protections are required for people with disabilities, including mental health needs, under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act in pretrial hearings.

> ability to pay > access to counsel > protections for people with disabilities

A lawsuit against judges and indigent defense attorneys in Washington County, **Oklahoma**, alleges that people are being unlawfully locked up because of their inability to pay fines and fees, and that courts are failing to make inquiries with regard...
to ability to pay either the initial fine or subsequent sanctions. According to the complaint in Feenstra v. Sigler, this situation is exacerbated by the fact that the court system is almost entirely user-funded, creating incentives for prosecutors and even defense attorneys to dispose of cases as quickly as possible.

> ability to pay

**NEW** Civil Rights Corps, along with Hughes Socol Piers Resnick & Dym, Ltd., the Nashville-based Law Office of Kyle Mothershead, and Barrett Johnston Martin & Garrett, challenged the private probation system in Giles County, **Tennessee** in 2018. In February 2019, the U.S. District Court for the Middle District of Tennessee granted an injunction limiting the use of cash bail for misdemeanor probation violations. The injunction in **McNeil v. Community Probation Services, LLC**, prohibits Giles County from jailing people simply because they cannot afford to pay money bail following arrest for an alleged misdemeanor probation violation. In December 2019, the Sixth Circuit Court of Appeals upheld the preliminary injunction and clarified that the sheriff may be sued for participating in unconstitutional practices that result in unlawful detention, even if the sheriff does not set the bail amount.  

> ability to pay

**NEW** Federal judge Lee Rosenthal issued final approval of the settlement agreement and consent decree in the case of **ODonnell v. Harris County (Texas)**. The agreement is expected to result in the prompt pretrial release of 90-95% of people charged with misdemeanors. Under the requirements of the consent decree, the county must provide social workers and investigators to assist lawyers at bail hearings, and judges must implement uniform court appearance policies, waive most court appearances upon request, and implement transparent and straightforward rescheduling and warrant recall processes.  

> pretrial release requirements

According to a federal lawsuit, **Bender v. Wisconsin**, people who are unable to post bond are forced to sit in jail for weeks or even months, due to the inadequate indigent defense system in **Wisconsin**. The underfunded system, which offers attorneys the lowest-in-the-nation rate of $40/hour, has led to overwhelming caseloads, a lack of experienced attorneys willing to take on cases, and long delays for people awaiting appointment of counsel.  

> access to counsel

**Pretrial Legislation**

State and federal lawmakers have proposed numerous bills aimed at reducing the use of money in pretrial systems, increasing the use of pretrial assessment tools, and limiting the number of people held in jail before trial.

**Passed Legislation**

**Alaska** has rolled back many pretrial justice reforms through **HB 49**. Failures to appear have become misdemeanors or felonies, depending on the underlying charge, instead of violations. The types of charges for which people can be held for up to 48 hours to allow prosecutors to demonstrate risk of flight or danger to the community has been expanded. The previous law, which took effect in 2016 under **SB 91**, contained requirements for the court to release people on recognizance or unsecured bonds based on results from pretrial assessment tools conducted by pretrial services officers; the new law says the results from a pretrial assessment tool “shall” be a factor that the court considers, but they are not determinative. The new law also encourages “the use of contemporaneous two-way video conference for pretrial hearings whenever possible,” and adds language that a person may request a bail review hearing based on inability to pay only if the person can show that they made a good faith effort to post required bail. Prior to repeal, the pretrial reforms enacted under
SB 91 had expanded pretrial releases by nearly 50 percent without changes in court appearance rates. The reforms under SB 91 also showed early evidence of decreasing ethnic disparities in pretrial release and detention.

**NEW** California Governor Gavin Newsom signed SB 394, which permits courts to create pretrial diversion programs for certain people who are primary caregivers of a child under 18 years of age. The bill would require participants to take part in classes relating to subjects that may include parenting, anger management, and financial literacy, and to receive services relating to housing, employment, and drug, alcohol, and mental health treatment, among others.

**NEW** California Governor Gavin Newsom signed AB 32, which will phase out the state’s use of private corrections companies over the next eight years. As part of the new law, no person will be allowed to operate, with some exceptions, a private detention facility within the state; a detention facility is defined as “any facility in which persons are incarcerated or otherwise involuntarily confined for purposes of execution of a punitive sentence imposed by a court or detention pending a trial, hearing, or other judicial or administrative proceeding.”

**Colorado** Governor Jared Polis also signed SB 191, which creates deadlines for authorities holding people pretrial. A defendant must be allowed to post bond within 2 hours of the sheriff receiving bond information from the court, and the custodian of a jail must release a person within 4 hours of bond being posted, with an exception for people required to be fitted for an electronic device. The law also requires the chief judge of each judicial district to develop a plan to set bond for people held in custody within 48 hours, and requires courts to release any person who can meet the terms of a bond, but cannot pay a fee or cost.

**Hawaii** passed a set of criminal justice reforms, including many that implement the recommendations of its Criminal Pretrial Task Force. Under the provisions of HB 1552 HD2 SD2 CD1, pretrial assessment tools and bail reports must be prepared within three working days of admission to a community correctional center and shared with the court, defense attorney, prosecutor and any person treating said person; the report must include an inquiry into financial circumstances; bail conditions must be set at arraignment or as soon as practicable; monetary bond must be set in a reasonable amount, with consideration of offense alleged, possible punishment upon conviction, and the defendant’s financial circumstances; and posting of monetary bond must be allowed seven days a week at police, law enforcement and community centers.

After the **Louisiana** state insurance commissioner determined that bail bond companies in New Orleans had been overcharging their customers and needed to pay back $6 million in overpayments to some 50,000 customers, Governor John Bel Edwards reversed the requirement for repayment through SB 108. The new law states that “no
repayment of overcollections as determined by the Commissioner shall be required.” The bill also eliminated the additional 1% licensing fee that most bail bond companies in New Orleans charged.

Missouri lawmakers passed HB 192, which includes a provision that forbids courts to threaten detention for the failure to pay “board bills,” fees charged for incarceration. “In no event shall the recovery of costs incurred by a municipality or county for the detention, imprisonment, or holding of any person be the subject of any condition of probation, nor shall the failure to pay such costs be the sole basis for the issuance of a warrant.” The new law follows a state supreme court ruling that courts lack the authority to impose jail ‘board’ bills as court costs (See under Pretrial Litigation, Missouri v. Richey).

Nevada lawmakers passed AB 439 and AB 434, designed to lessen the impact of court fines and fees. AB 439 eliminates the ability of courts to impose the costs of fines, costs and administrative assessments associated with juvenile proceedings; AB 434 clarifies the standard for determining indigence and allow courts to suspend driver’s license or incarcerate people based on ‘willful’ failure to pay.

Nevada lawmakers passed Senate Concurrent Resolution 11, calling for an interim committee to study pretrial release. The committee will look at timeliness of hearings for pretrial release, release on recognizance, and the effects of the Nevada pretrial assessment tool. The resolution also calls for an examination of “[t]he impact of race, gender and economic status as it pertains to the pretrial release of defendants, which must include taking testimony from affected communities and individuals”.

New Hampshire Governor Chris Sununu signed SB 314, amending earlier pretrial reforms in the state. The new law allows courts to consider homelessness and substance misuse, but courts cannot use evidence of such factors as the sole basis of dangerousness; authorizes the position of bail reform coordinator in the judicial branch to coordinate date reminders and handling of failure to appear; re-establishes the commission on pretrial detention, pretrial scheduling, and pretrial services; and waives the bail commissioner’s fee for indigent defendants.

Hailed as a historic bill (S1509C/A2009C), the New York legislature has passed a series of reforms designed to significantly reduce the number of people held in jail while their cases are pending. Money bail and pretrial detention have been eliminated for most cases; both are still permitted for violent felony charges. In cases where the setting of money bail is permitted, judges must consider ability to pay and can choose from three forms of bond, including partially secured or unsecured bonds. Other key provisions include: a prohibition on requiring people to pay for any part of the cost of nonmonetary release; a bench warrant grace period of 48 hours for failing to appear, which allows a defense attorney to contact the person and encourage appearance; a requirement that before issuing an appearance ticket, a police officer must inform the person that they may provide their contact information for the purposes of receiving a court notification. The bill also specifies that release decisions may not be based on assessments of future dangerousness or risk to public safety, which aligns with current New York law. The measures will take effect January 1, 2020.

In June 2019, the New York legislature passed S6407C, amending its historic package of pretrial reforms to allow judges additional discretion to preventively detain someone pretrial, when that person is charged with certain offenses.

The New York City Council passed Intro. No. 1199, eliminating bail fees associated with using a credit card. The city had previously charged a
2.49 percent fee for credit card payments, and a 7.9 percent fee for credit card payments paid at the jail. A 3 percent fee, charged by the Office of Court Administration, remains in place because that office is not within city control.

The Virginia legislature passed a budget amendment that lifts automatic driver’s license suspensions for unpaid court fines and fees. The amendment does not cancel the debt, but people with suspended licenses will not have to pay a reinstatement fee, and the amendment ends future suspensions until June 30, 2020. Because the amendment was part of a two-year budget, it will need to be made permanent in a future legislative session.

**Selected introduced legislation**

- **Colorado** HB1226 would implement a pretrial screening process for recommending conditions of release and establish pretrial services programs in all jurisdictions, “provide for greater fairness, improve public safety, operate in a more cost-effective manner, and ensure more humane treatment of individuals awaiting trial.” The bill has received the support of the state Attorney General.

- **Florida** SB 534 would allow each county to establish a supervised bond program “with the concurrence of the chief judge of the judicial circuit, the county’s chief correctional officer, the state attorney, and the public defender.” Any county that establishes a supervised bond program would be required to: employ a pretrial assessment instrument; have the assessment instrument validated by the Department of Corrections; and submit an annual report by a certain date to the Office of Program Policy Analysis and Government Accountability. The bill would also allow the chief judge of each circuit to issue administrative orders to employ pretrial assessments.

- The Pretrial Data Act (**Illinois** HB 2689) would require the collection and sharing of data relating to pretrial justice decisions, including personal recognizance, personal recognizance with the additional requirement of electronic monitoring, pretrial admissions data, and orders of detention. Illinois recently passed what is considered to be the nation’s first electronic monitoring data collection bill for people released from prison.

- A bipartisan group of legislators have introduced a suite of pretrial reforms (HB 4351 to HB 4360) in Michigan. The reforms include: requiring that courts release people on personal recognizance unless the preponderance of the evidence suggests undue danger to the community or willful failure to appear in court; forbidding the use of pre-established bail schedules or the imposition of financial conditions that results in detention simply because of inability to pay; reducing limitations on offenses for which a police officer can give an appearance ticket; and requiring circuit and district courts to submit quarterly data on the types of bail issued by the court.

- **Nebraska** lawmakers heard testimony on the need for changes to the state money bond system. The Director of Corrections in Douglas County, the most populous county in the state, reported an ‘alarming’ growth in pretrial detentions; in 2015, 654 people per day were held on pretrial status; by 2018, it was 959 people per day. Sen. Ernie Chambers has introduced LB 646, which would eliminate the use of cash bonds and appearance bonds.

- **New Hampshire** state Rep. Steve Beaudoin and state Sen. Jim Gray have introduced HB 1384, which would allow the detention of people without bail if the state provides “clear and convincing” evidence a suspect has violated terms of their bail. The bill also allows bail commissioners to collect a $40 fee for their services to be paid from fines collected by the courts.

- **New Mexico** Rep. Bill Rehm has introduced HB 32, which would rollback certain portions of a
constitutional amendment which took effect in 2016. The constitutional amendment allows judges to deny bail to people in cases where prosecutors have made a case by clear and convincing evidence that “no release conditions will reasonably protect the safety of any other person or the community.” Under the proposed bill, there would be a rebuttable presumption of pretrial detention under cases where a person is charged with a first-degree felony or serious violent offense, and either has previously convicted by a felony or previously violated conditions of pretrial release for any offense.

Oklahoma SB 252 was defeated. The bill would have required courts to release people on their own recognizance except for certain enumerated offenses, or if the court made findings, in writing, that release on recognizance would not reasonably assure a return to court, or the person would obstruct justice or engage in conduct that would present a threat to themselves or another person.

Attempts to pass pretrial justice reform bills in Texas did not succeed in the most recent legislative session. Supreme Court Chief Justice Nathan Hecht and Court of Criminal Appeals Presiding Judge Sharon Keller had announced their support of bipartisan and bicameral bail reform bills introduced by State Sen. John Whitmire and state Rep. Andrew Murr. In this year’s state of the judiciary speech, Hecht decried the lack of technology and information to release more people safely before trial, saying that “judges are denied a readily available tool to make more informed decisions.”

Executive Branch-Led Change

Executive branch pretrial improvements can include actions taken by governors, attorneys general, or county commissioners, as well as by groups that use funding provided through government agencies such as the Bureau of Justice Assistance.

NEW The Santa Clara County Board of Supervisors (California) has selected the OIR Group to head its Office of Correction and Law Enforcement Monitoring (OCLEM). OCLEM was established after the 2015 beating death of Michael Tyree by jail guards. OCLEM will have independent oversight of: monitoring day-to-day operations; auditing and monitoring the investigation of complaints; receipt of complaints; policy analysis and recommendations; community outreach; and mediation.

In a memo to deputy attorneys general and staff, Attorney General for Delaware, Kathleen Jennings, has indicated that she will submit to the judiciary the attorney general’s “strong preferences” that the presumptive request for misdemeanors will be release on own recognizance. Prosecutors will seek reductions of bail for people held solely on misdemeanor offenses whose cases do not resolve during a scheduled calendar.

The mayor and commission of Athens-Clarke County, a consolidated city-county in Georgia, unanimously passed an amendment to its local ordinance to effectively eliminate cash bond for low-level offenses.

The Cook County Board of Commissioners (Illinois) passed an ordinance extending protections for revolving bail funds to people who pay bonds for loved ones. Under the ordinance, a bond paid by a third-party surety may not be used to pay for attorney’s fees, fees, court costs or penalties. If there is a judgment of forfeiture ordered in favor of the state, no money deposited by the third-party surety will be forfeited to the state. The state of Illinois does not permit commercial bail bond agents.
Michigan Governor Gretchen Whitmer signed an executive order to establish a joint task force on jail and pretrial incarceration. Recommendations from the task force are expected at the end of 2019.

The Wayne County Board of Commissioners (Michigan) unanimously passed a resolution in support of bail reform. The resolution supports bipartisan bail reform legislation under consideration in the state legislature and calls for the expansion of a pilot program to reduce the amount of time people spend in jail. The resolution followed the filing of a lawsuit against Detroit’s 36th District Court alleging unconstitutional pretrial practices. Commission Chair Alisha Bell introduced the resolution; as president of the National Association of Black County Officials, Bell was instrumental in the passage of a similar resolution in 2018.

The Attorney General for North Carolina, Josh Stein, has held a series of roundtables with district attorneys, judges, sheriffs, pretrial program managers, and justice-involved people across the state to learn about effective pretrial release strategies. Criminal justice leaders from 18 counties looked at innovative practices being used to create fairer pretrial programs. They discussed ways to implement practices that increase pretrial release rates and do not depend on financial conditions of release while protecting public safety and maintaining individual accountability in their own counties.

The Attorney General of Virginia Mark Herring has issued a set of legislative priorities for 2020, including reforming the use of cash bail and expanding pretrial services; providing state support for the creation of citizen review panels for deaths in custody and police encounters to increase transparency and accountability; and expanding re-entry programs in local and regional jails.

Virginia Governor Ralph Northam signed an executive order to establish a commission to examine racial inequity in Virginia law. The commission has the broad mandate to identify and make recommendations to address any law “that were intended to or could have the effect of promoting or enabling racial discrimination or inequity.” The commission is seen as part of Northam’s continuing efforts to make amends after a racist photo of the governor in his medical school yearbook was discovered.

NEW The Spokane City Council (Washington) approved spending for a new pretrial release program for people facing misdemeanor charges. In the Spokane County Jail, 73 percent of people are in pretrial status. The new project is modeled on New York City’s Pretrial Supervised Release Program, where eligible people are released on the condition that they meet regularly with a social worker from a nonprofit agency who can assist with court appearance and can make referrals to services like affordable housing and drug addiction treatment.

Community & Grassroots-Led Change

Under pressure from community and justice advocacy groups, the Los Angeles (California) Board of Supervisors voted to cancel a $1.7 billion contract to replace the men’s downtown jail. The groups, including Dignity & Power Now, the Youth Justice Coalition, JusticeLA Coalition, American Civil Liberties Union of Southern California and Reform L.A. Jails, are calling for decentralized and community-based mental health facilities. Patrisse Cullors, founder and chairperson of Reform L.A.
Jails and co-founder of Black Lives Matter, said that meeting with elected officials and bringing forward mental health professionals who work inside jails were key strategies.

The ACLU of Colorado and the Colorado Freedom Fund have launched a court-watching project which will monitor courts for compliance with state pretrial laws, educate citizens about how courts operate, and gather data. Volunteers monitor for compliance with laws requiring legal representation before first appearance, alternatives to jail for inability to pay, court appearance within two days or release on a personal recognizance bond, and no money bond for petty offenses. Court watchers are working in Denver metro-area courtrooms, and the program is expected to last 10 weeks.

Loyola University College of Law (Louisiana) hosted a symposium entitled The Price of Freedom: The Prejudicial Effects of the Cash Bail System. The symposium examined the history of bail and recent reform efforts, including bail funds and systemic lawsuits.

Mississippi Bail Fund Collective is a new initiative by the People’s Advocacy Institute, with support from the office of the state public defender, Black With No Chaser, BYP 100, One Voice, Clean Slate, Mississippi in Action, MS Votes, Bellinder Law Firm and FWD.us. The Fund is committed to bailing poor people out of jail and providing compassionate help. It is based in Jackson, the state capital, with plans to expand across the state.

Advocates in the St. Louis (Missouri) area are also calling for the closure of the city’s Medium Security Institute, in a campaign called “Close the Workhouse,” as a means of dismantling part of the system of mass incarceration and moving investments to the community. A report from the campaign found that virtually everyone (95%) held in the Workhouse has not been convicted of a crime and is being held because they cannot afford bail, which in St. Louis is an average of $25,000.

A letter to judges, signed by ArchCity Defenders, The Bail Project, the public defender’s office in St. Louis, the ACLU of Missouri, the MacArthur Justice Center and the Mound City Bar Association, outlined several concerns about pretrial electronic monitoring, including the prohibitively high cost of $300 start-up fee plus monthly fees for the monitor itself and check-ins, plus unduly burdensome check-in requirements. The letter also noted that payments are being made to a private company, Eastern Missouri Alternative Sentencing Services (EMASS), and that the company was threatening people who could not make payments with jail time, a power they do not have.

NEW Unconvicted in NV (@UnconvictedNV) is a Twitter account which employs a bot to search inmate sites of Las Vegas (Nevada) area sites, store that information in a database and create tweets (occasionally supplemented by a human) on why people are locked up in jails. The account has posted on people who are locked up due to pedestrian or bicycle offenses, an inability to pay, and prostitution and/or pandering charges. The account also identifies racial inequalities.

The Brooklyn Community Bail Fund announced that it will cease operations as a revolving bail fund at the end of 2019. In the wake of New York’s pretrial justice reforms, the organization believed that “[b]ail funds became an escape hatch for a political system that lacked the courage to end money bail.” New legislation expanded the ability of bail funds to pay for bail set up to $10,000, a change from the previous law where bail funds could only pay for bail set at less than $2,000 for misdemeanors.

Trinity Church Wall Street (New York) hosted a breakfast for faith leaders, community advocates,
and local political office holders to rally support to eliminate cash bail in the state. Speakers at the breakfast, who can be seen here, emphasized the moral questions raised by cash bail.

**New York City** has become the first major U.S. city to allow people in jails to make free phone calls. Previously, people in jails were allowed free phone calls on a limited basis, and for other phone calls, were charged 50 cents for the first minute and 5 cents for each additional minute. Under the new rules, people in jail are allowed 21 minutes of free phone calls every three hours; people in solitary confinement are allowed a single daily call of 15 minutes.

The University of **North Carolina** hosted its first Criminal Justice Summit to explore pressing criminal justice issues, including bail reform. Professor Jessie Smith organized the summit and moderated the panel on bail, which included: Marc Levin, Vice President, Criminal Justice, Texas Public Policy Foundation and Right on Crime; Eric Halperin, Chief Executive Officer, Civil Rights Corps; Kevin Tully, Public Defender, Mecklenburg County; and Spencer B. Merriweather, District Attorney, Mecklenburg County. Smith also released an article on constitutionally-compliant pretrial detention frameworks, titled: [Pretrial Preventative Detention in North Carolina](#).

Two members of Southerners on New Ground (SONG) chained themselves to the gates of the Durham County Jail (**North Carolina**) for seven hours in the days before Mother’s Day to call for amendments to bail reform policies, citing concerns that the new policies will have a negative impact on people with mental health and substance use issues. SONG has also been a key participant in the Black Mama’s Bail Out, raising $220,000 this year to free 46 Black mothers on Mother’s Day.

The ACLU of **Ohio** has launched an [online toolkit](#) to promote pretrial reforms in the state. The toolkit features art by Joe Sharp, a formerly incarcerated person whose life was negatively affected by onerous bail requirements, offers an opportunity for people to share their stories, and provides updates to reforms in the state.

The American Civil Liberties Union Foundation of **Tennessee**, American Civil Liberties Union Foundation, Choosing Justice Initiative, and Civil Rights Corps have sent a [letter](#) to judges in Davidson County, Tennessee, expressing concern about a local rule that makes cash bail deposits subject to garnishment for any fines, court costs or restitution. The letter lays out several reasons for concern, including the failure for garnishment to serve any purpose associated with bail and an “impermissible financial incentive for judges to set cash bail as a means for recovering court costs.”

**NEW** The ACLU of **Vermont** released its [Blueprint for Smart Justice](#) for the state. Key components of the plan to end mass incarceration include: creating more diversion programs, ending cash bail, and challenging racism in the criminal justice system. Although Black people make up one percent of the state’s population, they make up eight percent of people entering correctional facilities, and Black and Latinx drivers are 3.9 times more likely than White drivers to be pulled over in the state.

**State & Local-Level Reports**

**NEW** Two studies from the University of **New Mexico** on the implementation of the PSA in Bernalillo County reveals that the vast majority of people returned to court with no new arrests. The study analyzed 6,392 felony cases, and found that 83 percent of people had no new arrests while on pretrial release; 82 percent returned to court as
required; and less than 1 percent (12 people) were arrested and charged with a first-degree felony.

**Blueprint for Smart Justice Hawai‘i** is part of the ACLU’s 50-state campaign to identify state-specific strategies to reduce mass incarceration. In Hawai‘i, where one in five people who are incarcerated are in pretrial justice status and money bond is assigned in 88 percent of cases (and posted only 44 percent of the time), the report includes pretrial reforms as part of its strategies. Specifically, the report calls for “enhancing speedy trial rights, expanding access to counsel, and expanding mandatory cite and release policies — and limit pretrial detention to the rare case where a person poses a serious, clear threat to another person.”

The Coalition to End Money Bond has released **Protecting Pretrial Reform: Two Years of Bond Reform in Cook County**, documenting outcomes following the implementation of a local court rule to limit the use of money bond. The report notes that since the Coalition began its work in 2016, the average number of people locked up in Cook County jail on a single day has fallen from 8,500 to 6,000. At the same time, violent crime has fallen eight percent from January to June 2018, compared to the same period in 2017.

Cook County, Illinois reports that according to data from 15 months following new pretrial practices, jail populations have dropped over 20 percent. The jail population dropped from 7,433 to 5,799 and that the average bond amount fell from $5,000 to $1,000. The percentage of people posting an “I-bond,” which does not require payment upfront, more than doubled, but 8 times as many people are held without bond. More than 99% of people who appeared in bond court and were subsequently released were not charged with a new violent offense.

**Pursuing Pretrial Freedom: The Urgent Need for Bond Reform in Illinois** by the Coalition to End Money Bond highlights continuing problems throughout the state regarding pretrial justice. Outside of Cook County, counties in Illinois do not consistently inform who is held because of an inability to pay bond. The report calls for the passage of the Pretrial Data Act, which would require counties to track bond decisions, jail population information, and the revenue they receive from bonds paid, and also lays out principles of pretrial reform.

The Kentucky Center for Economic Policy released a new [report](#) showing wide variation among counties in terms of how often money bond is used and how frequently people can afford those bonds. Based on data from the state’s Administrative Office of the Courts, the report showed that five percent of cases in McCracken County are granted release without monetary conditions, compared to 68 percent in Martin County. In Hopkins County, 99 percent of people who are assigned money bond find a way to make payment, compared to 17 percent in Wolfe County.

The Kentucky Chamber of Commerce released the results of a [poll](#) showing strong support (76%) for the idea that people charged with a nonviolent, nonsexual crime should be released from jail while awaiting trial through a bail process that does not require cash payment.

**Paid in Full: A Plan to End Money Injustice in New Orleans (Louisiana)**, a report from the Vera Institute of Justice, provides a blueprint to align court practices with the city’s move away from a ‘user-funded’ justice system to one that is paid for by the city.

**Rhetoric, Not Reform: Prosecutors & Pretrial Practices in Suffolk, Middlesex, and Berkshire Counties** (Massachusetts) offers an analysis by CourtWatch MA on how prosecutors who
ran on reform platforms have changed pretrial outcomes and practices. The report finds that in these counties, more work is needed to achieve reforms. In Suffolk County, the decrease in the jail population was likely due to a decrease in crime, rather than new policies; in Middlesex County the DA’s office requests release on recognizance less often that the statewide average rate; and that in Berkshire County, the use of pretrial detention without bail has increased by 83 percent.

**NEW** The Berkshire County (Massachusetts) CourtWatch Program, modeled off the larger, Boston-based program called CourtWatch MA (see above), released its pretrial hearing data, in partnership with QSIDE, based on practices by Berkshire County DA Andrea Harrington. Data from 300 cases shows that while Harrington has kept her promise to request money bail infrequently - out of 92 initial hearings money bail was requested three times - Harrington’s office is pursuing detention without bail more frequently.

The New Jersey Administrative Office of the Courts released its 2018 annual report showing that many of the state’s pretrial reforms are working as intended. Since 2015, when preparation for pretrial reforms began, the pretrial jail population has fallen by nearly 44 percent as a result of expanded use of citations-summons. De-facto detention due an inability to pay has nearly disappeared. The few held for detention hearings are afforded full due process and then some are released with conditions of supervision. In 2018, the rate of pretrial detention was roughly 6 percent. Additional work still needs to be done, however. While the increased rate of release has benefitted all people, however, African American men are still disproportionately represented in jail.

**NEW** Evaluation of Pretrial Justice System Reforms That Use the Public Safety Assessment, the first of a planned series looking at New Jersey’s changes, examined short-term outcomes and found that: a reduction in the number of arrest events followed the reforms, particularly for misdemeanor public-order charges; a larger proportion of defendants were released without conditions, and rates of initial booking into jail were lower than predicted given pre-CJR trends; and reforms significantly reduced the amount of time people spent in jail in the month after arrest. Future planned studies, authored by MDRC, will look at effects on outcomes such as court appearance rates, new arrests, the amount of time defendants are in jail while waiting for their cases to be resolved, and case dispositions (that is, whether defendants were found guilty or not guilty or had their cases dismissed). Another study will look at sub-groups of the pretrial populations in jail by assessment level and race.

**NEW** Paying for Jail: How County Jails Extract Wealth from New York Communities, authored by Worth Rises and the Brooklyn Community Bail Fund, describes the costs of phone calls, commissary charges and disciplinary tickets to families of people who are held in New York jails. Based on responses to Freedom of Information Letter (FOIL) requests to counties, the study estimates that the average family of a person who is incarcerated spends $152 per month on these three items, or about 6 percent of an average monthly household income. In many cases, disciplinary fines, a questionable practice, become liens on commissary accounts, meaning that the fines must be paid before a person can purchase basic hygiene products or food. While New York does not have for-profit prisons or jails, the report estimates that for phone calls alone in the state, corporations received $25.1 million dollars and counties received $11.8 million in kickbacks.

Beyond the Algorithm: Pretrial Reform, Risk Assessment, and Racial Fairness, a report from the Center for Court Innovation, examines the impact
of risk assessment on racial disparities in pretrial decisions based on 175,000 cases in New York City. While acknowledging many of the pitfalls and concerns around how algorithms are created and implemented, the authors conclude that “a more targeted use of risk assessments shows the potential for both significantly reducing pretrial detention and alleviating racial disparities.”

A report from the New York City Criminal Justice Agency reveals that from 1987 to the present, courts have moved steadily away from the use of money bail. The percentage of cases where money bail was set peaked in 1990 (48% of cases) to a new low of 23% in 2018. In 2018, there were three times as many releases without money as there were on money bail. From 2007-2017, the rates of court appearance have increased slightly across all case types from 84% to 86%. An article from the Marshall Project attributes these improvements to changes in culture driven by judges, prosecutors, defenders, the Kalief Browder case and court watching projects.

Buncombe County, North Carolina Sheriff’s Office has implemented four public-facing jail dashboards that are updated weekly. The dashboards show the current population of the jail, daily population trends, booking and release trends, and pretrial lengths of stay. “The data contained in these dashboards has been available to law enforcement, judges, and the D.A.’s office and in my opinion it is now time to make this information available to the residents of Buncombe County,” said Sheriff Quentin Miller.

The MDRC Center for Criminal Justice Research reports that after implementing the Public Safety Assessment, Mecklenburg County, North Carolina released more defendants but did not see a significant increase in failures to appear (FTAs) or new criminal charges during the pretrial period. However, most of the changes occurred in the step before the PSA report was completed, suggesting that other factors may be associated with the reductions in detention.

Open Justice Oklahoma released a report demonstrating a compelling need for pretrial reform. According to the data collected by the organization, people accused of nonviolent misdemeanors spend 2 to 6 weeks in jail awaiting resolution of their cases, and that counties could achieve substantial savings through recognizance bonds.

An analysis by the Criminal Justice Policy Research Institute at Portland State University found that people in Oregon who were detained before trial were more than two times more likely to receive a prison sentence and 1.5 times more likely to receive a jail sentence. The results also indicated that the longer a person spent in pretrial detention, the greater the likelihood that he or she would receive a sentence of incarceration. These findings were consistent across regardless of assessment tool score.

The Appeal, an independent online newspaper specializing in original criminal justice reporting, conducted an investigation into bail bond industry in Pennsylvania and found that in 2017, more than 230 agents issued more than $359 million in surety that year, but nearly half of all bonds were issued by just 25 agents. Approximately 40 percent of all bail bonds were issued in cases involving a Black defendant, even though Black people make up less than 12 percent of the state’s adult population.

The College Hill Independent, a joint-publication of students at the Rhode Island School of Design and Brown, conducted an independent investigation into the impact of court-imposed fines and fees. The study revealed that in fiscal year 2018, the Superior Court collected eight percent of court costs assessed that year in criminal cases, while the District Court’s collection rate was just
24 percent. While judges have the power to waive such fines and fees, they rarely do so, according to the report.

The Sycamore Institute in Tennessee released a report on trends in pretrial detention in the state. The report found that the pretrial population has grown faster than all other types of state and local incarceration, accounting for 38% of the growth in total incarcerations from 1991-2018, and people detained pretrial made up 51% of Tennessee’s local jail population in 2018, up from 30% in 1990.

A preliminary report on pretrial outcomes from the Virginia State Crime Commission examined the impact of the presence of pretrial services on court appearance and public safety. With regard to people released on bond, the public safety rate was virtually the same for counties with and without pretrial services; for counties without pretrial services, the percentage of people charged with failure to appear was slightly lower (11.8 percent vs. 14.5 percent for counties with pretrial services). A significant finding of the report was that people released on secured bond with pretrial supervision had the lowest rate of failure to appear charges (12.3 percent) followed closely by people released on personal recognizance without pretrial supervision (13.2 percent), who also had the highest public safety rate.

The Pretrial Reform Task Force in Washington has released its report and recommendations regarding pretrial practices in three major areas: pretrial services, assessments and data collection. The task force also developed a bench card on bail law. The second report, from the state’s office of the state auditor, found that in two counties, Yakima and Spokane, people who were released through pretrial services outperformed people who were released on bail, based on court appearance and remaining arrest-free.

A series from the Wisconsin Rapids-Tribune, Broke in a Broken System, explores many of the problems in the state’s justice system, including detention stemming from an inability to afford money bond, inadequate access to counsel, and technical violations while on probation or parole. One-third of people locked up in jail in Wisconsin were there because they could not afford to pay their bail amounts.

The Wisconsin Center for Investigative Journalism ran a Beyond Bail series, looking at the impact of cash bail on Wisconsin and the United States, as well as the issues around pretrial assessments. Last summer, the board of governors for the state bar voted to support reforming bail and pretrial detention laws to depart from the use of cash bail and move toward use of a validated risk-assessment instrument as a basis for pretrial detention decisions.
**Activity by Region and State**

Following is a list presenting the major pretrial improvements described above as of December 31, 2019, organized by state.

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List of acronyms

ACLU  American Civil Liberties Union
AV  Arnold Ventures
BJA  Bureau of Justice Assistance
CPAT  Colorado Pretrial Assessment Tool
CRC  Civil Rights Corps
CSG  Council of State Governments
DOJ  Department of Justice
EBDM  Evidence-Based Decision Making
EJUL  Equal Justice Under Law
IACP  International Association of Chiefs of Police
JDAI  Juvenile Detention Alternatives Initiative
JRI  Justice Reinvestment Initiative
LEAD  Law Enforcement Assisted Diversion
NACo  National Association of Counties
NCJA  National Criminal Justice Association
NCJRP  National Criminal Justice Reform Project
NCSC  National Center for State Courts
NCSL  National Conference of State Legislatures
NGA  National Governors Association
NIC  National Institute of Corrections
OSF  Open Society Foundations
PJI  Pretrial Justice Institute
PSA  Arnold Public Safety Assessment
SJC  Safety and Justice Challenge (MacArthur Foundation)
SJI  State Justice Institute
SPLC  Southern Poverty Law Center
SONG  Southerners on New Ground
STEER  Stop, Triage, Engage, Educate, and Rehabilitate
TAD  Treatment and Diversion
TASC  Treatment Alternatives for Safe Communities