

AFRICAN-AMERICAN VOTERS WANT A FAIR AND COMMONSENSE APPROACH TO PRETRIAL JUSTICE

America's criminal justice system is a maze; once you get in, it's hard to get out—and the system is devastating many African-American families and communities. A new national poll from the Pretrial Justice Institute and National Urban League Washington Bureau shows what changes African-American registered voters want at the front door—at the pretrial stage—of the criminal justice system.

African Americans are disproportionately penalized by pretrial detention decisions that are based on wealth instead of safety. They [are more likely to be required to pay money to be released from jail before trial, and in higher amounts](#).

Although the U.S. Supreme Court has ruled that in the United States “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception,”¹ studies show that African-American communities—from [Los Angeles](#) to [Baltimore](#)—lose tens of millions of dollars to money bail payments.² These dollars cannot be recovered **even if the charges are dropped or the person is found not guilty**. Commonsense pretrial reform is key to ending mass incarceration in America.

The new poll from the Pretrial Justice Institute and National Urban League Washington Bureau looks closely at African-American voters' thoughts and expectations for the pretrial phase of the criminal justice system.

This poll was commissioned by the Pretrial Justice Institute in partnership with National Urban League Washington Bureau and was designed and administered by Lake Research Partners. The survey was conducted by phone using professional interviewers and reached 296 African-American voters (unweighted); the results were then weighted into the base sample to represent their natural distribution in the electorate (N=130). The survey was conducted May 2-17, 2018.

Telephone numbers for the survey were drawn from a file of registered voters. The sample was stratified geographically to reflect the expected composition of registered voters nationwide. Data were weighted by gender, age, education, party identification, race, and region. The margin of error for the survey is +/- 5.8%.

PRETRIAL AND BAIL

Pretrial justice is the part of the criminal justice system that begins when a person comes into contact with law enforcement and ends when any resulting charges are resolved—usually through a dismissal, a plea, or a trial. A critically important element of the pretrial process is deciding whether an accused person should be detained in jail because no conditions or combination of conditions could satisfy proven concerns about public safety or court appearance.

“Bail” refers to the conditions a person must adhere to while awaiting trial. Although many people automatically associate the term with secured money bond—aka “money bail” or “cash bail”—bail can mean abiding by stay-away orders or curfews, updating the court about an address change, or checking in regularly with a supervision office.



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The results show that African-American voters believe that too many people are being arrested; that pretrial detention should be used only to protect public safety; and that a greater pretrial reliance on community-based services would be fairer and more effective. Specifically, African-American voters want to:

Reduce Arrests

To reduce the number of people in the system overall, fewer people must pass through the front door. Out of all demographic groups, African Americans (87 percent) most strongly favor reducing arrests for low-level, nonviolent offenses.³ Seventy-eight percent support reducing arrests by issuing citations rather than arresting people for certain offenses.⁴

Restrict Detention

African-American voters want the justice system to focus on public safety, with limits on the courts' power to detain. When deciding how to release someone before trial, 72 percent would prefer an assessment that focuses on public safety rather than on court appearance (12 percent).⁵ While 77 percent would give judges the ability to detain a person charged with a serious violent crime in jail without bail when it has been found in court that there are no options to get the person back to court or to protect public safety,⁶ African-American respondents also want limitations on this power. Almost three in four African-American voters (73 percent) would limit the number of days a person could be detained on non-serious offenses.⁷

Replace Money Bail

Out of all demographic groups, African-American respondents feel most strongly (65 percent) that the criminal justice system

For people in the pretrial phase, African-American voters support commonsense measures:

75% favor providing court reminders / supervision



76% support providing transportation to court



86% favor mental health services



90% support services for victims of domestic violence



74% support services for drug/alcohol use



African-American Women and Bail

In 1970, many jails had not even a single woman inmate. Four decades later, the number of women in jail nationwide has increased from 8,000 to 110,000²⁰. Sixty percent of women in jail are there pretrial.²¹ Women of color (44 percent African American and 15 percent Latinx) are overrepresented in jails; most women are in jail for nonviolent offenses.²²

Although women are typically assigned lower bond amounts, they also have lower incomes and are often unable to post bond. The average annual income of an African-American woman who could not post bond was \$9,083. Nearly four out of five women in jail are mothers or caretakers. Changes to pretrial justice must take into account the needs of women, particularly in a community-based context.²³ In our poll, African-American women voters had a pronounced shift (37 percent) away from support for money bail after learning about community-based alternatives.²⁴

should not jail people who cannot afford money bail.⁸ Fifty-three percent would remove money bail as the primary driver of the decision to detain or to release an accused person before trial.⁹ African-American voters favor eliminating the secured money bail system and replacing it with pretrial assessment and supervision (52 percent)¹⁰ or with unsecured money bail (66 percent).¹¹

Over half of African-American voters (57 percent) believe that supports such as court reminders, supervision, and referrals to services would be fairer to people of all races than money bail.¹² In strong numbers, African-American voters favor community-based services for people in the pretrial phase (see sidebar on Page 2).

Raise Equity

Eighty-six percent of African-American voters believe the wealthy enjoy substantially better outcomes from the criminal justice system than the poor and working class.¹³ Additionally, 78 percent of African-American voters feel whites have more favorable outcomes than African-American people, Latinx people, and other people of color.¹⁴ Seventy-two percent believe

the criminal justice system needs either a complete overhaul or major reform.¹⁵

Studies in different parts of the country show that African Americans are significantly less likely to be released without financial conditions than whites.¹⁶ Moreover, African-American men, on average, are assigned bond amounts 35 percent higher than those set for white men facing similar charges and are more likely to be held in pretrial detention.¹⁷ People who cannot afford to bond out of jail are more likely to be sentenced to jail or prison and for longer periods of time.¹⁸

A CLEAR MESSAGE AND A PATH FORWARD

Elected officials and justice system officials should be aware of the inequalities of the pretrial system that affect African-American families—and of how African-American voters want to see these problems fixed. African-American voters who responded to the poll have made it clear that wealth should not be a factor in detaining people before trial, and that the system should focus on public safety. Moreover, African-American voters strongly

prefer community-based supports that help people make court dates, avoid new arrests, and address substance abuse and mental health needs.

The poll revealed a tremendous opportunity to educate and lead voters on this issue. After

African-American voters learn more about about pretrial reform issues and options, support for eliminating money bail and instead using community-based supports rises to 61 percent. The elimination of money bail must be accompanied by a commonsense plan for a fair and community-focused pretrial model.

Endnotes

1. *United States v. Salerno*, 481 U.S. 739 (1987).
2. Arpit Gupta, Douglas Swanson, and Ethan Frenchman, “The High Cost of Bail: How Maryland’s Reliance on Money Bail Jails the Poor and Costs the Community Millions,” Maryland Office of the Public Defender (November 2016). Isaac Bryan, Terry Allen, Kelly Lytle Hernandez, and Margaret Dooley-Sammuli, “The Price for Freedom: Bail in the City of L.A.,” UCLA Bunche Center for African American Studies (December 2017).
3. Q19 (r). “[Do you favor or oppose reducing] the number of arrests for low-level, nonviolent offenses.” African-American respondents: Oppose, 7%; Don’t Know/Undecided, 6%. Latinx respondents: Favor, 75%; Oppose, 22%; Don’t Know/Undecided, 3%. White respondents: Favor, 71%; Oppose, 23%; Don’t Know/Undecided, 6%.
4. Q19 (s). “[Do you favor or oppose reducing] the number of arrests for low-level, nonviolent offenses by issuing citations rather than arrests for those offenses.” Oppose, 11%; Don’t Know/Undecided/Refused, 10%.
5. Q12. “And when it comes to deciding how to release or not release someone from jail before trial, which would you rather be the deciding factor: an assessment of the person that takes into account their risk to public safety or an assessment of the person that takes into account their risk of failing to appear in court for trial?” Neither/Don’t Know, 11%.
6. Q19 (t). “[Do you favor or oppose allowing] 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 protect public safety.” Oppose, 13%; Don’t Know/Undecided, 10%.
7. Q19 (p). “[Do you favor or oppose limiting] how many days a person not charged with a serious violent crime can stay in jail during pretrial, if they cannot afford money bail.” Oppose, 13%; Don’t Know/Undecided, 14%.
8. Q19 (a). “[Do you favor or oppose stopping] the practice of jailing people who cannot afford money bail before trial.” African-American respondents: Oppose, 30%; Don’t Know/Undecided, 4%. Latinx respondents: Favor, 52%; Oppose, 38%; Don’t Know/Undecided, 10%. White respondents: Favor, 41%; Oppose, 45%; Don’t Know/Undecided, 14%.
9. Q19 (q). “[Do you favor or oppose removing] money bail as the primary driver of pretrial detention decisions.” Oppose, 30%; Don’t Know/Undecided/Refused, 17%.
10. Q19 (k). “[Do you favor or oppose eliminating] money bail entirely from the criminal justice system and replac[ing] it with pretrial risk assessment and supervision.” Oppose, 39%; Don’t Know/Undecided, 9%.
11. Q19 (m). “[Do you favor or oppose] instead of requiring people to pay money upfront to be released from jail pretrial, requir[ing] unsecured bonds, which is a promise to pay a fine if they do not show up to trial.” Oppose, 24%; Don’t Know/Undecided, 9%.
12. Q17. “And which do you think is fairer to people of all races: money bail OR supports, like court reminders, referrals to services, and supervision?” Money bail, 25%; Both/Don’t Know/Neither, 18%.
13. Q7. “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?” Fairly, 10%; Don’t Know, 4%.
14. Q9. “Do you feel that the criminal justice system in the U.S. basically treats everyone fairly, or do you feel white people enjoy substantially better outcomes from the criminal justice system than black people, Latino people, and other people of color?” Fairly, 12%; Don’t Know, 9%.
15. Q3. “Thinking some more about the criminal justice system in the U.S., do you think the criminal justice system needs a complete overhaul, major reform, minor reform, or is there no need for change?” Complete overhaul, 33%; Major reform, 39%; Minor reform, 18%; No need for change, 5%; Don’t know, 5%.
16. Tina Freiburger and Catherine D. Marcum, “The Impact of Race on the Pretrial Decision,” 35 *Amer. J. of Crim. Just.* 76 (2010); Robert R. Weidner, Racial Justice Improvement Project Pretrial Detention and Release Decisions in Saint Louis County, Minnesota in 2009 & 2010 (Aug. 8, 2011).
17. Shawn D. Bushway and Jonah B. Gelbach, “Testing for Racial Discrimination in Bail Setting Using Nonparametric Estimation of a Parametric Model” (2011); Stephen Demuth, “Racial and Ethnic Difference in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees,” 41 *J. of Crim.* 897.

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18. Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, "[Investigating the Impact of Pretrial Detention on Sentencing Outcomes](#)," Laura and John Arnold Foundation (November 2013).
19. Q15. "Would you support or oppose eliminating money bail and instead using community-based support, such as court reminders and supervision, for people released before trial, or are you undecided?" Support, 36%; Oppose, 23%; Don't Know/Undecided, 41%. Q24. "Sometimes over the course of a survey, people change their minds. Would you support or oppose eliminating money bail and instead using community-based support, such as court reminders and supervision, for people before trial, or are you undecided?" Support, 61%; Oppose, 19%; Don't Know/Undecided, 20%.
20. Elizabeth Swavola, Kristine Riley, and Ram Subramanian, "[Overlooked: Women and Jails in an Era of Reform](#)," Vera Institute of Justice (August 2016).
21. https://www.prisonpolicy.org/factsheets/women_pie_chart_report_2017.pdf
22. Swavola et al., "Overlooked."
23. Amber Baylor, "[A Free Start: Community-Based Organizations as an Antidote to the Mass Incarceration of Women Pretrial](#)," 26 *Hastings Women's L. R.* 51 (2015).
24. After African-American women hear batteries of arguments both in favor of and opposed to eliminating money bail and instead using community-based supports, overall support reaches 65% (from 35%) and leads to opposition from +14 to +50. Q15. "Would you support or oppose eliminating money bail and instead using community-based support, such as court reminders and supervision, for people released before trial, or are you undecided?" Support, 35%; Oppose, 21%; Don't Know/Undecided, 43%. Q24. "Sometimes over the course of a survey, people change their minds. Would you support or oppose eliminating money bail and instead using community-based support, such as court reminders and supervision, for people before trial, or are you undecided?" Support, 61%; Oppose, 19%; Don't Know/Undecided, 20%.