

# NORTH CAROLINA VOTERS WANT A COMMONSENSE APPROACH TO PRETRIAL JUSTICE

Too many people are in North Carolina jails simply because they cannot afford money bond, and voters believe it is time for this to change. A new poll from the Pretrial Justice Institute shows that three out of five registered voters in North Carolina think the criminal justice system is in need of either a complete overhaul or major reform.<sup>1</sup> They think that pretrial justice should focus on public safety, not ability to pay, and they strongly support helping people who are released before trial be successful in the community.

## WHAT DO VOTERS OF NORTH CAROLINA WANT?

It is a fundamental American value that our legal institutions treat all people fairly and equally. However, money bail creates a two-tiered system of justice. People who can buy their release are free before trial, while people who cannot afford bond amounts remain locked up. This poll conducted in May 2018 shows that voters in North Carolina want their pretrial justice system to reserve detention for the relatively few people who pose a threat to community safety, release those who can be successful in the community before trial, and provide community-based services to those who need it.

## WHAT IS PRETRIAL JUSTICE?

Pretrial justice is the part of the criminal justice system that begins when a person comes into contact with law enforcement (or the police) 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 there are no conditions or combination of conditions that would 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—a.k.a. “money bail” or “cash bail”—it can mean abiding by stay away orders or curfews, agreeing to update the court of any address changes, or agreeing to check in regularly with a supervision office.

The Supreme Court has stated that in the United States “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” (United States v. Salerno, 481 U.S. 739 (1987)) North Carolina falls well short of this ideal. Eighty-six percent of people in North Carolina county jails in 2013 were awaiting trial and had not been convicted of a crime.<sup>2</sup> The growth of jail populations in the state is largely attributable to people held pretrial.<sup>3</sup>

This poll was commissioned by the Pretrial Justice Institute and designed and administered by Lake Research Partners. This survey was conducted by phone using professional interviewers and reached a total of 538 registered voters in North Carolina. The survey was conducted May 2 – 17, 2018.

Telephone numbers for the survey were drawn using a file of registered voters. The sample was stratified geographically to reflect the expected composition of registered voters statewide. Data were weighted by gender, age, education, party identification, race, and region. The margin of error for the survey is +/- 4.2%.

Specifically, voters want the pretrial justice system to:

**Reduce Arrests**

Pretrial is the “front door” of the criminal justice system; in order to reduce the system population overall, fewer people must pass through this door. Contact with police or law enforcement does not have to lead to time in jail. Citation in lieu of arrest policies, for example, allow law enforcement officers to present people with a date to appear in court instead of taking them into custody. In North Carolina, 78 percent of voters would reduce the number of arrests for low-level, nonviolent offenses by issuing citations instead of making arrests.<sup>4</sup> Seventy-seven percent of North Carolina voters favor providing court reminders or supervision for people awaiting trial in the community,

which are effective ways of having people show up to court dates with no new arrests.<sup>5</sup>

**Restrict Detention**

North Carolina voters want their pretrial justice system to focus on maintaining public safety and not default to incarcerating people who come into contact with law enforcement. More than eight out of ten (85%) would allow judges to detain people charged with a serious violent crime in jail without bail when it has been found in court that there are no options to get them back to court or protect public safety.<sup>6</sup> However, more than two out of three (70%) would prefer for the detention decision to be informed by an assessment that takes into account the arrested person’s risk to public safety rather than the risk of failing to appear in court for trial (11%).<sup>7</sup>

Respondents also want limits on the system’s ability to detain. Nearly half (49%) think prosecutors should have to make the case for pretrial detention rather than people having to make the case for their release.<sup>8</sup>

North Carolinians believe that many people who are arrested may be better served by community support services than by jail. Eighty-eight percent of respondents would provide supports for people who are victims of domestic violence, while 79 percent would help those with drug or alcohol dependencies.<sup>9</sup> Eighty-eight percent of respondents also would provide support services for people who have mental health needs.<sup>10</sup> Research supports this idea. When people who are likely to succeed on pretrial release are detained, usually because of money bond, they are more likely to be arrested in the future.<sup>11</sup> This is likely because even a few days in jail has destabilizing effects on employment, housing, and families.

**DETAINED ON  
CASH BOND**

Ninety-five percent of people in jail before trial in North Carolina are detained on secured bond, according to a 2016 “snapshot” of six counties (Buncombe, Cumberland, Johnston, Rowan, Catawba, and Duplin) that PJI prepared for the North Carolina Commission on the Administration of Law and Justice.<sup>23</sup>

The report noted that while the law requires a formal bond review process for people charged with felonies, no such process was required for people detained on misdemeanor charges. Consequently, “many misdemeanor defendants remain in jail for periods exceeding the sentence they could receive if convicted, and many plead guilty just so that they can be released.”<sup>24</sup>

### Replace Money Bond

North Carolinians understand that money bail does not guarantee public safety, and they do not want people to be locked up because they are poor. Fifty-seven percent of respondents support the use of unsecured bonds (bond that is paid only if the person does not appear in court),<sup>12</sup> and 73 percent of poll respondents want to limit how many days people not charged with serious violent crimes can remain in jail before trial if they cannot afford money bond.<sup>13</sup>

Respondents are also highly supportive of services that help released people get to court; 74 percent support providing reliable transportation to court for people awaiting trial who don't have the money to get there,<sup>14</sup> and 80 percent support educational courses and counseling to help people released before trial show up for court and not get arrested for new crimes.<sup>15</sup>

### Raise Equity

Voters in North Carolina believe that the criminal justice system does not treat all people fairly. Seventy-nine percent of respondents—76 percent of African Americans and 83 percent of whites—believe that the wealthy enjoy substantially better outcomes than poor and working class people.<sup>16</sup> Moreover, a majority of respondents (55%) agree that white people enjoy substantially better outcomes from the criminal justice system than African Americans, Latinx, and other people of color, with 69 percent of African Americans in agreement with this statement and 49 percent of whites.<sup>17</sup>

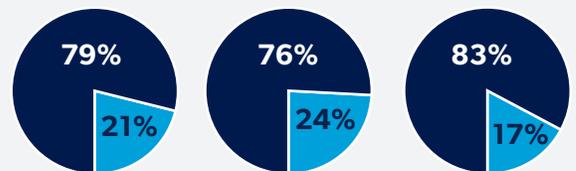
They are correct in these perceptions. Research shows that people who cannot afford to bond out of jail are more likely to be sentenced to incarceration and receive longer sentences

## NORTH CAROLINA MENTAL HEALTH NEED

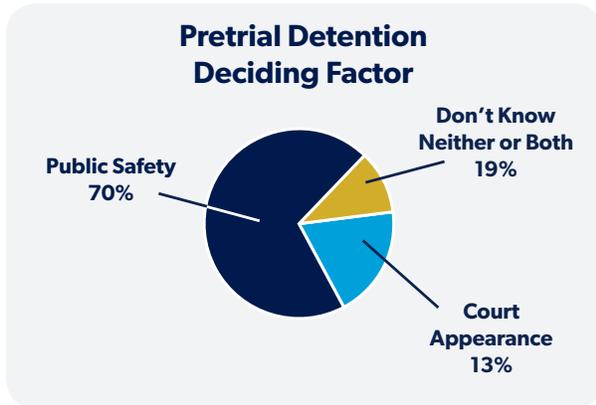
Many people in North Carolina jails have mental health needs, which both strains the pretrial justice system and also fails to address long-term mental health needs. In a survey from the North Carolina Sheriffs Association sheriffs reported that between one-third to three-quarters of their jail populations had a mental illness. Deputies in Pitt County found 25 people with mental health needs had been in jail more than 480 times, combined, over 15 years, at an aggregate cost of \$1.5 million.<sup>20</sup>

A study<sup>21</sup> from North Carolina State University found that treating people with mental illnesses in settings outside of the criminal justice system lowers arrests and saves \$25,000 per person per year. However, like other states, North Carolina incarcerates more people with severe mental illness than it hospitalizes.<sup>22</sup> Many jurisdictions are seeking to change those numbers. Forty-four counties in North Carolina participate in the Stepping Up initiative, which seeks to reduce the number of people with mental illnesses in jail by diverting them to services and treatment outside of the criminal justice system.

**Significant majorities of people feel that the wealthy enjoy substantially better outcomes from the criminal justice system than the poor and working class:**



■ Wealthy enjoy substantially better outcomes  
■ System treats everyone fairly



than those who are released.<sup>18</sup> Studies have found that African Americans face higher bond amounts and are less likely to be released on conditions that do not involve paying money.<sup>20</sup>

## **NORTH CAROLINA IS TAKING STEPS TO IMPROVE**

Across the state, system stakeholders are taking action to improve their pretrial practices. Mecklenburg County has employed an evidence-based pretrial assessment, to help guide pretrial release decisions since 2011. From the period of 2009-2015, the county's jail [population decreased 43 percent, while its public safety and court appearance rates increased to 93 percent](#) and 98 percent, respectively. Although money bail is still used, the proportion of people released on unsecured bail has [increased from 5 percent to 28 percent](#).

Buncombe, Durham, and Mecklenburg counties are among 40 national jurisdictions selected to take part in the Safety and Justice Challenge, an initiative of the John D. and Catherine T. MacArthur Foundation to safely reduce jail populations. Jackson and Haywood counties are developing an implementation plan for legal and evidence-based practices as a project funded by the State Justice Institute.<sup>19</sup>

North Carolina voters believe their pretrial system uses jail too readily for people who are charged with nonviolent crimes, often in ways that do not serve public safety—survey respondents' top priority. They also understand commonsense alternatives exist, and the more they learn about things like community-based support and services the more supportive they become. Whether motivated by concerns over the right to pretrial liberty, community well-being, or issues of fundamental fairness, voters are ready for their leaders to change the pretrial system in North Carolina. For more information about criminal justice policies and opportunities to improve pretrial justice in North Carolina, contact the following organizations:

- [ACLU of North Carolina](#)
- [Conservatives for Criminal Justice Reform](#)
- [Southerners on New Ground in North Carolina](#)

## Endnotes

1. 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, 21%; Major reform, 39%; Minor reform, 31%, No need for change, 6%; Don’t Know, 4%.
2. See, Measures for Justice website, Pretrial Justice Population for North Carolina, 2013. [bit.ly/2On4Pl7](http://bit.ly/2On4Pl7)
3. Joshua Aiken, [Era of Mass Expansion: Why State Officials Should Fight Jail Growth, a Prison Policy Initiative Report](#) (May 2017). See also, [https://www.prisonpolicy.org/graphs/NC\\_Convicted\\_Status\\_1978-2013.html](https://www.prisonpolicy.org/graphs/NC_Convicted_Status_1978-2013.html).
4. Q19 (s). “[Do you favor or oppose reducing] the number of arrests for low-level, non-violent offenses by issuing citations rather than arrests for those offenses.” Oppose, 14% ; Don’t Know/Undecided/Refused, 9%
5. See, “Use of Court Date Reminder Notices to Improve Court Appearance Rates,” Pretrial Justice Center for Courts Research Brief (September 2017); Christopher T. Lowenkamp and Marie VanNostrand, “Exploring the Impact of Supervision on Pretrial Outcomes,” Laura and John Arnold Foundation, (November 2013). Q19 (d). “[Do you favor or oppose providing] court reminders or supervision for people awaiting trial in the community.” Oppose, 12%; Don’t Know/Undecided, 10%.
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, 9%; Don’t Know/Undecided/Refused, 5%
7. 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 [ROTATE:] \_ 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?” Don’t Know/Neither/Both, 19%.
8. Q11. “And when it comes to deciding how to release or not release someone from jail before trial, [ROTATE:] \_would you rather prosecutors have to make the case to keep someone in jail pretrial OR \_would you rather defendants have to make the case that they should be released?” Defendants should make the case: 25%; Both/Neither/Don’t Know: 26%.
9. Q19 (i). “[Do you favor or oppose] support services for people awaiting trial in the community who are victims of domestic violence.” Oppose, 8%; Don’t Know/Undecided/Refused, 4%. Q19 (h). “[Do you favor or oppose] support services for people awaiting trial in the community who suffer from drug or alcohol addictions?” Oppose: 16%; Don’t Know/Undecided/Refused: 6%.
10. Q19 (j). “[Do you favor or oppose] support services for people awaiting trial in the community who suffer from mental health issues.” Oppose, 8%; Don’t Know/Undecided, 4%.
11. Christopher T. Lowenkamp, Marie VanNostrand and Alexander Holsinter, [Investigating the Impact of Pretrial Detention on Sentencing Outcomes](#), Laura and John Arnold Foundation (November 2013).
12. Q19 (m). “[Do you favor or oppose] instead of requiring people to pay money upfront to be released from jail pretrial, require unsecured bonds, which is a promise to pay a fine if they do not show up for trial.” Oppose 32%; Don’t Know/Undecided/Refused, 11%.
13. 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, 18%; Don’t Know/ Undecided, 9%
14. Q19 (f). “[Do you favor or oppose providing] reliable transportation to court for people awaiting trial who don’t have the money to get there.” Oppose, 21%; Don’t Know/Undecided/Refused, 5%.
15. Q 19 (c). “[Do you favor or oppose providing] educational courses and counseling to help people released before trial show up for their court appearance and not get arrested for new crimes.” Oppose, 15%; Don’t Know/Undecided/Refused, 5%.
16. 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?” Total: Fairly, 16%; Don’t Know, 5%. African American respondents: Fairly 24%. White respondents: Fairly, 10%, Don’t Know, 7%.
17. 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?” Total: Fairly, 32%; Don’t Know, 13%. African American respondents: Fairly, 24%; Don’t Know, 7%. White respondents: Fairly 36%; Don’t Know, 15%.
18. Lowenkamp et al, *supra*. .
19. PJI is providing technical assistance to Jackson and Haywood counties, as well as Durham and Mecklenburg counties.
20. <https://www.wnct.com/news/pitt-co-sheriffs-office-working-to-improve-state-of-mental-health-in-jails/1091448681>
21. Richard A. Van Dorn, Sarah L. Desmarais, John P Petrila, Diane Haynes and Jay Prakash Singh, “Effects of outpatient treatment on risk of arrest of adults with serious mental illness and associated costs,” *Psychiatric services*, 856-62 (2013).
22. <http://www.treatmentadvocacycenter.org/north-carolina>
23. John Clark, Timothy R. Schnacke and Sue Ferrere, “Upgrading North Carolina’s Bail System: A Balanced Approach to Pretrial Justice Using Legal and Evidence-Based Practices,” Pretrial Justice Institute, 12 (August 2016).
24. Upgrading North Carolina’s Bail System at 18.