

What's Happening in Pretrial Justice?

July 2019

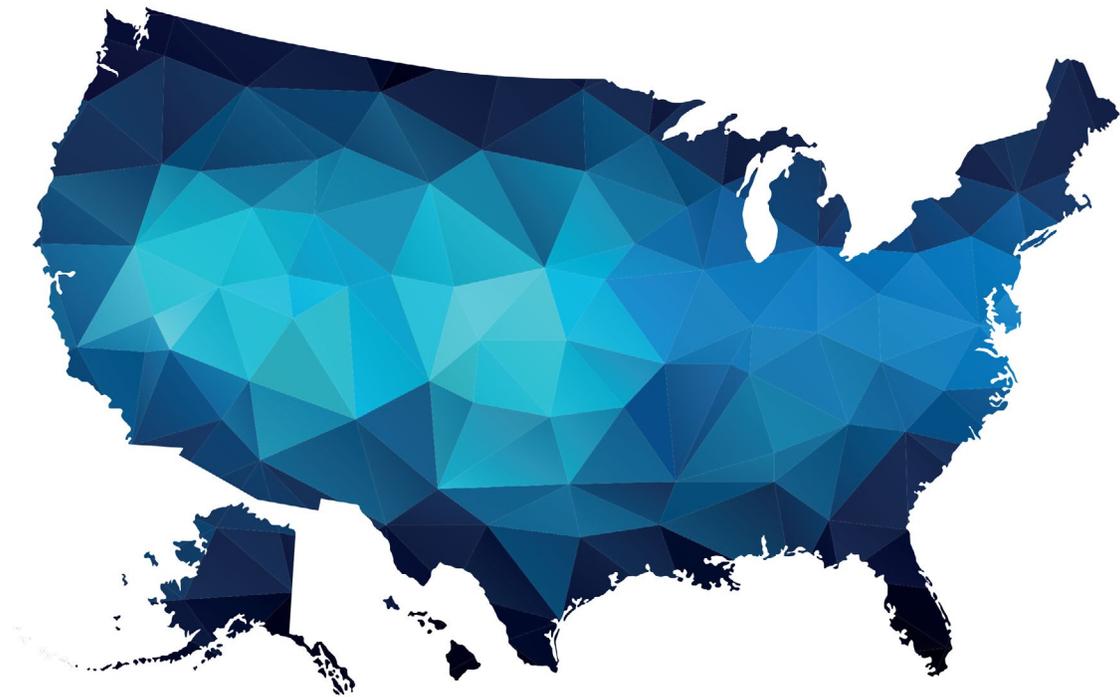


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Introduction

Interest in pretrial justice reform continues 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, and Community & Grassroots-Led Change. 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, in the first quarter 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.

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. Simply 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.

Pre-Booking Deflection and Diversion

NEW 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.

NEW 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

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 “reimagin[ing] 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.

NEW 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, proactively 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 rare cases, Porter said, his office may seek pretrial detention. Porter is joining several other prosecutors in Virginia in moving away from cash bail.

Defender-led Change

The UCLA School of Law 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.

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.

NEW 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 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.”

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 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 take 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 Chief Justice Maureen O’Connor has convened a task force 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.” A report from the task force is expected in May 2019.

Texas Supreme Court Chief Justice Nathan Hecht and Court of Criminal Appeals Presiding Judge Sharon Keller have 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."

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.

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. > [bail bond business practices](#)

A federal judge has granted summary judgement in a case challenging the use of bail schedules in San Francisco. In granting the motion in *Buffin v. San Francisco*, the judge noted that the use of pretrial assessments provided a plausible alternative that was "at least as effective and less restrictive for achieving the government's compelling interests in protecting public safety and assuring future court appearances," and also noted that "[t]he evidence demonstrates that the Sheriff's use of the Bail Schedule significantly deprives plaintiffs of their fundamental right to liberty." The case was defended by the **California** Bail Agents Association after the sheriff declined to defend the case. > [bail schedules](#) > [pretrial assessments](#)

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 assessments would constitute an additional punishment. > [ability to pay](#)

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](#). > [fines and fees](#)

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 bail. The lawsuit of [Caliste v. Cantrell](#) was filed by the ACLU and the MacArthur Justice Center. > [pretrial release requirements](#) > [access to counsel](#) > [ability to pay](#)

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 "a 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. > [pretrial detention](#)

NEW 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 bail. Eighty-five percent of people who are arraigned while under arrest are required to pay cash 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. > [bail schedules](#) > [ability to pay](#) > [access to counsel](#)

NEW 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." > [pretrial release requirements](#) > [ability to pay](#)

The Supreme Court of Missouri issued a unanimous opinion in **Missouri** vs. 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."

NEW The ACLU and Terrell Marshall Law Group filed a federal lawsuit in **Montana**, alleging that First Call Bail and Surety, its sureties and 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." The suit, [Mitchell and Meuchell v. First Call Bail and Surety](#), seeks damages and a declaratory relief finding that certain provisions in

the bail bond contract are unconscionable and void as a matter of public policy. > [bail bond business practices](#)

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 the 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. Subsequently Browder 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.

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](#)

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. > [ability to pay](#) > [pretrial release requirements](#)

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, and a court has 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. Read the injunction [here](#). > [ability to pay](#)

After nearly three years of litigation, the Harris County, **Texas** lawsuit of *ODonnell v. Harris County* over the use of money bail in misdemeanor cases has taken a new turn with newly-elected judges withdrawing the appeal of the case, and implementing new rules on the handling of misdemeanor charges. Under the new rules, 85% of people charged with misdemeanors will qualify for release on no cash bonds. A settlement is

pending. A new lawsuit has been filed, challenging the use of cash bail in felony cases. > [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

NEW **Colorado** Governor Jared Polis signed [HB1225](#), which requires courts to release people charged with misdemeanors, comparable municipal offenses or traffic offenses on personal recognizance. However, the law also provides that before appearing in court, the new law does not prohibit the release of a defendant pursuant to local pretrial release policies, including those that require payment of a monetary condition of release, if the defendant is first informed that the defendant is entitled to release on a personal recognizance bond. The law also permits the issuance of monetary conditions for persons who have failed to appear in court as a condition of release. The Attorney General for Colorado, Phil Weiser, [testified](#) in support of the bill.

NEW **Colorado** Governor Jared Polis also signed SB191, 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.

NEW **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](#), risk assessments 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 must be set at arraignment or as soon as practicable; bail 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 bail must be allowed seven days a week at police, law enforcement and community centers.

NEW **Louisiana** Governor John Bel Edwards signed [SB108](#), reversing the state's insurance commissioner's determination 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. The bill also eliminated the additional 1% licensing fee that most bail bond companies in New Orleans charged.

NEW **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.

NEW **Nevada** lawmakers passed Senate Joint 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 **New Hampshire** Governor Chris Sununu signed SB314, 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.

NEW 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.

NEW The **New York City** Council passed [Intro. No. 1199](#), eliminating bail fees associated with using a credit card to pay. The city had previously charged a 2.49 percent fee for credit card payments of cash bail, 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.

NEW 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 should not have to pay the reinstatement fee, and 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

Alaska Governor Mike Dunleavy introduced four pieces of legislation that would repeal current criminal justice law. One bill, SB 33, focuses on pretrial policies; the bill would roll back the use of pretrial assessments, take pretrial supervision duties away from a separate department and place them within probation, and eliminate a court's ability to grant credit for time spent "in a private residence or under electronic monitoring." Before the implementation of the current law, which took effect after the passage of SB 91 in 2016, the pretrial population had grown 81% over the previous decade.

The Attorney General for **Colorado**, Phil Weiser, [testified](#) in support of a pair of bills that would reform the state's pretrial justice system before the House Judiciary Committee. According to Weiser, the bills, which would end cash bail for lower-level traffic, petty or municipal offenses (HB 1225) and implement a pretrial screening process for recommending conditions of release and establish pretrial services programs in all jurisdictions (HB 1226), would "provide for greater fairness, improve public safety, operate in a more cost-effective manner, and ensure more humane treatment of individuals awaiting trial."

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.

NEW The Pretrial Data Act (**Illinois HB2689**) 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.

Ohio HB 439 would require courts to use the results of a validated assessment tool in bail determinations; to allow nonmonetary bail to be set; to require courts to collect certain data on bail, pretrial release, and sentencing; and to require the state Criminal Sentencing Commission to create a list of permissible validated assessment tools and monitor the policies and procedures of courts in setting bail and utilizing pretrial supervision services.

NEW **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 own 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.

NEW 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.

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.

NEW 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.

NEW **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.

NEW 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.

NEW The Cincinnati City Council (**Ohio**) passed a motion for prosecutors to forgo requests for cash

bond in cases of people charged with non-violent misdemeanors; instead, prosecutors will request own recognizance bonds. The motion was initiated by Councilman P.G. Sittenfeld.

NEW **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.

Community & Grassroots-Led Change

No two communities have the exact same challenges or strengths in their pretrial systems, and for that reason, the voices of community groups are taking on an increasingly important role in calling for change and educating policymakers and citizens about state and local pretrial justice issues. In some cases, community groups are also monitoring pretrial reforms to make sure that reforms are occurring as promised by elected officials.

Community & Grassroots-led Change

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.

NEW **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.

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 **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](#).

NEW 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.

NEW 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.

State and Local-Level Reports

NEW 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.

NEW [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 information on 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** 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.

NEW [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.

NEW The **New Jersey** Administrative Office of the Courts released its [2018 annual report](#) showing

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 state and local incarcerations, 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.

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.

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 March 31, 2019, organized by state.

| | Changing Practice | Judiciary-Led | Pretrial Litigation | Pretrial Legislation | Executive-Led | Community & Grassroots-Led | State & Local Level Reports |
|----------------|-------------------|---------------|---------------------|----------------------|---------------|----------------------------|-----------------------------|
| Alabama | | | | | | | |
| Alaska | | ● | | ● | | | |
| Arizona | ● | ● | | | | | |
| Arkansas | | | | | | | |
| California | ● | | ● | | | | |
| Colorado | ● | | | ● | ● | | |
| Connecticut | | | | | | | |
| Delaware | | | | | ● | | |
| Florida | | | | ● | | | |
| Georgia | | | | | ● | | |
| Hawaii | | | | ● | | | |
| Idaho | | | | | | | |
| Illinois | | | ● | | | | ● |
| Indiana | | | | | | | |
| Iowa | | | | | | | |
| Kansas | | | | | | | |
| Kentucky | | | | | | ● | ● |
| Louisiana | | ● | ● | ● | | ● | ● |
| Maine | | | | | | | |
| Maryland | | | | | | | |
| Massachusetts | ● | | ● | | | | |
| Michigan | | ● | ● | ● | ● | | |
| Minnesota | | | | | | | |
| Mississippi | | | | | | ● | |
| Missouri | ● | ● | ● | ● | ● | ● | |
| Montana | | | ● | | | | |
| Nebraska | | | | | | | |
| Nevada | | | | ● | | | |
| New Hampshire | | | | ● | | | |
| New Jersey | | | | | | | ● |
| New Mexico | | ● | | | | | |
| New York | | | ● | ● | | ● | ● |
| North Carolina | ● | | | | ● | ● | ● |
| North Dakota | | ● | | | | | |
| Ohio | ● | ● | | ● | ● | ● | |
| Oklahoma | ● | | ● | ● | | | ● |
| Oregon | ● | | | | | | |
| Pennsylvania | ● | | ● | | | | ● |
| Rhode Island | | | | | | | ● |
| South Carolina | | | | | | | |
| South Dakota | | | | | | | |
| Tennessee | | | ● | | | ● | ● |
| Texas | ● | ● | ● | | | | |
| Utah | | | | | | | |
| Vermont | | | | | | | |
| Virginia | ● | | | ● | ● | | |
| Washington | | | | | | ● | ● |
| West Virginia | | | | | | | |
| Wisconsin | | | ● | | | ● | ● |
| Wyoming | | | | | | | |

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 |
| PSA | Arnold Public Safety Assessment |
| 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 |