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THE STATE OF PRETRIAL JUSTICE IN AMERICA

NOVEMBER 2017

Executive Summary

The State of Pretrial Justice in America is the Pretrial Justice Institute's first comprehensive effort to gauge pretrial outcomes across the United States. It measures three basic indicators for each state with the goal of setting a baseline against which progress can be tracked: the rate at which people are detained before trial; the extent to which each state uses evidence-based pretrial assessment; and whether or not a state has functionally eliminated money bail.

Based on these measurements, and despite the heightened awareness of the importance of this part of the system, the state of pretrial justice in America is abysmal. As a nation, the overall grade is a D, just above failing. Only one state earned an A; nine states received Bs; ten states received Cs; 12 states received Ds; and 17 states—more than one-third—failed.¹

The main cause of these poor grades is that too many women and men are being incarcerated needlessly before trial. Research shows and the law requires that the vast majority of people in the pretrial phase should not be detained and should be released under the least restrictive of conditions. Detaining people who have a high probability of pretrial success in the community compromises public safety, erodes public trust in the criminal justice system, and inefficiently consumes governmental budgets.

States were also graded on how extensively they use evidence-based pretrial assessment to guide discretion and reduce disparate outcomes. Just

four years ago, it was estimated that 10% of people lived in a jurisdiction that used validated evidence-based pretrial assessments. That percentage has grown to 25%, mainly due to a few states and densely populated jurisdictions that have implemented them. Evidence-based pretrial assessments show that most people released before trial will appear in court and not be arrested on new charges pending trial. These tools are also far better than money bail at accurately identifying, without bias, the people who will benefit from support or supervision, as well as the very small number that courts may order detained, after full due process and a right of appeal.

The final indicator, whether the state has functionally eliminated money bail, was included because secured financial conditions play such a large role in needlessly detaining people and giving us a false sense of safety. Fewer than 3% of U.S. residents live in a jurisdiction that has accomplished this critical task. Only by moving away from money can we focus on what research shows: that there are more accurate, effective, and fair means of determining who should be detained.

This report is intended to stimulate further conversation about reform possibilities and action. Already, great strides are being taken by courageous stakeholders across the country. When those strides result in maximized liberty, maximized safety, and maximized appearance in court without methods that cause harm, grades will improve and a new national standard of pretrial justice will emerge.

1. Delaware did not receive a grade due to incomplete data.