

Voices for Pretrial Racial Justice



“The National Association of Pretrial Services Agencies (NAPSA) interacts with many pretrial services providers across the country that try to ensure that defendants receive pretrial justice and are not unfairly subjected to pretrial detention. In many jurisdictions, however, pretrial services professionals lack the critical resources needed to implement best practices in pretrial services. In some jurisdictions the pretrial services providers do not have sufficient staffing or resources to perform an evidence-based risk assessment of each arrestee before a bail determination is made. In other jurisdictions there is no validated risk assessment tool that would properly evaluate whether the defendant poses a low, moderate or high risk for release. In far too many other jurisdictions, even if a risk assessment is properly performed, the jurisdiction does not have adequate community-based supervision programs (electronic monitoring, drug testing, regular reporting) to supervise low and moderate risk defendants. As a result, bail officials tend to rely almost exclusively on money bonds without any consideration of alternatives to pretrial detention for defendants who pose no serious flight or safety risk. The combination of these factors leads to racial and ethnic disparities in the bail determination process. In some cases disparities are a direct result of the fact that a disproportionate number of African American and Latino defendants are indigent and simply cannot afford the bail imposed. In other jurisdictions, the amount of bail imposed is set on a schedule that does not take into account relevant objective background information that would indicate that the defendant is not a flight/safety risk, i.e., ties to the community, employment, limited prior criminal history. NAPSA is committed to promoting evidence-based practices that are safe and fair. Implementation of these practices will improve the bail determination process for all defendants and reduce or eliminate unfair racial and ethnic disparities that currently exist in many jurisdictions.”

Board of Directors,

National Association of Pretrial Services Agencies (NAPSA)



“Kentucky Pretrial Services was created in 1976 when commercial bail was outlawed. Kentucky is the only state where posting bail for profit is a crime. Kentucky is nationally known for its highly effective system of Pretrial Justice. Pretrial Officers interview and complete an objective risk assessment on newly arrested defendants. A recommendation is made to the court for an initial release decision within 24 hours. Our risk assessment is based strictly on criminal history and charging documents and as such, is completely objective and neutral. Previous tools used in Kentucky included factors such as home ownership, who the defendant lives with and source of income. These factors have been questioned as potentially having a disparate impact on people of color. We are unique in that our recommendations are made to judges by telephone, so the judge does not see the defendant. Based on the extensive research by the Laura and John Arnold Foundation, the tool currently in use in Kentucky has been validated as neutral as to gender, race and ethnicity. As a result of changing to the current risk assessment, our jail population essentially mirrors the state’s population in terms of racial and ethnic demographics. This was not the case before. Of course, we cannot control who gets arrested, but at least we have achieved a process for a neutral and objective release-or-detain decision.”

Tara Boh Klute

General Manager

Division of Pretrial Services

Kentucky Court of Justice

Administrative Office of the Courts

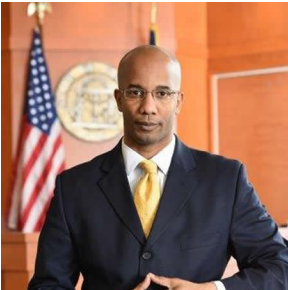
Voices for Pretrial Racial Justice



In my years as a public defender serving clients in multiple counties across Northern Kentucky, I witnessed many defendants who were charged with low-level misdemeanor offenses plead guilty at arraignment - without the advice of counsel - because they could not make bail. They could only foresee the immediate effect that continued incarceration was sure to bring: lost employment, unpaid bills, and a slew of childcare issues. A similar approach could also be found among defendants charged with felony offenses who did receive the benefit of legal counsel. Defendants with potentially viable defenses would sometimes choose to take a plea deal that secured their immediate release if they could not make bail. These decisions were often made without careful consideration of the less immediate collateral consequences that were sure to come. The consequences of a criminal record can be very far reaching and devastating in a variety of ways, thus contributing to the cycle of behavior that can lead one to the courthouse in the first place. In cases involving nonviolent allegations, it is unfortunate that people must balance their constitutional rights to have their day in court against the very harsh realities of what continued incarceration would mean for them and their families.

Heather Crabbe

Former Assistant Public Advocate
Commonwealth of Kentucky



In DeKalb County there are two arraignment calendars. One in the morning for people who did not make bail, and another in the afternoon for defendants who were able to post bail and be released. Consistently, the morning calendar of detained people is overwhelmingly African American and the afternoon calendar is largely made up mostly of white, African American and other defendants with money. At least in my county, there is simply no question that the bail decision has a disparate impact on people of color. I believe there needs to be changes in the way the criminal justice system handles these low-level criminal cases on the front end of the criminal justice system.

Robert D. James, Jr.

DeKalb County GA District Attorney



Money bail is perhaps the biggest contributor to racial and economic disparity in bail decision making. We have found that we can successfully address public safety and accountability while not unfairly detaining people who are poor or people of color simply because they do not have financial resources. The Pretrial Services Agency for the District of Columbia's role is to make sure that judges have the information they need about each person charged in order to make a fair, informed decision about risk of flight and rearrest. We use a scientifically validated risk assessment that helps promote racially neutral release and detention decisions, to the point that in 2014, there was only a five percent difference in release rates among African American, Hispanic and White defendants. Just over 88% of pretrial defendants are released by nonfinancial means and release rates are roughly equivalent among racial groups. Our jail is at 45% capacity, with very few detainees on pretrial status. Eighty-eight percent of defendants make all scheduled court appearances and 89% remain arrest free while in the community.

Spurgeon Kennedy

Director
Office of Strategic Development
Pretrial Services Agency for the District of Columbia

Voices for Pretrial Racial Justice



In my 17 years with Pretrial Services in Pima County, I have observed and participated in bail setting many times. In my observation, it is clear how closely community safety is tied to money bail in the minds of the public; there is a level of confidence that the imposition of money bail will insure public safety. In fact, that is not the case if you look at an individual's past behavioral performance, specifically when viewing criminal history. There are many examples of someone charged with a serious violent offense, a high bail is set, they are able to make bail, and then they are re-arrested while on pretrial release. There are also many examples of what might be considered a modest bail set for a person charged with a low-level, non-violent offense, and the person is unable to pay the bail because they are from a lower socioeconomic status. Unfortunately, individuals of color are disproportionately represented in this pretrial detention category, despite local data that shows African Americans and Latinos are likely to attend all court hearings and remain arrest free. In my career, I have found no data that clearly correlates money bail to pretrial success. The question then is, how safe and fair is the use of money in bail setting?

Domingo P. Corona

Director, Pretrial Services
Pima County , Arizona Superior Court



Of the areas of the criminal justice system identified by the Latino Action Network as needing reform in New Jersey, the bail system stood out because of its significant disparate impact on brown and black people. The bail system was designed that way, it's a business, and until we can re-write the book, with new policies, practices and institutions, this will remain a major civil rights issue. We have taken the first step, and now we must implement this new legislation, because under the current system, we know that if people don't have resources to pay their bail, especially low-level, non-violent offenders, they will get in the system, and stay in the system. This is a decent first step, but much more work is required to progress the issues of disparities in communities of color in NJ & beyond.

Cuqui Rivera

Board Secretary & Criminal Justice Reform Committee Chair
New Jersey Latino Action Network

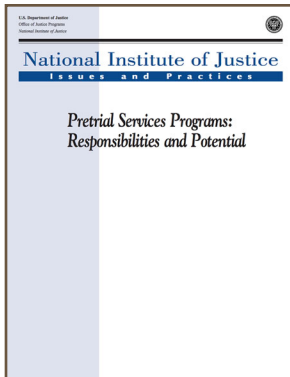


In Newark, NJ, we knew very well that a large number of black and brown people in our county jail were there because they could not afford bail while they awaited trial. Many were held for several months only to be released when they finally met a judge because there was no case against them. This was an untenable situation, a complete miscarriage of justice, which moved our church to join with others in a coalition to fight for bail reform in our state. The adoption of bail reform in New Jersey will finally give a measure of justice to many who, over many years, have been denied justice in our criminal justice system.

Rev. Dr. M. William Howard, Jr.

Pastor
Bethany Baptist Church
Newark, New Jersey

Voices for Pretrial Racial Justice



“The concept of equal justice under law is deeply embedded in the U.S. Constitution and is a core value of American society. In the area of pretrial release/detention decision-making, it means, at a minimum, that all defendants should have the same opportunity for consideration for release without invidious discrimination based on race, sex, or economic status. In particular, poor defendants should not be denied pretrial release solely because they are financially unable to post a money bond. By providing judicial officers with information about defendants and available supervision options, pretrial release programs enable courts to move toward the goal of equal justice.” From Barry Mahoney, Bruce D. Beaudin, John A. Carver, et al, “Pretrial Services Programs: Responsibilities and Potential” (2001) National Institute of Justice, www.ncjrs.gov/pdffiles1/nij/181939.pdf



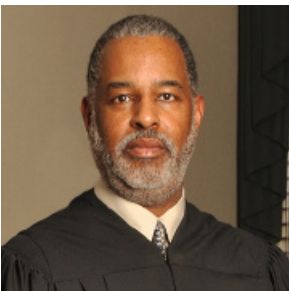
“Money bail is the civil rights issue of the 21st Century. Bail affects minorities in a disparate fashion. Study after study has shown that individuals who are similarly situated will receive differing bail amounts based upon their racial identity. You don’t need to be a scholar to see this play out in the courtrooms of Baltimore. Our non-minority clients have a clear advantage in bail determinations. It is just yet another reason to eliminate the use of money bail. We cannot escape the subtleties of unconscious racial bias caused by leaving too much discretion in the hands of bail officials who have the power to set bail amounts based upon race. Money bail doesn’t support stability and safety in the criminal justice system; it tears away at the foundation of stable and healthy communities.

In Baltimore City we face the highest bail amounts on average in Maryland, yet our clients are frequently the poorest of the poor. Pretrial detention is every bit a punishment as is a sentence imposed after a conviction. My clients are locked up from 30 days to upwards of a year waiting for trial. They lose their homes, jobs, children, enrollment in education. All of the stabilizing factors that could and should be considered in determining whether they are a flight risk or a danger to society are stripped away simply because they cannot pay a bail which is sometimes as little as \$100. Often we have clients who sit in jail on low level misdemeanor charges “serving” a 30-day pretrial detention sentence only to have the case dismissed on the trial date. In other cases my clients in pretrial detention will plead guilty, be sentenced to time served and then released. If the government does not believe my client should receive a sentence of incarceration upon conviction why is it appropriate to jail them beforehand? How can it ever be appropriate to jail them while they presumed innocent?”

Natalie Finegar

Deputy Public Defender

Baltimore, Maryland Office of the Public Defender



“Racial and ethnic disparities appearing in the later stages of the criminal justice system are actually produced and exacerbated by the disposition in the pretrial stages. . . . The available data indicate that the legal community, policymakers, lawmakers and others -- all of us involved in the criminal justice system -- need to broaden our perspective about the causes of racial disparities in the criminal justice system, with greater focus on the role of pretrial incarceration and the pretrial stages in producing such disparities.”

Hon. Andre M. Davis

Senior Judge

United States Court of Appeals for the Fourth Circuit