



# The Current State of Bail Reform in the United States: Results of a Landscape Analysis of Bail Reforms Across All 50 States

## Citation

Jorgensen, Isabella, and Sandra Susan Smith. "The Current State of Bail Reform in the United States: Results of a Landscape Analysis of Bail Reforms Across All 50 States." HKS Faculty Research Working Paper Series RWP21-033, December 2021.

## Published Version

<https://www.hks.harvard.edu/publications/current-state-bail-reform-united-states-results-landscape-analysis-bail-reforms-across>

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**HARVARD** Kennedy School  
JOHN F. KENNEDY SCHOOL OF GOVERNMENT

# The Current State of Bail Reform in the United States: Results of a Landscape Analysis of Bail Reforms Across All 50 States

Faculty Research Working Paper Series

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**December 2021**

**RWP21-033**

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# The Current State of Bail Reform in the United States

## Results of a Landscape Analysis of Bail Reforms Across All 50 States

Isabella Jorgensen and Sandra Susan Smith

### Abstract

This report discusses cash bail reforms that have occurred in the United States and provides key considerations for people interested in implementing bail reforms in their jurisdiction. Based on a landscape analysis of bail reforms across all 50 states, we identify the four main actors who take the lead on adopting bail reforms, as well as specific reforms they have implemented. We also consider different processes bail reform actors follow to implement reforms. We then share eight trends in the impacts of bail reforms from 12 jurisdictions where there has been thorough analysis of the reforms. Next, we lay out six criteria that equitable and effective bail reforms should satisfy and provide New Jersey as a case study. We conclude by discussing concerning elements of bail reforms that policy actors should be wary of when designing changes to the cash bail system.

## **Acknowledgement**

We would like to thank Dr. Steve Demuth for his time and insights. He provided extensive feedback, which made the final report stronger.

## **INTRODUCTION**

The cash bail system punishes people who cannot afford to pay monetary bail by incarcerating them when they have not been convicted of a crime. On any given day in the U.S., about 500,000 people are being held pretrial, in many cases because they cannot pay bail.<sup>1</sup> Research shows that being detained pretrial increases the likelihood someone will be convicted and has negative effects on their future labor market outcomes.<sup>2</sup> There are also substantial racial disparities in the rates of pretrial detention, as Black and Latino people are significantly more likely to be detained pretrial relative to White people.<sup>3</sup>

Many jurisdictions have taken steps to reform their cash bail systems, though there is large variation across jurisdictions as to what constitutes bail reform and how reforms are applied. We define bail reform as any policy change that is intended to and could reasonably be expected to reduce the number of people detained pretrial because they cannot afford to post cash bail. Examples of reforms include, but are not limited to, establishing a presumption of pretrial release without conditions, requiring access to counsel during bail hearings, eliminating a formal bond schedule, or abolishing cash bail altogether. Some places have paired bail reforms with other penal system reforms, such as policies to reduce arrests, leading to larger observed effects. This can make it challenging to isolate the causal impacts of bail reform on outcomes of interest (e.g., the size of the local jail population). Reforms often apply only to a subset of charges, such as misdemeanors, felonies, or nonviolent offenses. Additionally, jurisdictions implement reforms for a variety of reasons, and these reasons may influence both the scale and effectiveness of the reforms; drivers of bail reform can include pressure from the community, litigation related to the use of cash bail, and a desire to reduce criminal legal system costs.

In this report, we discuss the status of bail reform in the United States. First, we explore the four main policy actors that adopt bail reforms, as well as specific types of reforms that have been implemented by each actor. Then, we consider the different processes that policy actors have followed to enact reforms. Next, we look at the impacts of bail reforms in 12 jurisdictions that implemented and evaluated significant policy changes. We then recommend six key criteria that jurisdictions should meet when designing bail reforms. We highlight New Jersey's bail reform as a promising example and discuss the reforms in Illinois and Harris County as ones to watch. Finally, we discuss risk assessment tools and other areas of concern associated with the current landscape of bail reforms.

## **FOUR MAIN ACTORS IN BAIL REFORM**

There are four main categories of actors who implement bail reforms in the U.S.: courts, prosecutors, city and county governments, and state legislatures. We identified these actors after conducting a landscape analysis of bail reform efforts across all 50 states. Across the four actors, there have been dozens of different iterations of bail reforms, such as creating a presumption of release without cash bail, establishing the right to an attorney during bail hearings, and requiring that judges consider a person's ability to pay when setting monetary bail.

### **Courts**

The first category of bail reform actors is the courts. There are two main ways that courts have enacted bail reforms:

## 1. *Changing court rules.*

Local and state courts have implemented bail reforms by making changes to court rules, which govern how judges can make decisions. Such changes may include establishing a presumption of release on one's own recognizance for certain crimes, considering a defendant's ability to pay when setting bail, reducing or eliminating the use of bond schedules, and/or requiring judges to assess whether unsecured bonds or non-monetary conditions of release would be sufficient to assure court appearance and public safety before imposing cash bail. Courts in the following states and counties have implemented rule changes intended to modify how bail is used in their jurisdictions: Cook County, IL (2017<sup>4</sup>), Indiana (2016<sup>5</sup>), Maryland (2016<sup>6</sup>), Missouri (2019<sup>7</sup>), Mecklenburg County, NC (2010<sup>8</sup>, 2019<sup>9</sup>), Ohio (2020<sup>10</sup>), Fort Bend County, TX (2020<sup>11</sup>), and Travis County, TX (2020<sup>12</sup>).

In some places, courts have changed their rules to allow for or require risk assessments as part of the pretrial decision-making process; such changes to court rules are not captured on the list above and are instead discussed later in this report.

## 2. *Issuing opinions that change how bail is used.*

Another way that courts have influenced bail reforms is by issuing opinions that impact how cash bail is used in the jurisdiction. Below are examples in which courts have issued such rulings and brief descriptions of the opinions:

- *New Mexico*: In 2014, the New Mexico Supreme Court issued a ruling that cash bail should only be used if it is deemed necessary to assure a defendant will appear in court under the least restrictive conditions possible. This ruling led the legislature to adopt an amendment to New Mexico's state constitution that prohibited the state from detaining someone just because they could not afford to pay cash bail.<sup>13</sup>
- *Nevada*: In 2020, the Nevada Supreme Court issued a ruling that the state must provide clear and convincing evidence that bail is necessary "to ensure the defendant's presence at future court proceedings or to protect the safety of the community" in order for a judge to impose bail.<sup>14</sup> Additionally, the ruling states that defendants have a right to bail in a reasonable amount and that judges who impose monetary conditions of release must consider the defendant's financial resources. The ruling also says that defendants have the right to an individualized hearing about whether they will be detained pretrial, as well as a right to an attorney at that hearing.<sup>15</sup>
- *California*: In March 2021, the California Supreme Court found that conditioning pretrial release on a person's ability to afford bail is unconstitutional. The court ruled that a person's ability to pay bail must be considered when setting conditions of pretrial release.<sup>16</sup> Further, judges can no longer set unaffordable bail unless they determine that no other conditions of release will reasonably assure the person's appearance in court and/or public safety.<sup>17</sup> This opinion is important because it should reduce the use of cash bail in California, particularly for people who are low-income. It is also significant because the Court delivered its ruling less than five months after California voters overturned a law that would have replaced cash bail with a risk-based system.<sup>18</sup>

## **Prosecutors**

The second category of bail reform actors is prosecutors. Prosecutors most commonly enact bail reforms by announcing that their office will no longer request cash bail for people charged with

certain crimes, often nonviolent misdemeanors. Since 2017, prosecutors from at least 16 jurisdictions have announced that their offices will no longer seek cash bail for certain crimes. Examples of these jurisdictions include Los Angeles County, CA (2020<sup>19</sup>), Cook County, IL (2017<sup>20</sup>), Hennepin County, MN (2021<sup>21</sup>), Prince George’s County, MD (2019<sup>22</sup>), Brooklyn, NY (2017<sup>23</sup>), Manhattan, NY (2018<sup>24</sup>), Chittenden County, VT (2020<sup>25</sup>). Additionally, Virginia had a cluster of at least five prosecutors announce between 2018 and 2020 that they would no longer seek cash bail for certain crimes.<sup>26</sup> It is unclear if the Virginia prosecutors coordinated with one another or if the cluster emerged because prosecutors felt political pressure to stop requesting cash bail once others had done so.

Another example of a prosecutor-led bail policy change occurred last year in Philadelphia. In response to the COVID-19 pandemic in March 2020, District Attorney Larry Krasner announced that his office would only be requesting release on own recognizance *or* \$999,999 in cash bail.<sup>27</sup> Krasner framed the policy as a reform of the pretrial system in Philadelphia;<sup>i</sup> however, for many defendants, the \$999,999 bail amount essentially guarantees their detention. Evaluations from the Philadelphia Bail Fund and the Defender Association of Philadelphia found that Krasner’s office asked for bail to be set at \$999,999 in 50% of cases in the months following his announcement of the policy.<sup>28</sup> It is notable that in many cases judges and bail magistrates did not follow his office’s recommendation and instead opted to set lower, more proportionate bail amounts.<sup>29</sup>

## Cities and Counties

The third category of bail reform actors is city and county governments.<sup>ii</sup> There is significant variation in the types of reforms that have been implemented at the local level, though they can be separated into two main types:

### 1. *Changing local laws on the use of cash bail.*

Some places have implemented reforms that change how cash bail is used in their community. For example, in 2018, Atlanta passed a city ordinance that eliminated the use of cash bonds as a condition of release from the City of Atlanta Detention Center for people who were charged with violating city ordinances.<sup>30</sup> New Orleans passed a similar ordinance in 2017.<sup>31</sup> It is important to note that most city- and county-level changes to bail rules have been led by local courts as opposed to local governments.

### 2. *Expanding pretrial services.*

The existence of pretrial services in a community does not in itself qualify as bail reform; however, many cities and counties have taken steps to establish or expand their pretrial services in an effort to change how cash bail is used and to reduce pretrial detention.<sup>32</sup> Pretrial services broadly refer to services that people may interact with leading up to trial, such as court-ordered supervision, court date reminders, or behavioral health supports.<sup>33</sup> Additionally, cities and counties that adopt risk assessments commonly charge the local pretrial services

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<sup>i</sup> District Attorney Krasner had previously enacted other bail reforms, which included no longer seeking cash bail for a list of [25 nonviolent charges](#). Researchers found that these earlier reforms had positive impacts, including an increase in the number of people being released pretrial without conditions. We discuss the impacts of Krasner’s earlier policy changes in the “Impacts” section of this report.

<sup>ii</sup> Some states have statewide pretrial systems. In these states, it may be less feasible for cities and counties to enact bail reforms, particularly ones that overhaul the local use of cash bail.

organization with conducting them.<sup>34</sup> By expanding pretrial services, cities and counties create alternative conditions of pretrial release that can lead to a decreased reliance on cash bond.<sup>iii</sup> Yamhill County, Oregon is an example of a county that has expanded its pretrial services over the last 5-10 years; the expansion has been associated with a 10% decrease in the proportion of the local jail population that is made up of people detained pre-trial.<sup>35</sup>

Washington, D.C. is a leading example of a city that changed local laws on the use of cash bail and expanded pretrial services as part of its bail reform process. One of the first jurisdictions to pursue major reforms to limit the use of cash bail, D.C. passed its Bail Reform Act in 1992.<sup>36</sup> The law created the presumption that defendants would be released without conditions ahead of trial and laid out specific rules that judges must follow if they determined that imposing conditions is necessary to assure court appearance and public safety.<sup>37</sup> A notable part of the law is that a judge cannot impose cash bail that leads to someone’s pretrial detention; rather, cash bail can only be requested as a means of assuring a defendant appears for court.<sup>38</sup> To determine if/what conditions of release may be appropriate, D.C.’s pretrial services agency conducts a risk assessment and makes a recommendation accordingly.<sup>39</sup> The pretrial services agency then monitors defendants to ensure they comply with their conditions of release.<sup>40</sup>

### State Legislatures

The fourth category of bail reform actors is state legislatures. The table below lists reforms that have been included in state-level bail reform legislation and the states that adopted them.<sup>iv</sup> As the table demonstrates, the types and scales of reforms vary greatly by state. Some states have enacted only one type of reform. For example, in South Carolina’s 2009 Omnibus Crime Reduction and Sentencing Reform Act, the main policy change related to cash bail was the creation of guidelines for what judges can or must consider when imposing bail. Other states, like New Jersey, have adopted multiple reforms. New Jersey’s 2014 reforms included establishing a presumption of release, adopting a risk assessment, and expanding pretrial services, among others.<sup>41</sup>

Reform <sup>v</sup>	State(s)
Create a presumption of release and/or nonmonetary bail	California* (2018 <sup>42</sup> ), Illinois (2017 <sup>43</sup> ), Kentucky (2011 <sup>44</sup> ), Nebraska (2017 <sup>45</sup> , 2020 <sup>46</sup> ), New Hampshire (2018 <sup>47</sup> ), New Jersey (2014 <sup>48</sup> ), Utah* (2020 <sup>49</sup> ), West Virginia (2020 <sup>50</sup> )

<sup>iii</sup> Expanding pretrial conditions of release can also have negative consequences, as it can lead to people being released under more restrictive conditions that they would have been pre-reform. We discuss this further in the Areas of Concern section of the report.

<sup>iv</sup> It is possible that some state legislatures have adopted reforms that were not publicized or included bail reforms as a small component of a larger bill and thus the reforms did not come up in the landscape analysis.

<sup>v</sup> A handful of states have banned commercial bail bond companies. The motivation for banning commercial bail bonds seems to be that these businesses are exploitative and inflict disproportionate harm on people who are low-income. Banning commercial bail bonds is an important step for states to take, but we have not included it on the list of reforms. This is because it does not fall under our definition of bail reform, which is: “any policy change that is intended to and could reasonably be expected to reduce the number of people detained pretrial because they cannot afford to post cash bail.”



Adopt risk assessments and/or set rules regarding their use	Delaware (2012 <sup>51</sup> ), Hawaii (2012 <sup>52</sup> ), Illinois (2021 <sup>53</sup> ), Kentucky (2011 <sup>54</sup> ), Maryland (2020 <sup>55</sup> ), Montana (2017 <sup>56</sup> ), New Jersey (2014 <sup>57</sup> )
Establish guidelines for what judges can or must consider when imposing bail	Colorado (2013 <sup>58</sup> ), Maine (2021 <sup>59</sup> ), Oklahoma (2000 <sup>60</sup> ), South Carolina (2009 <sup>61</sup> ), Utah (2020 <sup>62</sup> ), West Virginia (2020 <sup>63</sup> )
Establish a right to counsel for bail hearings	Illinois (2017 <sup>64</sup> ), Nebraska (2020 <sup>65</sup> ), Utah (2020 <sup>66</sup> ), West Virginia (2020 <sup>67</sup> )
Expand procedural protections for the pretrial decision process (e.g., setting a timeframe in which someone must be given a bail hearing)	Connecticut (2017 <sup>68</sup> ), Delaware (2018 <sup>69</sup> ), New Jersey (2014 <sup>70</sup> ), West Virginia (2020 <sup>71</sup> )
Limit situations in which a judge can impose cash bail	Colorado (2019 <sup>72</sup> ), Connecticut (2017 <sup>73</sup> ), New Jersey (2014 <sup>74</sup> ), Vermont (2018 <sup>75</sup> )
Require that courts impose the least restrictive set of conditions deemed necessary to assure court appearance and/or public safety	California* (2018 <sup>76</sup> ), Illinois (2017 <sup>77</sup> ), New Jersey (2014 <sup>78</sup> ), West Virginia (2020 <sup>79</sup> )
Abolish cash bail for some or all crimes	Illinois (2021 <sup>80</sup> ), Maine (2021 <sup>81</sup> ), New York* (2019 <sup>82</sup> )
Create or expand pretrial services programs	Montana (2017 <sup>83</sup> ), New Jersey (2014 <sup>84</sup> )
Define the purpose of conditions of release and/or specify that cash bail is only one option for a condition of release	Colorado (2013 <sup>85</sup> ), Delaware (2018 <sup>86</sup> )
Amend state constitution to limit the use of bail	New Mexico (2016 <sup>87</sup> )
Remove presumption of detention for some crimes	Virginia** (2021 <sup>88</sup> )
Require that judges consider someone's ability to pay when setting bail	Georgia (2018 <sup>89</sup> )

Set a bail ceiling	Vermont (2018 <sup>90</sup> )
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\*Reforms were subsequently limited or repealed

\*\*Currently awaiting governor's approval

### Common Challenges Across Reform Categories

There are several common challenges that all decision-makers looking to implement bail reforms face. The first challenge is that, in many cases, there is need for cross-actor cooperation. This is because how cash bail is used depends on court rules, state and local laws, and the decisions of judges and prosecutors. For example, in 2018, New Orleans adopted the Public Safety Assessment (PSA) tool and a decision-making matrix as part of the city's efforts to reduce its jail population. When it announced the reform, the city said the risk assessment tool would help judges make more informed pretrial release decisions and, ideally, lead to higher rates of pretrial release.<sup>91</sup> While Mayor Landrieu was one of the leaders in the adoption of the PSA and decision-making matrix, a mayor alone does not have the capacity to implement a risk assessment tool or to change how judges make decisions. As a result, his office needed to collaborate with the Supreme Court of Louisiana, the Criminal District Court, and community stakeholders to enact the policy change.<sup>92</sup>

The second challenge is the faithful implementation of bail reforms given that the decision-makers who design the reforms usually have very little authority over the day-to-day application of the new policies. While the high-level actors we have already discussed drive the reforms, it is judges, pretrial service staff, district attorneys and assistant district attorneys, bail magistrates, and others who must put them in practice. If people are not properly trained on how to apply the reforms, or if they don't want to apply them correctly, then the reforms may not have their intended impact. This challenge is augmented by the fact that many reforms leave room for judicial discretion. Judicial discretion is a central element of the U.S. legal system and can enable judges to consider the totality of the circumstances when making decisions; however, discretion also allows judges to make decisions that diverge from what bail reforms would suggest. This is exemplified in the findings from a 2010 bail reform pilot in Jefferson County, Colorado. To conduct the reform pilot, the Jefferson County Criminal Justice Coordinating Committee suspended the existing bail schedule. The County also adopted a risk assessment tool, and judges had access to the results of the assessment when setting bail. A study of the pilot found that judges responded very differently to the reforms. Some responded by setting a high proportion of unsecured bonds (release without monetary bail), while some judges set many secured bonds.<sup>93</sup> The Jefferson County example demonstrates that the effectiveness of reforms does not just depend on how the reforms are written but also on how the reforms are applied by the end-users.

The third challenge is that, because there are so many different approaches to bail reform and because few jurisdictions rigorously evaluate the bail reforms they have implemented, there is not a clear blueprint for what works; policy actors that want to change the use of cash bail may not have a clear sense as to which reforms will be the most impactful and/or cost effective. They also may not know the best process for implementing reforms, which could lead to wasted time or resources. The lack of evaluation of past bail reforms may lead some jurisdictions to invest in policy changes that are not actually effective for achieving their desired goal. There is also a risk

that jurisdictions may implement reforms that introduce new harms for system-impacted individuals. As we will discuss in the Impacts section of this report, some bail reforms that have been thoroughly studied have been associated with negative effects, including longer case processing periods and increased racial disparities.

Finally, it is important to reiterate that one of the greatest challenges when implementing—and sustaining—bail reforms is the local political climate. Unfortunately, bail reform is heavily politicized and is often blamed by prosecutors, police, the media, and the general public when crime rates go up.<sup>94</sup> When a sizable margin of support is needed to enact reforms, as is the case with state legislation and some city- and county-level reforms, the political environment can determine whether reforms are passed or whether they will be subsequently rolled back. Even when broad buy-in is not needed to enact bail reform, as is often the case when prosecutors and judiciaries adopt reforms, a lack of political support for the reforms can significantly limit the reforms' impacts. For example, even if a district attorney's office stops asking for cash bail, a judge can still override requests for unsecured release and impose bail.<sup>95</sup> Additionally, since prosecutors are generally elected, their bail policies will only last while they are in office, unless their successor chooses to continue them. In areas where bail reform is contentious, constituents may even choose not to re-elect a prosecutor because of her bail policy.

## REFORM PROCESS

As could be expected given the variation in who is implementing reforms, there has also been significant variation in the reform process. In some jurisdictions, decision makers have taken an incremental approach to changing how cash bail is used, likely due to the political challenges associated with bail reform. Colorado adopted legislation in 2013 that redefined bail as just one possible condition of pretrial release and provided a specific list of factors that judges must consider when making pretrial release decisions.<sup>96</sup> Colorado built on this in 2019 with legislation that limited the charges for which the courts could impose cash bail.<sup>97</sup> In other jurisdictions, policy actors have made largescale changes through a single policy. This is what Washington D.C. did with its 1992 Bail Reform Act, which established a presumption of unconditional pretrial release and dictates that a judge cannot set bail that leads to someone being detained pretrial because the bail amount is unaffordable, among other reforms.

In some states, multiple actors have made reforms to the use of cash bail. For example, in Maryland, counties, courts, prosecutors, and the state legislature have adopted bail reforms. In 2015, the warden of St. Mary's County Detention Center led the implementation of the county's Pretrial Screening and Supervision Program. This program, which incorporated a risk assessment tool and pretrial services, was associated with a 33% decrease in the St. Mary's County jail population in the program's first year.<sup>98</sup> Then, in 2016, the Maryland Court of Appeals' Rules Committee issued rules changes regarding the use of bail and pretrial detention. These changes include prohibiting courts from imposing financial conditions that result in the pretrial detention of the defendant and requiring courts to give priority to nonfinancial conditions of release.<sup>99</sup> Prosecutors in Maryland have also made changes to their use of cash bail, as exemplified by the 2019 announcement from the State's Attorney for Prince George's County in which she said her office would no longer seek cash bail as a condition of release.<sup>100</sup> Most recently, in 2020, Maryland passed legislation that requires jurisdictions that use pretrial risk assessments to have

them independently validated in order to receive money through the state's pretrial services grant program.<sup>101, vi</sup>

## **Task Forces**

Although policy actors have taken many different approaches to bail reform, one common step in the bail reform process is the establishment of a task force. In at least 22 states, task forces have been created to assess the current use of bail and/or to identify potential bail reforms. Despite how common task forces are, the way that decision makers have established and used task forces has varied significantly.

There appear to be three different ways that task forces are created. Sometimes, the state legislature calls for a task force. For example, in 2018, the Massachusetts legislature passed a criminal justice reform bill that included the creation of a special commission to assess the state's bail system and recommend potential reforms.<sup>102</sup> In other cases, governors initiate a task force. One example of this occurred in Connecticut, whose governor requested that a task force review the state's bail system in 2015; the work of this task force informed bail reform legislation that Connecticut enacted in 2017.<sup>103</sup> The third way is via the state's judiciary. At least 11 state courts have asked task forces to explore the potential for bail reform broadly or to examine specific issues related to bail reforms, such as risk assessments to the cash bail system. The states where courts have established bail reform task forces are Arizona (2016<sup>104</sup>), California (2016<sup>105</sup>), Illinois (2017<sup>106</sup>), Indiana (2013<sup>107</sup>), Kansas (2018<sup>108</sup>), Nevada (2015<sup>109</sup>), New Jersey (2013<sup>110</sup>), New Mexico (2020<sup>111</sup>), Ohio (2019<sup>112</sup>), Texas (2015<sup>113</sup>), Utah (2014<sup>114</sup>), and Washington (2017<sup>115</sup>).

Task forces play different roles in different states' bail reform processes. In many states that have established a task force, the task force preceded the implementation of more significant reforms. For example, in 2015, the New Mexico Supreme Court created an Ad Hoc Pretrial Release Committee to review the state's bail and pre-trial release systems. Subsequently, the state legislature passed a constitutional amendment that prohibits judges from detaining people pretrial because they cannot afford the cash bail the court set for them.<sup>vii</sup> This policy change was then put out to referendum, and 87% of people who voted chose to adopt the amendment.<sup>116</sup> In other states, a task force is as far as the state has gotten with its bail reform efforts. For example, the Kansas Supreme Court established the Ad Hoc Pretrial Justice Task Force in 2018.<sup>117</sup> The Task Force recommended that the state pilot a risk assessment tool and educate district and municipal courts to reduce reliance on monetary bail,<sup>118</sup> but neither the Kansas Supreme Court nor the legislature have adopted bail reforms subsequently.

The impact of a task force depends largely on the political climate of the state. If there is insufficient political will to change the use of cash bail, then the task force is unlikely to lead to meaningful reform. For example, if only a handful of state legislators are willing to consider bail reform, then the work of the task force will not easily translate to enacted legislation.

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<sup>vi</sup> Maryland's 2020 bill also requires pretrial programs to implement multiple levels of supervision. It is important to note that this reform could have negative consequences, as it could lead to people being released under more restrictive conditions than they would have been prior to the policy change.

<sup>vii</sup> The amendment also allows for preventative detention based on alleged dangerousness, which could potentially lead to some individuals being wrongly detained and/or limit the presumption of innocence.

Additionally, even when there is support for bail reform, if a task force moves too slowly, it is possible that political support for the reforms will have diminished by the time the task force makes its recommendations. This may be especially true in situations where states have high legislative turnover. Finally, the impacts of a task force may be limited if the commission does not incorporate the perspectives of a wide range of stakeholders. To ensure that the final recommendations are feasible to implement and will generate broad buy-in, policy actors who establish task forces should be intentional about whose voices are represented on the task force.

## IMPACTS OF BAIL REFORMS

To highlight the impacts that bail reforms have had, this report incorporates findings from 12 jurisdictions for which there are high quality and publicly available impact evaluations of their reforms.<sup>viii</sup> We identify eight trends that emerged across the studies. The two most widely observed trends were no significant change in the rearrest rate among people on pretrial release and a decrease in the number of people being detained pretrial.

It is important to note that, because there is so much variation in the types of bail reforms that have been implemented, the jurisdictions in which they are implemented, and the policy actors who are implementing them, it is difficult to draw conclusions about general impacts of bail reforms. For example, we cannot say with certainty that reforming a bail system will lead to a specific outcome, such as a meaningful decrease in the jail population. This is because the design and context of a bail reform play key roles in whether it will generate impacts. Relatedly, the specific charges that bail reforms apply to differ across contexts, which makes it difficult to compare outcomes across jurisdictions. Moreover, even though jurisdictions across the country have implemented bail reforms, there are a limited number of studies on the impacts the reforms have had. Further complicating this is the fact that, even where such studies have been conducted, authors have applied varying levels of objectivity and statistical rigor, which makes it challenging to establish causal relationships between reforms and impacts.

### Trends

We define a “trend” as an impact that two or more studies identified. Some of the trends may seem contradictory; this is likely due to variation in the reforms that were implemented, jurisdictions having different priorities for reforms (e.g., reducing jail usage vs. decreasing use of cash bail), and/or local political climates influencing the extent of the effects reform can have. Additionally, just because a jurisdiction is not listed under a trend does not mean the trend did not occur there; rather, it means that the study from that jurisdiction did discuss outcomes related to that trend and thus there is no evidence that the trend occurred there.<sup>ix</sup>

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<sup>viii</sup> These jurisdictions are Cook County (IL), Harris County (TX), Jefferson County (CO), Kentucky, Maryland, Mecklenburg County (NC), New Jersey, New York City, New York State, Philadelphia, St. Mary’s County (MD), Yakima County (WA). The reforms these jurisdictions have adopted vary significantly, and, across the jurisdictions, they have adopted reforms from five categories: county-/city-led, court-led, prosecutor-led, risk assessments, and state legislation.

<sup>ix</sup> We only listed findings that appeared across multiple studies, so some studies included additional findings that are not discussed in this report, such as the cost savings associated with bail reforms. Additionally, not all the studies we examined in our research are included here; we excluded several studies where the analysis was evidently biased or seemed to be low quality.

Below are the eight categories of trends that emerged across the studies on bail reform impacts. We provide a brief discussion of each trend category and a description of the specific impacts that researchers identified in the jurisdictions where they occurred. Descriptions of the reforms adopted in each of the jurisdictions are included in Appendix I.

### ***1. Rearrest Rates OR Rates of New Violent Felony Arrests<sup>x</sup>***

One of the most common arguments made by opponents of bail reform is that reforms will lead to an increase in crime, particularly violent crime. It is notable that none of the studies we analyzed for this report found that bail reforms lead to a meaningful increase in crime. Many analyses use the rearrest rate as a proxy for new crimes committed while on pretrial release; among these studies, there was either a very small increase or no statistically significant change in the rearrest rate among people released pretrial after the adoption of bail reforms. Additionally, a handful of impact evaluations have looked at the association between bail reforms and new charges for violent crimes. None of these studies have found a statistically significant relationship between bail reform and the rate of new violent felony charges among people on pretrial release. It is important to keep in mind that being arrested or charged with a crime does not mean someone is guilty. Further, people on pretrial release are often monitored more stringently than the average person, which may lead to inflated rearrest rates.

- a. *Cook County (IL)*: A study conducted by Loyola University researchers found that, following court rules changes around the use of bail, there was no statistically significant change in the rate of new criminal charges filed against people released pretrial. The authors also found no statistically significant increase in the rate of new charges for violent criminal offenses among people on pretrial release.<sup>119</sup> Finally, there was no statistically significant change in overall crime in the year after the rule was established.<sup>120</sup>
- b. *Jefferson County (CO)*: The impact evaluation of the Jefferson County bail reform pilot compared two groups of defendants: those who had been randomly assigned to judges issuing high numbers of unsecured bonds (release on own recognizance) and those issuing many secured bonds (monetary bail). The study found no statistically significant difference in the rearrest rates of defendants in the “many unsecured bonds” group and those in the “many secured bonds” group.<sup>121</sup> This indicates that a decrease in the use of cash bail was not associated with an increase in new arrests.
- c. *Kentucky*: Following state-level bail reform in Kentucky, there was about a 1-2 percentage point increase in the rearrest rate among people released pretrial; it is important to note, however, that the author of the analysis specifically mentions that this increase could be the result of natural fluctuations over time.<sup>122</sup> Although

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<sup>x</sup> The Harris County Independent Monitor (see Appendix I) found that there was no increase in recidivism rates among people released pretrial following bail reforms; however, [a recent report from Harris County District Attorney Kim Ogg](#) argues that the Independent Monitor did not properly segment the data when conducting analysis of recidivism. The Monitor is transparent about the data they used in their analysis. There also seem to be issues with District Attorney Ogg’s analysis, including her failure to account for longer pretrial periods. Nonetheless, we have excluded the Independent Monitor’s findings around recidivism given the lack of consensus. District Attorney Ogg has not challenged the Monitor’s other findings included in this report, and thus we have included them with the relevant trends. We discuss the Ogg report further in the “Reforms to Watch” section of this report.

there was a slight increase in the overall rearrest rate for people released following Kentucky’s bail reform, there was no increase in the rate of new arrests for violent felonies.<sup>123</sup>

- d. *New Jersey*: There was about a 2.7 percentage point increase in the rate of new arrests for all types of crimes between 2014 and 2017 in New Jersey,<sup>xi</sup> though the authors of the report note that a change this small “should be interpreted with caution and likely do[es] not represent [a] meaningful difference.”<sup>124</sup>
- e. *New York City*: There was no increase in the likelihood of rearrest for people on pretrial release as part of New York City’s Supervised Release Program. In fact, a study of the program’s impacts found a *decrease* in the likelihood of rearrest while on pretrial release, though the finding was not statistically significant.<sup>125</sup> The same study found a 3-percentage point increase in the rate of new violent felony arrests among people released through the program (relative to comparison group); however, this increase was not statistically significant, meaning it could have resulted from natural variation over time.<sup>126</sup>
- f. *Philadelphia*: After the Office of the District Attorney in Philadelphia stopped asking for cash bail for most misdemeanors and nonviolent felonies, outside researchers found no statistically significant increase in the rearrest rate among people released pretrial.<sup>127</sup>
- g. *Yakima County (WA)*: A study of bail reforms in Yakima County found no statistically significant change in the rate of new arrests for people released pretrial following the reforms.<sup>128</sup>

## 2. *Size of the Jail Population OR Rates of Pretrial Release*

Five of the studies found that bail reforms were associated with a decrease in pretrial detention. The studies explored the effects on pretrial detention by assessing different metrics. Some authors focused specifically on the jail population, while others looked at changes in the rate of pretrial release.

- a. *Kentucky*: Initially, the 2011 Kentucky legislation was associated with a 9-percentage point increase in release for people deemed low-risk and a 7-percentage point increase in release for people considered moderate-risk. These changes in the rate of release did not hold over time; by January 2016, the rate of pretrial release was trending back towards its pre-reform level.<sup>129</sup> It is also important to note that Kentucky’s legislation was associated with a 4-percentage point decrease in release for people identified as “high-risk.”<sup>130</sup>
- b. *New Jersey*: From January 1, 2015-January 1, 2018, the three years after New Jersey’s bail reform law passed, the state’s jail population decreased by over 35%. This three-year period includes two years of preparing to implement the reforms, as well as one year where the reforms were fully implemented.<sup>131</sup> The jail population continued to decrease in 2018 and 2019, and by October 2019, the jail population had decreased to 7,937 people from 15,006 people in October 2012.<sup>132</sup> It is important to note that reforms to the use of cash bail alone likely did not cause the decrease in the jail population. The same legislation that enacted the bail

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<sup>xi</sup> New Jersey passed its bail reform legislation in 2014, and the law took full effect until 2017.

reforms also led to a significant increase in the use of complaint-summons instead of complaint-warrants, which meant that fewer people were being arrested in the first place.<sup>133</sup>

- c. *New York City*: The Supervised Release Program was associated with a 34-percentage point reduction in the proportion of defendants detained immediately after arraignment.<sup>134</sup>
- d. *New York State*: From September 2019 to March 2020, the jail population in New York City decreased by 25.7 percent, and the jail population in the rest of the state decreased by 31.4 percent.<sup>135</sup> This decline was observed after New York passed bail reform legislation, which came into full effect on January 1, 2020.
- e. *St. Mary's County (MD)*: In its first year, the St. Mary's County Pretrial Screening and Supervision Program was associated with a 33% decrease in the St. Mary's County jail population.<sup>136</sup>

### 3. *Unsecured Release*

In two jurisdictions, bail reform led to an increase in the proportion of people released on their own recognizance but little or no change in the rate of pretrial release/pretrial detention. This is because, in some jurisdictions, judges did not change *who* they were releasing but rather changed *how* they were releasing them. For example, someone who would have been released with conditions pre-reform would be released with no conditions post-reform.

- a. *Cook County (IL)*: The 2017 changes to the court rules in Cook County were associated with a 31-percentage point increase in the proportion of defendants being released without conditions; despite this increase, the pretrial release rate increased only slightly, by about 4-percentage points.<sup>137</sup>
- b. *Philadelphia*: Changes to the prosecutor's approach to bail in Philadelphia were associated with an 11-percentage point increase in the probability that a defendant would be released on their own recognizance. At the same time, there was no statistically significant change in pretrial detention.<sup>138</sup>

### 4. *Supervised Release*

Two of the studies found that bail reforms led to a decrease in the percentage of defendants released on their own recognizance or, relatedly, an increase in the percentage of defendants assigned supervised release. This means that the reforms led to some people being released with conditions who likely would have been released without conditions were the reforms not in place.

- a. *New York City*: No one who enrolled in New York City's Supervised Release Program was released on their own recognizance. Researchers found that, had the program not existed, approximately 44% of those who enrolled would have been released on their own recognizance.<sup>139</sup>
- b. *Mecklenburg County (NC)*: A study of the impacts of the PSA risk assessment tool in Mecklenburg County predicted that 3.7% of defendants would be assigned supervised release (based on data from two years prior to the adoption of the



PSA). In practice, however, 6.3% of people were assigned supervised release, likely due to the level of discretion judges were granted as part of the reforms.<sup>140</sup>

## 5. *Length of Detention*

In three jurisdictions, researchers found that bail reforms were associated with an increase in the likelihood of being released sooner after arrest and/or a decrease in the average length of pretrial detention.<sup>xii</sup> Reforms to the use of monetary bail may enable people to bond out sooner, which could explain these observed changes to the length of detention.

- a. *Harris County (TX)*: In Harris County, the percentage of people released in fewer days after arrest has increased. After the reforms were adopted, the proportion of people being released within two days of initial arrest increased by more than 20-percentage points, from less than 60 percent in 2016 to over 80 percent in 2019.<sup>141</sup> Further, in 2016, more than 10 percent of misdemeanor defendants were detained for over 14 days, and by 2019, that number had decreased to 6 percent.<sup>142</sup> At the same time, the average jail stay "has remained higher and recently trended upward, approaching 2016 levels as recently as the first quarter of 2020."<sup>143</sup> This indicates that, while many defendants are being released sooner, some are being detained long enough to keep the average high. Since 2015, the 99th percentile for jail stays has increased from 70-80 days to over 90 days. In some months between April 2018 and January 2020, the 99th percentile for jail stays was as high as 130 days.<sup>144</sup> In a later report, the authors found that, relative to the general population of people charged with misdemeanors, people with the longest pretrial jail stays are more likely to be male, Black, have mental health concerns, or to be unhoused.<sup>145</sup> Additionally, compared to the general population of people charged with misdemeanors, people with the longest pretrial detention stays are more likely to be people accused of "assaultive or sex offenses" or "disorderly conduct or vandalism."<sup>146</sup> For future reports on the progress of the reforms, the authors plan to conduct more analysis to isolate the potential causes of the long detention periods that a small subset of people are being subjected to in Harris County.<sup>147</sup>
- b. *New Jersey*: New Jersey's bail reforms were associated with about a 40% reduction in the average number of days people spend in jail pretrial. In 2014, the average pretrial jail stay was 62.4 days. In 2017, that average had decreased to 37.2 days.<sup>148</sup>
- c. *New York City*: As mentioned under the second trend, the Supervised Release Program was associated with a 34-percentage point decrease in the percentage of defendants who were detained immediately after arraignment.<sup>149</sup> Additionally, an evaluation of the program found that "in the absence of [Supervised Release] enrollment, defendants would have spent eight additional days in pretrial detention."<sup>150</sup>

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<sup>xii</sup> These metrics seem similar but are capturing different pieces of information. Average length of pretrial detention captures the fact that some people may be detained for violating conditions of pretrial release. In contrast, the period of detention before initial release is more directly influenced by the conditions that a judge or bail magistrate imposes on someone (e.g., requiring someone to post cash bail). These two metrics are related but looking at just one may not present a clear enough picture of the impacts that bail reforms are having on pretrial detention.

## 6. *Length of Pretrial Period*

In three jurisdictions, bail reforms were associated with an increase in the average length of the pretrial period, referring to the time from arrest until the case is resolved. One reason the pretrial period may increase is that people released pretrial have less incentive to plead guilty than they would if they were being detained, as is discussed in greater detail under trend seven.<sup>151</sup> Fewer people pleading guilty means cases take longer to be resolved. The increase in the pretrial period is concerning because it means people are being subjected to restrictive conditions of pretrial release for longer. This, in turn, may increase the likelihood of people being cited for “pretrial failure,” such as missing an appointment with a case manager or breaking a set curfew.<sup>152</sup>

- a. *Harris County (TX)*: The length of the pretrial period in Harris County has increased since 2015. In 2015, over 93% of cases were disposed within the 9-month analysis interval. That percentage has declined annually, reaching 59% in 2019 and dropping to 32% in 2020. Further, the median number of days to case disposition within the nine-month analysis interval increased from nine days in 2015 to 95 days in 2019 and 2020.<sup>153</sup>
- b. *New York City*: The Supervised Release Program is associated with nearly a two-month increase in the average length of the pretrial period, from 86 days to 143 days.<sup>154</sup>
- c. *Yakima County*: Prior to the reforms, the average length of the pretrial period was about 104 days. Following the reforms, that number had increased to about 121 days.<sup>155</sup>

## 7. *Case Outcomes*

Three of the studies we analyzed for this report specifically explore the impacts of bail reforms on case outcomes. Two of the studies—detailed below—found a decrease in the proportion of guilty findings. A third, focused on Yakima County, found no statistically significant change in the rate of guilty findings.<sup>156</sup>

It is unsurprising that there is an association between bail reforms and trends in case outcomes. Literature on effects of pretrial detention shows that there is a strong relationship between pretrial detention and guilty findings. For example, Dobbie et al. found that initial pretrial release decreases the probability that someone will be found guilty by 14-percentage points.<sup>157</sup> They hypothesize that people released pretrial may have less incentive to plead guilty and/or be better positioned to prepare for their trial if they are not detained, which could contribute to the decrease in guilty findings. The authors also discuss that judges/juries may be biased against people who appear at trial “in jail uniforms and shackles” and thus may be more likely to find someone who was detained pretrial guilty than they would someone who was released pretrial.<sup>158</sup>

- a. *Mecklenburg County (NC)*: After the PSA risk assessment tool was adopted, there was an increase in the number of cases dismissed and a decrease in the number of guilty findings (including pleas). Specifically, in December 2014, six months after the PSA was adopted, the observed proportion of “guilty” case resolutions was

11.5% lower than the predicted proportion based on past policy trends, and this effect grew over time.<sup>159</sup>

- b. *New York City*: Enrollment in Supervised Release was associated with about a 10-percentage point increase in the proportion of defendants whose cases were dismissed and about an 11-percentage point decrease in the proportion of defendants found guilty. It is important to note that almost no one in the sample or the comparison group was found not guilty.<sup>160</sup>

## 8. *Racial Disparities*

In six jurisdictions, researchers found an association between bail reforms and a change in racial disparities.<sup>xiii</sup> Four studies found an increase in racial disparities. Only one of the studies that looked at racial disparities found a decrease. A sixth found no change. Most of the authors who studied jurisdictions where there was an increase in racial disparities attributed the increase to the amount of judicial discretion the reforms allowed.

The pretrial systems in many places generate significant racial disparities, including in bail amounts, rates of pretrial release, and length of pretrial detention. Despite this, decision-makers who lead the adoption of bail reforms often do not center the goal of reducing racial disparities, instead choosing to focus on reducing the local jail population and/or saving money. Even when bail reform actors do not prioritize reducing racial disparities, we should hope that the reforms they enact would lead to a decrease in racial disparities; that is not always the case, however, as the descriptions below highlight.

### **Increase**

- a. *Kentucky*: In a study of Kentucky's reform legislation, the author found racial gaps in the rate of non-financial release post-reform. White people experienced a much larger increase in the rate of non-monetary bonds than Black people did (around 10 percentage points vs. 5 percentage points). Additionally, the legislation did not lead to a meaningful increase in the probability of being released within 3 days for Black defendants.<sup>161</sup> The author attributes these gaps to the fact that judges in rural settings (where defendants are 85% White) were more likely to change their bail-setting practices in response to the bill than judges in non-rural areas (where defendants are 68% White and 30% Black).<sup>162</sup>
- b. *Maryland*: After the court rules changed, the disparity in bail amounts between Black and White folks widened. Prior to the rule change, Black people faced an average bail amount 15% higher than White people. After the rule change, Black individuals face an average bail amount 22% higher than White individuals.<sup>163</sup> Following the rules change, Black people facing lower-level charges were also held without bail at a rate 8.8 percentage points higher than White people facing similar charges.<sup>164</sup>
- c. *New York State*: The state legislation was associated with a decrease in detention for both Black and non-Hispanic White people; however, non-Hispanic White

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<sup>xiii</sup> A study of the impacts of Yakima County's reforms found a decrease in racial disparities; however, their sample size is very small, and they group people who identify as Native American, Black, Asian, and Pacific Islander into one 23-person category labeled "other." Given this, we excluded their findings about the change in racial disparities due to concerns about the reliability of the findings.

people experienced a larger decrease in detention, which caused the racial disparity to widen.<sup>165</sup> The authors do not offer analysis as to why these disparities may have been exacerbated.

- d. *Philadelphia*: There are racial discrepancies in the impacts of the District Attorney's new bail policy. Following the adoption of the policy, Black people were released on their own recognizance less often than would be expected proportionally, while White people were released on their own recognizance significantly more often than would be expected.<sup>166</sup> The authors note that there are large standard errors with this analysis, so more research is needed to better understand the disparities.<sup>167</sup>

### **Decrease**

- a. *Harris County (TX)*:<sup>xiv</sup> Prior to the implementation of new court rules under the Consent Decree, the share of Black folks released on bond pretrial (secured or unsecured) was about 15-percentage points lower than the share of White folks released on bond pretrial. This gap narrowed to around 4-percentage points following the adoption of the new court rules in 2019.<sup>168</sup> One additional note is that there is not a visible difference between Black and White people being released on their own recognizance; this indicates that the gap in overall pretrial release is likely the result of different rates of bonding out when cash bail is assigned.<sup>169</sup>

### **No Change**

- a. *New Jersey*: Both Black and White people experienced a decrease in the average length of stay from initial arrest until pretrial release following New Jersey's bail reforms. Prior to the policy changes, Black people remained in jail an average of 10.7 days from arrest to initial pretrial release while White people remained in jail an average of 5.3 days from arrest to initial pretrial release. After the reforms, the average length of pretrial detention for Black individuals remained around two times that of White individuals. Black people were detained an average of 5 days from arrest to initial pretrial release while White people were detained an average of 2.9 days from arrest to initial pretrial release.<sup>170</sup>

## **CRAFTING EFFECTIVE AND EQUITABLE BAIL REFORMS**

The previous section demonstrates that reforms can have mixed impacts. For example, some bail reform approaches can be harmful, such as those that lead to people being released under more restrictive conditions than they would have been absent the reform and those that exacerbate racial disparities. Other reform approaches, however, can have positive effects like increasing the number of people released pretrial with no impacts to public safety or court appearance rates.

To reduce the risk of causing harm, jurisdictions should be intentional about designing policies that incorporate promising and/or best practices. This can be challenging, however, given that the limited literature on bail reform impacts makes it hard to identify the most effective reform

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<sup>xiv</sup> The court-appointed monitor in Harris County found that people with the longest pretrial detention periods are more likely to be Black. It is not clear whether this is a new racial disparity or one that has always existed, or how this disparity may have changed over time.

approaches. Based on our landscape analysis of bail reforms and their impacts,<sup>xv</sup> we recommend that new or modified bail reforms satisfy these six criteria:

1. The reform establishes (or preserves) a presumption of unconditional pretrial release to occur within 24 hours of arrest.
2. For cases where someone is not granted unconditional release, the reform requires that decisions on pretrial release be made within 48 hours of arrest.
3. The reform establishes the right to an attorney during the bail hearing and requires that jurisdictions provide access to a public defender if someone cannot afford counsel.
4. In cases where the judge determines that pretrial release with no conditions is insufficient, the reform requires them to impose the **least restrictive** condition or set of conditions to reasonably assure the person's court appearance; the reform also requires the judge or bail magistrate to state on the record what their reasoning is for requiring pretrial release conditions.
5. The reform calls for pretrial release services that include text message reminders of court hearings for everyone on pretrial release and wraparound services for those who need them.
6. The reform includes specific requirements for the collection, analysis, and dissemination of data about the reforms' impacts.

### **Promising Example: New Jersey**

Few jurisdictions have adopted bail reforms that fully satisfy all six criteria; one whose reforms meet nearly all of them is New Jersey.<sup>xvi</sup> New Jersey's bail reform is one of the most comprehensive pieces of bail reform legislation that has been implemented to date in the U.S., and the state's bail reform process serves as a strong model for other jurisdictions. In 2013, the New Jersey Supreme Court established a task force, the Joint Committee on Criminal Justice, to explore potential areas for reform, including the pretrial process.<sup>171</sup> The Committee had representation from all three branches of government, as well as other stakeholders in the criminal legal system, such as private lawyers, public defenders, and ACLU attorneys.<sup>172</sup> In March 2014, the Committee recommended that New Jersey move from a "resource-based to a risk-based system of pretrial release."<sup>173</sup> The legislature acted quickly to enact policy changes and, in summer 2014, passed major criminal legal system reform legislation, which included significant changes to the pretrial process (see Appendix 2). The law did not take effect until 2017, but the state began the implementation process soon after the legislation was passed. This process included extensive training for penal system actors and a transition to a fully electronic system for data collection and sharing.<sup>174</sup> Since the legislation was passed, the New Jersey Judiciary has published annual reports that provide updates on the implementation progress and data that highlights the legislation's impacts.

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<sup>xv</sup> As mentioned in the last section, we concentrated our analysis of impacts on jurisdictions that have high-quality impact evaluations available.

<sup>xvi</sup> New Jersey's 2014 reform bill establishes a presumption of nonmonetary pretrial release not a presumption of unconditional release. Further, New Jersey does not state that release must occur within 24 hours; rather, a decision about pretrial release must occur "without unnecessary delay" and no more than 48 hours after arrest. It is also important to note that while New Jersey does require that courts impose the least restrictive set of release conditions, it is not clear from the statute whether judges need to state on the record what their reasoning is for assigning conditions.

Many jurisdictions have taken incremental approaches to bail reform, making smaller scale changes over longer periods of time; in contrast, New Jersey's 2014 reforms come close to meeting all six recommended criteria in a single piece of legislation.<sup>175</sup> New Jersey is notable for its clearly defined and transparent decision-making processes. To operationalize the policy that courts may only impose the least restrictive set of release conditions, New Jersey has established four clearly defined levels of pretrial monitoring that correspond directly with a person's risk assessment score (Appendix 3). Details about the pretrial monitoring levels and the court's decision-making framework are publicly available and posted on the New Jersey Courts website as part of the "Criminal Justice Reform Information Center." New Jersey's reforms are also promising in that the legislation not only requires an annual report on the progress of the reforms, but also requires that a Pretrial Services Program Review Commission review the reports each year.<sup>176</sup> This Commission, which must be composed of policymakers and penal system actors, provides accountability for the implementation of the reforms and creates a clear pathway through which the reforms could be refined, if necessary. Like with the decision-making framework, New Jersey publicly shares the reports on the reforms, as well as annual statistics about them, by posting them clearly on the New Jersey Courts website.

New Jersey's approach to bail reform design, implementation, and evaluation has yielded positive impacts in the state.<sup>xvii</sup> Notably, two of the leading concerns people have about bail reform are that pretrial policy changes will lead to an increase in crime and a decrease in court appearance rates. Although New Jersey now releases more people pretrial, there has not been a meaningful change in the percentage of people who are rearrested while on pretrial release or in court appearance rates following the 2014 legislation.<sup>177</sup> This indicates that the concerns around the potential risks of bail reform are unfounded in New Jersey.

Another notable impact of New Jersey's bail reform has been a decline in the pretrial jail population. New Jersey's pretrial jail population has decreased by 36.2% since January 2015.<sup>178</sup> The transition from a cash bail system to a risk-based system facilitates higher rates of pretrial release and has likely contributed to the declining pretrial jail population. Also contributing to the decline is the increased use of complaint-summonses. From 2014 to 2017, the proportion of people being issued complaint-summonses instead of complaint-warrants increased from 54% to 71%.<sup>179</sup> This means that 71% of people required to appear in court in 2017 were never actually arrested, but rather were given a summons to appear. This is because, under the reformed use of cash bail, people in New Jersey must be released under the least restrictive set of conditions. With this new law in place, the state has increased the use of summonses in situations where the facts of the case indicate that pretrial monitoring is unnecessary.<sup>xviii,180</sup> Consequently, not only are more people being released after arrest, but there are also fewer people being arrested in the first place.

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<sup>xvii</sup> Although the legislation was signed in 2014, New Jersey's bail reform law did not take full effect until 2017. As such, it is not yet clear if the positive effects of New Jersey's bail reform will hold over time, particularly given the growing concerns around risk assessment tools, which we discuss later in this report.

<sup>xviii</sup> Under the 2014 reforms, New Jersey [recommends](#) law enforcement and court actors issue complaint summonses to people who could reasonably be expected to be released on their own recognizance rather than arresting them. This means that people who would have been arrested and then released without conditions pre-reform are now less likely to be detained in the first place.

In addition to the criminal legal system outcomes, new research shows that New Jersey's pretrial reforms had positive effects on employment. A study released in 2021 study found that New Jersey's 2014 legislation increased employment probability among Black people in New Jersey by up to 6.8 percentage points.<sup>181</sup> The authors did not find that the reforms impacted employment among White people,<sup>182</sup> indicating that the reforms may have helped to reduce Black-White racial disparities in employment. This study seems to be the first that looks at how New Jersey's 2014 bail reforms affected employment outcomes, and it will be important to follow how this literature evolves over time.

Racial disparities in the pretrial system remain an area of growth for New Jersey. As we highlighted in the Impacts section, the length of time between arrest and initial pretrial release for Black people in New Jersey is still about two times that of White people.<sup>183</sup> Additionally, Black people continue to be overrepresented in the New Jersey jail population. As of October 2018, Black people made up about 54% of the jail population, while White people made up about 30%.<sup>xix</sup> These statistics indicate that New Jersey should prioritize reducing racial disparities in its pretrial system.

### **High Potential Reforms**

Harris County and Illinois have recently adopted major bail reforms with the potential to have significant, positive impacts. Because the reforms are more recent than New Jersey's, there is not yet sufficient evidence to deem them promising examples. Nonetheless, the reforms in both places overhaul the use of cash bail and thus have high potential.

#### ***Harris County***

Harris County's bail reforms provide a recent, county-level example of reforms that satisfy nearly all six criteria.<sup>xx</sup> In 2019, Harris County adopted bail reforms in a Consent Decree stemming from litigation. The Harris County case is one of the most prominent bail-related court cases discussed across primary and secondary sources. In 2016, several people sued Harris County for its practice of setting unaffordable bail to unnecessarily detain people pretrial.<sup>184</sup> As part of the case settlement, Harris County agreed to the O'Donnell Consent Decree, which is the "first federal court-supervised remedy governing bail."<sup>185</sup>

As a result of the Decree, Harris County amended Local Rule 9, which governs the use of bail in the County. The amendments require that people charged with most misdemeanors be immediately released on their own recognizance.<sup>186</sup> People charged with misdemeanors that are not eligible for immediate release must be given a hearing within 48 hours and must be granted access to an attorney for that hearing. Before the court can impose monetary bail, it must collect information on a defendant's ability pay via an affidavit that an interviewer facilitates. When monetary bail is imposed, the court must go on the record with evidence that either the defendant can pay the amount set or that no other set of conditions were determined to be able to

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<sup>xix</sup> According to [Census.gov](https://www.census.gov), 15.1% of New Jersey's population is made up of Black people and 71.9% of the state's population is made up of White people. This supports the claim that Black residents are over-represented in the jail population.

<sup>xx</sup> The amended Local Rule 9 does not specifically address which pretrial services Harris County should be provide, though Harris County does have a Pretrial Services department that make recommendations regarding pretrial release and likely monitors compliance with conditions of pretrial release.

reasonably assure the person's appearance for trial.<sup>187</sup> The Consent Decree also calls for Harris County to make data on pretrial detention rates publicly available. Finally, the Decree requires that an independent monitor to oversee implementation and promote transparency by publishing regular reports on the progress of the Decree.<sup>188</sup>

So far, the Independent Monitor has identified several positive impacts associated with the reforms. For example, the Monitor found that there was no increase in recidivism rates among people released pretrial following bail reforms.<sup>189</sup> Additionally, the Monitor has found that more people are being released sooner after arrest and fewer people are being detained for more than 14 days.<sup>190</sup> Racial disparities in the rates of pretrial release have also declined since the reforms were enacted. Specifically, the disparity between the number of Black people released on bond pretrial and the number of White people released on bond has decreased from 15-percentage points to 4-percentage points.<sup>191</sup> It is notable that there are not visible racial disparities between the rates at which Black and White people are being released on their own recognizance.<sup>192</sup> This likely means that Black and White people are bonding out at different rates when cash bail is assigned and that this is driving the gap in overall pretrial release.

There are some potential areas for concern associated with Harris County reforms. As noted in the “Impacts” section of this report, the average length of pretrial detention and average pretrial period in Harris County have gone up, despite more people being released sooner. The average length of pretrial detention is being driven up because a small handful of people are being detained for much longer periods of time. Some may argue that detaining people accused of committing serious crimes represents a public safety benefit;<sup>193</sup> however, it is important to remember that people detained pretrial have not yet been found guilty of a crime. Further, being detained longer pretrial may amplify the downstream negative effects of being held in jail before trial. In addition, the length of the pretrial period has increased from nine days in 2015 to 95 days in 2019 and 2020,<sup>194</sup> potentially because fewer people are incentivized to plead guilty, which means it takes longer for cases to be disposed. This increase represents a complex tradeoff. On the one hand, the increase could be considered positive because it indicates people are fighting their cases rather than accepting plea deals that may leave them worse off than going to trial would. On the other hand, the longer pretrial period means that people are under greater scrutiny for a longer period, which, as previously discussed, could result increase a person’s likelihood of being cited for a pretrial failure.

It is important to note that some stakeholders are skeptical of the Independent Monitor’s findings. In September 2021, Harris County District Attorney Kim Ogg published a report criticizing the Harris County Independent Monitor’s findings around recidivism.<sup>xxi</sup> Specifically, District Attorney Ogg’s report argues that the Independent Monitor analyzed rearrest rates for everyone arrested for misdemeanors, not just people released on bond.<sup>195</sup> She says this approach led the Monitor to find artificially low recidivism rates. Notably, the Monitor was transparent in their reports about the specific subset of data they used to calculate recidivism, including the fact that some people in their dataset may have been detained in the period they were examining, thus making it nearly impossible for them to be arrested for a new crime.<sup>196</sup> It is also important to note that the rhetoric in the Ogg report demonstrates a strong bias against bail reform, which

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<sup>xxi</sup> District Attorney Ogg mainly challenged the Monitor’s findings around recidivism and did not call their other findings into question.



calls the reliability of her findings into question. She specifically notes in the report's opening letter that part of her motivation for publishing the report is a pending lawsuit that may lead Harris County to expand its bail reforms to cases involving felony charges.<sup>197</sup> Additionally, her report does not seem to account for the fact that the changes to Local Rule 9 have been associated with longer pretrial periods, meaning people are out on bond for longer. It may be that people are not being arrested for new crimes more frequently but rather that they are now more likely to be on bond when they are arrested.<sup>xxii</sup> Further analysis in Harris County is needed to get a clearer picture of the trends in re-arrests.

### ***Illinois***

In February 2021, Governor Pritzker signed into law legislation that eliminates cash bail,<sup>198</sup> making Illinois the first state to abolish its cash bail system.<sup>xxiii</sup> The bail reform legislation satisfies at least four of the six criteria that we outlined above. The law establishes a presumption of release on one's own recognizance.<sup>199</sup> It also states that judges may only impose additional conditions of pretrial release when they determine the conditions are necessary to assure a person's appearance in court and/or that the person will not engage in new criminal activity.<sup>xxiv,200</sup> If a judge does decide to detain someone pretrial, they must make a written finding that explains the reasoning behind their decision.<sup>201</sup> The law also requires that an individual has access to counsel at their pretrial release hearing and that there is time for them to confer with their attorney before the hearing.<sup>xxv,202</sup> The law allows courts to use a validated risk assessment tool, but it does not require them to use one. Notably, the law states that a pretrial risk assessment tool cannot be the sole basis for denying someone release pretrial.<sup>203</sup>

The legislation also includes specific requirements around data collection. Specifically, it requires that a Pretrial Practices Data Oversight Board oversees the quarterly collection of county-level data.<sup>204</sup> The data that counties must track includes rates of pretrial detention, release, and release on electronic monitoring, demographics of the pretrial jail population, demographics of people being released on electronic monitoring, and failure to appear and rearrest rates for people released pretrial.<sup>205</sup> Additionally, counties that use risk assessments must collect data that compares judges' pretrial release decisions and risk assessment scores.<sup>206</sup>

Because the law does not take effect until 2023, there is not yet evidence on the reforms' impacts. The impacts of Illinois's reforms will potentially have major implications for the future direction of bail reform given that Illinois is the first state to fully abolish cash bail.

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<sup>xxii</sup> Both the Independent Monitor and the Ogg report measure recidivism based on new arrests; however, a new arrest does not necessarily mean someone committed a crime. Further, if people are under more scrutiny while on pretrial release, it's possible they are more likely to be re-arrested while on release than they would be after their case is disposed.

<sup>xxiii</sup> California's 2018 legislation would have eliminated cash bail, but it was overturned by referendum in November 2020.

<sup>xxiv</sup> Illinois also enacted bail reform legislation in 2017 under Governor Bruce Rauner. The 2017 legislation established a presumption of nonmonetary bail and required that conditions of release be the least-restrictive possible to "reasonably assure the appearance of the defendant for further court proceedings and protect the integrity of the judicial proceedings from a specific threat to a witness or participant."

<sup>xxv</sup> The right to counsel at pretrial release hearings was originally established in the 2017 legislation.

## **INCREASINGLY COMMON PRACTICE: RISK ASSESSMENT TOOLS**

Risk assessments are one of the most common bail reform measures discussed in bail reform literature, and dozens of jurisdictions have adopted risk assessment tools. Some jurisdictions have designed their own risk assessment tools. For example, the state of Virginia implemented the Virginia Pretrial Risk Assessment Instrument (VPRAI) in 2005.<sup>207</sup> Other jurisdictions have chosen to adopt widely used tools like the PSA. While many jurisdictions seem to accept risk assessment tools as best practice, they should be approached with caution.

Bail reform activists, academics, judges, and policy practitioners have made data-driven critiques of risk assessment tools. One critique is that risk assessment tools typically use variables that are heavily influenced by other factors, namely systemic racism, which can lead risk assessment tools to be racially biased. If a risk assessment algorithm identifies people with criminal records as higher risk but does not account for the over-policing of Black and Latinx communities, then it will disproportionately identify Black and Latinx people as high risk.<sup>208</sup> Some evaluations of risk assessment tools have found this critique to be true. For example, in 2020, the ACLU presented data showing that Colorado's Pretrial Assessment Tool disproportionately identified Black people and unhoused people as high risk.<sup>209</sup> This is problematic because being identified as high risk increases the likelihood that someone will face burdensome conditions of pretrial release or be detained pretrial.

A second critique is that risk assessments may have only temporary effects on rates of pretrial release. One reason for this is that judges and bail magistrates may implement the tools with fidelity right after they are adopted but then revert to their old practices over time; there is an increased risk of this when judges maintain discretion to override the recommendation of a risk assessment tool. Research from Kentucky's statewide implementation of a risk assessment instrument indicates that risk assessments may not actually correct judicial bias in pretrial release decisions since judges often maintain the right to override the risk assessment's findings.<sup>210</sup> The study in Kentucky also found that, over time, judges may become less consistent in how they are applying the data that risk assessments provide.<sup>211</sup>

These critiques show that risk assessments alone do not necessarily lead to a reduction—or equitable reduction—in pretrial detention for people who cannot afford bail. Nonetheless, many courts, cities, counties, and states have adopted risk assessments with the goal of making more informed decisions when imposing conditions of pretrial release, including cash bail. An analysis of bail reform across all 50 states highlights provides three major takeaways related to risk assessments:

### **1. *Risk assessments can be adopted at the court-, city-, county-, or state-level.***

Sometimes, state courts order the state-wide adoption of a risk assessment tool, as the Arizona Supreme Court did in 2015.<sup>212</sup> Other times, state legislatures lead the state-wide adoption of risk assessments. Cities and counties have also taken the lead on implementing risk assessments in some places. For example, even though California has not adopted a risk assessment tool to be used statewide, at least 49 counties in California use a pretrial risk assessment tool to inform pretrial release decisions.<sup>213</sup>

### **2. *There are many different risk assessment tools being used.***

Some jurisdictions, such as Colorado,<sup>214</sup> Virginia,<sup>215</sup> and Washington, D.C.<sup>216</sup> have created their own risk assessment tools. Others have adopted already established tools. The PSA is one of the most widely used risk assessment instruments; it has been implemented statewide in four states and is being used in communities in at least 15 other states.<sup>217</sup>

### **3. *Risk assessments can be associated with decreases in the use of cash bail and pretrial detention.***

There is evidence that some bail reforms involving risk assessments have been associated with a decreased reliance on cash bail. For example, after Mecklenburg County, NC adopted the PSA in 2014, cash bail was set in 40% of cases. This use of cash bail was 11 percentage points lower than the predicted rate based on historical data, which indicates that the adoption of the PSA was associated with a decrease in the use of cash bail.<sup>218</sup> Additionally, as we highlighted in the Impacts section, several other jurisdictions that implemented risk assessment tools as part of their reforms observed increases in the rate of pretrial release. These include Kentucky, New Jersey, St. Mary's County, MD, and Yakima County, WA. It is important to keep in mind that a risk assessment was just one of multiple reforms implemented in each of these places, so we cannot conclusively say that the risk assessment is responsible for the change in pretrial release. Additionally, there is likely a correlation between which jurisdictions are adopting risk assessments and their impacts. At the point that a jurisdiction adopts a risk assessment, there is a clear commitment to reforming the pretrial release system; the same risk assessment tool may not have the same impacts in a jurisdiction where stakeholders were not dedicated to making changes to the bail system. Finally, risk assessments are used in dozens of other jurisdictions where there is not high-quality data published about the assessments' impacts, so there may be cases where risk assessments had decidedly harmful impacts that are not reflected in the available literature.

### **4. *Adopting a risk assessment alone will not be sufficient.***

Risk assessment tools alone will not necessarily lead to a reduction in pretrial detention for people who cannot afford bail. For risk assessments to lead to a reduced reliance on cash bail, it is important that jurisdictions also adopt and maintain a strong presumption of release for people charged with crimes.<sup>219</sup> Additionally, the adoption of risk assessments must be paired with behavior changes among people who make pretrial release decisions. Jurisdictions must effectively train judges and bail magistrates to use the instruments properly and consistently, and then hold them accountable for doing so. When bail decisionmakers begin overriding the pretrial release recommendation a risk assessment makes, human bias is introduced. This bias can lead the tool to have reduced impacts and can exacerbate racial disparities.

## **AREAS OF CONCERN**

There are four concerning elements of bail reforms that can be observed across many jurisdictions: use of preventive detention, high levels of judicial discretion, creating more levels of supervision, and a lack of data collection. These elements are concerning because they can exacerbate racial disparities and lead to a higher proportion of people being released under restrictive conditions.

Some jurisdictions have made preventive detention a more readily accessible option as part of their bail reforms. In other words, as states have made it possible to release more people by

moving away from cash bail, many have included loopholes that allow judges to detain people who are considered a threat to public safety or a flight risk.<sup>xxvi</sup> New Jersey is one example of a jurisdiction where the bail reforms included measures for preventive detention. A judge in New Jersey may detain someone pretrial if their risk assessment indicates a high probability of new criminal activity and/or failure to appear *and* the charge in question is indictable or related to domestic violence (see Appendix 3).<sup>220</sup> Prosecutors may also motion for a pretrial detention hearing when they want to detain someone leading up to their trial, even if that person’s risk assessment score indicates that release is appropriate.<sup>221</sup> At this hearing they must prove that no conditions of pretrial release—including monetary bail—could reasonably assure the person’s appearance in court and public safety.<sup>222</sup> While it is positive that many states are moving away from monetary bail systems, it is concerning that some bail reform laws allow for expanded use of preventive detention. This is especially true given that pretrial detention can negatively affect case dispositions, harm future labor market outcomes, and is associated with future criminal activity.<sup>223</sup> Further, there may be racial disparities associated with preventive detention, particularly when preventive detention laws intersect with racially biased prosecutorial charging patterns and/or judicial decision-making.<sup>xxvii</sup>

Most of the policy changes we examined as part of the landscape analysis leave room for judicial discretion. This is problematic because it means that judges in these jurisdictions are essentially being given the authority to diverge from the reformed law and assign bail as they see fit. In practice, this can have harmful consequences. For example, Kentucky’s 2011 bail reform legislation mandated the use of a risk assessment tool to inform bail decisions and established a presumptive default of immediate, non-monetary release for all low and moderate-risk defendants. The law also allowed for judicial discretion. As we discussed in the “Impacts” section, racial disparities in Kentucky grew because judges in rural, predominantly White areas of the state changed their bail setting practices to comply with the law, while judges in non-rural areas with larger Black populations used their discretion to continue setting bail as they had been prior to the reform.<sup>224</sup> As another example, a 2017 Administrative Order issued by the Circuit Court of Cook County’s Chief Judge barred judges from assigning unaffordable bail but similarly left room for judicial discretion. As a result, judges continued to set bail that people could not afford in about 15% of cases overall, with some judges setting unaffordable bail in as many as 25% of their cases.<sup>225</sup> Proponents of judicial discretion may argue that judges are using their discretion in a way that leads to better outcomes for people who pass through their courtrooms; however, this can actually worsen racial disparities, as judges’ biases—implicit or explicit—may lead them to favor certain people over others when using their discretion to help defendants.

Many jurisdictions have taken steps to expand pretrial monitoring and conditions of release, which enables them to apply more restrictions to people who are released pretrial. We discussed

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<sup>xxvi</sup> Note that a judge or prosecutor arguing that someone is a flight risk or a threat to public safety does not mean the person is either of these things. Further, judges or prosecutors may leverage preventive detention policies for other reasons, such as optics or as part of a prosecution strategy.

<sup>xxvii</sup> In some places, preventive detention is permitted for certain charges. Let’s say a prosecutor charges a Black person with a more severe lead charge than a White person accused of the same offense. It is possible that the disparate charging decision could make the Black person eligible for preventive detention but not the White person, depending on what the preventive detention policy is. In this way, prosecutorial patterns could contribute to racial disparities in preventive detention rates.

in the “Impacts” section how, in some places, people who would have been assigned unconditional release before the reform are now being released with conditions. As jurisdictions have moved away from cash bail systems, many have taken steps to expand their pretrial monitoring capacity. In other words, they have expanded potential conditions of release that people can be assigned if they are released instead of detained. These conditions vary slightly by jurisdiction and may include check-ins with pretrial services staff, drug testing, restrictions on whom someone can interact with, curfews, home visits, work requirements, electronic monitoring, or even house arrest. It is also important to note that the bail reforms in some places do not clearly distinguish between release on own recognizance (ROR) and release with conditions; rather, in these jurisdictions, ROR has come to mean “release,” and conditions may or may not be imposed.<sup>226</sup> The increased reliance on restrictive conditions of release is problematic because, like pretrial detention, it is a way of limiting the freedom that a person has when the courts have not yet determined guilt. Further, restrictive conditions of release, including electronic monitoring, could lead to negative outcomes for people released pretrial, such as social stigma that affects their access to jobs.

While many jurisdictions have made reforms to their cash bail systems, few seem to be collecting meaningful data on the impacts of these reforms. This is a problem because it means that policymakers do not know if their reforms are being implemented properly or if they are affecting release rates, racial disparities, crime rates, or rates of court appearance. Additionally, the lack of thorough data collection means that jurisdictions may not be aware of how many people are being released on their own recognizance as opposed to being released with conditions and how these trends vary overtime, by community, or by racial group. In addition to the lack of data collection being a problem, few jurisdictions publish transparent data about the impacts their bail reforms are having, which limits accountability for judges and policymakers.

## LOOKING AHEAD

In recent years, some of the most notable pieces of bail reform legislation have been scaled down or undone altogether. California’s 2018 legislation, which would have replaced the cash bail system with a risk-based one, was overturned on referendum in November 2020. New York’s 2019 legislation prohibiting the use of cash bail for many misdemeanors and nonviolent felonies was limited several months later; in 2020, the New York legislature passed a new law expanding the crimes for which judges could impose cash bail and enabling judges to set bail based on someone’s legal history, even if the current charge itself is not bail-eligible. Bail reforms also continue to be highly politicized. In New York City, for example, recent spikes in crime have been sensationalized as a product of the state’s bail reforms by media outlets, prosecutors, the newly elected mayor of New York City,<sup>227</sup> and the NYPD Police Commissioner.<sup>228</sup>

Despite the pushback in some places, other jurisdictions are providing hope. In February 2021, Illinois passed what is arguably the country’s most progressive state bail legislation, abolishing the use of cash bail as a condition of pretrial release; this legislation will come into full effect in 2023.<sup>229</sup> Additionally, researchers and nonprofits are developing and piloting new accountability measures that may lead to more equitable implementation of reforms. For example, a team of Harvard researchers is collaborating with the Texas Criminal Justice Coalition to test interventions designed to increase racial equity in bail decisions. These interventions include public report cards on judges’ bail decisions, as well as individualized feedback and

recommendations intended to improve accountability and facilitate more equitable decision-making.<sup>230</sup> Another organization, Measures for Justice, is similarly working to increase accountability by publishing county- and state-level data where it is available, including related to bail decisions.<sup>231</sup> It is crucial that jurisdictions continue to take evidence-informed steps to change the current system, so that low-income people are no longer punished because they cannot afford monetary bail.

## Appendix 1

The table below provides brief reform descriptions for the jurisdictions discussed in the section on reform impacts.

Jurisdiction	Reform Category	Highlights of the Reform
Cook County (IL)	City-/County-Led	A 2017 administrative order “established a presumption of release without monetary bail for the large majority of defendants in Cook County and encouraged the use of lower bail amounts for those required to post monetary bail.” <sup>232</sup>
Harris County (TX)	Court-Led	A district court case (O’Donnell v. Harris County) led to the establishment of the O’Donnell Consent Decree. The Decree requires that people charged with most misdemeanors be released on their own recognizance (ROR) and provides procedural protections for people who do not qualify immediate ROR. These protections include access to an attorney and an ability to pay determination. <sup>233</sup>
Jefferson County (CO)	City-/County-Led; Risk Assessment	In 2010, Jefferson County piloted changes to its bail practices over 14 weeks to assess the impacts bail reform could have. As part of the pilot, they suspended the existing money bail bond schedule and adopted a risk assessment to be used with all people arrested and booked into the detention facility. Daily bail advisement hearings were held, and the findings from the risk assessments were a key factor in the bail determinations. <sup>234</sup> Jefferson County does not appear to have adopted these reforms long-term.
Kentucky	State Legislation/ Risk Assessment	In 2011, Kentucky passed legislation mandating the use of pretrial risk assessment and establishing a presumptive default of immediate, non-monetary release for all low and moderate-risk defendants. <sup>235</sup>
Maryland	Court-Led	In 2017, the Maryland Supreme Court changed court rules, including: (1) prohibiting courts from imposing financial conditions that result in the pretrial detention of the defendant, and (2) expressly requiring courts to give priority to nonfinancial conditions of release. <sup>236</sup>

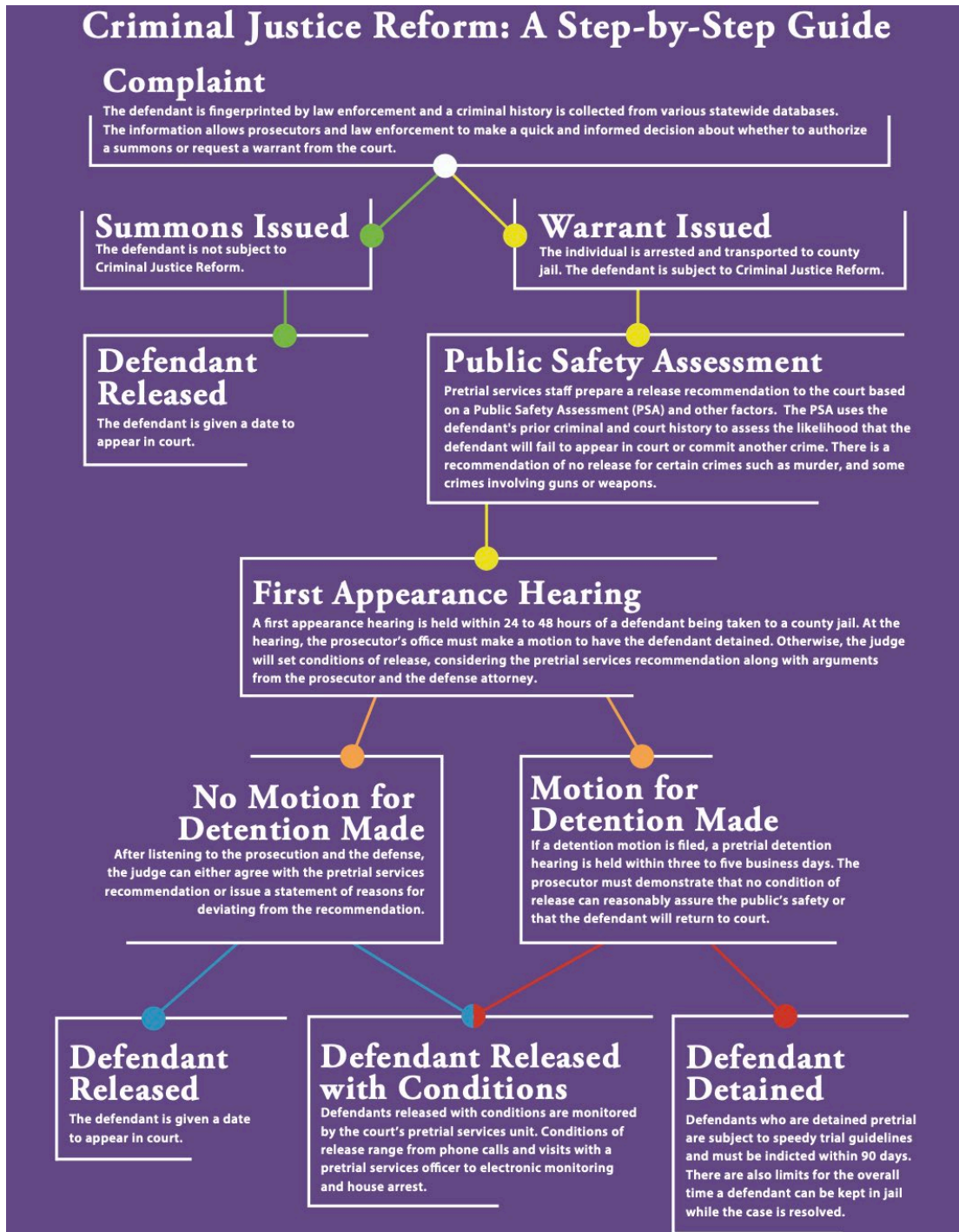
Mecklenburg County (NC)	City-/County-Led; Court-Led	Mecklenburg County has adopted a series of bail reforms since 2010. The specific reform analyzed in the study on Mecklenburg looks at the County’s 2014 implementation of the Public Safety Assessment, which the County adopted in place of a different risk assessment tool it had been using since 2011. <sup>237</sup>
New Jersey	State Legislation	In 2014, New Jersey passed legislation that adopted a risk assessment tool for decision-making, expanded pretrial services, established a presumption of release, limited situations where bail can be imposed, and expanded procedural protections related to pretrial release. <sup>238</sup>
New York City	City-/County-Led	In 2009, NYC began a pilot in Queens of its Supervised Release Program, which was designed to create an alternative to pretrial detention. The city expanded the program citywide in 2016. In 2020, state legislation made supervised release an option for everyone with pending cases in New York City. <sup>239</sup>
New York State	State-Legislation	In 2019, NY legislators passed a bail reform law prohibiting the imposition of cash bail for many misdemeanors and nonviolent felonies. Instead, judges would release people facing charges for such crimes on their own recognizance or with conditions of release. Cash bail was still allowed for people who were charged with violent felonies, as well as some other types of felonies. <sup>240</sup>  2020 legislation subsequently limited some of the reforms, including increasing the list of crimes for which cash bail could be imposed. <sup>241</sup>
Philadelphia	Prosecutor-Led	In 2018, District Attorney Larry Krasner of Philadelphia announced that his office would no longer seek monetary bail for many crimes, including most misdemeanors and nonviolent felonies. <sup>242</sup>
St. Mary’s County (MD)	City-/County-Led	In 2015, St. Mary’s County implemented a Pretrial Screening and Supervision Program, which incorporated a risk assessment tool and pretrial services. <sup>243</sup>



Yakima County (WA)	City-/County-Led	In 2016, Yakima County enacted reforms, which included: adoption a risk assessment tool for all newly charged people booked into the county jail, access to a public defender at initial appearances, and establishment of a pretrial services agency that provides pretrial assessment and management services. <sup>244</sup>
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## Appendix 2

The graphic below shows each step in the pretrial process, from the time someone first engages with law enforcement through the court's decision about pretrial release. This graphic is posted on the New Jersey Courts website.<sup>xxviii</sup>



<sup>xxviii</sup> The graphic can be accessed here: <https://www.njcourts.gov/courts/criminal/reform.html>.

### Appendix 3

One aspect of New Jersey’s decision-making framework (DMF) is the DMF Matrix,<sup>xxix</sup> included below. A person’s risk scores for new criminal activity (NCA) and failure to appear (FTA) correspond with a pretrial monitoring level. The higher PMLs are associated with a more intense—and often restrictive—level of monitoring.

	NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6
FTA 1	Risk Level Green – Recommendation ROR	Risk Level Green – Recommendation ROR	Risk Level Light Green – Recommendation PML 1	Risk Level Yellow – Recommendation PML 2	Risk Level Light Orange – Recommendation PML 3	Risk Level Red – No Release Recommended
FTA 2	Risk Level Green – Recommendation ROR	Risk Level Green – Recommendation ROR	Risk Level Light Green – Recommendation PML 1	Risk Level Yellow – Recommendation PML 2	Risk Level Light Orange – Recommendation PML 3	Risk Level Red – No Release Recommended
FTA 3		Risk Level Light Green – Recommendation PML 1	Risk Level Light Green – Recommendation PML 1	Risk Level Yellow – Recommendation PML 2	Risk Level Light Orange – Recommendation PML 3	Risk Level Red – No Release Recommended
FTA 4		Risk Level Light Green – Recommendation PML 1	Risk Level Light Green – Recommendation PML 1	Risk Level Yellow – Recommendation PML 2	Risk Level Light Orange – Recommendation PML 3	Risk Level Red – No Release Recommended
FTA 5		Risk Level Yellow – Recommendation PML 2	Risk Level Yellow – Recommendation PML 2	Risk Level Light Orange – Recommendation PML 3	Risk Level Dark Orange – Recommendation PML 3 + EM/HD	Risk Level Red – No Release Recommended
FTA 6				Risk Level Red – No Release Recommended	Risk Level Red – No Release Recommended	Risk Level Red – No Release Recommended

<sup>xxix</sup> There are other elements to New Jersey’s DMF. The full version is published on the NJ Courts website and can be accessed here: <https://www.njcourts.gov/courts/assets/criminal/decmakframework.pdf?c=N52>.

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- <sup>1</sup> Will Dobbie and Crystal S. Yang, “The Economic Costs of Pretrial Detention,” Brookings, March 24, 2021, <https://www.brookings.edu/bpea-articles/the-economic-costs-of-pretrial-detention/>.
- <sup>2</sup> Will Dobbie, Jacob Goldin, and Crystal S. Yang, “The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges,” *American Economic Review* 108, no. 2 (February 1, 2018): 201–40, <https://doi.org/10.1257/aer.20161503>.
- <sup>3</sup> Will Dobbie and Crystal S. Yang, “The Economic Costs of Pretrial Detention,” in *Brookings Papers on Economic Activity*, 2021, 6–7, <https://www.brookings.edu/bpea-articles/the-economic-costs-of-pretrial-detention/>.
- <sup>4</sup> Alexa Van Brunt and Bowman Locke E., “Toward a Just Model of Pretrial Release: A History of Bail Reform and a Prescription for What’s Next,” *The Journal of Criminal Law and Criminology* 108, no. 4 (Fall 2018): 763–64.
- <sup>5</sup> “Rules of Criminal Procedure,” Indiana Rules of Court, January 1, 2021, [https://www.in.gov/courts/rules/criminal/index.html#\\_Toc60037666](https://www.in.gov/courts/rules/criminal/index.html#_Toc60037666).
- <sup>6</sup> “Bail Reform: A Practical Guide Based on Research and Experience” (National Center for State Courts, March 13, 2019), 36–51, [https://www.ncsc.org/\\_data/assets/pdf\\_file/0026/42587/Bail-reform-guide-3-12-19.pdf](https://www.ncsc.org/_data/assets/pdf_file/0026/42587/Bail-reform-guide-3-12-19.pdf).
- <sup>7</sup> Dana Kramer, “Bail Reform: A Possible Solution to Missouri’s Broken Public Defender System?,” *Missouri Law Review* 85, no. 1 (Winter 2020): 297–319.
- <sup>8</sup> Carimah Townes, “A County in North Carolina Wants to Give Its Bail System a Serious Makeover,” *The Appeal*, October 13, 2017, <https://theappeal.org/a-county-in-north-carolina-wants-to-give-its-bail-system-a-serious-makeover/>.
- <sup>9</sup> “Bail Policy for Twenty-Sixth Judicial District” (2019), [https://www.nccourts.gov/assets/documents/local-rules-forms/Bail%20Policy.pdf?Ilxz6xa\\_CGHzzK9zpyEijZao9IRVZURc](https://www.nccourts.gov/assets/documents/local-rules-forms/Bail%20Policy.pdf?Ilxz6xa_CGHzzK9zpyEijZao9IRVZURc).
- <sup>10</sup> “Ohio Crim. R. 46 (Pretrial Release and Detention),” July 1, 2020, <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=6762089b-9df3-947a-8feb-768d54cef812&forceDialog=0>.
- <sup>11</sup> “General Order Regarding Procedures for Bail Hearings and Pre-Trial Release” (District Court of Fort Bend County, Texas, August 2020), <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=8630e982-a554-856d-72c0-17c39ed4857b&forceDialog=0>.
- <sup>12</sup> Michael King, “Travis Judges Loosen Misdemeanor Bond Requirements,” *The Austin Chronicle*, February 7, 2020, <https://www.austinchronicle.com/daily/news/2020-02-07/travis-judges-loosen-misdemeanor-bond-requirements/>.
- <sup>13</sup> Colin Doyle, Chiraag Bains, and Brook Hopkins, “Bail Reform, A Guide for State and Local Policymakers” (Criminal Justice Policy Program Harvard Law School, February 2019), 64–65, <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=9a804d1d-f9be-e0f0-b7cd-cf487ec70339&forceDialog=0>.
- <sup>14</sup> Valdez-Jimenez vs. Eighth Judicial Court, No. 76417 (Supreme Court of the State of Nevada April 9, 2020).
- <sup>15</sup> Valdez-Jimenez vs. Eighth Judicial Court at 3, 12, 18.
- <sup>16</sup> In re Kenneth Humphrey on Habeas Corpus., No. S247278 (Supreme Court of California March 25, 2021).
- <sup>17</sup> In re Kenneth Humphrey on Habeas Corpus.
- <sup>18</sup> Grace Panetta and Oma Seddiq, “Result: California Votes to Reject Proposition 25 and Keep Cash Bail,” *Business Insider*, November 12, 2020.
- <sup>19</sup> “Bail Reforms Announced for Hennepin County during Remote News Conference” (Hennepin County Attorney, December 2020), <https://www.hennepinattorney.org/news/news/2020/December/bail-reform-announced-at-news-conference>.
- <sup>20</sup> “State’s Attorney Foxx Announces Major Bond Reform” (Cook County State’s Attorney, June 12, 2017), <https://www.cookcountystatesattorney.org/news/state-s-attorney-foxx-announces-major-bond-reform>.
- <sup>21</sup> “Bail Reforms Announced for Hennepin County during Remote News Conference” (Hennepin County Attorney, December 2020), <https://www.hennepinattorney.org/news/news/2020/December/bail-reform-announced-at-news-conference>.
- <sup>22</sup> Lynh Bui, “Prosecutors in Prince George’s Will No Longer Recommend Cash Bail for Defendants,” *The Washington Post*, September 15, 2019, [https://www.washingtonpost.com/local/public-safety/prosecutors-in-prince-georges-will-no-longer-recommend-cash-bail-for-defendants/2019/09/15/27a1f274-d4bf-11e9-9343-40db57cf6abd\\_story.html](https://www.washingtonpost.com/local/public-safety/prosecutors-in-prince-georges-will-no-longer-recommend-cash-bail-for-defendants/2019/09/15/27a1f274-d4bf-11e9-9343-40db57cf6abd_story.html).

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- <sup>23</sup> “Manhattan and Brooklyn District Attorney’s Offices End Requests for Bail in Most Misdemeanor Cases” (District Attorney of New York County, January 9, 2018), <https://www.manhattanda.org/manhattan-and-brooklyn-district-attorneys-offices-end-requests-bail-most-misdemeanor/>.
- <sup>24</sup> “Manhattan and Brooklyn District Attorney’s Offices End Requests for Bail in Most Misdemeanor Cases.”
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