

Where Pretrial Improvements are Happening

July 2017

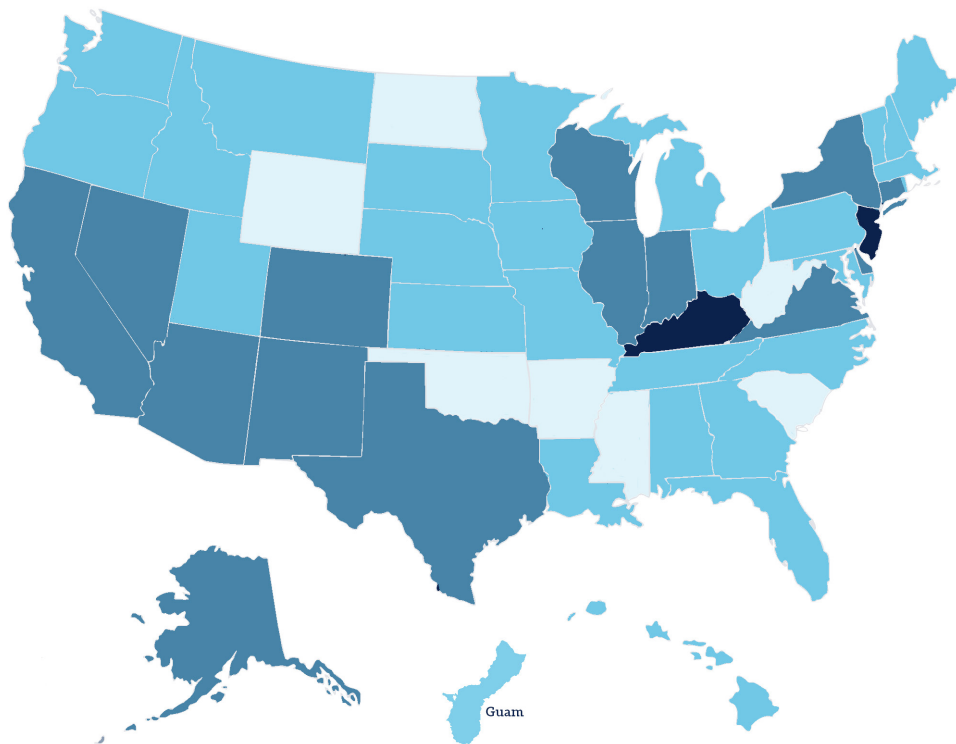


Table of Contents

Introduction.....1

Changing Practice.....1

 Pre-booking Deflection and Diversion.....1

 Citations in Lieu of Arrest.....2

 General Changes to Practice.....2

HOT SPOT: Lucas County, Ohio.....4

Judiciary-led Change.....5

Pretrial Litigation.....7

Lessons from the Juvenile System.....8

Pretrial Legislation.....9

 Most Recent.....10

 From Previous Sessions.....11

 Reclassification.....12

Executive Branch-led Change.....12

HOT SPOT: Washington, DC.....12

Community & Grassroots-led Change.....14

Activity by Region and States.....15

List of acronyms.....17

Cover: Color-coded activity map of the U.S. Darker colors represent states or territories closer to achieving full pretrial justice.



Introduction

Efforts to improve pretrial justice are underway across the country, from small towns that seek to lower jail populations to bills before Congress that would restrict federal funding for states that continue to rely on money bail. This document is intended to help readers understand the variety of pretrial improvements underway and where they are happening.

In the pages below you will find brief descriptions of a range of work currently happening or recently accomplished, organized by several main categories: Changing Practice, Judiciary-led Change, Pretrial Litigation, Pretrial Legislation, Executive Branch-led Change, and Community & Grassroots-led Change. A state-by-state table is provided at the end of the document for quick reference.

The Pretrial Justice Institute updates this publication on a quarterly basis, but retains overall information to ensure this is a complete standalone resource. New items are labeled.

Changing Practice

There are many ways jurisdictions can improve pretrial systems and the outcomes they produce without introducing new laws or amending state constitutions. Simply changing practice within existing legal structures can create immediate and positive results. For example, some jurisdictions have seen success in diverting people with mental health or substance use disorders away from the criminal justice system and into treatment. Other places have chosen to issue non-custodial citations or summonses to people accused of low-level offenses, avoiding the harms of unnecessary detention. This section describes that work, and more.

Pre-booking Deflection and Diversion

Many jurisdictions are pursuing diversion or deflection projects that keep people away from jail booking when a custodial arrest would be unnecessary or even harmful. In March 2017, the [Center for Health and Justice at the Treatment Alternatives for Safe Communities \(TASC\)](#) and the [Civil Citation Network](#) co-convened the first-ever [National Deflection Summit](#) in Alexandria, Virginia. Participants—including police, prosecutors, treatment and clinical experts, researchers, and representatives from national law enforcement and behavioral health associations—discussed alternatives to arrest for low-level offenses and for people with behavioral health needs. One outcome was a commitment to forming a deflection collaborative that will provide vision and leadership to the field, in part by reframing the relationship between law enforcement and treatment providers.

[STEER \(Stop, Triage, Engage, Educate, and Rehabilitate\)](#) is a project of **Montgomery County, MD** connecting people who have substance use treatment needs with community services instead of arresting them. In what is called the Montgomery Model, law enforcement *connects* potential STEER candidates to community service providers, rather than merely recommending them. STEER launched in March 2016 and connected 86 individuals with treatment—32 of whom successfully participated—in the first six months of the program.

The [Law Enforcement Assisted Diversion \(LEAD\)](#) program began in **King County, WA** in 2011 and has demonstrated positive results. LEAD diverts eligible people at the pre-booking stage, away from deeper justice system contact and toward community-based treatment and support services.

King County LEAD participants were:

- 89% more likely to obtain permanent housing,
- 46% more likely to find stable employment,
- 33% more likely to have stable income or benefits,
- 60% less likely to be re-arrested,
- 39% less likely to have a subsequent felony charge,
- Jailed for 39 fewer days per year than prior to the program,
- 87% less likely to receive a prison sentence, and
- Cost \$2,100 less to the local justice and legal system.

NEW!

As of June 2017, the LEAD model was being implemented in **King County, WA (Seattle); Santa Fe, NM; Albany, NY; Huntington, WV; Fayetteville, NC; Portland, OR; and Baltimore, MD.** LEAD implementation is expected to begin soon in **Bangor, ME; Atlanta, GA; Los Angeles/Long Beach, CA; San Francisco, CA; New Orleans, LA; Madison, WI; Thurston County, WA;** and several additional cities in **North Carolina.**

A [pre-booking diversion program](#) in **Florida** (Tallahassee, Pinellas, and Leon counties) has reported a 6% recidivism rate of participants, compared to an estimated 40-45% rate for similar individuals not enrolled in the program. Miami-Dade and four other Florida counties have also taken steps to reduce the number of people charged with low-level offenses in jail by adopting adult civil citations for the possession of 20 grams or less of marijuana.

Open Society Foundations has a Pre-Booking Diversion grant program that promotes alternatives to jail for drug use and addiction in **Los Angeles; Atlanta; Bangor, ME; Fayetteville, NC; Camden, NJ; Philadelphia;** and **Milwaukee,**

WI. Funding for the planning phase of this work has ended. Several of the participating sites will be seeking implementation funding.

Citations in Lieu of Arrest

The [International Association of Chiefs of Police \(IACP\)](#) reports that 87% of law enforcement agencies use citations as an alternative to custodial booking, cutting processing time by more than two-thirds (85.8 minutes to 24.2 minutes). There are, however, no aggregate data on how many people have been affected by this practice, and more study is needed to determine if and how citations can lead to reduced jail crowding, improved community relations, and other benefits.

The National Conference of State Legislatures maintains a [50-state chart](#) describing each state's statutory allowances for citations in lieu of arrest.

Some counties—like **Mesa County, CO** and **Eau Claire County, WI**—have begun testing and using a “proxy tool” to inform officers' decision making for when to issue citations in lieu of custodial arrests. The jurisdictions are collecting data to measure the success of the effort.

General Changes to Practice

NEW!

In June 2017 **Washington State** joined **Guam, Illinois,** and **Connecticut** as official participants in the Pretrial Justice Institute's [3DaysCount™](#) campaign. Through 3DaysCount, PJI will work with states (and territories) to achieve three main goals by 2020: 1) reduce arrests, 2) replace money-based pretrial practices with risk-based practices, and 3) restrict pretrial detention to those who pose unmanageable risks if released. Strategies to achieve these goals include improving state statutes, court rules, and state constitutions; implementing statewide evidence-based tools; and empowering and mobilizing commu-

nities to advocate for system improvements.

In early 2017 [New York City announced](#) an 18% decline in its jail population over two years. The mayor’s office credits the reductions to diversion and deflection strategies and increased use of non-financial pretrial release. Key findings include

- More than 70% of defendants in New York City are released without any conditions after their first appearance before a judge.
- A supervised release program has diverted over 3,000 people from jail since the program was launched in March 2016, allowing eligible, low-risk defendants to remain at home with their families and to continue working while waiting for trial.

In February 2017 the National Association of Counties (NACo) [adopted a policy](#) resolution urging

the Department of Justice (DOJ) to “continue efforts to advise state, county and municipal courts to acknowledge that the principles of due process and equal protection require that courts not employ bail and bond practices that cause indigent defendants to remain incarcerated even for a few days solely because they cannot afford to pay for their release.”

The John D. and Catherine T. MacArthur Foundation’s [Safety and Justice Challenge](#) (SJC) is a \$75 million initiative to support select jurisdictions. Initially focused on 20 sites, SJC now provides varying levels of funding to 39 jurisdictions—34 counties, four cities, and two statewide systems—in three groups. Ten Core Sites receive substantial funding and expert technical assistance; twenty Innovation Sites receive short-term support to design and test innovative approaches; and nine Partner Sites receive lower



SAFETY+JUSTICE CHALLENGE

Supported by the John D. and Catherine T. MacArthur Foundation

Core Sites

- Pima County, AZ
- Connecticut (unified court system)
- New Orleans, LA
- St. Louis County, MO
- New York, NY
- Lucas County, OH
- Philadelphia, PA
- Charleston County, SC
- Harris County, TX
- Spokane County, WA
- Milwaukee County, WI

Partner Sites*

- Los Angeles County, CA
- Palm Beach County, FL
- Ada County, ID
- Cook County, IL
- Mecklenburg County, NC
- Multnomah County, OR
- Pennington County, SD
- Shelby County, TN



Innovation Sites

- Santa Clara County, CA
- City & County of San Francisco, CA
- Adams County, CO

- State of Delaware
- Broward County, FL
- City of Atlanta, GA
- Polk County, IA
- East Baton Rouge Parish, LA
- Missoula County, MT
- Buncombe County, NC
- Durham County, NC
- Clark County, NV
- Summit County, OH
- Deschutes County, OR
- Allegheny County, PA
- Minnehaha County, SD
- Campbell County, TN
- Yakima County, WA

*Mesa County, CO has completed their participation as a Partner Site.

levels of funding and assistance to further develop improvement plans. SJC includes strategies for safely reducing the number of arrested people who are brought to jail and increasing the use of evidence-based tools, such as risk assessment instruments, in pretrial decision making.

The Laura and John Arnold Foundation has developed and piloted the Public Safety Assessment-Court (PSA) tool. It is currently in use statewide in **Arizona, Kentucky, and New Jersey**, and in approximately 30 local jurisdictions, including **Santa Cruz County, CA; Volusia County, FL; Cook County** and three other counties in **Illinois; Mecklenburg County, NC; Lucas County, OH; Allegheny County, PA; Yakima County, WA; and Milwaukee County, WI**. Additionally, **Dane County, WI; Harris County, TX; Rhode Island; Bernalillo County, NM; Minnehaha County, SD; Pennington County, SD; the City of Cleveland, OH;** and the states of **Utah, Rhode Island, and Iowa** are currently beginning implementation of the tool.

Kentucky's implementation of the PSA in 2013 led to an increase in pretrial release, higher court appearance rates, and fewer crimes committed by people on pretrial release. The [arrest rate for people released](#) before trial fell from 10% to 8.5%, representing a 15% decrease in overall pretrial crime. The tool is able to accurately identify the small number of individuals (just 6% of the study cohort) who pose a high risk of violence if released.

The National Criminal Justice Association (NCJA) and National Governors Association (NGA) have launched the [National Criminal Justice Reform Project](#) (NCJRP), an initiative to

HOT SPOT: Lucas County, Ohio

Lucas County, OH, has implemented the Laura and John Arnold Foundation's [Public Safety Assessment \(PSA\) tool](#) to meet the conditions of a federal court order to manage the jail population and local release and detention decisions. Previously, emergency release policies were charge-based and driven by the length of time in custody. Making risk-based decisions, with a consideration of the charge, has resulted in higher court appearance rates and lower rates of new criminal activity.

The county is also a participant in the MacArthur Foundation's Safety and Justice Challenge to change the ways it uses its local jails. In the first year of SJC involvement, Lucas County reported the following results:

An 18 percent reduction in the number of people incarcerated and a reduction in the total number of jail bed days of 4,158.

A 12 percent reduction in the number of people failing to appear in court.

A 10 percent reduction in the number of people arrested on new charges while await-

support sustainable system-wide criminal justice improvements. Funded by the Laura and John Arnold Foundation, the NCJRP will assist five states—**Arizona, Delaware, Illinois, Oregon, and Vermont**—in planning and implementing data-driven, evidence-based improvements focused on one or more areas of state policy and practice. Vermont has specifically named pretrial justice as a main focus of its work in the project.

The Council of State Governments, the American Psychiatric Association Foundation, and the National Association of Counties are jointly leading the Stepping Up Initiative to reduce the number of people with mental illness in jail. More than [300 counties](#) have already “Stepped Up,” passing resolutions in support of the initiative. **Ohio, California, and North Carolina** are among several states that are exploring how to support participating counties in this work.

The National Center for State Courts (NCSC) has supported jurisdictions in exploring pretrial justice improvements through extensive planning activities. Court representatives from **Arizona, Idaho, Indiana, and Wisconsin** took part in a Pretrial Justice Policy Forum and are working on action plans they developed during the forum.

In 2016, the State Justice Institute (SJI) awarded a Strategic Initiatives Grant to PJI and NCSC to conduct a national [Pretrial Justice and the State Courts Initiative](#). The initiative will provide technical assistance to competitively selected sites and will be guided by an advisory committee of chief justices, state court administrators, judges, court managers, and pretrial service agency directors, with input from other key stakeholders.

NEW!

In the second quarter of 2017, SJI approved funds for the [Connecticut Sentencing Commission](#) (with approval from the State Court Administrator) to support the travel of a delegation of Commission members to visit New Jersey to observe the operation of that state’s new bail system and to help organize and convene a statewide symposium on pretrial justice.

SJI also approved funding for a local-level [pretrial pilot project](#) in **New Hampshire**. One circuit and one superior court will implement new pretrial practices involving an actuarial pretrial risk tool and research-based risk management strategies as a demonstration site for the rest of the state.

Judiciary-led Change

Judiciaries in some states have conducted studies to explore pretrial justice issues in depth and have adopted court rules and procedures that seek to reduce money-based detention and implement risk-based practices. This section covers pretrial improvement work initiated and enacted by the courts.

Lawmakers, practitioners, and advocates have researched and debated the money bail system in **Maryland** for many years, generating several reports by special committees and philanthropic organizations. Each report has recommended a major overhaul to the state’s pretrial system, eliminating secured money bail, implementing pretrial risk assessment, and better enabling preventive detention (with full due process).

In 2016 Attorney General Brian E. Frosh issued a letter to lawmakers stating his office’s opinion that current pretrial practice in Maryland was likely

unconstitutional. Following that, Chief District Court Judge John P. Morrissey ordered judges in his courts to release most arrested people on their own recognizance or to impose the least onerous release conditions. After hearing arguments in January 2017—including testimony by former U.S. Attorney General Eric Holder in support of change—the Maryland Court of Appeals [adopted new court rules](#) that encourage the use of financial release conditions as a last alternative when the court can show that no other conditions will assure court appearance or public safety. See Pretrial Legislation for more about Maryland.) The new rules went into effect on July 1, 2017.

The **Arizona** state judiciary’s Task Force on Fair Justice for All issued a [report and recommendations](#) on court-ordered fines, penalties, fees, and pretrial release in late 2016. The recommendations were adopted by the Arizona Judicial Council in October 2016.

Several Court Rule revisions have been proposed based on the Task Force recommendations. These include defining the various types of money bond to include unsecured bond, deposit bond, secured bond and cash bond, and requiring the court to impose the least onerous type of bond necessary. The court is also urged to avoid imposing monetary conditions that result in unnecessary pretrial incarceration solely because the person is unable to pay the bond. Another rule is pending to clarify and define procedural requirements for exercising risk-based preventive detention.

NEW!

[A court rule change](#) issued by the **Arizona** Supreme Court on April 3, 2017 urges judges to utilize pretrial risk assessment and to move away from setting financial conditions, especially those

that would likely require defendants to seek the services of for-profit bail bonding companies.

The **Texas** Judicial Council and the Public Policy Research Institute published [Liberty and Justice: Pretrial Practices in Texas](#) in March 2017, an in-depth exploration of the state’s pretrial justice system. The report describes how using pretrial risk assessment can save money, strengthen public safety, and improve outcomes for defendants. According to the report, about one quarter of the state’s 41,000 prisoners pose a low risk to public safety and could safely be released prior to trial. Legislation has been introduced based on the findings of the *Liberty and Justice* study (see Pretrial Legislation section below).

Texas Chief Justice Nathan L. Hecht referenced *Liberty and Justice* in his February 2017 [State of the Judiciary](#) address, stating, “liberty, and common sense, demand reform.”

Missouri Chief Justice Patricia Breckenridge announced the formation of a Supreme Court Task Force on Pretrial in her January 2017 [State of the Judiciary](#) address. Concerning the pretrial issue, Justice Breckenridge said,

“Our cities and counties incur costs for pretrial incarcerations of people who simply are poor. There are individual and societal consequences from these unwarranted pretrial incarcerations. The consequences impact the defendants, their families and, ultimately, the state. Defendants lose not only their freedom but also their ability to earn a living and to provide for loved ones. Children may even come into state custody, because incarcerated parents are not home to care for them. And—after only three days in jail—the likelihood that an individual will commit future crimes also increases.”

NEW!

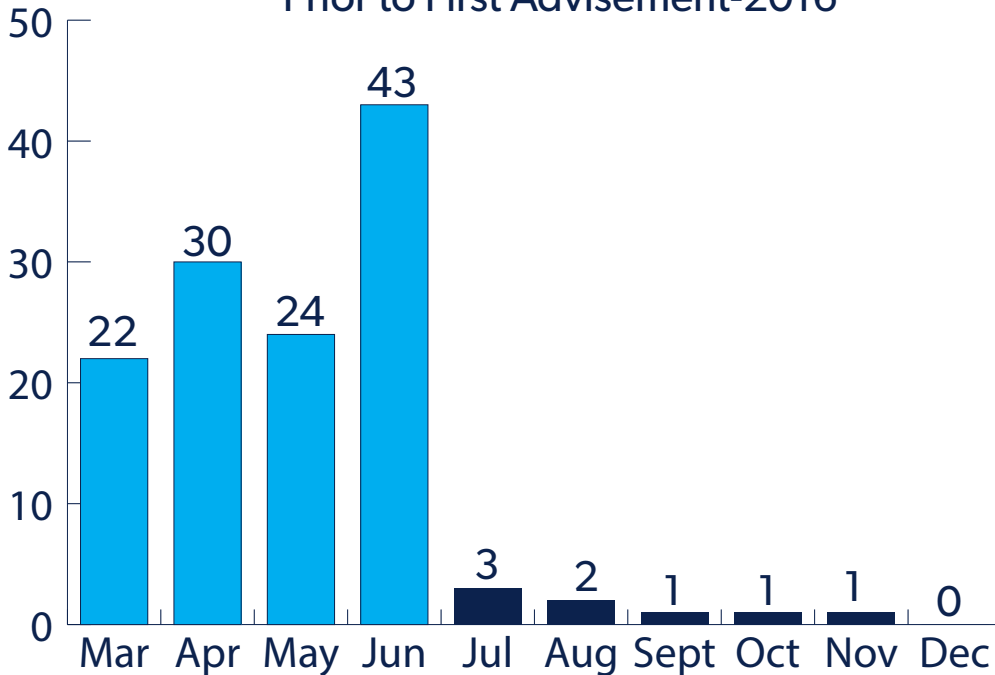
Denver's courts recently eliminated the use of a bail schedule for felony offenses, ensuring that release conditions, financial or otherwise, are based on the unique characteristics of the person arrested and the case. Almost all felonies, including warrants, are now assessed for risk and seen by a judge for bond conditions to be set. In May, prosecutors began appearing at felony advisements, leading to more conversations about diversion, improved filing decisions, increased victim input, and a reduction in financial bonds prior to first advisement (see graph below).

Pretrial Litigation

In recent years, the constitutionality of existing pretrial practice has been challenged in lawsuits against counties and cities. Many of these cases have been settled, with jurisdictions agreeing to change practices that treat people differently because of their access to money. Some initial rulings have been appealed and these challenges continue to make their way through the courts.

The non-profit civil rights law firms Civil Rights Corps (CRC) and Equal Justice Under Law

Number of Felony Defendants Released Through a Financial Bond Prior to First Advisement-2016



Supplied by City and County of Denver Department of Public Safety

(EJUL) have been successfully challenging the constitutionality of secured money bail derived from bail schedules. Their lawsuits have led to changes in pretrial release practices in **Alabama, Georgia, Louisiana, Missouri, Mississippi, Tennessee, and Texas**—including, in some cases, the elimination of bail schedules and money bail in certain courts and for specified offense categories. An overview of their work can be found in the PJI publication, [Money-Based Pretrial Practices Face Constitutional Challenges](#).

NEW!

On May 18, 2017 attorneys from the Southern Poverty Law Center, the ACLU, and CRC filed a major new challenge to the money bail system in **Randolph County, Alabama**. The main plaintiff in the case is Kandace Edwards, a pregnant woman with two children under the age of two. She is an army veteran accused of writing a \$75 forged check and was held in an Alabama jail cell because she could not afford to pay a \$7,500 money bond. Unlike other CRC cases, this case challenges the way that money bail is used in felony cases.

NEW!

On May 25, 2017 CRC joined the San Francisco Public Defender's Office to file a habeas corpus petition on behalf of William Peyser, a 73-year-old taxi driver with no criminal record who was kept in jail for more than five weeks, unable to afford money bail.

NEW!

On June 5, CRC joined the MacArthur Justice Center and social justice advocate Bill Quigley in filing a federal class action challenge to the money bail system in Lafayette Parish, **Louisiana**.

In 2016, a U.S. District Court entered a preliminary injunction requiring the **City of Calhoun, GA**, to release indigent defendants before trial on unsecured bond or on their own recognizance (Walker v. [City of Calhoun, Georgia](#)). Calhoun appealed the case and on March 9, 2017 the U.S. Court of Appeals in the Eleventh Circuit vacated the injunction and remanded the case to the district court for further proceedings.

A suit brought against **Harris County, TX** ([O'Donnell v. Harris County](#)) by CRC, the Texas Fair Defense Project, and local attorneys was debated in hearings in March 2017 after months of intense countywide and statewide debate and more than one million dollars spent by the county to fight the litigation. A federal judge issued a preliminary injunction, requiring the county to immediately change their pretrial practices.

Harris County continues to fight the ruling and has filed appeals all the way up to the U.S. Supreme Court, seeking to have the injunction lifted. Most recently, Justice Clarence Thomas, acting as a Circuit Justice, [denied the county's request](#).

In February 2017 the **Arizona** Supreme Court [struck down a constitutional provision](#) and laws that allow for the charge-based detention of certain defendants, specifically people accused of various sex offenses. [The Court wrote](#), “Under our reading of [United States v.] Salerno, the state may deny bail categorically for crimes that inherently demonstrate future dangerousness, when the proof is evident or presumption great that the defendant committed the crime. What it may not do, consistent with due process, is deny bail categorically for those accused of crimes that do not inherently predict future dangerousness.”

Under this narrow ruling, the court then declared

that the various sex offenses being reviewed were not the kinds of offenses that could be relied on to provide inherent risk of danger to the community, and thus they required more to detain than a mere finding of “proof evident or presumption great.”

With assistance from CRC, the Southern Poverty Law Center built upon successful litigation in **Alabama** to convince [50 cities](#)—accounting for 40 percent of the state’s population—to change some money bail practices. Cities that agreed to the changes will cease imposing money bail on people accused of minor offenses in city courts or, when money bail is set, will take into account each person’s ability to pay.

Lessons from the Juvenile System

Criminal pretrial justice systems can learn from the successes of juvenile systems, in particular the work of the Juvenile Detention Alternatives Initiative® (JDAI™). JDAI is a nationwide effort by local and state juvenile justice systems, initiated and supported by the Annie E. Casey Foundation to:

- Eliminate unnecessary and inappropriate use of juvenile secure detention;
- Reduce the number of youth who fail to appear in court or are re-arrested pending adjudication;
- Redirect public funds towards effective juvenile justice processes and public safety strategies;
- Reduce racial disparities; and

- Improve the juvenile justice system overall.

By closely analyzing the population eligible for detention, applying risk assessment to inform judicial decision making, and developing a continuum of community-based supervision strategies, JDAI sites are able to maintain many more youth successfully in the community while reserving detention for those who pose the highest risk. This approach is equally applicable to adult populations.

Since JDAI was created in 1992 with five pilot sites, it has grown to become the most widely replicated juvenile justice reform initiative in the United States, reaching youth in more than 300 local jurisdictions across 39 states, the District of Columbia, and two tribal jurisdictions. Forty percent of U.S. youth reside in jurisdictions where JDAI is active.

Across the JDAI sites reporting data in 2016, (comparing with pre-JDAI levels) accomplishments include:

- Average daily detention population reduced by 43%—1.4 million fewer days of juvenile detention
- Annual admissions to detention reduced by 49%
- Commitments to state custody reduced by 57%
- Felony petitions filed reduced by 39%
- 85% of the sites reporting data in 2016 had a lower detention population than before JDAI.

Sites have realized these results through a deliberate, intentional commitment to

implementing eight interrelated core strategies within the JDAI framework:

- Collaboration
- Data-driven decision making
- Objective admissions
- Alternatives to detention
- Case processing
- Special detention populations
- Racial and ethnic disparities
- Conditions of confinement

Pretrial Legislation

State and federal lawmakers have proposed numerous bills aimed at reducing the use of money in pretrial systems, increasing the use of pretrial risk assessment tools, and limiting the number of people who are held in jail before trial. In the 2016-2017 session, the [National Conference of State Legislatures](#) (NCSL) tracked 130 new enactments related to pretrial policy. This section provides an overview of some of these efforts.

New Jersey's successful legislation in 2014, which went into effect in January 2017, is one example of how pretrial systems can be improved through legislation and has already begun to produce positive results.

NEW!

By removing the financial barrier to pretrial release for almost all arrested people, New Jersey lowered its jail population by 19%

from January to June. During that time, courts imposed money bail in only nine cases.

Most Recent

NEW!

California Assemblymember Rob Bonta and Senator Bob Hertzberg introduced [The California Money Bail Reform Act of 2017](#) that clarifies the need to improve the state's pretrial system and proposes a framework for evidence-based improvements. In July the bill (SB10) was approved by the Senate Public Safety Committee.

In **Arizona** a pending bill ([House Bill 2500](#)) would require courts to release people accused of "bailable" offenses to be released without financial conditions unless it can be shown that no other conditions can assure court appearance and public safety. The bill would also require the use of pretrial risk assessment statewide and a pretrial services program to implement and manage the assessment and recommendation process.

In March, U.S. Representative Ted Lieu (CA-33) introduced the [No Money Bail Act of 2017](#) (H.R.1437), **federal** legislation which discourages "the use of payment of money as a condition of pretrial release in criminal cases" and would withhold some federal funding to jurisdictions that continue to use money bail.

NEW!

In February 2017 **Connecticut** Governor Dannel Malloy submitted a bill ([Governor's Bill 7044](#)) that would reform bail practices in misdemeanor cases. In June, the legislature passed the bill. The new law calls for limiting the use of secured financial bonds in misdemeanor cases.

Illinois passed a new law ([SB 2034](#)) that requires that public defenders be available at bail hearings, creates a presumption for non-monetary release on the least restrictive conditions; states that, when imposing a secured money bond, the court must consider the person's economic and social circumstances; and encourages the state supreme court to implement a statewide pretrial risk assessment tool.

A pending bill in **Indiana** ([Senate Bill 228](#)) would require the state's supreme court to adopt rules establishing a pretrial risk assessment system before 2020. The purpose of the risk assessment system is to assist courts in assessing an arrested person's likelihood of failing to appear in court or committing a new criminal offense while awaiting trial.

In the first quarter of 2017 more than a dozen bills related to pretrial justice were proposed in the **Maryland** legislature, some building on the new court rules (see Judiciary-led Change above) and others designed to counteract the new rules. The for-profit bail bonding industry was very active through lobbying and donations to industry-friendly legislators. However, when the session closed in early April no new legislation had passed, allowing the Court of Appeals' rule change to go into effect as intended in summer 2017.

New York Assemblymember Michael Simanowitz introduced [A01161](#), which would allow for the detention of arrested people before trial without the opportunity for release if the court can demonstrate the individual poses a clear and convincing risk to public safety if released.

Montana lawmakers passed [Senate Bill 59](#), which would develop a validated pretrial risk assessment tool and encourage its use by local jurisdictions in the pretrial release decision process.

[Legislative Bill 395](#), introduced in **Nebraska** in January 2017, would require courts to consider all forms of pretrial release and to assign the least onerous conditions to assure court appearance. The bill also would require courts to consider a defendant's ability to pay if financial release conditions are used. The bill was postponed indefinitely, but portions of its text have been included in [LB 259](#), still under consideration.

A **Pennsylvania** bill died ([House Bill 123](#)) that would have required courts to apply seized bail money paid by people convicted of crimes—regardless if they successfully attended all court dates—to the payment of fines, fees, and restitution. [Critics of the bill](#) asserted that the legislation constitutes a breach of the bail contract and may make some defendants less likely to post bail, thereby increasing detention and conviction rates. A similar bill ([HB305](#)) is still under consideration in **Hawaii**.

Pending legislation in **Texas** ([SB 271](#) and [companion HB 567](#)) would ban custodial arrests for non-jailable offenses—like the failure to signal a lane change charge for which [Sandra Bland](#) was arrested. These bills would also require police officers to inform motorists that they can't be arrested for such offenses. These bills remained under consideration in committee at the time of adjournment.

Also in **Texas**, bills ([SB 1338](#) and [HB 3011](#)) introduced by Senator John Whitmire and Representative Andrew Murr would require the use of pretrial risk assessment, the imposition of the least restrictive release conditions to assure court appearance, and allow for detention without bond when the court finds no conditions can assure court appearance or public safety. The proposed changes are based on findings from the report issued by the Texas Judicial Council and Public Policy Research Institute (listed above in Judiciary-led Change above).

HOT SPOT: Washington, DC

No Money Bond, Good Outcomes

The District of Columbia (DC) is widely recognized as a high-functioning pretrial justice system. The District employs several strategies at the point of police contact to avoid unnecessary jail bookings, including health- and treatment-related diversions and citations in lieu of arrest. It runs a robust Pretrial Services Agency that assesses all booked individuals and recommends appropriate supervision conditions for those released (including, in most cases, no supervision at all) and detention for those who pose risks that cannot be managed.

DC law has two important provisions that allow its pretrial system to operate the way it does. First, it states that no one can be held in jail before trial because of a lack of money. Because of this, money bond is nearly non-existent. Second, DC laws state that a person who is determined to be a high risk for pretrial failure may be preventively detained if no condition or set of conditions can assure pretrial success. DC detains roughly 9% of arrested people and all others are released without financial conditions. The District has high court appearance rates (91%) and public safety rates (88%). Only 12% of the district's jail population is pretrial, compared to the national rate of 63%.

ry-led Change). These bills remained under consideration in committee at the time of adjournment.

From Previous Sessions

In January 2017, the **New Orleans** City Council unanimously passed an ordinance eliminating the use of money bail for most non-felony violations of city ordinances. The bill ensures that no one in New Orleans municipal court is kept in jail simply because he or she cannot afford money bail.

In 2016, voters in **New Mexico** approved an amendment to allow for preventive detention of people who are deemed at a high risk for pretrial failure. In so doing, the state has joined **Washington, DC**, and **New Jersey** as the only jurisdictions in the U.S. with the legal framework to detain people based on their pretrial risk in addition to their charge.

In **California**, the Santa Clara County Board of Supervisors approved a plan that would greatly reduce the number of people who are jailed before trial due to unmet money bail conditions. The changes will also make it easier for arrested people to pay money bail themselves rather than having to hire a for-profit bail bonding company. Santa Clara arrived at recommendations for improving pretrial justice after a long and thorough examination of research and public comment. Once implemented, the county will be at the forefront of pretrial justice in California.

In **Alaska**, the state legislature passed, and the governor signed into law, a comprehensive justice reform package ([SB91](#) and [HB205](#)) that, among other things, promotes pretrial risk assessment in guiding release decisions, reduces the severity of some drug possession offenses and promotes the use of citations in lieu of arrest.

Reclassification

Some jurisdictions have [reclassified certain “non-](#)

[serious” offenses](#) from felonies to misdemeanors to reduce the severity of sentences. This move has also increased the number of charges that are eligible for citation in lieu of arrest. **California** has led in this area, prompting several other states to follow suit.

For example, in 2016, voters in **Oklahoma** approved [State Question 780](#), reclassifying some felony drug possession and property offenses as misdemeanors. This work was the culmination of several years of work in the Bureau of Justice Assistance (BJA)-funded Justice Reinvestment Initiative.

Executive Branch-led Change

Executive branch pretrial improvements can include actions taken by governors, attorneys general, or county commissioners, as well as by groups that utilize funding provided through government agencies such as the Bureau of Justice Assistance.

In Harris County, **Texas**, county commissioners [voted to develop a pilot program](#) to make public defenders present at bail hearings. The program is intended to help reduce the unnecessary detention of thousands of arrested people simply because they cannot afford money bail or are unfamiliar with the legal process.

NEW!

In **Wisconsin**, the state’s Department of Justice supports the [Treatment and Diversion \(TAD\)](#) Program which provides funding for pretrial diversion initiatives coordinated through local district attorneys’ offices. In many of these programs, district attorneys agree to not prosecute current charges if participating individuals agree to attend training or receive treatment. The TAD program has received increased funding to

over \$6 million for 2017 and now operates in 46 counties and 2 tribal jurisdictions in Wisconsin.

NEW!

In June 2017 the **Colorado Commission on Criminal and Juvenile Justice** convened a Pretrial Release Task Force to address compliance with the current pretrial statute; barriers to implementation; communication between pretrial services agencies, courts, defense attorneys, and prosecutors; training on pretrial risk assessment; a review of the Colorado Pretrial Assessment Tool (CPAT); and an environmental scan of pretrial practices in Colorado and around the country.

The Bureau of Justice Assistance (BJA) funds numerous initiatives and programs that seek to improve justice systems from a variety of angles, including the pretrial system.

BJA supports the Council of State Governments (CSG) to coordinate [Mental Health Court Learning Sites](#). These are jurisdictions that embody core principles of handling people with mental health needs in the criminal justice system and provide guidance to other jurisdictions. Currently, Learning Sites include **Bonneville County, ID**; **Ramsey County, MN**; **Dougherty County, GA**; and **New York City**.

The Justice Center at CSG, also with assistance from BJA, is supporting several initiatives focused on reducing the number of people with mental health needs in jail, including those being held before trial. These initiatives are located in **Rhode Island**; **Indianapolis**; **Douglas County, KS**; **Cumberland County, ME**; **Montgomery County, MD**; and **Rockdale County, GA**.

BJA has several initiatives that address “front-end” justice improvements. The Smart Defense initiative supports jurisdictions to improve

access to counsel and evidence-based advocacy in **Alameda County, CA; Kentucky; New York City; Texas;** and **Wisconsin.**

BJA's Smart Pretrial initiative is supporting the **City and County of Denver; the State of Delaware;** and **Yakima County, WA** in implementing validated pretrial risk assessment and risk-based supervision strategies, among other system improvements. These sites, and BJA-sponsored Smart Pretrial work, will conclude their work in the fall of 2017. (PJI will continue to support Smart Pretrial work separately.) Under a new award, PJI will be delivering targeted pretrial technical assistance to six competitively selected sites beginning the summer of 2017.

BJA's Justice Reinvestment Initiative (JRI) has done work to improve pretrial risk assessment in various jurisdictions including **Washington State; Hawaii; Rhode Island;** and **Alachua County, FL.** JRI has also provided funding for technical assistance in seven **California** counties; three **South Dakota** counties; **Johnson County, KS;** and **New York State** to improve pretrial systems through data and process analyses.

For nearly a decade, the National Institute of Corrections' (NIC) Evidence-Based Decision Making (EBDM) initiative has supported numerous sites to implement evidence-based justice practices, including those related to the pretrial stage. Currently, the initiative has three state sites and 16 local sites, and many have identified the pretrial decision point as a change target. These include sites in **Colorado, Virginia, Wisconsin, Indiana** and **Oregon.** Also, **Nevada** is one of three sites that has received technical assistance to implement

pretrial risk assessment through the state judiciary.

Community & Grassroots-led Change

NEW!

The power of community and grassroots organizing to create change was exemplified over the 2017 Mothers Day weekend by the work of Southerners on New Ground (SONG), in collaboration with more than 20 other social justice organizations. These groups led a nationwide effort to pay the money bail of mothers held in jail on financial bonds. The [Mama's Bail Out](#) campaign took place in **Oakland, CA; Los Angeles, CA; St. Petersburg, FL; Montgomery, AL; Memphis, TN; Durham, NC; Atlanta, GA; Houston, TX; New York City; Little Rock, AR; Charlottesville, VA; Charlotte, NC; Kinston, NC; Birmingham, AL; Baltimore, MD; Philadelphia, PA; St. Louis, MO;** and the **Washington, D.C.** area and helped secure the release of more than 100 women.

NEW!

Musician and entrepreneur Shawn Carter (aka Jay Z) became publicly involved in the bail issue for the first time by donating money to SONG and Color of Change to help pay the money bail of fathers detained on Fathers Day 2017.

Community organizations have been working to improve pretrial justice—often without the benefit of traditional approaches and funding streams. For example, groups like the [Texas Jail Project](#) and

[Silicon Valley De-Bug](#) have been drawing attention to the injustices of current pretrial practices in their communities through storytelling, videos and photographs. Another community-based approach with a long history being increasingly utilized is the community bail fund.

Community bail funds post money bail for eligible people who cannot afford to do so themselves. When defendants show up in court, the money returns to the fund to be used again for other people. These funds are an important short-term response to the problem of money bail. They eliminate unnecessary detention and the pay-off that motivates for-profit bail bondsmen, and also demonstrate how unnecessary money bail actually is. The **Bronx Freedom Fund**, for example, reports a 96% court appearance rate for its clients—some for more than a dozen dates in a row. In 62% of its cases, charges were dismissed. By comparison, more than 90% of people who do not pay money bail accept a plea in order to be released. The **Brooklyn Community Bail Fund** has demonstrated similar results and hosts the [National Bail Fund Network](#), an organization devoted to providing information and guidance to other bail funds or to communities interesting in starting one.

In the past few years, the number of community bail funds has increased. They can now be found in **New York, Chicago, Massachusetts, Nashville, and Seattle**. Temporary bail funds have also been set up to support people arrested in association with the Occupy, Black Lives Matter, and Dakota Access Pipeline protest movements.

Activity by Region and State

Following is a list presenting the major pretrial improvements described above as of June 2017, organized by state and geographical region.

Eastern and Midwestern States

Connecticut—SJC (statewide); 3DaysCount (statewide); Pending legislation (statewide); SJI (statewide)

Delaware—BJA Smart Pretrial (statewide); NCJRP (statewide), Pending legislation; SJC (statewide)

District of Columbia—Mama’s Bail Out

Illinois—3DaysCount-PJI (statewide); SJC (Cook & Lake Counties); Arnold Foundation PSA tool (multiple counties); Bail fund (Chicago); NCJRP (statewide), passed legislation (statewide)

Indiana—Court rules (statewide); CSG mental health diversion (Indianapolis); EBDM initiative (statewide); NCSC planning (statewide); Pending legislation (statewide)

Iowa—Arnold Foundation PSA tool (statewide); SJC (Polk County)

Kansas—CSG mental health diversion (Douglas County); BJA JRI (Johnson County)

Maine—OSF Pre-Booking Diversion/LEAD (Bangor); CSG mental health diversion (Cumberland County)

Maryland—AG/Courts (statewide); CSG mental health diversion (Montgomery County); STEER (Montgomery County); LEAD (Baltimore); New court rules (statewide); Mama’s Bail Out (Baltimore)

Massachusetts—Bail fund (Suffolk, Essex, Worcester, Middlesex and Plymouth counties)

Michigan—NCJA (statewide); Courts (statewide)

Minnesota—BJA/CSG (Ramsey County)

Missouri—SJC (St. Louis County); CRC (Ferguson and Jennings); Mama’s Bail Out (St. Louis)

Nebraska—Pending legislation (statewide)

New Hampshire—SJI (statewide)

New Jersey—Courts (statewide); OSF Pre-Booking Diversion/LEAD (Camden); Arnold Foundation PSA tool (statewide); piloting pretrial risk assessment (Clark, Ely & Washoe counties);

New York—Governor (statewide); NYC Mayor—expanding supervised release (New York City); SJC (New York City); BJA Smart Defense (New York City); BJA JRI (New York City); Bail fund (Brooklyn, Bronx); Pending legislation (statewide); Mama’s Bail Out (New York City)

North Dakota—No activity reported

Ohio—SJC (Lucas & Summit Counties); Arnold Foundation PSA tool (Lucas and Cuyahoga Counties); LEAD (Canton); Arnold Foundation PSA tool (Cleveland); Stepping Up planning (statewide)

Pennsylvania—SJC (Philadelphia & Allegheny County); OSF Pre-Booking Diversion/LEAD (Philadelphia); Arnold Foundation PSA tool (Allegheny County); Mama’s Bail Out (Philadelphia)

Rhode Island—CSG mental health diversion (statewide); BJA JRI (statewide); Arnold Foundation PSA tool (statewide)

South Dakota—SJC (Minnehaha & Pennington Counties); BJA JRI mental health diversion (statewide); Arnold Foundation PSA tool (Minnehaha and Pennington counties)

Vermont—Arnold Foundation planning summit (statewide); NCJRP (statewide)

West Virginia—LEAD (Huntington)

Wisconsin—SJC (Dane & Milwaukee Counties); OSF Pre-Booking Diversion/LEAD (Milwaukee); EBDM initiative (statewide); Arnold Foundation PSA tool (Milwaukee & Dane counties); NCSC planning (statewide); BJA Smart Defense (statewide); citation “proxy tool” (Eau Claire County); TAD program (statewide)

Southern States

Alabama—CRC (City of Clanton); SPLC (50 cities)

Arkansas—Mama’s Bail Out (Birmingham & Little Rock)

Florida—SJC (Broward & Palm Beach Counties); Arnold Foundation PSA tool (Volusia County); BJA JRI (Alachua County); Pre-arrest diversion “PAD” (Pinellas, Tallahassee & Leon counties); Mama’s Bail Out (St. Petersburg)

Georgia—OSF Pre-Booking Diversion/LEAD (Atlanta); CSG mental health diversion (Rockdale County); CRC (City of Calhoun); BJA/CSG (Dougherty County); SJC (Atlanta); Mama’s Bail Out (Atlanta)

Kentucky—BJA Smart Defense (statewide); Arnold Foundation PSA tool (statewide)

Louisiana—SJC (New Orleans & East Baton Rouge Parish); CRC (New Orleans & Lafayette Parish); City Council ordinance (New Orleans); LEAD (New Orleans)

Mississippi—CRC (Jackson)

North Carolina—SJC (Buncombe & Mecklenburg Counties); OSF Pre-Booking Diversion/LEAD (Fayetteville & select cities); Arnold Foundation PSA tool (Mecklenburg County); SJC Innovation Site (Buncombe County); Mama’s Bail Out (Charlotte, Durham & Kinston); Stepping Up planning (statewide)

Oklahoma—JRI (statewide)

South Carolina—SJC (Charleston County)

Tennessee—SJC (Campbell & Shelby Counties); CRC (Rutherford County); Mama’s Bail Out (Memphis)

Texas—CRC (Harris County); SJC (Harris

County); BJA Smart Defense (statewide); Arnold Foundation PSA tool (Harris County); Pending legislation (statewide); Defense pilot program (Harris County); Mama’s Bail Out (Houston)

Virginia—Revalidation of VPRAI (statewide);EBDM initiative (statewide); Mama’s Bail Out (Charlottesville)

Western States

Alaska—Legislation (statewide)

Arizona—SJC (Pima County); Arnold Foundation PSA tool (statewide); NCJRP (statewide); NCSC planning (statewide); Supreme Court—Task Force report & legislative summit (statewide); Supreme Court decision and rules change (statewide); Pending legislation (statewide)

California—Pending legislation (statewide); County Supervisors passed broad reform package (Santa Clara County); State Court established pre-trial working group (statewide); EJUL (San Francisco, Sacramento County); SJC (Los Angeles and Santa Clara Counties, San Francisco); OSF Pre-Booking Diversion/LEAD (Los Angeles & San Francisco); CJI risk assessment (multiple counties); Arnold Foundation PSA tool (Santa Cruz County); BJA Smart Defense (Alameda County); BJA JRI (Santa Cruz, San Francisco and Yolo Counties); Stepping Up planning (statewide); Mama’s Bail Out (Oakland, Los Angeles)

Colorado—EBDM initiative (statewide); BJA Smart Pretrial (City & County of Denver); citation “proxy tool” (Mesa County); eliminated bail schedule for felony offenses (Denver); CJCC task force (statewide); SJC (Adams County)

Guam—3DaysCount PJI (statewide)

Hawaii—BJA JRI (statewide); Pending legisla-

tion (statewide)

Idaho—SJC (Ada County); NCSC planning; BJA/CSG (Bonneville County)

Montana—Passed legislation (statewide); SJC (Missoula County)

Nevada—Courts (Clark, Ely, Washoe counties); EBDM initiative (select counties); SJC (Clark County)

New Mexico—Constitutional amendment (statewide); LEAD (Santa Fe); Arnold Foundation PSA tool (Bernalillo County)

Oregon—SJC (Deschutes & Multnomah Counties); EBDM initiative (Yamhill County); NCJRP (statewide); LEAD (Portland)

Utah—Courts have active pretrial committee (statewide); Arnold Foundation PSA tool (statewide)

Washington—SJC (Spokane & Yakima Counties); Arnold Foundation PSA tool (Yakima County); BJA Smart Pretrial (Yakima County); BJA JRI (statewide); Bail fund (Seattle); LEAD (King & Thurston Counties); 3DaysCount PJI (statewide)

Wyoming— No activity reported

List of acronyms

ACLU	American Civil Liberties Union
BJA	Bureau of Justice Assistance
CPAT	Colorado Pretrial Assessment Tool
CRC	Civil Rights Corps
CSG	Council of State Governments
DOJ	Department of Justice
EBDM	Evidence-Based Decision Making



EJUL	Equal Justice Under Law
IACP	International Association of Chiefs of Police
JDAI	Juvenile Detention Alternatives Initiative
JRI	Justice Reinvestment Initiative
LEAD	Law Enforcement Assisted Diversion
NACo	National Association of Counties
NCJA	National Criminal Justice Association
NCJRP	National Criminal Justice Reform Project
NCSC	National Center for State Courts
NCSL	National Conference of State Legislatures
NGA	National Governors Association
NIC	National Institute of Corrections
OSF	Open Society Foundations
PJI	Pretrial Justice Institute
PSA	Public Safety Assessment
SJC	Safety and Justice Challenge (MacArthur Foundation)
SJI	State Justice Institute
SPLC	Southern Poverty Law Center
SONG	Southerners on New Ground
STEER	Stop, Triage, Engage, Educate, and Rehabilitate
TAD	Treatment and Diversion
TASC	Treatment Alternatives for Safe Communities