



Overview

The ACLU received a grant from the Vital Projects Fund to engage in research concerning various aspects of mass incarceration. One aspect we examined was Michigan courts' use of bail, specifically, the use of bail to detain people before they are found guilty of a crime.

Research was conducted in three areas:

- I. Michigan bail laws and court rules,
- II. National bail trends, and
- III. Michigan bail practices.

Part I of this memo provides an overview of Michigan bail laws and court rules. This overview is necessary to 1) understand Michigan's pretrial detention laws to then determine if they are being followed, and 2) to allow a comparison of Michigan's bail law and rule to reforms underway throughout the United States.¹ Part II of this memo outlines bail reforms nationwide. Part III reports on bail practices throughout Michigan.

Part I - Michigan Bail laws and court rules

In Michigan, most defendants have a right to bail.² Michigan is a "right to bail" state. According to Michigan's Constitution, people "shall be bailable" unless they are charged with certain offenses and the proof is evident or presumption is great.³ The "certain offenses" are enumerated in the Constitution and reiterated in Michigan's court

¹ The intricacies of bail are vast and not addressed here. Comprehensive information on bail laws, court rules, and mechanics can, however, be provided by the ACLU of Michigan.

² The terms "bail" and "bond" are often used interchangeably. In general, the terms refer to a conditional release. Schnacke, Timothy "Model" Bail Laws: Re-Drawing the Line Between Pretrial Release and Detention, Center for Legal and Evidence-Based Practice, April, 2017.

³ Mich. Const. art. I, § 15.

rules.⁴ Michigan statutes similarly provide that unless otherwise provided by law, “a person accused of a criminal offense is entitled to bail.”⁵

In general, at a defendant’s arraignment⁶ the court has three options:

1. to order the defendant held pretrial because the defendant is charged with one of the enumerated crimes,⁷
2. to release the defendant on personal recognizance or unsecured appearance bond, or
3. to release the defendant conditionally, with or without money bail (ten percent, cash or surety).⁸

Of these options, the rules strongly favor release on a personal recognizance bond.

Personal recognizance/unsecured bond. A personal recognizance bond is a promise to appear. An unsecured appearance bond does not require a defendant to pay any money upfront; rather, a sum is promised, but paid only if the defendant fails to appear.

If the defendant is not charged with an enumerated crime, “the court **must** order the pretrial release of the defendant on **personal recognizance**, or on an **unsecured appearance bond**, subject to the conditions that the defendant will **appear as required**, will **not leave the state without permission**, and will **not commit any crime while released**, unless the court determines that such release will not **reasonably**

⁴ The Constitution provides that bail may be denied where the guilt is evident or the presumption is great to defendants charged with 1) violent felony while on probation, parole, or released pending trial for another violent felony, 2) violent felony who have been convicted of two or more violent felonies in last 15 years, 3) murder, treason, 4) criminal sexual conduct in the first degree, armed robbery, or kidnapping with intent to extort unless the court finds by clear and convincing evidence that the defendant is not likely to flee or present a danger to any other person; and defendants 5) charged with a violent felony alleged to have been committed while the person was on bail pending disposition of a prior violent felony charge or while the person was on probation/parole as a result of a prior conviction for a violent felony. Mich. Const. art. I, § 15; *See also* MCR 6.106(B).

⁵ MCL 765.6. No person charged with treason or murder shall be admitted to bail if the proof of his guilt is evident or the presumption great; see MCL 765.5. Bail recommendations are guided by MCR 6.106, Mich. Code Crim. Proc. Act 175 of 1927 Ch. V – Bail, and, in some jurisdictions, pretrial services legal and evidenced-based practices.

⁶ The arraignment is a pretrial proceeding with the purpose of providing formal notice of the charge against the defendant. *People v. Waclawski*, 780 N.W.2d 321 (2009).

⁷ MCR 6.106(A),(B)(referencing MI Const 1963, Sect 1, Article 15 language listing the crimes for which the court may deny pretrial release). If the court determines a defendant may not be released under this section, the court must order the defendant held for no more than 90 days. MCR 6.106(B)(3).

⁸ MCR 6.106(A)(2)-(3).

ensure the appearance of the defendant as required, or that such **release will present a danger** to the public.⁹

Conditional Release. If the court determines that a personal recognizance bond will **not reasonably ensure the defendant's appearance or keep the public safe**, the court may order pretrial release on the conditions the court deems appropriate.¹⁰ The court may, but is not obligated, to impose money bail as a term of condition release.¹¹

Money Bail. Only if the court determines **for reasons that it states on the record that defendant's appearance or the protection of the public cannot otherwise be assured**, money bail, with or without conditions may be required.¹² Money bail, therefore, is an option under the rules only *after* the court states on the record that money bail is necessary to ensure the defendant's appearance or protect the public.

How to decide?

Courts must begin with a presumption of a personal recognizance bond if the defendant is not charged with an enumerated crime. If the court determines that a personal recognizance bond is not sufficient to ensure appearance or keep the public safe, then it must decide which conditions of release to impose by considering the following factors:

- (a) defendant's prior criminal record, including juvenile offenses;
- (b) defendant's record of appearance or nonappearance at court proceedings or flight to avoid prosecution;
- (c) defendant's history of substance abuse or addiction;
- (d) defendant's mental condition, including character and reputation for dangerousness;
- (e) the seriousness of the offense charged, the presence or absence of threats, and the probability of conviction and likely sentence;

⁹ MCR 6.106(C).

¹⁰ MCR 6.106(D). This section lists conditions that may be appropriate including, *inter alia*, participation in treatment programs, curfew, and continued employment.

¹¹ MCR 6.106(D)(2)(o). Money bail may be part of conditional release if the court finds it "reasonably necessary to ensure the defendant's appearance as required and the safety of the public."

¹² MCR 6.106(E).

- (f) defendant's employment status and history and financial history insofar as these factors relate to the ability to post money bail;
- (g) the availability of responsible members of the community who would vouch for or monitor the defendant;
- (h) facts indicating the defendant's ties to the community, including family ties and relationships, and length of residence, and
- (i) any other facts bearing on the risk of nonappearance or danger to the public.¹³

If, after considering these factors, a court determines **for reasons stated on the record** that defendant's appearance and public safety can only be assured using money bail – with or without other conditions – money bail may be required.¹⁴

Types of Money Bail. When money bail is ordered, it may not be excessive.¹⁵ In fixing the amount of the bail, Michigan law requires the court to consider and **make findings on the record** as to each of the following:

- (a) The seriousness of the offense charged,
- (b) The protection of the public,
- (c) The previous criminal record and the dangerousness of the person accused,
- (d) The probability or improbability of the person accused appearing at the trial.¹⁶

¹³ MCR. Chapter 6.106(F)(1-2). While the court needs to put on the record that only money bail can assure defendant's attendance and keep society safe, the court does not need not make a finding on each of the enumerated factors.

See also SCAO Memorandum, June 7, 2016 re: MC 240 – Order for Pretrial Release, January 5, 2017 re: Surety Bond Process.

¹⁴ MCR 6.106(E).

¹⁵ MCL 765.6.

¹⁶ MCL 765.6. The statutes and court rules provide for a variety of types of money bail including posting the full bail amount, using a surety bond executed by a surety approved by the court and for ¼ of the bail amount, and providing real property as security. Notably, if the court fixes a bail amount and allows for the posting of a 10% deposit bond, the defendant may “post bail by a surety bond in an amount equal to 1/4 of the full bail amount” and executed by a surety approved by the court. MCL 765.6 (converting a 10% deposit bond into a 25% deposit bond). The Michigan Court rules further elaborate on how the parties that may post bond, stating that when a court does require money bail, it may require the defendant to:

- (a) post, at the defendant's option,
 - (i) a surety bond that is executed by a surety approved by the court in an amount equal to ¼ of the full bail amount, or
 - (ii) bail that is executed by the defendant, or by another who is not a surety approved by the court, and secured by
 - (A) a cash deposit, or its equivalent, for the full bail amount, or
 - (B) a cash deposit of 10% of the full bail amount, or with the court's consent,
 - (C) designated real property; or
- (b) post, at the defendant's option,

How are Michigan's bail laws and court rules applied?

The court's determination of whether to impose a personal recognizance bond, conditional pretrial release, or money bond may not be made based on race, religion, gender, economic status, or other impermissible criteria.¹⁷ But what the determination is made on is somewhat of a mystery. Data on who is being detained pretrial and why is scarce and scattered. This is why -

Pretrial detention practices, procedures, and the data collection varies by county. Michigan has jails in 81 of its 83 counties and each collects its own and often different data. The Michigan Jail Population Information System (JPIS) was originally developed to gather standardized information on jail utilization and demographics from county jails throughout the State. JPIS, however, was not created to capture bail information and, in any event, only 33% of county jails correctly upload local data into the JPIS system.¹⁸

The other statewide reporting system is the Judicial Data Warehouse (JDW). The JDW is the state's central electronic repository for court records in civil and criminal cases. The JDW, however, is not a source of pretrial detainee information because not all courts provide information to the JDW and, more importantly, reporting courts are not required to report bail data.¹⁹

Recently, the Michigan Supreme Court Administrator's (SCAO) office testified before the Michigan Senate Appropriations Committee to request funding to add bail

(i) a surety bond that is executed by a surety approved by the court for the full bail amount, or
(ii) bail that is executed by the defendant, or by another who is not a surety approved by the court, and secured by

(A) a cash deposit, or its equivalent, for the full bail amount, or with the court's consent,

(B) designated real property.

Additional details on types of surety bonds, Michigan laws and regulations around bondsmen, and procedures concerning return of bond, an appendix may be provided in the future. *See n. 1.*

¹⁷ MCR 6.106(F)(3)

¹⁸ JPIS specifications called for the capture of data on individual demographics, primary offense, known criminal history and information related to arrest, conviction, sentencing, and release. Michigan Department of Corrections. Reentry Administration. Office of Community Corrections Biannual Report, September 2015. http://www.michigan.gov/documents/corrections/OCC_Biannual_report_497186_7.pdf

¹⁹ In 2014, 242 out of 254 court locations contributed to the warehouse. 81 of 83 counties contribute data from at least one court in the county. "Technology: Supporting Timeliness, Efficiency, Access." *Judiciary Data Warehouse*, Michigan Judiciary, courts.mi.gov/education/stats/dashboards/Pages/Dashboard-JDW-Why.aspx. "Required Reports from District and Municipal Courts and Judges." *Michigan Courts*, Michigan Judiciary, 2018, courts.mi.gov/Administration/SCAO/Resources/Documents/other/Reporting%20Materials/RequiredReportsFromDistrictCourtsandJudges.pdf.

collection data to JDW and to fund the development of a pre-trial risk assessment tool. During the hearing, a senator asked how many defendants are currently being held in Michigan jails pending trial. The answer is unknown. SCAO was also asked the average cost “per day” of pretrial detention. That is also unknown.²⁰

According to federally collected data, there is wide discrepancy among Michigan county jails of people being held pretrial. The figures below are for the 15 largest jails in Michigan with available data that was collected by the Bureau of Justice Services.²¹ Wayne, Oakland, and Macomb, the state's three most populous counties, did not provide data to the U.S. Bureau of Justice Statistics so are not included in the table below.

Rank	County	Confined	Awaiting trial or arraignment
1	Kent	1084	38.7%
2	Ingham	583	53.3%
3	Genesee	530	72.5%
4	Calhoun	467	30.4%
5	Saginaw	455	50.5%
6	Washtenaw	410	32.7%
7	Muskegon	370	45.9%
8	Kalamazoo	361	38.0%
9	Berrien	340	16.8%
10	Ottawa	329	60.8%
11	Midland	262	21.0%
12	Newaygo	255	78.0%
13	Lenawee	246	35.0%
14	Eaton	236	39.0%

²⁰ Information on file with ACLU.

²¹ Roelofs, Ted. “The price of Michigan’s cash bail system.” *Bridge Magazine*, 15 Nov. 2016, citing the U.S. Bureau of Justice Statistics, 2013.

15	Livingston	236	48.3%
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While Macomb data is not included in the federal report, pretrial data about Macomb is available due to a local study conducted on Macomb County’s jail population. It revealed that in Macomb county jail “an astounding 77% of beds are occupied by defendants in pretrial status.”²² Other counties’ pretrial detainee percentages were found in news reports. According to one article, approximately half of Michigan’s jail beds are filled with inmates awaiting trial, with eight West Michigan counties averaging a pretrial inmate population of approximately 50 percent.²³ Another article focused on eight jails in Michigan and used the Freedom of Information Act to obtain snapshots of inmates on three randomly chosen weekdays in July, August and September 2017.²⁴ This report concluded that the average pretrial percentage of inmates awaiting trial is:

County	Awaiting trial
Allegan	63%
Barry	65%
Kent	37%
Mecosta	42%
Muskegon	56%
Newaygo	18%
Ottawa	66%
Van Buren	44%

²² Robertson, James, and David Bennett. *Jail Needs Analysis & Criminal Justice System Assessment Report*. Pp 21. Macomb County, Oct. 2016, mediad.publicbroadcasting.net/p/michigan/files/201705/macomb_justice_study_packet.pdf?_ga=2.257161611.1851786003.1494550872-1828790670.1486406715.

²³ Samples, Susan. “MI ‘behind’ in push to release inmates before trial.” *Target 8 Investigation*, 15 Nov. 2017.

²⁴ Samples, Susan. “No cash, no freedom: Bail means jail for W. MI’s poor.” *Target 8 Investigation*, 14 Nov. 2017.

While this data provides some insight into pretrial detention levels across the state, it still does not detail the racial or gender breakdown of pretrial detainees. It is useful, however, in revealing the difference in number of pretrial detainees in different counties across the state, which reasonably calls into question the uniform application of Michigan's pretrial rules.²⁵

Part II. National Bail Trends

Bail reform is moving on a variety of fronts nationwide. State policies, practices and procedures that assist defendants in making court appearances without the use of cash bail are being explored in many ways. Part II outlines three areas of bail reform efforts

1. elimination of cash bail or cash bail for profit,
2. development of bail funds, and
3. legislation or court rules that restrict the imposition of cash bail.

Elimination of Cash Bail or cash bail for profit

In 1992, the District of Columbia became the first and only jurisdiction in the U.S. to eliminate cash bail.²⁶ According to the Washington DC Pretrial Services Agency, no one is in jail in Washington DC is there because they can't afford bail. The agency relies on "scientifically-validated risk assessment instruments" that reflect a risk score.²⁷ When people are arrested, they're given a score of how likely they are to show up to their court date, and how likely they are to get in trouble again if they're released. Approximately 90% of the people arrested are released without leaving any money and provide only a promise to return to court and meet conditions such as drug testing or meetings with

²⁵ Notably, the news articles demonstrate the pretrial population taken during the snapshot period – but these percentages differ significantly from the pretrial detainee percentages in the federal report. *Supra* at 7 (revealing Newaygo's pretrial population as 78% vs. the 18% reported in the articles).

²⁶ D.C. Code Ann. § 23-1321.

²⁷ Ben-Achour, Sabri. "Washington DC has figured out a way around money bail." *Marketplace*, 21 Oct. 2016, <https://www.marketplace.org/2016/10/21/wealth-poverty/washington-dc-has-figured-out-way-around-money-bail>.

pretrial services. In the past five years, about 90% of the defendants released pretrial were not arrested again before their cases were resolved.²⁸

Some of Washington D.C.'s success with its bail system can be attributed to broad discretion judges have in denying bail outright.²⁹ Up to 15% of defendants deemed a danger or high flight risk are held without the option to post bail. That's in sharp contrast with the laws governing judges in Michigan (and many parts of the country) where bail is a constitutional right unless the defendant is charged with a certain crime.³⁰

Kentucky, Oregon, Wisconsin, and Illinois have not abolished bail completely, but have taken out the profit. These states abolished **commercial surety bail** in favor of nonfinancial release options and public or privately-secured cash bail.³¹ Similarly, Massachusetts does not have a statute providing for licensure of a bondsman and due to adverse court rulings that made the cost of doing business prohibitive, the profession is nearly obsolete.³² While these systems do not statutorily eliminate cash bail from the system, they do eliminate the for-profit middle man.

Alaska moved from money bail to a point system on January 1, 2018.³³ The new pretrial system is part of Senate Bill 91 (SB 91), a substantial criminal justice reform package passed in 2016. The bail changes were in response to a 2015 Pew and Alaska Judicial Council study which found (1) racial disparity in pretrial detainees and (2) that defendants from poorer areas of the state were more likely to plead guilty to crimes and more likely to stay in jail until trial.

²⁸ Marimow, Ann. "When it comes to pretrial release, few other jurisdictions do it D.C.'s way." *Washington Post*, 4 July 2016, https://www.washingtonpost.com/local/public-safety/when-it-comes-to-pretrial-release-few-other-jurisdictions-do-it-dcs-way/2016/07/04/8eb52134-e7d3-11e5-b0fd-073d5930a7b7_story.html?utm_term=.f1ba0e79d193.

²⁹ Santo, Alysia. "Kentucky's Protracted Struggle to Get Rid of Bail." *The Marshall Project*, 12 Nov. 2015, <https://www.themarshallproject.org/2015/11/12/kentucky-s-protracted-struggle-to-get-rid-of-bail#.FGkeZPvZG>

³⁰ Mich. Const. art. I, § 15.

³¹ Ky. Rev. Stat. §431.510(a)(b), Or. Rev. Stat §§ 135.245, 135.265, Wis. Stat. §969.12, 725 Ill. Comp. Stat. § 5/110, et al. Kentucky also uses the pretrial risk assessment tool developed by the Arnold Foundation.

³² Contrada, Fred. "Bail bondsmen are a thing of the past in Massachusetts." *Boston Business Journal*, 25 Mar. 2015.

³³ Alaska Senate Bill 91, signed into law by Governor Walker on July 11, 2016.

Under the new pretrial system, when people are charged with a crime they will not have to pay cash to get out of jail before a trial. Instead, the judge will utilize a point-based system that considers how likely someone is to show up to court appearances or commit a new crime.³⁴ People on pretrial release will be monitored, but because they are not incarcerated they will be able to go to work and the state won't have to pay for their jail stay. The points are compiled by Alaska's Division of Corrections upon arrest and provided to the judge, defender and prosecutor. Based on that score and the alleged crime, the individual can be released, released with conditions, or not released at all. Money bail may be ordered for certain specified crimes.

Bail funds

Because money is not what gets people back to court or keeps communities safe, some advocates are taking direct action against cash bail by raising charitable funds to post bail for defendants. While these funds are not the answer to reforming the bail system, their results clearly demonstrate that when money is taken *out* of the pretrial detention equation, the outcome for individuals and communities improve. Data on the use of bail funds reveals that over 55% of people who are bailed out have their cases dismissed and 95% of people return to all court dates.³⁵ Money is not dismissing the cases or getting people to court – the ability to stay in the community, be free from the pressure to plead guilty, and maintain employment, housing, and family ties is what produces these improved outcomes.

Legislation or court rules that restrict the imposition of cash bail.

In many states, bail reform is the result of legislators, voters, or court rule changes.

³⁴ The supporters and detractors from SB91 reflect the reaction to criminal justice reform nationwide. Proponents include: the Alaska Criminal Justice Commission, criminal defense attorneys, nonprofits that help returning citizens, the Alaska Federation of Natives, the American Civil Liberties Union of Alaska. Opponents include the state Office of Victims' Rights, other victim advocacy groups, and law enforcement unions - including the Public Safety Employees Association and the Anchorage Police Department Employees Association. Kelly, Devin, Theriault Boots, Michelle and Herz, Nathaniel. "How SB 91 has changed Alaska's criminal justice system." *Anchorage Daily News*, 23 Oct. 2017.

³⁵ The Bronx Freedom Fund, <http://www.thebronxfreedomfund.org/our-work>; The Brooklyn Community Bail Fund, <https://brooklynbailfund.org>; The Massachusetts Bail Fund, <http://www.massbailfund.org>.

California

The California Senate passed an ambitious bail reform bill that limits pretrial detention to specific persons, eliminates the use of bail schedules, and requires each county to establish a pretrial services agency.³⁶ The legislation also regulates the use of risk assessment tools to make sure that they do not worsen racial disparities and ensures constitutional rights are protected in the pretrial process. The efforts hit a roadblock in the California House where an identical bill faced “steep opposition” from bail bond industry lobbyists and concerns that the mandatory creation of pretrial services agencies and court-appointed lawyers would impose high costs on counties.³⁷

Colorado

In 2013, Colorado Governor Hickenlooper (D) quietly signed law bail reform into law.³⁸ By repealing and reenacting provisions of the criminal procedure code, the law could have substantially altered the way judges administer bail in Colorado. The amended law places a greater emphasis on evidence-based and individualized decision-making during the bond-setting process and discourages use of monetary conditions for bond. It incorporates recommendations voted out of the Colorado Commission on Criminal and Juvenile Justice’s Bail Subcommittee which spent a year studying federal and state evidence-based pretrial practices, as well as practices in Kentucky and Washington, D.C.³⁹ The changes, however, were discretionary and judges need not implement the reforms. In June 2017, the Colorado Commission on Criminal and Juvenile Justice convened a Pretrial Release Task Force to address

³⁶ California (State). Legislature. Assembly. *An act to...relating to pretrial release and detention...* (SB 10). 2017-2018 Reg. Sess. (December 5, 2016). http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201720180SB10.

³⁷ Ulloa, Jazmine. “Legislation to overhaul bail reform in California hits a hurdle in Assembly,” *Los Angeles Times*, 1 June 2017, <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-legislation-to-overhaul-bail-reform-in-1496385464-htmllstory.html>.

³⁸ Colorado (State). H.B. 13-1236, amending Col. Rev. Stat §16-1-104, et al., http://www.leg.state.co.us/clics/clics2013a/csl.nsf/fsbillcont3/6E02E86379A7876487257AF0007C1217?open&file=1236sjud_01.pdf.

³⁹ See, Schnacke, Timothy, “Best Practices in Bond Setting: Colorado’s New Pretrial Bail Law,” *Center for Legal and Evidence Based Practices*, for a comprehensive overview of the law and the process the Colorado legislature used to pass it: <https://www.pretrial.org/download/law-policy/Best%20Practices%20in%20Bond%20Setting%20-%20Colorado.pdf>.

compliance with the current pretrial statute, barriers to implementation, and other pretrial issues that may be delaying reform.

Connecticut

Connecticut Governor Malloy (D) proposed sweeping bail reforms for the state that would have largely eliminated a role for bail bond agents, but settled for a compromise that won bipartisan support and acceptance from the bail industry after a provision that could have put bail bond agents out of business was struck from the bill.⁴⁰ The provision would have required judges to allow defendants to go free after posting 10% of the bail set by a court, putting the state in competition with bond agents. The Bail Bond Association vigorously opposed the bill, arguing that it would put 1,000 bail bondsmen out of work. As amended, HB 7044 passed the House and Senate and was signed by the Governor.⁴¹

The compromise package makes several changes to bail practices including:

- a. barring judges from setting cash-only bails for certain offenses,
- b. restricting judges from setting bail for misdemeanors in most circumstances. Although discretion is retained for defendants with a record of not appearing in court or who are judged to be flight risks, and
- c. authorizing a study sought by the bail industry on the practicality of imposing a surcharge on bond agents' clients to help indigent defendants.

The reforms are projected to save Connecticut \$30 million over the next two years.⁴²

Illinois

In 2017, a bill was introduced in the Illinois Senate providing that first-time offenders charged with a non-violent offense, shall be released on his or her own

⁴⁰ Pazniokas, Mark. "Judiciary Committee approves compromise bail reforms," *The CT Mirror*, 4 Apr. 2017, <https://ctmirror.org/2017/04/04/judiciary-committee-approves-compromise-bail-reforms/>.

⁴¹ Substitute House Bill 7044, <https://www.cga.ct.gov/2017/FC/2017HB-07044-R000695-FC.htm>, https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2017&bill_num=7044.

⁴² Pazniokas, Mark, and Keith Phaneuf. "Bail reform wins final passage in Senate," *The CT Mirror*, 7 June 2017, <https://ctmirror.org/2017/06/07/bail-reform-wins-final-passage-in-senate/>.

recognizance, unless the court makes a specific finding that a cash bond is necessary to secure his or her appearance.⁴³ The bill is stalled, but bail reform for non-violent offenders is supported by the Cook County Sheriff, the State's Attorney, and the Administrative Office of the Illinois Courts.⁴⁴

Maryland

In Maryland, the Supreme Court changed the court rules to significantly change the state's cash bail system. The Court approved changes to the pretrial system to prevent people from being detained because they could not afford bail.⁴⁵ The changes did not entirely eliminate cash bail; it could still set if the defendant could afford it and releasing the defendant would not pose a danger to the community. Maryland's Attorney General strongly endorsed the changes.⁴⁶

The court rule change, approved unanimously by Maryland's highest court was scheduled to take effect July 1, 2017, and while it does not eliminate money bail or bail bondsmen, it does restrict judges from imposing a financial condition that the defendant is incapable of meeting.⁴⁷

The changes were vehemently opposed by Maryland bail bondsmen who worked with the legislature to roll back the court's decision. In March, the Maryland Senate passed legislation that would pare back the court rules. The Senate bill eliminated part of the court rule that would make cash bail a less-preferred means of ensuring public

⁴³ HB 2456, Illinois General Assembly, <http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=91&GA=100&DocTypeId=HB&DocNum=2456&GAID=14&LegID=103464&SpecSess=&Session=>; In March 2017, the bill was referred to rules committee, <http://www.ilga.gov/legislation/billstatus.asp?DocNum=2456&GAID=14&GA=100&DocTypeID=HB&LegID=103464&SessionID=91#actions>.

⁴⁴ Garcia, Jesus. "While detainees sit, Cook County bail reform drags on," *The Chicago Tribune*, 22 Mar. 2017, <http://www.chicagotribune.com/news/opinion/commentary/ct-bail-reform-cook-county-jail-perspec-0323-20170322-story.html>.

⁴⁵ Standing Committee on Rules of Practice and Procedure, Notice of Proposed Rule Changes, <http://mdcourts.gov/rules/reports/192nd.pdf>.

⁴⁶ Associated Press. "Maryland's highest court approves bail reform rule changes," *Maryland News*, 7 Feb. 2017, <http://wtop.com/maryland/2017/02/marylands-highest-court-approves-bail-reform-rule-changes>.

⁴⁷ Wiggins, Ovetta, and Ann Marimow. "Maryland's highest court overhauls the state's cash-based bail system," *The Washington Post*, 7 Feb. 2017, https://www.washingtonpost.com/local/md-politics/maryland-highest-court-overhauls-the-states-cash-based-bail-system/2017/02/07/36188114-ed78-11e6-9973-c5efb7ccfb0d_story.html?utm_term=.a9a4c5a3edac.

safety and a defendant's court appearances.⁴⁸ Advocates of bail reform, including Attorney General Brian E. Frosh, opposed the Senate bill. It was supported by the bail bond industry, which could lose business under the court rule.

The Senate bill then went to the Maryland House where a “the battle over bail has been one of the fiercest of the General Assembly session, pitting Attorney General Frosh and criminal justice reform advocates against the well-financed and politically powerful bail bond industry.”⁴⁹ After a coalition of lawmakers heavily lobbied their colleagues and the speaker, the House bill was not brought to the floor. This leaves the amended court rules in place and leaves the fight in the legislature to repeal them for another day.

New Jersey

In 2014, New Jersey voters supported amending New Jersey's Constitution to nearly eliminate cash bail resulting in legislation nearly eliminating cash bail and requiring Judges to use risk-assessment tools beginning in January 2017.⁵⁰ The reforms essentially eliminate cash bail and compel judges to detain or release a defendant based on the risk to public safety, rather than an ability to pay. The changes have begun to take place and continue to be protested by the bail bond industry which argues that it lets dangerous criminals out on the street.⁵¹ Law enforcement who oppose the reforms have also made their objections known.⁵² Some opposition was also voiced by lawmakers who complained that a bail overhaul is an unfunded mandate to counties.⁵³ The reforms are facing energetic attacks from the bail industry who have filed unsuccessful lawsuits to prevent them from taking place.⁵⁴

⁴⁸ Maryland Senate Bill 983, <http://mgaleg.maryland.gov/2017RS/bills/sb/sb0983t.pdf>.

⁴⁹ Dresser, Michael Busch. “Maryland House will not vote on cash bail bill,” *The Baltimore Sun*, 6 Apr. 2017, <http://www.baltimoresun.com/news/maryland/politics/bs-md-bail-bill-imperiled-20170406-story.html>.

⁵⁰ Senate Concurrent Resolution No. 128, http://www.njleg.state.nj.us/2014/Bills/SCR/128_11.HTM.

⁵¹ Foderaro, Lisa. “New Jersey Alters Its Bail System and Opens Legal Landscape,” *New York Times*, 6 Feb. 2017, https://www.nytimes.com/2017/02/06/nyregion/new-jersey-bail-system.html?_r=0.

⁵² <http://www.usbailreform.com/bail-reform-cops-cant-trust-cop-can-trust/>.

⁵³ Foderaro, Lisa. “New Jersey Alters Its Bail System and Opens Legal Landscape,” *New York Times*, 6 Feb. 2017, https://www.nytimes.com/2017/02/06/nyregion/new-jersey-bail-system.html?_r=0.

⁵⁴ Feuer, Alan. “New Jersey Is Front Line in a National Battle Over Bail,” *New York Times*, 21 Aug. 2017, <https://www.nytimes.com/2017/08/21/nyregion/new-jersey-bail-reform-lawsuits.html>.

New Mexico

In 2016, voters in New Mexico passed a Constitutional Amendment that prohibits the detention of defendants who aren't deemed dangerous or a flight risk "solely because of financial inability" to pay bail. The bill also gives judges the authority to deny bail to defendants whom prosecutors determine to be too dangerous to be out before trial.⁵⁵ Passage caused controversy and is characterized by the Governor as favoring the release of repeat offenders and violent criminals.⁵⁶ The reforms are being challenged by the bail bond industry in court, which to date has been unsuccessful in overturning the changes.

Other Bail Innovations include:

- The Laura and John Arnold Foundation is developing a tool intended for pretrial use the Foundation asserts can accurately distinguish among the low, moderate, and high-risk defendants, and identify those who are at an elevated risk for violence. The Public Safety Assessment (PSA) is a pretrial risk-assessment tool that is designed to assist judges in making release/detention determinations.
- NYC recently launched "Bail Lab" is currently crowdsourcing innovations for a sweeping reform of city policy.
- NYC also enacted a supervised release program that gives judges the option to release some defendants who would otherwise have been detailed due to their inability to make bail. The released defendants must report regularly to a nonprofit in the community from which they may also get referrals to services based on their needs. Vera is working with the City of New York to evaluate the program.⁵⁷

⁵⁵ <http://www.sos.state.nm.us/uploads/files/CA1-SJM1-2016.pdf>.

⁵⁶ Lopez, Fernanda and Chris McKee. "Lawmakers talk solutions to 'bail reform' constitutional amendment problem," *KRQE News 13*, 27 Oct. 2017, <http://krqe.com/2017/10/27/legislative-criminal-justice-subcommittee-discusses-bail-reform-friday/>.

⁵⁷ Cindy Redcross, Melanie Skemer, Dannia Guzman, Insha Rahman and Jessi Lachance. "New York City's Pretrial Supervised Release Program; An Alternative to Bail." *Vera Institute of Justice*. https://storage.googleapis.com/vera-web-assets/downloads/Publications/new-york-citys-pretrial-supervised-release-program/legacy_downloads/Supervised-Release-Brief-2017.pdf.

- Following a Department of Justice finding that Maine’s 15 jails are in a “terminal” state of disrepair, the state’s chief justice announced the creation of a Task Force on Pretrial Justice Reform to explore ways of alleviating bail requirements on non-violent offenders.
- The MacArthur Foundation awarded grants to 20 municipalities to begin exploring alternatives to jail. The Foundation awarded 11 jurisdictions grants between \$1.5M and \$3.5M over two years to reduce their jail populations and address racial and ethnic disparities in their justice systems. Nine additional jurisdictions will be given \$150,000 grants to continue their reform work and to participate in a growing, collaborative network of cities, counties, and states driving local justice reform.⁵⁸
- The MacArthur Foundation partnered with the Urban Institute to host the Innovation Fund to create space for 20 more jurisdictions to test innovative ideas on how to safely reduce the jail population while maintaining or enhancing public safety. The Urban Institute will provide technical assistance to the sites and document and disseminate lessons learned from the Innovation Fund’s work.
- Pretrial Justice Institute kicked off the 3DaysCount™ campaign where PJI and its partners will support participating states to improve state statutes and court rules, improve state constitutions, implement statewide evidence-based tools, and empower and mobilize communities for bail reform.

Part III - Michigan bail practices

Each time a person is arrested and accused of a crime, a bail decision must be made to determine if the defendant will be released back into the community or detained. Michigan Court Rules favor the release of a defendant pending trial.⁵⁹ Depriving a defendant of liberty pending trial is “harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to

⁵⁸ Eleven jurisdictions will receive grants between \$1.5 million and \$3.5 million and access to expert technical assistance to implement their plans for reform over two years. Nine jurisdictions will receive \$150,000 grants and access to expert technical assistance in 2016 to continue their local reform work and participate actively in the Safety and Justice Challenge Network.

⁵⁹ MCR 6.106(C)

defend themselves, and in many instances deprives their families of support.”⁶⁰ Pretrial detention also increases the likelihood of taking a guilty plea and national statistics show that pretrial detention of a lower-risk person can result in increased recidivism. Bail decisions, therefore, must balance the legal and constitutional rights of people who have been arrested with the need to protect the community and guarantee court appearance.

Bail decisions are important – but the available research tells us they are also made without regard to Michigan laws, court rules, risk assessments, and the negative consequences of pretrial detention. Nationally, low-income people, people of color, and people with disabilities are more likely to be held on bail. But, because data on Michigan pretrial detention practices and population is sparse and scattered, what’s happening in Michigan is less clear.

Pretrial decisions across the state

Pretrial detention practice and procedures vary in Michigan by court and by county. Of the 103 district courts⁶¹ in Michigan, some have pre-trial service departments, some use pre-trial risk assessments, and some utilize bail schedules (outlining a specific bail fee suggested for various charges). Where pretrial services are available, Courts utilize them to different degrees.⁶² In Macomb county, whether the pretrial services program assesses a defendant for pretrial release depends on which court the defendant goes through. The pretrial services program currently serves four out of nine district courts in the county.⁶³ Further muddying the data waters in jurisdictions that have pretrial service offices is the fact that individual judges use their

⁶⁰ *ABA Standards for Criminal Justice: Pretrial Detention, Pretrial Release, Standard 10-1.1*

⁶¹ Additionally, Michigan has 4 municipal courts that are not served by district courts in the region. <http://courts.mi.gov/Administration/SCAO/Resources/Documents/other/regionalcomposition.pdf>.

⁶² Michigan does not keep a comprehensive list of pretrial service departments but a search for pretrial service departments throughout the state reveals they exist in Oakland, Calhoun, Monroe, Ingham, Kent, Kalamazoo, Macomb, and Washtenaw counties. Notably, before Kent County implemented pretrial services, the county jail’s pretrial population was over 60%. In 2003, the pretrial population was approximately 31% according to the Michigan Task Force on Jail and Overcrowding. https://www.michigan.gov/documents/report_119595_7.pdf.

⁶³ Robertson, James, and David Bennett. *Jail Needs Analysis & Criminal Justice System Assessment Report*, Macomb County, 2016, http://mediad.publicbroadcasting.net/p/michigan/files/201705/macomb_justice_study_packet.pdf?_ga=2.257161611.1851786003.1494550872-1828790670.1486406715.

services and risk assessments differently. In Macomb county, one judge asks for pretrial input only for drug cases; in another county, one judge detains a high percentage of defendants pretrial regardless of their risk score.⁶⁴

Because of the variety of courts, case management systems, and lack of data collection, it is impossible to know how bail decisions are made in each county. What is possible, however, is to identify the counties with pretrial services, determine what if any risk assessment they use in bail decisions, and to identify whether their pretrial detainees are low, medium, or high risk. This information is important because according to the law and the scholarship, cash bail may be appropriate for high risk, sometimes medium risk, but is not appropriate for low-risk individuals.

Pretrial Service Offices

Pretrial services do not exist in every Michigan county. Where they do, pretrial services can perform critical functions related to the bail decision. They can provide necessary information for judges to make the most appropriate bail decisions. Many pretrial service offices interview the defendant before the arraignment and use a pretrial risk assessment to make bail recommendations to the court.

As noted above, not every county has pretrial services. They exist in the following counties:

Bay	Macomb
Berrien	Midland
Calhoun	Montcalm
Eaton	Muskegon
Genesee	Oakland
Grand Traverse	Ottawa
Ingham	Saginaw
Jackson	St. Joe
Kalamazoo	Washtenaw

⁶⁴ Robertson, James, and David Bennett. *Jail Needs Analysis & Criminal Justice System Assessment Report*, Macomb County, 2016. Macomb county pretrial officers also report that the district judges who receive a pretrial recommendation follow it about half the time.

Kent	Wayne
	Wexford

Many of these counties use the Michigan Risk Assessment, the Praxis, to make bail recommendations.⁶⁵ The Praxis purports to be a “research-based objective tool that identifies the likelihood of failure to appear in court and the danger to the community posed by a defendant pending trial.” The assessment is intended to identify

(1) “low” risk defendants who can be safely released into the community with limited or no conditions pending trial; (2) “average” risk defendants whose risk can be minimized by utilizing appropriate release conditions, community resources, and/or interventions upon release; and (3) the “high” risk defendants, those for whom no condition or combination of conditions can reasonably assure the safety of the community or appearance in court, so they can be detained pending trial.

Pretrial investigators assign these risk levels based on a set of predetermined factors, including:

- Charge type,
- Released pending trial (defendant already facing charges at time of arrest),
- Criminal history (at least one misdemeanor and one felony as adult),
- History of failure to appear in court (two or more),
- History of violent convictions (two or more),
- Length at current residence (lived at current address less than a year),
- Employed, primary caregiver, student, or retired, and
- History of drug abuse.

⁶⁵ The Praxis risk assessment tool is used to make bond recommendations and risk assessments. For risk assessments, it considers a defendant’s charge type, criminal history, whether the defendant was on bond when arrested, history of violent convictions, length at current residence, employment, role as caregiver, student, retired or disabled, and history of drug abuse.

The counties that use Praxis have agreed on a glossary of terms (in a manual) so that terms such as “low risk” mean the same thing in each county using the tool. A handful of the counties using Praxis are beginning to track their pretrial data.⁶⁶

Collection of pretrial service data is not required by Michigan law to be collected, shared, or stored. Data collection and analysis is, however, the best recommended practice by experts in the field.⁶⁷ The following data comes from six counties in Michigan who have populations ranging from slightly over 100,000 to over a million. These are counties that (1) use a pretrial assessment tool and (2) track pretrial detention decisions. While this data is limited, it provides an overall picture of pretrial detention in Michigan – and what that picture shows is that low-risk offenders are ordered to pay a financial bond on a regular basis - contrary to the law, the court rules, and the recommendation of pretrial services.

Statewide Aggregate Data for All Offenses (Violent and Non-violent)

The data collected for his project reveals that statewide, when reporting pretrial services agencies recommended a non-financial bond be set for a low-risk felony offender, courts ignored the recommendation and imposed a financial bond in over 55% of the cases.⁶⁸ Consider this statistic in light of the Michigan Court Rules that strongly favor non-financial bonds – that is, conditions of release that do not involve money. Recall that the rules default to releasing on a person on a personal recognizance bond and only when the court finds that a personal recognizance bond will not ensure appearance or keep the public safe, may it impose bond conditions. Recall also that these bond conditions may but need not, involve money as a condition of release.⁶⁹ Only after the court determines for reasons stated on the record that *no other conditions*

⁶⁶ Pretrial services offices are often started with funds from the State’s Community Correction Budget. It is anticipated that new pretrial service offices will have to agree to perform a risk assessment – preferably the Praxis – to receive startup funding.

⁶⁷ Justice Technology Committee Report: Using Technology to Improve Pretrial Release Decision-Making, February 17, 2016
<http://www.ncsc.org/~media/files/pdf/about%20us/committees/jtc/jtc%20resource%20bulletins/it%20in%20pretrial%203-25-2016%20final.ashx>.

⁶⁸ It is unclear from the data collected whether the bond decision was made by a magistrate or district judge. The data refers to the “bond set” but not the specific court that set it.

⁶⁹ Money bail may be part of conditional release if the court finds it “reasonably necessary to ensure the defendant’s appearance as required and the safety of the public.” MCR 6.106(D)(2)(o).

will secure a person's appearance or protect the public that money bail may be required.⁷⁰ Yet, in a majority of cases, when pretrial services recommends low-level offenders be released without money bond, courts impose money bond anyway.

The same pattern of requiring money bail regardless of pretrial services' recommendation continues for medium-risk defendants who were arrested for felonies. Where pretrial services recommended a **non-financial** bond (a bond where money is not a condition of release), courts ordered financial bonds in over 63% of the cases. And when pretrial services recommended a **non-financial** bond for a high-risk defendant, courts imposed a financial bond over 75% of time.

⁷⁰ MCR 6.106(E)

**Statewide – examining the type of bond recommendation vs. the type of bond set
(for felony charges)**

Risk Score Category

Where a financial bond was recommended by Pretrial Services		<i>Low</i>	<i>Medium</i>	<i>High</i>	Total
White	<i>Non-financial</i> bond set by court	4 7.5%	31 6.7%	36 14.5%	71 9.3%
	<i>Financial</i> bond set by court	49 92.5%	429 93.3%	213 85.5%	691 90.7%
Minority	<i>Non-financial</i> bond set by court	4 5.6%	33 6.0%	36 7.4%	73 6.6%
	<i>Financial</i> bond set by court	67 94.4%	519 94.0%	451 92.6%	1,037 93.4%

Where a non-financial bond was recommended by Pretrial Services		<i>Low</i>	<i>Medium</i>	<i>High</i>	<i>Total</i>
White	<i>Non-financial</i> bond set by court	117 38%	181 36.6%	2 8.7%	300 36.3%
	<i>Financial</i> bond set by court	191 62.0%	314 63.4%	21 91.3%	526 63.7%
Minority	<i>Non-financial</i> bond set by court	107 44.2%	138 35.1%	8 25.0%	253 37.9%
	<i>Financial</i> bond set by court	135 55.8%	255 64.9%	24 75.0%	414 62.1%

It is clear courts tend to ignore pretrial services recommendations when it comes to non-cash bonds. Generally, judges reflexively order cash bond over 50% of the time – but some specific counties provide more extreme examples.

Individual County Data for Violent and Non-violent Offenses

In County A, a larger, urban county, defendants arrested for felony charges (both violent and non-violent) who scored low risk on the pretrial assessments and were recommended for non-financial bond were ordered to pay a financial bond over 68% of the time.

And while most judges imposing bail disregarded the pretrial service recommendation across racial lines, data from one county showed a racial disparity on who is ordered to pay bond. In County B, white defendants who scored low risk and received a non-financial bond recommendation were ordered to pay a financial bond 17% of the time while similarly situated black defendants were ordered to pay a financial bond 37% of the time.⁷¹

Individual County Data for Non-violent Offenses

It is clear from the above data that some pretrial services recommendations of non-financial bond for both violent and non-violent felonies are often ignored. When looking at non-violent offenses, however, it is clear that ignoring release recommendations also means ignoring harm caused by detaining low-risk individuals.

In general, when pretrial services recommended **NO** financial bond for low-risk, non-violent offenders, the courts followed this recommendation about half the time. Courts increasingly disregarded the pretrial service recommendation of no financial bond, however, as the risk category increased. For medium and high risk, non-violent offenders, the court ordered a financial bond in nearly 60% of the cases where pretrial services recommended no financial bond.

⁷¹ This racial disparity is demonstrated through a small sample size. These county judges ordered 8 white defendants (17%) to pay a bond when pretrial recommended they not pay one, but 17 (37%) of minority defendants in the same circumstance to pay.

**Statewide – examining the type of bond recommendations vs. type of bond set for non-violent offenses
(for felony charges)**

Risk Score Category

Where a financial bond was recommended by Pretrial Services		<i>Low</i>	<i>Medium</i>	<i>High</i>	<i>Total</i>
White	<i>Non-financial</i> bond set by court	0 0.0%	23 9.7%	31 17.1 %	54 12.4 %
	<i>Financial</i> bond set by court	17 100.0%	213 90.3%	150 82.9 %	380 87.6 %
Minority	<i>Non-financial</i> bond set by court	0 0.0%	21 90.5%	29 9.6%	50 9.3%
	<i>Financial</i> bond set by court	16 100.0%	201 90.5%	272 90.4 %	489 90.7 %

Where a non-financial bond was recommended by Pretrial Services		<i>Low</i>	<i>Medium</i>	<i>High</i>	<i>Total</i>
White	<i>Non-financial</i> bond set by court	91 42.5%	169 38.9%	2 13.3 %	262 39.5 %
	<i>Financial</i> bond set by court	123 57.5%	265 61.1%	13 86.7 %	401 60.5 %
Minority	<i>Non-financial</i> bond set by court	65 50.4%	125 41.4%	7 41.2 %	197 44.0 %

	<i>Financial</i> bond set by court	64 49.6%	177 58.6%	10 58.8 %	251 56.0 %
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Specific examples of judges’ disregard for incarcerating low-risk individuals is further evident in some individualized county data. In County C, where pretrial services recommended no financial bond for a non-violent, low-risk offender, the court imposed a financial bond in over 80% of the cases.⁷²

Overall, the data reveals that courts often don’t follow pretrial services’ recommendations when the recommendation is to not impose a financial bond. The courts have little trouble, however, following a recommendation that a financial bond be imposed. In County F, where pretrial services recommended a financial bond in low-risk cases, the court complied 100% of the time.

How long does someone who has not been found guilty of a crime stay in jail?

It depends. Very little data is collected and even less is shared. The data provided below is from 5 counties and shows the average days-in-jail for pretrial detainees before they bond out.⁷³ It reveals that even low-risk defendants who eventually bond out do so *after* enough days have passed where their jobs, homes, family life, and future are at risk.

Pretrial detainees are labeled by charge and by risk level. Charges are “violent” or “non-violent.” Violent crimes include homicide, robbery, criminal sexual conduct, assault, and arson. Risk levels are high, medium or low. Risk scores are determined by pretrial services pursuant to the Praxis risk assessment tool. “Low risk” defendants are people “who can be safely released into the community with limited or no conditions pending trial.” Conversely, a “high risk” defendant is defined as “those for whom no

⁷² Note: the percentages are high because the numbers are low. In this county, only 13 white defendants were high risk and had a no financial bond recommended. The court followed the recommendation in 2 cases but imposed a financial bond in 11 cases. For minority defendants, a non-financial bond was recommended for 14 high risk defendants. The court ordered financial bonds in 8 of those cases.

⁷³ It is not clear why some people bond out. The data doesn’t reveal whether a financial bond was decreased or whether the pretrial release was with conditions that were met after a few days in jail.

condition or combination of conditions can reasonably assure the safety of the community or appearance in court, so they should be detained pending trial.”

The risk level and charges of people detained before trial vary wildly – but their pretrial detention experience does not. According to this data set, a Michigan low-risk individual charged with a non-violent crime averages nearly 4 ½ days in jail before bonding out. This is *one day less* than defendants at the other end of the spectrum: high-risk defendants charged with violent crimes. These people average of 5 ½ days in jail before bonding out. This is consistent with national research, which demonstrates that under money bail systems, nearly half of high-risk defendants returned to the community regardless of community safety but simply because they can pay the bail.⁷⁴

This information from 5 Michigan counties paints a confusing and bleak picture. Confusing, in that low-risk, non-violent defendants stay in jail for 4 ½ days – when they should not be in jail at all – and high-risk defendants charged with violent crimes who are able to post a financial bond stay in jail only one day more. This latter group consists of people who, by definition, cannot safely be released pending trial. In the middle of the spectrum, medium-risk defendants charged with a non-violent crime stay on an average of 13 days before bonding out and medium-risk defendants charged with violent crimes stay for almost 20 days. These numbers are bleak when we realize the cost of pretrial detention on families, futures, and our communities.

Nationally, taxpayers spend approximately \$38 million per day to jail pretrial detainees.⁷⁵ On average, pretrial detention costs \$74.61 daily.⁷⁶ It can cost more. In Macomb county, it's \$94.32 a day to house a prisoner in the county jail. In Wayne County, it's \$165 daily. Pretrial *supervision*, on the other hand, costs on average \$7.17 a day.⁷⁷ The cost on people's lives, however, is far more expensive. Compared to identical people who are **not** detained before trial, low-risk individuals detained longer than three days are:

⁷⁴ http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-research-summary_PSA-Court_4_1.pdf.

⁷⁵ “Pretrial Justice: How Much Does It Cost?” *Pretrial Justice Institute*.

⁷⁶ Wiseman, Jane, and Stephen Goldsmith, “Fairness is Fiscally Responsible.” *Data Smart City Solutions*, Harvard Kennedy School Ash Center, June 27, 2016.

⁷⁷ “Pretrial Justice: How Much Does It Cost?” *Pretrial Justice Institute*.

- 30% more likely to be convicted or plead guilty,
- four times more likely to receive a *jail* sentence,
- three times more likely to receive a *longer jail sentence* than someone who was not detained pretrial;
- three times more likely to receive a *prison* sentence; and
- twice as likely to receive a *longer prison sentence* than someone who was not detained pretrial.⁷⁸

Even a few days in jail leads to an increased likelihood of missing school, family contact, and work. The full cost of pretrial detention, therefore, can include family tension, school suspension, unemployment, and homelessness.

Conclusion: Money Bail – if it’s available, it’s used

Pretrial detention practices and the data around who is in jail varies by county. Each county collects its own and often different data. The data collection difficulties in Michigan hinder our attempts to fully understand exactly who is being detained pretrial and for how long. What data we do have, however, clearly demonstrates that judges are likely to impose a financial bond regardless of a defendant’s risk level, the law, the court rules, and the recommendation of pretrial services. Michigan law, court rules, and the research may favor pretrial release – but judges do not. The data we have clearly demonstrates that if judges can impose financial bonds, they will.

⁷⁸ “Pretrial Justice: How Much Does It Cost?” *Pretrial Justice Institute*.