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**Disclaimer**

APPR developed this summary—using online searches of academic databases and publicly available information—to provide an overview of current research on this topic. The online search may not have identified every relevant resource, and new research will shed additional light on this topic. APPR will continue to monitor the research and will update this summary as needed. Due to the broad nature of this summary, readers are encouraged to identify areas to explore in depth and to consider the local implications of the research for future advancements related to pretrial goals, values, policies, and practices.

# Pretrial Detention

**The United States Supreme Court has held that “In our society, liberty is the norm and detention prior to trial or without trial is the carefully limited exception.”<sup>1</sup> When evaluating policies and practices that impact the use of pretrial detention, jurisdictions must balance their interest in preventing flight and enhancing public safety with each person’s right to liberty and fair treatment under the law. This summary examines the current base of knowledge regarding the short- and long-term impacts of pretrial detention on court appearance, community safety and well-being, case outcomes, and the lives of those detained before trial.**

Pretrial research is always evolving. This research summary, which was updated in April 2024, includes findings from recently published studies that may slightly change the interpretation of the takeaways and conclusions presented in the earlier document. To explain why these slight changes occurred or why there might not be a singular conclusion, greater detail is provided on research study methodology, and additional guidance is offered on how to interpret findings. Overall, the inclusion of more recent research and a closer critique of past studies have not significantly altered the key findings previously presented to the field.

Several updates have been made to this summary, including:

- two updated studies,
- the inclusion of new studies,
- outlines of different research designs and study limitations,
- a new section on collateral consequences, and
- the exclusion of some analyses in the previous version that had weaker links with pretrial detention.

It is hoped that this update will equip readers with a greater understanding of the state of the research in the field.

## What Is Pretrial Detention?

On any given day, there are approximately 466,100 people in jail who are not convicted of their current charges and who are presumed innocent.<sup>2</sup> In fact, pretrial detention has been responsible for virtually all of the net jail growth over the last 25 years.<sup>3</sup>

Pretrial detention occurs when judges deny release prior to a trial (i.e., preventive detention) or set a financial condition of release the person cannot afford. Detention is an important option for responding to people who are accused of committing serious or violent crimes and who are likely to flee or threaten public safety during the pretrial period. Heavy reliance on pretrial detention, however, can come at a high price for those involved in the criminal legal system, for their families, for the communities in which they live, and for the system itself (e.g., budget impacts). The societal costs associated with involvement in the criminal legal system are referred to as “collateral consequences.” Some commonly experienced collateral consequences of pretrial detention include decreased earnings, loss of employment, loss of public benefits, and increased likelihood of new arrests.<sup>4</sup>

This summary reviews key research findings on the effect of pretrial detention on court appearances, public safety, and collateral consequences.

Advancing Pretrial Policy and Research is committed to achieving fair, just, equitable pretrial practices that positively impact people, systems, and communities.

The **Center for Effective Public Policy** ([cepp.com](http://cepp.com)) leads APPR’s technical assistance, training, resource development, and website management ([advancingpretrial.org](http://advancingpretrial.org)).

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## Research Designs

Pretrial detention is just one in a complex set of factors that influence whether a person accused of a crime appears in court, remains arrest-free during release, and receives due process and equitable treatment during the pretrial period. Studies vary in their ability to isolate the effects of pretrial detention and to produce causal or more credible findings. Rigorous studies can rule out alternative explanations and more convincingly link an intervention to differences in outcomes (as opposed to suggesting a correlational relationship).

1. **Randomized controlled trials (RCTs)** are considered “the gold standard” in research. People are randomly assigned to either an experimental group (which is subject to an intervention or to a policy or practice change) or to a control group (which is not subject to the intervention or to the policy or practice change). If the sample size is large enough and there is an effective randomization procedure, all of the factors that could influence the outcome other than the intervention or policy change will likely be distributed evenly between the two groups. In this way, differences in outcomes can be explained

by the intervention or policy change alone rather than by an alternative factor. However, within the criminal legal system, it is often difficult or impossible to implement RCTs due to logistical and ethical constraints. For this reason, **this research summary does not cite any RCTs.**

2. **Quasi-experimental studies** aim to estimate the effect of an intervention, policy, or practice without random assignment driven by the researcher (e.g., differences in judicial officers' preferences for the use of pretrial detention, changes to pretrial release policies).<sup>5</sup> Quasi-experimental studies encompass a broad range of approaches: more rigorous quasi-experimental studies can produce causal estimates while weaker quasi-experimental studies may leave the door open to alternative explanations. **The studies cited in this research summary are primarily quasi-experimental studies.**
3. **Descriptive or correlational studies** examine differences in outcomes between nonequivalent groups that were or were not subject to an intervention or to a policy or practice change. Under these designs, it is difficult to attribute any changes in outcomes to an intervention. Differences in outcomes may be driven by pre-existing differences or alternative explanations. In general, strong conclusions should not be drawn from these studies. However, because descriptive or correlational studies are still informative and can pave the way for more rigorous studies, **this research summary cites some descriptive or correlational studies.**

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## **Key Finding #1: While Pretrial Detention Ensures Higher Appearance Rates and Lower Pretrial Rearrest Rates, It Can Adversely Affect Long-Term Public Safety Outcomes**

Pretrial detention may increase court appearance rates and reduce arrests for new offenses during the pretrial period simply because people are held in jail; however, research shows that, in the long term, detention may actually increase the likelihood that someone will be arrested again.

Recent studies find that pretrial detention leads to only modest benefits during the pretrial phase and come at a high cost. For instance, from 2013 through 2017, Kentucky implemented an automatic release program that expedited pretrial release for people charged with nonviolent and nonsexual misdemeanors, with the goal of reserving resources for high-risk cases. The policy increased pretrial release rates from 76.6% to 90.3%. Although the failure to appear rate increased

from 10.7% to 14%, there was no statistically significant increase in pretrial rearrest. To put this in perspective, the policy eliminated 9,000 jail bed days each year the policy was in effect with no detectable effect on pretrial arrest and a marginal increase in the annual number of missed court dates.<sup>6</sup>

Moreover, reductions in pretrial arrests due to pretrial detention are largely outweighed by higher recidivism rates following case disposition. In New York, Philadelphia, and Miami, studies using a quasi-experimental design found that pretrial detention reduced pretrial rearrest rates but increased post-disposition rearrest rates by comparable levels.<sup>7</sup> In a study examining the effect of pretrial detention on misdemeanor cases in Houston, researchers found that pretrial detention reduced rearrest rates only within the first 30 days of the pretrial release hearing. After 18 months, the average number of new misdemeanor charges was 22.7% higher and the number of new felony charges was 30.9% higher for people who had been detained compared to people who had been released.<sup>8</sup> These studies find that pretrial detention negatively impacts public safety in the long run by increasing the chances of future criminal legal system involvement.

*Pretrial detention decisions can increase appearance rates and lower arrest rates during the pretrial period, but these short-term benefits may be outweighed by the long-term effects on public safety.*

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## Key Finding #2: Pretrial Detention Negatively Impacts Case Outcomes and Sentencing Decisions

Beyond pretrial and recidivism outcomes, several of the studies described above found that pretrial detention initiates a range of adverse consequences, many of which accumulate over time. Foremost, pretrial detention negatively impacts sentencing outcomes. In New York, Philadelphia, Miami, Houston, and Kentucky, quasi-experimental studies found that pretrial detention increased:

- overall conviction rates,
- the probability of pleading guilty,
- incarceration rates, and
- incarceration length.<sup>9</sup>

Researchers have offered some possible explanations for the more punitive outcomes and sentences. Multiple studies have demonstrated that detaining people who cannot meet financial release conditions

pretrial creates an incentive for people to plead guilty to exit jail.<sup>10</sup> Indeed, Stevenson’s 2018 study in Philadelphia suggests that many people who were detained because they were unable to pay higher bond amounts would have had their cases dropped or received an acquittal had they been able to afford an earlier release.<sup>11</sup> Pretrial detention led to a 13% increase in the likelihood of being convicted, a 42% increase in the length of incarceration sentences, and a 41% increase in the amount of nonbond court fees owed.

In addition, people detained pretrial are less able than their released counterparts to develop a stronger defense by working more closely with their attorneys or collecting relevant evidence. People who are released also have more opportunities to demonstrate positive behavior while on release—such as paying restitution, seeking treatment for substance use or mental illness, or engaging in activities to further their education or career—which can impact a judge’s sentencing decision.<sup>12</sup> One study examining the effect of pretrial detention on federal sentencing outcomes highlights the importance of being able to demonstrate positive behavior while on release.<sup>13</sup> The study found that pretrial release reduced sentence length, increased the probability of receiving a sentence below the federal guideline’s recommended sentence, and decreased the likelihood of receiving a mandatory minimum. Pretrial detention, by contrast, deprives a person of all these potential benefits.

Altogether, this research points to potential constitutional and ethical issues when pretrial detention is based on someone’s ability to pay a financial condition of release rather than on their likelihood to flee or threaten public safety. When that occurs, people with greater economic means receive more favorable outcomes and more lenient sentences based solely on their wealth.

*Research shows that people detained pretrial are more likely to plead guilty and receive harsher punishment than those released pretrial. For example, they are more likely to be sentenced to jail or prison, and their sentence lengths are likely to be longer.*

### Key Finding #3: Pretrial Detention Amplifies the Collateral Consequences of Contact with the Criminal Legal System

From a social costs perspective, pretrial detention can lead to many collateral consequences. For example, pretrial detention can reduce people’s ability to meet their basic needs, place stress on families, and remove people from prosocial institutions.<sup>14</sup> These disruptions can offset the short-term benefits of pretrial detention described above, including lower failure to appear rates and fewer new arrests while cases are pending.<sup>15</sup> In addition, collateral consequences, combined with a higher likelihood of receiving a criminal record when a person is detained pretrial, can contribute to worse opportunities in the long term, including reduced public safety.

Research finds that pretrial detention negatively affects **education and employment outcomes**. In Michigan, a study compared youth detained pretrial to other similarly situated youth who were not detained after criminal legal system contact. The study found that juvenile pretrial detention increased the likelihood of court appearance by 18.5%, but detention also decreased graduation rates by 37.7% and increased rearrest rates by age 19 by 27%.<sup>16</sup> In Philadelphia and Miami, people who were released pretrial were 24.9% more likely to be employed in the formal labor sector and 23.2% more likely to have any income within three to four years of their pretrial release hearing.<sup>17</sup> Pretrial release also increased the receipt of government benefits; the combined increase in formal earnings and government benefits translated to a little over a thousand dollars a year. Similarly, the 2018 New Jersey Criminal Justice Reform Act restricted the use of pretrial detention and was found to increase employment rates among Black people between 4.2 to 6.8 percentage points.<sup>18</sup>

Studies from non-U.S. countries can also illuminate these issues, in part because they allow greater access to administrative data than is possible under American law. While the non-U.S. contexts are different, these novel studies highlight how pretrial detention can influence collateral consequences in ways that may extend to the United States. One such study, in Chile, found that pretrial detention reduced formal employment rates and average monthly wages for as long as 24 months after the final trial verdict.<sup>19</sup> These reductions were driven by exclusion from the labor market both before and during the trial, the accompanying social stigma, and the impact of pretrial detention on the likelihood of post-verdict incarceration.

Growing research also suggests that pretrial detention is associated with **family and housing instability**. In Denmark, pretrial detention disrupted preexisting household arrangements and was associated with a higher likelihood of moving away from a partner or children. The study found small and statistically insignificant differences in recidivism rates, suggesting that pretrial detention provided no counterbalancing payoff for public safety.<sup>20</sup> Using interviews in New York, researchers surveyed detained people versus released people while controlling for the legal characteristics of their cases: those detained reported more difficulty caring for their children, they were less likely to be able to pay rent, and they were more likely to become unhoused.<sup>21</sup>

These studies are only beginning to uncover the adverse reach of pretrial detention; it would not be difficult to imagine that pretrial detention negatively impacts other key domains, like civic participation. On top of that, the adverse consequences of pretrial detention can persist across generations. Across the 75 largest counties in the United States, increases in pretrial detention rates over time were associated with increases in poverty rates and decreases in intergenerational mobility, much of which is disproportionately concentrated among Black people.<sup>22</sup>

*Pretrial detention amplifies collateral consequences, which can undermine public safety in the long term.*

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## Best Practice Recommendations

Professional practice standards are consistent with the findings of the research literature and, importantly, with the legal principle that courts must impose the “least restrictive conditions” necessary to provide a reasonable assurance of court appearance and community well-being and safety.<sup>23</sup>

### 1. American Bar Association (ABA)

*ABA Standards for Criminal Justice: Pretrial Release* provides multiple practice standards for pretrial release, including (but not limited to) the following:

- Standard 10-1.1 describes the purposes of the pretrial release decision: “The purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference...The law favors the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to

economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support.”

- Standard 10-1.2 recommends release under the least restrictive conditions, suggests diversion and other release options, and states that detention should be considered only under certain circumstances: “In deciding pretrial release, the judicial officer should assign the least restrictive condition(s) of release that will reasonably ensure a defendant’s attendance at court proceedings and protect the community, victims, witnesses or any other person. Such conditions may include participation in drug treatment, diversion programs or other pre-adjudication alternatives. The court should have a wide array of programs or options available to promote pretrial release on conditions that ensure appearance and protect the safety of the community, victims and witnesses pending trial and should have the capacity to develop release options appropriate to the risks and special needs posed by defendants, if released to the community. When no conditions of release are sufficient to accomplish the aims of pretrial release, defendants may be detained through specific procedures.”
- Standard 10-1.3 calls for the use of citations and summonses: “The principle of release under least restrictive conditions favors use of citations by police or summons by judicial officers in lieu of arrest at stages prior to first judicial appearance in cases involving minor offenses.”
- Standard 10-1.6 builds on Standard 10-1.2, considering detention as an exception to policy favoring release: “These Standards limit the circumstances under which pretrial detention may be authorized and provide procedural safeguards to govern pretrial detention proceedings. They establish specific criteria and procedures for effecting the pretrial detention of certain defendants after the court determines that these defendants pose a substantial risk of flight, or threat to the safety of the community, victims or witnesses or to the integrity of the justice process. The status of detained defendants should be monitored and their eligibility for release should be reviewed throughout the adjudication period. The cases of detained defendants should be given priority in scheduling for trial.”<sup>24</sup>

## **2. The National Association of Pretrial Services Agencies (NAPSA)**

*Standards on Pretrial Release* provides multiple practice standards for pretrial release, including (but not limited to) the following:

- Standard 1.1: “The goals of bail are to maximize release, court appearance and public safety” (p. 5).
- Standard 1.3: “A presumption in favor of release on one’s own recognizance with the requirements to appear in court at scheduled



court appearances and not engage in criminal activity should apply to all defendants” (p. 7).

- Standard 1.6: “Pretrial detention should be authorized but limited only to when the court finds by clear and convincing evidence that a detention-eligible defendant poses an unmanageable risk of committing a dangerous or violent crime during the pretrial period or willfully failing to appear at scheduled court appearances. Detention prior to trial should occur only after a hearing that guarantees a defendant’s due process and equal protection rights and includes explicit consideration of less restrictive options” (p. 13).
- Standard 2.1: “An array of options should be available to law enforcement before the initial court appearance to facilitate release of lower-risk defendants or as choices besides traditional arrest and case processing when appropriate” (p. 18).
- Standard 3.1(a): “Jurisdictions should develop guidelines that authorize criminal justice agencies to review and, where appropriate, release arrestees before the initial court appearance” (p. 37).
- Standard 3.2(a): “Defendants who have not been released pursuant to 3.1(a) should be brought immediately before a judicial officer for an initial bail determination” (p. 39).
- Standard 3.4(a): “Jurisdictions should define and justify the criteria for legal pretrial detention, keeping in mind that ‘liberty is the norm and detention should be the carefully limited exception’” (p. 47).
- Standard 3.4(b): “At the initial pretrial court appearance, the Court may order the temporary detention of the defendant pending a formal pretrial detention hearing if...(iii) the Court finds by a preponderance of the evidence that the defendant poses an unmanageable risk to commit a dangerous or violent offense or to willfully fail to appear for scheduled court appearances” (p. 48).
- Standard 3.4(c): “Unless a continuance is requested by the defense, the formal pretrial detention hearing should be held within five working days of the initial pretrial court appearance” (p. 49).
- Standard 3.4(h): “The Court should state in writing within three working days of the formal pretrial detention hearing the factual basis for its finding that, by clear and convincing evidence, the defendant poses an unmanageable risk to commit a dangerous or violent offense or to willfully fail to appear for scheduled court appearances” (p. 51).
- Standard 3.4(i): “Detained defendants should have their cases placed on an accelerated calendar. Jurisdictions should establish a finite time period from the detention order to the start of trial” (p. 52).<sup>25</sup>

### **3. National Institute of Corrections (NIC)**

*A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency* specifies elements of an effective pretrial system and states that pretrial release and detention decisions should be designed to maximize release, court appearance, and community well-being and safety. It also states that jurisdictions should have a legal framework that includes release options that follow or are in lieu of arrest, restrictions on detention for a limited and clearly defined type of defendant, and the consideration of release for defendants eligible by statute for pretrial release, with no locally imposed exclusions not permitted by statute.<sup>26</sup>

## Notes

1. *U.S. v. Salerno*, 281 U.S. 739, 755 (1987).
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3. Sawyer, W., & Wagner, P. (2023). *Mass incarceration: The whole pie 2023*. Prison Policy Initiative. <https://www.prisonpolicy.org/reports/pie2023.html>
4. Dobbie, W., Goldin, J., & Yang, C. S. (2018). The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *American Economic Review*, 108(2), 201–240. <https://pubs.aeaweb.org/doi/pdf/10.1257/aer.20161503>; Leslie, E., & Pope, N. G. (2017). The unintended impact of pretrial detention on case outcomes: Evidence from New York City arraignments. *Journal of Law and Economics*, 60(3), 529–557. [http://econweb.umd.edu/~pope/pretrial\\_paper.pdf](http://econweb.umd.edu/~pope/pretrial_paper.pdf); Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). *Investigating the impact of pretrial detention on sentencing outcomes*. Laura and John Arnold Foundation. [https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF\\_Report\\_state-sentencing\\_FNL.pdf](https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_state-sentencing_FNL.pdf)
5. In RCTs, researchers develop a protocol in which they can *directly manipulate* what happens as part of the random assignment of cases to study conditions (e.g., every other eligible case on a docket receives the intervention). In contrast, certain quasi-experimental designs may apply advanced statistics to leverage how existing policies facilitate the quasi-random assignment of cases to different conditions. If researchers are unable to estimate random assignment, there are other quasi-experimental designs, such as the comparison of the relative change in outcomes for the group affected by the policy against a group unaffected by the policy before and after the policy implementation (this design is also called differences-in-differences). This process helps isolate the effect of the focal policy from other changes that affect both groups over time and helps researchers rule out plausible alternative explanations.
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7. Dobbie et al., 2018; Leslie & Pope, 2017
8. Heaton, P., Mayson, S., & Stevenson, M. (2017). The downstream consequences of misdemeanor pretrial detention. *Stanford Law Review*, 69, 711–794. [https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=2148&context=fac\\_artchop](https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=2148&context=fac_artchop)
9. Dobbie et al., 2018; Heaton et al., 2017; Leslie & Pope, 2017; Lowenkamp et al., 2013
10. Dobbie et al., 2018; Heaton et al., 2017; Leslie & Pope, 2017; Petersen, N. (2019). Do detainees plead guilty faster? A survival analysis of pretrial detention and the timing of guilty pleas. *Criminal Justice Policy Review*, 31(4), 1–21. [https://www.researchgate.net/publication/332174820\\_Do\\_Detainees\\_Plead\\_Guilty\\_Faster\\_A\\_Survival\\_Analysis\\_of\\_Pretial\\_Detention\\_and\\_the\\_Timing\\_of\\_Guilty\\_Pleas](https://www.researchgate.net/publication/332174820_Do_Detainees_Plead_Guilty_Faster_A_Survival_Analysis_of_Pretial_Detention_and_the_Timing_of_Guilty_Pleas)
11. Stevenson, 2018
12. Heaton et al., 2017
13. Didwania, S. H. (2020). The immediate consequences of federal pretrial detention. *American Law and Economics Review*. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2809818](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2809818). In the federal system, almost all cases eventually end in a conviction, which allowed the study to identify mitigating factors, such as demonstrating positive behavior on pretrial release, as a key channel through which a person's pretrial detention or release influences downstream outcomes.
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17. Dobbie et al., 2018
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23. 18 U.S.C. § 3142(c)(1)(B); *Salerno*, 481 U.S. at 754.
24. American Bar Association. (2007). *ABA standards for criminal justice: Pretrial release* (3rd ed.). [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_pretrialrelease\\_blk/](https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk/)
25. National Association of Pretrial Services Agencies. (2020). *Standards on pretrial release: Revised 2020*. <https://drive.google.com/file/d/1edS2bltwfNR OieGeu1A6qKlUfzqop92/view>
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