



PLANK 2:

Enact common sense pretrial justice.

Every night, [nearly half a million people](#) sit in jail across America — not because they’ve been convicted of any crime, but often because they can’t afford [money bail](#). The current system of incarcerating so many people while they are legally innocent is racist, morally reprehensible, and unconstitutional.

This profound injustice devastates families and communities. Being jailed before trial rips parents from their families. It [increases people’s likelihood of conviction and of committing another crime](#). It causes people who are detained to lose their jobs and homes. It [significantly increases the likelihood of future unemployment](#) for those detained. It exposes people to [infectious disease](#), [mental illness](#), [unsanitary conditions](#), [sexual assault](#), and even [death](#) from suicide, violence, or medical inattention. Put simply, it robs [billions of dollars](#) from communities and the economy, and it causes immeasurable harm to those who can least afford it.

The time has come to completely overhaul the pretrial system and to ensure people are supported and their pretrial liberty is maximized. Drastically reducing the number of people incarcerated pretrial means less money spent on jails and more money spent on local community-based efforts surrounding child care, housing, mental health and drug treatment, and other non-carceral programs. These sorts of investments will help keep communities safe while allowing people facing charges to show up for their court dates without the use of restrictive conditions.

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State Policy Priorities

Eliminate wealth-based discrimination in the pretrial process

- Eliminate the use of money bail as a way of unconstitutionally detaining people.
- Eliminate all pretrial fees.
- Pass legislation to address excessive fines and fees, including in the juvenile legal system; see **Plank 4: Decriminalize poverty** for more information.

Preserve the presumption of innocence

- Automatically release everyone charged with a misdemeanor or felony, including only the narrowly drawn exceptions noted below for cases in which release threatens the safety of a specific person or persons. People should be released using a “cite and release” program that avoids the need for police processing or jail booking; the only condition should be that the person returns to court.
- Ensure that any accused individual has counsel available and is able to advocate zealously at any proceeding where their fundamental right to liberty is jeopardized, including at bail or pretrial detention hearings; see **Plank 3: Ensure a right to effective counsel for all** for more information.
- Ensure that neither probation offices nor other enforcement agencies, or any for-profit entities, bear responsibility for providing pretrial services — including, but not limited to, engaging in monitoring, surveillance, and searches.
- Ensure that, before issuing bench warrants, courts make repeated, documented efforts to contact the individual and wait an appropriate amount of time, such as a week following the missed appearance.
- Restrict the practice of direct filing youth to be prosecuted in adult court.

Make pretrial detention the carefully limited exception

- Ensure that eligibility for pretrial detention (the “detention eligibility net”) is extremely limited, including only the most serious felony cases.
 - Before imposing conditions or detention, require robust hearings that start by presuming innocence and, accordingly, release. The prosecutor must present evidence that the individual has committed the crime charged, and that the crime charged is eligible for detention. Failure to present evidence in this hearing would not result in dismissal of the case, but only in release from pretrial detention. Similarly, testimony in this hearing must not be admissible in subsequent proceedings, except for as a prior inconsistent statement when applicable. This hearing, while similar to a “probable cause” hearing, must not replace the need for a formal preliminary hearing. Such a process must require, at minimum:

- The right to appointed counsel immediately following arrest;
 - A written record justifying detention or any release conditions imposed, as described in the below bullet;
 - The right to discovery;
 - The right to testify, present witnesses, cross-examine witnesses, and present evidence;
 - The right to a good cause continuance; and
 - The right to appeal and to have decisions speedily reviewed.
- Ensure that, before imposing onerous conditions or detention, judges find by clear and convincing evidence that individuals pose a high risk of intentional flight or of seriously physically harming another reasonably identifiable person or persons during the adjudication period. Not all jurisdictions currently allow detention based on perceived public safety risk; in New York, for example, courts are not authorized to consider a person’s “dangerousness” in detention decisions. Evidence supporting findings of being a public safety risk must be specific to individuals and not based on generalized characteristics, such as the neighborhood in which they reside or that they are undocumented. Note: This platform in no way supports states adding new grounds for detention.
 - Reduce jail populations by ensuring that essentially all individuals can be released pretrial. For any jurisdictions where fewer than 95 percent of people are released pretrial, create a mandatory review process that provides additional oversight, scrutiny, and guidance that forces these jurisdictions to reduce their pretrial detention rates.
 - Ensure that bail is not revoked over technical violations.

Invest in — and maximize the use of — voluntary supports

- Invest robustly in alternatives to pretrial services that are voluntary, community-led, and restorative.
- Require release conditions to be no more restrictive than necessary to mitigate — and be directly tied to mitigating — the specifically identified risk or risks.
- Automatically offer and provide, without charge, accessible pretrial supports, such as phone, text, or email court reminders, redesigned summons forms, rides to court, childcare, and temporary housing, which help people who have been arrested successfully make court appearances and avoid new arrests. Collect data on the demographics of people who use and receive supports and document the outcomes of those supports.
- Require judicial officers, before imposing any conditions of release, to first consider offering free, non-coercive, fully voluntary supports, including those services listed in the previous bullet.

Minimize detention in the probation and parole contexts

- Ensure that people accused of probation and parole violations receive the same rigorous processes accorded to those who are initially arrested for a crime. (See **Plank 6: Transform probation and parole** for more guidelines surrounding probation and parole.)

Eliminate racial bias and hi-tech harm

- Ensure that restrictive conditions of release, including electronic monitoring, are only available in the same narrow set of cases and afforded the same robust, procedural protections that accompany outright orders of detention, thereby ensuring that no changes in pretrial policies increase the usage of such surveillance and monitoring tools. All costs for electronic monitoring must be paid by the entity imposing the condition.
- Eliminate the use of algorithm-based “risk assessment.” (See [Shared Statement of Civil Rights Concerns](#) for more information regarding the various issues surrounding the use of algorithm-based risk assessment.)

Ensure transparency through data collection and reporting

- Require robust, timely collection and reporting of pretrial detention and release data so that communities can monitor whether racial and/or other disparities persist. Specifically, data must be automatically collected before trial for each individual detained and must include information about race and ethnicity, age, gender, sexual orientation, gender identity, disability, and religion.
- Require reporting of all prosecutorial decision-making (*i.e.*, charging decisions and other discretionary decisions).

Reinvest in justice

- When implementing the policy changes described in this section, calculate the money “saved” and reinvest it in non-carceral, community-led programming or infrastructure that is selected through a participatory, community-involved process. Such investments may include, but are not limited to, drug and alcohol treatment, job training, youth programs, financial literacy, and childcare for communities traditionally impacted by over-policing and discriminatory bail practices. Under no circumstances should money saved through pretrial transformation directly support police activities.

Federal Policy Priorities

Make pretrial detention the carefully limited exception

- Set clear targets for reducing pretrial detention: Before the Bail Reform Act of 1984, the federal pretrial [detention rate was 24 percent](#); now, [it is almost 70 percent](#). Policymakers should set clear metrics for reversing this increase and enact legislation that reflects [the reality that 99 percent of people released pretrial appear for court and more than 98 percent are not rearrested on release](#).
- Limit the federal detention eligibility net to only the most serious offenses, keeping with [recent state legislation](#), and remove all drug offenses. Further limit the eligibility net by making detention [discretionary rather than mandatory for flight risk](#).
- Narrow the standard for detention based on flight risk by requiring a finding by clear and convincing evidence, keeping with the Due Process Clause, state legislation, and recent [state rulings](#). Further narrow the flight risk standard by requiring a prosecutor to prove, [based on individualized facts, that the person's release creates a high risk of intentional non-appearance in court and that no conditions of release could reasonably mitigate that risk](#).
- Narrow the standard for detention based on community safety concerns by requiring a finding [by clear and convincing evidence, based on individualized facts, that the person's release creates a specific and substantial risk that the person will cause bodily injury or use violent force against a reasonably identifiable person or persons and that no conditions of release could reasonably mitigate that risk](#).

Eliminate wealth-based discrimination in the pretrial process

- Eliminate all financial conditions of release. Financial conditions in the federal system [enable the rich to buy their freedom while low-income people are forced to rely on bail bonds](#) or suffer detention when their [family isn't wealthy enough to cover high unsecured bonds](#).
- Require the appointment of counsel at all initial appearance hearings for anyone who cannot afford counsel to eradicate the unconscionable federal practice of jailing people without lawyers.

Preserve the presumption of innocence

- Direct the attorney general to minimize arrests, decline to seek detention of individuals at their initial appearance in court, and consent to the release of those already detained, absent clear and convincing evidence that the person poses a specific threat of violence to a specific person or persons.

- Eliminate [existing “presumptions” of pretrial detention](#) — e.g., the “previous violator presumption” and “drug and firearm offender presumption” — and institute reforms so that the federal system conforms, as closely as possible, to the State Policy Priorities in the full platform. The presumptions [create racial disparities and have become an almost de facto detention order for approximately half of all federal cases and 93 percent of federal drug cases](#).

Uphold human rights

- Pass legislation to hold the United States Marshals Service accountable for its failure to ensure humane conditions of confinement for those in its custody and to implement adequate oversight of federal pretrial detention.

Ensure transparency through data collection and reporting

- Collect and publish federal pretrial release and detention data, especially data about disparities based on race, disability, and other categories, which is [currently not available to the public](#). Use this data to create legislation that specifically targets the laws and policies underlying these disparities. Additionally, pass legislation to require the release of demographic data about the pretrial population from the Department of Justice and Administrative Office of the Courts.

Reinvest in justice

- Require the federal government to calculate savings from the policy changes described in this section and reinvest it in community-based, community-led services, including drug and alcohol treatment centers, job training, youth programs, financial literacy, and child care for communities adversely impacted by discriminatory bail practices.

Incentivize state pretrial policy change

- Use Section 5 of the 14th Amendment to end unconstitutional wealth-based detention in state and local jails — pretrial detention that occurs solely because people are too poor to pay money bail.
- Pass legislation that incentivizes states to transform their pretrial systems into systems that truly respect the fundamental right to pretrial liberty. (See *State Policy Priorities*).