



THE UNIFORM PRETRIAL RELEASE AND DETENTION ACT (2020)

– A Summary –

The United States has the highest rate of incarceration in the world, with an estimated 2.3 million people in U.S. jails and prisons.¹ Pretrial detention, in which an individual is held in jail while awaiting trial, contributes significantly to the large number of people who are incarcerated. There are nearly half a million people confined in local jails on any given day in this country who have been charged with a crime but not yet tried or convicted. Nearly all of these people held in jail, presumed to be innocent while awaiting trial, are held because they cannot afford the bail which has been set.

Money bail, one of the tools used by courts to ensure that a person accused of committing a crime will return to court for trial, is common in most places throughout the United States. Bail, in its most ideal form, serves two purposes. First, it allows individuals to continue their daily lives while they await further court actions, thus maintaining the American ideal of innocent until proven guilty. Second, it incentivizes the accused to attend future court hearings or face financial consequences.

Most states rely on bail as the mechanism to ensure that a defendant will appear in court. The accused person who can pay cash bail or afford a commercial bond gets to go home immediately. Individuals who cannot pay the bail set by the court are detained pretrial, placing a disproportionate burden on low-income defendants. Therefore, whether an individual is jailed for months or years awaiting trial depends, in large part, on the person's wealth. Under the current system, the American ideal mentioned above is bifurcated—the wealthy are innocent until proven guilty, and the poor are guilty until proven innocent.

In an effort to eliminate or mitigate wealth-based disparities in detention, many states have been taking a closer look at their laws and considering alternatives to money bail. States have been making two general policy choices to address the issue: (1) eliminate the use of cash bail for misdemeanor or low-level felony cases; or (2) replace money bail with risk assessment tools.

The Uniform Pretrial Release and Detention Act responds to the need for a comprehensive and balanced statute to guide courts in making pretrial release and detention decisions for the hundreds of thousands of persons charged with crimes, many of which are minor, each year in state courts. The Act provides a comprehensive procedural framework for release and detention determinations.

The Act has three main objectives:

1. To offer a clear, coherent, and workable framework for pretrial release and detention that strikes an appropriate balance between an individual's interest in liberty versus the state's interest in public safety and ensuring the effective administration of justice.
2. To limit restrictions on pretrial liberty to those necessary to meet the state's compelling interests during the pretrial phase.
3. To provide enough flexibility to accommodate variations in state constitutional structure and policy preferences.

¹ <https://www.prisonpolicy.org/reports/pic2020.html>

Article 2 – Citation and Arrest

Article 2 of the Act contains provisions to guide the first interaction between an individual and a law enforcement officer. The Act provides an option to the states to enact a provision requiring citations over arrests in certain circumstances, limiting authority to arrest for certain classes or types of minor offenses. Article 2 outlines the information that the citation must include, and if a court appearance is required, when and where the individual must appear. Experience suggests that presenting this information clearly can help to minimize failures to appear in court.

Article 3 – Release Hearing

The Act requires that an arrested individual be brought before a court within 48 hours of arrest for an initial appearance, called a “release hearing” in the act. At the release hearing, the court must determine by clear and convincing evidence whether the accused is likely to engage in certain behaviors that would unduly threaten public safety or the administration of justice. If not, the court must release the defendant on recognizance. If the court determines that there is such a likelihood, the court must impose the least restrictive means to address the identified risk. In limited circumstances, the Act provides for temporary detention. As a general matter, the Act prohibits financial conditions of release that the defendant cannot satisfy.

Notably, Article 3 draws a distinction between a risk of nonappearance versus a risk of absconding. The term “nonappearance” corresponds in meaning with “not appear,” which is defined as “fail to appear in court as required without the intent to avoid or delay adjudication.”

Article 4 – Detention Hearing

The Act anticipates that a small fraction of defendants may present a great enough risk to justify pretrial detention. The Act authorizes a court to temporarily detain a defendant or impose unaffordable bail only if it finds that certain substantive and procedural criteria are met. If a defendant is held, the Act provides for a prompt detention hearing and establishes substantive and procedural standards that must be satisfied before the court may issue an order of pretrial detention or an order that otherwise *results* in continued detention, which includes imposing unaffordable bail amounts. Article 4 provides the procedural and substantive requirements to govern the detention determination. Article 4 establishes the standard for detention, which essentially mirrors the standard for temporary detention under Article 3.

The Act adopts the core procedural guarantees that can be found in the federal system (specifically the federal Bail Reform Act of 1984): the court must provide counsel to an indigent defendant; the court must conduct an adversarial hearing; and the court must find by clear and convincing evidence that detention is necessary.

Conclusion

While money bail can be a useful tool to ensure that accused individuals appear in court, statistics have shown that the use of money bail has caused significant harms to low-income populations and largely affects people of color. Furthermore, studies have shown that the use of money bail often leads to pretrial detention of accused individuals which contributes to negative outcomes in their cases and increases the financial burden on taxpayers and state and local criminal justice budgets. Detained defendants lose jobs, housing, and even custody of children. Pretrial detention has a negative impact on economic prospects

and increases the likelihood of recidivism. Detained defendants often plead guilty in order to go home with sentences of “time served”—even those who might otherwise be acquitted or have their charges dismissed—because they can’t afford to remain in jail any longer awaiting a trial that would clear their name.

Under the Act, courts must use fact-based information to make decisions regarding the release or detention of persons who have been arrested and charged with crimes. The goal of the Uniform Pretrial Release and Detention Act is to maximize pretrial liberty for those presumed to be innocent without sacrificing public safety.

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