

# FLORIDA VOTERS WANT A COMMONSENSE APPROACH TO PRETRIAL JUSTICE

Too many people are in Florida jails simply because they cannot afford money bond—and voters believe it is time for this situation to change. A new poll from the Pretrial Justice Institute and the James Madison Institute shows that Florida voters think pretrial justice should focus on public safety, not on ability to pay, and they strongly support helping people who are released before trial to be successful in the community.

## WHAT DO FLORIDA VOTERS WANT?

It is a fundamental American value that our institutions treat all people fairly and equally. However, money bail creates a two-tiered system of justice. People who can buy their release are free before trial, while people who cannot afford bond amounts remain locked up. The new poll, conducted in May 2018, found that Florida voters want their pretrial justice system to reserve detention for the relatively few people who pose a threat to community safety; to release those who can be successful in the community before trial; and to provide community-based services to those who need them.

## WHAT IS PRETRIAL JUSTICE?

Pretrial justice is the part of the criminal justice system that begins when a person comes into contact with law enforcement and ends when any resulting charges are resolved—usually through a dismissal, a plea, or a trial. A critically important element of the pretrial process is deciding whether an accused person should be detained in jail because there are no conditions or combination of conditions that would satisfy proven concerns about public safety or court appearance.

“Bail” refers to the conditions a person must adhere to while awaiting trial. Although many people automatically associate the term with secured money bond—aka “money bail” or “cash bail”—it can mean abiding by stay-away orders or curfews, agreeing to update the court of address changes, or agreeing to check in regularly with a supervision office.

The U.S. Supreme Court has ruled that in the United States “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception” (United States v. Salerno, 481 U.S. 739 [1987]). However, Florida, like many other states, falls far short of this ideal. Sixty percent of those detained in Florida jails—35,000 people on any given day—are awaiting trial, at an average cost of more than \$815 million per year to Florida taxpayers.<sup>1</sup>

This poll was commissioned by the Pretrial Justice Institute in partnership with the James Madison Institute and was designed and administered by Lake Research Partners. The survey was conducted by phone using professional interviewers and reached a total of 717 registered voters (weighted sample of N=664) in Florida. The survey was conducted May 2–17, 2018.

Telephone numbers for the survey were drawn from a file of registered voters. The sample was stratified geographically to reflect the expected composition of registered voters statewide. Data were weighted by gender, age, education, party identification, race, and region. The margin of error for the survey is +/- 3.7%.



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Specifically, voters want the pretrial justice system to:

**Reduce Arrests**

Pretrial is the “front door” of the criminal justice system; to reduce the system population overall, fewer people must pass through this door. Jail need not be the result of every contact with law enforcement. Issuing citations, for

example, allows law enforcement officers to present people with a date to appear in court instead of taking them into custody—reducing officer time spent on low-level cases. Seventy-eight percent of registered voters polled in Florida favor reducing the number of arrests for low-level, nonviolent offenses by issuing citations for those offenses.<sup>2</sup> Eighty-two percent favor providing court reminders or supervision for people awaiting trial in the community, which are effective ways of having people show up to court dates without using detention.<sup>3</sup>

**Restrict Detention**

Florida voters want their pretrial justice system to focus on maintaining public safety and not to default to incarcerating people who come into contact with law enforcement. Nearly nine out of 10 (89 percent) would allow judges to detain people charged with a serious violent crime when it has been found in court that no other options would get them back to court or protect public safety.<sup>4</sup> However, two out of three (67 percent) would prefer an assessment of the person that takes into account his or her likelihood of endangering public safety over an assessment that takes into account the person’s likelihood of failing to appear in court for trial (13 percent).<sup>5</sup>

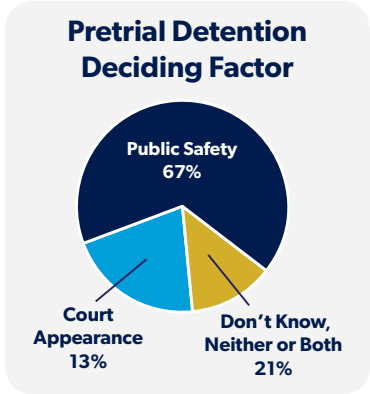
Respondents also want limits on the system’s ability to detain. A majority (55 percent) think prosecutors should have to make the case for pretrial detention rather than people having to make the case for their own release.<sup>6</sup>

**LATINX VOTERS WANT FAIR AND COMMONSENSE SOLUTIONS**

Latinx communities are disproportionately penalized by pretrial decisions that are based on wealth. PJI polled Latinx voters nationally to identify what they see as problems and issues in the criminal justice system. Some key results include:

- 91% of registered Latinx voters, nationally, are dissatisfied with the criminal justice system.
- Nearly nine of out 10 believe that the wealthy enjoy substantially better criminal justice outcomes.
- Almost three in four Latinx voters (73%) would limit how long a person could be jailed before trial on non-serious offenses due to an inability to pay money bail.
- Latinx voters overwhelmingly support providing community-based programming, such as mental health counseling (91%) and assistance for victims of domestic violence (95%) to people who have been released before trial.

For more, read [Latinx Voters Want Commonsense Pretrial Reform](#) [\(Link\)](#)



Floridians also believe that many people who are arrested may be better served by community support services than by jail. Ninety-one percent of respondents would provide supports for people who are victims of domestic violence, while 81 percent would help those with drug or alcohol dependencies.<sup>7</sup> Ninety percent of respondents also would provide support services for people who have mental health needs.<sup>8</sup> Research supports this idea, showing that when people who are likely to succeed on pretrial release are detained, usually because of money bond, they are more likely to be arrested in the future.<sup>9</sup> This is likely because even a few days in jail have destabilizing effects on employment, housing, and families.

**Replace Money Bond**

Florida voters understand that secured money bond does not guarantee public safety and they do not want people locked up because they are poor. Fifty-nine percent of respondents support the use of unsecured bonds (bond that is paid only if the person does not appear in court)<sup>10</sup>, and 71 percent of poll respondents want to limit how many days people not charged with serious violent crimes can remain in jail before trial if they cannot afford money bond.<sup>11</sup>

Respondents also showed enthusiasm for services that help people get to court: 77 percent support providing reliable transportation to court for people awaiting trial who don't have the money to get there,<sup>12</sup> and 82 percent support educational courses and counseling to help people released before trial show up for court and not get arrested for new crimes.<sup>13</sup>

**Raise Equity**

The people of Florida believe that the criminal justice system does not treat all people fairly.

**You Cannot Improve What You Cannot Measure**

In spring 2018, Florida enacted historic legislation (S 1392) requiring the collection and public release of criminal justice data as a means of guiding and measuring the impact of reforms. The law includes data on a number of key pretrial measures:

- who is being assigned bail and for what kinds of charges;
- the amount of bail defendants must pay to be released from pretrial detention;
- who is unable to pay bail; and
- the rate of pretrial release conditions violations.

The law will also track the number of people for whom a pretrial assessment was used—and not used—in determining whether release. It fills a significant gap<sup>16</sup>, too, by requiring collection of data on ethnicity; as a result, for the first time, it is expected that system stakeholders and communities will be able to quantify how Latinx, the largest ethnic group in Florida, are treated by the criminal justice system.

Four out of five Florida voters (81 percent) believe the wealthy enjoy significantly better outcomes from the criminal justice system than the poor and working class.<sup>14</sup> Moreover, a majority of respondents (59 percent) agree that white people enjoy substantially better outcomes from the criminal justice system than African Americans, Latinxs, and other people of color, with 86 percent of African Americans, 65 percent of Latinxs, and 48 percent of whites in agreement with this statement.<sup>15</sup>

They are right. Research shows that people who cannot afford to bond out of jail are more likely to be found guilty and to receive longer

sentences than those who are released.<sup>17</sup> Compared to white men charged with the same crime and with the same criminal histories, African-American men receive bail amounts 35 percent higher; for Latinx men, bail is 19 percent higher than that for white men.<sup>18</sup>

## **FLORIDA IS ON ITS WAY, BUT MORE WORK NEEDS TO BE DONE**

System stakeholders in Florida—from judges to prosecutors to defenders—recognize that their pretrial systems need to be improved, and in some places that work has already begun. Broward and Palm Beach counties are participants in the John D. and Catherine T. MacArthur Foundation’s Safety and Justice Challenge, which seeks to end the overuse of jails. Both the State Courts Administrator for Florida and the Florida Bar are leading meetings focused on statewide and local pretrial reform. The Fines & Fees Justice Center is also working with community-based organizations

and system stakeholders in Florida to address the negative impact of fines and fees in the justice system.

The findings from this poll hold an important message for system stakeholders and elected officials who determine pretrial policies and practices. Florida voters support change. They believe the current system is too quick to jail people—often in ways that do not serve public safety, voters’ top priority. Voters also understand that there are commonsense alternatives—and the more they learn about programs such as community-based supports and services, the stronger their backing for reduced reliance on money bond.

For more information about criminal justice and opportunities to improve pretrial policies in Florida, contact these organizations:

[ACLU of Florida](#)  
[Fines & Fees Justice Center](#)  
[James Madison Institute](#)  
[Project on Accountable Justice](#)



## Endnotes

1. <https://www.jamesmadison.org/pre-trial-decision-making/>
2. Q19 (s). “[Do you favor or oppose reducing] the number of arrests for low-level, nonviolent offenses by issuing citations rather than arrests for those offenses?” Oppose, 17%; Don’t Know/Undecided, 5%.
3. Q19 (d). “[Do you favor or oppose providing] court reminders or supervision for people awaiting trial in the community?” Oppose, 14%; Don’t Know/Undecided, 4%.
4. Q19 (t). “[Do you favor or oppose allowing] judges to detain people charged with a serious violent crime in jail without bail when it has been found in court that there are no options to get them back to court or protect public safety?” Oppose, 8%; Don’t Know/Undecided, 2%.
5. Q12. “And when it comes to deciding how to release or not release someone from jail before trial, which would you rather be the deciding factor: an assessment of the person that takes into account their risk to public safety OR an assessment of the person that takes into account their risk of failing to appear in court for trial?” Don’t Know/Neither/Both, 21%.
6. Q11. “And when it comes to deciding how to release or not release someone from jail before trial, would you rather prosecutors have to make the case to keep someone in jail pretrial OR would you rather defendants have to make the case that they should be released?” Defendants should make the case: 28%; Neither/Don’t Know/Both, 17%.
7. Q19 (i). “[Do you favor or oppose] support services for people awaiting trial in the community who are victims of domestic violence.” Oppose, 7%; Don’t Know/Undecided, 1%. Q19 (h). “[Do you favor or oppose] support services for people awaiting trial in the community who suffer from drug or alcohol addictions.” Oppose, 18%; Don’t Know/Undecided, 1%.
8. Q19 (j). “[Do you favor or oppose] support services for people awaiting trial in the community who suffer from mental health issues.” Oppose, 9%; Don’t Know/Undecided, 1%.
9. Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, “[Hidden Costs of Pretrial Detention](#),” Laura and John Arnold Foundation (November 2013).
10. Q19 (m). “[Do you favor or oppose] instead of requiring people to pay money up front to be released from jail pretrial, requir[ing] unsecured bonds, which is a promise to pay a fine if they do not show up for trial.” Oppose, 34%; Don’t Know/Undecided, 6%.
11. Q19 (p). “[Do you favor or oppose limiting] how many days a person not charged with a serious violent crime can stay in jail during pretrial, if they cannot afford money bail.” Oppose, 21%; Don’t Know/Undecided/Refused, 8%.
12. Q19 (f). “[Do you favor or oppose providing] reliable transportation to court for people awaiting trial who don’t have the money to get there.” Oppose, 22%; Don’t Know/Undecided, 1%.
13. Q19 (c). “[Do you favor or oppose providing] educational courses and counseling to help people released before trial show up for their court appearance and not get arrested for new crimes?” Oppose, 15%; Don’t Know/Undecided, 2%.
14. Q7. “Do you feel that the criminal justice system in the U.S. basically treats everyone fairly, or do you feel the wealthy enjoy substantially better outcomes from the criminal justice system than poor and working-class Americans?” Total: Fairly, 15%; Don’t Know, 4%. African-American respondents: Fairly, 6%; Wealthy, 87%; Don’t Know, 6%. Latinx respondents: Fairly, 11%; Wealthy, 82%; Don’t Know, 7%. White respondents: Fairly, 18%; Wealthy, 80%; Don’t Know, 3%.
15. Q9. “Do you feel that the criminal justice system in the U.S. basically treats everyone fairly, or do you feel white people enjoy substantially better outcomes from the criminal justice system than black people, Latino people, and other people of color?” Total: Fairly, 33%; Don’t Know, 8%. African-American respondents: Fairly, 9%; Don’t Know, 5%. Latinx respondents: Fairly, 26%; Don’t Know, 9%. White respondents: Fairly, 42%; Don’t Know, 9%.
16. <http://apps.urban.org/features/latino-criminal-justice-data/>
17. Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, “[Investigating the Impact of Pretrial Detention on Sentencing Outcomes](#),” Laura and John Arnold Foundation (November 2013).
18. T. Schlesinger, “Racial and ethnic disparity in pretrial criminal processing,” *Justice Quarterly*, 22(2), 170–192 (2005).