

AMERICAN JUDGES ASSOCIATION

RESOLUTION 2

WHEREAS, judicial decisions about release or detention of defendants before disposition of criminal charges have a significant, and sometimes determinative, impact on thousands of defendants and communities every day; and

WHEREAS, many of those incarcerated pretrial do not present a substantial risk of failure to appear or a threat to public safety, but do lack the financial means to be released¹; and

WHEREAS, the Department of Justice has advised that the principles of due process and equal protection require that courts not employ bail and bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release²; and

WHEREAS, defendants who are detained are more likely to plead guilty, receive more severe sentences, are offered less attractive plea bargains and are more likely to become 'reentry' clients because of their pretrial detention regardless of charge or criminal history³; and

WHEREAS, race and gender influence whether defendants are released on recognizance⁴ and the amount of bail set, which has long-lasting consequences throughout the justice system;

WHEREAS, evidence-based risk assessment of a defendant's likelihood to appear in court and remain arrest-free while awaiting trial can increase successful pretrial release outcomes without imposing unnecessary financial conditions, impairing the judicial process or threatening public safety; and

WHEREAS, least restrictive monitoring and supervision can greatly improve pretrial outcomes by providing appropriate and tailored conditions for those awaiting trial and adjusting levels based on individual compliance or non-compliance⁵;

NOW, THEREFORE, BE IT RESOLVED that the American Judges Association urges court leaders to:

1. promote and support the adoption of evidence-based risk assessment and management in making the bail determination;⁶

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

http://www.naco.org/sites/default/files/documents/Final%20paper_County%20Jails%20at%20a%20Crossroads_8.10.15.pdf

² <https://www.justice.gov/crt/file/832461/download>; see also, Letter from Maryland Attorney General Bryan Frosh, <http://bit.ly/2es4mwG>

³ https://scholar.princeton.edu/sites/default/files/wdobbie/files/dgy_bail_0.pdf;

http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJ-Research-brief_FNL.pdf

⁴ http://libres.uncg.edu/ir/asu/f/Marcum_CD_2010_Impact_of_Race.pdf;

<http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9125.2003.tb01007.x/abstract>;

<http://scholarworks.gvsu.edu/cgi/viewcontent.cgi?article=1008&context=scjpeerpubs>

⁵ <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=236>

⁶ The Joint Technology Committee of COSCA, NCSC, and NACM states: Jurisdictions can implement a pretrial risk assessment tool using data collected manually from local, state and federal databases, but a pretrial risk assessment tool would ideally be automated and integrated with existing systems that house relevant data.

<http://www.ncsc.org/~media/Files/PDF/About%20Us/Committees/JTC/JTC%20Resource%20Bulletins/IT%20in%20Pretrial%203-25-2016%20FINAL.ashx>.

2. eliminate practices that cause defendants to remain incarcerated solely because they cannot afford to pay for their release;
3. call for the elimination of commercially secured bonds at any time during the pretrial phase;
4. call for the shift from secured to unsecured money bond at any time during the pretrial phase;
5. promote and support the practice of least restrictive graduated conditions of release which can be adjusted per the compliance or non-compliance of the individual;
6. call for the ability of every judge to conduct a preventive detention hearing with full due process protections so that detention eligible defendants are detained under accepted evidentiary standards;
7. promote judicial training and development that addresses how best practices and identifying sources of implicit bias can reduce racial and gender disparities.

Adopted by the AJA Executive committee on January 13, 2017; the resolution will be voted on by the Board of Governors at their next meeting.