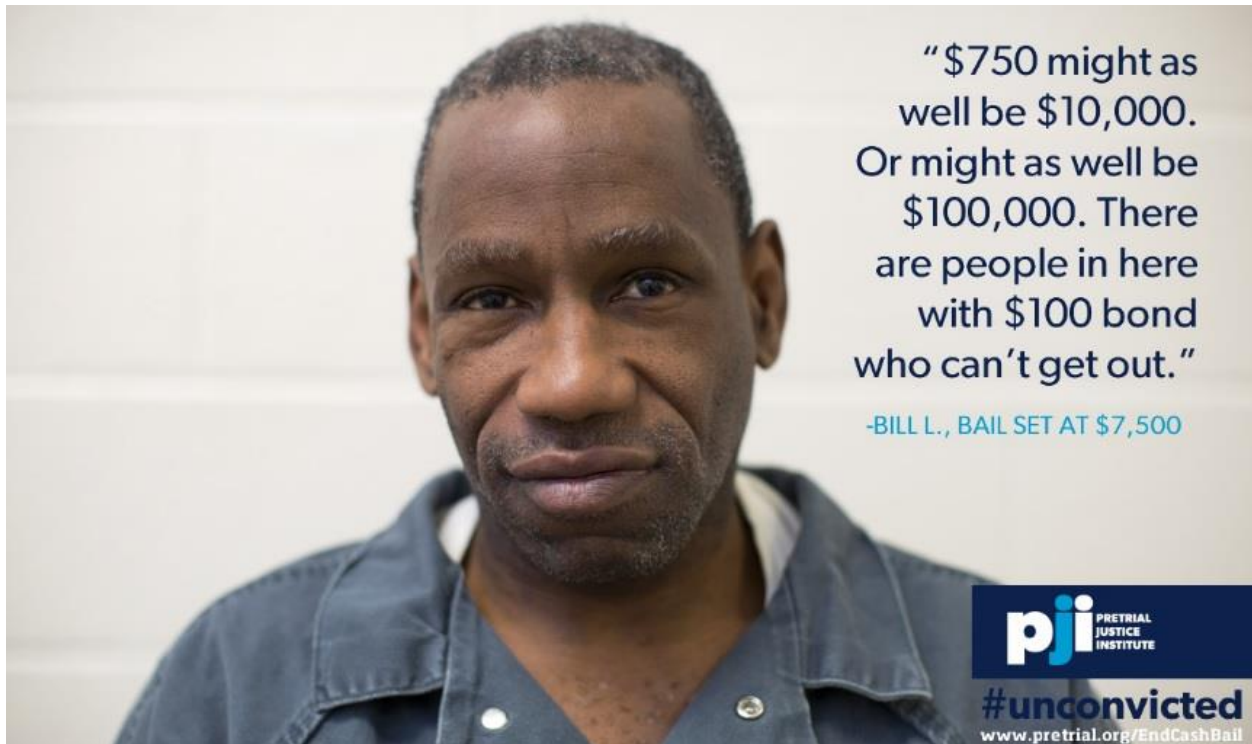




Not in My Name: Maryland's Voters Want Pretrial Justice



Prepared by the Pretrial Justice Institute
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Maryland's pretrial justice system is outdated, ineffective, expensive and dangerous. Those who make the single most important decision impacting the outcome of a case—whether a person who is arrested is released or detained pending trial—must digest an enormous amount of information quickly without evidence-based guidance to help them predict court appearance or public safety reliably. Far too often, the ability to post money bail is the determining factor of whether a person is released or detained, regardless of the person's likelihood to come back to court for his or her trial and to stay out of trouble before the trial. As a result, the majority of people in Maryland jails are people too poor to purchase their release, while higher-risk people with access to money get out.

Twice over the past four years, Maryland has convened high-level state commissions to study its pretrial system and to recommend reforms.¹ Although the recommendations were nearly identical in both cases, the state has failed to act upon them in a meaningful way. Reform has been stymied by disagreement about the extent of the problem and the most effective solutions, as well as the actions of the for-profit bail bond industry, a special interest group that uses its financial contributions to influence local and state elected officials to maintain the status quo.

Yet, *voters in Maryland want pretrial justice reform.*

An August 2015 poll conducted by Lake Research Partners² found that voters from every demographic and political perspective are dissatisfied with their criminal justice system and believe current practices are misguided, unfair and ineffective. Among the findings, voters believe:

- The system overall is not doing a good job of preventing crime and keeping Marylanders safe
- Too much effort is spent arresting and jailing people for low-level, nonviolent offenses at the expense of dealing with more serious crime
- People with financial means receive better treatment and people of color are treated differently than white people

Two high-level state commissions on bail reform recommended:

- The complete elimination of the use of secured, financial conditions of pretrial release
- Creation of uniform pretrial services across all 24 Maryland jurisdictions, responsible for administering a validated statewide risk assessment tool and for supervising those released with conditions
- Granting pretrial services the authority to release, without conditions, those individuals determined to be low-risk
- The establishment of a system for risk and needs-based supervision, referral, and treatment options in all Maryland counties
- Deployment of judges to ensure that all defendants not released by pretrial services have the benefit of an initial appearance and bail review before a judge within 24 hours of arrest
- Creation of a shared jail management system to allow for data collection on the pretrial population statewide

¹ John Clark, "Finishing the Job: Modernizing Maryland's Bail System." *The Abell Report* 29, no. 2 (2016): www.abell.org/publications/finishing-job-modernizing-maryland's-bail-system.

² Lake Research Partners designed and administered the survey, which was conducted by phone using professional interviewers, reaching a total of 600 likely 2016 general election voters in Maryland. The survey was conducted August 4-12, 2015.

Maryland voters also expressed strong support for evidence-based alternatives to current pretrial justice practices. Polling results show favorable attitudes toward commonsense changes endorsed by high-level stakeholders and national justice professional organizations, including:

- Making pretrial decisions based on risk rather than money
- Improving fairness and reducing unnecessary detention by implementing reforms such as increased use of citations in lieu of detention, earlier access to defense counsel, and limiting the time low-risk people can spend in jail before trial
- Ensuring that judges maintain the ability to detain, without the opportunity for release, people who are assessed as high-risk

These results mirror recent polling data from victims of crime who strongly believe that incarceration is a counterproductive response to most crime and fails to meet the needs of victims.³

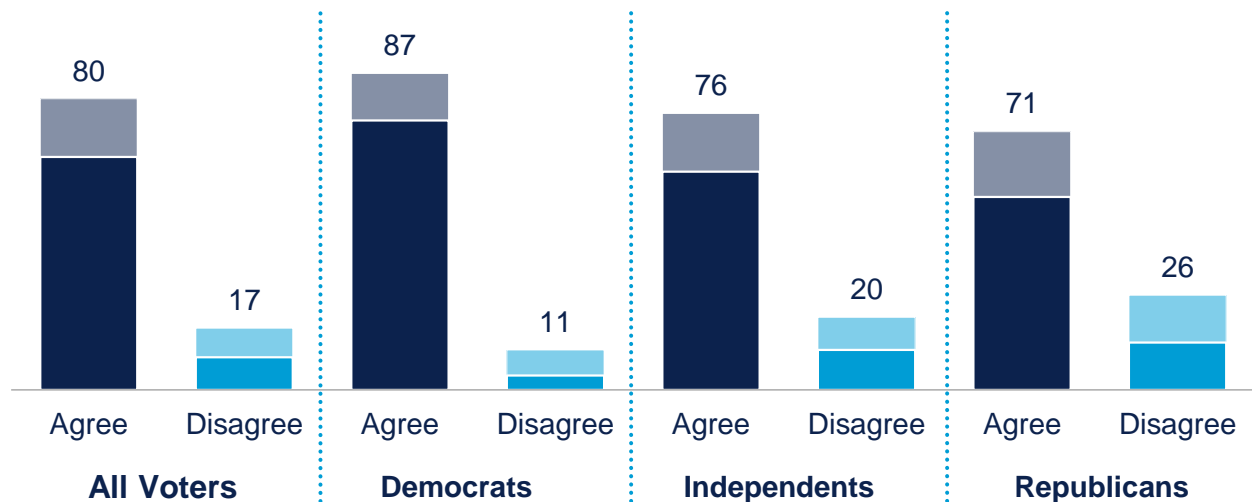
This report, which explores these and other findings in greater detail and provides contextual elaboration where appropriate, is intended to educate the broader public and provide policymakers in Maryland with a better understanding of what Maryland residents want: commonsense reform. It concludes with three recommendations for creating safer, fairer and more effective pretrial justice in the Old Line State.

³ "California Crime Victims' Voices: Findings from the First-Ever Survey of California Crime Victims and Survivors." Californians for Safety and Justice, 2016: http://libcloud.s3.amazonaws.com/211/72/d/228/2/VictimsReport_07_16_13.pdf.

Perceptions of the Criminal Justice System: Misguided, Unfair, Ineffective

Respondents from all political perspectives indicated that the biggest problem facing Maryland's criminal justice system is that too many people are jailed for low-level, nonviolent offenses (Figure 1). More people (30%) selected this as the top challenge facing the state than any other issue.

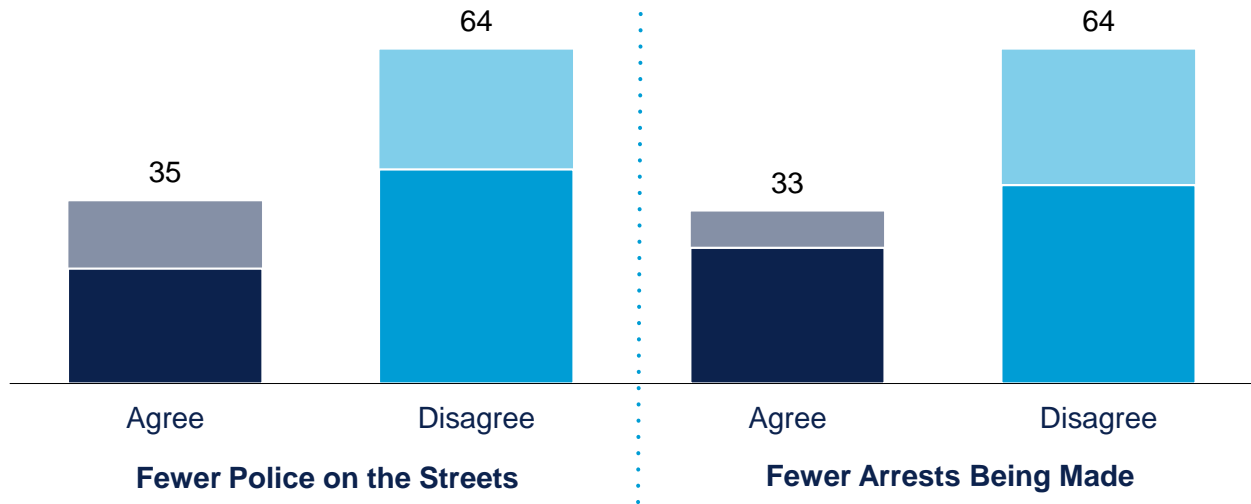
Figure 1: Focus on Arresting Violent Criminals Instead of Low-Level Suspects



**The darker portions of the bar charts represent "strong" agreement or disagreement.*

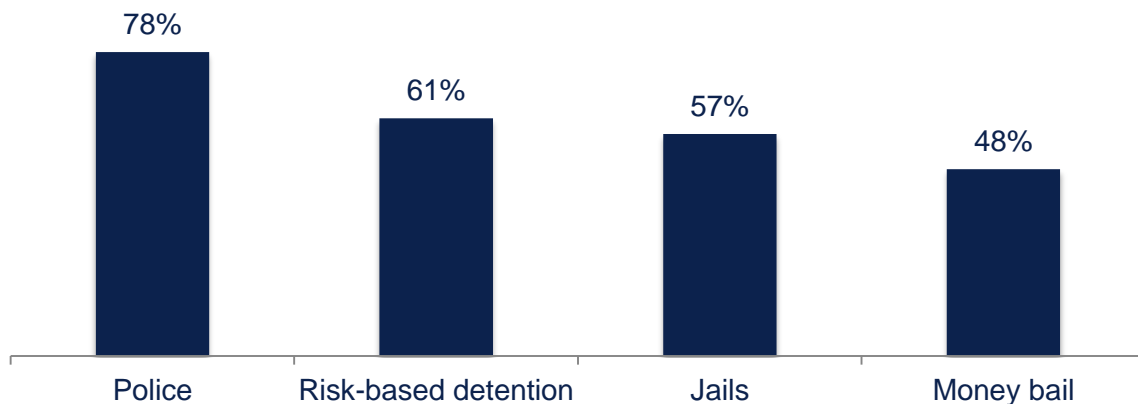
This perception is part of a set of beliefs around misguided use of resources and ineffective practices. More than a third (36%) of respondents believes that crime is rising in their area, and even more (65%) thought crime was rising nationally.⁴ However, most people do not associate the perceived increase in crime with either too few police (64% disagree) or too few arrests (64% disagree) (Figure 2).

Figure 2: Reason for Increase in Crime



In fact, jails are not seen as the most effective tool for fighting crime and keeping communities safe. Maryland voters believe that police are more effective, followed by risk-based detention. Only 48% of respondents believe money bail is effective in ensuring public safety (Figure 3).

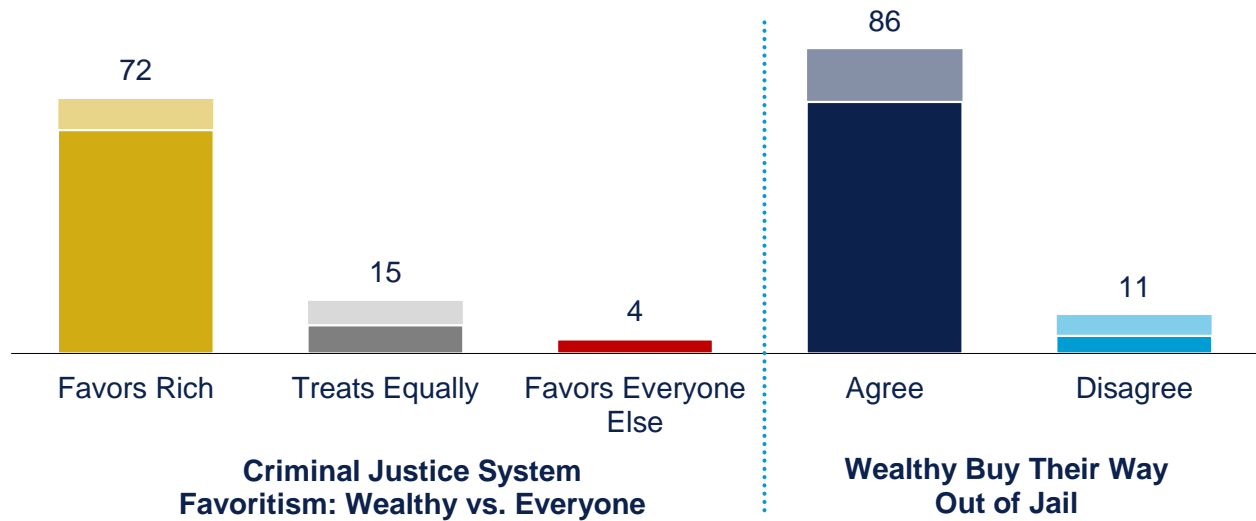
Figure 3: What is Effective at Fighting Crime and Keeping Us Safe?



⁴ While violent crime as spiked in some major cities, the overall crime rate remains historically low as compared to peak levels in the 1990s. *Crime in the United States, 2015*. Available at <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/home>.

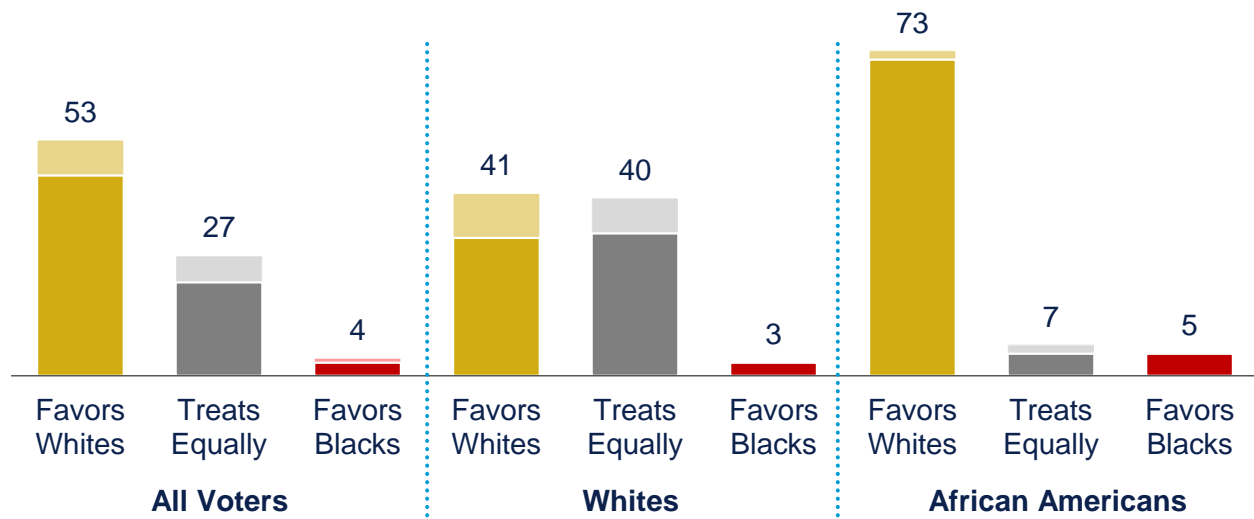
Maryland voters also recognize that the justice system favors the rich above everyone else (72% agree); only 15% believe it treats everyone fairly. At the pretrial stage, respondents believe that wealthy people arrested for crimes are too often able to buy their way out of jail (86% agree, including 71% who strongly agree) (Figure 4). While strongest among African American voters, this opinion is shared by nearly 7 in 10 white voters.

Figure 4: The Interaction Between the Wealthy and the Criminal Justice System



Most Maryland voters perceive racial bias in their state’s justice practices. Of all voters, 53% believe that the criminal justice system favors white people; just over a quarter (27%) think the system treats all people fairly. Among African Americans, 73% believe that whites are favored above people of color (Figure 5).

Figure 5: Criminal Justice System Favoritism: Whites vs. African Americans



Two-thirds (67%) of Maryland voters perceive the overall performance of the criminal justice system only as “just fair” or “poor.” Only 4% of likely voters feel the system is doing an “excellent” job. This suggests a strong statewide appetite for reform, such as introducing evidence-based pretrial risk assessment tools to make the criminal justice system more effective, efficient and fair.

Voters Understand Maryland’s Justice Challenges

Maryland voters are astute when it comes to assessing the state’s criminal and pretrial justice systems. Respondents accurately identified some of the major challenges facing the state. For example:

- Almost 75% of arrests in Maryland are for nonviolent or court-related charges, according to an analysis of pretrial practice in several Maryland counties. In Baltimore City, for example, nearly a third (32%) of arrests are for drug possession, traffic violations, other nonviolent offenses, or public order charges.⁵
- In some counties, more than one-quarter of all arrests are for Failure to Appear for previous court dates, a problem that signals weaknesses in current pretrial practices and services rather than high rates of criminal behavior.⁶

⁵ Commission to Reform Maryland’s Pretrial System: Final Report, Governor’s Office of Crime Control & Prevention. December 19, 2014, Appendix A, 9.

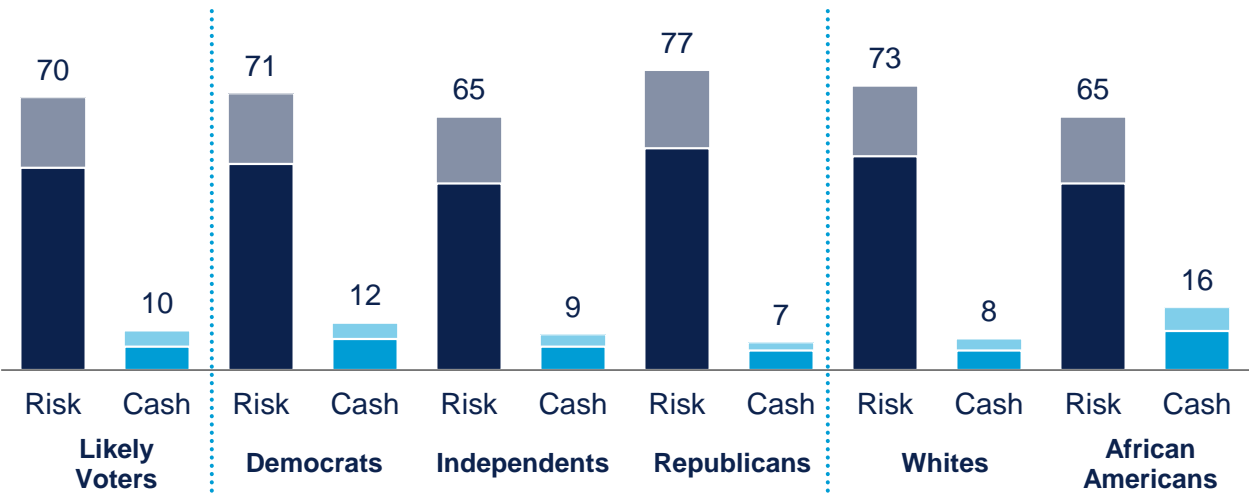
⁶ Governor’s Office of Crime Control & Prevention, Appendix A, 9.

- Several studies looking at bond amounts by race have shown that African Americans and Latinos regularly receive bond amounts that are higher than Whites with identical backgrounds. What's more, these groups are often unable to afford money bail and are detained more often.⁷
- Analysis of county-level data in Maryland shows that most jurisdictions are ineffective at keeping high-risk individuals detained before trial and releasing those with low or moderate risk levels. Of all people detained in the study cohort, nearly two-thirds (64.4%) were assessed as moderate or low risk. Meanwhile, 65% of high-risk individuals were released, most of them through a money bond.⁸

What Voters Think Works: Risk Assessment and Detention Based on Danger

Voters prefer that risk, not wealth, be used in making pretrial release decisions by a factor of seven-to-one (70% support pretrial risk assessment). This opinion is especially strong among Republican voters, but is also shared across partisan and demographic (Figure 6).

Figure 6: Determining Factor for Keeping Someone In Jail Before Trial: Risk Assessment vs. Cash Bail



In fact, given many scenarios to choose among, 85% of voters expressed support for systems that use risk assessment to guide pretrial release decisions, with supervision for those who need it. Fifty-seven percent indicated they “strongly favor” this kind of system.

Risk assessment is so intuitively appealing that nearly one-third of voters believes it already exists as part of current practice. Voters who would *not* support replacing money bail with risk assessment were

⁷ Cynthia E. Jones. “Give Us Free: Addressing Racial Disparities in Bail Determinations.” *Legislation and Public Policy* 16 (2014): 919-961.

⁸ Governor’s Office of Crime Control & Prevention, Appendix A, 19.

more inclined than others to believe it is already in use (44%), perhaps because they believe it to be part of a system that isn't producing good results.

In addition to strongly supporting risk-based pretrial justice, voters also strongly favor criminal justice reforms to reduce the number of people arrested and brought to jail. Voters also support the use evidence-based tools to guide decision-making, increase system fairness and reduce the unnecessary incarceration of people charged with low-level offenses (Table 1).

Voters express strong support for risk-based pretrial practices and other proposals to ensure public safety, increase fairness and reduce unnecessary incarceration.

Table 1: Reform Proposals	Favor
Use risk assessment and supervision of low-level, nonviolent defendants to reduce the unnecessary amount of people in jail.	85%
Increase access to defense counsel for all defendants, regardless of what they can afford.	78%
Allow judges to detain people in jail based on the outcome of their risk assessment score and the strength of the case against them.	77%
Reduce the number of arrests for low-level, nonviolent offenses by issuing citations rather than arrests for those offenses.	75%
Put a cap on how many days low-level, nonviolent defendants can be detained if they cannot afford bail.	74%
Move to a risk-based preventive detention system which would determine the level of risk of a defendant and detain those with the highest risk, without bail.	74%
Reduce the number of arrests for low-level, nonviolent offenses.	72%

Current Evidence-Based Reforms Appeal to Voters

As noted earlier, this and previous national polls show that many people believe risk assessment is already used as a matter of practice. Respondents are generally surprised to learn that most pretrial decisions are made using unscientific methods, including plain gut instinct.

Only five of Maryland’s 24 jurisdictions use a risk assessment tool of some kind in the pretrial process, and only two of those tools have been validated for the local population. In the 11 counties that operate a pretrial services agency, about half of all defendants are released before ever being assessed by a pretrial officer.

Voters prefer commonsense solutions that ensure fairness, reduce disparity and result in fewer people going to jail unnecessarily. These same solutions are supported by practitioners, justice professionals and law enforcement.

Education

Voters support many of the recommendations put forth by the two high-level commissions on pretrial reform in Maryland. Our findings indicate that this high level of support can be further enhanced by public education.

For example, voters were confused about the use of pretrial risk assessment, with two-thirds stating they believed it does exist or that they “don’t know” (Figure 7)—when, in fact, pretrial risk assessment is *not* part of current practice in most Maryland jurisdictions.

Support for wider adoption of pretrial risk assessment will benefit from education efforts focused on explaining how most current systems are nearly devoid of an evidence-based risk measurement and driven, instead, by subjective factors and defendants’ ability to pay money bail.

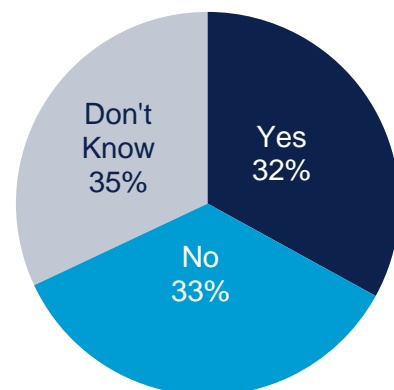
Similarly, voters firmly believe that too many people are in jail who don’t need to be there. However, voters may not understand that money bail is the primary driver of unnecessary detention. The data is clear on this problem and needs to be integrated into public education efforts.

Action

Translating support and understanding into **voter action** is a great opportunity when working for policy reform in an environment where elected officials are out of step with their constituents. The most recent polling found that, of several proposed actions, voters were most likely to say they would sign a petition asking elected officials to eliminate cash bail (57%, including 27% who said they “definitely would”). But there is more that can be done through community organizing.

Figure 7: Does Risk Assessment Exist?

Voters are confused about whether risk assessment currently exists as part of pretrial justice



Any campaign to improve Maryland’s pretrial justice systems through public education and voter mobilization can create clear pathways for meaningful action.

Profile of Polled Likely 2016 Voters

Gender: 48% men, 52% women	Geography:
Age: 17% under 30, 15% 30-39, 19% 40-49, 48% aged 50 and over	Western Maryland: 4%
Education: 49% with college or higher	Central Maryland: 51%
Race: 61% white, 28% black, 7% Latino/Asian/other	Eastern Shore: 8%
Political: 45% Democrat, 23% Republican, 29% Independent	Metro DC: 31%
	Southern Maryland: 6%

Recommendations

These polling results suggest the following commonsense reforms to Maryland’s pretrial justice system would enjoy significant public support:

- ★ Reduce unnecessary arrests that destabilize families and communities by decriminalizing minor offenses and issuing citations in lieu of custodial arrests wherever feasible.
- ★ Replace Maryland’s discriminatory money-based pretrial system with a fair system that uses objective admissions criteria to determine who can be released into the community without financial conditions and who needs to be detained for public safety reasons.
- ★ Strengthen and expand community-based support services that help people succeed while awaiting trial in the community, including court date reminders and access to services.

These changes reflect voters’ concerns about Maryland’s pretrial systems and their aspiration for fairer, more responsible use of public safety resources.