

Risk-Based Pretrial Detention in D.C.

What is D.C.'s current law? How is it used? Is D.C. in line with the rest of the U.S.? What does research say?

1. What is the current law in D.C. on pretrial release?

D.C. has long prioritized public safety in its pretrial decisions. In 1970, D.C. became the first U.S. jurisdiction to add protecting public safety to reducing the risks of failure to appear as considerations when setting bail. In 1992, D.C. passed the Bail Reform Amendment Act, which effectively prohibited the use of cash bail as a proxy for public safety.

Current law provides that a person charged with a crime can be held in jail pretrial if a judge finds that no conditions would reasonably assure their court appearance or public safety if they were released. A judge must determine whether the defendant should be held in pretrial detention within five business days of arrest. D.C. law still permits traditional bail for people considered a flight risk, such as fugitives from other states, but judges generally rely on detention or other requirements to ensure defendants appear for court and do not pose a threat to public safety, such as additional charges for failing to appear and pretrial supervision with conditions of release.

In 2024, D.C. expanded the offenses for which there was a presumption of pretrial detention to also include dangerous crimes or crimes of violence while armed, these include burglary, robbery, sexual abuse, aggravated assault, carjacking, kidnapping, manslaughter, sexual abuse, and gang activity, in addition to murder. Additionally, people accused of threatening or injuring a law enforcement officer or who were convicted of a serious crime while previously on pretrial release also have a detention presumption.

2. How does D.C. law compare to other places in the United States?

In many other states, there is no mechanism for “preventative detention” – that is, the court cannot hold a person based on their risk to community safety.^[i] Instead, defendants must get the chance to post bail. The amount is generally set by the court or a bail schedule and is refunded after the person appears for all court dates; if the individual fails to appear for court, the money is forfeited. Many who cannot afford the full amount pay a bail bondsman a non-refundable fee; if the person misses court, the bond company pays the full bail amount to the court.

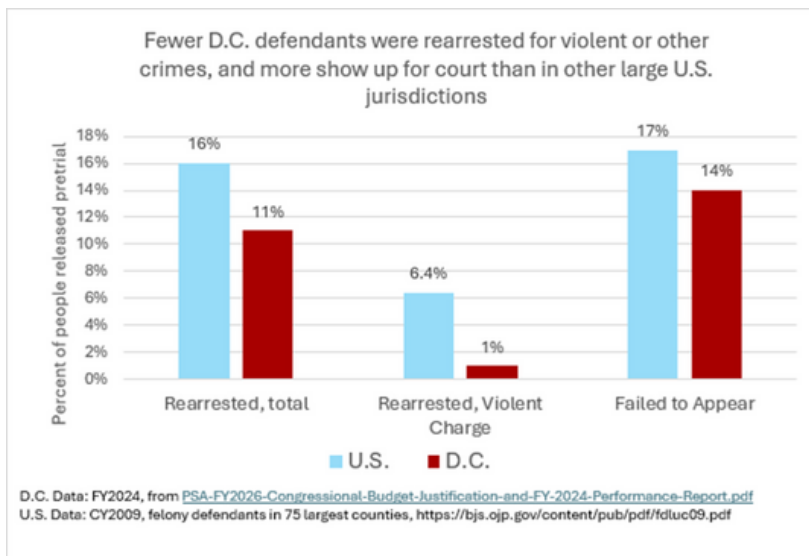
In a risk-based detention system like D.C.'s, release decisions are based on whether the defendant poses a flight or public safety risk. Often using a validated risk assessment tool, a dedicated agency or judge will determine a defendant's risk of flight or reoffending based on factors like charge, criminal history, and community ties like employment and family support. Judges then make a decision to detain pretrial or, if released, what conditions are required (GPS monitoring, travel restrictions, drug testing, weekly reporting, etc.). In D.C., the Pretrial Services Agency (PSA) conducts risk assessments on everyone arrested and makes recommendations to the court. For those granted conditional release, PSA provides supervision and connections to services, such as mental health and drug treatment, intended to mitigate the risk of not returning to court or engaging in illegal activity.

^[i] <https://www.ncsl.org/civil-and-criminal-justice/pretrial-release-detention>

3. What do we know about the efficacy of D.C.'s safety and risk-based approach?

From a public safety perspective, D.C.'s risk-based pretrial system outperforms traditional or cash bail systems in other cities. The most recent Bureau of Justice Statistics report of felony defendants showed that in the 75 largest cities, among felony defendants – most of whom were released on money bail – about 6.4% were rearrested for a violent charge, 16% overall were rearrested, and 17% failed to make a court appearance. **By comparison, in FY24**

in D.C. fewer people were arrested while on pretrial release for a violent charge (1%) or overall (11%); and only 14% failed to make a court appearance. (See chart.)



4. What does the law and research on this issue show?

The evidence is clear that cash bail does not ensure that people who pose a public safety risk will be held in jail pretrial, as anyone who can afford to pay their bail is released.

A 2024 study examining 33 cities across the country found that risk-based bail reforms did not increase crime rates; **cities with reformed bail policies saw lower rates of property, larceny, and violent crimes compared to traditional bail system cities.**^[ii] A 2023 analysis of 13 jurisdictions that implemented reforms to release more people pretrial through risk-informed release decisions also found no corresponding waves in crime.^[iii]

While the Eighth Amendment prohibits excessive bail requirements, **many people must stay in jail solely because they cannot afford to pay even a small cash bail.**^[iv] This can result in significant negative consequences for them, such as losing employment or housing or not being available to take care their family.^[v]

[ii] <https://www.brennancenter.org/media/13174/download/bail-reform-public-safety-report.pdf?inline=1>

[iii] <https://www.prisonpolicy.org/blog/2023/07/06/bail-reform/>

[iv] <https://www.macarthurjustice.org/issue/ending-the-punishment-of-poverty/pretrial-detention/>

[v] <https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/bailfail.pdf>

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Council for Court Excellence's (CCE's) mission is to bring people together to conduct research, educate, and advocate to make D.C.'s unique legal systems more just, equitable, and accountable to the community.



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