

Legal Definitions

presumption of innocence Also found in: [Acronyms](#), [Encyclopedia](#), [Wikipedia](#)
(redirected from *Innocent until proven guilty*)

A principle that requires the government to prove the guilt of a criminal defendant and relieves the defendant of any burden to prove his or her innocence.

The presumption of innocence, an ancient tenet of [Criminal Law](#), is actually a misnomer. According to the U.S. Supreme Court, the presumption of the innocence of a criminal defendant is best described as an assumption of innocence that is indulged in the absence of contrary evidence (*Taylor v. Kentucky*, 436 U.S. 478, 98 S. Ct. 1930, 56 L. Ed. 2d 468 [1978]). It is not considered evidence of the defendant's innocence, and it does not require that a mandatory inference favorable to the defendant be drawn from any facts in evidence.

In practice the presumption of innocence is animated by the requirement that the government prove the charges against the defendant [Beyond a Reasonable Doubt](#). This due process requirement, a fundamental tenet of criminal law, is contained in statutes and judicial opinions. The requirement that a person suspected of a crime be presumed innocent also is mandated in statutes and court opinions. The two principles go together, but they can be separated.

The Supreme Court has ruled that, under some circumstances, a court should issue jury instructions on the presumption of innocence in addition to instructions on the requirement of proof beyond a reasonable doubt (*Taylor v. Kentucky*). A presumption of innocence instruction may be required if the jury is in danger of convicting the defendant on the basis of extraneous considerations rather than the facts of the case.

The presumption of innocence principle supports the practice of releasing criminal defendants from jail prior to trial. However, the government may detain some criminal defendants without bail through the end of trial. The [Eighth Amendment](#) to the U.S. Constitution states that excessive bail shall not be required, but it is widely accepted that governments have the right to detain through trial a defendant of a serious crime who is a flight risk or poses a danger to the public. In such cases the presumption of innocence is largely theoretical.

Trial court judges are given less latitude under the Excessive Bail Clause. Bail is the amount of money, property, or bond that a defendant must pledge to the court as security for his or her appearance at trial. If the defendant meets bail or is able to pay the amount set by the court, the defendant is entitled to recover the pledged amount at the conclusion of the criminal proceedings. However, if the defendant fails to appear as scheduled during the prosecution, then he or she forfeits the amount pledged and still faces further criminal penalties if convicted of the offense or offenses charged.

When fixing the amount of bail for a particular defendant, the court takes into consideration several factors: (1) the seriousness of the offense; (2) the [Weight of Evidence](#) against the accused; (3) the nature and extent of any ties, such as family or employment, that the accused has to the community where he or she will be prosecuted; (4) the accused's ability to pay a given amount; and (5) the likelihood that the accused will flee the jurisdiction if released.

In applying these factors, courts usually attempt to set bail for a reasonable amount. Setting bail for an unreasonable amount would unnecessarily restrict the freedom of a person who only has been accused of wrongdoing; who is presumed innocent until proven otherwise; and who is entitled to pursue a living and to support a family. At the same time, courts are aware that bail needs to be set sufficiently high to ensure that the defendant will return for trial. Defendants are less likely to flee the jurisdiction when they would forfeit large amounts of money as a result. Courts are also aware that they must protect communities from the harm presented by particularly dangerous defendants. In this regard, the U.S. Supreme Court has permitted lower courts to deny bail for defendants who would create abnormally dangerous risks to the community if released.

Reasons to Deny Bail—

Why they do not apply to Desire' Dubounet

- | | |
|---------------------------------|---|
| 1. Seriousness of the Crime - | The Charge against me is the smallest |
| 2. Weight of Evidence - | There is No evidence + Judge Matsch said |
| - | there was NO SEAL to begin with |
| 3. Family ties and employment - | 3 of my children live in America |
| 4. Ability to pay the bail - | I was given bail before of 50k |
| 5. Likelihood of Flight - | I will pay my own way back on a one way - |
| - | passport taken at the border so I cannot and would not flee |

Pretrial Detention, Bail and Due Process

There is a right to presumption of Innocence. You are innocent till proven Guilty is the basis of our Law. Pretrial Detention can only be used to stop flight or protect the public. It is wrong and unjust to use Pretrial Detention as a punishment or for coercion or intimidation.

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Pretrial Detention, Bail and Due Process

By [Ken Strutin](#), Published on July 2, 2011

Pretrial detention of suspects directly impacts the presumption of innocence. The cornerstone of the justice system is that no one will be punished without the benefit of due process. Incarceration before trial, when the outcome of the case is yet to be determined, cuts against this principle. The Founders were aware of the dangers inherent in indiscriminate imprisonment, which is one of the main reasons behind the inclusion of the Eighth Amendment in the Bill of Rights, prohibiting excessive bail. Historically, the laws limiting pretrial detention were enacted to change the focus from personal to penal purposes, thus remedying the abuses of earlier English monarchs who used jail before trial as a form of punishment.¹

The need for bail is to assure that the accused will appear for trial and not corrupt the legal process by absconding.² Anything more is excessive and punitive.³ The risks of abuse at this stage when the court takes its first look at an accused's culpability must be scrutinized to avoid coercion or pre-punishment in the administration of justice.⁴ Scholars have pointed out the potential constitutional problems raised by federal and state laws that restrict access to bail or include criteria such as future dangerousness. And they have also tried to divine the Supreme Court's position on the existence of a substantive constitutional right to bail that would trump restrictive legislative enactments.

This article collects recent publications and other notable resources concerning the relationship between the administration of bail and the requirements of due process.

CONSTITUTION⁵

- [Eighth Amendment](#) (Further Guarantees in Criminal Cases) (GPO 1996)
"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."
- [Law of the Federal and State Constitutions of the United States](#) 165 (2004)
"S 122. Excessive Bail. The Constitutions of all the States except Illinois⁶ provide that excessive bail shall not be required."

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BAIL REFORM ACT OF 1984 ([18 U.S.C. SS 3141–3156](#))

- [Bail Reform Act of 1984](#) (FJC 2006 3rd ed.)
"In this third edition, David N. Adair, Jr., former associate general counsel of the Administrative Office of the United States Courts, primarily addresses areas that have been changed by statute or case law since the second edition, and elsewhere cites more recent cases that discuss the substantive issues. This edition includes case law through June 1, 2006. The Bail Reform Act of 1984 (18 U.S.C. SS 3141–3150) authorizes and sets forth the procedures for a judicial officer to order the release or detention of an arrested person pending trial, sentence, and appeal. The Bail Reform Act of 1984 has been amended several times. References in this monograph to the 'Bail Reform Act' or the 'Act' are to the amended version in effect as of October 30, 2005, and all cites to the U.S. Code are to the most current version in effect at the time of this printing. Appendix A reproduces the Bail Reform Act of 1984, as amended, as of October 30, 2005. Appendix B sets forth a selected provision of the Sentencing Reform Act of 1984."
- [Bail Reform Act: Getting and Keeping Them Out!](#) (Federal Defender 2008)
"Most often, our very first opportunity to impress our clients by strutting our legal acumen is at the preliminary and detention hearing. Often heard at the same time, the pair of hearings gives lawyers their first opportunity to have an adversarial hearing and begin to see the government's case. Unfortunately, the preliminary and detention hearing is often the government's first opportunity to nail your client, by requesting detention rather than allowing the setting of a reasonable bail bond."

Our response to the government's motion to detain, however unwitting, sends various messages to all interested parties. To your client, how hard you fight to secure his release is an indication of how hard you will work in his case generally, however fair or unfair. How hard you fight to secure his release is an indication of your belief in one of the central tenets of our criminal justice system: the presumption of innocence. Your stewardship of this very fragile concept signals your willingness to fight your client's cause. Therefore, this first showdown, this first battle, is extremely important. The battle lines must be drawn here." See also [Pretrial Release and Detention](#) (Federal Defender 2010)

- [Bail Pending Appeal: The Bail Reform Act](#), Champion, Nov. 2005, at 68
"More than 20 years ago, Congress enacted The Comprehensive Crime Control Act of 1984, sweeping legislation designed to address a broad spectrum of issues related to criminal prosecutions. See Pub. L. No. 98-473, 98 Stat. 1976, 1976-77 (1984). Title II of that Act consisted of significant new bail provisions that dramatically changed the previously existing policies favoring bail. See 18 U.S.C. SS 3141 et seq. [hereinafter '1984 Act']. Under prior legislation, the 1966 Bail Reform Act, the law favored releasing defendants who were awaiting disposition of their appeal. See [United States v. Miller](#), 753 F.2d 19, 21-22 (3d Cir. 1985). The prosecution had to prove that the defendant's appeal was 'frivolous' and the defendant had to show that he was neither a flight risk or danger to the community. Id.
The 1984 Act reflected a deliberate decision by Congress to reverse the presumption in favor of granting bail pending appeal. See [United States v. Miller](#), supra, 753 F.2d at 22-23 ("The basic distinction between the existing provision [the 1966 Bail Act] and Section 3143 is one of presumption It is the presumption [in favor of granting bail] that the Committee wishes to eliminate.") (quoting S. Rep. No. 225, 98th Cong., 1st Sess. 26 (1983)). The 1984 Act also shifted the burden of proof entirely to the defendant. See [United States v. Affleck](#), 765 F.2d 944, 953 (10th Cir. 1985). Under the 1984 Act, a defendant who is convicted and sentenced to a prison term must show by clear and convincing evidence that he is not likely to flee or pose a danger to another person or the community. See 18 U.S.C. S 1343(b)(1)(A).
The defendant must also show that his appeal is not for the purposes of delay and raises a substantial question of law or fact likely to result in reversal, an order for a new trial, a sentence that does not include a prison term, or a reduced prison sentence that would be less than the total time the defendant has already served, plus the expected duration of the appeals process. See 18 U.S.C. S 1343(b)(1)(B). This 'substantial question' standard is significantly higher than the 1966 Act's 'not frivolous' standard. See [United States v. Miller](#), supra, 753 F.2d at 23."
- [Chp 26 Release and Detention Pending Judicial Proceedings \(18 U.S.C. SS 3141 et seq.\)](#) in [Crime Resource Manual](#) (DOJ 1997)
"General Provisions Regarding Bail and Detention in Criminal Cases: The Eighth Amendment to the United States Constitution provides that '[e]xcessive bail shall not be required . . .' U.S. Const. Amend. VIII. The United States Supreme Court has interpreted this amendment to prohibit the imposition of excessive bail without creating a right to bail in criminal cases. See [United States v. Salerno](#), 481 U.S. 739, 754-55 (1987) ('eighth amendment does not grant absolute right to bail'). The subject of bail and detention also implicates the Fourteenth Amendment's Due Process Clause, and requires that laws imposing pretrial detention 'serve a compelling governmental interest', [Salerno](#), 481 U.S. at 752, and 'the Due Process Clause of the Fifth Amendment'. See [United States v. Ailemen](#), 165 F.R.D. 571, 577 (N.D.Cal. 1996)(internal citations omitted). In federal criminal proceedings, release and detention determinations are governed by the Bail Reform Act of 1984. 18 U.S.C. SS 3141-3156 (1990). These sections contain specific guidelines that 'judicial officers' must follow in considering whether a defendant should be detained or released pending federal criminal proceedings." See also [Chp 9-6.000 Release And Detention Pending Judicial Proceedings—18 U.S.C. SS 3141 et seq.](#) in [United States Attorneys' Manual](#) (DOJ 1997; Updated 2000)

SUPREME COURT DECISIONS

- [Bandy v. United States](#), 81 S.Ct. 197 (1960)

"On a previous application, bail was granted conditioned on the filing of a sufficient bond in the amount of \$ 5,000. Bandy v United States, 5 L Ed 2d 34, 81 S. Ct. 25. Now an application is made to me under Rule 46(a)(2) of the Federal Rules of Criminal Procedure for release on 'personal recognizance' pending certiorari. The application recites that the petitioner is unable to give security for the prescribed bond. . . . I [Justice Douglas] approach this application with the conviction that the right to release is heavily favored and that the requirement of security for the bond may, in a proper case, be dispensed with. Rule 46(d) indeed provides that 'in proper cases no security need be given.' For there may be other deterrents to jumping bail: long residence in a locality, the ties of friends and family, the efficiency of modern police. All these in a given case may offer a deterrent at least equal to that of the threat of forfeiture."
- [Carlson v. Landon](#), 342 U.S. 524 (1952)

"These cases present a narrow question with several related issues. May the Attorney General, as the executive head of the Immigration and Naturalization Service, after taking into custody active alien Communists on warrants, charging either membership in a group that advocates the overthrow by force of this Government or inclusion in any prohibited classes of aliens, continue them in custody without bail, at his discretion pending determination as to their deportability, under S 23 of the Internal Security Act? Differing views of the Courts of Appeals led us to grant certiorari. 342 U.S. 807, 810."
- [Stack v. Boyle](#), 342 U.S. 1(1951)

"Indictments have been returned in the Southern District of California charging the twelve petitioners with conspiring to violate the Smith Act, 18 U.S.C. (Supp. IV) SS 371, 2385. Upon their arrest, bail was fixed for each petitioner in the widely varying amounts of \$2,500, \$7,500, \$75,000 and \$100,000. On motion of petitioner Schneiderman following arrest in the Southern District of New York, his bail was reduced to \$50,000 before his removal to California. On motion of the Government to increase bail in the case of other petitioners, and after several intermediate procedural steps not material to the issues presented here, bail was fixed in the District Court for the Southern District of California in the uniform amount of \$50,000 for each petitioner. Petitioners moved to reduce bail on the ground that bail as fixed was excessive under the Eighth Amendment. In support of their motion, petitioners submitted statements as to their financial resources, family relationships, health, prior criminal records, and other information. The only evidence offered by the Government was a certified record showing that four persons previously convicted under the Smith Act in the Southern District of New York had forfeited bail. No evidence was produced relating those four persons to the petitioners in this case. At a hearing on the motion, petitioners were examined by the District Judge and cross-examined by an attorney for the Government. Petitioners' factual statements stand uncontroverted. After their motion to reduce bail was denied, petitioners filed applications for habeas corpus in the same District Court. Upon consideration of the record on the motion to reduce bail, the writs were denied. The Court of Appeals for the Ninth Circuit affirmed. 192 F. 2d 56. Prior to filing their petition for certiorari in this Court, petitioners filed with Mr. Justice Douglas an application for bail and an alternative application for habeas corpus seeking interim relief. Both applications were referred to the Court and the matter was set down for argument on specific questions covering the issues raised by this case. Relief in this type of case must be speedy if it is to be effective. The petition for certiorari and the full record are now before the Court and, since the questions presented by the petition have been fully briefed and argued, we consider it appropriate to dispose of the petition for certiorari at this time. Accordingly, the petition for certiorari is granted for review of questions important to the administration of criminal justice."

- [United States v. Salerno, 481 U.S. 739 \(1987\)](#)

"The Bail Reform Act of 1984 (Act) allows a federal court to detain an arrestee pending trial if the Government demonstrates by clear and convincing evidence after an adversary hearing that no release conditions 'will reasonably assure. . . the safety of any other person and the community.' The United States Court of Appeals for the Second Circuit struck down this provision of the Act as facially unconstitutional, because, in that court's words, this type of pretrial detention violates 'substantive due process.' We granted certiorari because of a conflict among the Courts of Appeals regarding the validity of the Act. [479 U.S. 929 \(1986\)](#). We hold that, as against the facial attack mounted by these respondents, the Act fully comports with constitutional requirements. We therefore reverse."

LAW REVIEWS

- [Discrimination, Coercion, and the Bail Reform Act of 1984: The Loss of the Core Constitutional Protections of the Excessive Bail Clause, 36 Fordham Urb. L.J. 121 \(2009\)](#)

"The core purpose of the Excessive Bail Clause was the prevention of the abuse and manipulation of the bail system by the Stuart kings and their royal judges. Rooted in these historic protections, while granting no substantive right to bail, the Clause protects criminal defendants from governmental discrimination and coercion. These protections have been subverted by the Bail Reform Act of 1984, which demands the consideration of ill-defined personal characteristics – from 'character' to 'community ties' – in the bail decision, and the Court's interpretation of that Act in [United States v. Salerno](#). Since this decision, many scholars have abandoned the Clause as a meaningful source of law. A renewed discussion of the Bail Reform Act is necessary to revive the most basic protections of the Excessive Bail Clause."

- [Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail, 23 Cardozo L. Rev. 101 \(2002\)](#)

"The United States Supreme Court has never ruled upon whether the constitutional right to counsel extends to the bail stage. Indeed in the vast majority of state and local criminal justice systems, indigent defendants appear alone and without legal representation when first appearing before a judicial officer following arrest. Without counsel, many poor and lower income people charged with non-violent misdemeanor charges remain in jail on unaffordable bail for days, weeks and months before returning to court and being assigned appointed counsel.

While it is rare to find lawyers representing indigent defendants in state court, this article provides empirical evidence that counsel's advocacy is the crucial difference whether indigent defendants regain liberty when charged with non-violent crimes or spend lengthy periods in pretrial incarceration awaiting trial. The study's empirical data lends support for understanding that bail should be considered a critical stage of a criminal proceeding, which requires states to provide counsel to indigent defendants.

The authors - a law professor, a criminologist, and an economist - analyzed an eighteen-month representation project which provided counsel to indigent defendants at Baltimore City bail hearings. Comparing two groups of randomly selected defendants charged with similar non-violent offenses and having comparable backgrounds, they report that two and one half times as many represented defendants were released on recognizance than unrepresented defendants. The authors also conclude that a lawyer's advocacy resulted in more than twice as many represented defendants having their bail reduced to affordable amounts. The Study found other important benefits of early representation at the bail stage. Judicial officers make better informed pretrial release decisions, prosecutors obtain earlier dispositions, and correction officials witnessed a decline in pretrial jail overcrowding. Finally, the Study revealed that detainees believed they were treated more fairly and were more willing to accept

the legitimacy of the judicial process.

The article concludes by providing a series of legislative and litigation strategies for reforming current practices and ensuring that indigent defendants no longer stand alone when first appearing in court for a pretrial release determination."

- [Due Process, Predictive Justice and the Presumption of Innocence \(SSRN 2011\)](#)
"The most commonly repeated adage in U.S. criminal justice is the presumption of innocence: defendants are deemed innocent until proven guilty. Historically, this presumption carried important meaning both before and during trial. However, in light of state and federal changes in pretrial practice, as well as Supreme Court precedent restricting the presumption's application to trial, the presumption of innocence no longer protects defendants before trial. These limitations on the presumption are fundamentally inconsistent with its constitutional roots. The results of the presumption's diminution are also troubling as the number of defendants held pretrial has steadily increased such that the majority of people in our nation's jails have not been convicted of any crime. Few contemporary legal scholars have focused on the dwindling pretrial presumption, let alone its constitutional implications. This article fills the void by examining how the Due Process Clause provides the constitutional basis for the presumption of innocence and how that presumption secures at least one pretrial right: the right to release on bail, absent serious flight risk. For the first time, this article introduces three rules to ensure that the pretrial presumption of innocence remains true to its constitutional roots. Returning the presumption to its constitutional foundation and ensuring its application in ways that are consistent with that foundation will result in less confusion by courts and a more consistent manner to make pretrial decisions."
- [Fear Itself: The Impact of Allegations of Gang Affiliation on Pre-Trial Detention \(SSRN 2010\)](#)
"In courtrooms across the country, prosecutors justify demands for high bail by alleging that defendants are affiliated with gangs. The practice is deeply problematic, both because law enforcement gang lists do not accurately represent true gang membership, and because the imposition of excessive bail violates the Eighth Amendment. Moreover, the allegations are largely made against young men of color. While gangs pose real problems in society, labeling young men who reside in gang neighborhoods as gang members does nothing to address the gang problem. This article explores the basis for and the impact of allegations of gang affiliation, and proposes safeguards to ensure that allegations of gang affiliation are made only in a limited class of cases, and tested promptly by evidentiary hearing."
- [Liberty Takings: A Framework for Compensating Pretrial Detainees, 26 Cardozo L. Rev. 1947 \(2005\)](#)
"This Article shows how the application of a takings paradigm to pretrial detention can mitigate the distorted incentives which shape bail hearings and plea bargaining. The case for compensating pretrial detainees poses challenges because the existence of probable cause of having committed a criminal offense combined with the presence of other risk factors formally legitimizes bail hearing decisions. However, this Article analogizes the taking of people to the taking of property to argue that pretrial detention constitutes a liberty taking which inflicts punishment on unconvicted defendants and creates incentives for false pleas and other perversions of justice. While society faces potential risks and costs from pretrial release, this Article will argue that compensating detainees who are never convicted or whose ultimate conviction could not reasonably have justified the initial detention decision will help to level the playing field for defendants in bail hearings and plea bargaining. This Article will conclude by showing how liberty takings can be designed to produce significant incentives for state actors to screen cases more thoroughly and to rely more extensively on less restrictive alternatives than pretrial detention."
- [Optimal Bail and the Value of Freedom: Evidence From the Philadelphia Bail Experiment \(SSRN 2007\)](#)
"This paper performs a cost-benefit analysis to determine socially optimal bail levels that balance the costs to defendants against the costs to other members of society. We consider jailing costs, the cost of lost freedom to

incarcerated defendants, and the social costs of flight and new crimes committed by released defendants. We estimate the effects of bail amounts on the fraction of defendants posting bail, fleeing, and committing crimes during pre-trial release, using data from a randomized experiment. We also use defendants' bail posting decisions to measure their subjective values of freedom. We find that the typical defendant in our sample would be willing to pay roughly \$1,000 for 90 days of freedom. While imprecise, our optimal bail estimates are similar to the observed levels of bail prior to bail reform."

AMERICAN LAW REPORTS (ALRs)

- [Application of State Statutes Establishing Pretrial Release of Accused on Personal Recognizance as Presumptive Forum of Release, 78 A.L.R.3d 780](#)

"This annotation collects and considers those cases dealing with the application of state statutes which establish personal or own recognizance release as the presumptive form of pretrial release for persons accused of bailable offenses, except where it is found that such a release will not reasonably assure the appearance of the accused for trial or that such a release will constitute a danger to the public.

The annotation focuses upon the question whether an accused is entitled to be released on his own recognizance under such a statute; thus, the question whether an accused may be denied release entirely under this kind of statute is generally without the scope of the annotation. However, a few cases considering this latter issue are discussed herein where they also contain some discussion of the question whether the accused should have been released on his own recognizance."

- [Excessiveness of Bail in State Criminal Cases—Amounts Over \\$500,000, 7 A.L.R.6th 487](#)

"The Eighth Amendment to the United States Constitution, which prohibits excessive bail, has been held applicable to the states pursuant to the Due Process Clause of the Fourteenth Amendment. Many state constitutions also have provisions prohibiting excessive bail. Generally, bail should be set in an amount reasonably calculated to ensure the accused's appearance and whether the bond is excessive depends on the circumstances of the case. Courts have considered whether a bond set in an amount over \$500,000 was excessive, reaching different results based upon the circumstances. In Ex parte Davis, 147 S.W.3d 546, 7 A.L.R.6th 829 (Tex. App. Waco 2004), for example, the court ruled that \$1 million bail set for each of two defendants in a drug-related murder case was excessive. The court reduced bail to \$500,000 for one defendant, even though he knowingly participated in the murder and engaged in drug trafficking, where he had community ties, limited financial resources, a relatively minor criminal history, and complied with the terms of a prior bond, and reduced bail to \$750,000 for the other defendant, even though he lived in another county, knowingly participated in the murder, had a prior criminal history, disregarded conditions of community supervision, and engaged in drug trafficking, where he presented evidence that he did not directly participate in the murder and had limited financial resources. This annotation discusses all cases adjudicating whether bail set in a state criminal case in an amount over \$500,000 was excessive."

- [Insanity of Accused as Affecting Right to Bail in Criminal Case, 11 A.L.R.3d 1385](#)

"This annotation discusses a relatively small corner of the general question of the right to bail in a criminal case, namely, what effect does the insanity of the accused have on such right? 'Insanity of the accused,' as used in the title, includes 'alleged insanity,' since in many situations the problem of allowing or denying bail must be solved before the fact of sanity or insanity is judicially proved, as where bail is sought before trial. Furthermore, 'insanity' refers to the state of the accused's mind either at the time the alleged crime was committed or at the time he is brought to trial."

- [Pretrial Preventive Detention by State Court, 75 A.L.R.3d 956](#)

"This annotation collects the cases discussing whether a state court, including the courts of the District of

Columbia, may deny or revoke bail to an adult criminal defendant before trial for the purpose of protecting particular persons or society in general from anticipated future criminal conduct on his part."

- [Propriety of Denial of Pretrial Bail under Bail Reform Act \(18 U.S.C.A. SS 3141 et seq.\), 75 A.L.R. Fed. 806](#)
"This annotation collects and analyzes the federal cases in which the courts have discussed or decided whether, either generally or under particular circumstances, it is or was proper to deny pretrial bail to an accused under the Bail Reform Act of 1984 (18 U.S.C.A. SS 3141 et seq.), which was effective October 12, 1984. Constitutional questions bearing on the propriety of such a denial are included."
- [Right of Bail in Proceedings in Juvenile Courts, 53 A.L.R.3d 848](#)
"This annotation collects the cases in which the question of the right to bail in proceedings in juvenile courts has been considered. Since this annotation deals with statutes only insofar as they are reflected in the reported cases within its scope, and no attempt is made to state the existing statutory law of any jurisdiction, the reader is advised to consult the most recent enactments of the particular jurisdiction in which he is interested."
- [Right of Defendant in State Court to Bail Pending Appeal From Conviction—Modern Cases, 28 A.L.R.4th 227](#)
"This annotation collects and analyzes those state and federal cases in which courts have considered whether defendants convicted in state criminal prosecutions are entitled to bail pending appeal of their convictions to higher state courts.
While the matter of a state defendant's right to bail pending appeal of a conviction is a matter generally covered by statutes or court rules of the various states, the present annotation does not purport to represent the statutes or court rules of any particular jurisdiction, except insofar as those statutes or court rules are reflected in the reported cases within the scope of this annotation. The reader is therefore advised to consult the latest statutory enactments or court rules of jurisdictions of interest."
- [Supreme Court's Construction and Application of Provision of Federal Constitution's Eighth Amendment That Excessive Bail Shall Not Be Required, 95 L. Ed. 2d 1010](#)
"This annotation collects and analyzes the decisions of the United States Supreme Court, or of the individual Justices of that court, which have interpreted and applied the clause of the Eighth Amendment to the Constitution of the United States which provides that '[e]xcessive bail shall not be required . . .!'"
- [What Constitutes a Risk of Flight so as to Render a Federal Criminal Defendant Ineligible for Bail Prior to Sentence or Pending Appeal?, 79 A.L.R. Fed. 460](#)
"This annotation collects those cases in which the courts have determined what constitutes an unreasonable risk of flight where a person seeks release on bail after judgment and prior to sentencing or pending an appeal of his conviction. Included are those cases in which the courts examine the criteria of 18 U.S.C.A. S 3143(a), and S 3142 in so far as it is incorporated within S 3143(b), in reaching a determination of what factual circumstances and considerations constitute an unreasonable risk of flight so as to warrant detention. Also included are cases decided under the former 18 U.S.C.A. SS 3146 and 3148 (the Bail Reform Act of 1966). Wherein the courts examined the same criteria as are applicable under the current law."

REPORTS, STUDIES & SURVEYS

- [National Symposium on Pretrial Justice \(PJI 2011\)](#)
"On May 31 and June 1, the Office of Justice Programs, U.S. Department of Justice, with the support of the nonprofit Pretrial Justice Institute, convened leaders from significant criminal justice stakeholder organizations and the pretrial community to update the important conversations of the 1964 National Conference on Bail and Criminal Justice."

- [Policy Statement on Fair and Effective Pretrial Justice Practices \(ACCD 2011\)](#)

"This American Council of Chief Defenders Policy Statement calls for a new commitment by all criminal justice stakeholders to ensure fair and appropriate pretrial release decision-making, and outlines key action steps for each pretrial actor."
- [Pretrial Release of Felony Defendants in State Courts \(NCJ 2007\)](#)

"Presents findings on the pretrial release phase of the criminal justice process using data collected from a representative sample of felony cases filed in the 75 largest U.S. counties in May during even-numbered years from 1990 to 2004. It includes trends on pretrial release rates and the types of release used. Pretrial release rates are compared by arrest offense, demographic characteristics, and criminal history. Characteristics of released and detained defendants are also presented. Rates of pretrial misconduct including failure to appear and rearrest are presented by type of release, demographic characteristics, and criminal history."
- [Pretrial Services Programming at the Start of the 21st Century: A Survey of Pretrial Services Programs \(BJA 2003\)](#)

"Pretrial services programs have been providing bail-setting judicial officers with information and options for the release or detention of people accused of criminal offenses since the 1960's. The results of two previous surveys done in 1979 and 1989 have guided county boards and other funding agencies in their establishment or expansion of pretrial services programming. The third survey, conducted in 2001, consisted of 202 pretrial services. The results show that many new pretrial services programs have been initiated since the last survey in 1989; 44 percent of the programs participating in the current survey have been started since 1990. Thirty-four percent of programs started since 1990 are probation, compared to 27 percent in jails, and 24 percent in courts. The average staff size for a pretrial program is 18; 10 percent of programs have just 1 staff person, and 2 percent have more than 200. Although many of the services and practices specified by the American Bar Association and the National Association of Pretrial Services Agencies are present in a large percentage of programs, the survey results show that several other services and practices are not present in most programs. A majority of programs have a mission statement and operations manual to guide and instruct staff. Fewer than half the programs provide a structured training program for new staff. Pretrial services programs are beginning to address challenges brought on by two special populations of defendants, those that have a mental illness and those charged with domestic violence. Most pretrial programs use drug testing as a tool in supervision. About half use alcohol testing. Just over half use a combination of manual and automated systems to gather, store, and retrieve information. Programs that assess risks of pretrial misconduct in an exclusively subjective manner are more than twice as likely to have a jail population that exceeds its capacity than those programs that assess risk exclusively through an objective risk assessment instrument. 4 endnotes, bibliography, 3 appendices "
- [Socioeconomic Impact of Pretrial Detention \(Open Society Justice Initiative 2011\)](#)

"Approximately 10 million people per year pass through pretrial detention; many of them will spend months or even years behind bars—without being tried or found guilty. Locking away millions of people who are presumed innocent is a waste of human potential that undermines economic development.

The economic effects of excessive pretrial detention—from lost wages to misspent government resources—are documented in a new report, *The Socioeconomic Impact of Pretrial Detention*, published by the Open Society Justice Initiative and the United Nations Development Program.

This study attempts for the first time to count the full cost of excessive pretrial detention, including lost employment, stunted economic growth, the spread of disease and corruption, and the misuse of state resources. Combining statistics, personal accounts, and recommendations for reform, *The Socioeconomic Impact of Pretrial Detention* provides empirical arguments against the overuse of pretrial detention."

STANDARDS

- [ABA Standards for Criminal Justice: Pretrial Release](#)
"In February 2002, the ABA House of Delegates approved 'black letter' standards that appear with commentary in a publication entitled: ABA Standards for Criminal Justice: Pretrial Release, 3d ed. (c) 2007. For the text of the publication, [click HERE](#) . To go directly to individual 'black letter' standards (without commentary), click on the applicable link in the Table of Contents, below. For information about purchasing the printed volume, please [click here](#)."
- [Standards on Pretrial Release \(NAPSA 3rd ed. 2004\)](#)
"Policymakers and practitioners concerned about criminal justice issues have increasingly come to recognize the importance of sound 'front-end' decision-making. The actions taken in the initial stages of any criminal case—in particular, the decisions concerning the release or detention of an arrested person—can have an enormous bearing on the outcome of an individual case and, in the aggregate, on the quality and effectiveness of the jurisdiction's criminal justice processes. The stakes involved are high: they involve considerations of individual liberty, public safety, and the integrity of the judicial process. This Third Edition of NAPSA Release Standards points the way to improved policy and practice in this crucial area."

SECONDARY RESOURCES

- [Annual Review of Criminal Procedure \(Georgetown Law Journal\)](#)
Each Annual Review covers the topic of Bail, including: Pretrial Detention; Rebuttable Presumption of Dangerousness; Detention Hearings; Amendment and Review of Detention and Release Orders; Release Pending Appeal; and Violation of Release Conditions. "Although the number and variety of topics covered has changed greatly over time, the Annual Review has always been structured so that the topics move chronologically through the steps of a criminal proceeding, as is illustrated by the following Table of Contents from the Twenty-Ninth Annual Review, published in May of 2000."
- [Chapter 5: Human Rights and Arrest, Pre-trial Detention and Administrative Detention in Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers \(UN 2003\)\[Pub. No. 9\]](#)
"The present chapter will provide an analysis of the basic legal rules governing arrest, detention on remand and administrative detention in international human rights law. In so doing, it will, inter alia, deal in some depth with the reasons justifying arrest and continued detention and the right of a person deprived of his or her liberty to challenge the legality of this deprivation of liberty. Emphasis will be laid on the jurisprudence of the Human Rights Committee, the Inter-American and European Courts of Human Rights, and the African Commission on Human and Peoples' Rights, which provide interpretations which are indispensable for a full understanding of the meaning of the international legal rules governing arrest and detention. As to the treatment of detainees and the specific interests and rights of children and women, these issues, although in many ways very closely linked to the subject matter of the present chapter, will be dealt with in separate chapters focusing specifically on the rights and interests of these groups (see Chapters 8 [International Legal Standards for the Protection of Persons Deprived of Their Liberty], 10 [The Rights of the Child in the Administration of Justice] and 11 [Women's Rights in the Administration of Justice] of this Manual)."
- [Chapter 8 International Legal Standards for the Protection of Persons Deprived of Their Liberty in Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers \(UN 2003\)\[Pub. No. 9\]](#)
"This chapter explains the principal international legal rules governing the treatment of persons deprived of their

liberty and will also provide examples of how these legal rules have been interpreted by the international monitoring organs. The treatment of all categories of detainees and prisoners remains a major challenge in the area of overall improvement in respect for the human person. Placed in a situation of inferiority and weakness, a person who is arrested, in pre-trial detention or serving a prison sentence upon conviction is to a considerable extent left to the mercy of the police and prison officials. The detainee or prisoner is virtually cut off from outside life, and thus also vulnerable to treatment violating his or her rights. The continuing widespread use of torture and other inhuman or degrading treatment or punishment of these categories of people, whose cries for help in moments of pain can be heard by nobody except fellow inmates, constitutes an intolerable insult to human dignity. International human rights law does however contain strict rules about the treatment of detainees and prisoners which are applicable at all times, and States are under a legal duty to take the necessary legislative and practical measures to put an end to all practices that violate these rules. In this respect, the task of judges, prosecutors and lawyers is of primordial importance in contributing to an increased respect for the legal rules that will help safeguard the life, security and dignity of people deprived of their liberty. In their daily work, these legal professions, when faced with people suspected or accused of criminal activities, will have to exercise constant vigilance for signs of torture, forced confessions under ill-treatment or duress, and any other kind of physical or mental hardship. Judges, prosecutors and lawyers thus have not just a key role in this regard, but also a professional duty to ensure the effective implementation of the existing domestic and international rules for the protection of the rights of people deprived of their liberty.

This chapter will first deal with the notion of torture, cruel, inhuman and degrading treatment and punishment, and will in particular deal with the problems caused by solitary confinement and, more specifically, incommunicado detention. It will also briefly explain the particular problems to which vulnerable groups such as children and women are subjected while detained. The rights both of children and of women in the administration of justice will, however, also be dealt with in some detail in Chapters [10](#) [The Rights of the Child in the Administration of Justice] and [11](#) [Women's Rights in the Administration of Justice] respectively. This chapter will then consider aspects of detention such as accommodation, exercise, the health of detainees and prisoners and their contacts with the outside world through visits and correspondence. Thirdly, the chapter will deal with the complaints procedures which must be available at all times to all persons deprived of their liberty. Lastly, the chapter will provide some advice on how judges, prosecutors, and lawyers may work more effectively for the eradication of torture and other unlawful treatment of detainees and prisoners."

- [National Association of Pretrial Service Agencies \(NAPSA\)](#)

"The National Association of Pretrial Services Agencies, NAPSA, is the national professional association for the pretrial release and pretrial diversion fields. Incorporated in 1973 in the District of Columbia as a not-for-profit corporation, the goals of the Association are expressed succinctly in Article II of its Articles of Incorporation: to serve as a national forum for ideas and issues in the area of pretrial services; to promote the establishment of agencies to provide such services; to encourage responsibility among its members; to promote research and development in the field; to establish a mechanism for exchange of information; and; to increase professional competence through the development of professional standards and education. NAPSA consists primarily of pretrial practitioners; however, others interested in pretrial issues such as judges, lawyers, researchers, and prosecutors, comprise its five-hundred plus membership from forty-four states, the District of Columbia, and Puerto Rico."

- [Pretrial Detention \(Prison Policy Initiative\)](#)

This is an annotated bibliography of studies concerning pretrial bail practices and conditions of confinement nationwide. "The non-profit, non-partisan [Prison Policy Initiative](#) documents the impact of mass incarceration on individuals, communities, and the national welfare. We produce accessible and innovative research to empower the public to participate in improving criminal justice policy."

- [Pretrial Justice Institute \(DOJ\)](#)

"In 1976, the U.S. Department of Justice funded the establishment of the Pretrial Services Resource Center, now called the Pretrial Justice Institute, in response to a request from The [National Association of Pretrial Service Agencies](#) (NAPSA) Board of Directors. In a 1975 survey by the [National Center for State Courts](#), 91 percent of pretrial program directors expressed a need for further training and technical assistance for themselves and their staffs. Spurred by this finding, the NAPSA directors submitted a proposal to the Law Enforcement Assistance Administration for the funding of an entity that could provide such assistance. The proposal was funded and the Pretrial Justice Institute was incorporated on December 2, 1976, opening our doors on March 1, 1977.

As stated in the Articles of Incorporation we were founded '...to promote research and development, exchange of ideas and issues, and professional competence in the field of pretrial services, to encourage the establishment of responsible agencies to provide such services, to provide technical assistance to those agencies providing such services, to provide a regular means of communication among such agencies and to develop and implement training materials and techniques for those engaged in delivering such services.' In 2007, we changed our name to the Pretrial Justice Institute to more accurately reflect our mission."

[1](#) Interestingly, today the debate about pretrial detention practices is motivated by proposals to shrink jail and detention facility budgets. See Shima Baradaran, [Want to Cut Costs? Release More Prisoners](#), *PrawfsBlawg*, Feb. 25, 2011.

[2](#) See generally Ken Strutin, [Preparing Bail Applications](#), *Prac. Litig.*, Sept. 1995, at 85; Ken Strutin, [Habeas Corpus as Tool to Review Bail Decisions](#), *N.Y. L.J.*, Nov. 15, 1995, at 1; Ken Strutin, [Restraints on Liberty Before Trial](#), *N.Y. L.J.*, Apr. 24, 1995, at 1

[3](#) See [United States v. Marion](#), 404 U.S. 307, 320 (1971) ("Arrest is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and friends.")

[4](#) See, e.g., [New York State Pretrial Release Services Standards](#) (NY DPCA 2007)(Important Principles: "2. Defendants are entitled to a presumption of innocence. Therefore, defendants should not be precluded from pretrial screening based on the current charge. However, for purposes of assessing flight risk, the instant charge may be an appropriate consideration as to the release recommendation. 3. New York State law does not authorize the imposition of conditions of release or preventive detention on the basis of future predictions of dangerousness. Therefore, pretrial release programs should provide assessments and recommendations to the courts based on the defendant's likelihood to appear in court.").

[5](#) All footnotes have been omitted from excerpts and abstracts.

[6](#) See *Ill. Const. Art. I, sect. 9*. See also Ann Lousin, [The Illinois State Constitution: A Reference Guide](#) 55-56 (2010).

[7](#) <http://www.ohchr.org/Documents/Publications/training9chapter5en.pdf>