

THE “PRESUMPTION OF DETENTION” DESTROYS THE PRESUMPTION OF INNOCENCE



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The current scope of pretrial detention is staggering—the majority of individuals held in county jails are awaiting trial and thus presumed innocent. In some large metropolitan districts, a quarter to half of people charged with misdemeanors are held pretrial despite low-grade criminal charges. Oftentimes they are held not because they have been deemed dangerous or unlikely to appear by the court, but because they are too poor to afford the assigned high monetary bail.

Pretrial detention also largely violates the constitutional right to a presumption of innocence. The presumption of innocence is the bedrock of legal jurisprudence in the United States; as President John Adams said, “It’s of more importance to the community, that innocence be protected, than it is, that guilt be punished.” The current system functions with a strong “presumption of detention,” which is akin to having a trial at which the presumption is guilt and a person must prove their innocence. This practice is antithetical to the ideals upon which our nation was founded.

We must dramatically reduce the use of pretrial detention, as it feels, looks, and functions like punishment to those who are detained. Supporting the constitutional right to a presumption of innocence with a “presumption of liberty” will help limit the use of pretrial detention to only those situations where there is a finding based on clear and convincing evidence that an individual is unlikely to appear before a court for adjudication of the charged offense. Any other pretrial detention is simply unconstitutional punishment by another name.

WHY IT MATTERS

1. Pretrial detention impedes a defendant’s ability to build their best case for trial.

The defendant has limited access to their attorneys and other resources and information, and so cannot argue a defense as strongly as if they had been released.

2. Pretrial detention results in defendants having to prove their innocence, rather than upholding the constitutional principle of innocent until proven guilty.

Pretrial detention immediately biases jurors against the defendant, leading to quick assumptions of guilt.

3. Lastly, defendants held before adjudication are much more likely to accept a plea bargain

than those released, due to the mental anguish and disruption of life that comes with being locked up in jail. Individuals will do anything not to return to this existence, and will accept plea bargains that free them immediately for “time served.”

By reducing the use of pretrial detention and practicing a presumption of liberty, a more robust balance between the aims of public safety, order, and individual liberty will be created.