May 1, 2014

Hello, APDs!

Greetings from the NC Public Defender Committee on Racial Equity (NC PDCORE).

I have had a wave of cases lately involving African American youths charged with low-level felonies who are receiving secured bonds with the additional condition of electronic monitoring despite being true Level 1s for sentencing purposes. This has had me thinking about pretrial detention and the tools PDCORE can provide to lend strength to your bond motions.

Perhaps it should come with sadness but not surprise that empirical studies consistently show that African American and Latino individuals are more likely to be detained pretrial than whites. These racial disparities are documented in dozens of studies, all of which control for important legal and extra-legal factors.

There is an excellent paper on this topic entitled [“Give Us Free”: Addressing Racial Disparities in Bail Determinations](http://www.nyujlpp.org/wp-content/uploads/2014/01/Jones-Give-Us-Free-16nyujlpp919.pdf) written by law professor and former Executive Director of PDS, Cynthia Jones. The paper outlines some of the statistics and cites the underlying studies beginning on page 938. One recent study found that African Americans were 66% and Latinos were 91% more likely to be detained pretrial than white defendants. The studies find both that people of color are more likely to have higher bonds set *and* that they are less likely to be able to post a given bond.

At least some judges might be receptive to this data in a bond motion, but others may not. Another way to use Professor Jones’s paper in your bond motions without getting into the racial disparities aspect is to cite the data regarding the harmful impacts of pretrial incarceration. Beginning on page 936, the paper details some frustrating realities:

* 78% of individuals detained pretrial are eventually convicted compared to just 60% of released defendants
* Studies show that individuals detained pretrial are more likely to plead guilty
* People detained pretrial are 23% more likely to be adjudicated as felons, as opposed to getting charges reduced to misdemeanors
* People detained pretrial are **four times** more likely to receive active time
* Individuals held pretrial receive sentences 68% longer than those released pretrial.

That means those who cannot make bond are more likely to plead guilty, receive worse plea offers, are more likely to receive active sentences, and receive longer sentences than those who are released. See [the paper](http://www.nyujlpp.org/wp-content/uploads/2014/01/Jones-Give-Us-Free-16nyujlpp919.pdf) for the statistics and cites to the studies. I have started incorporating this data into my bond motions. Let me know if you do too, and whether you have any success. Until next time, fight on freedom fighters!

We would love for you to join our organization! You will find the link to do so on the bottom right portion of the [webpage](http://ncids.com/pd-core/). If you have feedback about *Race Judicata*, we’d love to hear from you. Please respond to the original poster only, rather than the APD listserv.