

### FACTSHEET: PRETRIAL DETENTION AND REMAND TO CUSTODY

Other nations protect public safety without imprisoning as large a percentage of their population, handle law-breaking behavior in ways less reliant on incarceration, and have different approaches to addressing complex social issues. This factsheet, derived from the longer report, *Finding Direction: Expanding Criminal Justice Options by Considering Policies of Other Nations*, considers the criminal justice policies of five nations, Australia, Canada, Finland, Germany and England and Wales, alongside those of the U.S.



In the U.S., when a person is charged with an offense they may be detained in jail until their trial or they may be released to await their trial in the community through a variety of mechanisms which will be discussed later. In many other nations, people are said to be “remanded,” which is a summons to appear before a judge at a later date. If they are not released pretrial they can be “remanded to custody” until their court proceeding; if they are convicted, they can be remanded to custody prior to sentencing or during an appeal process. That some other nations include both those awaiting court hearings and those awaiting sentencing in their number of people “remanded to court” makes it an imperfect parallel with U.S. figures for pretrial detention; nonetheless, data collected by the International Centre for Prison Studies in London shows that a smaller percentage of the total number of people incarcerated in European nations are remanded to custody prior to trial or sentencing compared to in the United States. Canada holds the largest percentage of the total incarcerated population in pretrial detention—36 percent are remanded.<sup>1</sup>

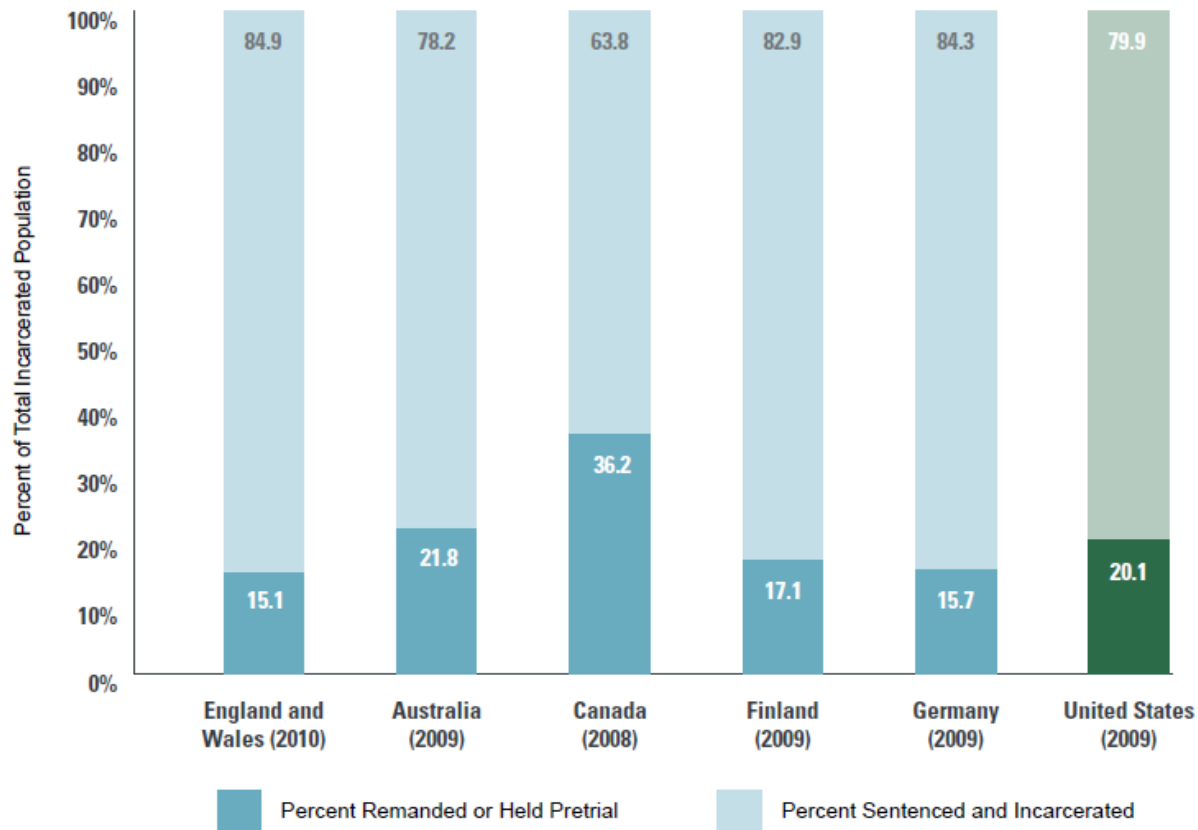
Pretrial detention is associated with a higher likelihood of both being found guilty<sup>2</sup> and receiving a sentence of incarceration over probation,<sup>3</sup> thus forcing a person further into the criminal justice system. In the United States, this is particularly important because of the sheer numbers: with 20 percent of the total number of people incarcerated

being pretrial, that means nearly 500,000 people each year are more likely to be found guilty and sentenced to incarceration, thus significantly adding to the total number of people in prison.

Each comparison nation has different thresholds for determining who will be released prior to trial. Nearly all comparison countries will hold a person pretrial to ensure return for trial. However, Canada, the United States, and England and Wales, will also hold a person pretrial to protect public safety.<sup>4</sup> Finland makes decisions about remand speedily and does so within four days of arrest. If a person is remanded to custody, they may request a new hearing every two weeks.<sup>5</sup>

If a person is not released on their own recognizance, the court can set a monetary amount that can be paid in exchange for release, which is called bail. The use of bail in Australia, Canada, the United States, and England and Wales likely contributes to the number of people held pretrial.<sup>6</sup> Germany has bail, but uses it infrequently, and Finland does not have a system of bail at all.<sup>7</sup> In addition, the United States is the only other nation besides the Philippines that permits commercial bail, or the practice of paying a third party to post bail on your behalf. This practice allows a third party, generally a corporation, to inherently make decisions in the bail process; because they make decisions based on a profit motive, public and individual well-being plays no role in deciding for whom they will post bail.<sup>8</sup>

**Canada has the largest percentage of people remanded to incarceration of the total incarcerated population.**



Source: International Centre for Prison Studies, "World Prison Brief: Country Profiles," January 5, 2011 [www.kcl.ac.uk/depsta/law/research/icps/worldbrief/](http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/)

Although the United States pretrial and detention practices are not notably different than those in the other comparison countries, it is worth considering that in those nations people are released on their own recognizance more often and bail is a right, not a privilege, issued relatively infrequently within the guidelines of a few, specific offenses.<sup>9</sup>

Releasing more people pretrial would not only potentially reduce the number of people going to prison, but prevent people from losing connections to work, family and community while being held pretrial.<sup>10</sup> In addition, holding more people pretrial is not correlated with having higher rates of crime or victimization.

**Policy Opportunity**

**Increase releases pretrial:** Comparison nations other than Canada use pretrial detention less than the United States, without experiencing a negative impact on public safety.

**End commercial bail:** Comparison nations forbid paying a third party any sum in exchange for posting bail. Private corporations contribute to the number of people held pretrial because they make bail decisions based on what is profitable, not the risk to public safety. States like Oregon, Illinois, Kentucky, and Wisconsin abolished commercial bail and require down-payments to the court, which are refunded only upon the person's appearance in court.

Country	Remand Prisoners as Percentage of Total Incarcerated Population (2009) <sup>11</sup>	Reasons for Remand Incarceration	Locations of Pretrial Incarceration	Bail Practices and Conditions
<b>Australia</b>	21.8 <sup>12</sup>	<ul style="list-style-type: none"> <li>• Risk of the person being a threat to themselves or others<sup>13</sup></li> <li>• High probability of the person not appearing for trial</li> <li>• Other factors such as the seriousness of the charge can also be taken into account<sup>14</sup></li> </ul>	Held in prison, but under less strict conditions than the general prison population so that they can access legal services and bail more easily <sup>15</sup>	<p>Bail can be set by the police or the court with the court having the ability to change or remove bail previously set by the police.<sup>16</sup></p> <p>Bail conditions vary by case but can include: attending court at the date and time agreed to, supervision, having a surety, home detention and abiding by a curfew.<sup>17</sup></p> <p>No commercial bail</p>
<b>Canada</b>	36.2 <sup>18</sup>	<ul style="list-style-type: none"> <li>• Ensure that the accused person does not flee</li> <li>• Protect the public if there is a high likelihood of reoffending</li> <li>• Maintain confidence in the administration of justice<sup>19</sup></li> </ul>	People on remand are the responsibility of State and Territorial governments are responsible for pretrial incarceration. People are held in prisons, jails, or remand centers (facilities specifically meant to house people on remand). <sup>20</sup>	<p>Bail is set by the court.</p> <p>Conditions of bail can include: curfews, treatment for substance abuse, counseling for anger management and prohibition from firearms possession as well as monetary fine if the person does not appear in court or comply with bail conditions.<sup>21</sup></p> <p>No commercial bail</p>
<b>Finland</b>	17.1 <sup>22</sup>	<ul style="list-style-type: none"> <li>• High probability they will seek to escape or evade justice</li> <li>• Try to tamper with evidence or witnesses</li> <li>• Continue criminal activity</li> <li>• Not a resident of Finland and therefore may attempt to leave the country<sup>23</sup></li> </ul>	<p>Legally required to be held in prisons, some of which are solely dedicated to remand inmates<sup>24</sup></p> <p>In practice, however, people are often held in police cells, even after their initial appearance in court.<sup>25</sup></p>	<p>No bail system, but most defendants are eligible for release on personal recognizance<sup>26</sup></p> <p>If a person is remanded to custody, they can request the court to reconsider and rule on their remand sentence every two weeks while awaiting trial.<sup>27</sup></p> <p>No commercial bail</p>
<b>Germany</b>	15.7 <sup>28</sup>	<ul style="list-style-type: none"> <li>• Strong suspicion of flight risk</li> <li>• Suspicion that evidence may be tampered with</li> <li>• Strong risk of reoffending in the case of serious crimes<sup>29</sup></li> </ul>	Housed in prisons, at least some of which are specifically for people on remand <sup>30</sup>	<p>The bail system is infrequently used and normally is applied to wealthy defendants, requiring payment, however, the use of sureties is allowed.<sup>31</sup></p> <p>No commercial bail</p>
<b>England and Wales<sup>32</sup></b>	15.1 <sup>33</sup>	<ul style="list-style-type: none"> <li>• Suspicion that the person would not later surrender to custody</li> <li>• Would likely interfere with witnesses or otherwise obstruct justice</li> <li>• Already on bail at the time of the offense</li> <li>• If the court is convinced that the person should be in custody for his/her own safety<sup>34</sup></li> </ul>	<p>Held in remand centers, which are housed within a prison service facility<sup>35</sup></p> <p>Law requires that people held on remand not come into contact with convicted persons.<sup>36</sup></p>	<p>Police officers can release a person on "street bail," in order to allow them to avoid overnight detention at a police station if they agree to appear at the police station at a later time.<sup>37</sup></p> <p>Conditions of bail are set in 25-33 percent of cases and can include: restriction of residence, prohibition from contact with a specific person, geographical travel boundaries, curfews and reporting to authorities.<sup>38</sup></p> <p>No commercial bail</p>
<b>United States</b>	20.8 <sup>39</sup>	<ul style="list-style-type: none"> <li>• Strong suspicion of flight risk</li> <li>• Potential to obstruct justice or intimidate a witness<sup>40</sup></li> <li>• Risk of danger to specific individuals or the community</li> <li>• The nature and circumstances of the crime<sup>41</sup></li> </ul>	Held in prisons, local jails, or detention centers, some of which are specifically for people that are pretrial <sup>42</sup>	<p>Varies by case but common bail conditions include: reporting regularly to police or a pretrial services agency, supervision by a designated custodian, geographical restrictions, prohibition from contact with specific people and the use of electronic surveillance<sup>43</sup></p> <p>With the exception of four states, commercial bail is permissible.<sup>44</sup></p>

Justice Policy Institute is a national nonprofit organization that changes the conversation around justice reform and advances policies that promote well-being and justice for all people and communities. To read the full report, *Finding Direction: Expanding Criminal Justice Options by Considering Policies of Other Nations*, please visit [www.justicepolicy.org](http://www.justicepolicy.org).

<sup>1</sup> International Centre for Prison Studies, "World Prison Brief: Country Profiles," January 5, 2011

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<sup>3</sup> Rod Morgan, "England/Wales," in Dünkel and Wagg, *Waiting for Trial*, 198

<sup>4</sup> Rick Sarre, Sue King and David Bamford, "Remand in Custody: Critical Factors and Key Issues," *Trends and Issues in Crime and Criminal Justice*, no.310 (2006): 1-3. [www.aic.gov.au/documents/8/D/E/%7B8DE2E6F6-9D25-45E8-AED0-39FA7CC9EA79%7D%7Dtandi310.pdf](http://www.aic.gov.au/documents/8/D/E/%7B8DE2E6F6-9D25-45E8-AED0-39FA7CC9EA79%7D%7Dtandi310.pdf), Office of Public Sector Information, "Bail Act 1976," Revised Statutes, [www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1976/cukpga\\_19760063\\_en\\_1#pb2-11g3](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1976/cukpga_19760063_en_1#pb2-11g3), *Crime and Society: A Comparative Criminology Tour of the World*, "Criminal Codes," Canada, [www-rohan.sdsu.edu/faculty/rwinslow/namerica/canada.html](http://www-rohan.sdsu.edu/faculty/rwinslow/namerica/canada.html).

<sup>5</sup> Matti Joutsen, Raimo Lahti and Pasi Pölonen, *Criminal Justice Systems in Europe*, 2010, A.M. van Kalmthout, M.M. Knapen, C. Morgenstern, *Pretrial Detention in the European Union: Finland*, (Tilburg, Netherlands: Tilburg University, 2009).

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<sup>6</sup> *Crime and Society: A Comparative Criminology Tour of the World*, "Detention," United Kingdom, [www-rohan.sdsu.edu/faculty/rwinslow/europe/great\\_britain.html](http://www-rohan.sdsu.edu/faculty/rwinslow/europe/great_britain.html), *Crime and Society: A Comparative Criminology Tour of the World*, "Detention," Germany, [www-rohan.sdsu.edu/faculty/rwinslow/europe/germany.html](http://www-rohan.sdsu.edu/faculty/rwinslow/europe/germany.html), *Crime and Society: A Comparative Criminology Tour of the World*, "Criminal Codes," Canada, [www-rohan.sdsu.edu/faculty/rwinslow/namerica/canada.html](http://www-rohan.sdsu.edu/faculty/rwinslow/namerica/canada.html).

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<sup>11</sup> Data for Canada is from 2008 and data for the United Kingdom is from 2010.

<sup>12</sup> International Centre for Prison Studies, "World Prison Brief: Country Profiles," January 5, 2011

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