



PRETRIAL DETENTION & COMMUNITY SUPERVISION

BEST PRACTICES AND RESOURCES FOR CALIFORNIA COUNTIES

**PARTNERSHIP
FOR COMMUNITY
EXCELLENCE**

SUPPORTING COUNTIES IN IMPLEMENTING THE 2011 PUBLIC SAFETY REALIGNMENT

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Editor

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California Forward launched the Partnership for Community Excellence (Partnership) in December 2011 to assist counties to envision, design and implement their own strategies to effectively implement new responsibilities related to the adult criminal justice Realignment under Assembly Bill 109 and related legislation. The Partnership's goal is to provide actionable information to local leaders and agencies so they can make smart decisions in building capacity, choosing evidence-based programs, and measuring and improving results.

Realignment also creates an opportunity for counties to examine new governance models that will help them achieve better outcomes in other areas of local government. Good governance is centered on collaborative planning, using models and services shown to work, and measuring and improving results. Given the diversity of California, these good governance practices can be expected to result in different strategies. There is no "one right way," yet government must be accountable to Californians for results. Adopting effective governance models will assist counties to improve transparency, accountability and results. Public leaders need accurate and up-to-date information in order to make good decisions and drive system change.

Effective pretrial practices are important to the success of Realignment and improving public safety, given that 71 percent of jail beds currently are occupied by pretrial detainees. Making pretrial release decisions based on a detainee's risk and needs, versus their ability to post bail, is key to improving public safety and offender outcomes. The purpose of this report is to provide a summary of best practices and practical information to assist county leaders in determining how pretrial programs could assist their local jurisdiction. The report includes the following:

- Summary of national pretrial best practices;
- Summary of five California counties' experiences in effectively implementing pretrial programs;
- Suggestions related to offender tracking and data collection and analysis;
- Issues for consideration in implementing a pretrial program; and,
- Resources including technical assistance available to counties.

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The Partnership strives to provide non-partisan, factual, actionable information and quality reports to those involved in implementing, or who have an interest in, Realignment. We want to improve the quality of our work over time so we welcome all suggestions and advice regarding this report as well as topics and other information to be included in future reports.

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The 2011 Public Safety Realignment (Realignment) is the most significant criminal justice legislation passed in three decades in California. Realignment moved authority, responsibility and accountability to counties for non-serious, non-violent and non-sex offenders formerly sentenced to state prisons. The State retained responsibility for serious, violent and sex offenders. This change allows counties to have more flexibility to develop local solutions to improve results. The legislation anticipates that counties would invest in community-based supervision and treatment to reduce long-term recidivism. This shift of state responsibilities to local government poses many challenges and opportunities.

One challenge of Realignment is the lack of jail beds available for locally sentenced offenders and parole and probation violators. In California, 32 out of 58 counties plan to add new jails or expand lockups, one of the most expensive ways to reduce risk other than prisons. Given the significant expense of constructing and operating jail beds, counties may want to consider alternatives that would reduce the demand for jail beds while maintaining public safety. Among the alternatives are pretrial programs that assess risk and manage in the community those defendants who are low risk for flight and committing a new crime.

In California, 71 percent of jail beds are filled with pretrial detainees, from very low risk to high risk. That compares to 61 percent nationally. Whether or not detainees are released often is based on their ability to pay bail versus their risk. As a result, many defendants who are considered low risk for flight and to commit a new crime are detained in jails because they cannot afford bail. The higher rate of pretrial detention coupled with plans to allocate considerable funds to build and operate new jail beds are reasons for counties to carefully consider whether establishing a pretrial program could reduce cost while maintaining public safety.

Many California counties have significantly reduced their need for expensive jail beds by implementing pretrial programs that use assessments to determine risk and then release detainees who are low risk for flight and committing new crimes on own recognizance (OR) or an OR bond with some form of supervision.

A review of the pretrial programs in five California counties (Marin, Santa Clara, Santa Cruz, San Francisco and Yolo) found that all had positive outcomes related to the number of pretrial detainees in jails, defendant court appearance rates, and new crimes committed. A recent study of Santa Clara County's pretrial program concluded that the program saves the county \$32 million per year.

The American Bar Association and the National Association of Pretrial Services Agencies have promulgated standards for pretrial programs, which call for limiting the circumstances under which pretrial detention may be authorized and providing procedural safeguards to govern pretrial detention proceedings. This standard is based on the law which favors the release of defendants pending adjudication of charges.

Though the research on effective pretrial programming is not as robust as in some other areas of corrections, evidence does point to the benefit of pretrial risk assessment and the implementation of a continuum of pretrial supervision options.

Risk and needs assessment is a core component of any pretrial program. Objective risk and needs assessment tools that have been validated for the local population are

critical to determining which defendants are low risk for flight and committing a new crime and determining services needed to reduce risk (e.g. drug treatment/testing, intensive or non-intensive supervision).

It is critical that data are collected and analyzed to determine the impact of Realignment, both at the state and local level. Counties have agreed to provide some important, yet basic, data to assist in evaluating Realignment. Counties considering implementation of a pretrial program should collect and analyze data on individual defendants – failure to appear and commission of new crimes – and on system outcomes. Pretrial services is part of a system, requiring several entities (courts, probation, law enforcement, etc.) to work together and it is important that the pretrial programs help assist the system in achieving overall goals.

Issues to consider in implementing pretrial programs include:

1. Each part of the criminal justice system must rely on information and data from other entities to effectively implement its responsibilities. Officials should consider early on how best to share information and data systems.
2. Implementation of new programs requires changes at the staff level so it is critical to involve staff in the process and provide training so the change is well understood and accepted as a new way to do business.
3. For new programs to work, the necessary infrastructure must be in place. The lack of sufficient community programs in many counties hampers efforts to provide alternatives to detention and incarceration.
4. Misinformation and a lack of understanding of evidence-based alternatives continues to be a primary concern around Realignment. State and local elected officials, as well as the public, struggle with the complexity and the risks associated with various proposals and decisions. Counties should educate and involve their elected officials and the public in their planning if they are to garner support for innovative and evidence-based strategies.
5. Data and analysis are useful in informing policy at the state and local level and in demonstrating results to key stakeholders and the public.

A number of resources are available to counties that want to consider implementing a pretrial program. The Crime and Justice Institute will be working with two counties to implement pretrial programs. Californians for Safety and Justice, partnering with various experts, will be providing direct support to counties that are building innovative approaches to increase safety and reduce justice system costs. Pretrial services is one of their areas of focus. A bibliography of important resources also is provided.

71 percent of jail beds are filled with pretrial detainees, from very low risk to high risk. Whether or not detainees are released is based on their ability to pay bail versus their risk.

The 2011 Public Safety Realignment (Realignment) is the most significant criminal justice legislation passed in three decades in California. This legislation resulted from the convergence of a poor economy and a resulting tight state budget with a federal court order, subsequently upheld by the U.S. Supreme Court, to reduce California's prison population from 170,000 inmates (2011) to 110,000 by June 2013 and to maintain an overcrowding rate of no more than 137.5 percent. A recent report shows that California has achieved two-thirds of the population reduction required by the court (Center on Juvenile and Criminal Justice [CJCJ], 2012a).

Realignment moved authority, responsibility and accountability to counties for non-serious, non-violent and non-sex offenders formerly sentenced to state prisons. The State retained responsibility for serious, violent and sex offenders. This change allows counties to have more flexibility to develop local solutions to improve results. Realignment contemplated that counties would invest in community-based supervision and treatment to reduce long-term recidivism. This shift in the state and local relationship poses many challenges and opportunities.

One challenge of Realignment is the lack of jail beds available for locally sentenced offenders and parole and probation violators. There are a number of ways to address this problem and each county has important choices to make.

In California, 32 out of 58 counties plan to add new jails or expand lockups, one of the most expensive ways to reduce risk other than prisons. Interestingly, 71 percent of jail beds are filled with pretrial detainees, from very low risk to high risk. Whether or not detainees are released is based on their ability to pay bail versus their risk. Many counties have significantly reduced their need for expensive jail beds by implementing pretrial programs that use risk assessments to determine risk and then release detainees who are low risk for flight and reoffending, on an own recognizance (OR) bond, or under some form of supervision.

The purpose of this report is to provide an overview of pretrial models and practices so counties can make informed decisions about how pretrial services could cost-effectively improve public safety outcomes.

THIS REPORT HIGHLIGHTS:

- 1 Best practices in safe and cost-effective pretrial practices**
- 2 Examples of pretrial programs from select California counties**
- 3 Lessons learned by counties currently implementing pretrial services**
- 4 Issues for consideration by local leaders in adopting and implementing pretrial services**
- 5 A list of publications that provide a more thorough analysis of pretrial issues and best practices**
- 6 Technical assistance that will be available to counties**



PRETRIAL ISSUES IN CALIFORNIA COUNTIES

HIGH RATES OF PRETRIAL DETENTION ACROSS CALIFORNIA

Data from the Board of State and Community Corrections shows that the percentage of individuals awaiting trial in California's county has risen 12 points from 1995 through the third quarter of 2011 (Board of State and Community Corrections [BSCC], 2011). That proportion was 71 percent for most of 2011 and the same in 2010, above the national average of 61 percent (Bureau of Justice Statistics, 2011) comprising roughly 50,000 of the 71,000 jail inmates in the state.

Many factors affect whether or not a defendant is detained prior to trial. One of the most prominent factors is whether or not the defendant can make bail. The current bail system is intended to ensure that defendants who have been determined not to pose a public safety risk appear for their scheduled court dates. In practice, however, individualized assessment of defendants' public safety and flight risk are routinely forgone, making pretrial release less a question of public safety and more a question of defendants' financial ability (Center on Juvenile and Criminal Justice, 2012b). The lack of individualized risk assessment at the time of arraignment has contributed to the high rates of pretrial detention. Individuals with financial means, such as a home to use as collateral, can secure release and return to their jobs, families, and communities. Others who cannot raise the necessary collateral must stay in jail, for several months in some cases, and may more readily accept a plea bargain as a result (Patterson & Lynch, 1991) (Clark & Kurtz, 1983) (Rankin, 1964) (Foote, 1954) as cited in (ACLU of California [ACLU], 2012). Disproportionate outcomes also have occurred as a result of a defendant's race and ethnicity. Latino and black defendants are more likely than white defendants to be held in custody because of an inability to post bail (Demuth, 2003) as cited in (ACLU, 2012).

The lack of individualized risk assessment at the time of arraignment has contributed to the high rates of pretrial detention.

Public defenders and private defense counsel across the state report that a substantial number of the pretrial detainees in county jails have bail set, but cannot afford to post bail. Few, if any, counties currently track specific information about their jail populations. Data reported to and maintained by the State combines all unsentenced prisoners without identifying who among them had bail set, and many remain in jail pending trial because they cannot post the court ordered bail amount. Better data collection by counties indicating who is held in lieu of bail and the reason(s) would greatly facilitate the implementation of improvements (ACLU, 2012).

PRESUMPTIVE BAIL AND ABSENCE OF INDIVIDUALIZED RISK ASSESSMENT

The California Penal Code requires judges to consider a number of factors when setting bail and deciding the terms of pretrial release, including the defendant's history of criminal convictions, past failure to appear in court, and the impact of pretrial release on victims (California Constitution) (California Penal Code) (Administrative Office of the Courts [AOC], 2011) (Clark v. Superior Court, 1992) (Ex Parte Ruef, 1908) (In re Christie, 2001) (In re Burnette, 1939) (People v. Gilliam, 1974) as cited in (ACLU, 2012). Despite this, counties have gradually transitioned to a presumptive bail system, where judges set bail according to the figure listed in the county bail schedule, without meaningful consideration of the specific circumstances of the defendant or the alleged

offense. As a result, many people who present no public safety or flight risk remain in jail prior to trial, while others who do present a public safety risk are released because they can afford to post the scheduled bail amount.

Bail schedules also vary widely from county to county. Presumptive bail for possession of a controlled substance under California Health and Safety Code section 11350 can range from \$5,000 in San Diego to \$25,000 in San Bernardino (California County Superior Courts, 2011). Relying solely on a county schedule to set bail raises serious due process concerns. The lack of individualized pretrial risk assessment has already led some courts outside of California to hold that presumptive bail practices violate defendants' due process rights (Carlson, 2011) as cited in (ACLU, 2012).

The increased cost of bail has resulted in the advancement of the commercial bond industry in California and significant statewide losses. According to a 2010 investigative series by National Public Radio, bail bond companies routinely fail to pay counties when their clients fail to appear for court. The series reported that in California bond companies owe counties \$150 million (NPR, 2010).

The information discussed above evidences incongruence with regard to bail issues. There is, however, a great deal of research on individualized risk assessment. According to an extensive review by the Vera Institute (which includes ample national models and sample risk assessment inventories), much of the research on pretrial release has focused on risk assessment and supervision practices that help reduce pretrial failure while protecting the rights of the individual (Vera Institute of Justice, 2010).



NATIONAL BEST PRACTICES IN MANAGING PRETRIAL ARRESTEES

As the public safety system moves towards greater collaboration across agencies (often referred to as a systems approach), the pretrial stage of the criminal justice process is gaining increasing attention as the first opportunity to focus on risk reduction of offenders. Though the research on effective pretrial programming is not as robust as in some other areas of corrections, evidence does point to the benefit of pretrial risk assessment and the implementation of a continuum of pretrial supervision options. Below is a brief discussion of the national pretrial landscape, as well as references to more in-depth explorations of the subject.

PRETRIAL SERVICES PROGRAMS

Pretrial release programs generally serve two primary functions:

1. They supply information to the court on which to base pretrial release decisions; and,
2. They provide a range of supervision options for defendants who are released to the community with terms of release.

Pretrial programs focus on a defendant's risk to re-offend and to fail to appear. These programs can supplement a bail system that includes surety bonds. They also can replace bonds with a system based solely on risk as recommended in the American Bar Association's (ABA) national pretrial standards. When used effectively, pretrial programs can uphold the presumption of release as outlined in federal law, reduce unnecessary incarceration, and help maintain public safety.

PRETRIAL INVESTIGATIONS

Pretrial investigations generally include an interview with the defendant, a review of court records and other collateral information, and a formal report presented to the court. The types of information collected in pretrial investigations can vary widely from jurisdiction to jurisdiction. Federal law allows judges to consider a number of factors, including the nature of the alleged offense, drug and alcohol use, mental health, employment, and ties to the community; state statute or court rule may refine the list of elements for local courts. As part of the overall pretrial investigation, evidence-based pretrial agencies also conduct an objective pretrial risk assessment to evaluate risk of flight and re-offense. The data elements that are predictive of risk often are only a subset of the information considered by a judge. (See pretrial risk assessment discussion below.)

The supervision function of pretrial programs varies widely. It is important to highlight that pretrial programs can be administered by probation departments, sheriffs, the courts, or independent agencies, public or private, and statute may dictate who can be supervised and in what manner. Evidence suggests that the intensity of supervision should be linked to risk, with low risk offenders receiving passive supervision, or none at all, and high risk offenders receiving active supervision (Latessa, 2012). Passive supervision, which is reported back to the court, includes periodic reviews of defendant's terms of release to identify changes in eligibility such as a change in employment status. More active interventions include court date reminders, electronic monitoring, or home confinement. Additionally, pretrial services programs may assist defendants by addressing needs such as employment and medical care. National standards are available to provide guidance for how programs should operationalize these goals.

The pretrial stage of the criminal justice process is gaining increasing attention as the first opportunity to focus on risk reduction of offenders.

Taken together, the ABA and NAPSA standards present details for introducing effective practices into all facets of pretrial decision making.

NATIONAL STANDARDS

Two organizations have promulgated standards for pretrial: the ABA and the National Association of Pretrial Services Agencies (NAPSA). The ABA standards, updated in 2007 and currently under revision, provide guidance on pretrial decision-making from arrest through the court process. The ABA states that “[t]he purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference. The law favors the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support. These standards limit the circumstances under which pretrial detention may be authorized and provide procedural safeguards to govern pretrial detention proceedings” (American Bar Association [ABA], Criminal Justice Section, 2007a).

In principle, the standards favor maintaining defendants in the least restrictive environment necessary to ensure public safety and a return to court, as well as balancing due process rights with objective risk assessment and placement decisions. The ABA also advocates for the abolition of commercial surety systems (i.e. bail bondsmen) (ABA, 2007).

The following standards on pretrial release were approved by the ABA in 2002 and were published with commentary in ABA Standards for Criminal Justice: Pretrial Release, Third Edition, 2007. (American Bar Association [ABA], Criminal Justice Section, 2007b). Counties can find more details on the individual standards from the ABA website at http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_toc.html.

The NAPSA standards purposefully align with the ABA standards, but also provide additional detail on the operation of effective pretrial services agencies, from the structure and management of a supervision program to responses to violations (National Association of Pretrial Services Agencies [NAPSA], 2004). Taken together, the two documents present details for introducing effective practices into all facets of pretrial decision making. This begins with risk assessment.

ABA STANDARDS ON PRETRIAL RELEASE

PART I. GENERAL PRINCIPLES

- Standard 10-1.1 Purposes of the pretrial release decision
- Standard 10-1.2 Release under least restrictive conditions; diversion and other alternative release options
- Standard 10-1.3 Use of citations and summonses
- Standard 10-1.4 Conditions of release
- Standard 10-1.5 Pretrial release decision may include diversion and other adjudication alternatives supported by treatment programs
- Standard 10-1.6 Detention as an exception to policy favoring release
- Standard 10-1.7 Consideration of the nature of the charge in determining release options
- Standard 10-1.8 Pretrial release decision should not be influenced by publicity or public opinion
- Standard 10-1.9 Implication of policy favoring release for supervision in the community
- Standard 10-1.10 The role of the pretrial services agency

ABA STANDARDS ON PRETRIAL RELEASE (CONT.)

PART II. RELEASE BY LAW ENFORCEMENT OFFICER ACTING WITHOUT AN ARREST WARRANT

- Standard 10-2.1 Policy favoring issuance of citations
- Standard 10-2.2 Mandatory issuance of citation for minor offenses
- Standard 10-2.3 Permissive authority to issue citations in all cases
- Standard 10-2.4 Lawful searches

PART III. ISSUANCE OF SUMMONS IN LIEU OF ARREST

- Standard 10-3.1 Authority to issue summons
- Standard 10-3.2 Mandatory issuance of summons
- Standard 10-3.3 Application for an arrest warrant or summons

PART IV. RELEASE BY JUDICIAL OFFICER AT FIRST APPEARANCE OR ARRAIGNMENT

- Standard 10-4.1 Prompt first appearance
- Standard 10-4.2 Investigation prior to first appearance: development of background information to support release or detention determination
- Standard 10-4.3 Nature of first appearance

PART V. THE RELEASE AND DETENTION DECISIONS

- Standard 10-5.1 Release on defendant's own recognizance
- Standard 10-5.2 Conditions on release
- Standard 10-5.3 Release on financial conditions
- Standard 10-5.4 Release order provisions
- Standard 10-5.5 Willful failure to appear or to comply with conditions
- Standard 10-5.6 Sanctions for violations of conditions of release, including revocation of release
- Standard 10-5.7 Basis for temporary pretrial detention for defendants on release
- Standard 10-5.8 Grounds for pretrial detention
- Standard 10-5.9 Eligibility for pretrial detention and initiation of the detention hearing
- Standard 10-5.10 Procedures governing pretrial detention hearings: judicial orders for detention and appellate review
- Standard 10-5.11 Requirement for accelerated trial for detained defendants
- Standard 10-5.12 Re-examination of the release or detention decision: status reports regarding pretrial detention
- Standard 10-5.13 Trial
- Standard 10-5.14 Credit for pre-adjudication detention
- Standard 10-5.15 Temporary release of a detained defendant for compelling necessity
- Standard 10-5.16 Circumstances of confinement of defendants detained pending adjudication

PART VI. NOTICE TO VICTIMS OF CRIME

- Standard 10-6.1 Judicial assurance of notice to victims

RISK ASSESSMENT FOR PRETRIAL ARRESTEES

The goals of pretrial detention are to ensure that defendants return to court, and to protect public safety. The challenge lies in successfully predicting who is at risk to fail to appear or to commit a new crime, and setting release terms that mitigate that risk, all while protecting a defendant's rights. Many jurisdictions use a bond schedule that links the severity of the alleged offense to a dollar amount, but there is no research to indicate whether or not this accurately predicts or mitigates risk. Conversely, research does show that certain elements of a defendant's past and current behavior and circumstances are predictive of risk, and can be accurately measured. For more information on assessing pretrial risk, see *State of the Science of Pretrial Risk Assessment*, published by the Pretrial Justice Institute (Mamalian, 2011).

A 2011 analysis identifies factors that have been shown to relate to pretrial risk, including criminal history, prior failures to appear, alcohol and transportation. Items that are generally not correlated with risk include age, family, and length of time at current residence.

Pretrial risk assessment tools function by considering a number of factors about the defendant and assigning points for each factor that increases the defendant's risk. The points are then translated into a risk level (usually low, moderate, or high), and used to inform a supervision recommendation to the court. Pretrial risk tools are not designed to assist in assigning an amount of surety bond, since there is no research to support such a tie, and since the ability to pay a bond is more closely linked to economic circumstances than to risk.

A 2011 analysis identifies factors that have been shown to relate to pretrial risk, including criminal history, prior failures to appear, alcohol and transportation. Items that are generally not correlated with risk include age, family, and length of time at current residence. However, the study does caution that significant factors can vary between jurisdictions, and each jurisdiction needs to complete its own analysis when either developing a new tool or adopting an existing one. Fortunately, the brevity of these types of instruments and the volume of cases going before the court often makes this validation analysis relatively quick and feasible. Engaging in a validation study ensures that the risk assessment instrument being used in a jurisdiction is predictive and achieves desired public safety goals (Bechtel, Lowenkamp, & Holsinger, 2011).

NATIONAL EXAMPLES OF THE USE OF PRETRIAL BEST PRACTICES

The body of research on effective pretrial programs is growing steadily, and provides lessons learned from around the country. The following examples are drawn from the *State of the Science of Pretrial Release Recommendations and Supervision* (VanNostrand, Rose, & Weibrecht, 2011).

Court Notification

A low-cost, highly effective intervention to ensure return to court is simply to remind defendants of their court dates, either by mail or phone, using an automated system or a person. VanNostrand, Rose and Weibrecht (2011) reviewed numerous evaluations and studies conducted in six different states over nearly 30 years. All the studies examined the effectiveness of court date notification programs. The target populations among the studies varied and ranged from defendants issued a citation/summons for minor offenses to those charged with felony offenses. Different approaches of notifying defendants were utilized and included (1) "live" callers such as volunteers or paid staff to call defendants to remind them of upcoming court dates, (2) an automated calling system, (3) notification letters or post cards, and (4) a combination of notification letters and phone calls. All of the studies concluded that court date notifications in some form are effective in reducing failures to appear in court.

In Multnomah County, Oregon, a randomized study compared defendants receiving automated reminders by phone to those who did not receive calls. The study found that those who received the reminders had a 16 percent failure to appear rate, compared to 28 percent in the comparison group. Coconino County (Flagstaff), Arizona implemented a telephone reminder system using volunteers. Results of a randomized trial found that 25.4 percent of the control group failed to appear, while the rate for the reminder group was 12.9 percent.

Electronic Monitoring

As an alternative to incarceration, electronic monitoring (EM) provides a way to closely track offender movement while ideally serving as a deterrent to committing crime or leaving town. When EM became available, many in the criminal justice system saw opportunities to reduce jail crowding by electronically monitoring offenders in lieu of incarceration. EM has been used as an alternative to detention for pretrial defendants for over 20 years. Although much of the EM research focuses on the application of EM for post-conviction offenders, there is a body of research that examines the efficacy of EM applied in pretrial settings. Results of EM are mixed, likely due to the fact that increased monitoring makes it more likely that the defendant will be caught violating. For example, U.S. Federal Pretrial Services found that defendants on EM were slightly more likely to fail to appear, and to be rearrested. More research is necessary to accurately assess the effectiveness of electronic monitoring tools with treatment and other targeted interventions used for pretrial release.

Pretrial Supervision

The practices known collectively as “pretrial supervision” are diverse, so it is difficult to capture their efficacy with examples. It is known, though, that basing a system on objective risk with interventions targeted to higher risk offenders is effective with other criminal justice populations. A randomized study conducted in Philadelphia, Pennsylvania, tested two different intervention models with moderate and high risk offenders. Though there was no variation in outcomes depending on the type of interventions received, the two groups did lower their risk score as compared to baseline after participating in an intervention consisting of an orientation, phone reporting, and in some cases, in-person reporting. More research is needed in this area to identify the relative impact of risk and the type of supervision received (Goldkamp & White, 2006).

As a field, pretrial services still has a long way to go to realize its potential in risk reduction, population management and public safety. However, the fundamental elements for success have been proven through research, and pioneers have discovered ways to translate those elements into successful operations. As more criminal justice systems adopt these approaches and measure their results, counties and their courts will have better information to make choices that cost-effectively improve public safety.



THE USE OF PRETRIAL SERVICES PROGRAMS IN CALIFORNIA

Several California counties have implemented pretrial services programs, some of which have been independently evaluated and have demonstrated positive results. Generally the goals associated with the county pretrial programs we reviewed are:

1. Reduced number of jail beds used for pretrial detainees who are low risk for failure to appear and re-offend so beds are available for sentenced offenders;
2. Reduced rates of re-offense;
3. Reduced rates of failure to appear; and,
4. For some, reduced recidivism.

Each county collected and analyzed data on their pretrial programs to determine their effectiveness.

Although all of the counties reviewed have the same goals, they have used different strategies in designing and implementing their pretrial programs. Most importantly, they have all collected and analyzed data on their pretrial programs to determine their effectiveness. However, each jurisdiction used different metrics to measure outcomes so direct comparisons of outcomes should not be made among these counties. These counties' pretrial programs are models for how to effectively implement good governance strategies. Each county:

1. Brought together leaders from all county agencies that had a stake in the pretrial program and worked together to develop and implement their agreed upon strategies;
2. Chose practices that have demonstrated success;
3. Collected and analyzed data to measure progress (some had independent evaluations);
4. Used effective quality improvement processes to improve results; and,
5. Achieved positive outcomes.

MARIN COUNTY

In 2011 the Adult Services Division of the Marin County Probation Department, , contracted with Leaders in Community Alternatives (LCA) to provide pretrial services. The objective of the Pretrial Release Program is to determine which defendants can be successfully released in the community while awaiting sentencing. The decision rationale includes: utilizing an evidence-based risk assessment to evaluate eligibility for community release and supervision; addressing the economic discriminatory nature of the bail system; establishing additional validated decision-making criteria in preparation for the impact of Realignment and AB109; and, saving costs by contracting with a community based organization (Daly, 2012).

LCA Pretrial Services staff is based in the Marin County Probation Department, working in cooperation with the Marin County Sheriff's Department and the courts. Detainees are excluded from pretrial release evaluation if they have: an U.S. Immigration and Customs Enforcement (ICE) hold, probation violation, zero bail, or are charged with committing a heinous crime, or if they have already been released on bail. Utilizing the Ohio Risk Assessment System - Pretrial Assessment Tool (ORAS-PAT), LCA Pretrial Services staff assess all eligible defendants including new arrestees and those who have been arrested for conditional violations of probation. The ORAS-PAT consists of seven risk variables in three dimensions (criminal history, employment and residential stability,

and drug use) and is administered in 10 to 15 minutes involving a face-to-face interview with the defendant in custody, with some questions verified through official records or otherwise. Based on the scores of these items, cut-points differentiate between groups that are low, medium, and high risk to violate pretrial supervision (failure to appear or new arrest) (Connelly, 2012).

LCA Pretrial Services staff prepares the Pretrial Release Report following additional evaluation of verified community ties, flight risk, and danger to self or others. There is an override option, based on information gained. The risk assessment score is the primary criterion for pretrial release recommendation. Detainees with low risk scores are generally recommended for release without conditions (OR); however Continuous Alcohol Monitoring (CAM) is considered for alcohol-related incidents. Arrestees with medium risk scores are generally recommended for release with conditions of appropriate electronic technology; home detention and/or CAM. Arrestees with high risk scores are typically not recommended for release, but release may be considered with conditions of the appropriate electronic technology – GPS and/or CAM. The LCA report with recommendation to deny or to approve release, without or with varying levels of supervision, is then submitted to Marin County Probation for review and approval, and subsequently to the court (Daly, 2012).

LCA Pretrial Services staff only supervises defendants who have been released on electronic supervision. Pretrial Services had no up front cost. The ongoing cost to Marin County Probation is \$25,000 annually for .5 FTE staff to conduct assessments and prepare the reports. On average, six to eight assessments are completed each day. The cost of supervision is paid by program participants, based on their ability to pay (sliding scale). An indigent fund is available which is funded through AB109 (Daly, 2012).

The outcomes measured are: failure to appear, re-offense, and failing to abide by the conditions of the electronic monitoring program during pretrial status. This information is tracked through the court's database system.

Below are the results for January through May 2012 for all pretrial releases under this program:

- 79 percent successfully appeared at their next court date with no further incidents;
- 9 percent had new charges filed;
- 3 percent were remanded due to program violations related to electronic monitoring; and,
- 9 percent failed to appear.

These results are based on 116 total releases, a relatively small sample (Connelly, 2012).

SANTA CLARA COUNTY

Santa Clara's Office of Pretrial Services was established as a separate agency in 1971. According to Garry Herceg, director of the Office of Pretrial Services, it remains the only such independent agency in California, although San Francisco may have a comparable agency, (Herceg, 2012). The agency has an annual budget of about \$5 million, and a recent study concluded that the agency saves the County about \$32 million per year (Santa Clara County, Board of Supervisors, Management Audit Division, 2012).

Pretrial Services has a station in the jail booking area, staffed by a 7 FTE court team. The team has phone and computer access to the courts, so there is no need to wait until court is in session to make release recommendations. The program also reviews in-custody defendants regularly for probable cause, to make recommendations regarding release and bail setting. Total FTEs for the agency, including supervision staff, is 47.

Pretrial cases also are assessed for substance abuse, employment, and housing by other appropriate county agencies.

Santa Clara policy is that no misdemeanors are booked except domestic violence cases (which according to California law must be booked). Most of the work is done with low end felonies. The Virginia Pretrial Release Risk Assessment Instrument (VPRAI) is used for initial screening; a local validation study will be completed very soon. The instrument measures the likelihood of appearance in court and likelihood of new offenses. The VPRAI examines a defendant's status at the time of the arrest as it relates to the current charges, pending charges, criminal history, residence, employment, primary caregiver, and history of drug abuse. Initial indications from the validation study suggest that information on mitigation factors, such as education, should be added to the instrument.

Pretrial Services staffs Own Recognizance (OR) and Supervised OR and, reflecting the fact that most of their cases are low level felonies, the agency is seeking to establish an Electronic Monitoring Program (EMP). EMP currently is not operative, pending a grant for equipment. Field supervision of cases includes weekly meetings and frequent drug testing. Currently, there are 390 defendants in OR and 660 in Supervised OR. The average length of supervision in 2011 was 120 days. Pretrial cases also are assessed for substance abuse, employment, and housing (especially for transients) by other appropriate county agencies. According to Director Herceg (2012) there is no memorandum of understanding for coordination with these agencies.

Defendant outcomes and program performance are tracked in two distinct systems. The County Justice Information system tracks recidivism and the Pretrial On-line Production System (POPS) for case managers addresses need factors such as substance abuse. Outcomes data for the justice-related variables for the first quarter of 2012 (January through March) show that 88 percent of defendants in the pretrial program appeared for their court date and 98 percent had no new offenses (Herceg, 2012).

SANTA CRUZ COUNTY

Santa Cruz County, a mid-sized central coast county, has initiated several reform efforts in the last ten years to improve services for youths and adults under their supervision. As result of deliberate interventions through a collaborative effort between the Probation Department and the Sheriff's Department, Santa Cruz County's non-sentenced jail population remains significantly below the state average of 71 percent (BSCC, 2011) with a non-sentenced jail population of 53.8 percent in 2010 (Smith & Penny, 2012).

Santa Cruz County historically faced the challenge of jail overcrowding after the construction of its main jail in 1981. In 2004 justice administrators formed a strategic task force in response to a county grand jury report that highlighted unsafe and crowded conditions in the jail facilities. Shortly thereafter, a comprehensive study was conducted of the Probation Department's practices (Center on Juvenile and Criminal Justice, 2012c) This study led to an expansion of the county's pretrial services program, housed in the probation department.

The expansion included stationing four deputy probation officers in the jail booking area, forming a new unit within the department. This created a streamlined process of conducting best practice risk assessments. The process was enhanced because of the probation department's well-established relationship with the Sheriff's Department. The pretrial services staff does not provide services on a 24-hour basis; however, the officers are stationed in the jail from 7 a.m. to 6 p.m. seven days a week.

Staff from the Pretrial Services Unit (PTS Unit) utilize the Virginia Pretrial Release Risk Assessment Instrument (VPRAI), which is built into the development of their report for the court. This risk assessment tool is connected to the Sheriff's booking case management system (CMS). This interconnection is essential as information will generate into the risk assessment if already contained in the CMS.

Pre-arraignment release is the unit's first priority. If not eligible for this release, the probation officer will conduct a full interview for further eligibility assessment. During this process, the officer verifies the individual's residence and employment. Additionally, if it is relevant, the probation officer will contact the victim. The report is then submitted to the court for the judge's decision. To determine eligibility, the probation officer determines whether or not the individual will remain law abiding and appear for scheduled court dates.

The probation department utilizes the standards of the California Association of Pretrial Services as a guide. A low risk score does not automatically result in release. The probation officer can override a score and provide reasons for the override to the court. In Santa Cruz County, to be eligible for pretrial services individuals must be under county jurisdiction. Therefore, individuals who are from out-of-state or who have out-of-county warrants are not eligible.

The PTS Unit is internally responsible for collecting and analyzing data. The unit is most interested in two indexes, appearance rates and new violation and/or technical violations.

The unit is held in high regard among local law enforcement. Its success is due, in part, to its well-established relationship with the courts and the sheriff's department. This allows the PTS Unit staff access to additional information with ease and efficiency (Smith & Penny, 2012).

SAN FRANCISCO COUNTY

The San Francisco Pretrial Diversion Project, Inc. (SFPDP) was established in 1976 through a collaborative effort with the San Francisco Bar Association, a contingent of judges from the Municipal Courts, and a group of citizen-advocates concerned about un-sentenced incarcerated individuals. SFPDP has an annual budget of \$3.4 million and operates nine different pretrial best practice programs that have significantly reduced San Francisco's un-sentenced population over the last 35 years. These programs have provided rehabilitation and mental health programming for thousands of individuals (Rodriguez & McCovey, 2012).

Pretrial services in San Francisco are almost entirely managed by a single non-profit agency that is funded directly through contracts with the San Francisco Sheriff's Department. Memorandums of understanding are not formally established with local criminal justice agencies, but rather with partnering organizations through contracts. A significant portion of SFPDP's contracts are established through a local Request for Proposal (RFP) process managed by the San Francisco Sheriff's Department. The signed contracts clearly delineate expectations and accountability measurements.

Of SFPDP's nine programs, three demonstrate an innovative approach to both the real needs of their clients as well as the realities and gaps that exist within the San Francisco judicial system. The Supervised Pretrial Release program (SPR) and the Own Recognizance program (OR) are both designed to serve felony defendants and provide judges with real alternatives to detention pending trial. Both programs involve thorough risk assessments and considerations of criminal history, "OR work-ups," that are provided to judges during pre-arraignment and pre-booking. In the OR program, duty judges review cases before arraignment to determine whether or not the individual qualifies for an OR release. The conditions of an OR release are relatively minimal, with the main requirement being a daily check-in with the SFPDP, the supervising agency.

In those cases where judges determine a greater need for structure and programming support for the individual, a judge can provide for release to the SPR program through the agency. Through this program, judges can mandate a broad spectrum of classes and group sessions for individuals, based on the determined needs. Through the agency's Court-Accountable Case Management Center, individuals on SPR take classes and participate in group sessions focused on substance

A low risk score does not automatically result in release. The probation officer can override a score and provide reasons for the override to the court.

abuse, mental health concerns (including dual diagnosis), anger management, domestic violence, as well as groups for the specific needs of women and youth.

A third program focuses specifically on homeless felony defendants. The San Francisco judicial system had traditionally struggled with a large number of homeless persons who were spending long periods of time as pretrial detainees in local jails. The SFPDP adapted a program started by the Center on Juvenile and Criminal Justice (CJCJ) that provided intensive one-on-one case management to homeless defendants currently in custody. Case managers develop a treatment plan that includes a range of counseling and life skills options. Positive results are seen in the large drops of homeless defendants using jail beds that could be used for more high-risk defendants or sentenced offenders (Rodriguez & McCovey, 2012).

Using the FileMaker Pro database system, the agency tracks both failure to appear (FTA) rates, as well as successful and unsuccessful completion of the court-mandated programming. The data provided by SFPDP are as follows:

1. For defendants with both felony and misdemeanor charges, the Structured Pretrial Release program (SPR) has only a 3 percent failure to appear rate, and that rate has been trending downwards over the past several years.
2. The Pretrial Diversion Program, which focuses exclusively on defendants with misdemeanor charges, showed a 73 percent successful completion rate in 2010 with another 12 percent of cases successfully completing the program in the following years. The program had a 15 percent failure rate of defendants failing to comply with the court-ordered components of the program.
3. The agency's No Violence Program (NoVA), a collaborative effort established by the San Francisco Sheriff's Department, is the only program that tracks long-term recidivism. NoVA is specifically geared for offenders with violent histories, and showed a 0 percent recidivism rate from two to five years after detainees left the program. The only individual to recidivate did so five years after exiting the program.

San Francisco has the fourth lowest rate of jail incarceration in the state. The city relies heavily on alternatives to incarceration for its sentenced population; therefore the remaining jail population has a higher concentration of unsentenced inmates – 83 percent – well above the state and national averages. Although San Francisco's pretrial jail population percentage is high, overall use of incarceration is very low, as reflected in the surplus of empty jail bed spaces, even with the newly realigned non-serious, non-violent, non-sex offender population.

The SFPDP describes several key elements as essential to their success with pretrial populations. They commended the ability of the criminal justice system to be able to collaborate with an outside agency such as theirs. Agency staff emphasizes the important of trust between the various public agencies and their non-profit, including the public defender's office, the sheriff's department, the district attorney's office, the courts, and the health department. One staff commented that "a chain is only as good as its weakest link" and their agency strives hard to ensure strong collaborations and open communication among agencies. The degree of trust and collaboration is a testament to agency's 35-year history and track record of success.

One of the ongoing struggles the agency faces is how to maintain up-to-date technology to most effectively track clients, process results, and disseminate that information to their partnering agencies. Staff are regularly trained on the various technology tools, but there is a sense that the agency is "always running to catch up" with new demands. The Chief Operating Officer indicated the agency is impacted by limited fiscal resources as city contracts are being cut by as much as 20 percent. Contracts cover salaries and some fringe benefits, but costs such as rent, travel, and employee benefits present threats to the long-term sustainability of the program (Rodriguez & McCovey, 2012).

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YOLO COUNTY

In August 2009 the Yolo County Probation Department was awarded a \$2.76 million Byrne Grant from the federal government for a two-year implementation of a new pretrial services program. The program started in February 2010 and the grant funding will end on September 30, 2012. The chief of probation is hopeful that AB 109 or other funding will be forthcoming to continue this highly successful program (Rist & Fruchtenicht, 2012).

The pretrial program was intended to help relieve overcrowding, which has historically been an issue for the Yolo County Jail given the federally mandated population cap. The program also was built to assess the value of utilizing a validated risk assessment and to provide direct supervision and services to pretrial defendants in the community. As a part of the grant, ongoing data has been collected and analyzed.

Funds for the program were used for all operations including staffing, equipment and electronic monitoring (GPS and SCRAM alcohol monitoring).

The Pretrial Services Unit (PSU) collaborates closely with criminal justice stakeholders in the county including the district attorney, public defender, sheriff, and the court. These stakeholders were very involved in establishing the initial criteria for the program and have met every three months since the inception of the program for updates. Due to the great cooperation and support among the stakeholders, there is no formal memorandum of understanding.

There are eight probation officers and a supervisor who manage Yolo County's PSU seven days a week. The jail booking roster is reviewed daily, and those eligible for release are interviewed. Exclusion criteria are set by law and by policy established by stakeholders. Generally those with specific holds (ICE, parole, etc.) are not eligible. Once the hold is removed those defendants are interviewed. The criteria for inclusion in the program has expanded over the past two years as the program has demonstrated success and garnered credibility with its judicial partners.

The ORAS-PAT risk assessment tool has been utilized for all eligible defendants. Full reports are prepared for the court for the date of arraignment or own recognizance (OR) hearings, usually the next day. This allows time for the Probation Department to check criminal history, contact victims, and confirm release addresses and community ties. On average, six to ten reports are completed each day. A PSU officer is present at each arraignment hearing.

PSU officers provide community supervision for each defendant released on Supervised OR (SOR). "High risk" defendants are seen weekly in face-to-face meetings or home contacts. Low and moderate risk defendants are seen less often. Clients who perform well are rewarded with reduced office visits and lessened sanctions. All defendants are required to call the office every day. The high level of supervision and accountability has led to success for defendants in the program. The success of these defendants has resulted in greater support from stakeholders.

An outside consultant's analysis found that defendants in the pretrial program had a 92 percent court appearance rate and 95 percent did not commit new offenses. The court accepted 90 percent of all recommendations from the program. According to the court, those released on SOR would not have been released at arraignment without the program. Pretrial services has acted as a relief valve in certain instances where defendants could not be held at the jail for medical reasons (Luminosity, Inc., 2012).

Over the past two years, the PSU has learned the following:

1. A data analyst is needed from the start. It is important for establishing credibility and to assure timely and appropriate changes are made in procedures.
2. Terms and conditions for each defendant should be specifically tailored to their criminogenic needs.
3. A graduated sanctions program with built in rewards for good behavior should be implemented.
4. The unit has to be willing to step outside of established comfort zones to fulfill their purpose (Rist & Fruchtenicht, 2012).

The high level of supervision and accountability has led to success for defendants in the program. The success of these defendants has resulted in greater support from stakeholders.



TRACKING THE NON-NON-NON (N3) POPULATION

The Chief Probation Officers of California (CPOC) released their first report regarding Realignment in July 2012 (Chief Probation Officers of California [CPOC], 2012). They are tracking data related to “non-serious, non-violent, non-sex offenders” (from here on referred to as the “N3” population) on Post Release Community Supervision (PRCS) and “1170(h)” offenders or felons ineligible for state prison who are sentencing to local jails, probation or both (split sentence). CPOC currently is collecting 13 data elements.

13 DATA ELEMENTS COLLECTED BY EACH COUNTY, CHIEF PROBATION OFFICERS OF CALIFORNIA

DATA ELEMENTS	TYPE OF NUMBER
Post Release Community Supervision (PRCS)	
PRCS offenders released	Count
PRCS warrant-before	Count
PRCS closures (6-12 months)	Count
PRCS closures (1 year)	Count
PRCS closures (18 months +)	Count
PRCS recidivism	Count
Active PRCS offenders population	Snapshot
Active PRCS warrant-after population	Snapshot
1170h (Felons ineligible for state prison who are sentenced)	
1170h (a) jail only sentences	Count
1170h (b) split sentences	Count
1170h (b) no jail sentences	Count
Active 1170 (b) offenders Population	Snapshot
Context Variables	
New felony probation grants	Count

(CPOC, 2012)

All 58 counties agreed to report specific data elements and there was 100 percent participation for the period from October 2011 to March 2012. CPOC’s early data and report reveal positive results for both the State and counties. Although there are no specific outcome measures at this point, CPOC has committed to reporting on outcomes in a future report. Much more data and analysis is needed to draw any specific conclusions but the data shows that Realignment is moving in the right direction (CPOC, 2012).

The Center on Juvenile and Criminal Justice (CJ CJ) has analyzed significant Realignment data and suggests that the courts would be an appropriate collection entity for N3 information. Court records document the final conviction offense codes and sentencing information in a centralized

location. Some adaptation would be required to track N3s at the sentencing phase of the court proceedings. This could involve a “flag” on the offender’s record so that as the offender moves through the system and are tracked by other agencies, they can be identified as a N3 (CJCJ, 2012a).

It is important that all county criminal justice agencies are involved in designing the right system for data collection and organization and offender tracking for the county as well as to assist broader statewide efforts to evaluate the effectiveness of Realignment.

DATA ON PRETRIAL POPULATIONS

The Department of Justice data shows the aggregate unsentenced population in county jails. However, this number could include detainees who were determined a flight or public safety risk, inmates awaiting transfer to federal ICE facilities, inmates who were eligible but could not afford to post bail, and so on. To fully assess the eligible pretrial population, these data would have to be disaggregated at the county level to better determine the demographics of the unsentenced jail population. In addition, information regarding defendants who successfully post bail and defendants who qualify for pretrial services could be collected.

The Department of Justice provides data regarding unsentenced inmates by county online at http://stats.doj.ca.gov/cjsc_stats/prof09/index.htm.

All 58 sheriffs provide monthly data, including the number of unsentenced inmates, to the Board of State and Community Corrections. (See Jail Profile Surveys at <http://www.bscc.ca.gov/resources>.)

In addition, CJCJ lists the unsentenced county jail populations on its interactive sentencing map at <http://casi.cjcj.org>.

COUNTY PRETRIAL DATA ANALYSIS

To analyze pretrial data and to compare the effectiveness of interventions, specifically with the realigned N3 population, counties would need to collect and track the following data (CJCJ, 2012a).

1. Establishing a baseline:
 - a. Who comprises the unsentenced jail population in the county?
 - i. Demographic information (race, gender, socio-economic status)
 - ii. How many are determined to be a flight risk?
 - iii. How many are determined as a danger to the community?
 - iv. How many are eligible for pretrial services?
 - v. How many cannot afford to post bail?
 - vi. How many are detained for transfer to other agencies/facilities?
 - vii. What are the needs of those individuals (mental health, drug use, etc.)?
 - viii. How many are N3s? Cross-tab N3s with above data elements.
 - b. Who comprises the unsentenced, released population in the county?
 - i. Demographic information (race, gender, socio-economic status).
 - ii. How many pretrial individuals are out on bail?
 - iii. How many pretrial individuals are out on own recognizance (OR)?
 - iv. How many pretrial individuals are out on home detention?
 - v. How many pretrial individuals are out on pretrial services?
 - vi. How many are N3s? Cross-tab N3s with above data elements.

2. Measuring outcomes:
 - a. Of those on bail, in home detention, or on OR release:
 - i. What percentage of each type of release show up for their court date?
 - ii. What percentage of each type of release committed a new law violation?
 - b. Of those in pretrial detention:
 - i. What are the long-term outcomes of reintegration to society versus recidivism?
 - ii. What are the collateral consequences of extended pretrial detention.
 - iii. Are there significant increases or reductions in the county un-sentenced jail population? This requires long-term tracking over time.
 - iv. What caused those increases or reductions?
 - v. Did any of the following play a role: Increased use of risk-assessment tools? Increased availability for pretrial services? Changes to bail schedules?
 - vi. Is the N3 population overwhelming the county justice system?

STATEWIDE DATA ANALYSIS

It would be helpful for the State or researchers to track offender N3 outcomes for counties that have extensive pretrial services versus those that do not. Two examples of data collection and outcome tracking are discussed below.

Santa Cruz County found that 92 percent of supervised pretrial participants did not re-offend, and 89 percent made all of their court appearances. Ninety jail beds a day were saved .

Washington D.C.: Over a period of four decades, the D.C. Pretrial Services Agency instituted a comprehensive pretrial policy including: validated risk assessments reported to courts in preparation for bail decisions, programming for those released pending trial, and effective pretrial supervision. As a result, by 2008, 80 percent of all defendants were released without a money bond (as opposed to the previous rate of 80 percent being held in jail, as is the case in many California counties). Fifteen percent are typically held by the court without bail. Only 5 percent have financial bail (ACLU, 2012).

Santa Cruz County, CA: In 2005, the Santa Cruz probation department began working with the sheriff's detention staff to introduce a validated risk assessment tool to identify whether pretrial defendants posed public safety risks to the community. After two years, Santa Cruz County found that 92 percent of supervised pretrial participants did not re-offend, and 89 percent made all of their court appearances. Ninety jail beds a day were saved (a 25 percent reduction in average daily population), thus amounting to significant cost savings to the county. In 2011, Santa Cruz's pretrial detention rate was 56 percent, far below the state-wide average of 67 percent for the fourth quarter of 2011 and 71 percent for the third quarter of 2011. None were released on commercial surety bail. Furthermore, the high non-financial release rate has been accomplished without sacrificing the safety of the public or the appearance of defendants in court. Agency data show that 88 percent of released defendants make all court appearances, and 88 percent complete the pretrial release period without any new arrests (ACLU, 2012).



ISSUES FOR CONSIDERATION

ASSESSING PRETRIAL POPULATIONS AND APPLYING DATA TO POLICY

The following discussion identifies offender-based individual data and system performance data that is useful in justice systems' ongoing decisions and operations and in justice system planning.

The most important offender-specific data concerning pretrial issues is derived from offenders' risk and needs assessments. Pretrial risk and need assessments, conducted by pretrial release or pretrial services officials for individual defendants, serve several purposes. A major goal of pretrial assessment is, most importantly, to balance considerations of public safety and fair, consistent treatment and protection of the rights of defendants. Pretrial risk and needs assessments assist the courts in determining whether or not to release detainees from incarceration, and with what bail or other conditions, if release is granted. Pretrial risk assessment instruments generate information about the risk to public safety and the likelihood of appearing as required in court if the defendant is released.

A sound pretrial detention/release strategy also can benefit justice system operations, reducing or forestalling court congestion and jail overcrowding. Also, a valid risk assessment process can, by scoring levels of risk, assist probation agencies in guiding supervision resources to cases in which supervision is most needed and effective. In addition to risk-avoidance concerns regarding defendant behavior, pretrial risk assessment instruments can and typically should consider responses to offender needs for treatment or other assistance. "[T]hese tools aid the decision-maker in choosing which arrestees should receive available services and perhaps just as important, which individuals do not need those services." (Lowenkamp, Lemke, & Latessa, 2008). Excessive intervention with low risk offenders has been found to be counterproductive, because offender contacts with antisocial peers may increase, while contacts with prosocial peer and family influences may be hindered (Lowenkamp, Lemke, & Latessa, 2008).

There is a large body of literature documenting the need for objective instruments to reduce the variability of traditionally subjective pretrial release decisions. The literature also documents the need to identify the most important and reliable data elements to capture in the assessment instrument. The assessment instrument should be validated by analyzing its predictive performance in specific local settings. An objective risk assessment also provides sound rationales for release decisions, easing officials' concerns about the criticism which often arises when released defendants do commit new crimes.

The particular risk factors measured "...need to be demonstrably related to FTA and rearrest rates, not solely to recidivism or general criminogenic factors" (Summers & Willis, 2010). One risk assessment instrument used in California, the Virginia Pretrial Risk Assessment, identified nine such risk factors, six of which address the defendant's individual criminal history and three of which included factors related to living circumstances. Risk assessments also may include demographic variables, such as age, gender, citizenship and, in some cases, peer or family relationships.

To compile a fuller profile of defendants in the system, the risk assessment can be supplemented with information related to case management activities that agencies

A valid risk assessment process can assist probation agencies in guiding supervision resources to cases in which supervision is most needed and effective.

in the justice system will be called upon to provide. For example, Santa Clara County's pretrial defendants are released for full substance abuse and mental health assessments. When aggregated, the risk assessment data can provide a picture of the proportions of defendants who are low, medium, and high risk, informing decisions regarding jail capacity needs and community supervision resource needs. Likewise, supplementing the risk profile with aggregated data regarding defendant treatment or support needs is pertinent to planning for appropriate rehabilitative resources (CJCJ, 2012).

JUSTICE SYSTEM DATA

Planning the response to pretrial population management must consider not only the profile of defendants involved but also the efficiency and effectiveness of the justice system itself. For example, questions to address might include whether defendants remain in custody longer than necessary because the response time of the system is slow. Transferring detainees to suitable pretrial alternatives may be impeded because court practice is slow, transfer procedures are impeded, or the alternatives are simply not available. In the long term, these delays affect not only immediate, but also projected, future jail capacity requirements.

One source of data is what might be called an intake/release analysis. In this exercise, defendant releases from jail during a sample time period—weeks or months, as deemed representative—are analyzed. Typically, data on the defendant, the date of booking, charge at booking, and the date of release and the release mechanism, is compiled. This data is used to identify how long defendants arrested on various charge categories or released in various ways stay in jail, with particular attention to identifying factors that may unduly delay release. For example, do particular charge categories have longer lengths of stay? Is this because of the severity of the charge or because of technical probation violations? Are particular release options, such as transfers to other jurisdictions, associated with longer stays? When the data on each release is aggregated, an agenda of possible changes in practice or policy can be developed, for discussion among local officials.

The intake/release analysis also can be enhanced by case tracking, i.e., following cases through the adjudication process. This analysis would review such variables as the number of appearances and the elapsed time between appearances or specific decision points. With regard specifically to pretrial releases, analysis of bail schedules and procedures for informing the court of pretrial release recommendations could be included.

In summary, analysis of adjudication issues also can provide an agenda for policy discussions. It is worth noting that such policy discussions are most productive when informed by data such as that summarized here and when all involved officials or agencies are represented in the discussions.

CHALLENGES TO IMPLEMENTATION

Lessons from other jurisdictions demonstrate that implementing new strategies to manage pretrial defendants can be challenging. The process requires investment from a wide range of local stakeholders and intensive work to change the culture of local systems. For counties interested in new pretrial strategies, first and foremost, it is important to recognize that the process takes extensive time and energy. Below are some challenges that counties may experience:

1. **Lack of support across and throughout criminal justice agencies:** Any significant change in practices in local criminal justice systems has to be supported and understood by all of the partners in the criminal justice system. Leaders implementing change can encounter problems when individual agencies refrain from supporting the change or

instruct their staff to disregard the change. Additionally, problems can arise when agency leaders support changes that staff within their agencies are either unfamiliar with or do not support. Internal education and dialogue is key.

2. **Lack of understanding among local elected officials:** Criminal justice agencies often understand details of criminal justice policies and practices but much of it can go beyond the knowledge base of local elected officials. If local elected officials are not familiar with the reasons for the policy shift, they may not provide the support necessary to finance the change or build public support for the change.
3. **Lack of integrated data systems:** Advancing a new pretrial approach requires that systems across agencies talk to each other and share relevant data. Counties run into implementation problems when their data systems and data sharing approaches are in silos.
4. **Lack of community infrastructure:** Managing pre-trial defendants in the community can be enhanced with community programs that help ensure pretrial defendants avoid problems before trial. Many jurisdictions lack substantive community programs. This can make it difficult for criminal justice agencies to partner with existing organizations.
5. **Lack of community support:** Residents want and deserve safety. Without sufficient information and access to dialogue with public safety leaders, they can misunderstand the intent behind changes in criminal justice system practices and policies. They need to be a part of the process to develop support for more effective strategies to manage pre-trial defendants.

GARNERING LOCAL SUPPORT FOR REFORM

Garnering local support is crucial to ensure the success of reforms. Given that each jurisdiction is unique, there is no one size fits all approach to building the support necessary to effectively implement new pretrial strategies and programs.

The challenges to implementation point to some steps county leaders can consider to build local support for pretrial reform:

1. **Bringing all stakeholders to the table:** Many jurisdictions have had success implementing changes by bringing all of the stakeholders together from the beginning of the process. This provides the opportunity for a broader group of key stakeholder to have ownership in the success of the reform. This means that instead of a few individuals responding to concerns raised, the broader group can participate in identifying concerns and creating solutions to address them. In this way potential problems are identified early on and strategies to address them are integrated into the plan and its implementation.
2. **Providing training for local elected officials and the public:** It is important to help decision-makers and community leaders understand the evidence base for the change, expected outcomes, data that will be collected and analyzed to measure results, and quality improvement efforts to improve results. This will assist in gaining the political support that may be needed to adopt and implement the new program.
3. **Educating the local media:** Giving local media outlets a briefing on the issues related to pretrial services and strategies to improve pretrial practices may help them accurately cover the issue and ask the right questions as the implementation process begins.

Key persons in the criminal justice system need additional education and training to recognize the effectiveness of evidence-based risk assessments for pretrial (and other evidence-based criminal justice programs and processes), including considerations of public safety and costs to the public and the individuals involved. This is critical to achieve optimal utilization of this valuable resource.

Many jurisdictions have had success implementing changes by bringing all of the stakeholders together from the beginning of the process.



RESOURCES FOR CALIFORNIA COUNTIES

A SAMPLING OF PRETRIAL RISK ASSESSMENT TOOLS

- Service Planning Instrument (SPIn). Orbis Partners. Pre-screening instrument; approximately 30 questions.
- Correctional Offender Management Profiling for Alternative Sanctions (COMPAS). Northpointe Institute for Public Management, Inc. Pre-screening instrument; approximately 30 questions.
- Ohio Risk Assessment System – Pretrial Assessment Tool (ORAS-PAT). University of Cincinnati. Available in the public domain; 7 questions.
- Virginia Department of Criminal Justice Services: Virginia Pretrial Risk Assessment Instrument. Available in the public domain; 8 questions.

Note: Other tools exist, but those listed above are the primary tools being used around the country.

PRETRIAL ASSISTANCE TO CALIFORNIA COUNTIES (PACC) PROJECT

Realignment requires innovative strategies for managing local correctional populations. Pretrial is emerging as a key area of focus, given the pretrial population's impact on court and jail resources. The Crime and Justice Institute (CJI) at Community Resources for Justice has received a grant from the Public Welfare Foundation (PWF) to provide technical assistance at the pretrial decision point to support overall criminal justice Realignment efforts in California counties. In May 2012, CJI began working with a group of national advisors to develop a framework for pretrial technical assistance, with a focus on public safety, effective population management, and evidence-based approaches. That framework will then be piloted in two counties, which will receive 10 months of intensive assistance. Throughout this process, CJI will disseminate technical assistance tools and lessons learned within California and nationally.

PACC Timeline

2012	
May - August	Work with National Advisory Group on Technical Assistance Framework
May - July	Select two California counties as technical assistance recipients
2012 to 2013	
September - June	Provide pretrial technical assistance to selected counties
Ongoing	Dissemination of tools and lessons learned

Site Selection

Sites will be selected through an informal vetting process that will involve conversations with key stakeholders, discussions of current pretrial practices, and review of local population data. Two sites will be selected to receive technical assistance; this is not a cash grant. Final selections will be made by CJI and PWF. Criteria for selection will include the commitment of key stakeholders, evidence of need, existing community partnerships, and specific goals for pretrial system change.

Technical Assistance

Though the technical assistance framework is still under development, it will likely include components related to pretrial risk assessment, diversion, pretrial supervision, bonding, population analysis and data collection. A lead technical assistance provider will work closely with lead local agency/agencies and county stakeholders to assess local needs, develop and implement a pretrial plan, and access additional expertise as needed.

For more information, or to express interest in participating in PACC, please contact Meghan Guevara at 303-975-6801 or mguevara@crj.org.

About the Crime and Justice Institute at CRJ: The Crime and Justice Institute (CJI) at CRJ strives to make criminal and juvenile justice systems more efficient and cost effective, and to promote accountability for achieving better outcomes. CJI provides nonpartisan policy analysis, capacity and sustainability-building technical assistance, research and program evaluation, and educational activities throughout the country. We take pride in our ability to improve evidence-based practices in courts and corrections; to gain organizational acceptance in difficult work environments; to create realistic implementation plans; to put these efforts into practice; to evaluate their effectiveness; and, to enhance the capacity and sustainability of corrections agencies. A key CJI strength lies in our ability to work with researchers, practitioners, academics, and those affected by crime to bridge the gap between research and practice in corrections. We have a reputation built over many decades for innovative thinking, unbiased issue analysis, and our ability to translate research into practice. CJI has provided technical assistance in more than two dozen states to stakeholders at multiple criminal justice decision points. For more information on our current projects and staff, please see our website, www.crjustice.org.

For more information, or to express interest in participating in PACC, please contact Meghan Guevara at 303-975-6801 or mguevara@crj.org.

CALIFORNIANS FOR SAFETY AND JUSTICE, THE LOCAL SOLUTIONS PROJECT

Partnering with experts from across the country, Californians for Safety and Justice's Local Safety Solutions Project aims to give direct support to counties building innovative approaches to increase safety and reduce justice system costs. The organization will provide:

1. Toolkits on topics that can help counties identify areas to enhance risk management and save resources;
2. Training on developing low cost strategies to enhance justice system effectiveness; and
3. Education for local leaders and community members to help counties adopt best practices and to expand support for best practices among diverse stakeholders.

Pretrial services will be one area of focus for this project. Additional information will be provided as the project is launched.

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Also see:

Pretrial Justice Institute website at <http://pretrial.org/Pages/Default.aspx>.

California Association of Pretrial Services website at <http://pretrialservicesca.org>.

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NOTES

PARTNERSHIP FOR COMMUNITY EXCELLENCE

SUPPORTING COUNTIES IN IMPLEMENTING THE 2011 PUBLIC SAFETY REALIGNMENT

For more information regarding realignment:

The Partnership for Community Excellence cafwd.org/pce

CALRealignment.org calrealignment.org

California Department of Corrections and Rehabilitation www.cdcr.ca.gov/realignment

Chief Probation Officers of California cpoc.org/php/realign/ab109home.php



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