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TAB 23

Center for Court Innovation: Digest of Evidence-based Assessment Tools

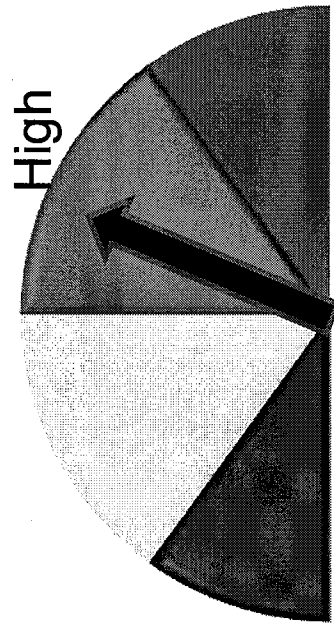
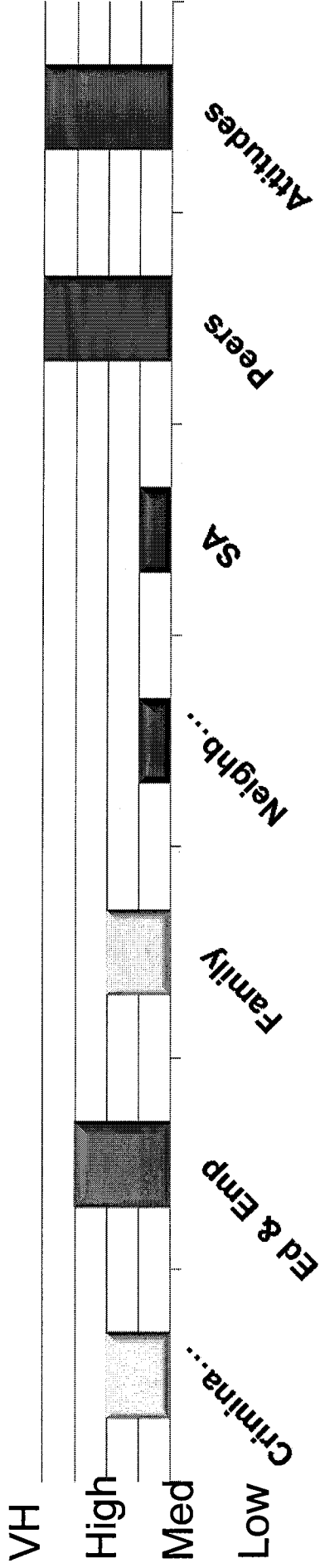
Validated to Predict Recidivism (Yes/No)		Proprietary?	Pros	Cons	More Information	Screening Version Available?
The Level of Services Inventory-Revised	Yes	Yes	Oldest of the comprehensive tools (most often validated); is open-ended and allows for interviewer discretion in rating risk; can be incorporated into existing data tracking systems or a the LSI standard system can be purchased	Requires in-depth clinical training; may take longer to administer than close ended tools; requires that the user pay per completed assessment	https://www.assessments.com/catalog/LSI_R.htm	Yes
The Level of Services Inventory-Case Management Inventory	Yes	Yes	Oldest of the comprehensive tools (most often validated); is open-ended and allows for interviewer discretion in rating risk; contains an administrative/case management component; can be incorporated into existing data tracking systems or a the LSI standard system can be purchased	Requires in-depth clinical training; may take longer to administer than close-ended tools; requires that the user pay per completed assessment	https://www.assessments.com/catalog/GAIN_SS.htm	Yes
The COMPAS	Yes	Yes	Close-ended questions only and does not require clinical knowledge or extensive training; Quicker to administer than some open-ended tools; Comes in a web-based, self-scoring format;	Close-ended questions mean less discretion on part of the interviewer to assess risk; Less clinically focused than some other comprehensive tools; may need to be supplemented with clinical tools; scoring system is proprietary	http://www.northpointinc.com/products/northpointe-software-suite	Unknown
The Ohio Risk Assessment System	Yes	No	Only comprehensive system in the public domain; Contains tools specifically for different stages of processing (pre-trial); prison intake; community supervision; reentry)	Requires some clinical training at a cost; may take longer to administer than close-ended tools	https://www.assessments.com/purchase/detail.asp?SKU=5252	Yes
The RANT (Risk and Need Triage)	Yes	Yes	Specific to drug-involved populations; Allows for a simple treatment matching based on four categories (high risk/low need; low risk/high need; high risk/high need; low risk/low need	Validation literature is new compared to other tools; relatively expensive; may not include all eight criminogenic needs; scoring system is proprietary	http://www.triant.org/	Unknown
Texas Christian University Drug Screen (TCUDS)	Yes	No	Based on DSM-IV criteria and validated to predict recidivism; in the public domain; easy to score and integrate in to existing data systems		https://www.assessments.com/catalog/TCUDS_II.htm	N/A
Addiction Severity Index ²	Unknown	No	Covers addiction and related psychosocial factors; has been used extensively in correctional and other settings	Lengthy, but not a focused addiction screener or a comprehensive risk-need-responsivity tool	https://www.assessments.com/catalog/ASI_v5.htm	N/A
GAIN Short Screener (GAIN-SS) ²	No	Yes	Very efficient combined short screener for addiction and mental illness (including internalizing and externalizing disorders)	Requires training at cost and is proprietary; Not originally designed for justice-system involved populations	https://www.assessments.com/catalog/GAIN_SS.htm	N/A
GAIN Short Screener (GAIN-SS) ²	No	Yes	Very efficient combined short screener for addiction and mental illness (including internalizing and externalizing disorders)	Requires training at cost and is proprietary; Not originally designed for justice-system involved populations	https://www.assessments.com/catalog/GAIN_SS.htm	N/A
Brief Mental Health Jail Screen ²	No	No	Public domain, no training required, easy to score; Looks at current active symptoms that may be related to justice system involvement	Not as accurate for female detainees than for male	http://gainscenter.samhsa.gov/pdfs/disorders/bjmhjsform.pdf	N/A
Texas Christian University Trauma Form	No	No	Covers the primary trauma symptoms without asking about specific traumatic experiences; is close-ended and could be used without clinical training; Public domain	Not necessarily valid as a predictor of PTSD diagnosis	http://www.lbr.tcu.edu/pubs/datacoll/Forms/ShortForms/09(SF)TRMA FORM.pdf	N/A
Trauma Symptom Checklist ²	No	No	Only separate criminal thinking scale that is not part of a separate comprehensive screener; public domain;	Not explicitly involved for justice system populations	http://www.ptscd.va.gov/professional/pages/assessments/tsc-40.asp	N/A
Texas Christian University CTS	No	No	Only separate criminal thinking scale that is not part of a separate comprehensive screener; public domain;	Statistically valid for predicting progress in treatment but not criminal recidivism	http://www.lbr.tcu.edu/pubs/datacoll/Forms/cjsurveyct.pdf	N/A

¹ Covers the eight criminogenic domains: Criminal History, Criminal Thinking, Antisocial Behavior, Antisocial Peers, Education/Employment, Family/Marital, Social Isolation, Substance Abuse

² Validated to accurately predict clinical diagnosis but not risk of recidivism

TAB 24

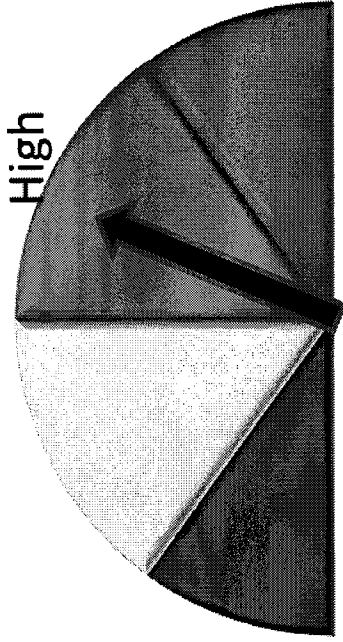
Finalized Report



Barriers to Service

- Low motivation to obtain employment
- Transportation—No valid license
- Mental Health—Needs evaluation

Applying the Risk and Responsibility Principles



- High Contact Frequency
- More intensive interventions
- More targets for change
- Minimize exposure to low risk

Use cost-benefit tools

Set long-term goal(s)

Motivational Interviewing strategies

Help problem solve transportation

Make referral/appointment to MH evaluation—making sure plan addresses transportation

Barriers to Services

- Low motivation to change substance abuse behavior
- Transportation—No valid license
- Mental Health—Needs evaluation

OHIO RISK ASSESSMENT SYSTEM: COMMUNITY SUPERVISION TOOL (ORAS – CST) INTERVIEW GUIDE

Conducting the Interview

The interview guide is designed to assist the assessor in gathering the information necessary to accurately assess the offender. It is important to establish rapport with the offender. While it is recommended that the interview guide be closely followed, the wording of the questions may vary. Here are some tips for conducting the interview:

- Conduct the interview in a relaxed and private environment
- Explain the purpose of the interview and stress the need for honesty and complete answers to questions
- Do not hesitate to use follow-up questions and probe. Examples of follow-up questions:
 - Tell me more. I want to be certain that I understand you.
 - What happened next?
 - Could you explain that further?
 - What do you mean?
 - Can you describe some examples?
 - How did that make you feel?
- Remember what information you are trying to obtain. Develop clear examples and remember there are sometimes differences in perception.
- Remember that the interviewer sets the tone. Be patient and try not to correct or teach
- Whenever possible use open-ended questions where the respondent provides his or her opinion and is able to elaborate. For example, “Tell me more about your relationship with....”
- Avoid double-barreled questions where the respondent is asked a combination of questions:
 - “How is your relationship with your mother and father?”
- Avoid biased questions where the respondent is led in a certain direction:
 - “Your relationship with your mother isn’t bad, is it?”

Also remember that the interview is only one source of information. Official records, the self-report questionnaire, and collateral sources such as family members or other professionals should also be consulted. It is important that to corroborate the offenders’ responses whenever possible.

SECTION 1: GENERAL RISK/NEED DOMAINS

1.0 CRIMINAL HISTORY:

The first section of the interview is designed to gather information necessary to score the Criminal History domain of the tool. While some of this information can be obtained from official records, it is still recommended that the assessor ask the offender about the current offense and past criminal behavior. This information will help score other areas of the assessment, particularly the Peers and Criminal Thinking and Behavioral Patterns sections. It is important to corroborate self report information in this area with official records.

The following items are scored in this area:

- 1.1 Most Serious Arrest Under Age 18: 0=None 1=Yes, Misdemeanor 2=Yes, Felony
- 1.2 Number of Prior Adult Felony Convictions: 0=None 1=One or Two 2=Three or more
- 1.3 Prior Sentence as an Adult to a Jail or Secure Correctional Facility: 0=No 1=Yes
- 1.4 Received Official Misconduct while Incarcerated: 0=No 1=Yes
- 1.5 Prior Sentence to Probation as an Adult: 0=No 1=Yes
- 1.6 Community Supervision Ever Been Revoked for Technical Violation as an Adult:
0=No 1=Yes

Questions for Criminal History Domain:

1a. Tell me about the first time you were ever arrested? _____

1b. How old were you when you were first arrested? _____

1c. What was it for? _____

I want to now ask you about your criminal record as an adult.

1d. Tell me about what happened the day you were arrested. _____

1e. Why did you decide to commit the offense? _____

1f. What part did others play in the offense? _____

1g. What part did drugs or alcohol play? _____

1h. Did you threaten or hurt anyone? _____

1i. How many times have you been convicted of a felony? _____

1j. Have you ever gotten in trouble for fighting or assaultive type behavior? No Yes

1k. How many times? _____

1l. What happened? _____

1m. Have you ever been sentenced to jail? No Yes How many times? _____

1n. Have you ever been sentenced to prison? No Yes How many times? _____

1o. Have you ever been sentenced to another type of secure correctional facility like a CBCF?
 No Yes

How many times? _____

1p. While you were incarcerated did you ever get written up or punished for misconduct?
 No Yes. How many times? _____

What was it for? (Probe to see if any misconducts were for violence)

1q. What was the result of the misconduct? _____

1r. How did you feel about the sanction you received? _____

1s. Have you ever been on probation? No Yes How many times? _____

1t. What were you on probation for? _____

1u. Did you complete probation supervision? No Yes

1v. Have you ever been on parole? No Yes

1w. Did you complete parole supervision? No Yes

1x. What was the hardest part of being on supervision? _____

1y. Have you ever had probation or parole supervision revoked for a technical violation?

No Yes How many times? _____

2.0 EDUCATION, EMPLOYMENT, AND FINANCIAL SITUATION:

This domain is designed to gather information about the offender's educational attainment, employment, and current financial situation. It is fairly straightforward and most respondents will be forthcoming.

The following items are scored in this area:

2.1 Highest Education: 0=High School Grad or Higher 1=Less than High School or GED

2.2 Ever Suspended or Expelled From School: 0=No 1=Yes

2.3. Employed at the Time of Arrest: 0=Yes 1=No

2.4 Currently Employed: 0=Yes, Full-time, Disabled, or Retired 1=Not Employed or Employed Part-time

2.5 Better Use of Time: 0=No, Most Time Structured 1=Yes, Lots of Free Time

2.6 Current Financial Situation: 0=Good 1=Poor

Questions for Education, Employment, and Financial Situation Domain:

I would now like to talk with you about your education, employment and financial situation:

2a. What is the highest grade you completed? _____ Did you graduate? __ No __ Yes

Did you get a GED? __ No __ Yes

2b. Were you ever in any special education classes? __ No __ Yes

2c. Tell me about problems you might have had in school? _____

2d. Were you ever suspended or expelled from school? __ No __ Yes

What happened? _____

2e. Were you working at the time of your arrest? __ No __ Yes

What were you doing? _____

2f. Are you currently employed? __ Yes __ Full time __ Part Time __ Seasonal __ No

If no, why not: _____

Where do you work? _____

How long have you had this job? _____

2g. If no, how do you support yourself while not working? _____

2h. How many hours a week do you work? __ Year around or seasonal? __ Yearly __ Seasonal

If not employed, find out why. _____

2i. How do you get along with your co-workers? _____

2j. How do you get along with your boss? _____

2k. Walk me through a typical day for you? _____

Do you have a lot of free time? _____

How much free time would you estimate you have each week? _____
(Probe to make sure structured time is prosocial and not just hanging out.)

2l. What percentage of your week would you say is free time: _____%

2m. Tell me about your current financial status. _____

2n. What are your sources of income? _____

2o. Are you behind in your debts or court ordered obligations? _____

2p. How do you think your financial status is as far as meeting your monthly needs?

2q. Are you able to get by or are you struggling to make ends meet? _____

2r. Do you worry about finances and meeting your basic needs? _____

How would you rate your current financial situation:

Cannot pay bills

1

2

3

4

Can pay bills and have extra \$

5

3.0 Family and Social Support:

The family and social support section examines the familial and social support of the offender. Research has shown that an individual's family and social support can influence the probability of future criminal behavior. Individuals with family and social support systems who are supportive or tolerant of criminal behavior are more likely to engage in criminal behavior. Alternatively, individuals who have a strong family or social support network which condemns criminal activities reduce the likelihood that an individual will engage in future criminal behavior.

The following items are scored in this area:

3.1 Parents have Criminal Record: 0=No 1=Yes

3.2 Currently Satisfied with Current Marital or Equivalent Situation: 0=Yes 1=No

3.3 Emotional and Personal Support Available from Family or Others:
0=Very Strong Support 1=None to Strong Support

3.4 Level of Satisfaction with Current Level of Support from Family or Others:
0=Very Satisfied 1=Not Satisfied

3.5 Stability of Residence: 0=Stable 1=Not Stable

Questions for Family and Social Support Domain:

I now want to talk with you about your family and the support you get from them.

3a. Describe your relationship with your family? (Probe to determine if parents (both biological and step parents are still alive and how much contact they have with them). _____

3b. Who raised you? _____

3c. How often do you get together with them? _____

3d. How do they feel about you getting in trouble with the law? _____

3e. Has your trouble with the law changed your relationship with your family? _____

Explain? _____

3f. Does anyone in your family have a criminal record? No Yes Who? _____

What was it for? _____

When was the last time you saw them? _____

3g. Now let me ask you about your current marital situation. Are you married? No Yes

Are you involved with anyone? Probe to determine if it is a casual relationship or a significant other. _____

3h. Describe your relationship with your partner? _____

How do you get along? _____

How do you resolve disagreements? _____

3i. In this relationship have you experienced physical, psychological, or sexual abuse?

Whether involved or single, ask how satisfied the offender is with his/her current situation. _____

3j. Do you have a supportive relationship with your family? _____

Close friends? _____

3k. In terms of your family, spouse, and close friends, how would you rate the emotional and personal support you received from them:

Very Strong Support Strong Support Ok Support Weak Support No Support

3l. How satisfied are you with current level of support you have received from your family or close friends?

Very Satisfied Satisfied Somewhat Satisfied Not Satisfied

3m. If the offender is not living with family or significant other, ask them who they currently live with. _____

4.0 NEIGHBORHOOD PROBLEMS:

This next domain is very short and asks about the neighborhood that the offender lives in. High crime neighborhoods and places where drugs are readily available often increase the opportunity for an offender to engage in criminal behavior.

The following items are scored in this area:

4.1 High Crime Area: 0=No 1=Yes

4.2 Drugs Readily Available in Neighborhood:

0=No, Generally Not Available 1=Yes, Somewhat Available 2=Yes, Easily Available

Questions for Neighborhood Problems Domain:

I would now like to talk with you about where you live.

4a. How long have you lived at your current address? _____

4b. How many times have you moved in the past year (do not count incarcerations)? _____

What were the reasons for the moves? (Probe to determine stability of current living situation.) _____

4c. Tell me about the neighborhood you live in. _____

4d. Tell me about the kinds of crimes happening in your neighborhood. _____

Are police there frequently? _____

Do you feel safe? _____

How would you rate your neighborhood?

__ High Crime __ Moderate Crime __ Some but no more than most __ Little crime

Are drugs readily available in your neighborhood?

__ Generally not available __ Somewhat available __ Easily available

5.0 SUBSTANCE USE

The substance use section examines the occurrence of substance use in the offender's life and the extent to which its use has caused problems across varying aspects of the offender's life. Substance use can be pervasive in its ability to influence multiple aspects of a person's life including involvement with the legal system, issues with loved ones and friends, health and social service problems, and its interaction with seeking or maintaining employment. For this domain alcohol and drug use are separated.

The following items are scored in this area:

5.1 Age First Began Regularly Using Alcohol: 0=17 or older 1=Under Age 17

5.2 Longest Period of Abstinence from Alcohol: 0= Six Months or Longer 1=Less than Six Months

5.3 Ever Used Illegal Drugs: 0 = No 1 = Yes

5.4 Drug Use Caused Problems: 0=Never 1=Past 2= Current

5.5 Drug Use Caused Problems with Employment: 0=No 1=Yes

Questions for Substance Abuse Domain:

Let's talk about your substance use.

5a. Have you ever had a problem with alcohol? No Yes

5b. When did you first start to regularly drink? _____

5c. Describe your drinking habits. _____

What is the longest period you have abstained from drinking? _____

How long has it been since you last drank? _____

5d. Have you ever been in treatment for alcohol use? _____

5e. Have you ever had a problem with drugs other than alcohol? No Yes

5f. Describe your drug use in the past. _____

5g. How often did you use? _____

What drugs? _____

Did you use alone or with others? _____

5h. Have you ever had any problems due to your drug use (Social, family, legal, employment, family, etc)?

How many times? _____

5i. Has your drug use ever caused you problems with a job? __ No __ Yes

What happened? _____

5j. Have you ever been in treatment for drug use? __ No __ Yes

If yes, please explain: _____

5k. If drugs or alcohol are a problem ask the offender if they are willing to consider going to a program. _____

6.0 PEER ASSOCIATIONS

This domain is designed to examine the peer association of the offender, how much contact they have, and how much the offender engages in criminal activities. Friends can have a strong influence over offenders, and it is important to determine the degree to which their friends are involved in criminal behavior.

The Following Items are Scored in this Domain:

6.1 Criminal Friends: 0=None 1=Some 2=Majority

6.2 Contact with Criminal Peers: 0=No Contact with Criminal Peers 1=At Risk of Contacting Criminal Peers 2=Contact or Actively Seeks out Criminal Peers

6.3 Gang Membership: 0=No, Never 1=Yes, but Not Current 2=Yes, Current

6.4 Criminal Activities: 0=Strong Identification with Prosocial Activities 1=Mixture of Pro- and Antisocial Activities 2=Strong Identification with Criminal Activities

Question for the Peers Domain:

I now want to ask you about your friends.

6a. How many close friends would you say you have? _____

How often do you see them? _____

6b. Was anyone else involved in the current offense? ___ No ___ Yes

If yes explain: _____

What is your current relationship with them? _____

6c. Have any of your close friends been involved in criminal behavior? _____

What percentage of your close friends have been in trouble with the law? _____ %

What kind of things have they been involved in? _____

6d. What are some the activities you like to do with your family and friends? _____

Now I want you to think of other friends, not necessarily close ones, but more like acquaintances. These are people you see and hang out with occasionally.

6e. How many of your acquaintances have been in trouble with the law? _____

What kind of activities have they been involved in? _____

How often do you have contact with them? _____

6f. Have you ever been in a gang? ___ No ___ Yes

When? _____

Are you in one now? ___ No ___ Yes

If yes probe for more information: _____

6g. Do you have any hobbies or interests? _____

Do you belong to any groups or clubs? _____

Do you go to church? _____

(Probe to find out degree to which the offender is involved in prosocial activities.)

7.0 CRIMINAL ATTITUDES AND BEHAVIORAL PATTERNS:

This domain addresses the criminal attitudes of the offender as well as some behavioral patterns that can often lead to criminal behavior. In addition to the specific questions for this item, the interviewer should score this item from the totality of the responses in the interview. Listen for rationalizations, minimizations, and justifications of behavior throughout the interview.

The Following Items are Scored for this Domain:

- 7.1 Criminal Pride: 0=No Pride in Criminal Behavior 1=Some Pride 2=A Lot of Pride
- 7.2 Expresses Concern about Others: 0=Concerned About Others: 1=Limited Concern
2=No real Concern for Others
- 7.3 Feels Lack of Control Over Events: 0=Controls Events 1=Sometimes Lacks Control
2=Generally Lacks Control
- 7.4 Sees No Problem in Telling Lies: 0=No 1=Yes
- 7.5 Engages in Risk Taking Behavior: 0=Rarely Takes Risks 1=Sometimes Takes Risks
2=Generally Takes Risks
- 7.6 Walks Away from a Fight: 0=Yes 1=Sometimes 2=Rarely
- 7.7 Believes in "Do Unto Others Before They Do Unto You":
0=Disagree 1=Sometimes 2=Agrees

Questions for the Criminal Attitudes and Behavioral Patterns Domain:

Let's talk again about the trouble you got in.

7a. How do you feel about what happened? _____

What do you think about crime? _____

Tell me about the victims? _____

How do you think they feel about what you did? _____

_____ No pride in criminal behavior _____ Some pride _____ A lot of pride

7b. As a general rule do you worry about other people's problems? _____

___ Concerned about others ___ Some concern ___ No real concern for others

Now I want you to think about how things have been going for you recently.

7c. Do you sometimes feel that you have lost control over events in your life? _____

___ Feels in Control over Events ___ Sometimes lacks control ___ Generally lacks control

Why? _____

Now let me ask you about honesty.

7d. Do you think it is sometimes ok to tell a lie? _____

Under what circumstances? _____

___ Never only small white lies ___ Yes it is ok

7e. A lot of people like to take chances and risks. Do you consider yourself to be a risk taker?

How about when you committed your offense? _____

How did it make you feel? _____

If I asked you to rate yourself as a risk taker on a scale from 1 to 5 with 1 being not at all,
and 5 being often how would you rate yourself? _____

7f. Would you describe yourself as someone who "Walks Away from a fight", or "Tries to avoid it but it seems to find you" or, "first one in"? _____

If I asked you to rate yourself on a scale from 1 to 5 with 1 being "walks away", and 5 being "first one in" how would you rate yourself? _____

7g. Have you ever heard the saying, "Do Unto Others Before They Do Unto You"? In general do you:

___ Disagree with statement, ___ depends on the situation, or ___ Agree with statement

7h. How do you feel about getting some help or participating in programs? _____

SECTION 2: RESPONSIVITY ASSESSMENT

Considering the entire interview as well as official records, the next section is designed to identify special considerations or responsivity factors that might affect the offender's engagement in supervision or programming. For each of the following areas check the boxes that best describes the offender for each of these items.

Low Intelligence*

Physical Handicap (describe) _____

Reading or Writing significantly below normal*

Mental Health Issues (list diagnoses* _____

Motivation is a Problem* (No Desire to Change/Participate in Programs) Note, some offenders will be motivated to obtain help in some areas but not others. For example, they may want assistance in getting a job, but are not willing to go to substance abuse treatment. This can be important for case planning. Please provide information:

Transportation is a problem

Child Care is a problem

Language is a problem. List offender's native language: _____

Ethnicity or cultural barriers. De scribe: _____

History of Abuse/Neglect poses a barrier for offender. Explain: _____

Interpersonal Anxiousness (offender is very nervous and may require program with little confrontation)

Other, Please explain: _____

****If these items are checked it is strongly recommended that further assessment be conducted to determine level or severity.***

Ohio Risk Assessment System - Community Supervision Tool (ORAS-CST) Scoring Guide

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School of Criminal Justice
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Introduction

The following scoring guide is intended to be a user's guide for the Ohio Risk Assessment System – Community Supervision Tool (ORAS-CST), which was developed by the Center for Criminal Justice Research at the University of Cincinnati. The scoring guide will give a brief overview of the assessment tool followed by an item-by-item explanation of scoring criteria.

Overview of the Community Supervision Tool (CST)

The Community Supervision Tool (CST) is designed to be used with offenders in the community. This can include those on probation or parole, as well as offenders in residential facilities and other community alternatives (such as day reporting centers). The instrument was designed to be administered through file review and a structured interview, although some items can be obtained through a self-report questionnaire. The CST consists of 35 items across seven domains: 1) Criminal History; 2) Education, Employment, and Financial Situation; 3) Family and Social Support; 4) Neighborhood Problems; 5) Substance Use; 6) Peer Associations; and 7) Criminal Attitudes and Behavioral Patterns.

As elaborated later in this guide, each item is scored using specific criteria and the scores can range from 0 to 2, depending on the item. The final score is a summed product of each of the individual items creating a range between 0 and 49. The higher the score, the greater the risk the individual poses. The following cutoff scores and failure rates have been established for this instrument:

Risk Categories for MALES			Risk Categories of FEMALE		
Scores	Rating	Percent of Failures	Scores	Rating	Percent of Failures
0-14	Low	9%	0-14	Low	7%
15-23	Moderate	34%	15-21	Low/Moderate	23%
24-33	High	58%	22-28	Moderate	40%
34+	Very High	70%	29+	High	50%

Reassessment

Reassessment should be done at set intervals (no earlier than six months from the most recent assessment) or if a critical incident has occurred.

General Assessment Information

Information to score this assessment should be gathered from the interview with the offender and verified with available criminal history reports or other collateral sources. For this reason, the following terms should be clarified:

- **Arrest vs. Conviction:** Items which ask about arrests are inquiring to times the offender was taken into custody or a citation issued, for a misdemeanor or felony, regardless of the final disposition. There are a variety of reasons why a charge might not become a conviction: dismissal, court diversion in lieu of conviction, etc. For clarification, convictions are findings of guilt by a court which result in a criminal record.
- **Prior:** Items which ask about prior incidents are inquiring about events which occurred *before* the current offense. Current offenses should not be considered when scoring these items. For example, an offender who is being assessed for their third conviction would only have two prior convictions.
- **Current:** Items which ask about current behavior should focus on the last six month period prior to the assessment, unless otherwise stated.
- **Incarceration:** Items which ask about prior incarcerations in a secure correctional facility are inquiring about custodial sentences imposed as punishment upon conviction. Jail incarceration which result from pretrial detention or other non-court issued confinement should not be scored as a yes. Jail stays resulting from probation violations should be counted in this question.

Accuracy of Information

An accurate assessment requires accurate information. There are several sources of information that should be used: official records, offender interview, self-report questionnaire, and collateral sources. Remember the following tips:

- Ask the right questions in the right way – follow the questionnaire.
- Use effective interviewing techniques – probe and allow offender to talk.
- Get the quality and depth of information needed – take your time and do not rush.
- Get collaboration from collateral sources – when in doubt, double check information.
- Score accurately – double check scoring, follow scoring guide, and consult with supervisor if in doubt about an item.

1.0 Criminal History Section

The criminal history section examines aspects of the individual's criminal behavior that correlates with recidivism. It is well documented that past criminal behavior is predictive of future criminal behavior. As such, 6 items are included in this domain, with a total possible score of 8.

1.1 Most Serious Arrest Under Age 18:

Score this item as 0 if the offender does not have a prior arrest or charge under the age of 18, or if arrest/charge was for a status offense. Status offenses include: unruly, runaway, truancy, or other charges that if committed by an adult would not result in charges. Score as 1 if the offender was arrested/charged under the age of 18 for a misdemeanor. Score as 2 if arrest/charge under 18 was for a felony. Do not count arrests/charge for status offenses. If the age at arrest is unknown, use the age at first conviction. If youth was arrested/charged but level cannot be determined, score as 1.

1.2 Number of Prior Adult Felony Convictions:

Score this item as 0 if the offender does not have any prior adult felony convictions. Score as a 1 if the offender has one or two felony convictions as an adult. Score as a 2 if the offender has three or more prior adult felony convictions. All felony convictions are tallied regardless of if they were from a single arrest event or multiple events over the course of time. Only the final dispositions are considered for scoring. For example, any prior felony charge which was pled to a misdemeanor would not count. In addition, any alternative to a conviction (i.e., diversion) would not count.

1.3 Prior Sentence as an Adult to a Jail or Secure Correctional Facility:

For the scoring of this item, secure correctional facilities include prison, jail, boot camps, or a community based correctional facility. Score this item as 0 if the offender has never been sentenced to a secure correctional facility. Score as 1 if the offender has previously been sentenced to a secure correctional facility. Only count sentences that are associated with a conviction in an adult court. Jail incarcerations which are a result from pretrial detention or other non-court issued confinement should not be counted when scoring this item.

1.4 Received Official Misconduct while Incarcerated as an Adult:

Score this item as 0 if the offender has never been sentenced to a jail or secure correctional facility or, if sentenced, the offender has never received an official misconduct. Score as 1 if the offender has been incarcerated in a correctional facility as an adult and has received an official misconduct within the facility. To be scored, this sanction must have resulted in a written behavioral report, a hearing officer finding, or a formal finding from a rule infraction board. Do not count informal warnings from correctional staff which did not result in a formal sanction.

1.5 Prior Sentence to Community Supervision as an Adult:

Score this item as 0 if the offender has never been sentenced to any community supervision as an adult. Score as 1 if the offender was placed on community supervision prior to the current offense. This is independent of whether or not the offender violated or was successful under supervision.

1.6 Community Supervision Ever Been Revoked for Technical Violation as an Adult:

Score this item as 0 if the offender has either never been under community supervision or if supervision has never been revoked and the offender sent to prison for a technical violation. Score this item as 1 if the offender ever had community supervision revoked for a technical violation and was sent to prison. This can include probation, community supervision, or parole supervision.

2.0 Education, Employment, and Financial Situation

This section examines the educational attainment of the offender, as well as employment, use of time, and financial situation. Both current and past events are included. There are 6 items in this domain with a total possible score of 6.

2.1 Highest Education:

Score this item as 0 if a high school degree has been earned. Score as 1 if the offender does not have a high school diploma. GED is scored as 1. If the offender has a GED and has completed a minimum of a 2 year degree/certificate score this item as a 0. *Note: This item can be scored from interview or self-report questionnaire. Question 1 on Self-Report.*

2.2 Ever Suspended or Expelled From School:

Score as 0 if the offender has never been expelled or suspended from school. Score as 1 if the offender reports having been expelled or suspended from school. Do not count in-school suspensions. These scores should be assessed regardless of the age of the offender. *Note: This item can be scored from interview or self-report questionnaire. Question 2 on Self-Report.*

2.3 Employed at the Time of Arrest:

Score as 0 if the individual was legally employed (either part-time or full-time) at the time of arrest for the current offense. If the individual is disabled or retired, score as 0. Score as 1 if the offender was unemployed at the time of arrest or working under the table. If self-employed, this must be verified. Note: if the work is temporary and the hours are inconsistent from week to week, score as 1. Only employment should be considered for this item; do not take into account education status or taking care of family/household. *Note: This item can be scored from interview or self-report questionnaire. Question 10 on Self-Report.*

2.4 Currently Employed:

Score as 0 if the offender is currently employed and either: works 30 hours or more a week (full-time), is verifiably disabled and unable to work, is retired and existing on a pension, is a seasonal worker but the income covers expenses year round, is a full-time homemaker whose job it is to maintain the house and care for dependents, or is currently attending school full-time (or part-time schooling co-occurring with a part-time job). If self-employed, this must be verified. If the individual is unemployed or employed less than 30 hours, score as 1. If the work is temporary and the hours are inconsistent from week-to-week, score as 1. *Note: This item can be scored from interview or self-report questionnaire. Question 12 on Self-Report.*

2.5 Better Use of Time:

Score this item as 0 if 50 percent or more of the offender's time is structured. This can include school, work, and structured activities (such as church, taking care of a family member, or other prosocial activities). Score as 1 if less than 50 percent of the offender's time is structured. This item should be scored based on the past 6 months. If in a correctional facility consider the time in the community as well as the offender's use of free time while in the facility. *Note: This item can be scored from interview or self-report questionnaire. Question 14 on Self-Report.*

2.6 Current Financial Situation:

Score as 0 if the offender's current financial situation is stable, if they have some savings, a source of income, and they are able to manage needs and debts reasonably well. Score as 1 if the offender has difficulty paying bills, does not have a reasonable plan for long term management of finances, and is uncertain about how they will get by. This item should be scored based on the past 6 months. *Note: This item can be scored from interview or self-report questionnaire. Question 17 on Self-Report.*

If scored from Self-Report, score 1 or 2 as 1 and 3 or 4 as 0.

3.0 Family and Social Support

The family and social support section examines the family and social support of the offender. Research has shown that an individual's family and social support can influence the probability of future criminal behavior. Individuals with family and social support systems who are supportive or tolerant of criminal behavior are more likely to engage in criminal behavior. Alternatively, individuals who have a strong family or social support network that condemns criminal activities reduces the likelihood that an individual will engage in future criminal behavior. There are 5 items in this domain with a total possible score of 5.

3.1 Parents have a Criminal Record:

For the purpose of this assessment parent includes any individual(s) that the offender identifies as a parental figure, or who had a significant role in raising them. Criminal record includes any conviction for a misdemeanor or a felony. Consider the criminal history of all parental figures who meet the criteria. For instance, an offender who identifies a mother, step-father, and biological father as a parental figure or who was involved in raising them would have 3 individuals to consider. Score this item as 0 if no parents have a criminal record. Score this item as 1 if parent, step-parent, or parental figure has a criminal record.

3.2 Currently Satisfied with Current Marital or Equivalent Situation:

Score this item as 0 if the offender is involved in a marriage or relationship that is mostly rewarding and satisfying and offers some positive controls over the offender. Also score as 0 if the offender is single and satisfied. Score as 1 if there are significant conflicts or problems resulting in dissatisfaction, stressors such as verbal abuse, lack of respect or indifference, or if there are few rewards or positive support from the relationship. *Note: This item can be scored from interview or self-report questionnaire. Question 16 on Self-Report.*

If scored from Self-Report, score 1 or 2 as 1 and 3 or 4 as 0.

3.3 Emotional or Personal Support Available from Family or Others:

Score this item as 0 only if the offender believes that family or close friends offer very strong emotional or personal support. Score as 1 if the offender does not believe that they have very strong emotional or personal support from their family or close friends. *Note: This item can be scored from interview or self-report questionnaire. Question 19 on Self-Report.*

If scored from Self-Report, score 1 thru 4 as 1 and 5 as 0.

3.4 Level of Satisfaction with Current Level of Support from Family or Others.

Score this item as 0 if the offender is extremely satisfied with the level of support they receive from family and friends, regardless of how they rate the level of support. Score as 1 if they are not satisfied or somewhat satisfied with level of support or if concerns are expressed. *Note: This item can be scored from interview or self-report questionnaire. Question 20 on Self-Report.*

If scored from Self-Report, score 1 thru 4 as 1 and 5 as 0.

3.5 Stability of Residence:

Score this item as 0 if the offender has lived in a stable residence over the past 12 months. Stable residence includes living with family, contractual agreement (pays rent), receives mail, helps pay the bills, has a key, few moves, etc. Score as 1 if the offender has had three or more address changes in the past 12 months or if living arrangements have otherwise not been stable (such as sleeping on a friend's couch, no permanent address, or being constantly thrown out of the house). *Note: Question 4 on Self-Report pertains to the number of times the offender has moved in the past year; however, interviewer should still probe about other issues related to stability.*

4.0 Neighborhood Problems

This domain is designed to examine the current neighborhood where the offender resides. There are 2 items in this domain with a total possible score of 3.

4.1 High Crime Area:

This item pertains to the neighborhood where the offender resides. Indicators to look for include: drugs are readily available, the neighborhood has a high proportion of offenders, criminal activities are common, or the police frequent the area. Score as 0 if the offender resides in a relatively crime free neighborhood. Score as 1 if the neighborhood is considered a high crime area. If the offender is living in a residential program or halfway house rate the offender's neighborhood they were living in prior to the facility. *Note: This item can be scored from interview or self-report questionnaire. Question 9 on Self-Report.*

4.2 Drugs Readily Available in Neighborhood:

This item pertains to the neighborhood where the offender resides, and can be scored as 0, 1, or 2. If the offender resides in a neighborhood where drugs are not readily available, score as 0. Score as 1 if drugs are somewhat available in the offender's neighborhood. Score as 2 if drugs are easily available. If the offender is living in a residential program or halfway house rate the offender's neighborhood s/he was living in prior to the facility. *Note: This item can be scored from interview or self-report questionnaire. Question 15 on Self-Report.*

If scored from Self-Report, score 4 as 0, 2 or 3 as 1, and 1 as 2.

5.0 Substance Use

The substance use section examines the occurrence of substance use in the offender's life and the extent to which substance use has caused problems across varying aspects of the offender's life. Substance use can be pervasive in its ability to influence multiple aspects of a person's life, including involvement with the legal system, issues with loved ones and friends, health and social service problems, and its interaction with seeking or maintaining employment. For this domain, alcohol and drug use is separated. There are 5 items in this domain with a total possible score of 6.

5.1 Age First began Regularly Using Alcohol:

For the purposes of assessment, regular use does not include having a sip or socially used a few times, but rather look for a pattern of use (e.g., drank most weekends). Score this item as 0 if the offender did not start regularly using alcohol until 17 years of age or older. If the offender has never regularly used alcohol, score as 0. If regular use before age 17, score as 1. **Note: This is Question #5 on Self-Report; however, interviewer should still probe about other issues related alcohol use.**

5.2 Longest Period of Abstinence from Alcohol:

The purpose of this item is to determine if the offender has a problem with alcohol and if so, has the offender abstained from alcohol recently. Score this item as 0 if the offender does not have a problem with alcohol or if the offender does have a problem s/he has abstained from alcohol for the past six months or longer. Score as 1 if the offender has a problem with alcohol and has not abstained for the past six months. Do not count periods of incarceration. **Note: This is Question #6 on Self-Report; however, interviewer should still probe about other issues related to alcohol use.**

5.3 Ever Used Illegal Drugs:

Use includes current or past use. For the purposes of this item, assessor can rely on interview, official records, results from drug tests, or other verifiable sources. Score this item as 0 if the offender has never used illegal drugs or prescription drugs for recreational use. Score as 1 if the offender has used illegal drugs or abused prescription drugs (including use for recreational purposes).

5.4 Drug Use Caused Problems:

This item can be scored as a 0, 1, or 2. Score as 0 if the offender's drug use has never led to problems (legal, employment, social, medical, and/or family). Score as 1 if the offender's drug use has caused problems in the past. Score as 2 if the offender's drug use poses a current problem. Take into consideration the most recent 12 month period.

5.5 Drug Use Caused Problems with Employment:

Score this item as 0 if the offender has not had any drug use related problems with employment in the past 6 months. Score as 1 for those offenders who have been fired from their job, routinely have been criticized on the quality of their work due to drug use at work, missed work due to drug use, have been caught being under the influence during work, or have been denied a job due to an inability to pass a drug test in the past 6 months. If the offender is unemployed, but has not had a work related problem with drug use, score as a 0. **Default scoring: If this question is scored yes, Item 5.4 must be scored a 2.**

6.0 Peer Associations

Items in this section are designed to examine the peer associations of the offender, how much contact they have, and how much they engage in criminal activities. There are 4 items in this domain, with a total possible score of 8.

6.1 Criminal Friends:

This item can be scored as 0, 1, or 2, depending on the percentage of criminal friends the offender has; do not consider acquaintances. Score this item as 0 if the offender does not have any close friends who have a criminal record and engage in criminal behavior. Those offenders who have some criminal *and* prosocial friends score as follows: If some, but less than half of their friends are involved in criminal behavior, score as a 1. For those offenders that have 50% or more of friends engaging in criminal behavior or activities, score as a 2. If the offender has only one close friend and that individual is criminal, score as a 2. **Note: This item can be scored from interview or self-report questionnaire. This is Question #8 on Self-Report; however, interviewer should still probe about friendships.**

6.2 Contact with Criminal Peers:

The purpose of this item is to determine if the offender has established a clear plan to avoid past criminal associates. This item can be scored as 0, 1, or 2. For the purpose of this item, past associates include close friends as well as acquaintances and co-defendants. Score as 0 for those offenders who are not at risk of reconnecting with prior criminal associates. This could be either that the individual is making purposeful actions to avoid contact and distancing themselves from prior criminal associates, have clear and practical plans to deal with past associates, or they had no prior criminal associates. A score of 1 should be assigned to those offenders who are at some risk of reconnecting with prior criminal associates. This score suggests that there is some possibility the offender will reconnect with past criminal associates, and the individual has not taken any purposeful actions to prevent or avoid this interaction, or has adopted a passive or dismissive response to their influence. That is, they are not actively avoiding past friends, and a likely response from an individual with this score would be "I will deal with it when it occurs." A score of 2 should be assigned to those offenders who, by verbal or behavioral indicators, have demonstrated that they are still in contact with criminal friends and associates or actively seek out old criminal friends. Any individual who has made it clear that they will resume relationships (romantic included) with co-defendants should be scored a 2.

6.3 Gang Membership:

This item can be scored as a 0, 1, or 2, depending on the offender's current or past gang involvement. Score as 0 if the offender has never been involved in a gang. Score as a 1 if the offender has been in a gang previously, but is not currently active. For those offenders who are currently in a gang, score as a 2. **Note: It is recommended that both self reported affiliation and/or official records be used to score this item.**

6.4 Criminal Activities:

This item can be scored as a 0, 1, or 2, depending on the offender's identification and participation in prosocial activities. The purpose of this item is to assess the offender's participation in activities which have the potential to result in criminal behavior. In addition to the specific questions for this item, the interviewer should score this item from the totality of the responses in the interview. Offenders may indicate that they regularly partake in criminal behavior/activities when they discuss what they do with their peers, in their free time, or when discussing activities they do with their spouse/family. It should be noted this item pertains to activities that are directly related to criminal behavior and not simply non-productive activities (i.e., video games or watching television). This item is seeking to identify the frequency in which the individual participates in antisocial behavior including but not limited to the following: drug use, drunk driving, selling drugs, illegal gambling, criminal behavior, gang involvement, or hanging out with other known criminal associates. Score as 0 if the offender has a strong identification and participation in prosocial activities while avoiding antisocial behavior. This can include time and activities with family, work, school, sports, hanging out with prosocial friends, engaging in hobbies, clubs, church, and other prosocial activities. Score as 1 for offenders with a mixture of prosocial and procriminal identification and participation. These are offenders who, while engaging in prosocial activities, like work or family, also engage in behavior that puts them at risk for criminal conduct. Score this item as 2 if the offender has a strong identification and participation with criminal activities. These are offenders who identify with the criminal element, see crime as a way of life, and even if they are engaged in a few prosocial activities these activities will involve some elements of antisocial behavior (drinking, using drugs, fighting, etc).

7.0 Criminal Attitudes and Behavioral Patterns

This section addresses the criminal attitudes of the offender, as well as some personality traits that can often lead to criminal behavior. In addition to the specific questions for this item, the interviewer should score this item from the totality of the responses in the interview. Listen for rationalizations, minimizations, and justifications of behavior throughout the interview. There are 7 items in this domain with a total possible score of 13.

Neutralization techniques include:

- *Denial of Responsibility: The offender will state that criminal acts are due to factors beyond their control*
- *Denial of Injury: The offender admits responsibility for the act, but minimizes the extent of harm or denies any harm*
- *Denial of the Victim: The offender reverses the role of offender and victim and blames the victim*
- *“System Bashing”: The offender believes that those who disapprove of the offender’s acts are defined as immoral, hypocritical, or criminal themselves, since, after all, “everyone does it”*
- *Appeal to Higher Loyalties: This will be common with gang members, who believe that they “Live by a different code” – the demands of larger society are sacrificed for the demands of more immediate loyalties*

Other things to listen for include: negative expression about the law (the law is unfair); negative expressions about conventional institutions, values, rules, and procedures, including authority (i.e., work is for others); negative expressions about self-management of behavior, including problem solving ability (i.e., “I have never been good at that”); negative attitudes toward self and one’s ability to achieve through conventional means (i.e., “work is not for me”; “I have never done well in school”); and lack of empathy and sensitivity toward others (i.e., “who did I hurt besides myself?”).

7.1 Criminal Pride:

This item can be scored as 0, 1, or 2. This item is designed to gauge the offender's current pride in criminal behavior. Assessors should listen for justifications and minimizations, bragging about past criminal acts, and other verbal or behavioral indicators. For example, some offenders will claim to be ashamed of behavior, yet they have a history of continuing it. Others will minimize by blaming the victim, and some will say that the victim got what was coming to them. Score this item as 0 if the offender takes no pride in their criminal behavior, shows genuine remorse, and accepts responsibility for their actions. For those offenders who have some justifications or minimizations, score as a 1. These are individuals who, while generally prosocial, may not accept full responsibility for acts, or may see it happening again under the same circumstances. Score as 2 those offenders who attempt to justify or minimize criminal behavior, or who take responsibility but take pride in the behavior (i.e., "I would do it again"; "they had what was coming to them"; "what is wrong with using drugs, it should be legal anyway?").

7.2 Expresses Concern about Others

This item can be scored as 0, 1, or 2. This item examines the degree to which the offender is generally capable of expressing concern about others. For the purposes of this item, general concern about others is not specific to his or her criminal behavior. For those offender's who express genuine concern about others, score as a 0. Score as 1 for those offenders who appear to have only limited concern for others. For those offenders who do not express concern about others, score as a 2. *Note: This item can be scored from interview or self-report questionnaire. Question 21 on Self-Report.*

If scored from Self-Report, score 1 or 2 as 0, 3 as 1, and 4 or 5 as 2.

7.3 Feels Lack of Control Over Events:

This item can be scored as a 0, 1, or 2. This item examines the degree to which the offender feels in control of events affecting his or her life. For those offenders who feel like they have control over their lives and events surrounding them, score as a 0. A score of 1 should be given to those offenders who express some concern about controlling events in their lives, feel that they cannot always cope with day-to-day activities, but in general are able to handle situations as they appear. A score of 2 should be given to those offenders who do not feel like they have much control over events in their lives and who are having a difficult time coping with day-to-day stress. This item should take into consideration the most recent 6 month period. *Note: This item can be scored from interview or self-report questionnaire. Question 23 on Self-Report.*

If scored from Self-Report score 4 or 5 as 0, 3 as 1, and 1 or 2 as 2.

7.4 Sees No Problem in Telling Lies:

This item is designed to measure the degree to which the offender sees no problem in telling lies or being honest. For those offenders who believe that it is wrong to lie, except for small white lies (e.g., not to hurt someone's feelings), score as a 0. For those who justify lying, are willing to do it to get ahead, or see no real problem in lying, score as 1. The offender's willingness to tell the truth during this interview should be taken into account. *Note: This item can be scored from interview or self-report questionnaire. Question 22 on Self-Report.*

If scored from Self-Report, score 1 as 0 and 2 thru 5 as 1.

7.5 Engages in Risk Taking Behavior:

This item can be scored as 0, 1, or 2 and should take into consideration the most recent 6 month period. This item examines the degree to which the offender engages in risk taking behavior. For those offenders who do not generally engage in risk taking behavior (e.g., the current criminal activity appears to be an exception), score as a 0. A score of 1 should be assigned to those offenders who take some risk. Assign a score of 2 to those offenders who generally place themselves in risky situations or find it exciting to take risks. Interviewers should look for a pattern of risk taking behavior that might include non-criminal activities as well. *Note: This item can be scored from interview or self-report questionnaire. Question 24 on Self-Report.*

If scored from Self-Report, score 4 or 5 as 0, 3 as 1, and 1 or 2 as 2.

7.6 Walks Away from a Fight:

This item can be scored as 0, 1, or 2. This item examines the degree to which the offender is willing to walk away from a fight in the past 6 months. For those offenders who generally walk away from a fight and see themselves as someone who generally avoids fights, score as a 0. Score as 1 those offenders who do not seek fights and generally try and avoid them, but for whom it sometimes finds them. For those offenders who do not avoid fights, see themselves as not usually walking away from a fight, or actively seek it out, score as a 2. *Note: This item can be scored from interview or self-report questionnaire. Question 25 on Self-Report.*

If scored from Self-Report, score 1 or 2 as 0, 3 as 1, and 4 or 5 as 2.

7.7 Believes in "Do Unto Others Before They Do Unto You":

This item can be scored as a 0, 1, or 2, and examines the degree to which the offender believes in "doing unto others before it is done to them." Score as 0 those offenders who generally disagree with this statement. For those offenders who are ambivalent or say it "depends on the situation," score as a 1. Score as 2 those offenders who agree with this statement. *Note: This item can be scored from interview or self-report questionnaire. Question 26 on Self-Report.*

If scored from Self-Report, score 4 or 5 as 0, 3 as 1, and 1 or 2 as 2.

TAB 25



Risk and Needs Triage™

Treatment Research Institute

Client Report

Name: John Doe **Gender:** Male
Date of Birth: 6/2/1982 **Race:** Multiracial
Date of Eval: 2/13/2008 **Evaluator:** Jane Doe
ID No: 18003501 **Referral Source:** Pre-trial Services
Case No: 984654654

		Risk	
		High	Low
Needs	High	X	
	Low		

The following risk factors were identified:

- **Age of onset of criminal activity \leq 15 years.** An earlier onset of crime or delinquency generally predicts a more chronic course and poorer response to interventions unless there is close supervision and accountability.
- **Age of onset of substance abuse \leq 13 years.** An earlier onset of substance abuse generally predicts a more chronic course and poorer response to standard treatment unless there is close supervision and accountability.
- **Deviant peer affiliations.** Associating with other offenders or substance abusers predicts a poorer response to treatment and supervision requirements.
- **Prior failure in drug rehabilitation.** Previous failures in rehabilitation or treatment predict a poorer response to subsequent episodes unless there is more intensive monitoring and services.
- **Prior felony or serious misdemeanor convictions.** Prior felony or serious misdemeanor convictions predict a greater likelihood of recidivism.
- **Unstable living arrangements.** A pattern of instability is generally associated with a poorer response to treatment and greater likelihood of failure to comply with supervision requirements.

The following needs factors were identified:

- **Physical addiction to drugs or alcohol.** This individual suffers from a loss of control over substance use that requires substantial clinical intervention.

This individual was classified as **high risk and high need**. Such individuals typically require a combination of services involving intensive treatment, close monitoring, and accountability for their actions.

Note: This triage screen was not designed to be a clinical assessment tool and should not be used for treatment planning or diagnostic purposes. It was designed to identify those risks and needs for offenders that have been proven by research to predict a poorer response to standard supervisory or treatment requirements. The goal is to use this information to match the offenders to those programs that are most likely to elicit the best outcomes.



RANT™ was created by the Treatment Research Institute

TAB 26

PTSD CheckList – Civilian Version (PCL-C)

Client's Name: _____

Instruction to patient: Below is a list of problems and complaints that veterans sometimes have in response to stressful life experiences. Please read each one carefully, put an "X" in the box to indicate how much you have been bothered by that problem *in the last month*.

No.	Response	Not at all (1)	A little bit (2)	Moderately (3)	Quite a bit (4)	Extremely (5)
1.	Repeated, disturbing <i>memories, thoughts, or images</i> of a stressful experience from the past?					
2.	Repeated, disturbing <i>dreams</i> of a stressful experience from the past?					
3.	Suddenly <i>acting or feeling</i> as if a stressful experience <i>were happening</i> again (as if you were reliving it)?					
4.	Feeling <i>very upset</i> when <i>something reminded</i> you of a stressful experience from the past?					
5.	Having <i>physical reactions</i> (e.g., heart pounding, trouble breathing, or sweating) when <i>something reminded</i> you of a stressful experience from the past?					
6.	Avoid <i>thinking about or talking about</i> a stressful experience from the past or avoid <i>having feelings</i> related to it?					
7.	Avoid <i>activities or situations</i> because they <i>remind you</i> of a stressful experience from the past?					
8.	Trouble <i>remembering important parts</i> of a stressful experience from the past?					
9.	Loss of <i>interest in things that you used to enjoy</i> ?					
10.	Feeling <i>distant or cut off</i> from other people?					
11.	Feeling <i>emotionally numb</i> or being unable to have loving feelings for those close to you?					
12.	Feeling as if your <i>future</i> will somehow be <i>cut short</i> ?					
13.	Trouble <i>falling or staying asleep</i> ?					
14.	Feeling <i>irritable</i> or having <i>angry outbursts</i> ?					
15.	Having <i>difficulty concentrating</i> ?					
16.	Being " <i>super alert</i> " or watchful on guard?					
17.	Feeling <i>jumpy</i> or easily startled?					

PCL-M for DSM-IV (11/1/94) Weathers, Litz, Huska, & Keane National Center for PTSD - Behavioral Science Division

This is a Government document in the public domain.

PTSD CheckList – Civilian Version (PCL-C)

The PCL is a standardized self-report rating scale for PTSD comprising 17 items that correspond to the key symptoms of PTSD. Two versions of the PCL exist: 1) PCL-M is specific to PTSD caused by military experiences and 2) PCL-C is applied generally to any traumatic event.

The PCL can be easily modified to fit specific time frames or events. For example, instead of asking about “the past month,” questions may ask about “the past week” or be modified to focus on events specific to a deployment.

How is the PCL completed?

- The PCL is self-administered
- Respondents indicate how much they have been bothered by a symptom over the past month using a 5-point (1–5) scale, circling their responses. Responses range from **1 Not at All – 5 Extremely**

How is the PCL Scored?

1) Add up all items for a total severity score

or

2) Treat response categories **3–5 (Moderately or above)** as symptomatic and responses **1–2 (below Moderately)** as non-symptomatic, then use the following DSM criteria for a diagnosis:

- Symptomatic response to at least 1 “B” item (Questions 1–5),
- Symptomatic response to at least 3 “C” items (Questions 6–12), and
- Symptomatic response to at least 2 “D” items (Questions 13–17)

Are Results Valid and Reliable?

- Two studies of both Vietnam and Persian Gulf theater veterans show that the PCL is both valid and reliable (Additional references are available from the DHCC)

What Additional Follow-up is Available?

- All military health system beneficiaries with health concerns they believe are deployment-related are encouraged to seek medical care
- Patients should be asked, “**Is your health concern today related to a deployment?**” during all primary care visits.
- If the patient replies “**yes**,” the provider should follow the Post-Deployment Health Clinical Practice Guideline (PDH-CPG) and supporting guidelines available through the DHCC and www.PDHealth.mil

TAB 27

BRIEF JAIL MENTAL HEALTH SCREEN

Section 1

Name: _____ First MI Last	Detainee #: _____	Date: ____/____/_____	Time: _____ AM PM
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Section 2

Questions	No	Yes	General Comments
1. Do you <i>currently</i> believe that someone can control your mind by putting thoughts into your head or taking thoughts out of your head?			
2. Do you <i>currently</i> feel that other people know your thoughts and can read your mind?			
3. Have you <i>currently</i> lost or gained as much as two pounds a week for several weeks without even trying?			
4. Have you or your family or friends noticed that you are <i>currently</i> much more active than you usually are?			
5. Do you <i>currently</i> feel like you have to talk or move more slowly than you usually do?			
6. Have there <i>currently</i> been a few weeks when you felt like you were useless or sinful?			
7. Are you <i>currently</i> taking any medication prescribed for you by a physician for any emotional or mental health problems?			
8. Have you <u>ever</u> been in a hospital for emotional or mental health problems?			

Section 3 (Optional)

Officer's Comments/Impressions (check *all* that apply):

- Language barrier Under the influence of drugs/alcohol Non-cooperative
 Difficulty understanding questions Other, specify: _____

Referral instructions: This detainee should be referred for further mental health evaluation if he/she answered:

- YES to item 7; OR
- YES to item 8; OR
- YES to at least 2 of items 1 through 6; OR
- if you feel it is necessary for any other reason

Not Referred

Referred on ____/____/____ to _____

Person completing screen _____

INSTRUCTIONS ON REVERSE

INSTRUCTIONS FOR COMPLETING THE BRIEF JAIL MENTAL HEALTH SCREEN

GENERAL INFORMATION:

This Brief Jail Mental Health Screen (BJMHS) was developed by Policy Research Associates, Inc., with a grant from the National Institute of Justice. The BJMHS is an efficient mental health screen that will aid in the early identification of severe mental illnesses and other acute psychiatric problems during the intake process.

This screen should be administered by Correctional Officers during the jail's intake/booking process.

INSTRUCTIONS FOR SECTION 1:

NAME: Enter detainees name — first, middle initial, and last
DETAINEE#: Enter detainee number.
DATE: Enter today's month, day, and year.
TIME: Enter the current time and circle AM or PM.

INSTRUCTIONS FOR SECTION 2:

ITEMS 1-6:

Place a check mark in the appropriate column (for "NO" or "YES" response).

If the detainee REFUSES to answer the question or says that he/she DOES NOT KNOW the answer to the question, do not check "NO" or "YES." Instead, in the General Comments section, indicate REFUSED or DON'T KNOW and include information explaining why the detainee did not answer the question.

ITEMS 7-8:

ITEM 7: This refers to any *prescribed* medication for any emotional or mental health problems.

ITEM 8: Include any stay of one night or longer. Do NOT include contact with an Emergency Room if it did not lead to an admission to the hospital

If the detainee REFUSES to answer the question or says that he/she DOES NOT KNOW the answer to the question, do not check "NO" or "YES." Instead, in the General Comments section, indicate REFUSED or DON'T KNOW and include information explaining why the detainee did not answer the question.

General Comments Column:

As indicated above, if the detainee REFUSES to answer the question or says that he/she DOES NOT KNOW the answer to the question, do not check "NO" or "YES." Instead, in the General Comments section, indicate REFUSED or DON'T KNOW and include information explaining why the detainee did not answer the question.

All "YES" responses require a note in the General Comments section to document:

- (1) Information about the detainee that the officer feels relevant and important
- (2) Information specifically requested in question

If at any point during administration of the BJMHS the detainee experiences distress, he/she should follow the jails procedure for referral services.

INSTRUCTIONS FOR SECTION 3:

OFFICER'S COMMENTS: Check any one or more of the four problems listed if applicable to this screening. If any other problem(s) occurred, please check OTHER, and note what it was.

REFERRAL INSTRUCTIONS:

Any detainee answering YES to Item 7 or YES to Item 8 or YES to at least two of Items 1-6 should be referred for further mental health evaluation. If there is any other information or reason why the officer feels it is necessary for the detainee to have a mental health evaluation, the detainee should be referred. Please indicate whether or not the detainee was referred.

Appendix E

ONTARIO DOMESTIC ASSAULT RISK ASSESSMENT – FORM*

3/2007

Score 1 if 'yes' Score 0 if 'no' Score 'MI' if missing item

- _____ 1. Before this time, have police ever come because he was assaulting the victim (or threatening with a weapon) victim's children, his children, or his former partner?
- _____ 2. Before this time, have police ever come to deal with him for any other kind of violence?
- _____ 3. Before this, has he ever been sentenced to prison or jail for at least 30 days, even if he didn't serve the whole time?
- _____ 4. Has he ever had bail, probation, parole, or a no-contact, AND disobeyed the conditions?
(PROMPT: fail to turn up, breach probation, break the law again, violate the "no-contact" order)
- _____ 5. This time, did he threaten to harm or kill the victim or anyone else?
- _____ 6. This time, did he do anything to prevent the victim from leaving the location?
(PROMPT: lock the doors, take her car keys, hold onto her)
- _____ 7. Is victim concerned that he will assault her or the children in the future?
- _____ 8. How many children does the victim have? How many does he have?
(include minor or adult children: biological, step or adopted; living anywhere)
score 1 if there are at least 2 children together
- _____ 9. Does the victim have any children from relationships before this partner?
- _____ 10. Is he violent to people other than the victim and the children?
(PROMPT: fights with, hits, even if no police come)
- _____ 11. SUBSTANCE ABUSE: ask these questions until the second 2nd 'yes' response then score 1 for this item
 - a. Did he consume alcohol immediately before or during the index incident?
 - b. Did he use drugs immediately before or during the index incident?
 - c. Did he abuse drugs and/or alcohol in the days or weeks, prior to index incident?
 - d. Did he noticeably increase his abuse of drugs and/or alcohol in the days or weeks, prior to index incident?
 - e. Has he been more angry or violent when using drugs and/or alcohol prior to the index incident?
 - f. Has he consumed alcohol before or during a criminal offence prior to the index incident?
 - g. Has his alcohol use prior to the index but since age 18 resulted in some problems or interference in his life?
 - h. Has his drug use prior to the index but since age 18 resulted in some problems or interference in his life?
(PROMPT: for "problems" *THAT HAPPEN AS A RESULT OF SUBSTANCE ABUSE:* financial problems, job loss or job problems, loss of relationships or relationship problems, trouble with the law, health problems, withdrawal symptoms, or inability to stop or decrease use)
- _____ 12. Has he ever assaulted the victim when she was pregnant?
- _____ 13. VICTIM BARRIERS TO SUPPORT: ask these questions until the first "yes" response then score 1 for this item
 - a. Does the victim have children at home aged 18 or under?
 - b. Does the victim live in a home with *no* phone?
 - c. Does the victim live where there is *no* access to transportation? (PROMPT: no bus, no money for taxi, partner takes car; if victim has no access score as "yes")
 - d. Does the victim live in a home with *no* people living close by? (If victim feels geographically isolated score as "yes")
 - e. Did the victim consume alcohol or drugs just before or during the index incident, or does she have a history of alcohol or drug abuse? *If present, score 1 for this item.*

_____ = RAW SCORE
_____ = ADJUSTED SCORE

ODARA - C © MHCP Research Dept 2005
Use Only With Scoring Instructions

Accused: _____
 LAST NAME First name Middle name(s)

Incident #: _____

Victim: _____
 LAST NAME First name

Offence date: ____/____/20____
 dd mm yy

The *Ontario Domestic Assault Risk Assessment (ODARA)* is an actuarial risk assessment tool that ranks men with respect to risk for domestic violence recidivism. The higher the ODARA score, the more likely the man is to assault a female cohabiting partner again, the more frequent and severe future assaults will be, and the sooner he will reassault. The ODARA was developed on a study of 589 men known to police in Ontario for physically assaulting their female partners. In an average follow up of approximately five years after an index incident of domestic violence, 30% of men recidivated; recidivism occurred an average of 15 months after the index incident. The ODARA consists of 13 unique predictors of domestic violence recidivism, including domestic and non-domestic criminal history, threat and confinement during the most recent incident, children in the relationship, substance abuse, and barriers to victim support.

In the study, only acts of physical violence (including, but not limited to, actual or attempted use of a weapon) met the definition of domestic violence recidivism. Of the men who recidivated, most assaulted the same partner as before.

Adjusted Scores for Missing Items (circle score used)

Raw Score	0	1	2	3	4	5	6	7+
0	0	0	0	0	0	0	0	0
1	1	1	1	1	1	2		
2	2	2	3	3	3			
3	3	4	4	4	5			
4	4	5	5	6	7+			
5	5	6	7+	7+	7+			
6+	7+	7+	7+	7+	7+			

ODARA Raw Score for the Accused:

ODARA Adjusted Score for the Accused:

Check	ODARA score	Percent Recidivism*	Percent in this range of scores	Percent scoring lower	Percent scoring higher	Remarks
	0	5	11	0	89	Men with this score have a 5% likelihood of recidivism.* Approximately 90% of wife assaulters score higher on the ODARA.
	1	10	16	11	73	Men with this score have a 10% likelihood of recidivism.* Approximately 70% of wife assaulters score higher on the ODARA.
	2	20	21	27	52	Men with this score have a 20% likelihood of recidivism.* Approximately 50% of wife assaulters score higher on the ODARA.
	3	27	19	48	33	Men with this score have approximately a 30% likelihood of recidivism.* Approximately 30% of wife assaulters score higher on the ODARA.
	4	41	13	67	20	Men with this score have approximately a 40% likelihood of recidivism.* Approximately 20% of wife assaulters score higher on the ODARA.
	5-6	59	13	80	7	Men in this range of scores have approximately a 60% likelihood of recidivism.* Fewer than 10% of wife assaulters score higher on the ODARA.
	7-13	70	7	93	0	Men in this range of scores have a 70% likelihood of recidivism.* No wife assaulters score higher on the ODARA.

* Recidivism: a new assault against a female domestic partner, identified in police records.

Note: The higher the ODARA score, the sooner, more frequent, and more serious the recidivism.

Completed by: _____

Date: ____/____/20____

Reviewed by: _____

Date: ____/____/20____
 dd mm yy hr min

NOTE: Use only with full scoring criteria. Based on ODARA-LE used by police in Ontario Pilot Project; modified by MHCP.

TAB 28



CAGE Substance Abuse Screening Tool

Directions: Ask your patients these four questions and use the scoring method described below to determine if substance abuse exists and needs to be addressed.

CAGE Questions

1. Have you ever felt you should cut down on your drinking?
 2. Have people annoyed you by criticizing your drinking?
 3. Have you ever felt bad or guilty about your drinking?
 4. Have you ever had a drink first thing in the morning to steady your nerves or to get rid of a hangover (eye-opener)?
-

CAGE Questions Adapted to Include Drug Use (CAGE-AID)

1. Have you ever felt you ought to cut down on your drinking or drug use?
2. Have people annoyed you by criticizing your drinking or drug use?
3. Have you felt bad or guilty about your drinking or drug use?
4. Have you ever had a drink or used drugs first thing in the morning to steady your nerves or to get rid of a hangover (eye-opener)?

Scoring: Item responses on the CAGE questions are scored 0 for "no" and 1 for "yes" answers, with a higher score being an indication of alcohol problems. A total score of two or greater is considered clinically significant.

The normal cutoff for the CAGE is two positive answers, however, the Consensus Panel recommends that the primary care clinicians lower the threshold to one positive answer to cast a wider net and identify more patients who may have substance abuse disorders. A number of other screening tools are available.

CAGE is derived from the four questions of the tool: Cut down, Annoyed, Guilty, and Eye-opener

CAGE Source: Ewing 1984

The UNCOPE Screening Instrument for Substance Abuse

The UNCOPE consists of six questions found in existing instruments and assorted research reports. Variations in wording are noted for several of the items. The more concrete wording of the revised versions were found to be slightly better as a generic screen. Either version of the six questions may be used free of charge for oral administration in any medical, psychosocial, or clinical interview. They provide a simple and quick means of identifying risk for abuse and dependence for alcohol and other drugs.

- U "In the past year, have you ever drank or used drugs more than you meant to?" or, as revised "Have you spent more time drinking or using than you intended to?"
- N "Have you ever neglected some of your usual responsibilities because of using alcohol or drugs?"
- C "Have you felt you wanted or needed to cut down on your drinking or drug use in the last year?"
- O "Has anyone objected to your drinking or drug use?" Or, "Has your family, a friend, or anyone else ever told you they objected to your alcohol or drug use?"
- P "Have you ever found yourself preoccupied with wanting to use alcohol or drugs?" or, as revised, "Have you found yourself thinking a lot about drinking or using?"
- E "Have you ever used alcohol or drugs to relieve emotional discomfort, such as sadness, anger, or boredom?"

A CAUTION REGARDING ALL SCREENS

Screens merely provide an indication of whether or not an individual appears at risk for a given condition. Screens are inappropriate for use as treatment intake tools and insufficient for supporting diagnoses.

For further information on the UNCOPE, contact
Norman G. Hoffmann, Ph.D.
Evince Clinical Assessments, PO Box 17305, Smithfield, RI 02917
Tel: 800-755-6299 401-231-2993 Fax: 401-231-2055 evinceassessment@aol.com

TAB 29

An Example From Kentucky Pretrial Services

Levels of Pretrial Supervision

Minimal

- One (1) face to face contact per month
- Court notification
- Compliance Verification

Standard

- Two (2) face to face contacts per month
- One (1) additional phone contact per month
- Court notification
- Compliance Verification

Intensive

- One (1) face to face contact per week
- One (1) additional phone contact per month
- Court notification
- Compliance Verification

Risk Level	Pretrial Supervision Level
Low*	Minimal
Moderate	Standard
High	Intensive

*Although PTS does not recommend supervision for low risk defendants, if the court orders such, minimal supervision will be utilized unless the defendant is moderate or high needs.

Risk Level	Needs	Supervision Level
Low	High	Intensive
Low	Moderate	Standard
Low	Low	Minimal
Moderate	High	Intensive
Moderate	Moderate	Standard
Moderate	Low	Minimal
High	High	Intensive
High	Moderate	Standard
High	Low	Minimal

PSP

RISK/NEEDS CASE MANAGEMENT MATRIX

The PSP Case Management matrix is intended as a guide to developing and administering supervision to pretrial defendants. The following will provide operational definitions for the matrix as well as conditions under which the case manager should modify the supervision strategy.

Definitions:

Risk Level: The assessed risk of pretrial misconduct based on the results of the revised-VPRA.

Defendant Ability to Manage Behavior: Assessment of factors indicating the defendant's ability to manage his/her own behavior in the community, including the extent of supervision and or support. These factors may provide the basis to over-ride the risk tool. These factors may change during the course of pretrial supervision, which may require modifications to the supervision plan. These factors may be pro-social or pro-criminal, and include:

- Current/Chronic alcohol/drug issues
- Mental Health Issues (and extent to which they are currently being treated)
- Family/Social support
- Score on the ODARA (for DV Cases)
- Demonstrated propensity for violence
- Proximity/access and relationship to victim
- Issues regarding housing that significantly impact (positively or negatively) the defendant's ability to abide by release conditions
- Personality issues, Physical/medical issues, degree of impulsivity, maturity, etc., that may impact ability/willingness of defendant to comply with release conditions

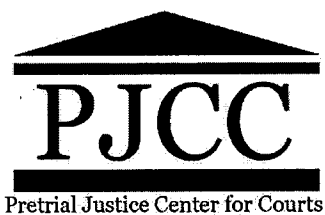
Recommended Supervision Strategy: These are strategies that should be considered given the level of risk and the ability of the defendant to manage their own behavior in the community. It is not an exhaustive list; nor is it a required list of conditions.

- **Reporting Requirements:**
 - The purpose of reporting generally is to
 - Verify that the defendant is physically within the jurisdiction, and thus able to comply with the conditions of release
 - Verify that the defendant resides where he/she reported they would, that the residence is appropriate, and that the defendant is able to comply with all release conditions while residing there
 - Facilitate the monitoring of other conditions such as, taking prescribed MH medication, abstaining from alcohol and/or drugs, curfew, or Treatment attendance
 - The mode of reporting, phone, office, home, etc., should be commensurate with the defendant's level of risk and be the most appropriate to accomplish the above purpose(s).
 - Contact standards for pretrial defendants are one (1) contact per week, generally by phone. Exceptions may be made for higher risk or special cases.

Appendix D
Pretrial Services Program
RISK/NEEDS CASE MANAGEMENT MATRIX

RISK LEVEL	DEFENDANT ABILITY TO MANAGE BEHAVIOR	RECOMMENDED SUPERVISION STRATEGY
HIGH Scores 8 – 9 on Revised VPRA	LOW <u>Recommend</u> <u>Detained in Custody</u>	<u>RISK CONTROL:</u> Monitoring of required activities to mitigate risk, including: Electronic Monitoring, MH medication, Treatment, case managed housing, victim contact. (home/community/office) weekly Face to face contacts
MEDIUM Scores 5 – 7 on Revised VPRA	MODERATE Conditionally Release	<u>SUPERVISION:</u> Reporting via phone (weekly), collateral contacts Monitoring of A & D use, or other prohibited activities
LOW Scores 0 – 4 on Revised VPRA	HIGH Presumptively Release	<u>MONITORING:</u> Reporting via phone (bi-weekly) Report in person after court

TAB 30



Addressing Victims' Rights in Pretrial Justice Reform

Pretrial Justice Brief 1*

March 2015

Momentum for achieving greater justice in pretrial release decision making is building across the country as state and local jurisdictions are exploring a range of approaches and implementing various reforms.¹ The collaborative engagement of criminal justice system stakeholders has been a hallmark of these reform efforts. Victims of crime are among these stakeholders, and they bring important voices to the pretrial justice discussion.

In the past few years, legislatures, criminal justice agencies, courts and victim advocates have pressed for victims' meaningful participation in pretrial decision making and access to services in the pretrial process.² Nearly all states have enumerated victims' rights in pretrial release processes through legislation or constitutional amendment,³ but many victims may have little knowledge about these rights or how to exercise them. For example, a 2013 California survey of crime victims and survivors found that the majority of victims were unaware of most of the services available to them, including access to victim compensation and assistance in navigating the criminal justice system.⁴

Across the numerous articulations of victims' rights, four stand out as fundamental rights: (1) notice, (2) participation and input, (3) victim compensation and restitution, and (4) reasonable protection.⁵ This brief describes examples of legislation, programs and other resources that promote each of these rights.

Notice

Providing notice to victims of hearings and other events related to criminal proceedings, including the release status of defendants, are essential to ensuring the meaningful exercise of other victims' rights.

- The National Victim Notification Network, also known as VINE (Victim Information Notification Everyday),⁶ operates statewide in 40 states and in some counties in another 7 states. VINE allows 24/7 access to up-to-date information about criminal cases and custody status of offenders. VineLink⁷ provides crime victims online access to this information. In some states the information is available in Spanish.
- According to a review by the National Conference of State Legislatures (NCSL), as of April 2013, 24 states require victim notice of the defendant's pretrial release hearing and 41 states provide victims the right to notice when a defendant is released prior to trial.⁸

Participation and Input

A victim's ability to provide input into decisions throughout the criminal justice process is critical to victim safety, as well as to promoting trust and confidence in the criminal justice system.

- Opportunities to provide input in pretrial decisions may include being heard at pretrial hearings and being consulted before the

* This Brief was prepared by Susan Keilitz of the National Center for State Courts' Pretrial Justice Center for Courts (www.ncsc.org/pjcc). The Pretrial Justice Center provides information and tools, offers education and technical assistance, facilitates cross-state learning and collaboration, and promotes the use of evidence-based pretrial practices for courts across the country. It works closely with the Conference of Chief Justices, the Conference of State Court Administrators and other national court organizations to implement pretrial justice reform. The Center is supported by the Public Welfare Foundation (PWF). Points of view or opinions expressed in the Brief are those of the author and do not necessarily represent the official position of the NCSC or PWF.

hearing. The NCSL's review identified 18 states that allow victims some participation in pretrial hearings, with 14 providing the opportunity to be heard or to be consulted.⁹

- The National Institute of Corrections (NIC) recommends that criminal justice agencies and victim service providers adopt policies and develop materials for providing victims information about their rights and opportunities for participation at all stages of the criminal justice system. NIC also recommends that state corrections websites include a page specific to victim information and involvement.¹⁰

Compensation and Restitution

Crime victim compensation and restitution are two important ways that the criminal justice system can help victims recover from the losses they suffer and move forward from their victimization. Victim compensation is made through a state program that pays for out-of-pocket expenses incurred by victims of specified types of crimes, typically felonies, whether or not the offender is prosecuted or convicted. Victim restitution comes from the offender and typically is made through a court order following a conviction.¹¹ Although these remedies may be available by law, access to and enforcement of them can be challenging.

- State and local court leadership spurred and sustained the implementation of innovative restitution programs that significantly improved victim access to restitution funds in California; Michigan; Vermont; Maricopa County, Arizona; and the Eighth Judicial Circuit of Florida.¹²
- Ten states (Alaska, California, Illinois, Indiana, Kansas, Minnesota, Montana, Nevada, Washington and Wisconsin) have enacted legislation to authorize funds from forfeited bail bonds to be directed to victims, either directly

or through victim compensation funds. Montana and Wisconsin broaden access to these funds by allowing the court to order restitution to the victim without making a determination of guilt. Washington directs the dollars to a fund that supports testimony by victims and witnesses.¹³

Reasonable Protection

Ensuring victim safety is a key goal of justice system responses to crime, and pretrial reforms have addressed this goal in several ways. While much of the movement has focused on protecting victims of domestic violence, sexual assault, and stalking, many activities may apply to all victims of crime.

- Examples of legislative action include specifying violent offenses for which pretrial release may be denied, requiring pretrial release hearings in specified crimes, requiring some period of detention before pretrial release for specified crimes, and setting conditions of release.¹⁴
- Johnson County, Kansas is using a locally validated tool, the Domestic Violence Lethality Assessment (DVLA). Law enforcement officers administer the DVLA in a victim interview at the scene of domestic violence calls. A high score can trigger specified protocols, including linking the victim with the local victim service provider and raising the pretrial risk assessment score.¹⁵
- Virginia has implemented guidelines for electronic monitoring of defendants, including while on pretrial release.¹⁶
- The National Network to End Domestic Violence provides extensive guidelines on safety planning related to the ever growing use of technology.¹⁷

In announcing the 2015 National Crime Victims' Rights Week Resource Guide, Office for Victims of Crime Director Joye E. Frost stated:



By working with community leaders and organizations, we can leverage existing community resources to understand the needs of underserved victims and the impact of victimization. Engaging the entire community will enable us to reach more victims and expand their options for services.¹⁸

Based on the examples of legislative and programmatic activities highlighted here, communities are answering Director Frost's call by continuing to advance victims' rights in their efforts to achieve greater safety and justice in pretrial release.¹⁹

Endnotes

¹ See "A Snapshot of Pretrial Reform Activity Across the Nation," National Center for State Courts Pretrial Justice Center for Courts, January 2015 (www.ncsc.org/PJCC).

² According to the National Conference of State Legislatures (NCSL), over the past three years (2012-2014) 16 states have enacted a total of 22 laws related to victim protection and policy in the pretrial process. See NCSL's searchable databases of bills related to pretrial release (<http://www.ncsl.org/research/civil-and-criminal-justice/state-pretrial-release-legislation.aspx>) and pretrial policy (<http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-policy.aspx>).

³ See NCSL, Victims' Pretrial Release Rights and Protections (<http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-victims-rights-and-protections.aspx>).

⁴ See "California Crime Victims' Voices: Findings from the First-Ever Survey of California Crime Victims and Survivors," http://www.courts.ca.gov/documents/BTB_XXII_IIIIE_3.pdf.

⁵ See "Offender Re-Entry: The Value of Victim Involvement," a National Institute of Corrections web broadcast, February 18, 2015, at http://nicic.gov/downloads/files/ib2015feb_15c9002%20part%20guide%20nic%20offender_%20reentry%20final%20508%202-18-15.pdf.

⁶ See <http://www.appriss.com/vine.html>.

⁷ See <https://www.vinelink.com/vinelink/initMap.do>.

⁸ See NCSL, Victim Notification and Participation Rights in Pretrial Release at <http://www.ncsl.org/research/civil->

[and-criminal-justice/pretrial-release-victims-rights-and-protections.aspx#Victim Notification](http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-victims-rights-and-protections.aspx#VictimNotification).

⁹ See Victim Notification and Participation Rights in Pretrial Release at [http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-victims-rights-and-protections.aspx#Victim Notification](http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-victims-rights-and-protections.aspx#VictimNotification).

¹⁰ See "Offender Re-Entry: The Value of Victim Involvement" (Participant Guide, p.17); prepared for a National Institute of Corrections web broadcast, February 18, 2015, at http://nicic.gov/downloads/files/ib2015feb_15c9002%20part%20guide%20nic%20offender_%20reentry%20final%20508%202-18-15.pdf.

¹¹ See the National Center for Victims of Crime at <http://www.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/restitution>.

¹² See "Making Restitution Real: Five Case Studies on Improving Restitution Collection," National Center for Victims of Crime (NCVC), at http://www.victimsofcrime.org/docs/Reports%20and%20Studies/2011_restitutionreport_web.pdf?sfvrsn=2. See also NCVC's online Restitution Toolkit at <http://www.victimsofcrime.org/library/publications/restitution-and-compensation/restitution-toolkit>.

¹³ See NCSL, Forfeited Bail Bonds Disbursed to Victims at [http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-victims-rights-and-protections.aspx#Victim Funds](http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-victims-rights-and-protections.aspx#VictimFunds).

¹⁴ See NCSL, Victims' Pretrial Release Rights and Protections (<http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-victims-rights-and-protections.aspx>).

¹⁵ The tool is undergoing further validation. See "An Analysis of the Domestic Violence Lethality Assessment in Johnson County, Kansas," United Community Services of Johnson County at <http://ucsjoco.org/Uploads/Domestic-Violence-Lethality-Assessment-Report.pdf>.

¹⁶ See Virginia Department of Criminal Justice Services Guidelines For Local Electronic/GPS Monitoring Programs at <https://www.dcis.virginia.gov/programs/emonitoring/DJSGuidelinesforLocalPrograms.pdf>.

¹⁷ See <http://nnev.org/resources/safetynetdocs.html>.

¹⁸ See Office for Victims of Crime Letter to Colleagues at <http://ovc.ncjrs.gov/ncvrw2015/pdf/OVCletter.pdf>.

¹⁹ If your jurisdiction is addressing victims' rights and issues in pretrial justice reforms, please share your experiences with Susan Keilitz skeilitz@ncsc.org of the NCSC's Pretrial Justice Center for Courts.



TAB 31

178.5698. Information concerning release of defendant and disposition of case provided upon request; court to inform and provide documentation to certain persons of their right to be informed of release of offender from prison in certain cases; when and whom warden must inform of release of offender from prison

1. The prosecuting attorney, sheriff or chief of police shall, upon the request of a victim or witness, inform the victim or witness:
 - (a) When the defendant is released from custody at any time before or during the trial, including, without limitation, when the defendant is released pending trial or subject to electronic supervision;
 - (b) If the defendant is so released, the amount of bail required, if any; and
 - (c) Of the final disposition of the criminal case in which the victim or witness was directly involved.
2. A request for information pursuant to subsection 1 must be made:
 - (a) In writing; or
 - (b) By telephone through an automated or computerized system of notification, if such a system is available.
3. If an offender is convicted of a sexual offense or an offense involving the use or threatened use of force or violence against the victim, the court shall provide:
 - (a) To each witness, documentation that includes:
 - (1) A form advising the witness of the right to be notified pursuant to subsection 5;
 - (2) The form that the witness must use to request notification in writing; and
 - (3) The form or procedure that the witness must use to provide a change of address after a request for notification has been submitted.
 - (b) To each person listed in subsection 4, documentation that includes:
 - (1) A form advising the person of the right to be notified pursuant to subsection 5 or 6 and NRS 176.015, 176A.630, 178.4715, 209.392, 209.3925, 209.521, 213.010, 213.040, 213.095 and 213.131 or NRS 213.10915;
 - (2) The forms that the person must use to request notification; and
 - (3) The forms or procedures that the person must use to provide a change of address after a request for notification has been submitted.
4. The following persons are entitled to receive documentation pursuant to paragraph (b) of subsection 3:
 - (a) A person against whom the offense is committed.
 - (b) A person who is injured as a direct result of the commission of the offense.
 - (c) If a person listed in paragraph (a) or (b) is under the age of 18 years, each parent or guardian who is not the offender.
 - (d) Each surviving spouse, parent and child of a person who is killed as a direct result of the commission of the offense.
 - (e) A relative of a person listed in paragraphs (a) to (d), inclusive, if the relative requests in writing to be provided with the documentation.
5. Except as otherwise provided in subsection 6, if the offense was a felony and the offender is imprisoned, the warden of the prison shall, if the victim or witness so requests in writing and provides a current address, notify the victim or witness at that address when the offender is released from the prison.

6. If the offender was convicted of a violation of subsection 3 of NRS 200.366 or a violation of subsection 1, paragraph (a) of subsection 2 or subparagraph (2) of paragraph (b) of subsection 2 of NRS 200.508, the warden of the prison shall notify:

- (a) The immediate family of the victim if the immediate family provides their current address;
- (b) Any member of the victim's family related within the third degree of consanguinity, if the member of the victim's family so requests in writing and provides a current address; and
- (c) The victim, if the victim will be 18 years of age or older at the time of the release and has provided a current address, before the offender is released from prison.

7. The warden must not be held responsible for any injury proximately caused by the failure to give any notice required pursuant to this section if no address was provided to the warden or if the address provided is inaccurate or not current.

8. As used in this section:

(a) "Immediate family" means any adult relative of the victim living in the victim's household.

(b) "Sexual offense" means:

- (1) Sexual assault pursuant to NRS 200.366;
- (2) Statutory sexual seduction pursuant to NRS 200.368;
- (3) Battery with intent to commit sexual assault pursuant to NRS 200.400;
- (4) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;
- (5) Incest pursuant to NRS 201.180;
- (6) Open or gross lewdness pursuant to NRS 201.210;
- (7) Indecent or obscene exposure pursuant to NRS 201.220;
- (8) Lewdness with a child pursuant to NRS 201.230;
- (9) Sexual penetration of a dead human body pursuant to NRS 201.450;
- (10) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony;
- (11) An offense that, pursuant to a specific statute, is determined to be sexually motivated; or
- (12) An attempt to commit an offense listed in this paragraph.

TAB 32

January 2013



The Delivery of Pretrial Justice in Rural Areas

A GUIDE FOR RURAL COUNTY OFFICIALS



Stephanie J. Vetter and John Clark
Senior Project Associates
Pretrial Justice Institute



About PJI

PJI is the nation's only non - profit dedicated to advancing safe, fair and effective juvenile and adult pretrial justice practices and policies. For more information, visit www.pretrial.org.

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About NACo

The National Association of Counties (NACo) is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,068 counties. NACo advances issues with a unified voice before the federal government, improves the public's understanding of county government, assists counties in finding and sharing innovative solutions through education and research, and provides value-added services to save counties and taxpayers money. For more information about NACo, visit www.naco.org.

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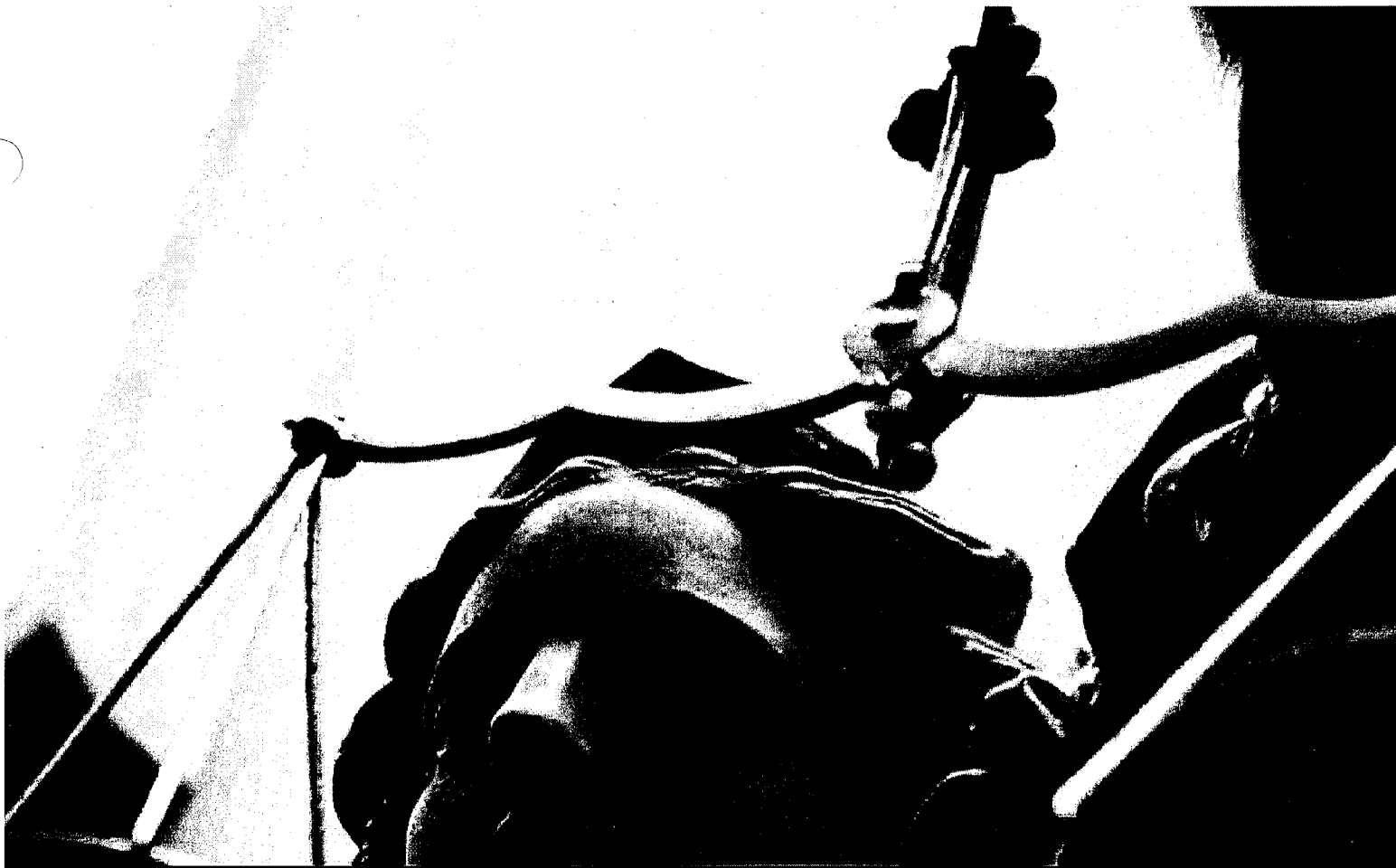
The Delivery of Pretrial Justice in Rural Areas

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Public opinion polls have shown that the public wants to see more informed pretrial release decision-making. A 2012 poll of Republican voters in Florida found that 91 percent believe that risk should be the main factor used in determining pretrial release, and 59 percent are supportive of supervising appropriate defendants in the community rather than keeping them in jail until their trials.

Another 2012 poll showed that 91 percent of residents of Mecklenburg County, N.C., believed that it was extremely important for the judge to be provided with detailed information about a defendant at the first appearance in court.

Key findings from Lake Research Partners telephone polling in 2012 concludes that support for pretrial justice reforms are broad and intense, traversing partisan, regional, racial and other demographics lines.

NACo webinar October 4, 2012



In many urban jurisdictions, significant efforts have been made in recent years to realize the vision of a coordinated, evidenced-based pretrial justice system. These efforts have been supported by a number of policy statements from national organizations, numerous publications on best practices, analyses of performance measures, validation of pretrial risk assessment instruments and dozens of training sessions conducted for judges, prosecutors, defense attorneys, law enforcement officials, community providers and pretrial justice staff. As extensive as these efforts have been, they are geared toward large jurisdictions with high volumes of criminal cases.¹

Yet two-thirds of the nation's counties are rural. These counties are home to 51 million people², or roughly 15 percent of the U.S. population. Moreover, there is evidence suggesting that rural counties are as focused, if not more, on enhancing pretrial justice as their urban and suburban counterparts – 44 percent of all pretrial justice programs that were started between 2000 and 2009 were in rural counties.³ Thus, attention to promoting and enhancing pretrial justice must include rural counties.

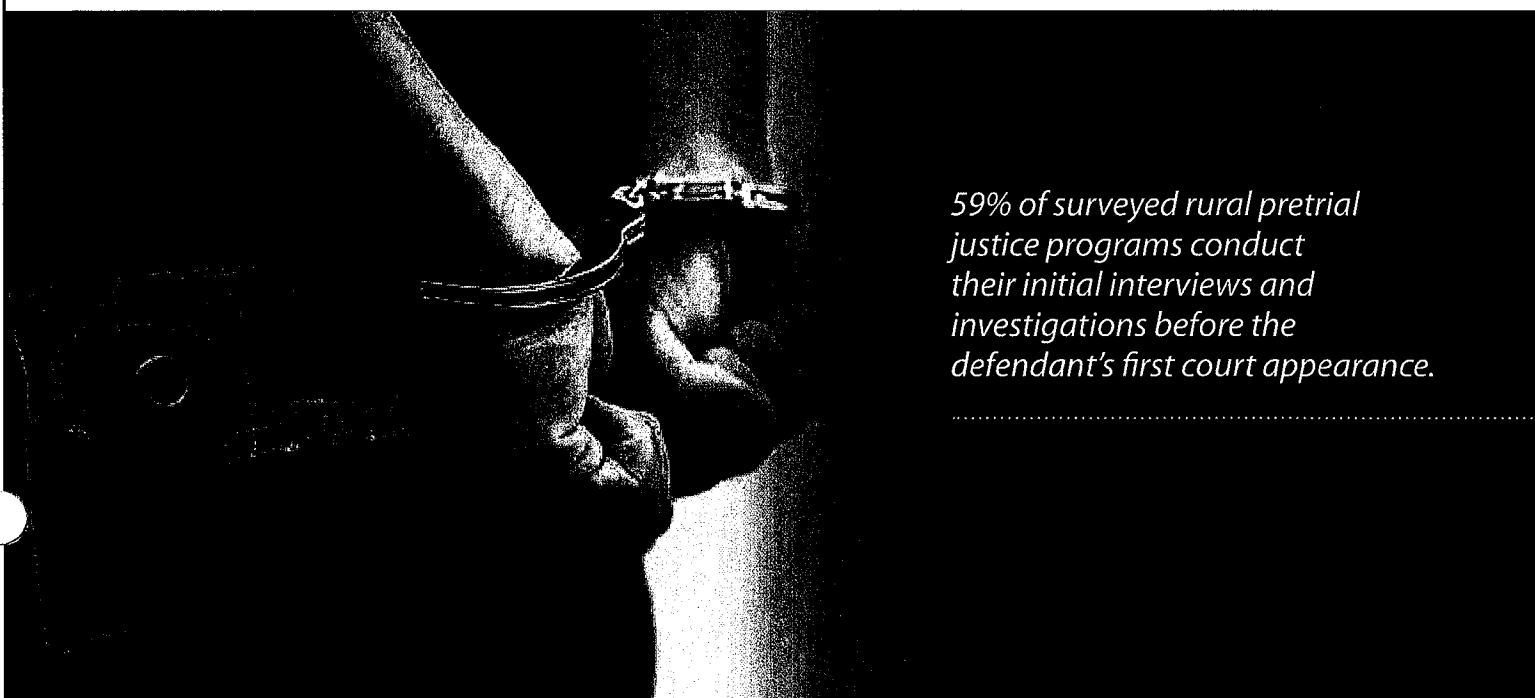
The experiences of delivering pretrial justice in larger, metropolitan counties, where a large volume of cases and corresponding resources exist are valuable and can inform rural pretrial justice. However, rural jurisdictions are characteristically different and face a set of unique challenges that must be addressed to successfully implement pretrial justice. These include:

- » Long distances for defendants to travel for supervision appointments and to attend court
- » Low case volumes that move system stakeholders to search for multi-county approaches to providing justice
- » Limited personnel and infrastructure require staff to perform multiple roles, and
- » Lack of community-based experts and resources.

On the other hand, there are several strengths that rural jurisdictions can build upon to address these challenges, including:

- » Rural relationships can be more flexible and responsive than large bureaucracies
- » Small scale can lead to big innovations
- » Sharing resources regionally can save money, and
- » Local culture is geared toward problem solving.

This is a guide for elected officials seeking to enhance existing or develop new pretrial justice practices in rural areas. By identifying the characteristics, strengths and challenges in rural jurisdictions and combining these factors with the lessons and experiences of urban, suburban and rural pretrial justice programs, national standards and best practices, this guide offers a set of recommendations to enhance local policies and practices within the context of rural settings.



59% of surveyed rural pretrial justice programs conduct their initial interviews and investigations before the defendant's first court appearance.



Pretrial Justice Today

Both rural and urban jurisdictions are challenged by rising jail populations and the associated costs to taxpayers.

The Evidence for Enhancing Pretrial Justice

A brief examination of data shows why so much attention has been paid to enhancing pretrial justice in recent years. Between 1990 and 2008, the jail population in the United States doubled, rising from 400,000 inmates to 800,000. Much of this increase was driven by the pretrial detainee population, which rose from 50 percent of the total jail population in 1996 to 61 percent currently.⁴ Between 1982 and 2006, county expenditures on criminal justice grew from \$21 billion to \$109 billion. County spending on jails alone rose 500 percent over that period.⁵

With most counties in the country experiencing severe financial hardships, these spending levels can no longer be sustained. Driving up jail populations is the increased use of money bond, which many defendants cannot afford to pay. Safely downsizing the jail populations through pretrial justice is a strategy that has proven successful in many counties across the country and can be replicated with fidelity in rural areas to achieve public safety goals while reducing costs.

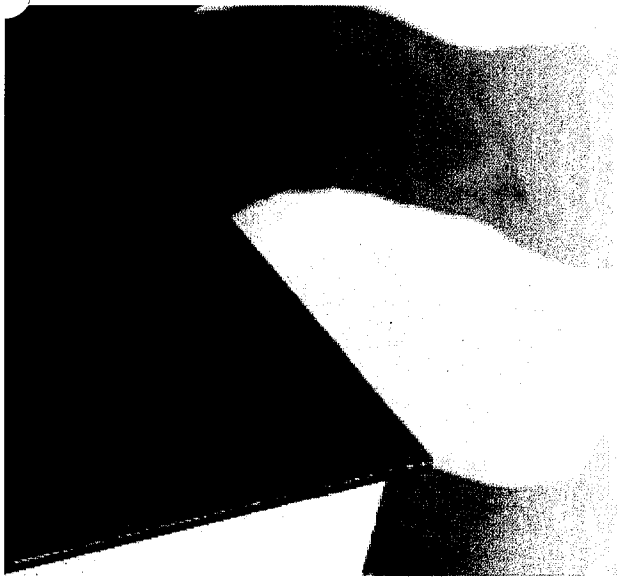
Although it has been widely documented in the literature that the current system of bail bonding is unsafe, discriminatory, and ex-

pensive,⁶ its use is on the rise. Sharply contrasted, nearly all pretrial justice programs:

- » Report using objective risk criteria to assess if someone can be safely released into the community under supervision
- » Base decision-making and practice on evidence, research and national standards
- » Are accountable to the court system for public safety outcomes
- » Produce better outcomes than money bonds, and
- » Cost significantly less than jail.

As the field of pretrial justice becomes more evidence-based, the practice of exclusively using money to sort out who is released from jail pending trial and who must remain in jail becomes unnecessary and obsolete. Under pretrial justice standards, judges, prosecutors, defense attorneys and law enforcement receive consistently prepared information on defendants that identify the risk to reoffend or fail to appear for court, in addition to a long list of alternatives that take into account the circumstances and characteristics of each arrestee, rather than the amount of money available to them.

These alternatives range from "release on recognizance" (a commitment to obey certain conditions) for the lowest risk defendants to "detention with no possibility



of release” before trial for the highest risk defendants, and offer a wide range of individually tailored alternatives in between. The data has consistently shown when defendants are released pending trial without having to post a money bond, the overwhelming majority stay out of trouble and do come back to court when required.⁷

Pretrial Justice Policy Statements and Standards

A number of key stakeholder groups, including the National Association of Counties (NACo), the Association of Prosecuting Attorneys, American Jail Association, International Association of Chiefs of Police, American Council of Chief Defenders, the National Association of Criminal Defense Lawyers, National Sheriffs Association, and the American Probation and Parole Association, have issued **policy statements** supporting the enhancement of pretrial justice.

These policy statements are framed by the Eighth Amendment to the United States Constitution, the Bail Bond Act of 1966, and for nearly 50 years now the American Bar Association’s (ABA) set of standards for delivering pretrial justice.⁸ These standards are based on the Bill of Rights, Supreme Court

case law, state statutes, researched practices producing the “best outcomes,” which defined over time most broadly as protecting victims and the public, safeguarding the judicial process, and more recently, doing these things in the most cost effective manner possible.

NACo, in its American County Platform, updated in 2009, calls for many of these same elements. NACo calls on all counties in the country, including rural counties, to provide for interviews, risk assessments of all persons booked into county jails, reporting to the judicial officer presiding at the initial court appearance.

NACo also calls on all counties to use the least restrictive release conditions calculated to reasonably assure court appearance and protect community safety. These are typically set forth by state statute, and *start* with release on recognizance (promise to appear in court), *graduate* to release on non-financial conditions that are supervised by court or law enforcement or a third party equivalent (such as a nonprofit contracted to provide such justice to a county or circuit), and *end* with detention without bail for those for whom no conditions can reasonably assure public safety or appearance in court.⁹

26% of surveyed rural pretrial justice programs serve multiple counties within their states, including one, Kentucky’s, which serves the entire state.

Applying the Elements of Pretrial Justice in Rural Counties

This section explores the functions performed by pretrial justice programs, how rural jurisdictions have been seeking to address those functions, and examines policy issues relating to pretrial justice, including the availability of detention for defendants who pose significant risks, the availability of citation release for those who pose minimal risks, the early screening of cases by prosecutors, and the early involvement of defense counsel. The information provided in this section regarding rural pretrial justice practices was obtained through surveys of rural jurisdictions and follow up telephone interviews.¹⁰

Pretrial Justice Program Functions

Collaboration to develop multi-county pretrial justice. Most urban and suburban pretrial justice programs in the country serve individual counties. As is the practice in other areas of providing government services to rural areas, many rural pretrial justice programs serve multiple jurisdictions, allowing rural counties to share resources.

EXAMPLES FROM THE FIELD

There are several different approaches to providing pretrial justice at a multi-county level. These include:

- » A statewide pretrial justice program. In Kentucky, for example, the pretrial justice program operates at the state level under Kentucky's Administrative Office of the Court. The program divides the state into 50 pretrial districts, 26 of which are in exclusively rural areas.
- » A government-run multi-county pretrial justice program. The Riverside Criminal Justice Agency covers about one-half of the Sixth Judicial District of Virginia. The agency was established in 1995 to provide local probation and drug and mental health court services to two rural counties and one rural city in that judicial district. In 2000, the agency started providing pretrial justice services. The agency is governed by a Community Criminal Justice Board comprised of judges, prosecutors, defense, law enforcement, the sheriff and community members from each of the three jurisdictions. The Board of Supervisors of each locality appoints board members.
- » Services provided by a private, non-profit organization. Maine Pretrial Services is a private, non-profit organization that provides pretrial justice programs by contracting with individual counties in Maine. It currently serves nine Maine counties, seven of which are rural. It also provides drug courts to some of the counties. When contracts are signed with the individual counties, staff are hired and assigned to the particular county. In each of the counties it serves, the program uses the pretrial risk assessment instrument that was empirically derived and validated in Virginia. The program hopes to validate that instrument for the Maine population.

Screening, interview and investigation. As noted, NACo and the ABA state that all defendants who have been arrested on criminal charges should be interviewed **before** their initial appearance in court. Ideally, the interview takes place in the period between a defendant's arrest and first appearance in court before a judicial officer. Some programs, due to resource limitations, conduct their interview and investigations after the initial bail-setting hearing, but this approach is not ideal since judges are forced to make release decisions without the benefit of the information provided by pretrial services. As a result, some defendants may be released with insufficient conditions, and others will spend need-less time in jail.

EXAMPLES FROM THE FIELD

In Kentucky, where 26 multi-county districts served by the statewide pretrial justice program are in exclusively rural areas, staff have faced challenges in getting interviews completed. Staff may have to drive long distances to a jail several counties away to conduct just one

or two interviews. The program has tried setting up the capacity to conduct inter-views remotely through a video system but has run into bandwidth problems. As a result, the program is now looking into using web cams and Skype to do remote interviews.

Assessing level of risk. The ABA Standards on Pretrial Release make two key points relevant to risk assessment. First, that the risk assessment should be based on "objective" criteria. Second, the standards also state that "the information gathered in the pre-first appearance investigation should be demonstrably related to the purposes of the pretrial release decision and should include factors shown to be related to the risk of flight, threat to the safety of any person or the community and to the selection of appropriate release conditions."¹¹

The factors that are most predictive of flight and re-arrest vary slightly among jurisdictions, as do the weights that are assigned to each factor, but most validated pretrial risk assess-ment instruments contain the following factors: current charge, prior criminal history, prior history of failure to appear, whether there are any pending cases, current residence, employ-ment, and history of substance abuse.¹²

Validating risk assessment instruments where there are so few cases to study is a chal-lenge facing many rural jurisdictions. Several rural pretrial justice program administra-tors reported adopting instruments that have been validated by an urban county within the state, or even from another state.

EXAMPLES FROM THE FIELD

The eight rural programs from Virginia that participated in the survey use a pretrial risk assessment instrument that was validated in a mix of urban, suburban and rural counties in Virginia in 2003, and then re-validated in 2009. Maine Pretrial Services, which serves nine counties in that state, also uses the tool that was vali-dated in Virginia, as does the pretrial jus-tice program that serves Canyon County,

Idaho. The program in rural Kandiyohi County, Minn., uses an instrument that was validated for Hennepin County, Minn. The statewide pretrial justice pro-gram in Kentucky uses a pretrial risk as-sessment instrument that was validated across all jurisdictions in the common-wealth, including the rural counties. (Cop-ies of the Virginia and Kentucky validated pretrial risk assessment instruments are presented in the Appendix.)

85% of surveyed rural pretrial justice programs make recommendations to the court based on the least restrictive conditions.

26% of surveyed rural pretrial justice programs review cases of detained defendants on a regular basis.

Recommending viable, least restrictive release options to address identified risks. According to statutes and national standards, conditions of pretrial release should be related to the risk identified for each individual defendant and should be the least restrictive necessary to reasonably assure the safety of the public and appearance in court. Aside from the legal reasons to do so, use of the least restrictive conditions assures the most economical use of limited supervision resources. Moreover, research has shown that adding unnecessary conditions of release for low risk defendants can actually increase non-compliance for that population. As one researcher has noted, “[t]he law tells us that a person has a right to release on the least restrictive terms and conditions, and the research tells us that is going to produce the best outcomes.”¹³

CASE REVIEW

What happens if someone has conditions set by the court for release but the defendant cannot satisfy them? This is typical in the case of money bonds and more recently observed when conditions of release involve supervision fees charged to defendants (such as drug tests, electronic monitoring, or general supervision by a court or law

enforcement officer). Regardless of the reason, some defendants authorized for release by the court at first appearance are not released. Part of a high-functioning pretrial justice system is a case-review mechanism for monitoring all defendants detained and informing the court about their status to allow for a reconsideration of the conditions of release that resulted in detention.

Effective community supervision strategies. The Pretrial Release Standards of the National Association of Pretrial Services Agencies state that pretrial justice programs “should establish appropriate policies and procedures to enable the effective supervision of defendants who are released prior to trial under conditions set by the court. The agency or program should: (i) monitor the compliance of released defendants with assigned release conditions; (ii) promptly inform the court of facts concerning compliance or noncompliance that may warrant modification of release conditions and of any arrest of a person released pending trial; (iii) recommend modifications of release conditions, consistent with court policy, when appropriate; (iv) maintain a record of the defendants’ compliance with conditions of release; (v) assist defendants released prior to trial in securing employment and in obtaining any necessary medical services, drug or mental health treatment, legal services, or other social services that



would increase the chances of successful compliance with conditions of pretrial release; (vi) notify released defendants of their court dates and when necessary assist them in attending court; and (vii) facilitate the return to court of defendants who fail to appear for their scheduled court date.”¹⁴

Pretrial supervision may be a challenge for rural pretrial justice programs as the county or counties served by the program may span a very large geographical area and may not have much, if any, public transportation. This can make it difficult for defendants to report to the program for regular supervision appointments, including drug testing, and to make court appearances. This problem can be exacerbated if the defendant has lost his or her driver’s license either because the current charge is Driving While Intoxicated or the defendant is still under a license suspension for a previous drunk driving charge. There are a number of different strategies reported by rural programs to meet the need for information and face-to-face contact with transportation challenges and limited time and funding.

EXAMPLES FROM THE FIELD

In Canyon County, Idaho, the pretrial justice program, which is under the Sheriff’s Department, arranges for defendants with transportation or distance issues to report to law enforcement agencies closer to their homes. Maine Pretrial Services does the same. The Gallatin County, Mont., program allows defendants with

alcohol testing conditions to report to their local police stations. The program in Centre County, Pa., allows staff to meet with defendants in public places closer to the defendants’ homes, such as libraries or churches. The Riverside Criminal Justice Agency, which serves three rural Virginia localities, uses remote alcohol testing technology.

Court date reminders. The ABA says that pretrial justice programs should establish procedures to remind defendants of their upcoming court dates.¹⁵ These reminders, which can be through telephone, mail, e-mail or twitter, should specify the date, location, and time of the appearance. Recent research has shown that this simple act can have a dramatic impact on reducing the likelihood of failure to appear, cutting failure to appear rates in half, or even more.¹⁶

51% of surveyed rural pretrial justice programs report that a defense attorney is present at the initial appearance.

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24% of surveyed rural pretrial justice programs make telephone reminder calls to defendants, and 4% send defendants reminder notices by mail.

Providing crime victims with mechanisms for reporting apparent violations of pretrial release conditions. The victims' rights amendments, part of many state constitutions, require that criminal justice agencies notify victims of developments in a case, such as the date and time of hearings and any release of the defendant or offender. Some pretrial justice programs around the country alert victims about the initial appearance of the defendant in court and the pretrial release status of defendants. Developing relationships with victims is important for another reason. Often victims will have important information about a defendant's compliance with pretrial release conditions, and it is important for victims to know that they should convey any such information to the pretrial justice program.

Data collection, analysis and reporting the outcomes of pretrial justice functions. It is important that pretrial justice programs track their outcomes and performance. In 2011, the Pretrial Executive Network, a group of about a dozen program administrators convened by the National Institute of Corrections, developed a list of outcome, performance, and mission critical measures for pretrial justice programs (see Appendix C).¹⁷

Collecting data on these measures has been one of the most neglected functions of pretrial justice programs, whether they are large programs serving major urban centers or tiny programs serving small rural areas. Tracking outcomes, public safety measures and costs is vital in the current economic environment. While rural pretrial justice programs may not have the same resources that are available to their counterparts in larger jurisdictions, they do have one advantage – the relatively smaller volume of cases means that there are fewer cases to be tracked.

EXAMPLES FROM THE FIELD

Maine Pretrial Services utilized federal funds from a re-entry grant to develop an automated information system that could be used for its pretrial justice work.

Policies Affecting Pretrial Justice in Rural Areas

Preventive detention protocols. The laws in several states recognize that some defendants present risks that are so high that no condition or combination of conditions of release can reasonably assure the safety of the community or appearance in court. In these situations, laws give the court the authority to hold these defendants without bail. Pretrial justice programs can help the court identify who these defendants are through the risk assessment process and bring these defendants to the attention of the court.

CITATION RELEASES

Using citation releases, instead of making a full custodial arrest, a law enforcement officer issues a directive, similar to a traffic ticket, to appear in court on a specific date. This reduces the number of people being admitted to jail on new charges.

The use of citation releases can be especially beneficial in rural areas, where law enforcement officers may have long distances to drive to transport people to jail. Citation releases save transport time and reduce costs associated with transport, booking and lodging. This can have a significant cost benefit in rural jurisdictions where few law enforcement officers may be on duty at any given time.

The ABA Standards state: "[A] police officer who has grounds to arrest a person for a minor offense should be required to issue a citation in lieu of taking the person to the police station or to court. In determining whether an offense is minor, the police officer should consider whether the alleged crime involved the use or threatened use of force or violence, possession of a weapon, or violation of a court order protecting the safety of persons or property."¹⁸

Early involvement of the prosecutor. The Standards of the National District Attorneys Association state that prosecutors have the responsibility to screen cases "at the earliest practical time"¹⁹ to "eliminate from the criminal justice system those cases where prosecution is not justified or not in the public's interest."²⁰ Moreover, prosecutor offices should provide the training and guidance to prosecutors assigned to this task to enable them to use sound discretion in making these decisions.²¹ The commentary to these standards state: "It could be argued that screening decisions are the most important made by prosecutors in the exercise of their discretion in the search for justice."²² In addition to screening cases early, prosecutors should also be present at the initial appearance of the defendant in court. At the hearing, the prosecutor should make appropriate representations on behalf of the state on the issue of pretrial release.²³

EXAMPLES FROM THE FIELD

In the rural counties served by Maine Pretrial Services, and in rural Canyon County, Idaho, prosecutors review each case between the time of arrest and the defendant's initial appearance in court to determine whether to issue a complaint before that hearing. In addition, the pretrial justice programs in these jurisdictions provide the prosecutors with the pretrial justice report so that they are prepared to make representations regarding pretrial release at the initial court appearance.

Early appointment of defense attorney. NACo urges rural counties to "implement multi-county public defender systems that would enable a full-time public defender to cover a multi-county circuit similar to multi-county district attorney offices. A full time public defender should be an active participant in the local criminal justice system."²⁴

Providing defense representation at the initial court appearance for indigent defendants is a challenge in all types of jurisdictions – large and small. But the benefits of doing so are significant. A 2000 study conducted in Baltimore, Md., showed that defendants provided with representation at the bail-setting hearing were released more often and spent less time in jail than those not represented, with no impact on public safety rates.²⁵





Recommendations for Elected County Officials

93% of surveyed rural pretrial justice programs provide supervision services for defendants on pretrial release.

To establish or enhance pretrial justice in rural areas requires leadership, collaboration, and a series of next steps for county officials. From Kentucky and Virginia to Idaho and Maine, examples from the field illuminate lessons learned and inform how pretrial justice can be tailored to work in the rural context, with a number of rural tactics showing great promise. A crucial lesson that emerges from successful rural efforts is the importance of collaboration on multiple levels—multi-county partnerships, state and local governments, and local agencies in rural communities.

Ultimately, any approach should ensure that the ABA Pretrial Justice Standards be used for comparison so that new programs, or improvements made to existing pretrial justice are made through the existing Jail Population Management Collaborative or Criminal Justice Coordinating Committees (CJCC) using program data to make necessary policy and program adjustments.

TO ESTABLISH OR ENHANCE RURAL PRETRIAL JUSTICE PROGRAMS:

1. Develop coordinated, system-wide approaches for pretrial justice planning, implementation and monitoring.

Rural counties that don't have such groups, often called Criminal Justice Coordinating Committees (CJCC), should establish one. In many cases, a signed partnership agreement or memorandum of understanding between, the courts, the jails, state's attorney and defense helps establish the authority and oversight of pretrial justice and can span several counties within a region.

These committees should undertake the planning, implementation and monitoring of pretrial justice, tackling

tasks such as: analyzing jail data, monitoring public safety data and mapping pretrial decision-making (see appendices); adopting a policy statement or resolution supporting pretrial justice; determining the administrative locus, program funding and management of pretrial justice programs; and ensuring that pretrial justice programs reflect national standards and best practices.

2. Review local ordinances and state statute pertaining to pretrial release decision-making for their compatibility with the pretrial standards outlined by the American Bar Association.

The law, professional standards and

research demonstrate that pretrial release decisions should be guided by risk assessment, not by defendants' access to money.

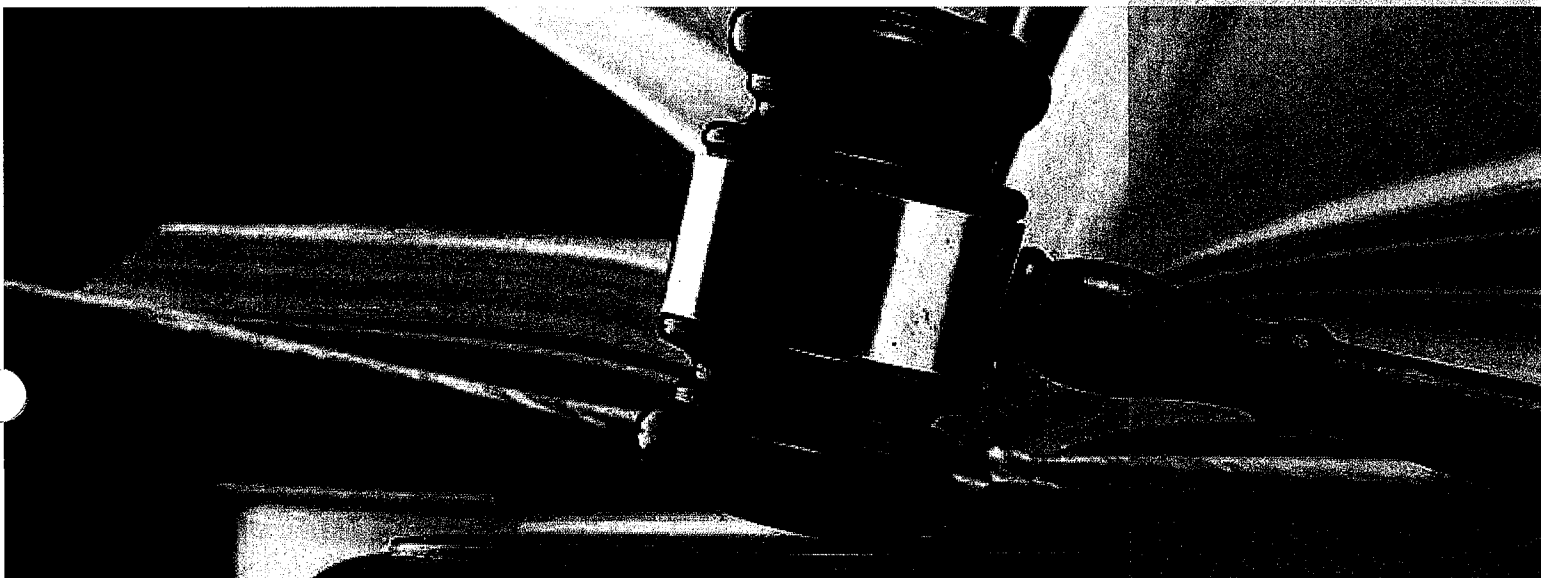
3. Adopt regional approaches to providing defense representation. In 2011, NACo adopted new policy urging rural counties (typically counties of fewer than 50,000 residents) to implement multi-county public defender systems, which allow a full-time public defender to serve within a multi-county circuit similar to multi-county district attorney offices.²⁶ According to the research, a full-time defender, active in the local criminal justice system and present at initial hearings, can play a significant role in safely reducing the number of defendants held unnecessarily at the pretrial stage.

4. Educate constituents on pretrial justice through local, regional and state symposiums. Publications, newsletters, conferences, trainings and technical assistance can build support for needed changes within the broader community and among stakeholders. Use the latest national polling results to help inform messaging and communications related to pretrial justice.

5. Collect and analyze program and public safety data. Routine data collection and reporting should be used to understand how the jail is being used, to illustrate the impact of the risk assessment instrument on the jail population and public safety, and to produce regular results reports to stakeholders. Cost benefit analysis can help make the case for using less expensive pretrial alternatives.

6. Ensure that the ABA standards for pretrial justice programming are in place by advocating for changes within the system at the policy level. Although multiple challenges exist in achieving these standards, there is capacity to change the status quo through collaboration with a variety of criminal justice agencies, including the judiciary, prosecution, defense, law enforcement and community-based providers. The public clearly supports the outcomes of quality pretrial justice programs as evidenced in recent public polls. Now, more than ever, multiple funding and learning opportunities exist at the local and national levels through a variety of sources (PJI, NIC, NACo), and the pretrial justice field offers a number of practices that can be replicated or tailored effectively to rural areas.

46% of surveyed rural pretrial justice programs use risk assessment instruments that have been validated; 8 of these programs are located in Virginia, which uses a statewide validated tool.



APPENDIX A - ABA PRETRIAL RELEASE STANDARDS

AMERICAN BAR ASSOCIATION (ABA) PRETRIAL JUSTICE STANDARDS

- » The use of citation releases by law enforcement in lieu of custodial arrests for non-violent offenses when the individual's identity is confirmed and no reasonable cause exists to suggest the individual may be a risk to the community or any other individual, or to be a risk to fail to appear in court.
- » The elimination of automatic, predetermined money bond schedules set with regard only to the arrest charge, instead requiring all arrestees to be individually assessed for risk of re-arrest and flight, prior to any pretrial release.
- » The screening of criminal cases by the prosecutor's office before the initial appearance to make sure that the charge before the court at the defendant's first appearance is the charge on which that the prosecutor is moving forward, and to make early assessments of the defendants' eligibility for any available problem-solving courts or diversion programs.
- » The presence of a defense counsel at the initial appearance who is prepared to make representations on the defendant's behalf for the court's pretrial release decision.
- » The existence of a pretrial services function that:
 - Interviews all defendants who are in custody before the initial court appearance;
 - Compiles the information that the court is required by law to take into consideration in making a pretrial release decision, and submits that information to the court;
 - Assesses each defendant's level of risk to be a danger to the community and to fail to appear in court using scientifically validated risk criteria;
 - Recommends to the court viable, least restrictive release options to address identified risks;
 - Has available and uses preventive detention protocols for defendants who pose unmanageable risks to public safety;
 - Provides accountable, transparent and evidence-based community supervision strategies that are aligned with the risk principle, which states that defendants should be provided with supervision that is commensurate with their identified risk levels ;
 - Provides court date reminder notices for all defendants;
 - Provides crime victims and others with mechanisms for reporting apparent violations of pretrial release conditions; and,
 - Provides regular reports to the court on the outcomes of individuals released pretrial.

APPENDIX B – PRETRIAL RISK ASSESSMENT INSTRUMENTS

The following two pretrial risk assessment instruments have been validated in multiple jurisdictions, including rural counties, within their respective states – Virginia and Kentucky. Rural counties seeking to implement a pretrial justice program can “borrow” one of these instruments and use it as an interim risk assessment tool until there is an opportunity to validate it for the county.

VIRGINIA PRETRIAL RISK ASSESSMENT INSTRUMENT

Risk Factor	Criteria	Assigned Points
Charge Type	If the most serious charge for the current arrest was a felony	1
Pending Charges	If the defendant had one or more charges pending at the time of arrest	1
Criminal History	If the defendant had one or more misdemeanor or felony convictions	1
Failure to Appear History	If the defendant had two or more failure to appear convictions	2
Violent Conviction History	If the defendant had two or more violent convictions	1
Length at Current Address	If the defendant lived at the current address for less than one year prior to arrest	1
Employed/ Primary Care Giver	If the defendant had not been employed continuously for the past two years and was not the primary caregiver of a child at the time of arrest	1
History of Drug Abuse	If the defendant had a history of drug abuse	1

The points assigned to each of the nine factors are used to calculate a total risk score, which ranges from 0-9. The point totals are then grouped into risk levels as suggested by the data, so that the lower the risk level the lower the probability of failure to appear in court or a rearrest.

Risk Level	Point Totals
1 (lowest)	0, 1
2	2
3	3
4	4
5 (highest)	5-9

KENTUCKY RISK ASSESSMENT INSTRUMENT

Scoring Items	Points	
	Yes	No
Does the defendant have a verified local address and has the defendant lived in the area for the past twelve months?		2
Does the defendant have verified sufficient means of support?		1
Is the defendant's current charge a Class A, B, or C Felony?	1	
Is the defendant charged with a new offense while there is a pending case?	7	
Does the defendant have an active warrant(s) for Failure to Appear prior to disposition? If no, does the defendant have a prior FTA for felony or misdemeanor?	2	
Does the defendant have prior FTA on his or her record for a criminal traffic violation?	1	
Does the defendant have prior misdemeanor convictions?	2	
Does the defendant have prior felony convictions?	1	
Does the defendant have prior violent crime convictions?	1	
Does the defendant have a history of drug/ alcohol abuse?	2	
Does the defendant have a prior conviction for felony escape?	3	
Is the defendant currently on probation/ parole from a felony conviction?	1	

CUT-POINTS FOR THE PRETRIAL RISK ASSESSMENT INSTRUMENT

Risk Level	Point Totals
Low	0-5
Moderate	6-13
High	14 and higher

APPENDIX C - LIST OF PERFORMANCE AND OUTCOME MEASURES FOR PRETRIAL JUSTICE PROGRAMS

THE OUTCOME MEASURES INCLUDE THE FOLLOWING:

- » **Safety rate:** The rate at which defendants on release go through the pretrial period without being charged with any new offenses.
- » **Appearance rate:** The rate at which defendants appear for all their court dates.
- » **Concurrence rate:** The ratio of defendants whose supervision level or detention status corresponds with their assessed risks of pretrial misconduct.
- » **Success rate:** The percentage of released defendants who (1) are not revoked for technical violations of the conditions of their release, (2) appear for all scheduled court appearances, and (3) are not charged with a new offense during pretrial supervision.
- » **Pretrial detainee length of stay:** The average length of stay in jail for pretrial detainees who are eligible by statute for pretrial release.

THE PERFORMANCE MEASURES IDENTIFIED BY THE PRETRIAL EXECUTIVE NETWORK INCLUDE:

- » **Universal screening:** The percentage of defendants eligible for release by statute or local court rule that the program assesses for release eligibility.
- » **Recommendation rate:** The percentage of time the program follows its risk assessment criteria when recommending release or detention.
- » **Response to defendant misconduct:** The frequency of policy-approved responses to compliance and non-compliance with court-ordered release conditions.
- » **Pretrial intervention rate:** The pretrial justice program's effectiveness at resolving outstanding bench warrants, arrest warrants, and capiases.

THE MISSION CRITICAL DATA INCLUDE:

- » **Number of defendants released by release type and condition:** The number of release types ordered during a specific time, i.e., month or year.
- » **Caseload ratio:** The number of supervised defendants divided by the number of case managers.
- » **Time from non-financial release order to start of pretrial supervision:** Time between a court's order of release and the pretrial justice program's assumption of supervision.
- » **Time on pretrial supervision:** Time between the pretrial program's assumption of supervision and the end of program supervision.
- » **Pretrial detention rate:** Proportion of pretrial defendants who are detained throughout the pretrial period.

Collecting data on these measures has been one of the most neglected functions of pretrial justice programs. Whether they are large programs serving major urban centers or small programs serving rural areas, demonstrating the impact is vital. While rural pretrial justice programs may not have the same resources that are available to their counterparts in larger jurisdictions, they do have one advantage – the relatively smaller volume of cases means that there are fewer cases to be tracked.

APPENDIX D - RURAL PRETRIAL SURVEY RESULTS

While this survey was not designed to be an exhaustive list of rural pretrial justice programs, it includes 41 rural pretrial justice programs: eight of which are located in Virginia, seven in New York, six in Minnesota, and four in Pennsylvania.²⁷

RURAL PRETRIAL JUSTICE PROGRAMS SURVEYED

State	Number of Pretrial Justice Programs Surveyed
Colorado	2
Hawaii	1
Idaho	1
Illinois	2
Indiana	1
Iowa	1
Kentucky	1
Maine	1
Minnesota	6
Montana	1
Nevada	1
New Hampshire	1
New York	7
North Carolina	2
Ohio	1
Pennsylvania	4
Virginia	8
TOTAL	41

Program Service Areas: Twenty-nine programs (71%) serve a single county; ten (26%) serve multiple counties within a state; and one program, Kentucky's serves the entire state, and thus includes urban, suburban, and rural counties.

Rural Demographics: Fifteen programs (37%) serve a population of less than 50,000 people; twelve (32%) serve populations ranging between 50,000 and 100,000; nine (24%) serve populations ranging from 100,000 to 500,000.

Annual Program Budgets: Eighteen programs (44%) had annual budgets of less than \$200,000; ten (24%) had budgets that ranged between \$200,000 and \$500,000; four (10%) had annual budgets between \$500,001 and \$800,000; seven (17%), all serving multiple counties, had budgets over \$800,000.

Program Staffing and Operations: Seven of the programs (18%) have just one staff person, six (15%) have two staff; nine (22%) have between three and five staff; ten (24%) have between six and ten staff. Not surprisingly, programs that serve multiple counties have more staff. The Maine pretrial justice program, which serves 10 counties, has 22 staff dedicated to pretrial justice duties. The statewide Kentucky program has 264 staff who cover all urban, suburban and rural areas in the state.

Starting salary ranges for line staff varies from \$20,000 and \$30,000 in 13 (34%) of programs to \$30,001 and \$40,000 in 26 (63%) of the programs. Starting salaries for program administrators range from \$30,000 and \$40,000 for six (15%) programs, \$40,001 and \$50,000 for six (15%) programs, \$50,001 and \$60,000 for 13 (32%) programs, \$60,001 and \$70,000 for six (15%) programs, and over \$70,000 for eight (20%) programs.

Examining program hours of operation, 32 (78%) are open only during regular business hours. The remaining nine (22%) are open extended hours, including three that operate 24 hours a day.

Pretrial justice programs are located within a number of different administrative settings, including: the court, the jail, the probation department, independent agencies, or through contracts with non-profit groups. Twenty-five of the programs surveyed (66%) are administratively located within probation departments. Three programs (7%) are located in the courts and four (10%) in the jails. Another three (7%) are operated by private, non-profit organizations, and four (10%) are independent agencies.

The following table profiles 40 of the 41 rural pretrial justice programs that participated in the survey. Since the Kentucky program serves the entire state, that program is not included in this table. The programs are listed in order of the size of the staff.

APPENDIX D

CHARACTERISTICS OF RURAL PRETRIAL JUSTICE PROGRAMS

Staff Size of Program	Jurisdiction(s) Served	Population of Jurisdiction(s) Served	Annual Budget of Program	Administrative Location
1	Single County	Less than 50,000	Less than \$200,000	Probation
1	Single County	Less than 50,000	Less than \$200,000	Sheriff/Jail
1	Single County	Between 50,000 and 100,000	Less than \$200,000	Probation
1	Single County	Less than 50,000	Less than \$200,000	Probation
1		Between 50,000 and 100,000	Less than \$200,000	Probation
1	Single County	Less than 50,000	Less than \$200,000	Probation
1	Single County	Between 100,00 and 500,000	Unknown	Probation
2	Single County	Less than 50,000	Less than \$200,000	Probation
2	Single County	Between 50,000 and 100,000	Less than \$200,000	Probation
2	Single County	Between 100,00 and 500,000	Less than \$200,000	Independent Agency
2	Single County	Less than 50,000	Less than \$200,000	Probation
2	Single County	Less than 50,000	Less than \$200,000	County Manager
2	Single County	Less than 50,000	Less than \$200,000	Private, Non-Profit
3	Single County	Less than 50,000	Less than \$200,000	Sheriff/Jail
3	Single County	Less than 50,000	Less than \$200,000	Probation
3	Single County	Between 50,000 and 100,000	Less than \$200,000	Independent Agency
3	Single County	Less than 50,000	Less than \$200,000	Probation
4	Single County	Between 50,000 and 100,000	Less than \$200,000	Probation
4	Single County	Between 50,000 and 100,000	Between \$200,000 and \$500,000	Courts
4	4 Counties	Between 50,000 and 100,000	Less than \$200,000	Probation
4	4 Counties	Less than 50,000	Between \$500,000 and \$800,000	Probation
5	3 Counties	Between 50,000 and 100,000	Between \$200,000 and \$500,000	Probation
6	Single County	Between 100,00 and 500,000	Between \$200,000 and \$500,000	Private, Non-Profit
6	2 Counties	Between 100,00 and 500,000	Between \$200,000 and \$500,000	Probation
7	4 Counties	Less than 50,000	Between \$200,000 and \$500,000	Probation
8	Single County	Less than 50,000	Between \$200,000 and \$500,000	Probation
8	Single County	Less than 50,000	Between \$200,000 and \$500,000	Probation
9	Single County	Less than 50,000	Between \$200,000 and \$500,000	Probation
10	Single County	Between 100,00 and 500,000	Between \$500,000 and \$800,000	Sheriff/Jail
10	Single County	Between 50,000 and 100,000	Between \$800,000 and \$1,500,000	Independent Agency
10	2 Counties	Between 50,000 and 100,000	Between \$200,000 and \$500,000	Probation
10	2 Counties	Between 100,00 and 500,000	Between \$500,000 and \$800,000	Probation
12	Single County	Between 50,000 and 100,000	Between \$500,000 and \$800,000	Probation
16	Single County	Less than 50,000	Between \$800,000 and \$1,500,000	Probation
37	12 Counties	Between 500,000 and 1,000,000	Between \$1,500,000 and \$10,000,000	Private, Non-Profit
61	14 Counties	Between 100,00 and 500,000	Between \$1,500,000 and \$10,000,000	Courts
Unknown	Single County	Between 100,00 and 500,000	Between \$200,000 and \$500,000	Sheriff/Jail
Unknown	Single County	Between 50,000 and 100,000	Between \$800,000 and \$1,500,000	Probation
Unknown	Single County	Between 50,000 and 100,000	Unknown	Private, Non-Profit
Unknown	4 Counties	Between 100,00 and 500,000	Between \$800,000 and \$1,500,000	Independent Agency

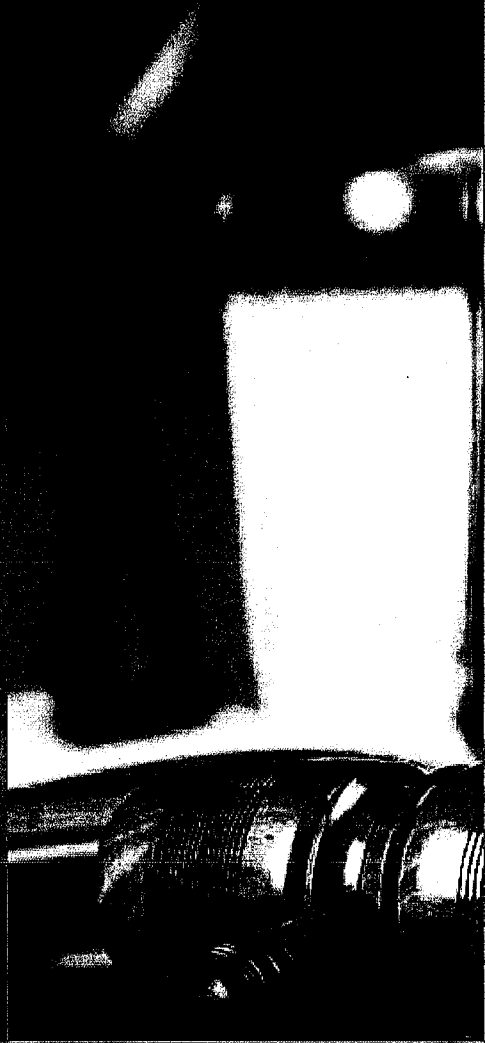
APPENDIX E - ADDITIONAL RESOURCES

- » **Jail Population Management:** Elected County Officials' Guide to Pretrial Services, National Association of Counties, Bureau of Justice Assistance and Pretrial Justice Institute. With shrinking budgets and growing jail populations, counties across the nation are facing tough decisions on how to control county criminal justice costs while maintaining public safety. This document provides an overview for elected county officials on the roles that they can play in managing jail populations and reducing costs through the establishment or improvement of pretrial services and establishment alternatives to money bail. This document is available at <http://www.pretrial.org/Reports/PJI%20Reports/Jail%20Population%20Management%20Elected%20County%20Officials%20Guide%20to%20Pretrial%20Services%20>.
- » **Pretrial Services Program Implementation:** A Starter Kit. Pretrial Justice Institute. This "how-to guide" is an essential resource to jurisdictions attempting to establish or improve their pretrial services programs. It provides the steps that a jurisdiction should take in implementing the functions of a pretrial justice program, and a planning and implementation checklist. The appendices contain such materials as examples of interview forms, mission statements, policies and procedures, and job descriptions used by pretrial justice programs. This document is available at <http://www.pretrial.org/Reports/PJI%20Reports/PJI-StarterKit.pdf>.
- » **Promising Practices in Providing Pretrial Services Functions Within Probation Agencies:** A Users Guide, Pretrial Justice Institute and American Probation and Parole Association. With an increasing number of pretrial services programs being housed within probation departments, the Pretrial Justice Institute partnered with the American Probation and Parole Association to develop this Users Guide. This document should be very a useful tool to those jurisdictions who run or are planning on running their pretrial services program out of probation or parole. It describes the challenges that must be addressed in providing these functions within a probation setting and lists several strategies for successfully doing so. This document is available at <http://www.pretrial.org/Featured%20Resources%20Documents/APPA%20Guide%20Book.pdf>.

Endnotes

- 1 Many of these efforts have been funded by the Bureau of Justice Assistance, an agency of the Office of Justice Programs, U.S. Department of Justice.
- 2 Kenneth M. Johnson, "Rural Demographic Change in the New Century: Slower Growth, Increased Diversity," *Carsey Institute Issue Brief*, 44, Winter 2012, at 1.
- 3 "2009 Survey of Pretrial Services Programs," (Washington, D.C.: Pretrial Justice Institute), 2010.
- 4 Todd Minton, *Jail Inmates at Mid Year 2010: Statistical Tables* (Washington, D.C.: Bureau of Justice Statistics, 2011).
- 5 Bureau of Justice Statistics' Justice Expenditures and Employment Extracts series.
- 6 Rational and Transparent Bail Decision Making: Moving From A Cash-Based to a Risk-Based Process (Washington, D.C.: Pretrial Justice Institute, 2012); Melissa Neal, *Bail Fail: Why the U.S. Should End the Practice of Using Money for Bail* (Washington, D.C.: Justice Policy Institute, 2012); and Spike Bradford, *For Better or For Profit: How the Bail Bonding Industry Stands in the Way of Fair and Effective Pretrial Justice* (Washington, D.C.: Justice Policy Institute, 2012).
- 7 For example, in the District of Columbia, 85 percent of defendants are released without having to post a money bond; 88 percent appear in court for all their hearings and 88 percent go through the pretrial period without a new arrest. The D.C. Pretrial Services Agency: *Lessons From Five Decades of Innovation and Growth*, (Washington, D.C.: Pretrial Justice Institute).
- 8 The first edition of the ABA Pretrial Release Standards was issued in 1968. These Standards have been updated several times, most recently in 2007. *ABA Standards for Criminal Justice: Pretrial Release (Third Edition)*, (Washington, D.C.: American Bar Association, 2007.)
- 9 National Association of Counties, *Justice and Public Safety, American County Platforms 2011-2012*, p. 10.
- 10 In 2009, the Pretrial Justice Institute conducted a survey of pretrial services programs nationwide. (The full survey report, *2009 Survey of Pretrial Services Programs*, can be downloaded at www.pretrial.org. Thirty-five pretrial services programs identified themselves in that survey as serving rural areas. These 35 programs were re-contacted in 2012 and asked to provide any necessary updates to the survey information. Six additional rural pretrial services programs were identified and completed the survey in 2012. Follow up telephone calls were then conducted with administrators of ten rural pretrial services programs.
- 11 ABA Pretrial Release Standard 10-4.2.
- 12 Cynthia A. Mamalian, *State of the Science of Pretrial Risk Assessment* (Washington, D.C., Pretrial Justice Institute, 2011).
- 13 National Symposium on Pretrial Justice: *Summary Report of Proceedings* (Washington, D.C.: Bureau of Justice Assistance, 2012), at 21.
- 14 *Standards on Pretrial Release: Third Edition*, (National Association of Pretrial Services Agencies, 2004), Standard 3.5(a).
- 15 ABA Pretrial Release Standard 10-1.10(b)(xi).
- 16 Jefferson County, Colorado Court Date Notification Program: FTA Pilot Project Summary, November 2005; Matt Nice, Court Appearance Notification System: Process and Outcome Evaluation (Multnomah County: Multnomah County Budget Office, March 2006); Matt O'Keefe, Court Appearance Notification System: 2007 Analysis Highlights (June 2007); Wendy White, Court Hearing Call Notification Project (Coconino County: Coconino County Criminal Justice Coordinating Council and Flagstaff Justice Court, 2006); Mitchel N. Herian and Brian H. Bornstein, "Reducing Failure to Appear in Nebraska: A Field Study," *The Nebraska Lawyer*, (September 2010).
- 17 *Measuring What Matters: Outcome and Performance Measures for the Pretrial Services Field* (Washington, D.C.: National Institute of Corrections, 2011).
- 18 ABA Pretrial Release Standard 10-2.2.
- 19 *National Prosecution Standards: Third Edition* (Alexandria: National District Attorneys Association, 2009), Standard 4-1.1.
- 20 *Id.*, Standard 4-1.3.
- 21 *Id.*, Standard 4-1.2.
- 22 *Id.*, Commentary to Standard 4-1.
- 23 *Id.*, Standard 4.4.4.
- 24 National Association of Counties, *Justice and Public Safety, American County Platforms 2011-2012*.
- 25 Douglas L. Colbert, Ray Paternoster, & Shawn Bushway, "Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail," *Cardozo Law Review* 23 (2002), 1719, 1720.
- 26 *Indigent Defense in Rural America. Justice and Public Policy Platforms and Resolutions: 2011-2012*, National Association of Counties, at 4-5.
- 27 This is not meant to be an exhaustive list of all pretrial services programs in the country that serve rural areas. It includes those that had participated in the survey.

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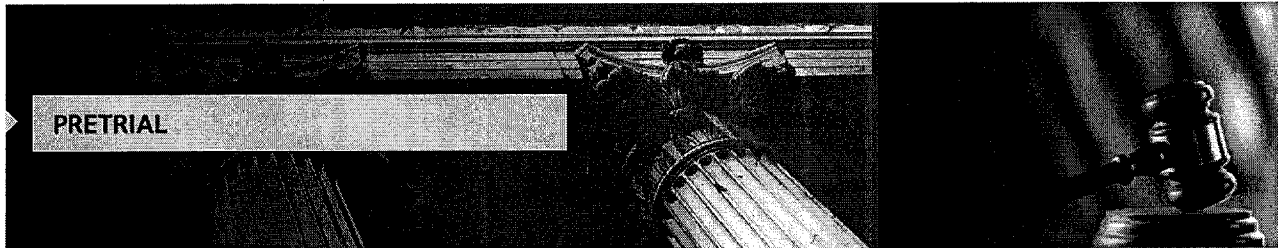


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TAB 33

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Risk Management

Addressing Challenges to
Implementation

Toolkits and TTA Providers

Online Resources

Pretrial Implementation Toolkits and Technical Assistance Providers

This section contains resource intended to help pretrial practitioners and system stakeholders efficient and effective processes while improving public safety outcomes through the adoption of legal and evidence-based practices.

Implementation Guides

- Pretrial Services Program Implementation: a Starter Kit (Pretrial Justice Institute)
- Creating an Effective Pretrial Program (Crime and Justice Institute)
- Frequently Asked Questions About Pretrial Release Decision Making (American Bar Association)
- Pretrial Services Programs: Responsibilities and Potential (National Institute of Justice)
- Promising Practices in Providing Pretrial Services Functions Within Probations Agencies: a User's Guide (American Probations and Parole Association)
- Jail Population Management: Elected County Officials' Guide to Pretrial Services (National Association of Counties)
- The Delivery of Pretrial Justice in Rural Areas: a Guide for County Officials (Pretrial Justice Institute)
- Mesa County Evidence-Based Pretrial Implementation Guide (Colorado)
- Active Implementation Hub
- National Implementation Research Network

TTA Providers

For those seeking training and technical assistance for the first time, be sure to check out the guide, [Using Outside Expertise: Know What to Expect](#),

Bureau of Justice Assistance (BJA)

To achieve safer communities nationwide, the **Bureau of Justice Assistance (BJA)** National Training and Technical Assistance Center (NTTAC) connects criminal justice professionals to the resources they need to improve outcomes at the state, local, or tribal level.

The training and technical assistance (TTA) lifecycle begins when a state, local, or tribal jurisdiction submits a request for resources and services. NTTAC follows up with the requesting jurisdiction to gather more information, and evaluates whether the scale and scope of the request meet established response criteria. If the request meets criteria, NTTAC moves forward by matching the request to the TTA provider(s) best able to meet the request - through either a new or existing funding arrangement.

Pretrial Justice Institute (PJI)

The Pretrial Justice Institute's core purpose is to advance safe, fair, and effective juvenile and adult pretrial justice practices and policies. Funded in part by the Bureau of Justice Assistance, the Public Welfare Foundation, and the Annie E. Casey Foundation, the organization works to achieve our core purpose by moving policymakers and justice system stakeholder to adopt and implement practices and policies through educating key stakeholders; moving stakeholders into action; advocating change in key states; developing messages, stories, and media coverage in support of change; and connecting local jurisdictions to assistance.

Crime and Justice Institute (CJI)

The Crime and Justice Institute offers a continuum of trainings to engage and educate corrections professionals and partners. For systems embarking on evidence-based reform, CJI provides an introductory series on effective interventions, organizational change, and collaboration. For those committed to comprehensive skill development, the Supervisor's Leadership Academy cultivates current and future leaders. CJI is able to tailor training content to the specific needs of the organization. Our trainers also offer coaching and training-of-trainers to increase the capacity of organizations to deliver training themselves.

Justice Management Institute (JMI)

The Justice Management Institute, a non-profit organization based in Arlington, Virginia, provides cutting edge research, education and training programs, and technical assistance in justice policy, planning, and operations. JMI collaborates with justice professionals to shape systems that are responsive, outcome-driven, fairer, more equitable, and more efficient. JMI has worked with counties and local courts to develop strategic plans to reduce jail overcrowding, launch new accountability courts, or grow diversionary programs.

Luminosity, Inc.

Luminosity is a criminal justice consulting firm specializing in data driven justice solutions focused on the front-end or pretrial stage of the criminal justice system. The pretrial stage includes arrest through case disposition and involves many system stakeholders including law enforcement, jail, court, prosecutor, and defense. Luminosity works with local, state, and federal agencies and systems to identify opportunities to improve efficiency and effectiveness and implement practical data driven solutions to solve the most challenging problems.

National Criminal Justice Association (NCJA)

Based in Washington, D.C., the National Criminal Justice Association represents state, tribal and local governments on crime prevention and crime control issues. Its members represent all facets of the criminal and juvenile justice community, from law enforcement, corrections, prosecution, defense, courts, victim-witness services and educational institutions to federal, state and local elected officials. NCJA CJA regularly convenes SAAs regarding multiple criminal justice issues, and is able to provide implementation and justice information sharing TTA. Please contact NCJA Senior Policy Advisor, Carol Poole at cpoole@ncja.org for more information.

National Institute of Corrections (NIC)

The National Institute of Corrections is an agency within the U.S. Department of Justice, Federal Bureau of Prisons. We provide training, technical assistance, information services, and policy/program development assistance to federal, state, and local corrections agencies. Through cooperative agreements, we award funds to support our program initiatives. We also provide leadership to influence correctional policies, practices, and operations nationwide in areas of emerging interest and concern to correctional executives and practitioners as well as public policymakers.

National Center for State Courts (NCSC)

The National Center for State Courts is the organization courts turn to for authoritative knowledge and information, because its efforts are directed by collaborative work with the Conference of Chief Justices, the Conference of State Court Administrators, and other associations of judicial leaders. Consequently, NCSC is able to return expertise to the courts in a variety of forms — from Web resources to hands-on assistance. State assessments pay for the distribution of information from knowledge analysts and online sources, available free of charge to state trial and appellate courts and their administrative offices.

Vera Institute of Justice

The Vera Institute of Justice combines expertise in research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety. Vera is an independent, nonpartisan, nonprofit center for justice policy and practice, with offices in New York City, Washington, DC, New Orleans, and Los Angeles. Our projects and reform initiatives, typically conducted in partnership with local, state, or national officials, are located across the United States and around the world.

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TAB 34

N.R.S. Const. Art. 1, § 7

§ 7. Bail; exception for capital offenses and certain murders

All persons shall be bailable by sufficient sureties; unless for Capital Offenses or murders punishable by life imprisonment without possibility of parole when the proof is evident or the presumption great.

178.484. Right to bail before conviction; exceptions; imposition of conditions; arrest for violation of condition

1. Except as otherwise provided in this section, a person arrested for an offense other than murder of the first degree must be admitted to bail.
2. A person arrested for a felony who has been released on probation or parole for a different offense must not be admitted to bail unless:
 - (a) A court issues an order directing that the person be admitted to bail;
 - (b) The State Board of Parole Commissioners directs the detention facility to admit the person to bail; or
 - (c) The Division of Parole and Probation of the Department of Public Safety directs the detention facility to admit the person to bail.
3. A person arrested for a felony whose sentence has been suspended pursuant to NRS 4.373 or 5.055 for a different offense or who has been sentenced to a term of residential confinement pursuant to NRS 4.3762 or 5.076 for a different offense must not be admitted to bail unless:
 - (a) A court issues an order directing that the person be admitted to bail; or
 - (b) A department of alternative sentencing directs the detention facility to admit the person to bail.
4. A person arrested for murder of the first degree may be admitted to bail unless the proof is evident or the presumption great by any competent court or magistrate authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense.
5. A person arrested for a violation of NRS 484C.110, 484C.120, 484C.130, 484C.430, 488.410, 488.420 or 488.425 who is under the influence of intoxicating liquor must not be admitted to bail or released on the person's own recognizance unless the person has a concentration of alcohol of less than 0.04 in his or her breath. A test of the person's breath pursuant to this subsection to determine the concentration of alcohol in his or her breath as a condition of admission to bail or release is not admissible as evidence against the person.
6. A person arrested for a violation of NRS 484C.110, 484C.120, 484C.130, 484C.430, 488.410, 488.420 or 488.425 who is under the influence of a controlled substance, is under the combined influence of intoxicating liquor and a controlled substance, or inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders the person incapable of safely driving or exercising actual physical control of a vehicle or vessel under power or sail must not be admitted to bail or released on the person's own recognizance sooner than 12 hours after arrest.
7. A person arrested for a battery that constitutes domestic violence pursuant to NRS 33.018 must not be admitted to bail sooner than 12 hours after arrest. If the person is admitted to bail more than 12 hours after arrest, without appearing personally before a magistrate or without the amount of bail having been otherwise set by a magistrate or a court, the amount of bail must be:
 - (a) Three thousand dollars, if the person has no previous convictions of battery that constitute domestic violence pursuant to NRS 33.018 and there is no reason to believe that the battery for

which the person has been arrested resulted in substantial bodily harm or was committed by strangulation;

(b) Five thousand dollars, if the person has:

(1) No previous convictions of battery that constitute domestic violence pursuant to NRS 33.018, but there is reason to believe that the battery for which the person has been arrested resulted in substantial bodily harm or was committed by strangulation; or

(2) One previous conviction of battery that constitutes domestic violence pursuant to NRS 33.018, but there is no reason to believe that the battery for which the person has been arrested resulted in substantial bodily harm or was committed by strangulation; or

(c) Fifteen thousand dollars, if the person has:

(1) One previous conviction of battery that constitutes domestic violence pursuant to NRS 33.018 and there is reason to believe that the battery for which the person has been arrested resulted in substantial bodily harm or was committed by strangulation; or

(2) Two or more previous convictions of battery that constitute domestic violence pursuant to NRS 33.018. The provisions of this subsection do not affect the authority of a magistrate or a court to set the amount of bail when the person personally appears before the magistrate or the court, or when a magistrate or a court has otherwise been contacted to set the amount of bail. For the purposes of this subsection, a person shall be deemed to have a previous conviction of battery that constitutes domestic violence pursuant to NRS 33.018 if the person has been convicted of such an offense in this State or has been convicted of violating a law of any other jurisdiction that prohibits the same or similar conduct.

8. A person arrested for violating a temporary or extended order for protection against domestic violence issued pursuant to NRS 33.017 to 33.100, inclusive, or for violating a restraining order or injunction that is in the nature of a temporary or extended order for protection against domestic violence issued in an action or proceeding brought pursuant to title 11 of NRS, or for violating a temporary or extended order for protection against stalking, aggravated stalking or harassment issued pursuant to NRS 200.591, or for violating a temporary or extended order for protection against sexual assault pursuant to NRS 200.378 must not be admitted to bail sooner than 12 hours after arrest if:

(a) The arresting officer determines that such a violation is accompanied by a direct or indirect threat of harm;

(b) The person has previously violated a temporary or extended order for protection of the type for which the person has been arrested; or

(c) At the time of the violation or within 2 hours after the violation, the person has:

(1) A concentration of alcohol of 0.08 or more in the person's blood or breath; or

(2) An amount of a prohibited substance in the person's blood or urine that is equal to or greater than the amount set forth in subsection 3 of NRS 484C.110.

9. If a person is admitted to bail more than 12 hours after arrest, pursuant to subsection 8, without appearing personally before a magistrate or without the amount of bail having been otherwise set by a magistrate or a court, the amount of bail must be:

(a) Three thousand dollars, if the person has no previous convictions of violating a temporary or extended order for protection against domestic violence issued pursuant to NRS 33.017 to 33.100, inclusive, or of violating a restraining order or injunction that is in the nature of a temporary or extended order for protection against domestic violence issued in an action or proceeding brought pursuant to title 11 of NRS, or of violating a temporary or extended order for protection against stalking, aggravated stalking or harassment issued pursuant to NRS 200.591,

or of violating a temporary or extended order for protection against sexual assault pursuant to NRS 200.378;

(b) Five thousand dollars, if the person has one previous conviction of violating a temporary or extended order for protection against domestic violence issued pursuant to NRS 33.017 to 33.100, inclusive, or of violating a restraining order or injunction that is in the nature of a temporary or extended order for protection against domestic violence issued in an action or proceeding brought pursuant to title 11 of NRS, or of violating a temporary or extended order for protection against stalking, aggravated stalking or harassment issued pursuant to NRS 200.591, or of violating a temporary or extended order for protection against sexual assault pursuant to NRS 200.378; or

(c) Fifteen thousand dollars, if the person has two or more previous convictions of violating a temporary or extended order for protection against domestic violence issued pursuant to NRS 33.017 to 33.100, inclusive, or of violating a restraining order or injunction that is in the nature of a temporary or extended order for protection against domestic violence issued in an action or proceeding brought pursuant to title 11 of NRS, or of violating a temporary or extended order for protection against stalking, aggravated stalking or harassment issued pursuant to NRS 200.591, or of violating a temporary or extended order for protection against sexual assault pursuant to NRS 200.378. The provisions of this subsection do not affect the authority of a magistrate or a court to set the amount of bail when the person personally appears before the magistrate or the court or when a magistrate or a court has otherwise been contacted to set the amount of bail. For the purposes of this subsection, a person shall be deemed to have a previous conviction of violating a temporary or extended order for protection against domestic violence issued pursuant to NRS 33.017 to 33.100, inclusive, or of violating a restraining order or injunction that is in the nature of a temporary or extended order for protection against domestic violence issued in an action or proceeding brought pursuant to title 11 of NRS, or of violating a temporary or extended order for protection against stalking, aggravated stalking or harassment issued pursuant to NRS 200.591, or of violating a temporary or extended order for protection against sexual assault pursuant to NRS 200.378, if the person has been convicted of such an offense in this State or has been convicted of violating a law of any other jurisdiction that prohibits the same or similar conduct.

10. The court may, before releasing a person arrested for an offense punishable as a felony, require the surrender to the court of any passport the person possesses.

11. Before releasing a person arrested for any crime, the court may impose such reasonable conditions on the person as it deems necessary to protect the health, safety and welfare of the community and to ensure that the person will appear at all times and places ordered by the court, including, without limitation:

(a) Requiring the person to remain in this State or a certain county within this State;

(b) Prohibiting the person from contacting or attempting to contact a specific person or from causing or attempting to cause another person to contact that person on the person's behalf;

(c) Prohibiting the person from entering a certain geographic area; or

(d) Prohibiting the person from engaging in specific conduct that may be harmful to the person's own health, safety or welfare, or the health, safety or welfare of another person.

In determining whether a condition is reasonable, the court shall consider the factors listed in NRS 178.4853.

12. If a person fails to comply with a condition imposed pursuant to subsection 11, the court may, after providing the person with reasonable notice and an opportunity for a hearing:

(a) Deem such conduct a contempt pursuant to NRS 22.010; or

(b) Increase the amount of bail pursuant to NRS 178.499.

13. An order issued pursuant to this section that imposes a condition on a person admitted to bail must include a provision ordering any law enforcement officer to arrest the person if the officer has probable cause to believe that the person has violated a condition of bail.

14. Before a person may be admitted to bail, the person must sign a document stating that:

(a) The person will appear at all times and places as ordered by the court releasing the person and as ordered by any court before which the charge is subsequently heard;

(b) The person will comply with the other conditions which have been imposed by the court and are stated in the document; and

(c) If the person fails to appear when so ordered and is taken into custody outside of this State, the person waives all rights relating to extradition proceedings. The signed document must be filed with the clerk of the court of competent jurisdiction as soon as practicable, but in no event later than the next business day.

15. If a person admitted to bail fails to appear as ordered by a court and the jurisdiction incurs any cost in returning the person to the jurisdiction to stand trial, the person who failed to appear is responsible for paying those costs as restitution.

16. For the purposes of subsections 8 and 9, an order or injunction is in the nature of a temporary or extended order for protection against domestic violence if it grants relief that might be given in a temporary or extended order issued pursuant to NRS 33.017 to 33.100, inclusive.

17. As used in this section, "strangulation" has the meaning ascribed to it in NRS 200.481.

N.R.S. 178.4851

178.4851. Release without bail; imposition of conditions; arrest for violation of condition

1. Upon a showing of good cause, a court may release without bail any person entitled to bail if it appears to the court that it can impose conditions on the person that will adequately protect the health, safety and welfare of the community and ensure that the person will appear at all times and places ordered by the court.

2. In releasing a person without bail, the court may impose such conditions as it deems necessary to protect the health, safety and welfare of the community and to ensure that the person will appear at all times and places ordered by the court, including, without limitation, any condition set forth in subsection 11 of NRS 178.484.

3. Upon a showing of good cause, a sheriff or chief of police may release without bail any person charged with a misdemeanor pursuant to standards established by a court of competent jurisdiction.

4. Before a person may be released without bail, the person must file with the clerk of the court of competent jurisdiction a signed document stating that:

(a) The person will appear at all times and places as ordered by the court releasing the person and as ordered by any court before which the charge is subsequently heard;

(b) The person will comply with the other conditions which have been imposed by the court and are stated in the document;

(c) If the person fails to appear when so ordered and is taken into custody outside of this State, the person waives all rights relating to extradition proceedings; and

(d) The person understands that any court of competent jurisdiction may revoke the order of release without bail and may order the person into custody or require the person to furnish bail or

otherwise ensure the protection of the health, safety and welfare of the community or the person's appearance.

5. If a jurisdiction incurs any costs in returning a person to the jurisdiction to stand trial, the person failing to appear is responsible for paying those costs as restitution.

6. An order issued pursuant to this section that imposes a condition on a person who is released without bail must include a provision ordering a law enforcement officer to arrest the person if the law enforcement officer has probable cause to believe that the person has violated a condition of release.

178.5698. Information concerning release of defendant and disposition of case provided upon request; court to inform and provide documentation to certain persons of their right to be informed of release of offender from prison in certain cases; when and whom warden must inform of release of offender from prison

1. The prosecuting attorney, sheriff or chief of police shall, upon the request of a victim or witness, inform the victim or witness:

(a) When the defendant is released from custody at any time before or during the trial, including, without limitation, when the defendant is released pending trial or subject to electronic supervision;

(b) If the defendant is so released, the amount of bail required, if any; and

(c) Of the final disposition of the criminal case in which the victim or witness was directly involved.

2. A request for information pursuant to subsection 1 must be made:

(a) In writing; or

(b) By telephone through an automated or computerized system of notification, if such a system is available.

3. If an offender is convicted of a sexual offense or an offense involving the use or threatened use of force or violence against the victim, the court shall provide:

(a) To each witness, documentation that includes:

(1) A form advising the witness of the right to be notified pursuant to subsection 5;

(2) The form that the witness must use to request notification in writing; and

(3) The form or procedure that the witness must use to provide a change of address after a request for notification has been submitted.

(b) To each person listed in subsection 4, documentation that includes:

(1) A form advising the person of the right to be notified pursuant to subsection 5 or 6 and NRS 176.015, 176A.630, 178.4715, 209.392, 209.3925, 209.521, 213.010, 213.040, 213.095 and 213.131 or NRS 213.10915;

(2) The forms that the person must use to request notification; and

(3) The forms or procedures that the person must use to provide a change of address after a request for notification has been submitted.

4. The following persons are entitled to receive documentation pursuant to paragraph (b) of subsection 3:

(a) A person against whom the offense is committed.

(b) A person who is injured as a direct result of the commission of the offense.

(c) If a person listed in paragraph (a) or (b) is under the age of 18 years, each parent or guardian who is not the offender.

(d) Each surviving spouse, parent and child of a person who is killed as a direct result of the commission of the offense.

(e) A relative of a person listed in paragraphs (a) to (d), inclusive, if the relative requests in writing to be provided with the documentation.

5. Except as otherwise provided in subsection 6, if the offense was a felony and the offender is imprisoned, the warden of the prison shall, if the victim or witness so requests in writing and provides a current address, notify the victim or witness at that address when the offender is released from the prison.

6. If the offender was convicted of a violation of subsection 3 of NRS 200.366 or a violation of subsection 1, paragraph (a) of subsection 2 or subparagraph (2) of paragraph (b) of subsection 2 of NRS 200.508, the warden of the prison shall notify:

(a) The immediate family of the victim if the immediate family provides their current address;

(b) Any member of the victim's family related within the third degree of consanguinity, if the member of the victim's family so requests in writing and provides a current address; and

(c) The victim, if the victim will be 18 years of age or older at the time of the release and has provided a current address, before the offender is released from prison.

7. The warden must not be held responsible for any injury proximately caused by the failure to give any notice required pursuant to this section if no address was provided to the warden or if the address provided is inaccurate or not current.

8. As used in this section:

(a) "Immediate family" means any adult relative of the victim living in the victim's household.

(b) "Sexual offense" means:

(1) Sexual assault pursuant to NRS 200.366;

(2) Statutory sexual seduction pursuant to NRS 200.368;

(3) Battery with intent to commit sexual assault pursuant to NRS 200.400;

(4) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive;

(5) Incest pursuant to NRS 201.180;

(6) Open or gross lewdness pursuant to NRS 201.210;

(7) Indecent or obscene exposure pursuant to NRS 201.220;

(8) Lewdness with a child pursuant to NRS 201.230;

(9) Sexual penetration of a dead human body pursuant to NRS 201.450;

(10) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony;

(11) An offense that, pursuant to a specific statute, is determined to be sexually motivated; or

(12) An attempt to commit an offense listed in this paragraph.

TAB 35

Effective Pretrial Justice Communication

Guidelines for Champions & Spokespeople

Updated October 2014

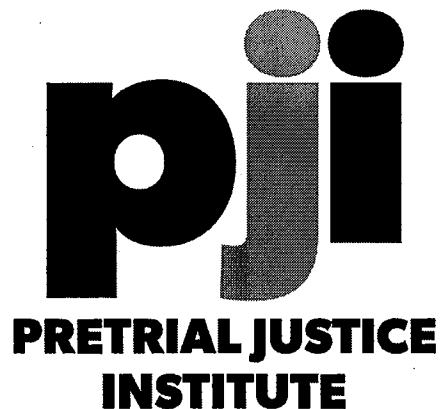


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Bail fundamentals

The Purpose of Bail

- Protect the integrity of the court process (court appearance)
- Protect the public (rearrest)
- Guard against punishment prior to adjudication (innocent until proven guilty)

Bail Law

- Must be individualized: *Stack v. Boyle*, 342 U.S. 1 (1951)
- May consider danger: *U.S. v. Salerno*, 481 U.S. 739 (1987)

Bail in the Current System

Current Bail Decision-Making

- Offense-based – static/one dimensional. Assumes charge = risk.
- Fail to factor risks and strengths (risk) of individual defendant
- Consideration of danger not part of process
- No individual, tailored conditions imposed or monitored to mitigate risk
- Those *with* money are released w/o monitoring or supervision
- Those *without* money are not released and/or may be over-supervised

Impact

- \$9 billion annually spent on pretrial incarceration
- More than half of the most dangerous defendants – most likely to reoffend or skip court – are released
- Jail beds filled disproportionately with lower risk pretrial defendants
- Pretrial detention of lower risk defendants increases likelihood of recidivism
- Contributes to disproportionate impact on defendants who are poor and of color

Introducing Risk Assessment

The problem:

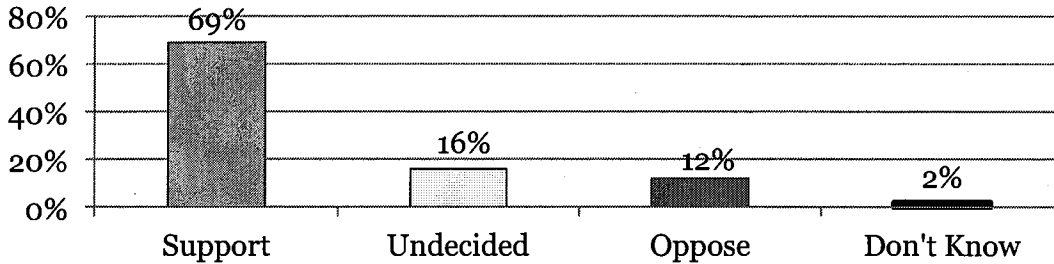
- The American system of bail is fundamentally incapable of doing the job we expect from it: it is dangerous, outdated, unfair, and expensive—costing taxpayers more than \$9 billion each year without doing enough to protect public safety.
- Those with money, regardless of the danger they pose to the community, can purchase their freedom while poor, often low-risk defendants remain in jail – an experience that actually *increases* their likelihood to offend in the future.

The solution:

- Jurisdictions must move from a resource-based to a risk-based bail decision-making process, allowing for more informed decisions at each phase in the pretrial process (from first contact with law enforcement through adjudication).
- Jurisdictions must conduct a **risk assessment of all defendants** in custody awaiting their initial appearance in court and provide **supervision and monitoring** of defendants released by the court, when appropriate.
 - Pretrial risk assessment improves public safety and has proven cost savings to taxpayers
 - Risk assessment improves our ability to identify potentially dangerous individuals or individuals who are likely to flee.
 - In addition, it allows those who are deemed eligible to return their families, jobs and communities while awaiting adjudication.
- State law should allow for the detention through due process of those too risky to be released.
- Moving to risk assessment and pretrial supervision and monitoring will require the support of all those involved in the criminal justice system.

Public Opinion

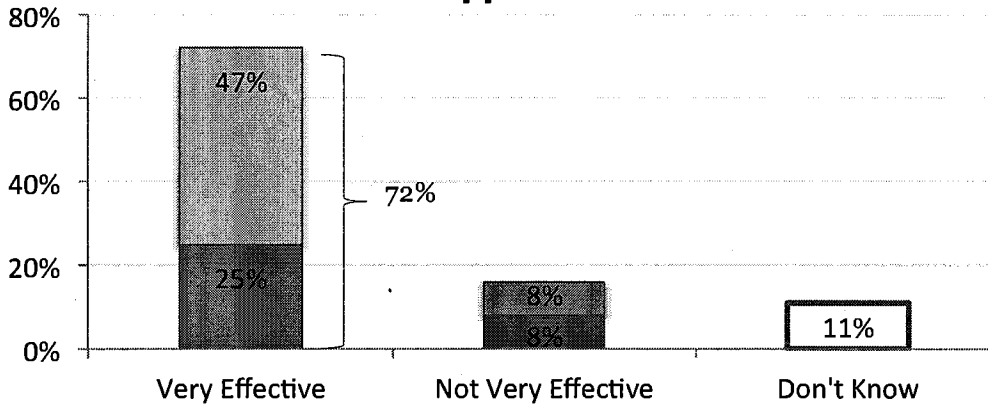
More than 2/3 support Risk assessment instead of cash bail bonds



Question:

Some have proposed using risk-based screening tools instead of cash bail bonds to determine whether defendants should be released from jail before trial. This risk assessment would take into account such factors as [drug use history, mental health, employment status, residency, and community ties] or [the charge in question, criminal history, any warrants or previous failures to appear for court]. Under this system, high-risk defendants would be held in jail until trial and low-risk defendants would be released with conditions and be monitored and supervised. Would you support or oppose this proposal to use risk assessment instead of cash bail bonds to determine whether defendants should be released from jail before trial, or are you undecided? **[IF SUPPORT/OPPOSE]** And do you feel that way strongly, or not-so strongly? (Lake Research Partners, 2012)

Over 70% perceive risk assessment as Very/Effective at protecting public safety and ensuring court appearance.



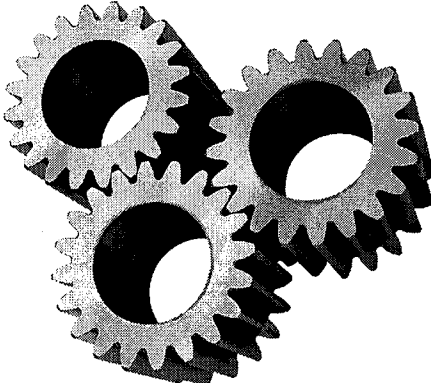
Question:

I'm going to read you a list of terms used to describe the proposal of using risk-based screening tools to determine whether defendants should be released from jail before trial. For each term, tell me how effective you think it sounds when it comes to protecting public safety and ensuring appearance for trial: VERY effective, SOMEWHAT effective, NOT VERY effective, NOT effective AT ALL. If you don't know just say so and we'll move on. "Pretrial risk assessment." (Lake Research Partners, 2012)

Using Analogies

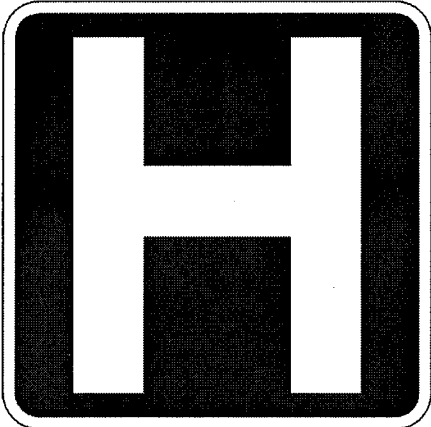
Gears

- Vehicles have several gears to accommodate varying terrains.
- We currently rely on only one “gear” in our pretrial systems: the DETENTION gear.



Hospital

- Hospitals assess patients to determine who can be treated as outpatient and who needs to be admitted.
- If most pretrial systems were hospitals, they would be admitting people for colds and sprained ankles.



Colorado Tool

In most jurisdictions, the bulk of defendants will fall within the low and medium-low risk categories and can be released with no conditions or with very minimal supervision. For example, in Colorado, nearly 70% of defendants were of low or medium-low risk. Only 8% fell within the high-risk category.

Risk Category	Public Safety Rate	Court Appearance Rate	% of Defendants
1	91%	95%	20%
2	80%	85%	49%
3	69%	77%	23%
4	58%	51%	8%



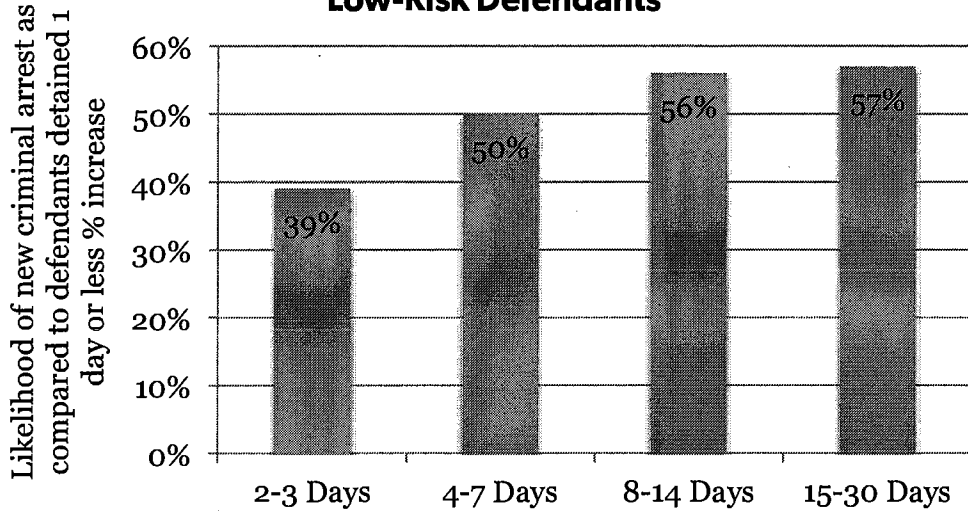
Sample Guidelines

Knowing defendants' risk levels allows jurisdictions to tailor supervision and monitoring strategies.

Pretrial Risk Category	Most Serious Charge					
	Less Serious Misdemeanor	More Serious Misdemeanor	Less Serious or Non-Violent Felony	Driving Under the Influence	Domestic Violence	Serious or Violent Felony
Lower	Recognizance Release with Court Reminder	Recognizance Release with Court Reminder	Recognizance Release with Court Reminder	Recognizance Release with Basic Supervision	Recognizance Release with Basic Supervision	Detained, or Recognizance Release with Enhanced Supervision if Released
Medium	Recognizance Release with Basic Supervision	Recognizance Release with Basic Supervision	Recognizance Release with Basic Supervision	Recognizance Release with Enhanced Supervision	Recognizance Release with Enhanced Supervision	Detained, or Recognizance Release with Enhanced Supervision if Released
Higher	Detained, or Recognizance Release with Enhanced Supervision if Released	Detained, or Recognizance Release with Enhanced Supervision if Released	Detained, or Recognizance Release with Enhanced Supervision if Released	Detained, or Recognizance Release with Enhanced Supervision if Released	Detained, or Recognizance Release with Enhanced Supervision if Released	Detained, or Recognizance Release with Enhanced Supervision if Released

Arnold Foundation Research

Increase in New Criminal Arrest Related to Pretrial Detention Length for Low-Risk Defendants



Arnold Foundation Research

- Pretrial detention results in worse outcomes, when comparing similar defendants.
- Defendants held for entire pretrial period are:
 - Are 4x more likely to be sentenced to jail
 - Are 3x more likely to be sentenced to prison
 - Receive 3x longer jail sentences
 - Receive 2x longer prison sentences
 - Moderate- & high-risk defendants do better under pretrial supervision

Paying Money Upfront Unnecessary

Recent research in Colorado found...

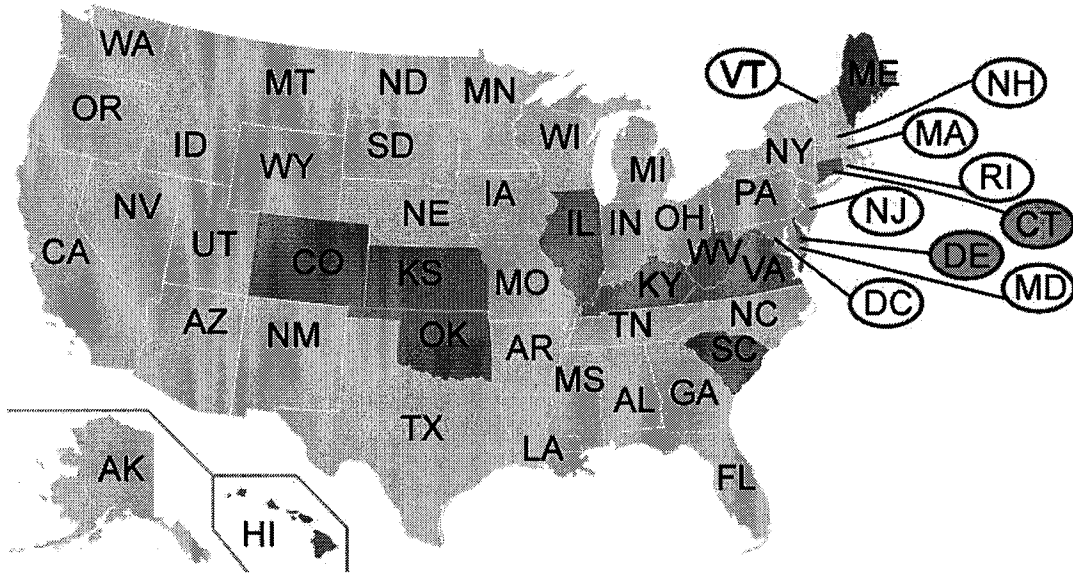
- Unsecured bonds are as effective as secured bonds at achieving
 - public safety
 - court appearance
- Higher \$ amounts of secured bonds are associated with more pretrial jail bed use but not increased court appearance rates.
- Unsecured bonds result in far fewer jail beds used than do secured bonds because more releasable defendants leave jail (94% unsecured versus 61% secured), and leave sooner.
- Unsecured bonds are as effective as secured bonds at preventing defendants who fail to appear in court from remaining at-large on a warrant.
- This information is based on a study of over 1,900 defendants in 10 counties throughout Colorado over a 16 month period.



Adoption of Risk Assessment

- An estimated 369 counties (about 10%) use a validated risk assessment.
- Each of the 94 Federal Districts is required to use the validated federal pretrial risk assessment tool.

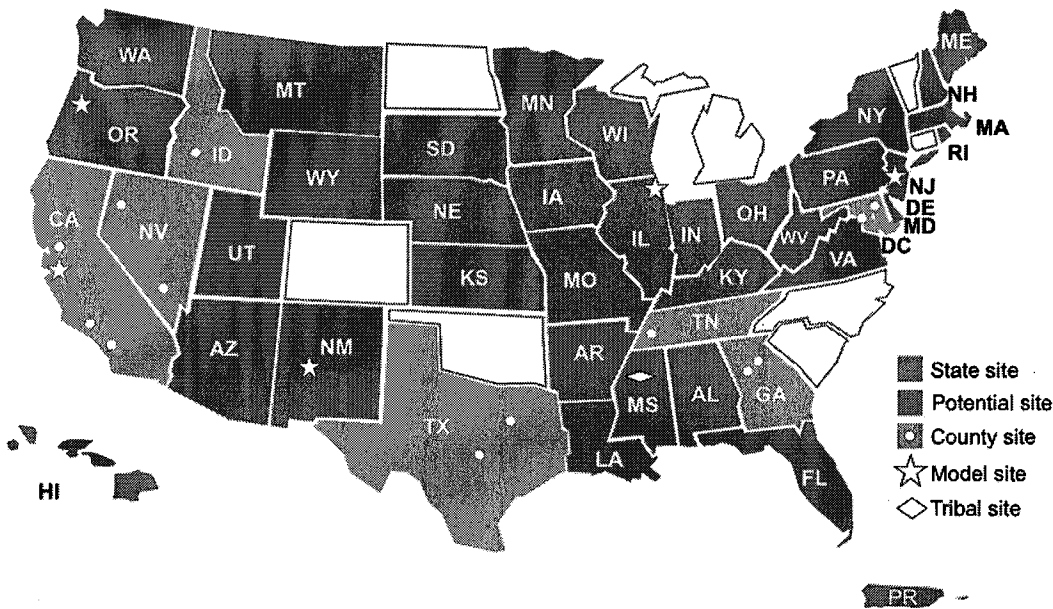
12 states (covering roughly 16% of the U.S. population) have instructed courts to consider the results of a risk assessment when making a pretrial release decision.



Pretrial outcomes in jurisdictions with high-functioning risk assessment

	Kentucky	DC
Release Rate	69%	85%
Appearance Rate	88%	89%
Public Safety Rate	91%	89%

The Juvenile Detention Alternatives Initiative (JDAI) is active in more than 200 counties, spanning 39 states plus the District of Columbia.



One in four youth live in a community that participates in JDAI.

Talking Points for Different Audiences

Different audiences respond better to different arguments, depending on their professional and personal beliefs and perceptions. Below is a collection of the main talking points of pretrial justice

- Currently more than half of the highest-risk defendants are getting released pretrial without supervision or monitoring. This poses a threat to law enforcement and the community.
- Currently, we set a high bond for potentially violent defendants and hope they can't make it. Low-risk defendants who simply cannot afford to purchase their freedom remain in jail pending trial.
- A majority of jurisdictions rely on pre-set bond amounts which enable defendants to avoid risk screening by prosecutors and the courts.
- Those with money – regardless of where they got the money or their potential danger to the community – can purchase their freedom prior to trial.
- Judges should have the ability to keep potentially violent defendants detained and not be required to set a bond amount intended to detain, which often does not.
- Prosecutors should have the ability to argue for the pretrial detention those assessed as too dangerous to be released, not high bond amounts that gamble on a defendant's ability to make that bond.
- Robust pretrial systems incorporate preventive detention statutes that allow for the detention of the riskiest defendants, through due process, until they go to trial.
- Risk assessment helps the system quickly focus on those factors that have been shown to predict pretrial failure.
- Research shows that those who are deemed appropriate for release through risk assessment are likely to make all their court appearances and are unlikely to re-offend.
- Release under risk assessment isn't a free ride. It is an opportunity to ensure justice is applied equally and efficiently and to monitor the conditions set by the courts.
- By using risk assessment tools, as well as supervision and monitoring of defendants, we protect public safety and the integrity of the court process, all at a lower cost than we do now.
- In order to ensure successful representation of defendants in the pretrial phase, the pretrial justice movement calls for adequate funding and support of public defenders' offices across the country.
- Judicial discretion is vital – and will remain so with the inclusion of a pretrial risk assessment tool.
- Keeping low-risk defendants out of jail allows them to contribute to the tax base rather than being housed at taxpayer expense.



- Studies show that defendants detained in jail while awaiting trial plead guilty more often, are convicted more often, are sentenced to prison more often, and receive harsher prison sentences than those with the same charges who are released during the pretrial period.
- There is considerable research to support the need for reform as well as overwhelming support from the public – 70% of Americans believe in using risk assessment over cash bail.
- Using actuarially-derived risk assessment tools, more than 90% of defendants score within the low to medium risk range, a population who can be safely managed in the community while posing little risk of flight or re-arrest. The tool used in Colorado only scores 8% of defendants in the highest risk category.
- Without supervision, once a defendant makes bail, regardless of risk level, he or she is out on the street and there are no back-up safeguards.

There is a **growing chorus** of groups who have called for pretrial reform around risk assessment and supervision/monitoring, including:

- American Bar Association
- American Civil Liberties Union
- American Jail Association
- American Probation and Parole Association
- Association of Prosecuting Attorneys
- Conference of Chief Justices
- Conference of State Court Administrators
- International Association of Chiefs of Police
- National Association of Counties
- National Association of Criminal Defense Lawyers
- National Center for State Courts
- National Judicial College
- National Legal Aid & Defender Association
- National Sheriffs' Association
- and more.

Targeting Your Message

When speaking with...

Judges: Risk assessment helps the courts quickly focus on those factors that have been shown to predict pretrial failure.

Law Enforcement: Currently more than half of the highest-risk defendants are getting released pretrial without supervision or monitoring. This poses a threat to law enforcement and the community.

Prosecutors: Prosecutors should have the ability to argue for pretrial detention, not high bond amounts that gamble on a defendant's ability to make that bond.

Public Defenders: Using actuarially-derived risk assessment tools, more than 90% of defendants score within the low to medium risk range, a population who can be safely managed in the community while posing little risk of flight or re-arrest. The tool used in Colorado only scores 8% of defendants in the highest risk category.

Elected Officials: Keeping low-risk defendants out of jail allows them to contribute to the tax base rather than being housed at taxpayer expense.

Pretrial Landscape

- Understanding the legislative, judicial and electoral environment is critical to developing – and delivering at the right time – the tactics to most efficiently and effectively promote the message for reform and introduction of risk assessment.
- Who are the key decision makers?
- What audience do you need to reach to influence them?
- Who do they listen to?
- When and how can you get them to pay attention?



Supports Reform



Other Tools for You

Media Toolkit

- Pretrial Justice Reform Message Guide
- Press Protocols
- Template Opinion/Editorial
- Template Letter to the Editor
- Capturing Personal Narratives in a Story Bank
- Fact Sheets: Interested Parties Memo and Expert Availability
- Talking Points and Potential Reporter Questions
- Press Lists

www.pretrial.org

How to Apply Those Tools

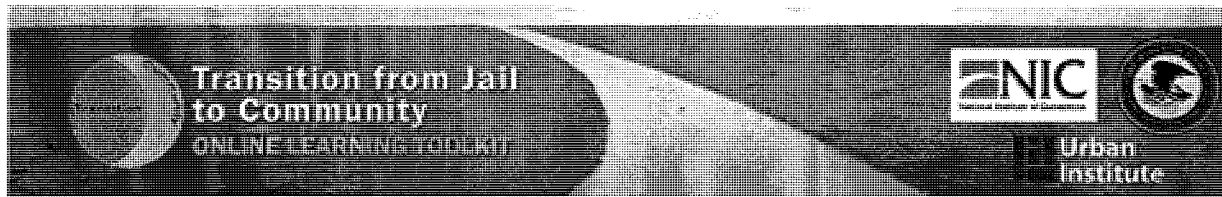
- Write an **Opinion/Editorial** for submission to your local paper
- **Comment online** to reporter stories on the issue
- **Email reporters** directly with what they got right in the story, and what they should also think of
- Write a **Letter to the Editor** in response to news articles
- Write a **blog** entry for your organization’s website or newsletter
- Write a **letter to your legislator** (or other influential person) and then post it on your website, social networking platforms (Facebook, Twitter, etc.)
- Work with **producers on radio programs and at your local television station** and make yourself available to comment on this issue
- Get on the agenda for **your next group or community association’s meeting** to talk about this issue, explain a call to action and motivate your peers
- **Catalog stories and anecdotes** of what is happening in your community to put a local, human face on the toll this issue takes on real people and families and share these stories with your peers and advocacy organizations like the Pretrial Justice Institute



**For more information, contact the
Pretrial Justice Institute
www.pretrial.org**



TAB 36



Module 1: Getting Started

Module 2: Leadership, Vision and Organizational Culture

Module 3: Collaborative Structure and Joint Ownership

Module 4: Data-Driven Understanding of Local Reentry

Module 5: Targeted Intervention Strategies

Module 6: Screening and Assessment

- Section 1: The Need for Screening
- Section 2: The Need for Assessment
- **Section 3: Selecting Screens and Assessment Tools**
- Section 4: The Logistics of Screening and Assessment
- Section 5: Terms Used in the Field

Module 7: Transition Plan Development

Module 8: Targeted Transition Interventions

Module 9: Self-Evaluation and Sustainability

Section 3: Selecting Screens and Assessment Tools

This section provides assistance and guidance in selecting appropriate screening tools and assessment instruments that satisfy both the informational requirements of the TJC model and local concerns (e.g., inexpensive, easy to administer, yield information useful to a variety of partners). This section offers different types of instruments to assess specific inmates' risk and needs.

Questions to think about before choosing screens and assessments include the following:

- Is the screen or assessment valid and reliable?
- Is the screen or assessment copyrighted?
- Is there any cost to use the screen or assessment?
- How much staff time is needed to complete the screen or assessment?
- What is the cost of administering the screen or assessment, including staff time and training?
- How much training is involved to administer the screen or assessment?
- Is medical, mental health, or substance abuse training necessary to administer the screen or assessment?
- Is the screen or assessment available in other languages?
- Is the screen or assessment available in electronic format?

Screens and Short Assessments Used During the Booking Process

The TJC model recommends that each person booked at your jail receive a short risk-to-reoffend screen and a pretrial risk assessment. The risk-to-reoffend screen will help identify those who need a full risk and needs assessment and are targeted to receive intensive services pre- and post-release as well as those of lower risk who are candidates for release, diversion, or alternatives to incarceration. The pretrial risk assessment will help identify the risk levels for failing to appear in court and rearrest. In some jurisdictions, the court may delegate to booking officers the authority to release those defendants who score as low risk on the risk assessment. The risk-to-reoffend screen will help identify those who need a full risk and needs assessment.

Though it may seem okay to cut corners and use the score from a risk-to-reoffend screen or assessment to determine who should receive pretrial release, a number of factors relevant in predicting criminogenic risk and needs do not predict pretrial risk. The use of separate instruments is advised.

Defining Risk Categories

Each jurisdiction must determine what criminogenic risk and need scores or "cut-points" will be utilized to assign medium- and high-risk individuals to available program tracks, sanctions, treatment, or some combination of system actions. Cut-points, or the threshold of risk/need identified by screening and/or assessment that is required to assign offenders to intensive interventions, must be jurisdiction specific, for they must consider a number of local factors such as the actual number of people in a given risk/needs category; existing service capacity (institutional and community based); and available resources, including staff, space, and bed capacity. In this world of shrinking resources, it is essential that jurisdictions establish cut-points to ensure that precious resources are spent on offender groups that are most likely to benefit.

Risk-to-Reoffend Screens

The following table highlights three risk-to-reoffend screens for this purpose. Our intent is not to endorse any individual screen, but instead to draw your attention to screens commonly used in correctional settings that are well regarded by experts in the field.

The *Proxy Risk Triage Screener* is the shortest of the three, with only three items. The eight-item *Level of Service Inventory—Revised Screening Version* categorizes a person into a low-, medium-, or high-risk group. The *Wisconsin Risk Assessment*, an 11-item instrument, asks more comprehensively about criminal history, drug/alcohol interference, living arrangements, and general attitude regarding change.

Quick Risk Screening					
Tool Name	Cost	Time to Complete Interview	Inventory Items	Instrument Result	Additional Information

Proxy Risk Triage Screener (Proxy)	No cost	Five minutes or less	Three items – Current age, age at first arrest, # of priors	Risk of recidivism on an 8-point scale	
Level of Service Inventory—Revised Screening Version (LSI-RSV)	\$2.20/use	15 minutes	Eight items – Criminal history, education/employment, family/marital, companions, alcohol/drug problems, attitudes/orientation, personal/emotional	Risk of recidivism score on an 8-point scale and brief summary of dynamic risk areas that may need attention	
Wisconsin Risk	No cost	15–30 minutes	11 items – Criminal history (adult and juvenile), drug/alcohol involvement, living arrangements, general attitude for change	Risk of recidivism score	

Pretrial Risk Assessments

The following table highlights three pretrial risk assessment instruments. Our intent is not to endorse any individual instrument, but instead to draw to your attention pretrial screens commonly used that are well regarded by experts in the field.

The Ohio Pretrial Assessment Tool is the shortest of the three, with seven items, the point totals are grouped into three levels of risk – low, moderate, and high. The eight-item *Virginia Pretrial Risk Assessment Instrument* categorizes a person into five levels of risk – lowest to highest. The *Kentucky Risk Assessment Instrument* is the longest of the three (12-items) and like Ohio’s tool, groups the point totals into low-, moderate-, or high-risk group.

Quick Pretrial Assessments					
Tool Name	Cost	Time to Complete Interview	Inventory Items	Instrument Result	Additional Information
Ohio Risk Assessment System: Pretrial Assessment Tool (ORAS-PAT)	No cost	10 minutes or less	Seven items – Age of first arrest, criminal history, employment, residential stability, history of drug use, severity of drug use.	Risk score on a 9-point scale.	http://www.uc.edu/corrections/services/risk-assessment.html
Virginia Pretrial Risk Assessment Instrument (VPRAI)	No cost	15 minutes or less	Eight items – charge type, pending charges, criminal history, failure to appear history, violent conviction history, length at current address, employed/primary care giver, history of drug abuse	Risk score on a 9-point scale	
Kentucky Risk Assessment Instrument	No cost	15 minutes or less	12 items – length of current address, employment, charge type, pending charges, failure to appear history, conviction history, violent conviction history, history of drug abuse, escape history, under probation/parole supervision	Risk score on a 24-point scale	

In 2014, the Laura and John Arnold Foundation will be releasing a pretrial risk assessment tool that is based on a study of hundreds of thousands of cases from numerous jurisdictions. The intent of the instrument is that it can be universal; that is, it can be used in any jurisdiction in the country. Another feature of the instrument is that is comprised entirely of criminal history factors – information that would be readily available to a booking officer. In addition, several states, including Ohio, Virginia, Kentucky, Colorado, and Florida, have validated their pretrial risk instruments within their state. These developments mean that there will be a validated pretrial risk assessment tool available for use in every jurisdiction in the country.

Assessments for Persons Who Score Medium to High on a Risk/Needs Screen

Comprehensive criminogenic risk/need assessment instruments are targeted to those who scored medium to high on the quick screen, indicating that they may need more intensive intervention. Multipurpose risk/needs assessments are advantageous because they not only evaluate the risk of recidivism, but identify categories of needs in areas identified as being most likely to impact recidivism, including education, employment, financial, family, housing, leisure, substance abuse,

criminal thinking, and other personal needs. By discerning these criminogenic needs areas, the assessment tools identify targets for intervention.

Research consistently identifies eight major criminogenic needs, and further distinguishes between the "big four" (those most strongly related to re-offending) and the lesser four. They are:³

Big four criminogenic needs

1. History of antisocial behavior
2. Antisocial personality pattern
3. Antisocial cognition
4. Antisocial associates

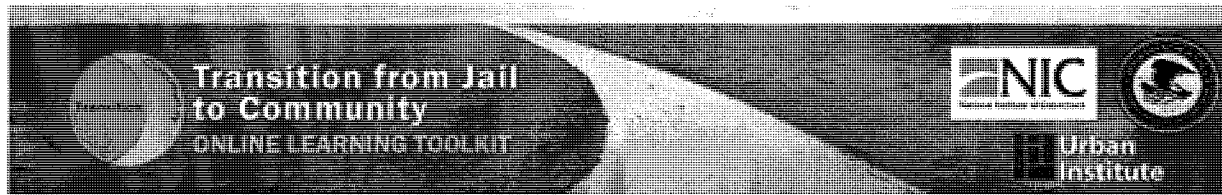
Lesser four criminogenic needs

1. Family/marital factors
2. Lack of achievement in education/employment
3. Lack of pro-social leisure or recreation activities
4. Substance abuse

1 of 4



³ Andrews, D.A., James Bonta, and J. Stephen Wormith. "The Recent Past and Near Future of Risk and/or Need Assessment." *Crime and Delinquency*, 52:1, 7-27.



Module 1: Getting Started

Module 2: Leadership, Vision and Organizational Culture

Module 3: Collaborative Structure and Joint Ownership

Module 4: Data-Driven Understanding of Local Reentry

Module 5: Targeted Intervention Strategies

Module 6: Screening and Assessment

- Section 1: The Need for Screening
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- **Section 3: Selecting Screens and Assessment Tools**
- Section 4: The Logistics of Screening and Assessment
- Section 5: Terms Used in the Field

Module 7: Transition Plan Development

Module 8: Targeted Transition Interventions

Module 9: Self-Evaluation and Sustainability

Section 3: Selecting Screens and Assessment Tools

The following table provides information on seven comprehensive risk/needs assessments for inmate treatment, planning, and placement.

Criminogenic Risk/Needs Assessment					
Tool Name	Cost	Time to Complete Interview	Inventory Items	Instrument Result	Additional Information
Level of Service Inventory - Revised (LSI-R)	\$2.20/use	60 minutes	54-item inventory - interview	Total risk/need score and 10 subdomain scores	http://www.mhs.com/
Level of Service / Case Management Inventory (LS-CMI)	\$2.20/use	120-180 minutes	124-item inventory - interview Risk, needs, responsibility. Case and release planning	Risk/needs score, responsibility score, generates plan for case management	http://www.mhs.com/
Correctional Offender Management Profiles for Alternative Sanctions (COMPAS)	Per user fee of approx. \$225/user/year	90 minutes	98-item inventory - interview Risk, needs, responsibility Case and release planning	Risk/needs score and plan for case management	www.northpointeinc.com
Ohio Risk Assessment System (ORAS)	No cost	45-90 minutes	101-item inventory - pretrial assessment, community supervision screening, community supervision full assessment, prison intake, prison reentry	Total risk/need score and 7 subdomain scores	http://www.uc.edu/corrections/services/risk-assessment.html
Wisconsin Risk/Needs	No cost	60 minutes	23 items - interview	Risk/needs score	Available in PDF from http://www.j-sat.com/
Applied Correctional Transition Strategy (ACTS)	By jurisdiction Software license or hosted online	45-minute initial interview Ongoing during jail transition planning and treatment	Risk triage + 17 item interview for full risk/needs, Additional modules for change readiness general responsibility, gender responsibility, ongoing jail transition planning and aftercare	Risk triage rating Risk score Needs rating Change readiness Targeted transition modules Transition plan, progress notes, and aftercare.	www.correctionspartners.com
Client Management Classification (CMC)	No cost	60-75 minutes	71 items - interview Risk, needs, responsibility Case and release planning	Risk/needs score and suggested plan for case management	nicic.org/Library/000532
Correctional Assessment Intervention System (CAIS)	By jurisdiction Software license or hosted online	60 - 75 minutes	82 items	Risk/needs score, generates plan for case management	http://www.nccd-crc.org/nccd/initiatives/cais-jais.html

Here we briefly discuss some other screens and assessments used in the jails and the community throughout the country.

Field notes from Hampden County, Massachusetts

The Hampden County, Massachusetts, Correctional Center uses the LSI-R short-form screening version (LSI-R: SV), which provides only a yes/no indication of need in eight categories. The total score ranges

from 0 to 8. As Hampden County screens all sentenced inmates entering the facility, it chose the short screening version because it takes only 10 minutes to administer, compared with nearly an hour for the long form.

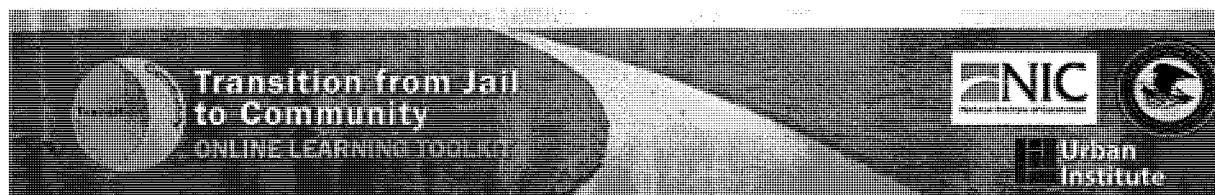
Specialized Screens and Assessments

Specialized screens and assessments, in conjunction with comprehensive general risk and needs assessments, can be used to contribute to targeted treatment and transitional planning. Selective use of one or more of these tools is recommended when an individual scores high on all or a section of a comprehensive risk/needs assessment. The tables below list commonly used behavioral health, substance abuse, and sex offender screens and assessments.

Behavioral Health Screens and Assessments

Specialized Screens and Assessments for Populations with Behavioral Health Issues					
Tool Name	Cost	Time to Complete Interview	Inventory Items	Instrument Result	Additional Information
The Brief Jail Mental Health Screen	No cost	Less than three minutes	Eight items – interview, behavioral health	Quick screen for the presence of a mental health disorder	gainscenter.samhsa.gov/html/resources/MHscreen.asp
Mental Health Screening Form-III	No cost	—Three to five minutes	17 items – interview, behavioral health	Quick screen for the presence of a mental health disorder	www.renocounseling.net/mhsf.pdf
Global Appraisal of Individual Needs – Short Screener (GAIN-SS)	By jurisdiction Software license or hosted online	Three to five Minutes	20 items – interview, behavioral health	Quick screen and identification of clients with one or more behavioral health concerns	http://www.gaincc.org/GAINSS
Global Appraisal of Individual Needs – (GAIN)	By jurisdiction Software license or hosted online	90–120 minutes	123 items – interview, behavioral health	Identification of clients with one or more behavioral health concerns	http://www.chestnut.org/
Hare Psychopathy Checklist–Revised: 2nd Edition (PCLR 2nd ed.)	Excluding start-up cost \$3/use	120–180 minutes	20-Item inventory + structured interview to assess psychopathy	Assessment of psychopathy	





The National Institute of Corrections

Department of Justice

Urban Institute

The Transition from Jail to Community Initiative

Module 1: Getting Started**Module 2:** Leadership, Vision and Organizational Culture**Module 3:** Collaborative Structure and Joint Ownership**Module 4:** Data-Driven Understanding of Local Reentry**Module 5:** Targeted Intervention Strategies**Module 6: Screening and Assessment**

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Here we briefly discuss some other screens and assessments used in the jails and the community throughout the country.

Medical Screens

1. The Texas Uniform Health Status Update is a medical screen that is easy to use and comes with user-friendly instructions. Some benefits of this screen are its one-page length and instructions to guide the screener on its use.

2. The New York City Correctional Health Services screen is a four-page screening instrument that uses prompting questions during the medical history section. The screen includes a section on the last page that reminds the staff to give each inmate three brochures on HIV, sexually transmitted disease, health, and dental needs.

Activities of Daily Living Screen

Dr. Brie Williams, a geriatrician and correctional health care expert, recommends that inmates who miss two or more of the following activities of daily living (ADL) answers be transferred directly to a nursing home or assisted living facility if family cannot care for them. Inmates who miss one ADL and/or have fallen in the past year should be assessed more carefully for possible assisted living or nursing home-level care.

Activities of Daily Living: Is the inmate able to do each of the following?

- Bathing: sponge, shower, and/or tub
- Dressing/undressing: able to pick out clothes, dress and undress self (tying shoes is not included)
- Toileting: able to get on/off toilet, clean self afterward
- Transferring: able to get in/out of bed and chair without assistance or mechanical aids
- Eating: able to completely feed self
- Mobility: able to walk without help except from cane, walker, or crutch and does not need lifting from bed

Suicide Risk Screens

1. The Texas Commission on Jail Standards' Mental Disability/Suicide Intake Screen is one page and determines if a further mental health evaluation is needed. Any positive response to the six suicide-related questions requires further evaluation of the person.

2. The Suicide Prevention Screening Guidelines, a 16-item screen developed by the New York Commission of Correction, has detailed instructions on how to administer it and is well-regarded by experts.

Alcohol or Drug Withdrawal Screens

1. The Clinical Institute Withdrawal Assessment for Alcohol (CIWA-AR) is a recommended alcohol withdrawal screen that can also be used for the psychoactive drug benzodiazepine. This screen requires five minutes to administer and may be reproduced freely.

2. Clinical Opiate Withdrawal Scale (COWS) is an opiate-withdrawal screen.

Substance Abuse Screens

1. U.S. Department of Health and Human Services – Simple Screening Instrument for Substance Abuse (pages 7 - 15).

Treatment Screens

1. CJ Comprehensive Intake (TCU CJ CI) is usually administered by a counselor in a face-to-face interview held one to three weeks after admission, when the offender has had time to detox and reach greater stabilization and cognitive focus (90 minutes).

2. CJ Client Evaluation of Self and Treatment, Intake Version (TCU CJ CEST-Intake) is a self-rating form completed by the offender at the time of admission to treatment. It includes short

scales for psychological adjustment, social functioning, and motivation. These scales also provide a baseline for monitoring offender performance and psychosocial changes during treatment (15 minutes).

3. CJ Client Evaluation of Self and Treatment (TCU CJ CEST) records offender ratings of the counselor, therapeutic groups, and the program in general. It also contains scales assessing psychological adjustment, social functioning, and motivation (35 minutes).

4. TCU Criminal Thinking Scales (TCU CTS) is a supplement to the Criminal Justice - Client Evaluation of Self at Intake (CJ-CESI) and CJ-CEST and is designed to measure "criminal thinking." The six criminal thinking scales are *Entitlement, Justification, Power Orientation, Cold Heartedness, Criminal Rationalization, and Personal Irresponsibility*, which represent concepts with special significance in treatment settings for correctional populations (five to ten minutes).

Homelessness Screens

1. New York City Department of Health Homelessness Checklist is a nine-item screen to determine the rate of homelessness of the jail population. The homeless are often frequent users of the jail and shelter system. Identifying this population can help your jail at incarceration transition to direct these individuals to supportive services and shelter or supportive housing at release instead of sending them back to the street, knowing that they will shortly return to jail.

Employment Assessments

An important issue to address among your jail population is its vocational and employment needs. Many maintain that there is a very strong connection between employment and crime: when individuals are working, they are less likely to be committing crimes. Thus, it is important that we do what we can to foster the employability of inmates when they leave our jails.

Many government and nonprofit agencies have developed tools to assess the employment readiness of people with criminal records. We include two employment assessment tools.

1. PS Plus Employment Assessment Form was developed in the United Kingdom for a prison and community-based project. It surveys for vocational interests, skills, and history; education levels and qualifications; and other barriers to employment, such as driver's license suspension.

2. Maryland Correctional Education Program Employment Survey was originally developed by the New Mexico Corrections Department and modified and adapted by the Maryland Correctional Education Program. This assessment tool poses a series of 49 questions intended to identify potential challenges the job seeker may face. This tool groups issues by the following six categories: education/training, personal/health, offender, attitude, support, and job search.

For more information and examples from the field

1. Mellow, Jeff, Debbie Mukamal, Stefan LoBuglio, Amy Solomon, and Jenny Osborne. 2008. *The Jail Administrator's Toolkit for Reentry*, Washington, DC: Bureau of Justice Assistance.

2. Orange County, CA. Pretrial risk assessment instrument and report analyzing risk scores by offender characteristics.

Prerelease Risk Information

1. Vetter, Stephanie J. and John Clark. 2013. *The Delivery of Pretrial Justice in Rural Areas*.

Proxy Information

1. Bogue, Brad, William Woodward and Lore Joplin. 2005. Using a Proxy Score to Pre-screen Offenders for Risk to Reoffend.

2. Davidson County, TN Sheriff's Office. 2010. A comparison of inmates completing Proxy questions and inmates released without Proxy scores.

3. Davidson County, TN Sheriff's Office. 2010. Proxy Data Report. Proxy report with data obtained during the initial classification assessment.

4. Denver Sheriff Department. Risk/Need Screening and Assessment Pilot Overview. Proxy pilot and Level of Service Inventory report including tables and graphs.

5. Denver Sheriff Department. Proxy assessment report.

6. Douglas County, KS Sheriff's Office. 2009. Douglas County Proxy Fact Sheet. Proxy fact sheet including a discussion on Proxy score ranges are determined.

7. Orange County, CA Sheriff's Department. 2009. Proxy Pilot 2009 Results. Proxy pilot report including tables and graphs.

8. Orange County, CA. Pilot proxy data spreadsheet.



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TAB 37

ABA CRIMINAL JUSTICE STANDARDS ON PRETRIAL RELEASE

Third Edition

Approved by the ABA House of Delegates, February 2002

PART I. GENERAL PRINCIPLES

Standard 10-1.1 Purposes of the pretrial release decision

The 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 judge or judicial officer decides whether to release a defendant on personal recognizance or unsecured appearance bond, release a defendant on a condition or combination of conditions, temporarily detain a defendant, or detain a defendant according to procedures outlined in these Standards. 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.

Standard 10-1.2. Release under least restrictive conditions; diversion and other alternative release options

In deciding pretrial release, the judicial officer should assign the least restrictive condition(s) of release that will reasonably ensure a defendant's attendance at court proceedings and protect the community, victims, witnesses or any other person. Such conditions may include participation in drug treatment, diversion programs or other pre-adjudication alternatives. The court should have a wide array of programs or options available to promote pretrial release on conditions that ensure appearance and protect the safety of the community, victims and witnesses pending trial and should have the capacity to develop release options appropriate to the risks and special needs posed by defendants, if released to the community. When no conditions of release are sufficient to accomplish the aims of pretrial release, defendants may be detained through specific procedures.

Standards 10-1.3. Use of citations and summonses

The principle of release under least restrictive conditions favors use of citations by police or summons by judicial officers in lieu of arrest at stages prior to first judicial appearance in cases involving minor offenses. In determining whether an offense is minor, consideration should be given to whether the alleged crime involved the use or threatened use of force or violence, possession of a weapon, or violation of a court order protecting the safety of persons or property.

Standard 10-1.4. Conditions of release

(a) Consistent with these Standards, each jurisdiction should adopt procedures designed to promote the release of defendants on their own recognizance or, when necessary, unsecured bond. Additional conditions should be imposed on release only when the need is demonstrated by the facts of the individual case reasonably to ensure appearance at court proceedings, to protect the community, victims, witnesses or any other person and to maintain the integrity of the judicial process. Whenever possible, methods for providing the appropriate judicial officer with reliable information relevant to the release decision should be developed, preferably through a pretrial services agency or function, as described in Standard 10-1.9.

(b) When release on personal recognizance is not appropriate reasonably to ensure the defendant's appearance at court and to prevent the commission of criminal offenses that threaten the safety of the community or any person, constitutionally permissible non-financial conditions of release should be employed consistent with Standard 10-5.2.

(c) Release on financial conditions should be used only when no other conditions will ensure appearance. When financial conditions are imposed, the court should first consider releasing the defendant on an unsecured bond. If unsecured bond is not deemed a sufficient condition of release, and the court still seeks to impose monetary conditions, bail should be set at the lowest level necessary to ensure the defendant's appearance and with regard to a defendant's financial ability to post bond.

(d) Financial conditions should not be employed to respond to concerns for public safety.

(e) The judicial officer should not impose a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant's inability to pay.

(f) Consistent with the processes provided in these Standards, compensated sureties should be abolished. When financial bail is imposed, the defendant should be released on the deposit of cash or securities with the court of not more than ten percent of the amount of the bail, to be returned at the conclusion of the case.

Standard 10-1.5. Pretrial release decision may include diversion and other adjudication alternatives supported by treatment programs

In addition to employing release conditions outlined in Standard 10-1.4, jurisdictions should develop diversion and alternative adjudication options, including drug, mental health and other treatment courts or other approaches to monitoring defendants during pretrial release.

Standard 10-1.6. Detention as an exception to policy favoring release

These Standards limit the circumstances under which pretrial detention may be authorized and provide procedural safeguards to govern pretrial detention proceedings. They establish specific criteria and procedures for effecting the pretrial detention of certain defendants after the court determines that these defendants pose a substantial risk of flight, or threat to the safety of the community, victims or witnesses or to the integrity of the justice process. The status of detained defendants should be monitored and their eligibility for release should be reviewed throughout the adjudication period. The cases of detained defendants should be given priority in scheduling for trial.

Standard 10-1.7. Consideration of the nature of the charge in determining release options

Although the charge itself may be a predicate to pretrial detention proceedings, the judicial officer should exercise care not to give inordinate weight to the nature of the present charge in evaluating factors for the pretrial release decision except when, coupled with other specified factors, the charge itself may cause the initiation of a pretrial detention hearing pursuant to the provisions of Standard 10-5.9.

Standard 10-1.8. Pretrial release decision should not be influenced by publicity or public opinion

The judicial officer should not be influenced by publicity surrounding a case or attempt to placate public opinion in making a pretrial release decision.

Standard 10-1.9. Implication of policy favoring release for supervision in the community

The policy favoring pretrial release and selective use of pretrial detention is inextricably tied to explicit recognition of the need to supervise safely large numbers of defendants in the community pending adjudication of their cases. To be effective, these policies require sufficient informational and supervisory resources.

Standard 10-1.10. The role of the pretrial services agency

Every jurisdiction should establish a pretrial services agency or program to collect and present the necessary information, present risk assessments, and, consistent with court policy, make release recommendations required by the judicial officer in making release decisions, including the defendant's eligibility for diversion, treatment or other alternative adjudication programs, such as drug or other treatment courts. Pretrial services should also monitor, supervise, and assist defendants released prior to trial, and to review the status and release eligibility of detained defendants for the court on an ongoing basis.

The pretrial services agency should:

- (a) conduct pre-first appearance inquiries;
- (b) present accurate information to the judicial officer relating to the risk defendants may pose of failing to appear in court or of threatening the safety of the community or any other person and, consistent with court policy, develop release recommendations responding to risk;
- (c) develop and provide appropriate and effective supervision for all persons released pending adjudication who are assigned supervision as a condition of release;
- (d) develop clear policy for operating or contracting for the operation of appropriate facilities for the custody, care or supervision of persons released and manage a range of release options, including but not limited to, residential half-way houses, addict and alcoholic treatment centers, and counseling services, sufficient to respond to the risks and problems associated with released defendants in coordination with existing court, corrections and community resources;
- (e) monitor the compliance of released defendants with the requirements of assigned release conditions and develop relationships with alternative programs such as drug and domestic violence courts or mental health support systems;
- (f) promptly inform the court of all apparent violations of pretrial release conditions or arrests of persons released pending trial, including those directly supervised by pretrial services as well as those released under other forms of conditional release, and recommend appropriate modifications of release conditions according to approved court policy. The pretrial services agency should avoid supervising defendants who are government informants, when activities of these defendants may place them in conflict with conditions of release or compromise the safety and integrity of the pretrial services professional;
- (g) supervise and coordinate the services of other agencies, individuals or organizations that serve as custodians for released defendants, and advise the court as to their appropriateness, availability, reliability and capacity according to approved court policy relating to pretrial release conditions;

(h) review the status of detained defendants on an ongoing basis for any changes in eligibility for release options and facilitate their release as soon as feasible and appropriate;

(i) develop and operate an accurate information management system to support prompt identification, information collection and presentation, risk assessment, release conditions selection, compliance monitoring and detention review functions essential to an effective pretrial services agency;

(j) assist persons released prior to trial in securing any necessary employment, medical, drug, mental or other health treatment, legal or other needed social services that would increase the chances of successful compliance with conditions of pretrial release;

(k) remind persons released before trial of their court dates and assist them in attending court; and

(l) have the means to assist persons who cannot communicate in written or spoken English.

PART II. Release By Law Enforcement Officer Acting Without An Arrest Warrant

Standard 10-2.1. Policy favoring issuance of citations

It should be the policy of every law enforcement agency to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law. This policy should be implemented by statutes of statewide applicability.

Standard 10-2.2. Mandatory issuance of citation for minor offenses

(a) Except as provided in paragraph (c), a police officer who has grounds to arrest a person for a minor offense should be required to issue a citation in lieu of taking the accused to the police station or to court. In determining whether an offense is minor, the police officer should consider whether the alleged crime involved the use or threatened use of force or violence, possession of a weapon, or violation of a court order protecting the safety of persons or property.

(b) Except as provided in paragraph (c), when a person in custody has been taken to a police station and a decision has been made to charge the person with a minor offense, the responsible officer should be required to issue a citation in lieu of continued custody.

(c) The defendant may be detained when an otherwise lawful arrest or detention is necessary to ensure the safety of any person or the community, or when the accused:

(i) is subject to lawful arrest and fails to identify himself or herself satisfactorily;

(ii) refuses to sign the citation after the officer explains to the accused that the citation does not constitute an admission of guilt and represents only the accused's promise to appear;

(iii) has no ties to the jurisdiction reasonably sufficient to ensure the accused's appearance in court and there is a substantial likelihood that the accused will refuse to respond to a citation;

(iv) previously has failed to appear in response to a citation, summons, or other legal process for an offense;

(v) is not in compliance with release conditions in another case or subject to a court order or is on probation or parole; or

(vi) poses a substantial likelihood of continuing the criminal conduct if not arrested.

(d) When an officer fails to issue a citation for a minor offense, but instead takes a suspect into custody, the law enforcement agency should be required to indicate the reasons in writing.

(e) Notwithstanding the issuance of a citation, a law enforcement officer should be authorized to transport or arrange transportation for a cited person to an appropriate facility if the person appears mentally or physically unable to care for himself or herself.

Standard 10-2.3. Permissive authority to issue citations in all cases

Each law enforcement agency should promulgate regulations designed to increase the use of citations to the greatest degree consistent with public safety. Except when arrest or continued custody is necessary, the regulations should require such inquiry as is practicable into the accused's place and length of residence, family relationships, references, present and past employment, criminal record, and any other facts relevant to appearance in response to a citation.

Standard 10-2.4. Lawful searches

When an officer makes a lawful arrest, the defendant's subsequent release on citation should not affect the lawfulness of any search incident to the arrest.

PART III. Issuance of Summons in Lieu of Arrest

Standard 10-3.1. Authority to issue summons

All judicial officers should be given statutory authority to issue a summons rather than an arrest warrant in all cases in which a complaint, information, or indictment is filed or returned against a person not already in custody. Judicial officers should liberally utilize this authority unless a warrant is necessary to prevent flight, to ensure the safety of the defendant, any other person or the community, to prevent commission of future crimes or to subject a defendant to the jurisdiction of the court when the defendant's whereabouts are unknown. If a judicial officer issues a summons rather than an arrest warrant in connection with an offense, absent exigent circumstances, no law enforcement officer may arrest the accused for that offense without obtaining a warrant.

Standard 10-3.2. Mandatory issuance of summons

A summons rather than an arrest warrant should be mandatory in all cases involving minor offenses unless the judicial officer finds that:

- (a) the accused is subject to lawful arrest and fails to identify himself or herself satisfactorily;
- (b) the whereabouts of the accused are unknown and the issuance of an arrest warrant is necessary to subject the accused to the jurisdiction of the court;
- (c) an otherwise lawful arrest or detention is necessary to ensure the safety of any other person or the community;
- (d) the accused has no ties to the community reasonably sufficient to ensure appearance and there is a substantial likelihood that the accused will refuse to respond to a summons;
- (e) the accused previously has failed to appear without just cause in response to a citation, summons, or other legal process;
- (f) the accused is not in compliance with release conditions in another case or is subject to a court order or is on probation or parole; or
- (g) the accused poses a substantial likelihood of continuing the criminal conduct if not arrested.

Standard 10-3.3. Application for an arrest warrant or summons

(a) Time permitting, in those cases in which the judicial officer has discretion to issue a summons instead of an arrest warrant, the judicial officer should consider:

(i) the accused's ties to the community, including factors such as age, residence, employment and family relationships, reasonably sufficient to ensure appearance;

(ii) the nature of the alleged offense and potential penalty;

(iii) the accused's past history of response to legal process;

(iv) the accused's past criminal record;

(v) whether the case involves a juvenile or adult offense; and

(vi) whether the accused is in compliance with release conditions in another case or subject to a court order or on probation or parole.

(b) The judicial officer ordinarily should issue a summons in lieu of an arrest warrant when the prosecutor so requests.

(c) In any case in which the judicial officer issues a warrant, the judicial officer should state the reasons in writing or on the record for failing to issue a summons.

**PART IV. Release by Judicial Officer
at First Appearance or Arraignment**

Standard 10-4.1. Prompt first appearance

(a) Arrests should not be timed to cause or extend unnecessary pretrial detention.

(b) Unless the defendant is released on citation or in some other lawful manner, the defendant should be taken before a judicial officer without unnecessary delay. The defendant should be presented at the next judicial session within [six hours] after arrest. In jurisdictions where this is not possible, the defendant should in no instance be held by police longer than 24 hours without appearing before a judicial officer. Judicial officers should be readily available to conduct first appearances within the time limits established by this Standard. Where a crime of violence is implicated, an assessment of the risk posed by the defendant to the victim(s) and community should be completed prior to the first appearance; but a defendant's first appearance should not ordinarily be delayed in order to conduct in-custody interrogation or other in-custody investigation. A defendant who is not promptly presented should be entitled to immediate release under appropriate conditions unless pretrial detention is ordered as provided in Standards 10-5.8 through 10-5.10.

Standard 10-4.2. Investigation prior to first appearance: development of background information to support release or detention determination

(a) In all cases in which the defendant is in custody and charged with a criminal offense, an investigation to provide information relating to pretrial release should be conducted by pretrial services or the judicial officer prior to or contemporaneous with a defendant's first appearance.

(b) Pretrial services should advise the defendant that:

(i) the pretrial services interview is voluntary;

(ii) the pretrial services interview is intended solely to assist in determining an appropriate pretrial release option for the defendant;

(iii) any responsive information provided by the defendant during the pretrial services interview will not be used in the current or a substantially-related case either to adjudicate guilt or to arrive at a sentencing decision; but

(iv) the voluntary information provided by the defendant during the pretrial services interview may be used in prosecution for perjury or for purposes of impeachment.

(c) Release may not be denied solely because the defendant has refused the pretrial services interview.

(d) The pretrial services interview should include advising the defendant that penalties may be imposed for providing false information.

(e) The pretrial services interview of the defendant should carefully exclude questions relating to the events or the details of the current charge.

(f) The pretrial services investigation should include factors related to assessing the defendant's risk of flight or of threat to the safety of the community or any person, or to the integrity of the judicial process. Information relating to these factors and the defendant's suitability for release under conditions should be gathered systematically and considered by the judicial officer in making the pretrial release decision at first appearance and at subsequent stages when pretrial release is considered.

(g) The pretrial services investigation should focus on assembling reliable and objective information relevant to determining pretrial release and should be organized according to an explicit, objective and consistent policy for evaluating risk and identifying appropriate release options. The information gathered in the pre-first appearance investigation should be

demonstrably related to the purposes of the pretrial release decision and should include factors shown to be related to risk of flight or of threat to the safety of any person or the community and to selection of appropriate release conditions, and may include such factors as:

- (i) the nature and circumstances of the charge when relevant to determining release conditions, consistent with subsection (e) above;
- (ii) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;
- (iii) whether at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense;
- (iv) the availability of persons who agree to assist the defendant in attending court at the proper time and other information relevant to successful supervision in the community;
- (v) any facts justifying a concern that a defendant will fail to attend court or pose a threat to the safety of any person or the community; and
- (vi) factors that may make the defendant eligible and an appropriate subject for conditional release and supervision options, including participation in medical, drug, mental health or other treatment, diversion or alternative adjudication release options.

(h) The presentation of the pretrial services information to the judicial officer should link assessments of risk of flight and of public safety threat during pretrial release to appropriate release options designed to respond to the specific risk and supervision needs identified. The identification of release options by pretrial services for the consideration of the judicial officer should be based on detailed agency guidelines developed in consultation with the judiciary to assist in pretrial release decisions. Suggested release options should be supported by objective, consistently applied criteria contained in the guidelines. The results of the pretrial services investigation and recommendation of release options should be promptly transmitted to relevant first-appearance participants before the hearing, including information relevant to alternative release options, conditional release treatment and supervision programs, or eligibility for pretrial detention, so that appropriate actions may be taken in a timely fashion.

Standard 10-4.3. Nature of first appearance

(a) The first appearance before a judicial officer should take place in such physical surroundings as are appropriate to the administration of justice. Each case should receive individual treatment, and decisions should be based on the particular facts of the case and information relevant to the purposes of the pretrial release decision as established by law and court procedure. The proceedings should be conducted in clear and easily understandable language calculated to advise defendants effectively of their rights and the actions to be taken against them. The first appearance should be conducted in such a way that other interested persons may attend or observe the proceedings.

(b) At the defendant's first appearance, the judicial officer should provide the defendant with a copy of the charging document and inform the defendant of the charge and the maximum possible penalty on conviction, including any mandatory minimum or enhanced sentence provision that may apply. The judicial officer should advise the defendant that the defendant:

(i) is not required to say anything, and that anything the defendant says may be used against him or her;

(ii) if represented by counsel who is present, may communicate with his or her attorney at the time of the hearing;

(iii) has a right to counsel in future proceedings, and that if the defendant cannot afford a lawyer, one will be appointed;

(iv) if not a citizen, may be adversely affected by collateral consequences of the current charge, such as deportation;

(v) if a juvenile being treated as an adult, has the right, where applicable, to the presence of a parent or guardian;

(vi) if necessary, has the right to an interpreter to be present at proceedings; and

(vii) where applicable, has a right to a preliminary examination or hearing.

(c) Unless the defendant is released at the first appearance, if the defendant is not represented, counsel should be appointed immediately. The next judicial proceeding should occur promptly, but not until the defendant and defense counsel have had an adequate opportunity to confer, unless the defendant has intelligently waived the right to be represented by counsel.

(d) The defendant should be provided an opportunity to communicate with family or friends for the purposes of facilitating pretrial release or representation by counsel.

(e) A record should be made of the proceedings at first appearance. The defendant also should be advised of the nature and approximate schedule of all further proceedings to be taken in the case.

(f) The judicial officer should decide pretrial release in accordance with the general principles identified in these Standards.

(g) If, at the first appearance, the prosecutor requests the pretrial detention of a defendant under Standards 10-5.8 through 10-5.10, a judicial officer should be authorized, after a finding of probable cause to believe that a defendant has committed an offense as alleged in the charging document, to order temporary pretrial detention following procedures under Standard 10-5.7 or to conduct a pretrial detention hearing under Standard 10-5.10.

PART V. The Release and Detention Decisions

Standard 10-5.1. Release on defendant's own recognizance

(a) It should be presumed that defendants are entitled to release on personal recognizance on condition that they attend all required court proceedings and they do not commit any criminal offense. This presumption may be rebutted by evidence that there is a substantial risk of nonappearance or need for additional conditions as provided in Standard 10-5.2, or by evidence that the defendant should be detained under Standards 10-5.8, 10-5.9 and 10-5.10 or conditionally released pending diversion or participation in an alternative adjudication program as permitted under Standard 10-1.5.

(b) In determining whether there is a substantial risk of nonappearance or threat to the community or any person or to the integrity of the judicial process if the defendant is released, the judicial officer should consider the pretrial services assessment of the defendant's risk of willful failure to appear in court or risk of threat to the safety of the community or any person, victim or witness. This may include such factors as:

(i) the nature and circumstances of the offense when relevant to determining release conditions;

(ii) the defendant's character, physical and mental condition, family ties, employment status and history, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;

(iii) whether at the time of the current offense or arrest, the person was on probation, parole, or other release pending trial, sentencing, appeal, or

completion of sentence for an offense;

(iv) availability of persons who agree to assist the defendant in attending court at the proper time and other information relevant to successful supervision in the community;

(v) any facts justifying a concern that the defendant will violate the law if released without restrictions; and

(vi) factors that may make the defendant eligible and an appropriate subject for conditional release and supervision options, including participation in medical, drug, mental health or other treatment, diversion or alternative adjudication release options.

(c) In the event the judicial officer determines that release on personal recognizance is unwarranted, the officer should include in the record a statement, written or oral, of the reasons for this decision.

Standard 10-5.2. Conditions of release

(a) If a defendant is not released on personal recognizance or detained pretrial, the court should impose conditional release, including, in all cases, a condition that the defendant attend all court proceedings as ordered and not commit any criminal offense. In addition, the court should impose the least restrictive of release conditions necessary reasonably to ensure the defendant's appearance in court, protect the safety of the community or any person, and to safeguard the integrity of the judicial process. The court may:

(i) release the defendant to the supervision of a pretrial services agency, or require the defendant to report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

(ii) release the defendant into the custody or care of some other qualified organization or person responsible for supervising the defendant and assisting the defendant in making all court appearances. Such supervisor should be expected to maintain close contact with the defendant, to assist the defendant in making arrangements to appear in court, and, when appropriate, accompany the defendant to court. The supervisor should not be required to be financially responsible for the defendant nor to forfeit money in the event the defendant fails to appear in court. The supervisor should promptly report a defendant's failure to comply with release conditions to the pretrial services agency or inform the court;

(iii) impose reasonable restrictions on the activities, movements, associations, and residences of the defendant, including curfew, stay away

orders, or prohibitions against the defendant going to certain geographical areas or premises;

(iv) prohibit the defendant from possessing any dangerous weapons and order the defendant to immediately turn over all firearms and other dangerous weapons in defendant's possession or control to an agency or responsible third party designated by the court. Prohibit the defendant from engaging in certain described activities, or using intoxicating liquors or certain drugs;

(v) conditionally release the defendant pending diversion or participation in an alternative adjudication program, such as drug, mental health or other treatment courts;

(vi) require the defendant to be released on electronic monitoring, be evaluated for substance abuse treatment, undergo regular drug testing, be screened for eligibility for drug court or other drug treatment program, undergo mental health or physical health screening for treatment, participate in appropriate treatment or supervision programs, be placed under house arrest or subject to other release options or conditions as may be necessary reasonably to ensure attendance in court, prevent risk of crime and protect the community or any person during the pretrial period;

(vii) require the defendant to post financial conditions as outlined under Standard 10-5.3, execute an agreement to forfeit, upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to ensure the appearance of the defendant, and order the defendant to provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial officer may require;

(viii) require the defendant to return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(ix) impose any other reasonable restriction designed to ensure the defendant's appearance, to protect the safety of the community or any person, and to prevent intimidation of witnesses or interference with the orderly administration of justice.

(b) After reasonable notice to the defendant and a hearing, when requested and appropriate, the judicial officer may at any time amend the order to impose additional or different conditions of release.

Standard 10-5.3. Release on financial conditions

(a) Financial conditions other than unsecured bond should be imposed only when no other less restrictive condition of release will reasonably ensure the defendant's appearance in court. The judicial officer should not impose a financial condition that results in the pretrial detention of the defendant solely due to an inability to pay.

(b) Financial conditions of release should not be set to prevent future criminal conduct during the pretrial period or to protect the safety of the community or any person.

(c) Financial conditions should not be set to punish or frighten the defendant or to placate public opinion.

(d) On finding that a financial condition of release should be set, the judicial officer should require the first of the following alternatives thought sufficient to provide reasonable assurance of the defendant's reappearance:

(i) the execution of an unsecured bond in an amount specified by the judicial officer, either signed by other persons or not;

(ii) the execution of an unsecured bond in an amount specified by the judicial officer, accompanied by the deposit of cash or securities equal to ten percent of the face amount of the bond. The full deposit should be returned at the conclusion of the proceedings, provided the defendant has not defaulted in the performance of the conditions of the bond; or

(iii) the execution of a bond secured by the deposit of the full amount in cash or other property or by the obligation of qualified, uncompensated sureties.

(e) Financial conditions should be the result of an individualized decision taking into account the special circumstances of each defendant, the defendant's ability to meet the financial conditions and the defendant's flight risk, and should never be set by reference to a predetermined schedule of amounts fixed according to the nature of the charge.

(f) Financial conditions should be distinguished from the practice of allowing a defendant charged with a traffic or other minor offense to post a sum of money to be forfeited in lieu of any court appearance. This is in the nature of a stipulated fine and, where permitted, may be employed according to a predetermined schedule.

(g) In appropriate circumstances when the judicial officer is satisfied that such an arrangement will ensure the appearance of the defendant, third parties should be permitted to fulfill these financial conditions,

Standard 10-5.4. Release order provisions

In a release order, the judicial officer should:

(a) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the defendant's conduct; and

(b) advise the person of:

(i) the consequences of violating a condition of release, including the immediate issuance of a warrant for the defendant's arrest and possible criminal penalties;

(ii) the prohibitions against threats, force, or intimidation of witnesses, jurors and officers of the court, obstruction of criminal investigations and retaliation against a witness, victim or informant; and

(iii) the prohibition against any criminal conduct during pretrial release.

Standard 10-5.5. Willful failure to appear or to comply with conditions

The judicial officer may order a prosecution for contempt if the person has willfully failed to appear in court or otherwise willfully violated a condition of pretrial release. Willful failure to appear in court without just cause after pretrial release should be made a criminal offense.

Standard 10-5.6. Sanctions for violations of conditions of release, including revocation of release

(a) A person who has been released on conditions and who has violated a condition of release, including willfully failing to appear in court, should be subject to a warrant for arrest, modification of release conditions, revocation of release, or an order of detention, or prosecution on available criminal charges.

(b) A proceeding for revocation of a release order may be initiated by a judicial officer, the prosecutor, or a representative of the pretrial services agency. A judicial officer may issue a warrant for the arrest of a person charged with violating a release condition. Once apprehended, the person should be brought before a judicial officer. To the extent practicable, a defendant charged with willfully violating the condition of release should be brought before the judicial officer whose order is alleged to have been violated. The judicial officer should review the conditions of release previously ordered and set new or additional conditions.

(c) The judicial officer may enter an order of revocation and detention, if, after notice and a hearing, the judicial officer finds that there is:

(i) probable cause to believe that the person has committed a new crime while on release; or

(ii) clear and convincing evidence that the person has violated any other conditions of release; and

(iii) clear and convincing evidence, under the factors set forth in Standard 10-5.8, that there is no condition or combinations of conditions that the defendant is likely to abide by that would reasonably ensure the defendant's appearance in court and protect the safety of the community or any person

(d) When a defendant has been charged with a new offense or violations of any conditions of release, he may be temporarily detained pending hearing after notice of the charges for a period of not more than [five calendar days] under this Standard.

Standard 10-5.7. Bases for temporary pretrial detention for defendants on release in another case

(a) The judicial officer may order the temporary detention of a defendant released in another case upon a showing of probable cause that the defendant has committed a new offense as alleged in the charging document if the judicial officer determines that the defendant:

(i) is and was at the time the alleged offense was committed:

(A) on release pending trial for a serious offense;

(B) on release pending imposition or execution of sentence, appeal of sentence or conviction, for any offense; or

(C) on probation or parole for any offense; and

(ii) may flee or pose a danger to the community or to any person.

(b) Unless a continuance is requested by the defense attorney, the judicial officer may order the detention of the defendant for a period of not more than [three calendar days], and direct the attorney for the government to notify the appropriate court, probation or parole official, or Federal, State or local law enforcement official to determine whether revocation proceedings on the first offense should be initiated or a detainer lodged.

(c) At the end of the period of temporary detention, the defendant should have a hearing on the release or detention of the defendant on the new charged offense. If such a

hearing is not conducted [within five calendar days], the defendant should be released on appropriate conditions pending trial.

Standard 10-5.8. Grounds for pretrial detention

(a) If, in cases meeting the eligibility criteria specified in Standard 10-5.9 below, after a hearing and the presentment of an indictment or a showing of probable cause in the charged offense, the government proves by clear and convincing evidence that no condition or combination of conditions of release will reasonably ensure the defendant's appearance in court or protect the safety of the community or any person, the judicial officer should order the detention of the defendant before trial.

(b) In considering whether there are any conditions or combinations of conditions that would reasonably ensure the defendant's appearance in court and protect the safety of the community and of any person, the judicial officer should take into account such factors as:

- (i) the nature and circumstances of the offense charged;
- (ii) the nature and seriousness of the danger to any person or the community, if any, that would be posed by the defendant's release;
- (iii) the weight of the evidence;
- (iv) the person's character, physical and mental condition, family ties, employment status and history, financial resources, length of residence in the community, including the likelihood that the defendant would leave the jurisdiction, community ties, history relating to drug or alcohol abuse, criminal history, and record of appearance at court proceedings;
- (v) whether at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense;
- (vi) the availability of appropriate third party custodians who agree to assist the defendant in attending court at the proper time and other information relevant to successful supervision in the community;
- (vii) any facts justifying a concern that a defendant will present a serious risk of flight or of obstruction, or of danger to the community or the safety of any person.

(c) In cases charging capital crimes or offenses punishable by life imprisonment without parole, where probable cause has been found, there should be a rebuttable presumption that the defendant should be detained on the ground that no condition or combination of conditions of release will reasonably ensure the safety of the community or

any person or the defendant's appearance in court. In the event the defendant presents information by proffer or otherwise to rebut the presumption, the grounds for detention must be found to exist by clear and convincing evidence.

Standard 10-5.9. Eligibility for pretrial detention and initiation of the detention hearing

(a) The judicial officer should hold a hearing to determine whether any condition or combination of conditions will reasonably ensure the defendant's appearance in court and protect the safety of the community or any person. The judicial officer may not order the detention of a defendant before trial except:

(i) upon motion of the prosecutor in a case that involves:

(A) a crime of violence or dangerous crime; or

(B) a defendant charged with a serious offense on release pending trial for a serious offense, or on release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence; or on probation or parole for a serious offense involving a crime of violence, a dangerous crime; or

(ii) upon motion of the prosecutor or the judicial officer's own initiative, in a case that involves:

(A) a substantial risk that a defendant charged with a serious offense will fail to appear in court or flee the jurisdiction; or

(B) a substantial risk that a defendant charged in any case will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate a prospective witness or juror.

(b) If the judicial officer finds that probable cause exists, except for a defendant held under temporary detention, the hearing should be held immediately upon the defendant's first appearance before the judicial officer unless the defendant or the prosecutor seeks a continuance. Except for good cause shown, a continuance on motion of the defendant or the prosecutor should not exceed [five working days]. Pending the hearing, the defendant may be detained.

(c) A motion to initiate pretrial detention proceedings may be filed at any time regardless of a defendant's pretrial release status.

Standard 10-5.10. Procedures governing pretrial detention hearings: judicial orders for detention and appellate review

- (a) At any pretrial detention hearing, defendants should have the right to:
 - (i) be present and be represented by counsel and, if financially unable to obtain counsel, to have counsel appointed;
 - (ii) testify and present witnesses on his or her own behalf;
 - (iii) confront and cross-examine prosecution witnesses; and,
 - (iv) present information by proffer or otherwise.
- (b) The defendant may be detained pending completion of the pretrial detention hearing.
- (c) The duty of the prosecution to release to the defense exculpatory evidence reasonably within its custody or control should apply at the pretrial detention hearing.
- (d) At any pretrial detention hearing, the rules governing admissibility of evidence in criminal trials should not apply. The court should receive all relevant evidence. All evidence should be recorded. The testimony of a defendant should not be admissible in any other criminal proceedings against the defendant in the case in chief, other than a prosecution for perjury based upon that testimony or for the purpose of impeachment in any subsequent proceedings.
- (e) In pretrial detention proceedings under Standard 10-5.8 or 10-5.9, where there is no indictment, the prosecutor should establish probable cause to believe that the defendant committed the predicate offense.
- (f) In pretrial detention proceedings, the prosecutor should bear the burden of establishing by clear and convincing evidence that no condition or combination of conditions of release will reasonably ensure the defendant's appearance in court and protect the safety of the community or any person.
- (g) A judicial order for pretrial detention should be subject to the following limitations and requirements.
 - (i) Unless the defendant consents, no order for pretrial detention should be entered by the court except on the conclusion of a full pretrial detention hearing as provided for within these Standards.
 - (ii) If, on conclusion of a pretrial detention hearing, the court determines by clear and convincing evidence that no condition or combination of conditions will reasonably ensure the appearance of the person as required,

and the safety of any other person and the community pursuant to the criteria established within these Standards, the judicial officer should state the reasons for pretrial detention on the record at the conclusion of the hearing or in written findings of fact within [three days]. The order should be based solely upon evidence provided for the pretrial detention hearing. The court's statement on the record or in written findings of fact should include the reasons for concluding that the safety of the community or of any person, the integrity of the judicial process, and the presence of the defendant cannot be reasonably ensured by setting any conditions of release or by accelerating the date of trial.

(iii) The court's order for pretrial detention should include the date by which the detention must be considered de novo, in most cases not exceeding [90 days]. A defendant may not be detained after that date without a pretrial detention hearing to consider extending pretrial detention an additional [90 days] following procedures under Standards 10-5.8, 10-5.9 and this Standard. If a pretrial detention hearing to consider extending detention of the defendant is not held on or before that date, the defendant who is held beyond the time of the detention order should be released immediately under reasonable conditions that best minimize the risk of flight and danger to the community.

(iv) Nothing in these Standards should be construed as modifying or limiting the presumption of innocence.

(h) A pretrial detention order should be immediately appealable by either the prosecution or the defense and should receive expedited appellate review. If the detention decision is made by a judicial officer other than a trial court judge, the appeals should be de novo. Appeals from decisions of trial court judges to appellate judges should be reviewed under an abuse of discretion standard.

Standard 10-5.11. Requirement for accelerated trial for detained defendants

Every jurisdiction should establish, by statute or court rule, accelerated time limitations within which detained defendants should be tried consistent with the sound administration of justice. These accelerated time limitations should be shorter than current speedy trial time limitations applicable to defendants on pretrial release. The failure to try a detained defendant within such accelerated time limitations should result in the defendant's immediate release from detention under reasonable conditions that best minimize the risk of flight and danger to the community pending trial, unless the delay is attributable to or agreed to by the defendant

Standard 10-5.12. Re-examination of the release or detention decision: status reports regarding pretrial detainees

(a) Upon motion by the defense, prosecution or by request of the pretrial services agency supervising released defendants alleging changed or additional circumstances, the court should promptly reexamine its release decision including any conditions placed upon release or its decision authorizing pretrial detention under Standards 10-5.8 through 10-5.10. The judicial officer may, after notice and hearing when appropriate, at any time add or remove restrictive conditions of release, short of ordering pretrial detention, to ensure court attendance and prevent criminal law violation by the defendant.

(b) The pretrial services agency, prosecutor, jail staff or other appropriate justice agency should be required to report to the court as to each defendant, other than one detained under Standards 10-5.8, 10-5.9 and 10-5.10, who has failed to obtain release within [24 hours] after entry of a release order under Standard 10-5.4 and to advise the court of the status of the case and of the reasons why a defendant has not been released.

(c) For pretrial detainees subject to pretrial detention orders, the prosecutor, pretrial services agency, defender, jail staff, or other appropriate agency should file a report with the court regarding the status of the defendant's case and detention regarding the confinement of defendants who have been held more than [90 days] without a court order in violation of Standards 10-5.10(g)(iii) and 10-5.11.

Standard 10-5.13. Trial

The fact that a defendant has been detained pending trial should not be allowed to prejudice the defendant at the time of trial or sentencing. The court should ensure that the trial jury is unaware of the defendant's detention.

Standard 10-5.14. Credit for pre-adjudication detention

Every convicted defendant should be given credit, against both a maximum and minimum term or a determinate sentence, for all time spent in custody as a result of the criminal charge for which a sentence of imprisonment is imposed.

Standard 10-5.15. Temporary release of a detained defendant for compelling necessity

Upon a showing by defense counsel of compelling necessity, including for matters related to preparation of the defendant's case, a judicial officer who entered an order of pretrial detention under Standards 10-5.8 through 10-5.10 may permit the temporary release of a pretrial detained person to the custody of a law enforcement or other court officer, subject to appropriate conditions of temporary release.

Standard 10-5.16. Circumstances of confinement of defendants detained pending adjudication

Defendants detained pending adjudication should be confined in facilities separate from convicted persons awaiting sentencing or serving sentences or held in custody pending appeal. The rights and privileges of defendants detained pending adjudication should not be more restricted than those of convicted defendants who are imprisoned. Detained defendants should be provided with adequate means to assist in their own defense. This requirement includes but is not limited to reasonable telephone rates and unmonitored telephone access to their attorneys, a law library, and a place where they can have unmonitored meetings with their attorneys and review discovery.

PART VI. Notice to Victims of Crime

Standard 10-6.1. Judicial Assurance of Notice to Victims

As part of the pretrial release process, the judicial officer should direct the appropriate office or agency to provide victim(s) of the crime with notice of any crime charged, any conditions imposed on the defendant including those related to possession or purchase of firearms, and methods of seeking enforcement of release conditions.

TAB 38

CREATING AN EFFECTIVE
PRETRIAL
PROGRAM

A TOOLKIT FOR PRACTITIONERS

by

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safeandjust.org

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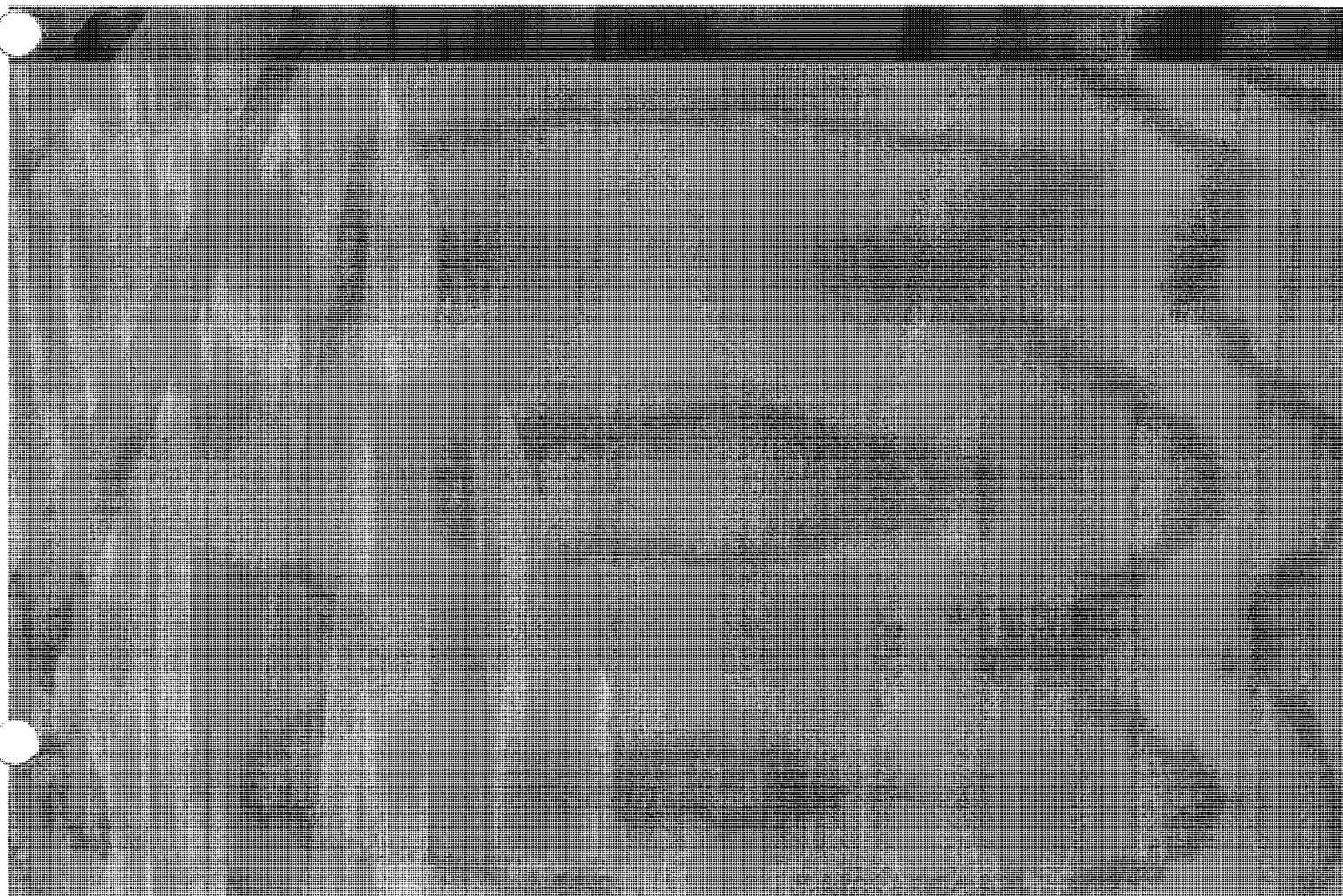


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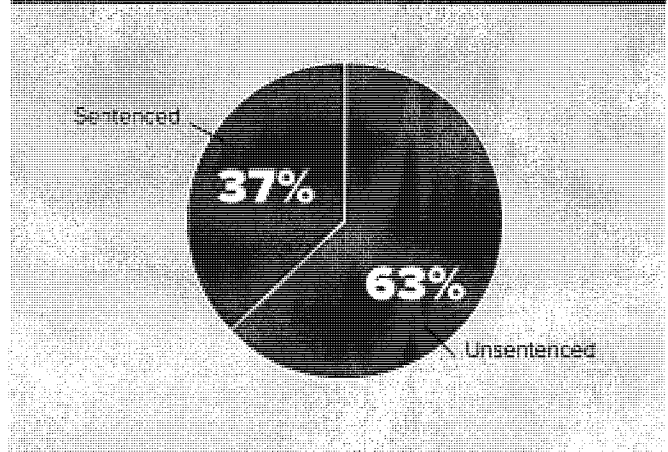
INTRODUCTION

These are times of significant change for county jails and justice systems. Public Safety Realignment, the 2011 law that shifted management of people convicted of certain nonviolent, non-serious, non-sex offenses from state prisons and parole to county jails and probation, has had a major impact. More individuals are being sentenced to county jail instead of state prison, including people who violate conditions of their parole. Some county jails face limited capacity or strained resources. Combined with ongoing county budget challenges, more than ever, local leaders need effective strategies to safely manage their justice populations and reduce costs at the same time.

On average, more than 60 percent of those in local jails in California are awaiting trial.¹ They are being detained “pretrial” while their case goes through criminal proceedings. There are models of pretrial diversion and supervision programs that can effectively manage these individuals in a community setting. Reducing the number of pretrial detainees in jails or the length of their stay can conserve considerable resources and allow the jail to meet other public safety needs. In a post-Realignment California, assessing pretrial program options is both an opportunity and a necessity.

Fortunately, pretrial program models have evolved considerably in recent decades, and there is evidence to show that they can be more successful than the money bail system at ensuring public safety and court appearance. There are many evidence-based options available to communities seeking to implement or strengthen pretrial programs. There is not one “correct” model for pretrial programs, and they can be successfully administered through the courts, probation departments, sheriff departments, county administration, independent agencies or any combination of these.

FIGURE A. CALIFORNIA COUNTY JAIL POPULATIONS



Source: Board of State and Community Corrections, 2012.¹

Many counties are now exploring such programs, asking critical questions about whom among those awaiting trial needs to be in jail and who can be managed successfully in the community.

This toolkit offers guidance to county officials on how to develop and operate these programs at the local level, building upon available literature on effective pretrial policies and practices. Specifically, officials will find:

- Key information about the legal framework and national standards for pretrial programs;
- How to implement a pretrial risk assessment;
- Pretrial diversion and supervision advice;
- How to assess your current system; and
- Recommendations on using data to measure and enhance pretrial programs.

For more information, please refer to the Other Resources section at the end of this document.

Definition of Key Terms

Pretrial Population: People awaiting the outcome of criminal charges against them.

Pretrial Diversion: A program that postpones the prosecution of an offense at any point in the judicial process from charging until adjudication. If the defendant successfully completes a diversion program, criminal charges may be dismissed at the end of the diversion period.

Release on One's Own Recognizance (OR): A judge or sheriff releases a defendant from custody without posting money bail.

Supervised Release: A program that supervises defendants in the community while they await the outcome of their charge.

PRETRIAL: AN OVERVIEW

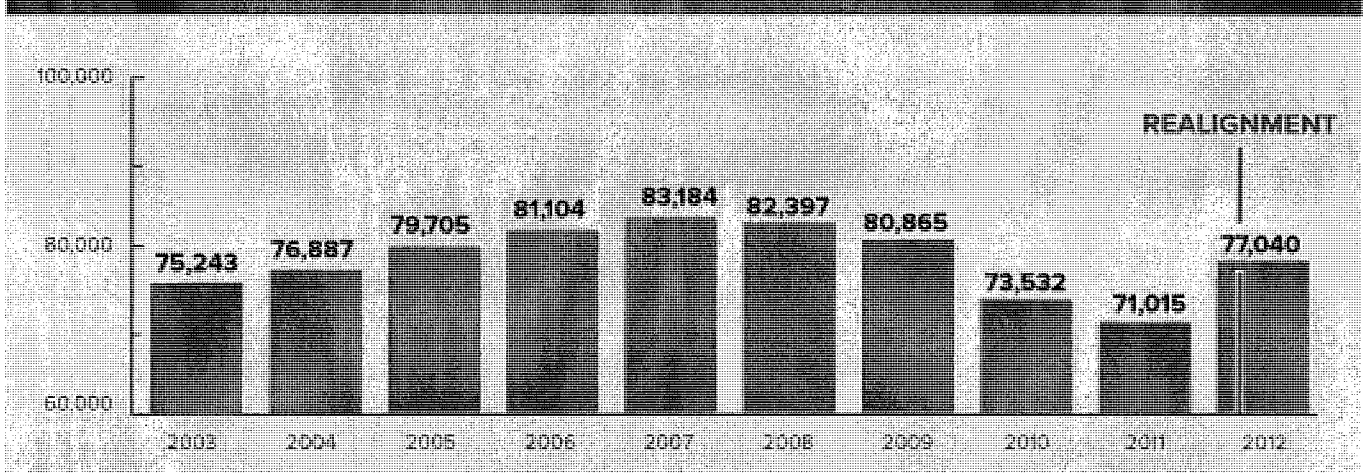
Jail Population Trends

Despite declining national crime rates between 1980 and 2008, jail populations in the U.S. grew significantly during that same period, peaking at 785,533.² The number of people in jails across the country began to decline in 2008. Until recently, California was also experiencing a decline. After record-low jail populations in 2010 and 2011, the number of California jail inmates increased during 2012 by an estimated 7,600.³ Public Safety Realignment, which shifted the management of specified

nonviolent, non-sex, non-serious felonies to local counties, is the major contributor to this growth.

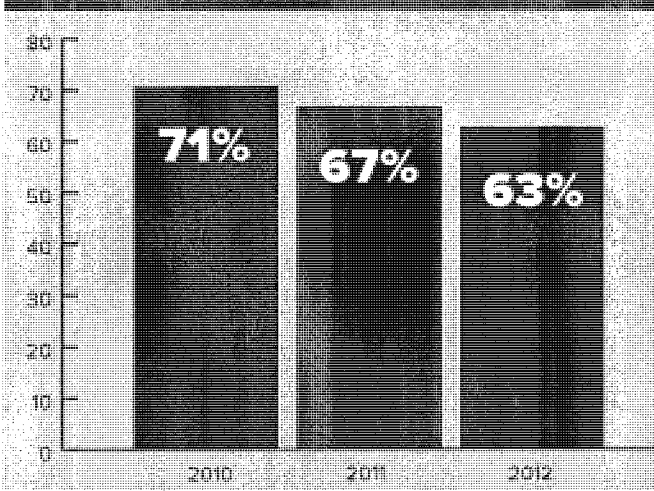
While much of the focus post-Realignment is on individuals serving local sentences after being convicted of a crime, **the majority of people in California jails continue to be individuals awaiting trial.** Enhanced pretrial programs offer an option for counties to preserve jail space and reduce their jail populations safely.

FIGURE B. CALIFORNIA JAIL POPULATIONS, 2003–2012



Source: Board and State Community Corrections, 2012¹

FIGURE C. UNSENTENCED IN STATEWIDE JAIL POPULATION, 2010–2012



Source: Board and State Community Corrections, 2012¹

From a legal perspective, pretrial programs consider both the rights of the defendant and the integrity of the judicial process. The presumption of innocence, the right to reasonable bail and other legal and constitutional rights of people facing charges are balanced with the need to protect the community, maintain the integrity of the judicial process and assure appearance in court.⁴ Effective pretrial practice is based on the principles of Evidence-Based Practices (EBP), which is the application of science into operational practice for services and programs for people in the justice system. Research has shown EBP interventions, including pretrial supervision, reduce costly jail stays, increasing the likelihood that the defendant does not commit a new crime while awaiting trial and returns to court.⁵ Pretrial interventions should be geared toward achieving those desired outcomes in a cost-effective manner.

Legal Framework for Pretrial Justice in California

California's pretrial system can be divided into two types of release systems:

1. Financially-secured release (traditional money bail); and
2. Government-supervised or non-financial release (release on the defendant's own recognizance, pretrial diversion, conditional or supervised release, and electronic monitoring).

In California, counties use these two options at different rates. San Mateo, for example, has an 82-percent financial and 18-percent non-financial release rate, compared to a 42-percent financial and 58-percent non-financial release rate in San Bernardino County.⁶ Pretrial reform can expand non-financial releases.

Both the California Constitution and the California Penal Code contain provisions that define, at least in broad strokes, the legal framework for bail and other pretrial practices. Information about these provisions (which provide the statutory framework for pre- and post-conviction bail, release on defendant's own recognizance and pretrial diversion) is laid out in detail in the Other Resources section at the end of this toolkit.

National Standards

In addition to the state legal framework for pretrial justice, practice standards have been developed at the national level. The American Bar Association (ABA) and National Association of Pretrial Services Agencies (NAPSA) have developed national standards for pretrial release practices, and NAPSA has also developed an accreditation process for pretrial agencies.

In California, the California Association of Pretrial Services has adopted standards for local practice.⁷ Additionally, several other national organizations have released policy documents supportive of pretrial justice practices⁸ (e.g., the Conference of State Court Administrators, National Association of Counties, Association of Prosecuting Attorneys, International Association of Police Chiefs, and the National Legal Aid and Defenders Association, American Council of Chief Defenders).

The ABA and NAPSA **standards advocate for the use of risk-based pretrial decision-making rather than a system based on financial bond** or commercial surety. Extensive research has demonstrated that actuarial assessment is a safer, more accurate way of making release decisions than solely using professional judgment.⁹ Pretrial risk-assessment tools have been validated and successfully implemented in states and counties across the country, including several in California.

PRETRIAL PROGRAMS: RISK ASSESSMENT

Who is likely to appear in court and unlikely to pose a threat to public safety if released pending trial?

A key function of a pretrial program is to provide information to aid the court in answering this question. Scientific data is available to help decision-makers identify those with the highest likelihood of success through the use of pretrial risk-assessment tools.

Pretrial risk assessment places defendants into categories of risk in a manner that predicts the likelihood of either an arrest on a new charge or failure to appear in court. The results of the pretrial risk assessment provide uniform criteria that can assist in the decision to release or detain pending trial. When used effectively, risk assessment serves to increase public safety, as well as reduce costs and conserve jail bed space for high-risk defendants and high-risk sentenced individuals.

A sample pretrial risk-assessment instrument can be found in this section.

Things to Consider When Implementing a Pretrial Risk Assessment

1. Define the Purpose(s) for Using the Instrument

What do you want the instrument to do, and how will the information it provides be used? For example, the instrument can be used to:

- Predict the risk of court appearance and/or new arrest;
- Support conditions for release pending trial; and/or
- Guide decision-making by judges, jail authorities and/or other staff.

2. Identify Available Instruments

Survey the market to see what options are available. A sample non-proprietary instrument is included in this section, and many more tools are available that can best fit your needs. Creating an instrument specifically for a jurisdiction (or a set of jurisdictions within the region or state) is also an option. Peers, professional associations and technical assistance providers can supply useful guidance, information and support.

3. Conduct a Review of Available Research

Gather published and unpublished studies about the instrument(s) identified. Review these studies to assess the instrument's predictive validity, taking into account the level of rigor and independence of the research. Determine whether the survey instrument assesses risk accurately for different jail demographics (e.g., predicts risk for males better than for females.)

4. Consider Other Important Factors Unique to the Jurisdiction

Each jurisdiction has unique factors to consider in making the final decision, including:

- Cost and workload;
- Administrative, court, population capacity and/or statutory requirements;
- Degree of external support needed to integrate the instrument into daily business practices; and
- The various risk-assessment instruments already in use throughout the jurisdiction(s).

Prepare for Challenges to Implementation

Challenges to implementation are inevitable. The following issues may arise:

- **Workload and time constraints:** Address through various restructuring or prioritization methods. For example, limit the workload associated with monitoring low-risk individuals. This type of restructuring can provide time to conduct and apply the pretrial risk-assessment instrument. In addition, if particular defendants are statutorily excluded from pretrial release, do not take the time to administer a pretrial risk assessment.
- **Buy-in:** Address by increasing levels of knowledge and comfort with the instrument with key stakeholders (e.g., courts, District Attorneys, Public Defenders, Sheriffs, county executives, staff, etc.). This can include ongoing educational efforts and data-driven feedback on the effectiveness of pretrial release and/or detention decisions and practices.

- **Accuracy:** Address through ongoing training and quality assurance to ensure the instrument is administered in a consistent manner. It should also be periodically validated (assessed to determine if the instrument correctly predicts the probability of its new arrest and/or failure to appear).
- **Competing practices** (e.g., financial bail schedules, booking matrices and other forms of subjective risk

assessment): Address by identifying when and how these methods are used and if they are operating at cross purposes to risk-based decision-making. Thereafter, determinations can be made to reduce conflicting practices, duplication of efforts and/or eliminate potentially dangerous practices.

Increasing Public Safety with Pretrial Risk Assessment in Yolo County

The Yolo County Probation Department's pretrial program, established in 2010, has achieved remarkable results in a short time, safely and effectively reducing the jail's pretrial population. Probation's Pretrial Unit worked in conjunction with the District Attorney, Public Defender, Sheriff and the court to establish the program's initial criteria. They selected the Ohio Risk Assessment System — Pretrial Assessment Tool (ORAS-PAT), a non-proprietary, streamlined tool that asks individuals about their criminal history, age of first arrest, prior failures to appear in court, drug use, residential stability and employment history (see Figure E).

The Probation Department then double-checks the defendant's criminal history, contacts any victims, confirms release addresses and reviews community ties. The Pretrial Unit provides community supervision for each individual released on Supervised OR and sees higher-risk individuals weekly in face-to-face meetings or home visits.

Results: From 2010 to 2012, felony defendants on supervised release in Yolo County had an 84-percent success rate. On average, 67 percent of released felony defendants nationally (most of whom are released on bail) stay out of trouble and appear in court.¹⁰

FIGURE D. SUPERVISED RELEASE SUCCESS RATES

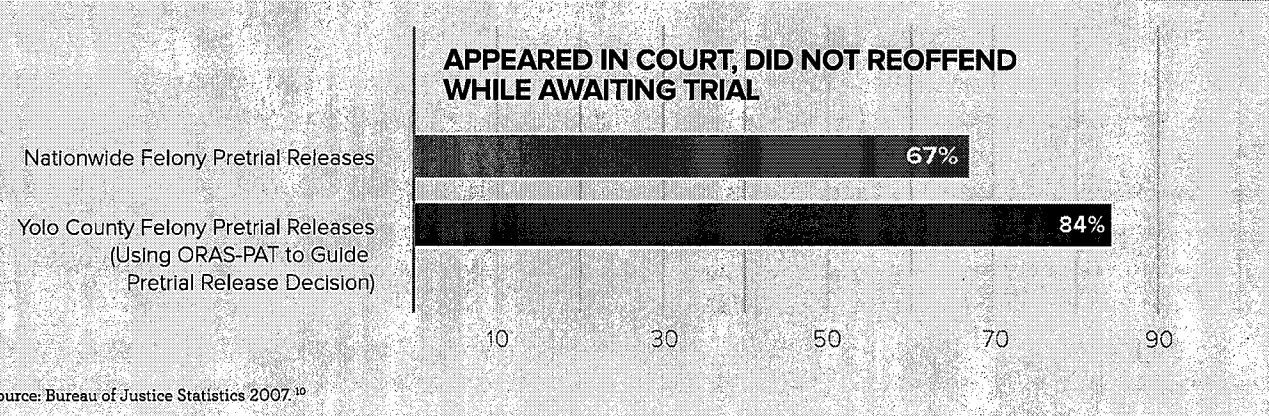


FIGURE E. OHIO RISK ASSESSMENT SYSTEM— PRETRIAL ASSESSMENT TOOL (ORAS-PAT)

OHIO RISK ASSESSMENT SYSTEM: PRETRIAL ASSESSMENT TOOL (ORAS-PAT)

Name: _____ Date of Assessment: _____

Case#: _____ Name of Assessor: _____

Pretrial Items		Verified
1. Age at First Arrest 0=33 or older 1=Under 33	<input type="text"/>	<input type="checkbox"/>
2. Number of Failure-to-Appear Warrants Past 24 Months 0=None 1=One Warrant for FTA 2=Two or More FTA Warrants	<input type="text"/>	<input type="checkbox"/>
3. Three or more Prior Jail Incarcerations 0=No 1=Yes	<input type="text"/>	<input type="checkbox"/>
4. Employed at the Time of Arrest 0= Yes, Full-time 1= Yes, Part-time 2= Not Employed	<input type="text"/>	<input type="checkbox"/>
5. Residential Stability 0=Lived at Current Residence Past Six Months 1=Not Lived at Same Residence	<input type="text"/>	<input type="checkbox"/>
6. Illegal Drug Use During Past Six Months 0=No 1=Yes	<input type="text"/>	<input type="checkbox"/>
7. Severe Drug Use Problem 0=No 1=Yes	<input type="text"/>	<input type="checkbox"/>
Total Score:		<input type="text"/>

Scores	Rating	% of Failures	% of Failure to Appear	% of New Arrest
0-2	Low	5%	5%	0%
3-5	Moderate	18%	12%	7%
6+	High	29%	15%	17%

Please State Reason if Professional Override:

Reason for Override (note: overrides should not be based solely on offense):

Other Areas of Concern. Check all that Apply:

<input type="checkbox"/> Low Intelligence*	<input type="checkbox"/> Child Care
<input type="checkbox"/> Physical Handicap	<input type="checkbox"/> Language
<input type="checkbox"/> Reading and Writing Limitations*	<input type="checkbox"/> Ethnicity
<input type="checkbox"/> Mental Health Issues*	<input type="checkbox"/> Cultural Barriers
<input type="checkbox"/> No Desire to Change/Participate in Programs*	<input type="checkbox"/> History of Abuse/Neglect
<input type="checkbox"/> Transportation	<input type="checkbox"/> Interpersonal Anxiety
<input type="checkbox"/> Other _____	

***If these items are checked it is strongly recommended that further assessment be conducted to determine level or severity.**

Source: Center for Criminal Justice Research, University of Cincinnati School of Criminal Justice, 2010.

PRETRIAL PROGRAMS: DIVERSION

In fiscal year 2010-2011, the California Superior Court processed more than 1.5 million criminal cases, but only 16 percent were felonies.¹¹ The amount of resources consumed to file and process 1.5 million cases is extraordinary, not to mention the additional traffic through the courts due to violations and other infractions.

While pretrial programs can decrease the burden on jails, the burden on courts remains the same — unless more efficient alternatives are pursued to hold individuals accountable. Pretrial diversion offers an alternative for individuals charged with certain traffic, misdemeanor or felony offenses.

Pretrial diversion affords the justice system opportunities to triage resources to serious crimes and higher-risk defendants, helping with docket management and reducing jail costs. It also provides opportunities for victims and offenders to remedy alleged criminal activity outside of the traditional and costly adjudication process.

What is Pretrial Diversion?

Pretrial diversion is defined as any voluntary option in which defendants undergo alternative criminal case processing that results in dismissal of the charge(s) if certain conditions are satisfied.¹² According to national standards,¹³ the purpose of pretrial diversion is to:

- Enhance public safety by addressing the root cause of behaviors that lead to arrest;
- Reduce the stigma associated with a record of conviction;
- Restore victims; and
- Conserve justice system resources.

Pretrial diversion's key components are:

1. Uniform eligibility criteria;
2. Structured services and supervision; and
3. Charge dismissal upon successful completion of the required conditions.¹⁴

Pretrial diversion programs conduct an assessment of risk and needs, and provide targeted supervision and programming based on that assessment. While most pretrial diversion programs require defendants to accept responsibility for their actions, defendants are not required to admit guilt. Another key aspect is that each case considered for pretrial diversion has prosecutorial merit. Therefore, the process for initiating pretrial diversion occurs after the decision has been made to proceed with filing criminal charges. And similar to pretrial programs, pretrial diversion can be located in a variety of agencies: a stand-alone agency, District Attorney's office, pretrial agency, probation, courts, private nonprofits, Sheriff's office, etc.

While research on pretrial diversion is still emerging, certain promising and emerging practices in the field have been identified. Table 1 outlines current knowledge of promising practices in pretrial diversion as outlined in a recent publication by the National Association of Pretrial Service Agencies.¹⁵

Diversion is not a "cure-all" for resource management. However, more and more jurisdictions are turning to diversion to manage individuals charged with low-level offenses while still addressing underlying issues such as substance abuse and mental health. For more information and program examples, visit the diversion webpage of the National Association of Pretrial Service Agencies: <http://napsa.org/diversionmain.html>.

TABLE 1. PROMISING PRACTICES IN PRETRIAL DIVERSION

PROMISING PRACTICE	INTENT
Formalized cooperative agreements between the pretrial diversion agency and key stakeholders to assure program continuity and consistency	Allows for transparency and continuity of program rules and consistency of treatment of all defendants
Defendant access to counsel before the decision to participate in pretrial diversion	Allows defendants to fully understand the merits of their individual cases, program requirements and potential outcomes of participation; enables defendants to make an informed decision to enter the program
Specific due process protections incorporated into programming	Affords defendants rights and protections under pretrial status; includes the right to review a prosecutor's decision to deny access to pretrial diversion, written reasons for termination from pretrial diversion, and the right to challenge termination decisions
Broad, equitable and objective diversion eligibility criteria, applied consistently at multiple points of case processing	Allows for similarly situated defendants (i.e., similar charges and criminal histories) to be given equal consideration for access into pretrial diversion; encourages broad application of the criteria to provide the opportunity to all potential candidates
Uniform and validated risk and needs assessment to determine the most appropriate and least restrictive levels of supervision and services needed	Allows for the identification of risk and needs to address in the program for each defendant at or shortly after enrollment
Intervention plans tailored to individual participant risks and needs — and developed with the participant's input	Provides the realistic goals and objectives to address each defendant's assessed risk while being responsive to individual characteristics, encouraging motivation and responsibility for change, and utilizing the least restrictive means necessary
Graduated sanctions short of termination as responses to participant behavior	Provides for swift, certain and proportionate responses to noncompliance that, when consistently applied, mitigate risks and serve to increase compliance
Maximum possible privacy protections for participants and program records	Affords confidentiality for the program and each defendant, ensures consistency with the unique legal protections of pretrial status and the opportunity for record expungement upon successful completion
Independent program evaluations	Provides an unbiased study of program effectiveness and the identification of areas for continued improvement

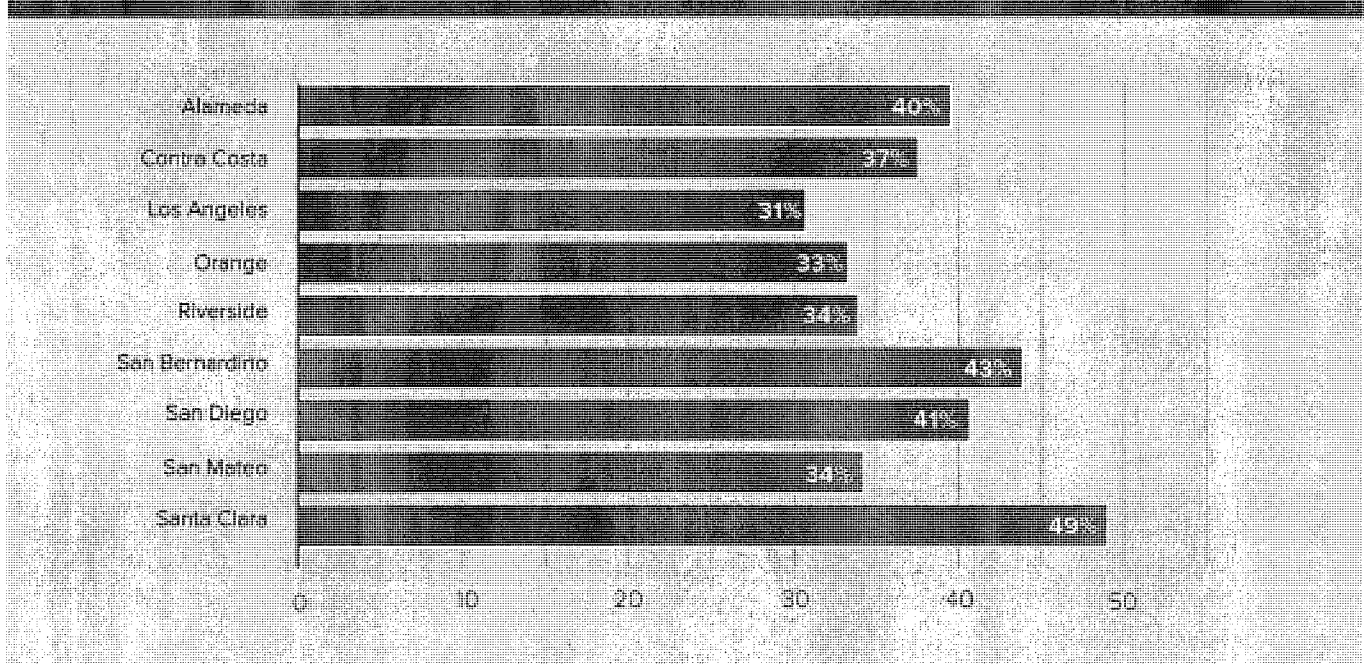
Source: National Association of Pretrial Service Agencies, 2010.¹⁵

PRETRIAL PROGRAMS: SUPERVISION

Pretrial supervision offers county justice systems intermediate options between release on one's own recognizance and remand to jail for those defendants facing formal prosecution. Risk-based assignment to pretrial supervision can help assure a return to court, maintain public safety and conserve resources for supervision of high-risk caseloads. A continuum of pretrial supervision options can be housed anywhere in the justice system and should include responses appropriate for high-, medium- and low-risk defendants.

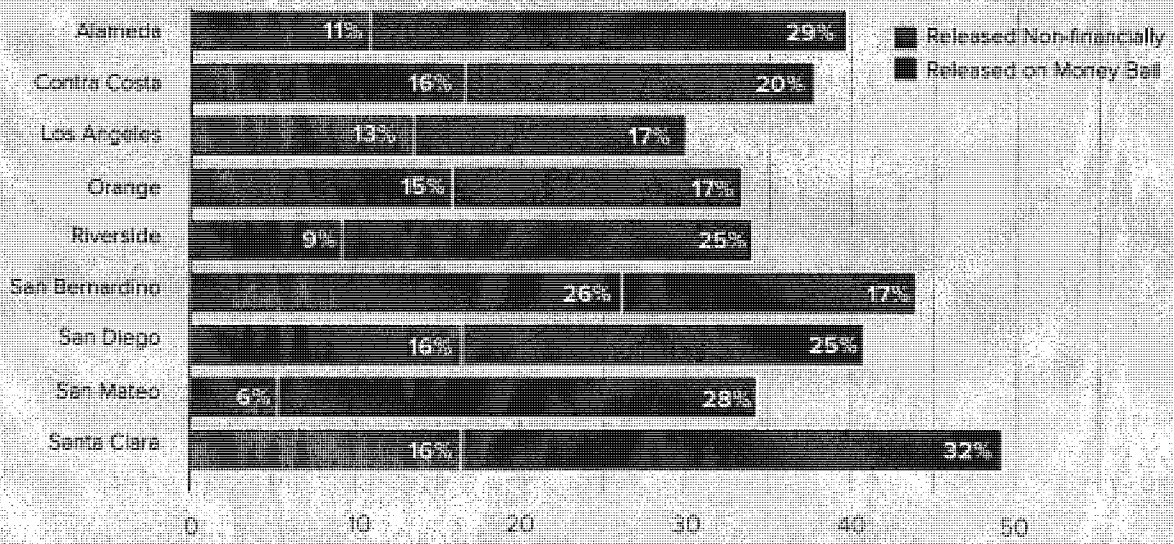
In contrast to pretrial diversion, pretrial supervision is not voluntary and does not require that a defendant admit guilt or take responsibility for the alleged crime. Successful completion of pretrial supervision does not result in charges being dropped or make any other guarantees in terms of disposition. It can, however, reduce recidivism by allowing defendants to maintain employment and ties to family and community – and save counties money by placing individuals in the least restrictive setting necessary to ensure public safety and return to court.

FIGURE F. OVERALL PRETRIAL RELEASE RATE (% OF ELIGIBLE DEFENDANTS) BY COUNTY



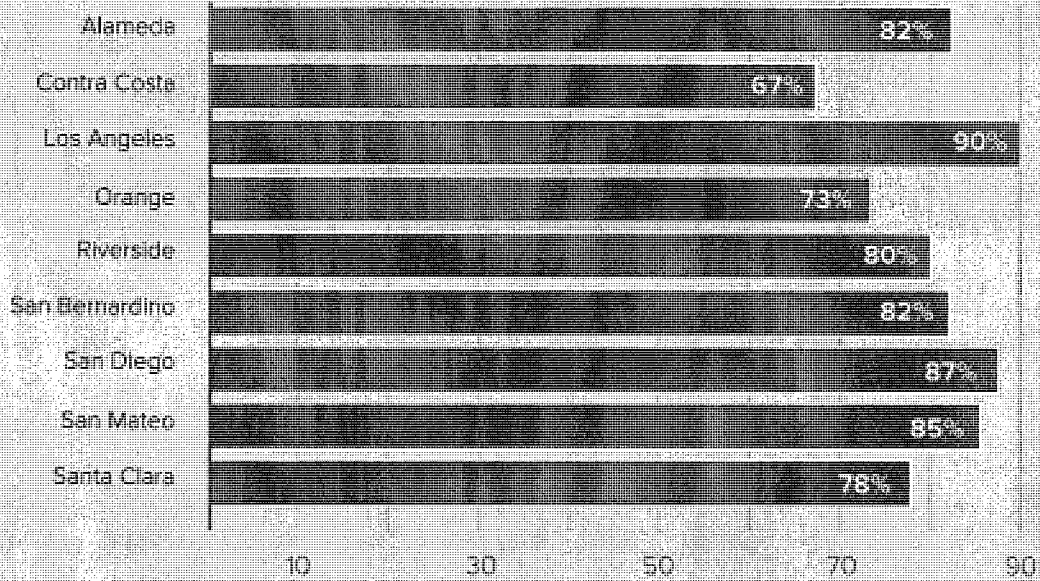
Source: Pretrial Justice Institute, 2009.⁶

FIGURE G. TYPES OF PRETRIAL RELEASE BY COUNTY



Source: Pretrial Justice Institute, 2009.⁹

FIGURE H. PRETRIAL SUCCESS RATES BY COUNTY, 2004 (% WITH NO NEW ARREST)



Source: Crime and Justice Institute, 2010.²³

Effective pretrial supervision strategies vary from straightforward interventions (court date reminder systems) to more intensive supervision and monitoring. The table on page 14 summarizes interventions cited in *State of Science of Pretrial Release Recommendations and Supervision*.¹⁶

Some interventions, like court date reminders, have been proven successful in reducing failures to appear. Others, like electronic monitoring, have not been proven to reduce risk, but they are a successful population management strategy (allowing defendants to be maintained in the community).

Questions for Developing a Pretrial Program Continuum

- What are the risk reduction and/or population management goals that the program is trying to achieve?
- What existing data supports the program's effectiveness?
- Who is the target population?
- What resources are needed to implement the program effectively, and to ensure that it is utilized?
- To what terms of supervision will defendants be subjected, and how will they be held accountable?
- How will referrals be managed, and how will the program communicate with the court?
- How will success be measured?

Areas of Caution

Drug testing is not proven effective as a risk reduction strategy, and over-testing can result in program failure because defendants miss appointments.¹⁷ However, if the jail is housing many low-risk defendants awaiting trial on drug charges, and release with a condition of drug testing is agreeable to local stakeholders, drug testing can provide a viable option for population management. However, data on violations should be closely tracked to determine if the structure of the program contributes to failure on supervision.

Avoid pretrial programming that leads to a **"net-widening"** of supervision. Low-risk individuals charged with low-level

offenses should be released on their own recognizance, and pretrial supervision programming should be reserved for individuals who otherwise would go to jail. Supervision for individuals charged with low-level offenses can be detrimental because it disrupts their pro-social activities and can bring them into contact with individuals with more serious criminal histories. Scarce resources should be dedicated to the higher-risk individuals who will derive the most benefit.

Reducing Costs Through the Affordable Care Act for Treatment of Pretrial Populations

As part of health care reform, California is expanding Medi-Cal eligibility to all citizens and certain qualified non-citizens 18-64 years old with incomes under 138 percent of the Federal Poverty Line, effective January 1, 2014. This means that, for the first time, the large majority of individuals in jail will become eligible for health coverage, including mental health care and substance abuse treatment. However, only treatment in non-correctional hospitals and other community settings, and not in the jail, will be covered.

With expanded Medi-Cal reimbursements and enhanced treatment benefits:

- Treatment in community settings, including as part of a pretrial diversion or supervision program, may be able to be reimbursed at 100 percent of the costs; and/or
- A stay in a treatment program may be less expensive and more effective at reducing recidivism than jail stays for low-level, chronically ill pretrial populations.

For more information about how county justice systems can take advantage of health care reform to reduce costs and increase public safety, see *Enrolling County Jail & Probation Populations in Health Coverage*, another toolkit in this series, available at safeandjust.org.

Administrating Agency Checklist of Program Functions

Once the decision has been made to implement a supervision program, the process proceeds in the same way that it would for most programming: An agency must take responsibility for administration. Budgets, staffing, policies and procedures must be put in place, and performance measures should be documented. Specifically, ensure that:

- Stakeholders are involved in program development and supportive of implementation;
- The program fits within the legal framework for pretrial;
- The role of the program in the system and eligibility are clear to all stakeholders;
- Processes are in place to integrate the program into pretrial decision-making; and
- Data is collected and shared.

Ongoing data collection will ensure that the program is being used as intended and does not have unintended consequences. (For example, if assessment is delegated to a new pretrial agency, monitor any changes in inmates' length of stay to make sure the change does not cause administrative delays.)

Data-Driven Pretrial Supervision Practices Conserve Needed Jail Space in Santa Cruz

Santa Cruz County has been honing its pretrial supervision strategies for almost a decade, helping keep its unsentenced jail population at or below the state average.

The expanded pretrial program, led by the Probation Department, was initiated in 2005 in response to overcrowding and unsafe conditions in the county jail. In Santa Cruz, comparatively few people are held in jail pretrial: 71 percent of 2011 arrestees were released prior to the disposition of their charges, including 45 percent released on their own recognizance, 18 percent making bail, and about 5 percent being placed on a supervised release program. With the help of four pretrial probation deputies stationed in the jail, pretrial release is secured quickly in Santa Cruz, with the vast majority of those released spending less than a day in jail.

Santa Cruz's pretrial supervision program makes it possible for certain higher-risk individuals to be managed in the community as they await the outcome of charges. Like many other jurisdictions, a substantial proportion of individuals are arrested on drug charges in Santa Cruz. Those who are not released with a citation or on their own recognizance are released to pretrial supervision, where they are connected with treatment programs appropriate to their risk and needs.

Results: Analysis of Santa Cruz pretrial programs reveal that 92 percent of participants did not acquire new charges upon release, and 89 percent successfully appeared on their court date.

TABLE 2. PRETRIAL INTERVENTION STRATEGIES

TYPE	PURPOSE	RESEARCH SUMMARY	EXAMPLES	OTHER CONSIDERATIONS
Court Date Notification	To reduce failure to appear and other related costs	Studies spanning 30 years and six states demonstrated court date-notification systems effectively reduced failure to appear rates.	<ul style="list-style-type: none"> Nebraska Multnomah County, OR Flagstaff, AZ Jefferson County, CO King County, WA New York, NY 	<ul style="list-style-type: none"> Notification options included volunteer callers, automated systems and a combination of calls and mailings. Studies varied in target population and method of notification.
Drug Testing	To monitor drug use and reduce or deter pretrial failure	Studies do not demonstrate drug testing as a condition of pretrial release is effective in reducing pretrial failure, even when a system of sanctions is included.	<ul style="list-style-type: none"> Washington, DC Multnomah County, OR Pima and Maricopa Counties, AZ Prince George's County, MD and Milwaukee, WI 	<ul style="list-style-type: none"> Studies demonstrated drug testing had high rates of noncompliance due to missed appointments.
Electronic Monitoring	To provide surveillance and monitor compliance pending trial, serves as an alternative to detention	Studies do not demonstrate electronic monitoring reduces pretrial failure.	<ul style="list-style-type: none"> Mesa County, AZ Lake County, IL Federal Pretrial Marion County, IN 	<ul style="list-style-type: none"> Studies demonstrated that the use of electronic monitoring can result in higher technical violation rates. Electronic monitoring can reduce unnecessary detention of defendants who would have otherwise been detained. Studies did not address the risk level of the defendants; more research is needed.
Supervision	To facilitate, support and monitor compliance with pretrial release conditions	Data points to a general benefit of supervision, but little research is available on type and intensity of supervision.	<ul style="list-style-type: none"> Dade County, FL, Milwaukee County, WI, and Multnomah County, OR Philadelphia, PA 	<ul style="list-style-type: none"> Conditions of supervision are meant to address risk of flight and danger to community safety pending trial. Historically, there is significant variation in what supervision entails (e.g. monthly phone calls, daily face-to-face contacts, additional services). More research is needed to tell what type(s) of supervision work best with which defendants (see Supervision with Alternatives to Detention)
Supervision with Alternatives to Detention	To reduce unnecessary detention while assuring court appearance and community safety	When the risk level of the defendant is considered, non-custodial supervision options can reduce unnecessary jail stays while assuring court appearance and public safety.	<ul style="list-style-type: none"> Federal Pretrial 	<ul style="list-style-type: none"> Alternatives for low-risk defendants should rarely be used, if at all, as it can increase risk of failure (mental health treatment may be an exception). Moderate- and higher-risk defendants benefit from alternatives when a specific risk is matched to a specific alternative. When applied appropriately to moderate- and high-risk defendants, alternatives provide programmatic and economical benefits. Some examples of alternatives include third-party custody, drug/mental health/sex offender treatment, location monitoring, housing in a halfway house or shelter.

Source: Pretrial Justice Institute, 2011.¹⁸

ASSESSING PRETRIAL EFFECTIVENESS

A pretrial program, with its risk-assessment, diversion and supervision components, should be continually assessed to ensure it is meeting its goals of protecting public safety and targeting justice system resources efficiently. Whether you have a pretrial program in place or are starting from scratch, a system assessment provides an opportunity to determine where you are and how to develop a plan for moving forward. The assessment should include a review of qualitative and quantitative data, as well as discussion of the goals for pretrial services.

The assessment process should incorporate diverse viewpoints from across agencies (courts, sheriff departments, etc.) and within agencies (from executives to frontline staff) through surveys, focus groups or open meetings.

System assessment results are intended to be constructive, not overwhelming. When presenting results, identify areas of strength as well as need, and focus on actionable items that will achieve the goal of pretrial services in your county. A variety of survey-style assessment tools are available at: www.crj.org/cji.

Assessment Questions to Ask

- What are the goals of our pretrial system?
- What are the demographics of the pretrial population?
- How are pretrial defendants currently managed?
- What are the policies and procedures of individuals and agencies that are part of pretrial decision-making?
- What statutes govern local pretrial decision-making?
- How does local practice compare to national standards?

ONGOING MEASUREMENT AND ENHANCEMENTS

Pretrial programs are the most effective when measurement is ongoing. Understanding how many adults are arrested each year, which agencies make the most arrests, booking trends, trends by offense type, length-of-stay trends and release patterns will provide a high-level view of what is happening in the system.

A companion toolkit, *How to Assess Jail Populations: A Toolkit for Practitioners*,¹⁹ provides guidelines for calculating and analyzing factors that will aid in risk management and the expansion of effective community supervision programs. That toolkit also provides an entrée into key pretrial services measures on a systemic level.

Jail Assessment Questions to Ask

- What proportion of people in the county jail are able to secure pretrial release, and how does this number compare to the state average?
- How do money bail amounts in your county compare with those for the same crimes in other California counties?
- How many people assessed as low-risk are being released on personal recognizance and/or transferred to pretrial, non-custodial supervision programs?
- How long do people who are unable to secure pretrial release typically spend in jail before their court disposition?
- What are the charges facing this group? Is there a subsection that would be likely to succeed in pretrial release?

Assessing the Impact of Functions Within Pretrial Programs

How well is your county doing with each of the following?

- Conducting pretrial risk assessment
- Completing pretrial reports
- Providing recommendations to release or detain defendants to the court
- Providing pretrial supervision
- Responding to noncompliance
- Cost-effectiveness of the above components

What Data is Needed?

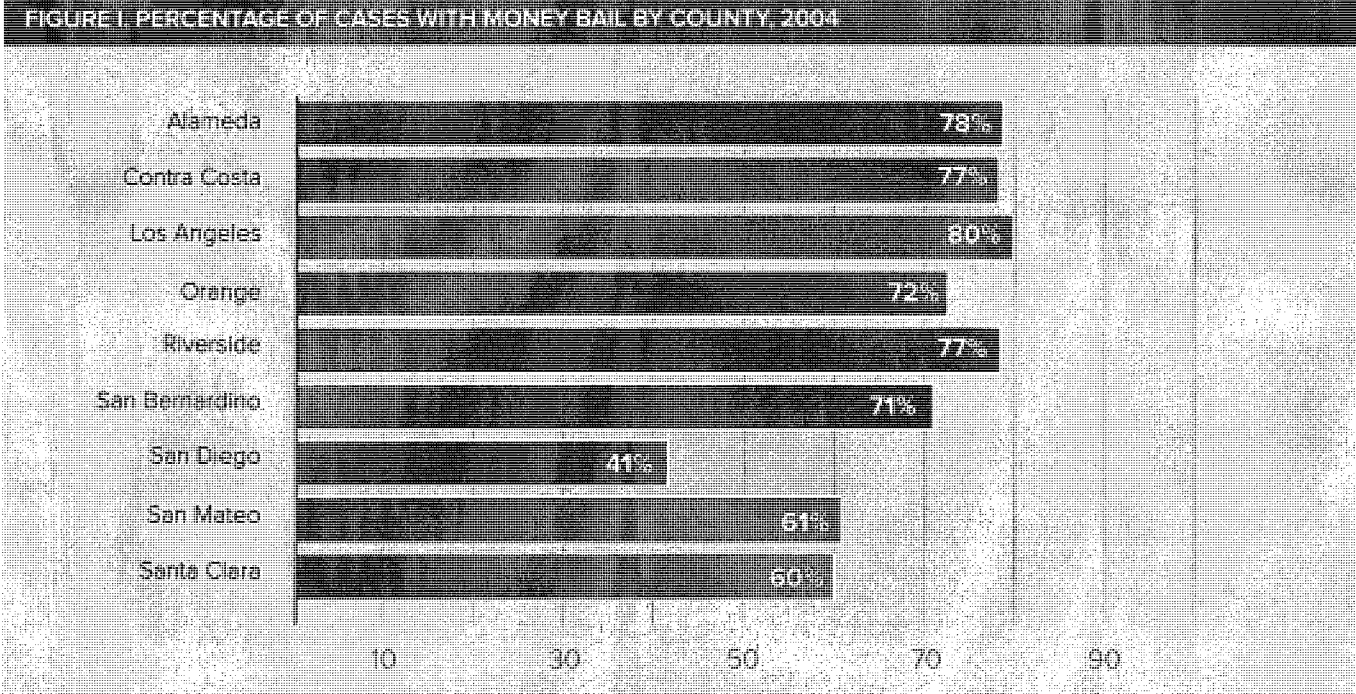
A recent publication by the National Institute of Corrections and the Pretrial Executive Network entitled *Measuring What Matters: Outcome and Performance Measures for the Pretrial Services Field*²⁰ describes essential outcomes, performance goals and other measures to utilize (see Table 3). The measures highlighted in the publication mirror the national standards for pretrial justice practices by the American Bar Association²¹ and the National Association of Pretrial Services Agencies.²²

Because the national standards recommend only non-financial terms of release, no data elements pertaining to bail are included here. However, since financial terms and commercial surety are legal in California, local counties should also collect data on the relationship between bond amounts, charges, defendant outcomes and jail utilization to determine whether bail practices are having the desired outcome.

TABLE 3. SUMMARY OF KEY DATA MEASURES FOR THE PRETRIAL SERVICES FIELD

DATA MEASURES	DATA DESCRIPTIONS
OUTCOME MEASURES — INDICATORS OF EFFECTIVENESS IN ACHIEVING A STATED MISSION OR INTENDED PURPOSE	
Appearance Rate	The percentage of supervised defendants who make all scheduled court appearances
Safety Rate	The percentage of supervised defendants who are not charged with a new offense during the pretrial stage
Concurrence Rate	The ratio of defendants whose supervision level or detention status corresponds with their assessed risk of pretrial misconduct
Success Rate	The percentage of released defendants who (1) are not revoked for technical violations of the conditions of their release, (2) appear for all scheduled court appearances, and (3) are not charged with a new offense during pretrial supervision
Pretrial Detainee Length of Stay	The average length of stay in jail for pretrial detainees who are not statutorily ineligible for pretrial release
PERFORMANCE MEASURES — QUANTITATIVE OR QUALITATIVE CHARACTERIZATIONS OF PERFORMANCE	
Universal Screening	The percentage of defendants eligible for release by statute or local court rule that the program assesses for release eligibility
Recommendation Rate	The percentage of time the program follows its risk-assessment criteria when recommending release or detention
Response to Defendant Conduct	The frequency of policy-approved responses to compliance and non-compliance with court-ordered release conditions
Pretrial Intervention Rate	The pretrial agency's effectiveness at resolving outstanding bench warrants, arrest warrants, and capiases
MISSION-CRITICAL DATA — STRATEGICALLY LINKED TO OUTCOMES AND PERFORMANCE; TRACKS PROGRESS IN AREAS AND ON ISSUES THAT SUPPLEMENT SPECIFIC MEASURES	
Defendants Released by Release Type and Condition	The number of release types ordered during a specified time frame
Caseload Ratio	The number of supervised defendants divided by the number of pretrial officers/case managers
Time From Non-financial Release Order to Start of Pretrial Supervision	Time between a court's order of release and the pretrial agency's assumption of supervision
Time on Pretrial Supervision	Time between the pretrial agency's assumption of supervision and the end of program supervision
Pretrial Detention Rate	Proportion of pretrial defendants who are detained throughout pretrial case processing

Source: National Institute of Corrections and the Pretrial Executive Network, 2011.²⁰



Source: Clark, John. The Impact on Money Bail on Jail Bed Usage, *American Jails*, July/August 2010.

Getting Started

These data provide a snapshot of how well the pretrial program is functioning and the impact it is having on the local criminal justice system. The challenge lies in determining when and how data is collected to maximize utility while managing workload. Table 4, adapted from an earlier CJI publication,²³ outlines a strategy for working through common challenges while developing and implementing pretrial data collection and analysis – and how to use the analysis for ongoing improvements.

TABLE 4. PRETRIAL DATA COLLECTION AND ANALYSIS ROADMAP

STEP 1: DEFINE THE OUTCOME(S)

- Consider agency mission, vision statements, national standards and the purpose of the pretrial program.
- Clearly define the intended outcome(s) in terms that are Specific, Measurable, Attainable, Realistic and Time-bound (SMART). This will provide specified targets to focus efforts upon.
- Discuss goals with key stakeholders to ensure commitment to agreed-upon outcomes.

STEP 2: DEVELOP A PRETRIAL PROGRAM LEVEL LOGIC MODEL TO ACHIEVE THE DESIRED OUTCOME(S)

- Logic models provide a graphic means of describing what is intended to happen, including resources to utilize, activities to perform, and the outputs and outcomes that will be achieved.
- The logic model development process aids in the clarification of pretrial service components and the theories behind their effectiveness. It also serves as a guide to evaluation.
- If, after developing the logic model, it is determined there are gaps that will make achieving the desired outcome(s) problematic, brainstorm ways to revise the resources or activities in a way that will logically enable the desired outcome(s) to be achieved, or perhaps revise the desired outcome(s) accordingly. Revise the logic model accordingly.
- Note: In addition program level logic models, more detailed logic models can be utilized on a narrower scale, such as for a particular component of the pretrial program.

STEP 3: DETERMINE WHAT INDICATORS WILL NEED TO BE MEASURED

- Use the logic model as the frame from which to select indicators to measure. Then, dissect the various elements to pinpoint exactly what needs to be known in order to pinpoint what is working or not working.
- Prioritize these indicators based on what you need to know first and what you have the resources to collect. During the prioritization process it is helpful to consider factors such as the consistency with the research literature, timeliness of data availability, ease of reporting and the level of interest among stakeholders.
- Consider the utility of the indicator(s) and the message that emphasis on particular indicator(s) will send, keeping in mind the items that get measured will be what gets done.
- Over time, phase in indicators that gradually build proficiency and capacity.

STEP 4: DECIDE HOW TO MEASURE THE INDICATORS

- Brainstorm mechanisms that can capture the indicators selected and develop a strategy for how the data will be collected, by whom and how often. Some common mechanisms include management information systems and databases, spreadsheets, supervisory reviews, policy audits, peer reviews, surveys, and/or formal evaluation.
- Study mechanisms to ensure that they are reliable and valid (i.e., they measure the right things).
- If there are too many indicators on which to realistically collect data, another round of prioritization may be needed. This may also be an opportunity to identify where deeper levels of quality assurance may be needed.

STEP 5: DOCUMENT A PLAN THAT PULLS IT ALL TOGETHER

- The plan should describe how these indicators will be brought together, articulate why, how and when they will be collected and reported, as well as who they will be reported to.
- The plan can be shared with stakeholders and agency employees and may need to be updated on an annual (or more frequent) basis as the agency progresses.

STEP 6: COMMUNICATE THE PLAN (REPEATEDLY)

- Communicate early and often about the purpose of the plan and how the data will be used for feedback, improvement and to celebrate successes.
- Multiple forms of communication are often helpful, including letters or emails to stakeholders and employees, blogs, meetings, annual reports and press releases.

STEP 7: COLLECT THE DATA

- Everyone involved in the data collection process should have a clear understanding of the tasks each needs to complete.
- Training may need to be provided upfront and regular checks should be done to ensure data is being collected consistently and accurately.
- Be mindful of accuracy; data that is trustworthy is much more likely to be acted upon.

STEP 8: ANALYZE AND REPORT THE DATA

- Put the data into a format that can be easily understood and used (e.g., one page of bullets to summarize the information, simple graphs and bar charts, and/or complex statistical analysis depending on the data and capacity for analysis).
- It helps to compare present data to baseline measures or other benchmarks. The benchmarks should be initially set at realistic levels to ensure they are attainable, then gradually raise the benchmarks as proficiency is established.
- Test the reporting format to ensure the data is accurate and easily understood. Revise if necessary.
- Be sure to disseminate the data quickly so it can be put to use.

STEP 9: PUT THE DATA TO USE

- Ask key questions: What is and is not working? What are the lessons learned? How can data be used for improvement?
- Celebrate success and create improvement plans where necessary.
- Data is most useful when it is applied to improve practices; create opportunities to discuss data and how to use it.

STEP 10: REPEAT

- Determine at regular intervals until the outcome(s) have been mastered.
- Once mastery of the outcome(s) is achieved, move on to the next desired outcome(s) and repeat the steps.

Source: Crime and Justice Institute, 2010. ²³

The data measures and steps outlined above provide the type of knowledge base that will help local counties know if pretrial programs are producing their intended outcomes. Having a clear plan in place to identify and use data to drive decisions can foster data-driven decision-making and, ultimately, provide for greater accountability, efficiency and effectiveness within the justice system. For more information, see the Other Resources section.

CONCLUSION

Rising jail populations are forcing California counties to prioritize their institutional resources in ways that maximize, not jeopardize, public safety. Previous uses of jails to house large numbers of people awaiting trial is no longer feasible, and counties throughout California are seeing the benefit of applying risk-based pretrial practices to make more beds available for sentenced individuals and high-risk pretrial defendants, while maintaining low-risk defendants in the community.

For counties that pursue pretrial risk-assessment and supervision practices, there is no “right” approach; a variety of tools are available, and pretrial supervision can be structured in numerous ways through the courts, sheriff departments, probation or an independent agency. Community Corrections Partnerships²⁴ or other local collaboratives can build a system that meets local needs, saves money and helps to keep prison crowding from simply shifting to jail crowding.

ABOUT THE CRIME AND JUSTICE INSTITUTE AT CRJ



crj.org/cji

The primary goal of the Crime and Justice Institute (CJI) at Community Resources for Justice is to make criminal and juvenile justice systems more efficient and cost effective to promote accountability for achieving better outcomes. CJI provides nonpartisan policy analysis, consulting and research services to improve public safety throughout the country. With a reputation built over many decades for innovative thinking, unbiased issue analysis and effective policy advocacy, CJI's strength lies in its ability to bridge the gap between research, policy and practice in public institutions and communities, and provide evidence-based, results-driven recommendations.

Services include:

- Trainings
- Assessments
- Policy Development and Analysis
- Research and Evaluation
- Implementation Assistance

CJI has worked at the county and state level in California to build systemic capacity for data-driven public safety policy and practice, including supporting the implementation of Public Safety Realignment, expanding the application of evidence-based principles, and enhancing the administration of pretrial justice.

ABOUT CALIFORNIANS FOR SAFETY AND JUSTICE'S LOCAL SAFETY SOLUTIONS PROJECT



safeandjust.org

Californians for Safety and Justice is a nonprofit working to replace prison and justice system waste with common sense solutions that create safe neighborhoods and save public dollars. Partnering with experts from around the country, our *Local Safety Solutions Project* provides direct support to counties interested in using innovative approaches to increase safety and reduce justice system costs.



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What does California state law say about pretrial release?

California's statutory requirements on pretrial release — including with respect to money bail, OR release, and diversion — are important to keep in mind when designing a pretrial program.

Article 1, § 28 (b) of the California Constitution grants victims the right to have their and their family's safety to be considered at bail. Section 28 (f) (3) reiterates Article 1 § 12's provisions concerning the right to non-excessive bail, but also adds the following: "In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations." That Section also requires courts to apply the same considerations to release on recognizance.

Bail:

Article I, § 12 of the California Constitution affords the right to be released on bail by sufficient sureties except in three circumstances: (1) capital crimes when the facts are evident or the presumption great; (2) felony offenses involving acts of violence or sexual assault, when the facts are evident or the presumption great and there is clear and convincing evidence of a substantial likelihood that the defendant's release would result in great bodily harm to others; and (3) felony offenses when the facts are evident or the presumption great and there is clear and convincing evidence of a substantial likelihood that the defendant, if released, would carry out a threat of great bodily injury to another. This section of the Constitution also requires that, in fixing the amount of money bail, the court perform some level of individualization, taking into account the seriousness of the offense charged, the defendant's previous criminal record, and the probability of the defendant's appearing at the trial or hearing. In the alternative, in the court's discretion, a defendant may be released on his own recognizance.

Several provisions of the California Penal Code prescribe specifications for pretrial practices in California. The relevant bail provisions touch upon — among other matters — the amount of bail to be set, the availability of release on the defendant's own recognizance, and the availability of post-conviction bail. The Penal Code also contains authority for a variety of pretrial diversion programs.

Amount of bail. Bail must be fixed by the judge at the time of appearance. If there was no appearance, bail must be in the amount fixed in the arrest warrant. If there was no warrant, the amount of bail must follow a uniform countywide schedule of bail for the county in which the defendant is required to appear. § 1269b(b). The countywide schedule must account for the seriousness of the offense charged, including aggravating factors chargeable in the complaint. § 1269b(e). If the defendant is arrested for a felony offense or a misdemeanor violation of a domestic violence restraining order and there is reasonable cause to believe that the standard bail amount is insufficient to ensure the defendant's appearance or to protect a victim of domestic violence, a peace officer must request that the court order a higher bail amount. § 1269c. A defendant charged with certain offenses, conversely, may apply to the court for release on a bail lower than the standard amount or for release on his own recognizance. § 1269c. In setting, reducing, or denying bail, the court must consider the protection of the public, the seriousness of the offense charged, the defendant's previous criminal record, and the probability of the defendant's appearing at trial or hearing. § 1275(a). Analysis of the seriousness of the offense must include consideration of, where applicable, the victim's injuries, threats to the victim or witnesses, the use of a firearm, and the use of controlled substances. § 1275(a).

Release on the defendant's own recognizance. Any defendant charged with a non-capital offense may be released on his own recognizance. § 1270(a). A defendant charged with a misdemeanor is entitled to release on his own recognizance unless the court finds on the record that such release will compromise public safety or will not reasonably ensure the defendant's appearance. § 1270(a). For certain crimes—

including serious felonies, violent felonies, intimidation of witnesses, certain domestic batteries, and certain violations of protective orders—a hearing must be held in open court before the defendant may be released on an increased or decreased bail amount or may be released on his own recognizance. § 1270.1(a). At the hearing, the court must consider evidence of the defendant's potential danger to others and the defendant's ties to the community. § 1270.1(c). The court may also request the preparation of an investigative report recommending whether the defendant should be released on his own recognizance. § 1318.1. A defendant released on his own recognizance must agree to appear at all times ordered by the court, comply with all reasonable conditions imposed by the court, not depart the state without leave, and waive extradition if he is apprehended outside of California. § 1318(a).

Post-conviction bail. After conviction for a non-capital offense, a defendant who has applied for probation or who has appealed may be admitted to bail as a matter of right pending application for probation in cases of misdemeanors, or appeals from judgments imposing a fine or imposing imprisonment for misdemeanors. § 1272(1)-(2). The defendant may be admitted to bail as a matter of discretion in all other cases. § 1272(3). In such cases, release on bail pending appeal must be ordered if the defendant demonstrates, by clear and convincing evidence, that he is not likely to flee and that he does not pose a danger to another person or to the community; if so, the defendant must also demonstrate that the appeal raises a substantial legal question not designed merely to delay. § 1272.1.

Pretrial diversion programs. Pretrial diversion refers to postponing the prosecution of an offense—either temporarily or permanently—at any point in the judicial process from charging until adjudication. § 1001.1. If the defendant performs satisfactorily in a diversion program, criminal charges may be dismissed at the end of the diversion period. § 1001.7. Currently, diversion programs exist for drug abusers (§ 1000), persons charged with drug offenses (§ 1000.8), persons charged with child abuse and neglect (§ 1000.12; § 1001.70), persons with cognitive developmental disabilities (§ 1001.21), persons charged with traffic violations (§ 1001.40), persons

charged with certain misdemeanors (§ 1001.51), and persons who write bad checks (§ 1001.60). None of these provisions or any other provisions in the Penal Code should “be construed to preempt other current or future pretrial or precomplaint diversion programs.” § 1001.

California statutory provisions delineate the scope of pretrial release and specific exceptions:

- *California Constitution Article I, § 12* singles out only three groups for differential bail treatment (in this case, excepting them from the right to be released on bail by sufficient sureties): individuals charged with capital offenses, individuals charged with violent felonies who pose a danger to others, and individuals charged with felonies who have threatened to harm others.
- *Penal Code § 1319.5(b)* limits which individuals can be released on their own recognizance without a hearing, specifically excluding: persons on felony probation or felony parole and persons who have failed to appear in court three or more times over the preceding three years and who are arrested for any felony offense, violation of the California Street Terrorism Enforcement and Prevention Act, assault and battery, theft, burglary, or any offense in which the defendant was armed or personally used a firearm.
- *Penal Code § 1270.1(a)* limits which individuals can be released on bail in an amount more or less than the standard bail schedule amount without a hearing, specifically excluding: individuals charged with serious felonies, individuals charged with violent felonies (with an exemption for residential burglary), persons charged with preventing or dissuading a witness from testimony where the offense is punished as a felony, persons charged with domestic battery, and persons charged with violation of a protective order under certain circumstances. Serious felonies, as defined in Penal Code § 1192.7(c), and violent felonies, as defined in Penal Code § 667.5(c), include: murder, attempted murder, manslaughter, mayhem, rape, rape in concert, sodomy, lewd or lascivious act with a child, felony punishable by death or life imprisonment, felony involving great bodily injury

to another, felony involving use of a firearm, grand theft involving a firearm, robbery, arson, sexual penetration by force or fear of injury, kidnapping, explosion of destructive device, assault with intent to commit a felony, assault with a deadly weapon on a peace officer or fireman, continuous sexual abuse of a child, carjacking, extortion, felony threats to victims or witnesses, first-degree burglary, assault by a prisoner, holding a hostage by a prisoner, use of a weapon of mass destruction, sale of specified drugs (heroin, cocaine, PCP, methamphetamine) to a minor, throwing acid or flammable substances, discharge of a firearm at an occupied dwelling or vehicle, and shooting from a vehicle.

Pretrial justice is also a target for recent and pending legislation, including an expansion of the use of electronic monitoring and support for the implementation of evidence-based practices. The field is likely to receive additional legislative attention as a result of rising jail populations.

ENDNOTES

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- ²¹ Criminal justice standards on pretrial release: Third edition, American Bar Association, 2002.
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- ²³ Pierce-Danford, Kristy; Guevara, Meghan. "Commonwealth of Virginia: Roadmap for evidence-based practices in community corrections," Crime and Justice Institute at Community Resources for Justice, 2010.
- ²⁴ Community Corrections Partnerships (CCP) are county entities that advise the county on evidence based sentencing and supervision practices. The executive committee of the CCP is comprised of local public safety and health officials and is charged with developing implementation plans for Public Safety Realignment.
- ²⁵ This statutory provision echoes Article I, § 12 of the California Constitution.



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