

Supreme Court of Nevada
ADMINISTRATIVE OFFICE OF THE COURTS

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MEETING NOTICE AND AGENDA

Committee to Study Evidence-Based Pretrial Release

VIDEOCONFERENCE

Date and Time of Meeting: Wednesday, Sept. 30, 2015 @ 1:30 p.m.

Place of Meeting:

Carson City Supreme Court Library Room 107 201 S. Carson Street Carson City, Nevada	Las Vegas Regional Justice Center Conference Rooms A and B 200 Lewis Avenue Las Vegas, Nevada
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AGENDA

- I. Call to Order
 - a. Call of Roll
 - b. Opening Remarks
 - i. Conference of Chief Justices Resolution 3 and Evidence-Based Pretrial Release Policy Paper (**Tab 1**)
 - ii. Committee Material Table of Contents (**Tab 2**)
 - iii. Arizona Evidence-Based Pretrial Services Administrative Order (**Tab 3**)
- II. Discussion of Committee Goals and Objectives
- III. Guest Speaker Presentation - *Mr. Tim Murray, Pretrial Justice Institute (Tab 4)*
- IV. Guest Speaker Presentation - *Ms. Laurie Dudgeon, Kentucky Administrative Office of the Courts and Ms. Tara Boh Blair, Kentucky Dept. of Pretrial Services (Tab 5)*
- V. Presentation of the Pretrial System Analysis for the 2nd Judicial District Court - *Judge Scott Pearson and Judge Elliott Sattler (Tab 6)*

VI. General Workplan and Data Collection Discussion

VII. Other Items/Discussion

VIII. Future Meeting Dates*

- a. November 5, 2015 at 1:30 p.m.
- b. December 3, 2015 at 1:30 p.m.

IX. Adjournment

- Action items are noted by (for possible action) and typically include review, approval, denial, and/or postponement of specific items. Certain items may be referred to a subcommittee for additional review and action.
- Agenda items may be taken out of order at the discretion of the Chair in order to accommodate persons appearing before the Commission and/or to aid in the time efficiency of the meeting.
- If members of the public participate in the meeting, they must identify themselves when requested. Public comment is welcomed by the Commission but may be limited to five minutes per person at the discretion of the Chair.
- The Commission is pleased to provide reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If assistance is required, please notify Commission staff by phone or by email no later than two working days prior to the meeting, as follows: Jamie Gradick, (775) 687-9808 - email: jgradick@nvcourts.nv.gov
- This meeting is exempt from the Nevada Open Meeting Law (NRS 241.030 (4)(a))
- At the discretion of the Chair, topics related to the administration of justice, judicial personnel, and judicial matters that are of a confidential nature may be closed to the public.
- **Notice of this meeting was posted in the following locations:** Nevada Supreme Court website: www.nevadajudiciary.us; Carson City: Supreme Court Building, Administrative Office of the Courts, 201 South Carson Street; Las Vegas: Regional Justice Center, 200 Lewis Avenue, 17th Floor.

*Please notify Ms. Jamie Gradick with the AOC as soon as possible if you will be unavailable during these meeting dates/times.

TAB 1

Conference of Chief Justices Resolution 3

&

Evidence-Based Pretrial Release Policy Paper

CONFERENCE OF CHIEF JUSTICES

Resolution 3

Endorsing the Conference of State Court Administrators Policy Paper on Evidence-Based Pretrial Release

WHEREAS, pretrial judicial decisions about release or detention of defendants before disposition of criminal charges have a significant, and sometimes determinative, impact on thousands of defendants every day; and

WHEREAS, pretrial release decisions add great financial stress to publicly funded jails holding defendants who are unable to meet financial conditions of release; and

WHEREAS, many of those incarcerated pretrial do not present a substantial risk of failure to appear or a threat to public safety, but do lack the financial means to be released; and

WHEREAS, evidence-based assessment of the risk that a defendant will fail to appear or will endanger others, if released, can increase successful pretrial release without imposing unnecessary financial conditions that many defendants are unable to meet; and

WHEREAS, defendants who are detained can suffer job loss, home loss, and disintegrated social relationships, and, according to the Bureau of Justice Assistance, "receive more severe sentences, are offered less attractive plea bargains and are more likely to become 'reentry' clients because of their pretrial detention regardless of charge or criminal history;" and

WHEREAS, imposing conditions on a defendant that are appropriate for that individual following a valid pretrial assessment substantially reduces pretrial detention without impairing the judicial process or threatening public safety; and

WHEREAS, in 2012 the Conference of State Court Administrators (COSCA) adopted a Policy Paper on Evidence-Based Pretrial Release, which concludes with the following recommendations to state court leaders:

- Analyze state law and work with law enforcement agencies and criminal justice partners to propose revisions that are necessary to support risk-based release decisions of those arrested and ensure that non-financial release alternatives are utilized and that financial release options are available without the requirement for a surety;

- Collaborate with experts and professionals in pretrial justice at the national and state levels;
- Take the message to additional groups and support dialogue on the issue;
- Promote the use of data including determining what state and local data exist that would demonstrate the growing problem of jail expense represented by the pretrial population, and that show the risk factors presented by that population may justify broader pretrial release; and
- Reduce reliance on bail schedules in favor of evidence-based assessment of pretrial risk of flight and threat to public safety.

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices commends and endorses the Policy Paper on Evidence-Based Pretrial Release and joins with Conference of State Court Administrators to urge that court leaders promote, collaborate, and accomplish the adoption of evidence-based assessment of risk in setting pretrial release conditions and advocate for the presumptive use of non-financial release conditions to the greatest degree consistent with evidence-based assessment of flight risk and threat to public safety and to victims of crimes.

Adopted as proposed by the CCJ/ COSCA Criminal Justice Committee at the Conference of Chief Justices 2013 Midyear Meeting on January 30, 2013.

2012-2013 Policy Paper Evidence-Based Pretrial Release

Final Paper



Author

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COSCA Policy and Liaison Committee

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Glossary of Terms

Bail – Bail refers to a deposit or pledge to the court of money or property in order to obtain the release from jail of a person accused of a crime. It is understood that when the person returns to court for adjudication of the case, the bail will be returned in exchange. If the person fails to appear, the deposit or pledge is forfeited. There is no inherent federal Constitutional right to bail; a statutory right was first created in the 1960s.

Bond – A term that is used synonymously with the term “bail” and “bail bond.” (*See above*).

Citation release – a form of nonfinancial pretrial release in which the defendant is issued a written citation, usually at the time of arrest, and signs the citation pledging to appear in court when required.

Commercial bail agent/bondsman – a third party business or person who acts as a surety on behalf of a person accused of a crime by pledging money or property to guarantee the appearance of the accused in court when required.

Compensated surety – a bond for which a defendant pays a fee to a commercial bail agent, which is nonrefundable.

Conditional release – a form of nonfinancial pretrial release in which the defendant agrees to comply with specific kinds of supervision (e.g., drug testing, regular in-person reporting) in exchange for release from jail).

Deposit bond - a bond that requires a defendant to post a deposit with the court (usually 10% of the bail amount), which is typically refunded upon disposition of the case.

Full cash bond – a bond deposited with the court, the amount of which is 100% of the bail amount. The bond can be paid by anyone, including the defendant.

Pretrial - The term “pretrial” is used throughout this paper to refer to a period of time in the life of a criminal case before it is disposed. The term is a longstanding convention in the justice field, even though the vast majority of criminal cases are ultimately disposed through plea agreement and not trial.

Property bond – a bond that requires the defendant to pledge the title of real property valued at least as high as the full bail amount.

Release on recognizance – a form of nonfinancial pretrial release in which the defendant signs a written agreement to appear in court when required and is released from jail.

Surety—a person who is liable for paying another’s debt or obligation.

Surety bond – a bond that requires the defendant to pay a fee (usually 10% of the bail amount) plus collateral if required, to a commercial bail agent, who assumes responsibility for the full bail amount should the defendant fail to appear. If the defendant does appear, the fee is retained by the commercial bail agent.

I. Introduction

Pretrial judicial decisions about release or detention of defendants before disposition of criminal charges have a significant, and sometimes determinative, impact on thousands of defendants every day while also adding great financial stress to publicly funded jails holding defendants who are unable to meet financial conditions of release. Many of those incarcerated pretrial do not present a substantial risk of failure to appear or a threat to public safety, but do lack the financial means to be released.¹ Conversely, some with financial means are released despite a risk of flight or threat to public safety, as when a bond schedule permits release upon payment of a pre-set amount without any individual determination by a judge of a defendant's flight risk or danger to the community. Finally, there are individuals who, although presumed innocent, warrant pretrial detention because of the risks of flight and threat to public safety if released.

Evidence-based assessment of the risk a defendant will fail to appear or will endanger others if released can increase successful pretrial release without financial conditions that many defendants are unable to meet. Imposing conditions on a defendant that are appropriate for that individual following a valid pretrial assessment substantially reduces pretrial detention without impairing the judicial process or threatening public safety. The Conference of State Court Administrators advocates that court leaders promote,

collaborate toward, and accomplish the adoption of evidence-based assessment of risk in setting pretrial release conditions. COSCA further advocates the presumptive use of non-financial release conditions to the greatest degree consistent with evidence-based assessment of flight risk and threat to public safety and to victims of crimes.

II. The Law

The Supreme Court of the United States has said, "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law."² The right to bail has been a part of American history in varying degrees from the beginning -- 1641 in Massachusetts and 1682 in Pennsylvania. Other state constitutions adopted the Pennsylvania provision as a model.³ Nine states and Guam follow the pattern of the United States Constitution by prohibiting "excessive bail" without explicitly guaranteeing the right to bail.⁴ Forty state constitutions, as well as the Puerto Rico Constitution and the District of Columbia Bill of Rights, expressly prohibit excessive bail.⁵ One state, Maine, had a constitutional provision prior to 1838 that expressly provided the right to bail, but by amendment that year the Maine Constitution now only prohibits bail in capital cases, without otherwise addressing the matter.⁶ However, the Maine Supreme Judicial Court held that the current language continues the guarantee of the right to bail that was express prior to 1838.⁷ The Federal

Judiciary Act of 1789 provided for the absolute right to bail in non-capital cases. The Eighth Amendment prohibition on excessive bail was adopted in 1791 as part of the Bill of Rights.⁸

Freedom before conviction permits unhampered preparation of a defense and prevents infliction of punishment before conviction. Without the right to bail, the presumption of innocence would lose its meaning.⁹ The purpose of bail is to ensure the accused will stand trial and submit to sentencing if found guilty.¹⁰ Another legitimate purpose is reasonably to assure the safety of the community and of crime victims.¹¹

Twelve states, the District of Columbia, and the federal government have enacted a statutory presumption that defendants charged with bailable offenses should be released on personal recognizance or unsecured bond unless a judicial officer makes an individual determination that the defendant poses a risk that requires more restrictive conditions or detention.¹² Six other states have adopted this presumption by court rule.¹³ However, it is common in many states to have bail schedules, adopted statewide or locally, that establish a pre-set amount of money that must be deposited at the jail in order for a defendant to obtain immediate release, without any individual assessment of risk of flight or danger to the community. In a 2009 nationwide survey of the 150 largest counties, among the 112 counties that responded, 64 percent reported using bond schedules.¹⁴

Despite the common use of bond schedules (also commonly termed “bail schedules”), they seem to contradict the notion that pretrial release conditions should reflect an assessment of an individual defendant’s risk of failure to appear and threat to public safety. Two state high courts have rejected the practice of imposing non-discretionary bail amounts based solely on the charge, as in a bail schedule. The Hawai’i Supreme Court found an abuse of discretion for a trial court to apply a bail schedule promulgated by the senior judge that ignored risk factors specific to the defendant.¹⁵ The Oklahoma Court of Criminal Appeals overturned a statutory mandate for a particular bail amount attached to a specific crime: “[The statute] sets bail at a predetermined, nondiscretionary amount and disallows oral recognizance bonds under any circumstances. We find the statute is unconstitutional because it violates the due process rights of citizens of this State to an individualized determination to bail.”¹⁶

In the United States in the twenty-first century, it is common to require the posting of a financial bond as the means to obtain pretrial release, often through procuring the services of a commercial bond company, or bail bondsman. Bonding companies typically require a non-refundable premium payment from the defendant, usually 10 percent of the bail set by the court. Many companies also require collateral sufficient to cover the full bond amount.¹⁷ In 2007 the DOJ Bureau of Justice Statistics reported that an estimated 14,000 bail agents nationwide secured the release of more than 2 million defendants annually.¹⁸ The United

States and the Philippines are the only countries that permit the widespread practice of commercial bail bonds.¹⁹ In countries other than these two, “[b]ail that is compensated in whole or in part is seen as perverting the course of justice.”²⁰

III. The Consequences of Pretrial Release versus Incarceration

From the perspective of the defendant, who is presumed innocent, pretrial release mitigates the collateral consequences of spending weeks or months awaiting trial or a plea agreement. Jail time can result in job loss, home loss, and disintegrated social relationships, which in turn increase the likelihood of re-offending upon release.²¹

In 2010 the United States had the world’s highest total number of pretrial detainees (approximately 476,000) and the fourth-highest rate of pretrial detention (158 per 100,000).²² A study of felony defendants in America’s 75 largest urban counties showed that in 1990, release on recognizance accounted for 42% of releases, compared to 25% released on surety bond. By 2006, the proportions had been reversed: surety bonds were used for 43% of releases, compared to 25% for release on recognizance.²³ Taking into account all types of financial bail (surety bond, deposit bail, unsecured bond, and full cash bond), it is clear that the majority of pretrial release requires posting of financial bail.

The same study of felony defendants showed that 42% were detained until disposition of their case.²⁴ Pretrial

incarceration imposes significant costs on taxpayer-funded jails, primarily at the local government level. In 2010, “taxpayers spent \$9 billion on pre-trial detainees.”²⁵ The increased practice of requiring financial bonds has contributed to increased jail populations, which has produced an extraordinary increase in costs to counties and municipalities from housing pretrial detainees. The most recent national data indicates that 61% of jail inmates are in an un-convicted status, up from just over half in 1996.²⁶

In addition to the financial costs from increased pretrial detention, the cost in unequal access to justice also appears to be high. The movement to financial bonds as a requirement for pretrial release, often requiring a surety bond from a commercial bond seller, makes economic status a significant factor in determining whether a defendant is released pending trial, instead of such factors as risk of flight and threat to public safety. A study of all nonfelony cases in New York City in 2008 found that for cases in which bail was set at less than \$1,000 (19,617 cases), in 87% of those cases defendants were unable to post bail at arraignment and spent an average of 15.7 days in pretrial detention, even though 71.1% of these defendants were charged with nonviolent, non-weapons-related crimes.²⁷ In short, “for the poor, bail means jail.”²⁸ The impact of financial release conditions on minority defendants reflects disparate rates of poverty among different ethnic groups. A study that sampled felony cases in 40 of the 75 largest counties nationwide found that, between 1990 and

1996, 27% of white defendants were held in jail throughout the pretrial period because they could not post bond, compared to 36% of African-American defendants and 44% of Hispanic defendants.²⁹

The practice of conditioning release on the ability to obtain a surety bond has so troubled the National Association of Pretrial Services Agencies (NAPSA) that, in its Third Edition of Standards on Pretrial Release (and in previous editions beginning in 1968), Standard 1.4(f) provides that “[c]onsistent with the processes provided in these Standards, compensated sureties should be abolished.” According to NAPSA, compensated sureties should be abolished because the ability to pay a bondsman is unrelated to the risk of flight or danger to the community; a surety bond system transfers the release decision from a judge to private party making unreviewable decisions on unknown factors; and the surety system unfairly discriminates against defendants who are unable to afford non-refundable fees required by the bondsman as a condition of posting the bond.³⁰ The American Bar Association also recommends that “compensated sureties should be abolished.”³¹ The Commonwealth of Kentucky and the State of Wisconsin have prohibited the use of compensated sureties.³² In addition, Illinois and Oregon do not allow release on surety bonds (but do permit deposit bail).³³

The ability of a defendant to obtain pretrial release has a significant correlation to criminal justice outcomes. Numerous research projects conducted over the past

half century have shown that defendants who are held in pretrial detention have less favorable outcomes than those who are not detained —regardless of charge or criminal history. In these studies, the less favorable outcomes include a greater tendency to plead guilty to secure release (a significant issue in misdemeanor cases), a greater likelihood of conviction, a greater likelihood of being sentenced to terms of incarceration, and a greater likelihood of receiving longer prison terms.”³⁴ Data support the common sense proposition that pretrial detention has a coercive impact on a defendant’s amenability to a plea bargain offer and inhibits a defendant’s ability to participate in preparation for a defense. In summarizing decades of research, the federal Bureau of Justice Assistance noted that “research has demonstrated that detained defendants receive more severe sentences, are offered less attractive plea bargains and are more likely to become ‘reentry’ clients because of their pretrial detention – regardless of charge or criminal history.”³⁵

IV. Evidence-Based Risk Assessment: The Lesson of *Moneyball* and the Challenge of Adopting New Practices

Michael Lewis’s book *Moneyball* documents how Oakland A’s general manager Billy Beane used statistics and an evidence-based approach to baseball that yielded winning seasons despite severe budgetary constraints.³⁶ His approach attracted considerable antagonism in the baseball community because it deviated from long-held practices based on intuition and gut feelings, tradition, and ideology. As

persuasively set forth more recently in *Supercrunchers*, the cost of ignoring data and evidence in a broad variety of human endeavors is suboptimal decision-making.³⁷ This realization and the commensurate movement toward evidence-based practice, by now firmly ensconced in medicine and other disciplines, have finally emerged in the fields of sentencing, corrections, and pretrial release (but not without resistance, as in baseball).

In 1961, the New York City Court and the Vera Institute of Justice organized the Manhattan Bail Project, an effort to demonstrate that non-financial factors could be used to make cost-effective release decisions.³⁸ Decades later, the movement away from financial conditions and toward use of an evidence-based risk assessment in setting pretrial release conditions appears to be gathering momentum. The 2009 Survey of Pretrial Services Programs found that the majority of 112 counties responding to a survey of the 150 largest counties use a combination of objective and subjective criteria in risk assessment. Eighty-five percent of those responding counties reported having a pretrial services program to assess and screen defendants and present that information at the first court appearance.³⁹ The ongoing development of evidence-based decision-making in pretrial release decisions is demonstrated by the release in August 2011 of a monograph by the National Institute of Corrections recommending outcome and performance measures for evaluating pretrial release programs.⁴⁰ Looking forward to the type of assessments that would support evidence-

based pretrial decisions, an accumulation of empirical research strongly suggests the following points:

- Actuarial risk assessments have higher predictive validity than clinical or professional judgment alone.⁴¹
- Post-conviction risk factors (relating to recidivism) should not be applied in a pretrial setting.⁴²
- Several measures commonly gathered for pretrial were not significantly associated with pretrial failure: residency, injury to victim, weapon, and alcohol.⁴³
- The six most common validated pretrial risk factors are prior failure to appear; prior convictions; current charge a felony; being unemployed; history of drug abuse; and having a pending case.⁴⁴
- Defendants in counties that use quantitative and mixed risk assessments are less likely to fail to appear than defendants in counties that use qualitative risk assessments.⁴⁵
- Not only are subjective screening devices prone to demographic disparities, but these devices produce poor results from a public safety perspective.⁴⁶
- The statewide pretrial services program in Kentucky, begun in 1968, now uses a uniform assessment protocol that results in a failure to appear rate of only 10 percent and a re-arrest rate of only 8 percent.⁴⁷

- Pretrial programs that use quantitative and mixed quantitative-qualitative risk assessments experience lower re-arrest rates than programs that only use qualitative risk assessments.
- The number of sanctions a pretrial program can impose in response to non-compliance with supervision conditions further lowers the likelihood of a defendant's pretrial re-arrest.⁴⁸

The use of a validated pretrial risk assessment tool when making a judicial decision to release or not, and the attendant conditions on release based on that assessment, fits within a well-functioning case management regimen. While different instruments have been used with success in different jurisdictions, in general, research on pretrial assessment conducted over decades has identified these common factors as good predictors of court appearance and/or danger to the community:

- Current charges;
- Outstanding warrants at the time of arrest;
- Pending charges at the time of arrest;
- Active community supervision at the time of arrest;
- History of criminal convictions;
- History of failure to appear;
- History of violence;
- Residence stability over time;
- Employment stability;
- Community ties; and
- History of substance abuse.⁴⁹

A comprehensive guide to implementing successful evidence-based pretrial services into the pretrial release determination, with step-by-step instructions on the process from formation of a Pretrial Services Committee through program implementation, is available from the Pretrial Justice Institute.⁵⁰

Perhaps the best-known use of evidence-based risk assessment to reduce reliance on financial release conditions exists in the District of Columbia's Pretrial Services Agency (PSA).⁵¹ Paradoxically, the DC pretrial Code requires detention if no combination of conditions will reasonably assure that a defendant does not flee or pose a risk to public safety.⁵² If the prosecutor demonstrates by clear and convincing evidence that a defendant presents a serious flight risk or threat to the victim or to public safety, the defendant is detained without the option for pretrial release. However, the DC Code also provides that a judge may not impose a financial condition as a means of preventative detention.⁵³ PSA conducts a risk assessment (flight and danger) through an interview with the defendant within 24 hours of arrest that assesses points on a 38-factor instrument, assigning a defendant into a category as high risk, medium risk, and low risk.⁵⁴ In 1965, only 11% of defendants were released without a money bond, but by 2008, 80% of all defendants were released without a money bond, 15% were held without bail, and 5% were held with financial bail (none on surety bond), while at the same time 88% of released defendants made all court appearances and 88% completed pretrial release without any new arrests.⁵⁵

Another example of the impact of evidence-based pretrial risk assessment is found in the Harris County (Houston), Texas, "direct filing" system.⁵⁶ As charges are being accepted and filed, the defendant is transferred to the central jail for intake. At the jail, the pretrial screening department interviews the defendant and collects data such as family composition, employment status, housing, indigency status, education level, health problems and medications, and potential mental health issues. This process culminates in a risk classification, identifying defendants who are appropriate for release on personal recognizance bond. The process continues through appearance before a magistrate (typically within 12 hours of arrest), where defendants granted personal bond and those able to post cash or surety bonds are released from jail.⁵⁷ An estimate of net savings and revenue for Fiscal Year 2010 showed that Harris County gained \$4,420,976 in avoided detention costs and pretrial services fees collected after deducting for the costs of pretrial services.⁵⁸

Kentucky abolished commercial bail bondsmen in 1976 and implemented the statewide Pretrial Services Agency that today relies on interviews and investigations of all persons arrested on bailable offenses within 12 hours of his or her arrest. Pretrial Officers conduct a thorough criminal history check and utilize a validated risk assessment that measures flight risk and anticipated conduct to make appropriate recommendations to the court for pretrial release. Furthermore, Pretrial Services

provides supervision services for pretrial defendants, misdemeanor diversion participants and defendants in deferred prosecution programs.

In 2011 Pretrial Services processed 249,545 cases in which a full investigation was conducted on 88% of all incarcerated defendants.⁵⁹ Using a validated risk assessment tool, Pretrial Services identifies defendants as being either low, moderate, or high risk for pretrial misconduct, (i.e. failing to appear for court hearings or committing a new criminal offense while on pretrial release). Ideally, low risk defendants (those most likely to return to court and not commit a new offense) are recommended for release either on their recognizance or a non-financial bond. Statistically, about 70% of pretrial defendants are released in Kentucky; 90% of those make all future court appearances and 92% do not get re-arrested while on pretrial release.⁶⁰ When looking at release rates by risk level, the data shows that judges follow the recommendations of Pretrial Services. In 2011, judges ordered pretrial release of 81% of low risk defendants, 65% of moderate risk defendants, and 52% of high risk defendants.⁶¹

In 2011, Kentucky adopted House Bill 463, a major overhaul of the Commonwealth's criminal laws that intended to reduce the cost of housing inmates while maintaining public safety.⁶² Since adoption of HB 463, Pretrial Services data shows a 10% decrease in the number of defendants arrested and a 5% increase in the overall release rate, with a substantial increase in non-financial

releases and in releases for low and moderate risk defendants. The non-financial release rate increased from 50% to 66%, the low risk release rate increased from 76% to 85%, and the moderate risk release rate increased from 59% to 67%. In addition, pretrial jail populations have decreased by 279 defendants, while appearance and public safety rates have remained consistent.⁶³

There are other, similar examples of successful implementation of evidence-based pretrial assessments that deliver on the promise of pretrial release without financial conditions.⁶⁴

Evidence-based pretrial risk assessment in the context of skillful and collaborative case management and data sharing should be embraced as the best practice by judges, court administrators, and court leaders. Reliance on a validated, evidence-based pretrial risk assessment in setting non-financial release conditions balances the interests of courts in both protecting public safety and safeguarding individual liberty.

V. The Way Forward

“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 law favors 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.”

ABA Criminal Justice Standards on Pretrial Release, Third Edition
Standard 10-1.1.

By adopting this paper, COSCA is not leading a parade, but joining in some very good and credible company. As noted in 2011 by a leading official of the United States Department of Justice, “Within the last year, a number of organizations have publicly highlighted the need to reform our often antiquated and sometimes dangerous pretrial practices and replace them with empirically supported, risk-based decision-making.”⁶⁵ Not surprisingly pretrial services agencies themselves support this effort,⁶⁶ but so do a wide variety of other justice-oriented interest groups: the National Association of Counties,⁶⁷ the American Jail Association,⁶⁸ the International Association of Chiefs of Police,⁶⁹ the American Council of Chief Defenders,⁷⁰ the American Bar Association,⁷¹ the Association of Prosecuting Attorneys,⁷² and the American Association of Probation and Parole.⁷³

Following the 2011 National Symposium on Pretrial Justice hosted by the U.S. Department of Justice (DOJ), the DOJ’s Office of Justice Programs collaborated with the Pretrial Justice Institute to convene in October 2011 the first meeting of the Pretrial Working Group. Information about the continuing work of the Pretrial Working Group subcommittees can be found at the Web site published by the Office of Justice Programs in association with the Pretrial Justice Institute. The stated goals of this effort are to exchange information on pretrial justice issues, develop a website to disseminate information on the work of the subcommittees, and inform evidence-based pretrial justice policy making.⁷⁴

There are two major obstacles to reform. First, there is resistance to changing the status quo from those who are comfortable with or profit from the existing system. This resistance can be overcome by a well-

executed, evidence-based protocol, as has been demonstrated in the District of Columbia and in Kentucky. Second, courts tend to be deliberate in adopting change and to require persistent presentation of well-documented advantages to new approaches, such as evidence-based practices in the pretrial release setting. In this regard, familiarity with evidence-based decision making in drug courts, at sentencing, and in evaluating court programs should help gain acceptance for evidence-based practices in the pretrial setting. Part of this shift in practice might include elimination of or decreased reliance on bail schedules, which are in use in at least two-thirds of counties across the country.⁷⁵ State court leaders should closely follow and make a topic of discussion the efforts of the Department of Justice and its Pretrial Justice Working Group discussed above, as well as continuing efforts by the American Bar Association which is supporting transition toward evidence-based pretrial practices through its Pretrial Justice Task Force.⁷⁶

State court leaders must take several steps to leverage the emerging national consensus on this issue:

- Analyze state law and work with law enforcement agencies and criminal justice partners to propose revisions that are necessary to
 - support risk-based release decisions of those arrested;
 - ensure that non-financial release alternatives are available and that financial release options are available without the requirement for a surety.
- Collaborate with experts and professionals in pretrial justice at the national and state levels.
- Take the message to additional groups and support dialogue on the issue.
- Use data to promote the use of data; determine what state and local data exist that would demonstrate the growing problem of jail expense represented by the pretrial population, and that show the risk factors presented by that population may justify broader pretrial release.
- Reduce reliance on bail schedules in favor of evidence-based assessment of pretrial risk of flight and threat to public safety.

References

¹VanNostrand, M. and Crime and Justice Institute (2007). *Legal and Evidence-Based Practices: Applications of Legal Principles, Laws, and Research to the Field of Pretrial Services*. Washington, DC: U.S. Department of Justice, National Institute of Corrections.

² Coffin v. United States, 156 U.S. 432, 453 (U.S. 1895).

³ Schnacke, T.R., and M. R.Jones, and C. M. Brooker (2010). *The History of Bail and Pretrial Release*. Washington, D.C.: Pretrial Justice Institute.

⁴ U.S. Const. amend VIII (1791); Ga. Const., art. 1, sec. 9, para. XVII; Haw.Const. art. I, sec. 12; Md. Const. Declaration of Rights, art. 25; Mass. Const. Part I, art. XXVI; N.H. Const. Part I, art. 33; N.Y. Const. art. I, sec. 5; N.C. Const. art. 1, sec. 27; Va. Const. art. 1, sec. 9; W.Va. Const. art. III, sec. 5; Guam Organic Act, 48 U.S.C. sec. 1421b (2006).

⁵ ALA. CONST. art. I, §16; ALASKA CONST. art. I, § 11; ARIZ. CONST. art. II, § 22; ARK. CONST. art. II, § 8; CAL. CONST. art. I, § 12; COLO. CONST. art. I, § 19; CONN. CONST. art. I, § 8; DEL. CONST. art. I, § 12; FLA. CONST. art. I, § 14; IDAHO CONST. art. I, § 6; ILL. CONST. art. I, § 9; IND. CONST. art. I, § 7; IOWA CONST. art. I, § 12; KAN. CONST. Bill of Rights, § 9; KY. CONST. § 16; LA. CONST. art. I, § 8; ME. CONST. art. I, § 10; MICH. CONST. art. I, § 15; MINN. CONST. art. I, § 7; MISS. CONST. art. III, § 29; MO. CONST. art. I, § 20; MONT. CONST. art. II, § 21; NEB. CONST. Art. I, § 9; NEV. CONST. art. I, § 7; N.J. CONST. art. I, § 11; N.M. CONST. art. II, § 13; N.D. CONST. art. I, § 11; OHIO CONST. art. I, § 9; OKLA. CONST. art. II, § 8; OR. CONST. art. I, § 14; PA. CONST. art. I, § 14; R.I. CONST. art. I, § 9; S.C. CONST. art. I, § 15; S.D. CONST. art. VI; Tenn. CONST. ART. I, §15; TEX. CONST. art. I, § 11; UTAH CONST. art. I, § 8; VT. CONST. ch. 2, § 40; WASH. CONST. art. I, § 20; WIS. CONST. art. I, § 8; WYO. CONST. art. I, § 14; P.R. CONST. art. II, § 11; D.C. Code, Bill of Rights, art. I, § 108.

⁶ ME. CONST. art. I, § 10.

⁷ Fredette v. State, 428 A.2d 395, 404-05 (Me. 1981).

⁸ U.S. CONST. amend. VIII (1791).

⁹ “Federal law has unequivocally provided that person arrested for noncapital offense shall be admitted to bail, since the traditional right of accused to freedom before conviction permits unhampered preparation of defense and serves to prevent infliction of punishment prior to conviction, and presumption of innocence, secured only after centuries of struggle, would lose its meaning unless such right to bail before trial were preserved.” Stack v. Boyle, 342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3 (1951).

¹⁰ *Id.*

¹¹ United States v. Salerno, 481 U.S. 739 (1987); Bail Reform Act of 1984, 18 U.S.C. §§ 3141-3150 (1984).

¹² 18 U.S.C. § 3142(c)(1)(B) (2008); D.C. Code § 23-1321(c)(B) (2003); 11 Del. Code § 2105 (2006); Iowa Code Ann. §811.2 (2012); Ky. Rev. Stat. Ann. § 431.520 (2012); Mass. Gen. Laws Ann. ch. 276 § 58A (2010); Me. Rev. Stat. Ann tit. 15 § 1026 (2012); Neb. Rev. Stat. § 29-901 (2010); N.C. Gen. Stat. § 15A-534 (2012); Or. Rev. Stat. Ann. § 135.245(3) (2009); S.C. Code Ann. § 17-15-10 (2011) (amended by 2012 South Carolina Laws Act 286 (S.B. 45)); SDCL § 23A-43-2 (1982); Tenn. Code Ann. § 40-11-104 (2012); Wis. Stat. § 969.01 (1977).

¹³ Ariz. R. Crim. P. 7.2(a) (2008); Minn. R. Crim. P. 6.02 (2010); N.M. R. Dist. Ct. RCRP Rule 5-401(a) (2010); N. D. R. Crim. P. 46(a) (2006); D.C. Code §23-1321 (2003) ; Wyo. R. Crim. P. 46.1(a)(2) (2001).

¹⁴ Pretrial Justice Institute (2009). *Pretrial Justice in America: A Survey of County Pretrial Release Policies*, pp. 2,7. Washington, D.C.: Pretrial Justice Institute.

¹⁵ Pelekai v. White, 861 P.2d 1205 (1993).

¹⁶ Clark v. Hall, 53 P.3d 416 (2002).

¹⁷ Pretrial Justice Institute (2009), *op. cit.*, p.9.

¹⁸ Cohen, T. and B. Reaves (2007) *Pretrial Release of Felony Defendants in State Courts*, p.4. Washington, D.C.: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

¹⁹ Liptak, A. (2008). "Illegal Globally, Bail for Profit Remains in the U.S.," *New York Times* (January 29, 2008), accessed at <http://www.nytimes.com/2008/01/29/us/29bail.html?pagewanted=all>

²⁰ Devine, F.E. (1991). *Commercial Bail Bonding: A Comparison of Common Law Alternatives*, p 201. New York: Praeger.

²¹ Freiburger, T., C. Marcum, and M. Pierce (2010). "The Impact of Race on the Pretrial Decision," *American Journal of Criminal Justice*, Vol. 35 No. 1, pp76-86; Texas Criminal Justice Coalition (2010). *Costly Confinement & Sensible Solutions: Jail Overcrowding in Texas*. Austin: Texas Criminal Justice Coalition.

²² Open Society Justice Foundation (2010). *The Socioeconomic Impact of Pretrial Detention*, p. 11. New York: Open Society Foundation.

²³ Thomas H. Cohen and Kyckelhahn, T. *Felony Defendants in Large Urban Counties, 2006*, p.2. Washington D.C.: US Department of Justice, Office of Justice Planning, Bureau of Justice Statistics.

²⁴ Cohen and Kyckelhahn (2010), op. cit. p1.

²⁵ American Bar Association Criminal Justice Section (2011). *Dialogue On Strategies to Save States Money, Reform Criminal Justice & Keep the Public Safe*, p.9. Washington, D.C.: American Bar Association.

²⁶ Burdeen, C.F. (2009). *Jail Population Management: Elected County Officials' Guide to Pretrial Services*, p.4. Washington, D.C.: National Association of Counties.

²⁷ Human Rights Watch (2010). *The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City*, p.2. New York: Human Rights Watch.

²⁸ *Id.*, p.20.

²⁹ Demuth, S. (2003). "Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees," p. 41. *Criminology* Vol. 41 No. 3, pp 873-907.

³⁰ National Association of Pretrial Services Agencies (2002). *NAPSA Standards on Pretrial Release, Third Edition*, p.9. Rochester, NY: National Association of Pretrial Services Agencies.

³¹ American Bar Association (2007). *ABA Standards for Criminal Justice: Pretrial Release*, 3d ed., Standard 10-1.4f. Washington, D.C.: American Bar Association.

³² Ky. Rev. Stat. §431.510 (2004); Wis. Stat. §969.12 (1994).

³³ IL ST CH 725 §5/110-7 (2012); Or. Rev. Stat. §135.265 (2011).

³⁴ National Association of Pretrial Services Agencies, *NAPSA Standards on Pretrial Release*, supra note 30, p.9. See also Phillips, M. T. (2007). *Bail, Detention, and Nonfelony Case Outcomes, Research Brief No. 14*. New York: New York City Criminal Justice Agency, Inc. and Phillips, M. T. (2008). *Bail, Detention, and Felony Case Outcomes, Research Brief No. 18*. New York: New York City Criminal Justice Agency, Inc.

³⁵ Bureau of Justice Assistance (2012). "Ensuring Procedural Justice Throughout the Adjudication Process: Pretrial Reform, High Performance Prosecution, and Smarter Sentencing Practices," FY12 Competitive Grant Announcement. Washington, D.C.: US Department of Justice, Office of Justice Programs, Bureau of Justice Assistance Grant Announcement 2-12-3287, citing multiple sources, p.4. Accessed at <http://www07.grants.gov/search/search.do?oppId=162693&mode=VIEW>. Studies cited include: Anne Rankin, "The Effects of Pretrial Detention," *New York University Law Review* Vol. 39, pp 641-655 (1964); Patricia Wald, "The Right to Bail Revisited: A Decade of Promise without Fulfillment," in S. Nagel, ed. *The Rights of the Accused* (Beverly Hills, CA: Sage Publications, 1972); William M. Landes, "Legality and Reality: Some Evidence on Criminal Procedure," *Journal of Legal Studies*, Vol. 3 pp.287-337 (1974); Hans Zeisel, "Bail Revisited," *Law and Social Inquiry*, Vol. 4 No. 4, pp 769-789 (1979); John S. Goldcamp, *Two Classes of Accused: A Study of Bail and Detention in American Justice*. (Cambridge, MA:

Ballinger Pub. Co., 1979); Stevens H. Clarke and Susan T. Kurtz, "The Importance of Interim Decisions to Felony Trial Court Dispositions," *Journal of Criminal Law and Criminology*, Vol. 74, pp. 476-518; Michael R. Gottfredson and Don M. Gottfredson, *Decision Making in Criminal Justice: Toward a Rational Exercise of Discretion* (New York: Plenum Press, 1988). See also Mary T. Phillips, Bail Detention and Nonfelony Case Outcomes, CJA Research Brief No. 14 (New York City Criminal Justice Agency, 2007) and Mary T. Phillips, Bail, Detention, and Felony Case Outcomes, CJS Research Brief No. 18, (New York City Criminal Justice Agency, 2008).

³⁶ Lewis, M. (2003). *Moneyball: The Art of Winning an Unfair Game*. New York: W.W. Norton. See generally, Cullen, F.T., Myer, A.J., and Latessa, E.J. (2009). "Eight Lessons from Moneyball: The High Cost of Ignoring Evidence-Based Corrections," *Victims and Offenders* Vol. 4 No. 2, pp. 97-213.

³⁷ Ayers, I (2007). *Supercrunchers: Why Thinking-By-Numbers is the New Way to Be Smart*. New York: Bantam Books.

³⁸ Katsive, M. C. (1968). *New Areas for Bail Reform: A Report on the Reevaluation of the Manhattan Bail Project, June 1966-August 1967*. New York: Vera Institute of Justice.

³⁹ Pretrial Justice Institute (2009) *op. cit.*

⁴⁰ National Institute of Corrections (2011). *Measuring What Matters – Outcome and Performance Measures for the Pretrial Services Field*. Washington, D.C.: U.S. Department of Justice, National Institute of Corrections.

⁴¹ Bechtel, K., Lowenkamp, C. T., and Holsinger, A. (2011). "Identifying the Predictors of Pretrial Failure: A Meta-Analysis," *Federal Probation*, Vol. 75 No. 2, accessed at <http://www.uscourts.gov/uscourts/FederalCourts/PPS/Fedprob/2011-09/identifying.html>. Authors cite the following studies in support of this statement: Latessa, E.J. & Lovins, B. (2010). The role of offender risk assessment: A policy maker guide. *Victims and Offenders*, 5 (3), 203–219; Ægisdóttir, S., White, M. J., Spengler, P. M. et al. (2006). The meta-analysis of clinical judgment project: Fifty-six years of accumulated research on clinical versus statistical prediction. *Counseling Psychologist*, 34, 341–382; Andrews, D. A., Bonta, J., & Wormith, S. J. (2006). The recent past and near future of risk and/or need assessment. *Crime and Delinquency*, 52, 7–27; Grove, W. M., Zald, D. H., Lebow, B. S., Snitz, B. E., & Nelson, C. (2000). Clinical versus mechanical prediction: A meta-analysis. *Psychological Assessment*, 12, 19–30.

⁴² Mamalian C. A. (2011). *State of the Science of Pretrial Risk Assessment*, p.19. Washington, D.C.: Pretrial Justice Institute, citing VanNostrand, M. (2007) *Legal and Evidence-based Practices: Application of Legal Principles, Laws and Research to the Field of Pretrial Services*. Washington, D.C.: National Institute of Corrections and Crime and Justice Institute.

⁴³ *Identifying the Predictors of Pretrial Failure*, *supra* note 38.

⁴⁴ Mamalian, *op. cit.* p.9.

⁴⁵ Levin, D (2007) *Examining the Efficacy of Pretrial Release Conditions, Sanctions and Screening with the State Court Processing Statistics Dataseries*. pp 9-10. Washington, D.C.: Pretrial Justice Institute.

⁴⁶ *Id.*

⁴⁷ Mahoney, B., et al. (2001). *Pretrial Services Programs: Responsibilities and Potential*. P. 13. Washington, D.C.: National Institute of Justice. Data provided August 2012 by Laurie Dudgeon, Director, Administrative Office of the Courts of Kentucky, directly from the Pretrial Services case management system, known as the Pretrial Release Information Management (PRIM). The Kentucky pretrial release statutory scheme is at K.R.S. sec. 431.066, *et. al.*

⁴⁸ Levin (2007). *supra* note 42.

⁴⁹ VanNostrand, M. (2007) *Legal and Evidence Based Practices: Application of Legal Principles, Laws, and Research to the Field of Pretrial Services*. p. 11. Washington, D.C.: Crime and Justice Institute and the National Institute of Corrections, Community Corrections Division.

⁵⁰ Muller, J. (2010). *Pretrial Services Program Implementation: A Starter Kit*. Washington, D.C.: Pretrial Justice Institute.

⁵¹ Pretrial Justice Institute (2012). *Rational and Transparent Bail Decision Making: Moving from a Cash-Based to a Risk-Based Process*, p. 33. Washington, D.C.: Pretrial Justice Institute.

⁵² D.C. Code § 23-1322 (2009).

⁵³ D.C. Code § 23-1321(c)(3) (2003).

⁵⁴ KiDeuk, K and Denver, M. (2011) *A Case Study on the Practice of Pretrial Services and Risk Assessment in Three Cities*, p.8. Washington, D.C.: The Urban Institute.

⁵⁵ Pretrial Justice Institute (n.d.). "The D.C. Pretrial Services Agency: Lessons from Five Decades of Innovation and Growth," *Case Studies*, Vol. 2, No. 1, accessed at <http://pretrial.org/Success/Case%20Study%20%20-%20DC%20Pretrial%20Services.pdf>. Sources cited include Thomas, Jr., W.H. (1976). *Bail Reform in America*. Berkeley, CA: University of California, Berkeley, for data from 1962 through 1975; District of Columbia Pretrial Services Agency (2009). *Leading the Field: District of Columbia Pretrial Services Agency FY 2008 Annual Report*. Washington, D.C.: D.C. Pretrial Services Agency. for 2008 data.

⁵⁶ Mahoney, B. and Smith, W. (2005). *Pretrial Release and Detention in Harris County: Assessment and Recommendations*. Denver, CO: Justice Management Institute.

⁵⁷ *Id.*

⁵⁸ Nagy, G. (2012). "Pretrial Services, Evidence Based Policy and Practices" presentation to the Pretrial Detention in Texas: Strategies for Saving Taxpayer Money While Maintaining Public Safety meeting, Austin, Texas, March 30, 2012.

⁵⁹ Data provided August 2012 by Laurie Dudgeon, Director, Administrative Office of the Courts of Kentucky, directly from the Pretrial Services case management system, known as the Pretrial Release Information Management (PRIM).

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Kentucky legislation 11 RS HB 463/EN accessed at <http://www.lrc.ky.gov/record/11rs/hb463.htm>

⁶³ *Ibid.*

⁶⁴ *State of the Science of Pretrial Risk Assessment*, *supra*, note 42, at 30-38. See also *Rational and Transparent Bail Decision Making*, *supra* note 48 at 22-33.

⁶⁵ Laurie Robinson, Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice, remarks at the National Symposium on Pretrial Justice, Washington, D.C., May 31, 2011.

⁶⁶ National Association of Pretrial Services Agencies, *NAPSA Standards on Pretrial Release*, *supra* note 27 at p 53, Standard 3.1.

⁶⁷ National Association of Counties (2012), *The American County Platform and Resolutions*, Section on Justice and Public Safety, subsection on Courts, Resolution F, Pretrial Release.

Accessed at <http://www.naco.org/legislation/policies/documents/american%20county%20platform%20and%20resolutions%20cover%20page%2011-12.pdf>

⁶⁸ American Jail Association (2010). "Resolution on Pretrial Justice," adopted October 24, 2010. Accessed at <http://www.pretrial.org/OurServices/Advocacy/AdvocacyDocuments/AJA%20Resolution%20on%20Pretrial%20Justice%202011.pdf>

⁶⁹ International Association of Chiefs of Police (2011). *Law Enforcement's Leadership Role in the Pretrial Release and Detention Process*. Washington, D.C.: International Association of Chiefs of Police.

⁷⁰ American Council of Chief Defenders (2011). *Policy Statement on Fair and Effective Pretrial Justice Practices*, Washington, D.C.: American Council of Chief Defenders. Accessed at http://nlada.net/library/document/na_accdpretrialstmt_06042011

⁷¹ American Bar Association (2002). *ABA Standards for Criminal Justice: Pretrial Release*, 3d ed. Standard 10-1.10. Accessed at http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk.html#10-1.10.

⁷² Association of Prosecuting Attorneys (2011). *Policy Statement on Pretrial Justice*. Washington, D.C.: Association of Prosecuting Attorneys. Accessed at <http://www.apainc.org/html/APA+Pretrial+Policy+Statement.pdf>

⁷³ American Probation and Parole Association (2010). *Pretrial Supervision Resolution*. Lexington, KY.: American Probation and Parole Association. Accessed at http://www.appa-net.org/eweb/Dynamicpage.aspx?site=APPA_2&webcode=IB_Resolution&wps_key=3fa8c704-5ebc-4163-9be8-ca48a106a259

⁷⁴ Pretrial Justice Working Group Web site at <http://www.pretrial.org/symposium.html>.

⁷⁵ Carlson, L. (2010). "Bail Schedules: A Violation of Judicial Discretion?," Washington, D.C.: Pretrial Justice Institute.

⁷⁶ See the American Bar Association's *ABA Criminal Justice Section Newsletter* (Winter 2012), p.3, which provides contact information about the Pretrial Justice Task Force, organized under the auspices of the ABA Crime Prevention, Pretrial and Police Practices Committee.

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TAB 3

Arizona Evidence-Based Pretrial Services
Administrative Order

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
ARIZONA CODE OF JUDICIAL) Administrative Order
ADMINISTRATION § 5-201:) No. 2014 –12
EVIDENCE-BASED PRETRIAL)
SERVICES)
_____)

Article 2, Section 22(A)(1-4) of the Arizona Constitution provides that “[a]ll persons charged with a crime shall be bailable by sufficient sureties,” unless they have committed certain serious crimes or pose a substantial danger to the public. A.R.S. § 13-3961(A)(1-5) lists offenses for which bail is not available “if the proof is evident or the presumption great that the person is guilty of the offense charged.”

A.R.S. § 13-3967(A) further confirms that persons charged with bailable public offenses may either be released on their own recognizance or on bail.

Arizona Rules of Criminal Procedure 7.2 requires that “any person charged with an offense bailable as a matter of right shall be released pending or during trial on the person’s own recognizance, unless the court determines, in its discretion, that such a release will not reasonably assure the person’s appearance as required. If such a determination is made, the court may impose conditions described in Rule 7.3(a) and (b) that will reasonably assure the person’s appearance.”

National criminal justice research shows that more than sixty percent of the jail population comprises defendants who are being held for crimes for which they have been charged, but have not yet been tried or convicted. Research suggests many of those pretrial detainees do not present a threat to public safety or a substantial risk of failure to appear at future proceedings or appointments. They simply cannot afford bail. The research also suggests that these low-risk defendants could be safely released from jails while awaiting trial if evidence-based procedures are put in place, including use of validated risk assessments and appropriate community supervision.

Key national organizations, including the Conference of Chief Justices, the Conference of State Court Administrators, the American Bar Association, the National Association of Counties, the American Jail Association, the International Association of Chiefs of Police, the American Council of Chief Defenders, the Association of Prosecuting Attorneys, and the American Probation and Parole Association support the adoption of an evidence-based assessment of risk in setting pretrial release conditions.

Validated evidence-based risk assessment tools have been developed and are being successfully used in several jurisdictions in the United States. These tools assess the likelihood that a defendant will appear for court and the likelihood of re-arrest while a defendant is on pretrial status. Pretrial service programs using risk assessments and providing supervision services currently exist in some courts in Arizona. This code section will provide structure and support for current and future programs.

Arizona Code of Judicial Administration (ACJA) section 5-201 authorizes courts to operate pretrial service programs that incorporate evidence-based practices, including the use of risk assessments for the purpose of making pretrial release decisions, establishing pretrial release conditions, and providing pretrial release supervision. That section was approved by the Arizona Judicial Council on December 12, 2013.

ACJA § 5-201(E)(1) approves use of the validated pretrial risk assessment tools currently in use in the Superior Court in Maricopa County, the Superior Court in Pima County, and the Superior Court in Coconino County. The Arizona Judicial Council approved the use of the Virginia model pretrial risk assessment tool currently in use in the Superior Court in Pinal County and the Superior Court in Yuma County until the implementation of a new risk assessment tool named the “Public Safety Assessment-Court (PSA-Court)” that will be piloted during 2014. Additionally, the Superior Court in Gila and Mohave Counties and the Mesa Municipal Court will participate in the pilot implementation and are approved to use the PSA-Court risk assessment tool.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that ACJA § 5-201, attached hereto, is adopted as a section of the Arizona Code of Judicial Administration.

IT IS FURTHER ORDERED that courts currently operating pretrial services shall be in full compliance with ACJA § 5-201(E)(1) regarding use of an approved pretrial risk assessment tool and all other provisions of this code section on or before December 31, 2014.

IT IS FURTHER ORDERED that courts implementing pretrial service programs after the date of this Order shall comply with ACJA § 5-201(E)(1) regarding use of an approved pretrial risk assessment tool and all other provisions of this code section before services begin.

Dated this 10th day of January, 2014.

REBECCA WHITE BERCH
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION

Part 5: Court Operations

Chapter 2: Programs and Standards

Section 5-201: Evidence Based Pretrial Services

A. Definitions. In this section, the following definitions apply:

“Court” or “courts” means superior court or limited jurisdiction court.

“Electronic Monitoring” means various technologies utilized to monitor a defendant’s compliance with release conditions, including use of global positioning satellite and radio frequency.

“Evidence based practices” means programs, assessments and supervision policies and practices that scientific research demonstrates reduce instances of a pretrial defendant’s failure to appear in court and involvement in criminal activity.

“Offense” (or public offense) means “conduct for which a sentence to a term of imprisonment or of a fine is provided by any law of the state in which it occurred or by any law, regulation or ordinance of a political subdivision of that state and, if the act occurred in a state other than this state, it would be so punishable under the laws, regulations or ordinances of this state or of a political subdivision of this state if the act had occurred in this state” as provided in A.R.S. § 13-105(27).

“Pretrial risk assessment” means a state-approved validated actuarial assessment that predicts a pretrial defendant’s risk of committing a new crime or failing to appear while on pretrial release for the purpose of assisting the court in determining release decisions and release conditions and to assist the pretrial services staff with supervision monitoring requirements.

“Pretrial services” means programs that perform functions to assist the court in making prompt, fair, and effective decisions regarding the release, detention or conditions of release of persons arrested.

“Pretrial services staff” means court employees who assist the court in making determinations regarding the release or detention of persons arrested, make recommendations for release conditions, and provide supervision or monitoring of persons released under supervision. Pretrial services staff includes probation officers who perform these duties.

“Pretrial supervision” means monitoring and supervising defendants who are released pursuant to A.R.S. § 13-3967(D)(5) to minimize risks of committing a new crime or failing to appear while on pretrial release.

“Release order” means the court order that contains the conditions and restrictions imposed by the court as well as the next court date and location.

“Risk” means measurable factors that correlate to a pretrial defendant’s probability of committing a new crime or failing to appear while on pretrial release that are gathered

through a standardized risk assessment instrument, information from the defendant, victims, interested parties or other sources of information.

B. Purpose.

This code section provides the scope, requirements, and procedures for Arizona courts to establish and operate pretrial services consistent with evidence-based practices. The superior court in each county may operate pretrial services in the probation department, pretrial services department or court administration. Municipal and justice courts may also establish and operate pretrial services.

The purpose of pretrial services is to provide information that will assist the court in making pretrial release decisions, as well as supervising defendants who are released pursuant to A.R.S. § 13-3967(D)(5).

C. Authority.

1. Az. Const. Art. 6, § 3, provides that the supreme court shall have administrative supervision over all the courts of the state. As part of that administrative supervision, this code section establishes requirements for the formation and operation of pretrial service programs consistent with Az. Const. Art. 2 § 22(A),(B) and A.R.S. § 13-3967.
2. In order to assist the court in making determinations regarding release, the imposition of conditions of release or to make determinations regarding violations of conditions of release pursuant to Az. Const. Art. 2 § 22(A),(B), and A.R.S. § 13-3967(C),(D)(5), pretrial services shall have authority to interview and process all persons charged with an offense either before or after first appearance.

D. Applicability.

This code section applies to all courts or court departments that operate pretrial services including interviewing pretrial defendants, administering pretrial risk assessments, providing recommendations regarding release conditions and/or supervising persons released to pretrial supervision.

E. Program Operations.

1. Courts operating pretrial services shall use a pretrial risk assessment tool approved by the Arizona Judicial Council to assist in determining a defendant's likelihood of committing a new crime or failing to appear for court while on pretrial release. The results of the pretrial risk assessment tool shall be provided to the court prior to the initial appearance and, when requested by the court, for use at any hearing in which release decisions are made.
2. To the extent this information is available, pretrial services staff shall assist in providing the following for the court's consideration in determining release decisions, pursuant to A.R.S. § 13-3967(A),(B):

1. The views of the victim.
2. The nature and circumstances of the offense charged.
3. The weight of evidence against the accused.
4. The accused's family ties, employment, financial resources, character and mental condition.
5. The results of any drug test submitted to the court.
6. Whether the accused is using any substance if its possession or use is illegal pursuant to chapter 34 of this title.
7. Whether the accused violated section 13-3407, subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01.
8. The length of residence in the community.
9. The accused's record of arrests and convictions.
10. The accused's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.
11. Whether the accused has entered or remained in the United States illegally.
12. Whether the accused's residence is in this state, in another state or outside the United States.

3. A.R.S. § 13-3967(D)-(E) states:

D. After providing notice to the victim pursuant to section 13-4406, a judicial officer may impose any of the following conditions on a person who is released on his own recognizance or on bail:

1. Place the person in the custody of a designated person or organization agreeing to supervise him.
2. Place restrictions on the person's travel, associates or place of abode during the period of release.
3. Require the deposit with the clerk of the court of cash or other security, such deposit to be returned on the performance of the conditions of release.
4. Prohibit the person from possessing any dangerous weapon or engaging in certain described activities or indulging in intoxicating liquors or certain drugs.
5. Require the person to report regularly to and remain under the supervision of an officer of the court.
6. Impose any other conditions deemed reasonably necessary to assure appearance as required including a condition requiring that the person return to custody after specified hours.

E. In addition to any of the conditions a judicial officer may impose pursuant to subsection D of this section, the judicial officer shall impose both of the following conditions on a person who is charged with a felony violation of chapter 14 or 35.1 of this title and who is released on his own recognizance or on bail:

1. Electronic monitoring where available.
2. A condition prohibiting the person from having any contact with the victim.

4. Pretrial services staff shall provide information and may make recommendations to assist the court in setting release conditions consistent with A.R.S. § 13-3967(D)-(E) and local policy. Release conditions recommendations shall be based on results from a risk assessment, and may also include but are not limited to:
 - a. Use of electronic monitoring;
 - b. Imposing curfews or house arrest;
 - c. Drug and alcohol monitoring, testing, evaluation or treatment; and
 - d. Assessing needs of seriously mentally ill defendants.
5. Pretrial services staff supervising defendants released to pretrial supervision shall:
 - a. Ensure released defendants are informed of their next court date and, when required by local policy, provide released defendants with a reminder of future court dates;
 - b. Inform the court of violations of pretrial release conditions pursuant to local policy;
 - c. Facilitate the return to court of defendants who fail to appear for their scheduled court dates;
 - d. Make arrests of persons on pretrial release if authorized pursuant to A.R.S. § 12-256;
 - e. Promptly inform the court of any danger the person poses to other persons or the community, or other significant changes that may impact the person's risk; and
 - f. Provide reports to the court to inform of violations or assist the court in modification or revocation of conditions of release pursuant to Rule 7.4(b) or 7.5(c), Rules of Criminal Procedure.
6. When juveniles transferred or charged in adult court are released to pretrial supervision, pretrial services staff shall assist the court as necessary in notifying the appropriate school district, pursuant to A.R.S. § 13-3967(J) which provides:

A judicial officer who orders the release of a juvenile who has been transferred to the criminal division of the superior court pursuant to section 8-327 or who has been charged as an adult pursuant to section 13-501 shall notify the appropriate school district on the release of the juvenile from custody.
7. Courts shall establish supervision requirements which support the goals of minimizing the risk of defendants committing a new crime or failing to appear while on pretrial release.

F. General Administration.

1. A presiding judge or designee operating pretrial services or pretrial supervision shall adopt policies and procedures in support of this code that conform with this section and are consistent with the principles of evidence-based practices.
2. A presiding judge or designee operating pretrial services or pretrial supervision shall provide data reports to the AOC as requested.

G. Training Requirements.

1. Courts using a risk assessment instrument shall ensure that pretrial services staff responsible for administration of a pretrial risk assessment instrument complete approved training.
2. Courts that provide supervision of persons released under supervision of a pretrial services agency shall ensure that all pretrial services staff providing supervision have completed approved training.

TAB 4

Guest Speaker Presentation

Mr. Tim Murray, Pretrial Justice Institute

Pretrial Justice

Tim Murray
Director Emeritus

September 17, 2015



Purposes of the Bail Decision

1. Provide due process for those accused of crimes
2. Maintain the integrity of the judicial process by securing defendants for trial
3. Protecting victims, witnesses, and the community



Stack v. Boyle, 342 U.S. 1 (1951)



Bail determinations must be:

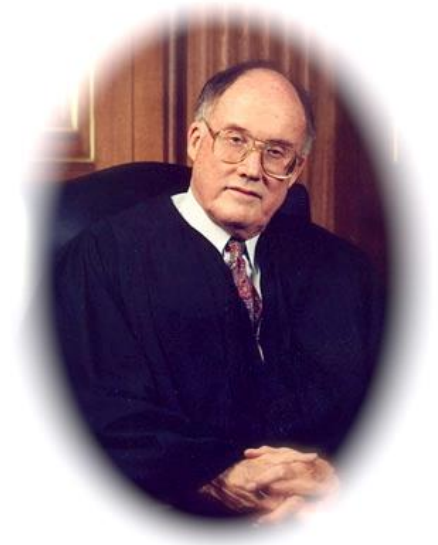
- based on standards relevant to assure appearance
- individualized to each defendant



Salerno Court on Pretrial Liberty



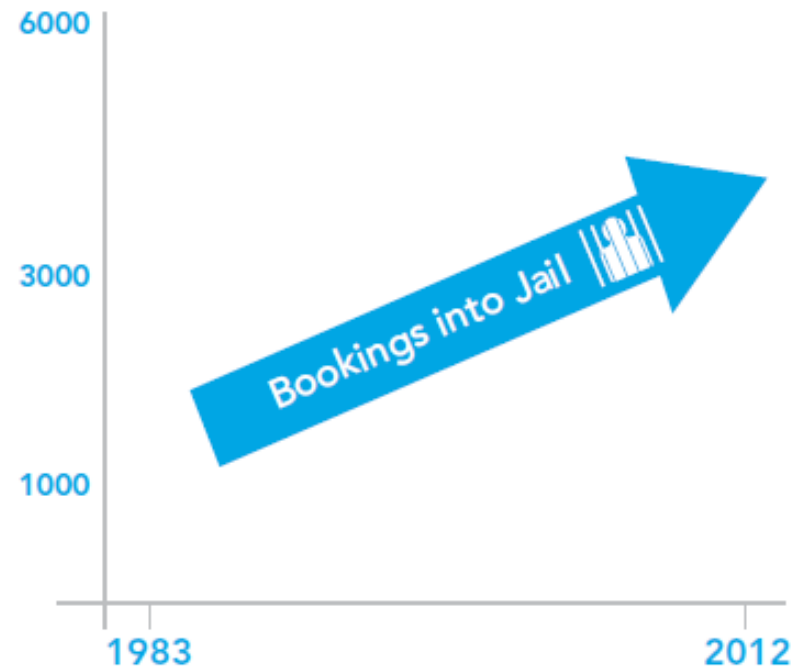
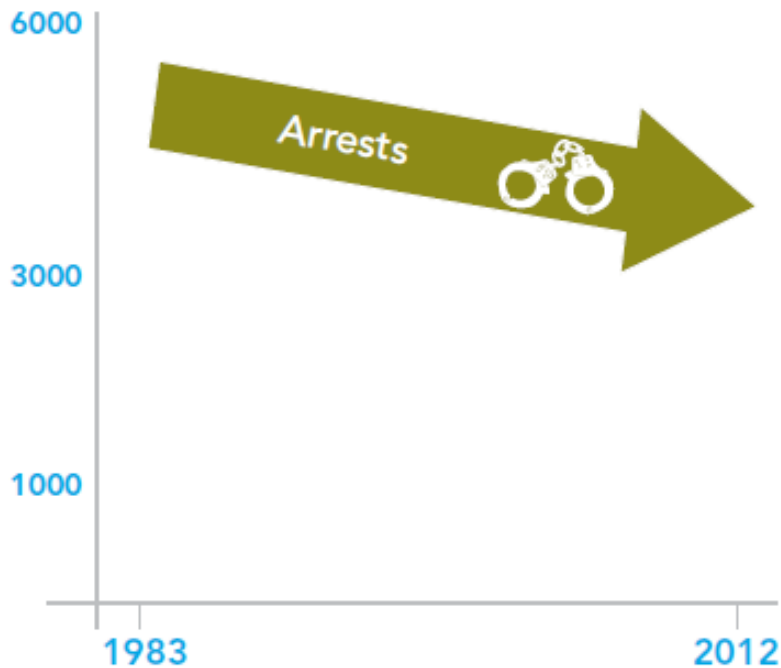
“In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”



--Chief Justice William Rehnquist
481 U.S. 739 (1984)



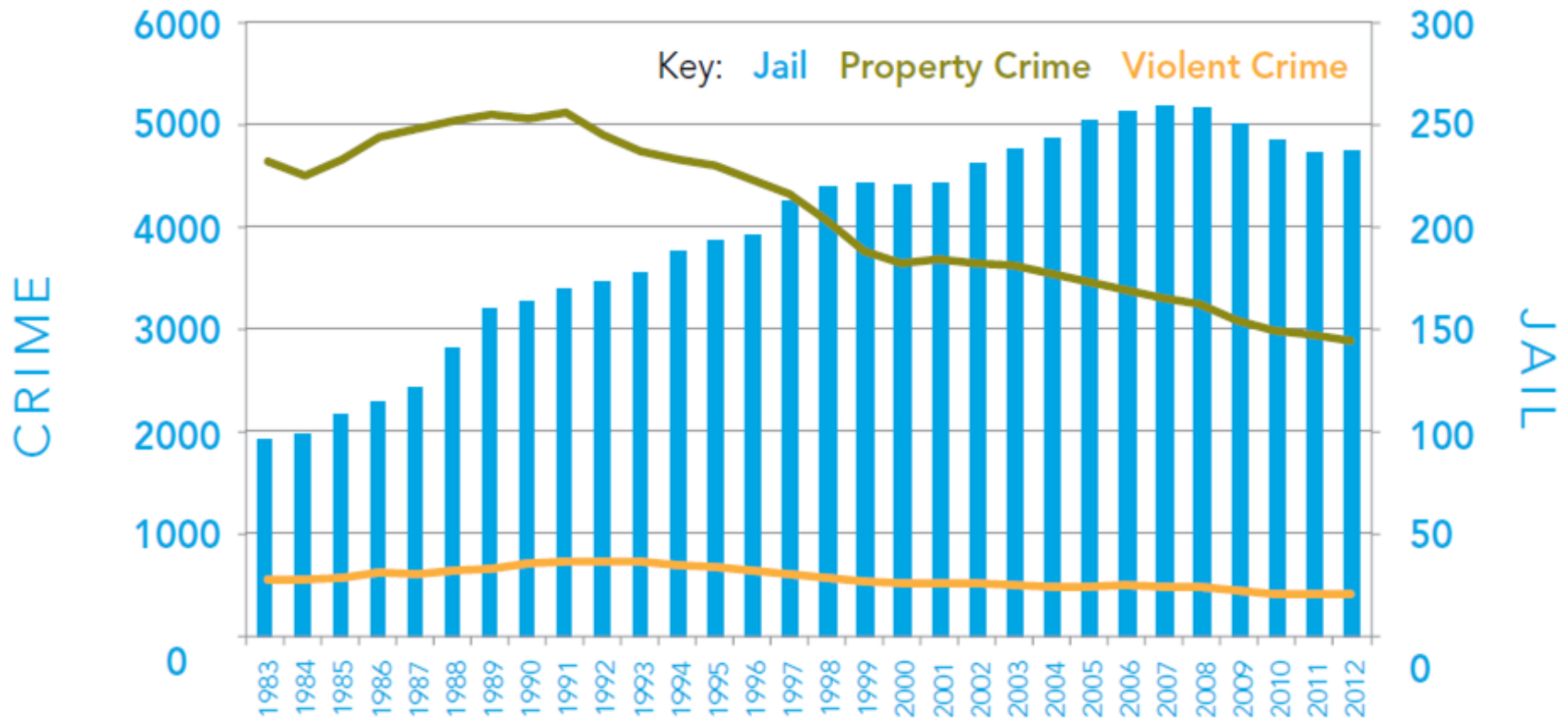
Arrest and Booking Rates Per 100,000



Subramanian, Ram et al. (2015) Incarceration's Front Door: The Misuse of Jails in America. New York, NY: The Vera Institute of Justice.



Crime and Jail Rates per 100,000



Subramanian, Ram et al. (2015) Incarceration's Front Door: The Misuse of Jails in America. New York, NY: The Vera Institute of Justice.

Unconvicted Inmates: Driving Jail Increases Since 1990

Since 1990, The number of **unconvicted** individuals in U.S. jails has increased by 126%, accounting for 77% of the total increase in jail populations.

Let's do the math!

Since 1990, total jail populations have increased by 84%.

$$\begin{array}{r} 2014 \quad 745,000 \\ 1990 \quad - 405,000 \\ \hline 340,000 \div 405,000 \\ = \uparrow 84\% \end{array}$$

During this time, the number of **unconvicted** people in jail increased by 126%.

$$\begin{array}{r} 2014 \quad 468,000 \\ 1990 \quad - 207,000 \\ \hline 261,000 \div 207,000 \\ = \uparrow 126\% \end{array}$$

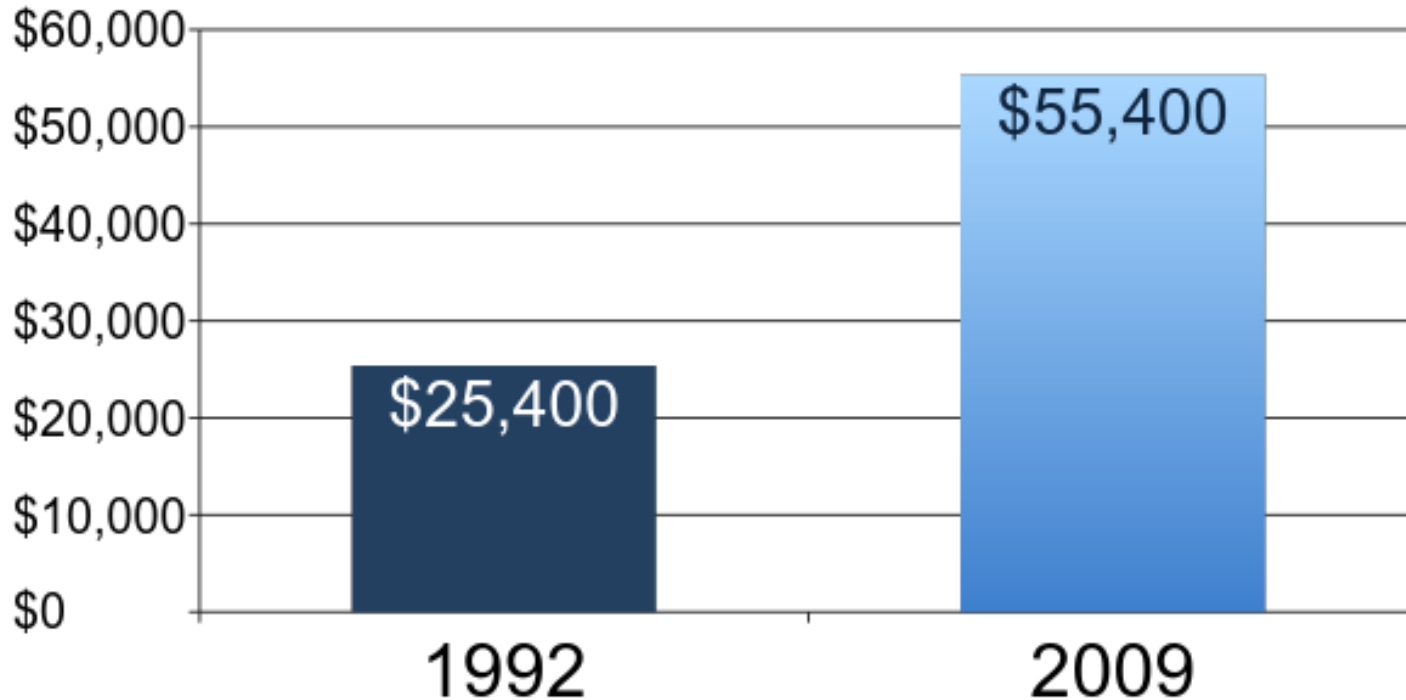
So, unconvicted individuals accounted for 77% of the increase in total jail populations since 1990.

$$\begin{array}{r} 1990 \quad 261,000 \\ 2014 \quad \div 340,000 \\ \hline 77\% \end{array}$$



source: Bureau of Justice Statistics.
Jail Inmates At Midyear 2014.

Average Money Bail For Felony Defendants

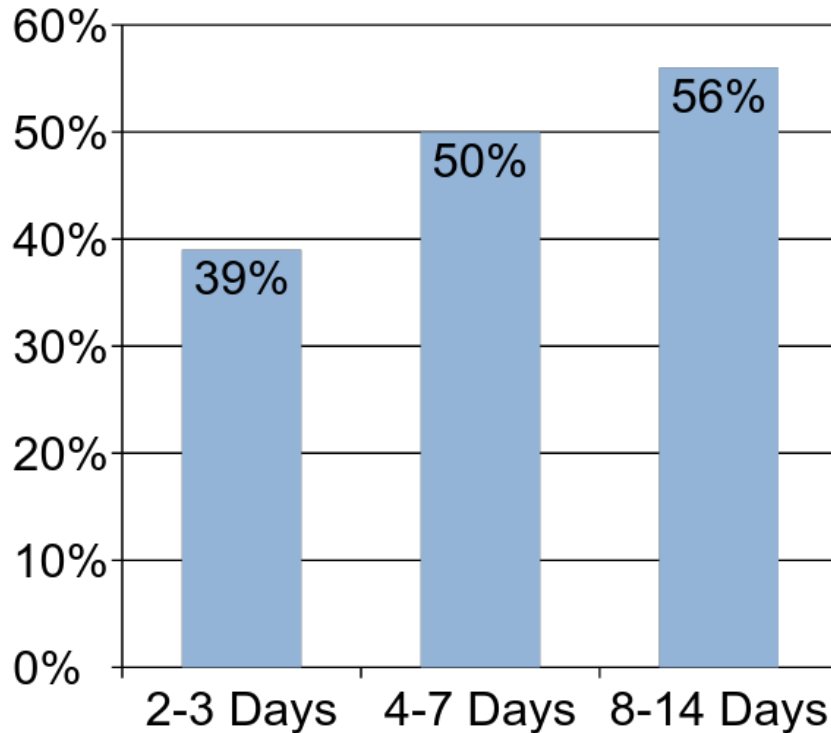


After adjusting for inflation, this represents a **43% increase over 17 years**

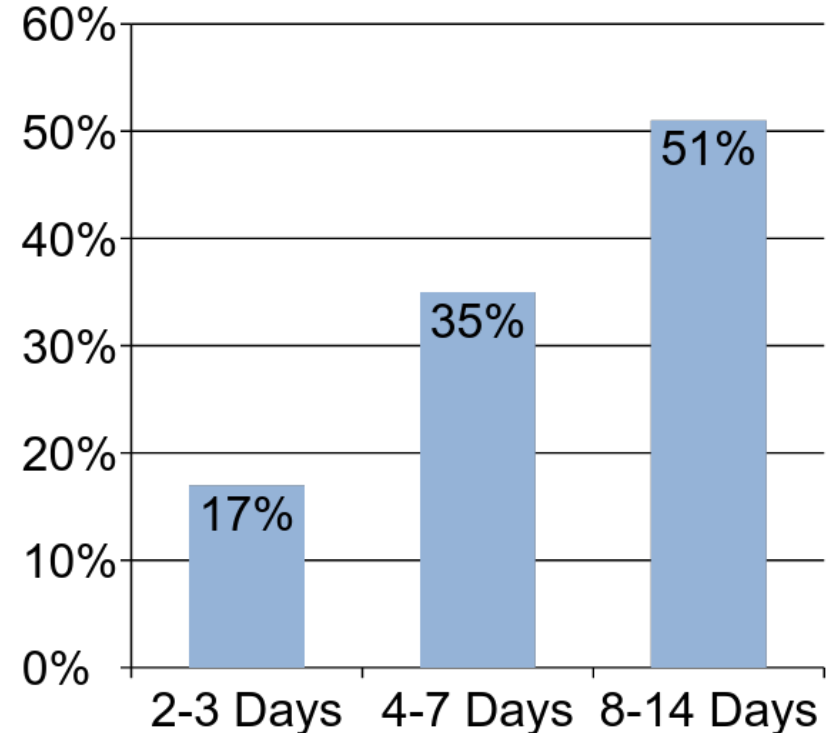


Why Do We Care?

Increase in New Criminal Arrest Low-Risk Defendants*



Increase in 2-Year Recidivism Low-Risk Defendants*



*Lowenkamp, C.T., VanNostrand, M., & Holsinger, A. (2013). The Hidden Costs of Pretrial Detention. Laura and John Arnold Foundation. New York City, NY.

“...defendants who are high-risk and/or violent are often released... nearly half of the highest-risk defendants were released pending trial.”

-Developing a National Model for Pretrial Risk Assessment,
Laura & John Arnold Foundation



Impact of pretrial incarceration: employment, education, family & **crime**



Even short stints in **jail before trial** lead to an increased likelihood of missing school, getting fired from jobs, increased desperation, and as a result, a **higher risk of being arrested again.**



Outcomes of Pretrial Incarceration



Compared to defendants released at some point prior to trial,
defendants held for the entire pretrial period had:

4x greater likelihood
of being sentenced
to jail

3x greater likelihood of
being sentenced to
prison

3x longer jail
sentences

2x longer prison
sentence

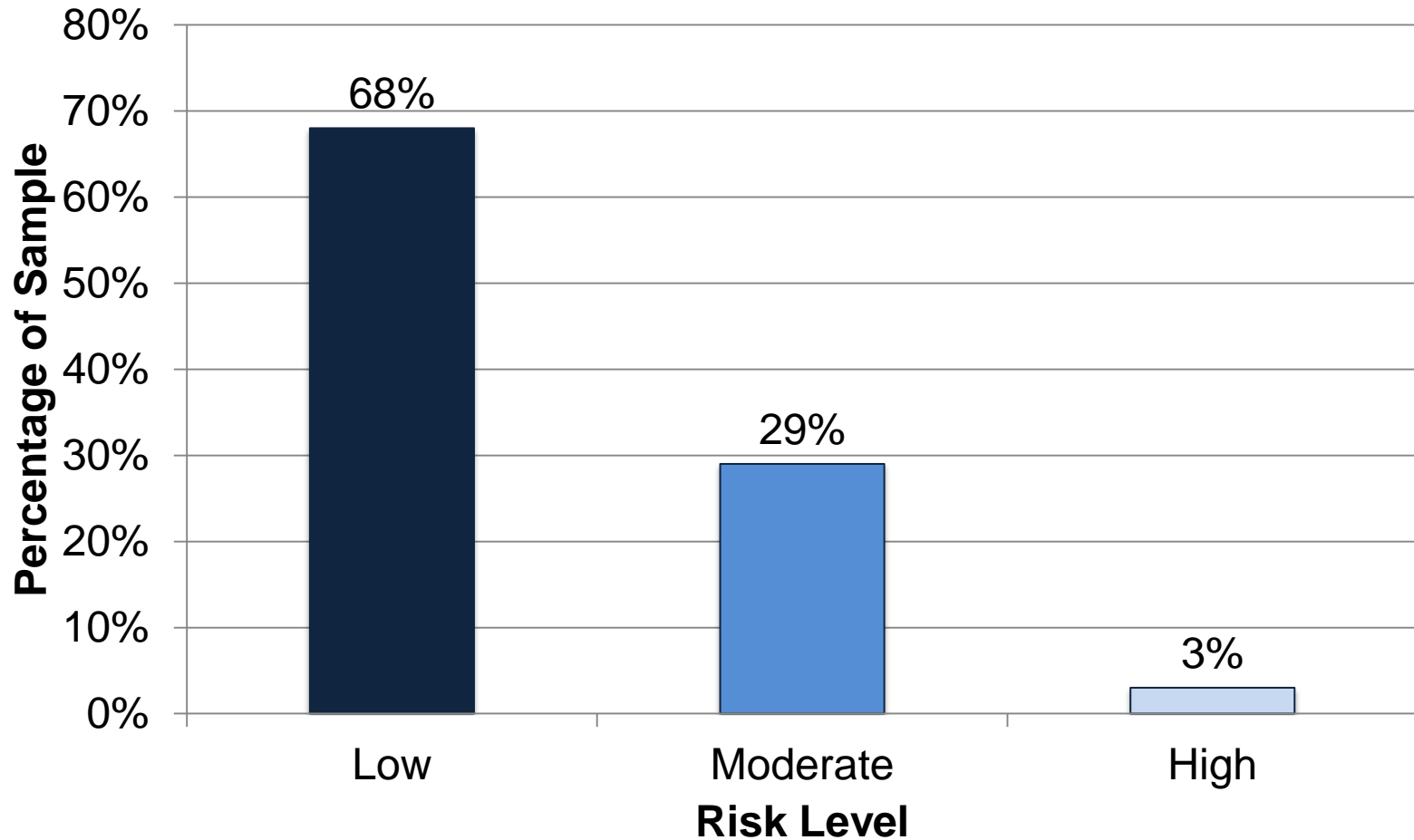


Using Risk Assessment

- Measures likelihood of pretrial failure/success: court appearance, re-arrest.
- Results used to inform release/detain decision.
- Results used to determine level of supervision, if any.
- Empirically valid tools reduce racial and economic disparities inherent in money bail systems.



Risk Category Distribution



Statement from the Justice Department

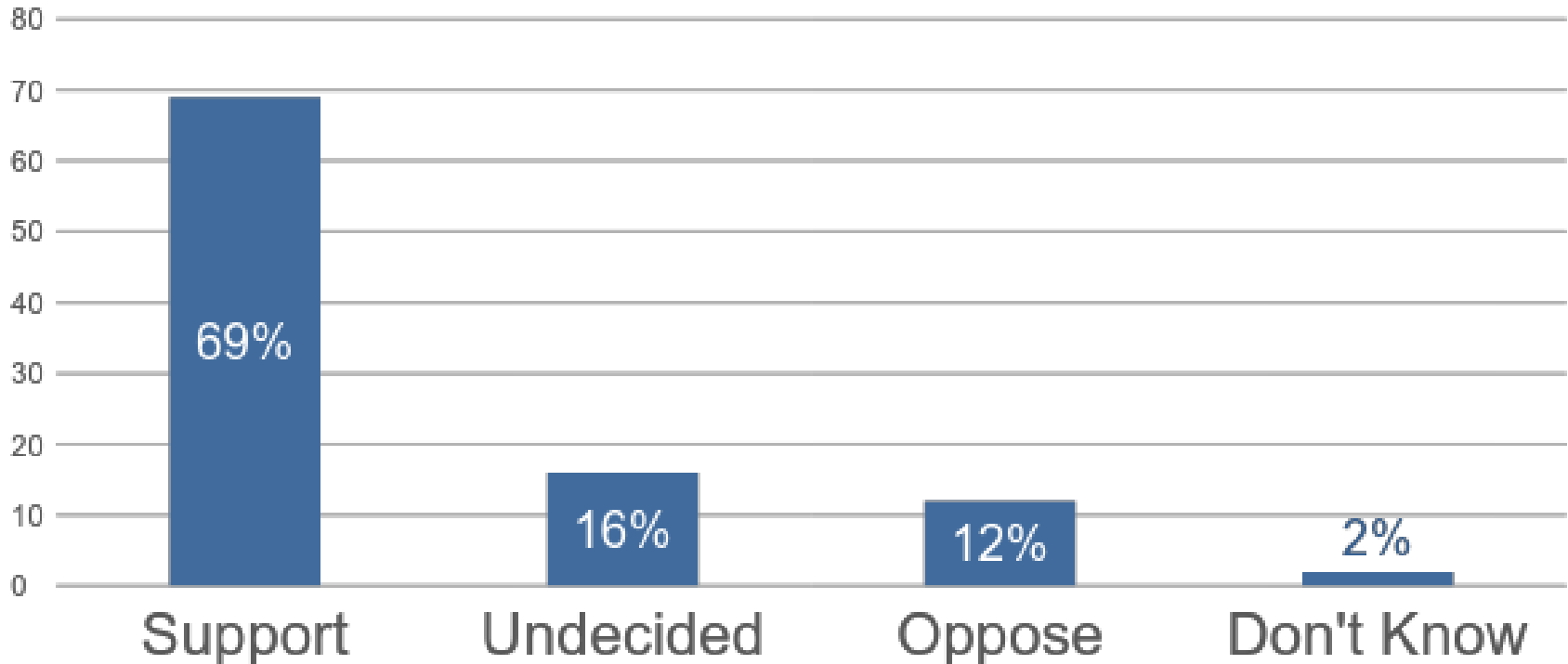


“It is the position of the United States that, as courts have long recognized, any bail or bond scheme that mandates payment of pre-fixed amounts for different offenses in order to gain pre-trial release, without any regard for indigence, not only violates the Fourteenth Amendment’s Equal Protection Clause, but also constitutes bad public policy.”

Statement of Interest, Varden v. City of Clanton, 2015



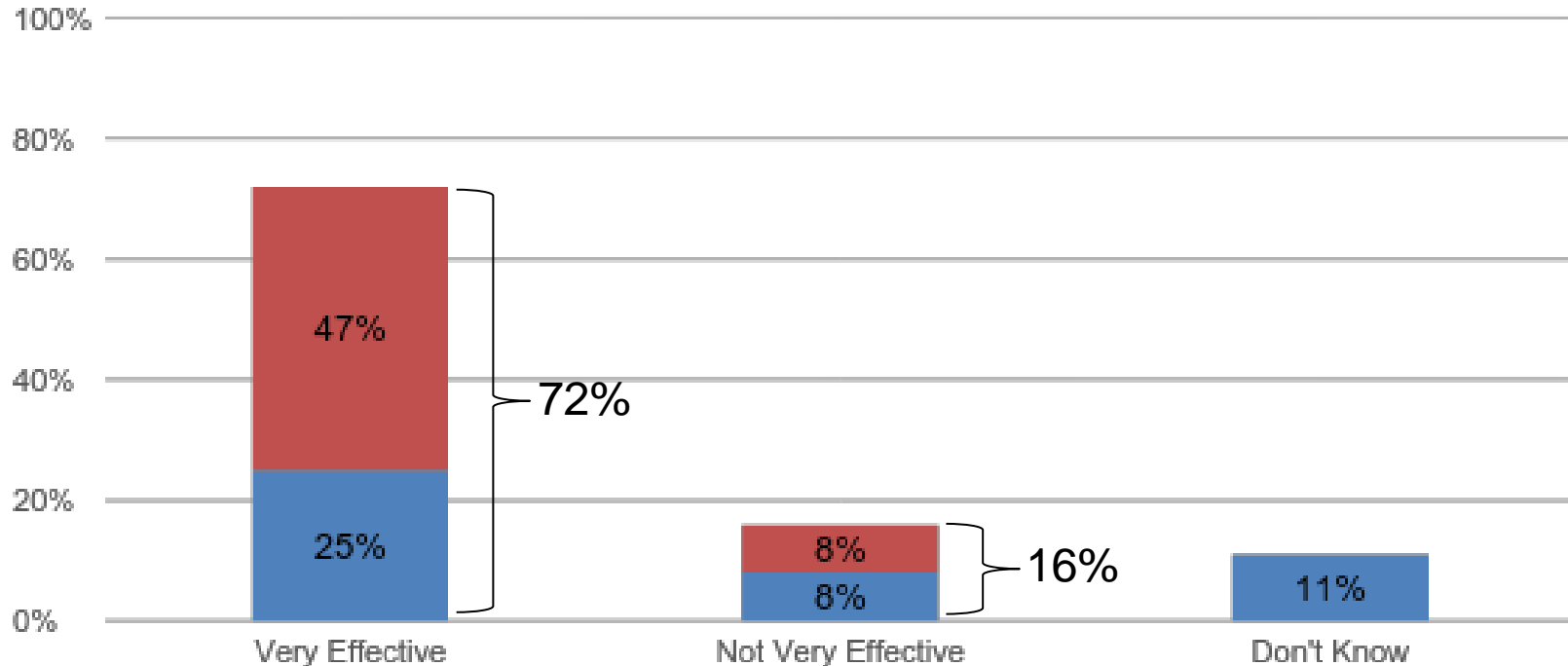
Public Opinion: Risk Assessment Instead of Cash Bonds



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/OPOSE]** And do you feel that way strongly, or not-so strongly? *(Lake Research Partners, 2012)*



Perceived Effectiveness of “Pretrial Risk Assessment”



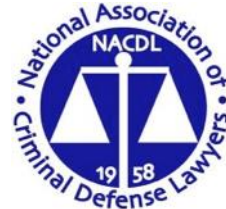
Question:

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.”



Call to Action



Colorado Tool Example



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%



Pretrial Outcomes in Kentucky

- Overall Release rate: 70%
- Non-financial release rate: 66%
- Rearrest rate: 8%
- Failure to appear rate: 10%



Case Study: Washington, DC



- 80% of defendants released non-financially
- 15% detained without bail
- 5% have financial bonds
- 88% make all court appearances
- 88% have no rearrests



What Legislatively is Needed



- No right to bail
- Requirement to use risk at pretrial
- Workable preventive detention statute
- Elimination of bond schedules and \$ bond

- Statute can change culture
 - Change behavior
 - Provide for remedy if not



3 DAYS COUNT™

Commonsense Pretrial

A campaign to apply practical solutions to widespread pretrial justice challenges, making our country safer and ensuring the best possible outcomes for all.

In 20 states by 2020.



Reduce unnecessary arrests that destabilize families and communities



Replace discriminatory cash bail with practical, risk-based decision-making



Enable transparent detention for the small number of defendants who pose a genuine threat to public safety





Commonsense Pretrial



October 22, 2015 – state enrollment open!

www.pretrial.org/3DaysCount



"Criminal defendants, presumed innocent, must not be confined in jail merely because they are poor. Justice that is blind to poverty and indiscriminately forces defendants to pay for their physical liberty is no justice at all."

—US Court, Middle District of Alabama,
September 14, 2015





www.pretrial.org



facebook.com/pretrial



[@pretrial](https://twitter.com/pretrial)



tim@pretrial.org



TAB 5

Guest Speaker Presentation

Ms. Laurie Dudgeon, Kentucky Administrative
Office of the Courts

&

Ms. Tara Boh Blair, Kentucky Department of
Pretrial Services

Presentation to The Nevada Committee Studying Evidence-Based Pretrial Release

Laurie Dudgeon, Director, KY Administrative Office of the Courts

Tara Boh Blair, Executive Officer, KY Department of Pretrial Services

Does a Pretrial System Based on
Money Bail Violate the Equal
Protection Clause of the Fourteenth
Amendment?

“No person may, consistent with the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, be held in custody after an arrest because the person is too poor to post a monetary bond.”

Donya Pierce et al. v. The City of Velda City. U.S. District Court. No. 4:15-cv-570-HEA. Eastern District of Missouri, Eastern Division. 3 June 2015.

“Incarcerating individuals solely because of their inability to pay for their release, whether through the payment of fines, fees, or a cash bond, violates the Equal Protection Clause of the Fourteenth Amendment.”

Statement of Interest of the United States, *Christy Dawn Varden et al. v. The City of Clanton*. No. 2:15-cv-34-MHT-WC. U.S. District Court, Middle District of Alabama, Northern Division. 13 February 2015.

“Criminal defendants, presumed innocent, must not be confined in jail merely because they are poor. Justice that is blind to poverty and indiscriminately forces defendants to pay for their physical liberty is no justice at all.”

Opinion, Peggy Jones, as Administrator of the Estate and Personal Representative of Christy Dawn Varden v. The City of Clanton. No. 2:15-cv-34-MHT. U.S. District Court, Middle District of Alabama, Northern Division. 14 September 2015.

The Paradigm Shift

Agencies and Organizations Endorsing an Evidence-Based Pretrial Release Process (partial list):



If Nevada Wants to Implement an
Evidenced-Based Pretrial Release
Process What is the First Step?

A Validated Pretrial Assessment Tool

Pretrial risk assessment instruments are statistical screening tools containing objective information that predict pretrial failure (failure to appear and new criminal activity).

Pretrial “Risk” Assessment

- Proven through research
- Equitably classify defendants
- Objective
- Consistent with state statutes
- Measure risk of failure to appear and new criminal activity

Most Common Risk Factors:

- FTA History
- Prior Convictions
- Pending Cases
- Prior incarcerations
- Age
- Prior Violent Convictions

Three Primary Data Sources to complete the Risk Assessment

- Information from Defendant
 - Interview
- Information from Charging Document(s)
- Information from Criminal History
 - Local, State and NCIC

Judicial Inquiry System

Judicial Inquiry System
Kimber Perkins Case Manager Tue Jul 7, 2015 1:03 PM EDT Online: 00:06

[Change Password](#) [LOGOUT](#) [Need Assistance?](#)

Home
Subject Query
Calendar View
JIS Administration
JLA Administration

Query
Summary

Source Responses 100%

- > APPRISS 106 hit(s) ?
- > CCIS 47 hit(s) ✓
- > DHSMV 13 hit(s) ✓
- > DJJ 1 hit(s) ✓
- > FCIC 1 hit(s) ✓
- > FLSumm 1 hit(s) ✓
- > HOTFILE 14 hit(s) ✓
- > NCIC 1 hit(s) ✓
- > OutStDL 1 hit(s) ✓

Errors/Timeouts/No Records

- v DOC 0 hit(s) ✓

1 of 1 (100%)

DOC - Name
SUCCESS
[Raw Data](#)
[Parameters](#)
No record found

Print Results

Alert Legend

- ▲ VIOLENT FELONY OFFENDER OF SPECIAL CONCERN
- ▲ HIGH RISK SEXUAL OFFENDER
- ▲ SEXUAL OFFENDER, SEXUAL PREDATOR
- ▲ OFFENDER ALERT
- ▲ FEDERAL ALERTS
- ▲ WARRANT, INJUNCTION, SUPERVISED / ABSCONDER
- ▲ DOMESTIC CASE, MENTAL HEALTH

Search Criteria

First Name	test
Last Name	test
SSN	098765432
SID #	01777559
DL/ID #	d00627956
FBI #	9444400

Summary Results - 146 Merged Records

Merged?	Alerts	Score	Sources	First Name	Middle Name	Last Name	Gender	Race	D.O.B.	
<input type="checkbox"/>	M	▲▲▲	27%	CCIS, DJJ, FCIC, FLSumm, HOTFILE, NCIC, OutStDL	CARL	C	PUBLIC	MALE	WHITE	1956-05-23
<input type="checkbox"/>		▲	7%	HOTFILE	TEST	T	RECORD	MALE	WHITE	0
<input type="checkbox"/>			6%	DHSMV	TEST	MINOR	TEST	MALE	HISPANIC	1997-12-31
<input type="checkbox"/>			6%	DHSMV	TEST	NEPTUNE	TEST	MALE	WHITE	1956-01-01
<input type="checkbox"/>			6%	DHSMV	TEST	NEW	TEST	MALE	BLACK	1975-02-08
<input type="checkbox"/>			6%	DHSMV	TEST	NON US	TEST	FEMALE	WHITE	2000-01-22
<input type="checkbox"/>			6%	DHSMV	TEST	NULL	TEST	MALE	WHITE	1999-01-01
<input type="checkbox"/>			6%	DHSMV	TEST	TEST	TEST	FEMALE	WHITE	1900-01-01
<input type="checkbox"/>			6%	DHSMV	TEST	TEST	TEST	MALE	WHITE	1901-01-01
<input type="checkbox"/>			6%	DHSMV	TEST	TEST	TEST	MALE	O	1995-05-13

Based on the identifiers used to conduct this search, the following records were returned as possible matches. Further analysis of the records may be necessary to determine if this individual is the subject in question. Please note the risk flags associated with a record are derived from possible matches as well as other data source returns.

Summary Identifiers

Alert	WARRANT; HIGH RISK SEXUAL OFFENDER; SEXUAL OFFENDER [HOTFILE] DOMESTIC CASE [CCIS]	SID #	FL01777559 [FLSumm, FCIC, HOTFILE] KY01030175; NM63536; W415506; WV676323 [NCIC]
Name	CARL C PUBLIC [FLSumm, FCIC, HOTFILE] BRAD HUCK [NCIC] BENEDICT BLUETEST; CARL PUBLIC [HOTFILE] Sharon Elaine Test, III [DJJ] D L OFFICE [OutStDL] TEST TEST [CCIS]	FBI #	9003300 [FLSumm, FCIC] 9444400 [NCIC] 96728XA7 [HOTFILE]
D.O.B.	1956-05-23 [FLSumm, FCIC, HOTFILE] 1964-01-01 [NCIC] 1970-06-15 [HOTFILE] 2000-09-01 [DJJ] 1956-09-10 [OutStDL]	DOC #	Z76345 [HOTFILE]
SSN	234567990; 234577890; 234579056; 456783159; 234567890 [NCIC] UNKNOWN [FLSumm] 299123465 [HOTFILE] 088888222 [OutStDL]	DJJ #	532950 [DJJ]
Race	WHITE [FLSumm, FCIC, HOTFILE] NATIVE AMERICAN [NCIC] Pacific Islander [DJJ] UNKNOWN [OutStDL] U [CCIS]	DL/ID #	AZ/D00627956 [OutStDL]
Gender	MALE [NCIC, FLSumm, FCIC, HOTFILE, OutStDL] FEMALE [DJJ]	DL Msgs	

Merge
Compare

Search Again
Details

First Appearance Calendar
 LEE County: 45 results returned @ Mon Jul 2, 2012 8:41 PM Calendar Date Range: 2012-07-02 To 2012-07-03

1-Risk	Classification	Booking No.	Name	Race	Gender	DOB	SSN	Booking Src	Data Sources
WARRANT	Click To Change	722699		W	M	1975-08-22		VINE, FCIC	CCIS, DHSMV, FDLE, FLSUM, HOTFILES, NCIC
SEXUAL OFFENDER, SEXUAL PREDATOR	Click To Change			W	M	1972-06-18		FCIC	FDLE, FLSUM, HOTFILES, NCIC
PROBATION, VFOSC, WARRANT	Click To Change	722691		B	F	1974-12-11		VINE	CCIS, DHSMV, FDLE, FLSUM, HOTFILES, NCIC
PROBATION, SUPERVISED OFFENDER, VFOSC	Click To Change	722651		W	M	1965-05-28		VINE, FCIC	CCIS, DC, DHSMV, FDLE, FLSUM, HOTFILES, NCIC
PROBATION, SUPERVISED OFFENDER, VFOSC	Click To Change	722712		W	M	1986-12-19		VINE, FCIC	CCIS, DC, DHSMV, FDLE, FLSUM, HOTFILES, NCIC
PROBATION, SUPERVISED OFFENDER	Click To Change			W	M	1979-09-25		FCIC	CCIS, DC, DHSMV, FDLE, FLSUM, HOTFILES, NCIC
PROBATION, SUPERVISED OFFENDER	Click To Change	722650		W	M	1982-06-15		VINE, FCIC	CCIS, DC, DHSMV, FDLE, FLSUM, HOTFILES, NCIC
PROBATION, SUPERVISED OFFENDER	Click To Change	722697		W	M	1983-11-29		VINE, FCIC	CCIS, DC, DHSMV, FDLE, FLSUM, HOTFILES, NCIC
PROBATION, SEXUAL OFFENDER, SUPERVISED OFFENDER, VFOSC	Click To Change	722700		B	M	1958-02-12		VINE, FCIC	CCIS, DC, DHSMV, FDLE, FLSUM, HOTFILES, NCIC
PROBATION	Click To Change			W	M	1967-01-14		FCIC	CCIS, DC, DHSMV, FDLE, FLSUM, HOTFILES, NCIC
PROBATION	Click To Change			B	M	1985-08-12		FCIC	CCIS, DC, DHSMV, FDLE, FLSUM, HOTFILES, NCIC
INJUNCTION	Click To Change	722681		W	M	1968-11-29		VINE, FCIC	CCIS, DHSMV, FDLE, FLSUM, HOTFILES, NCIC
INJUNCTION	Click To Change	722679		W	M	1974-01-25		VINE, FCIC	CCIS, DHSMV, FDLE, FLSUM, HOTFILES, NCIC
GANG MEMBER	Click To Change			W	M	1988-02-25		FCIC	CCIS, DC, DHSMV, DJJ, FDLE, FLSUM, HOTFILE S, NCIC
DOMESTIC CASE, INJUNCTION	Click To Change	722707		W	F	1979-10-27		FCIC, VINE	CCIS, DHSMV, FDLE, FLSUM, HOTFILES, NCIC
DOMESTIC CASE	Click To Change	722698		W	F	1953-03-31		VINE, FCIC	CCIS, DHSMV, FDLE, FLSUM, NCIC

Creating a Case Management System

- Data Needed to Assess and Manage Risk
- Data Needed for Performance and Outcome Measures

Pretrial Release Information Management (PRIM)

Pretrial Release Information Management version 4.5.3.0 : S200TSAPPS27

Reports Maintenance

Interview Search

Current User: Mark_Heyerly

[Create New File](#) [Print Results](#) [Exit Application](#)

Select a Search Category

Person Interview Case Court Event

Interview Criteria

Holding County	Status	Non-Financial Release	Active MCR	Probable Cause Reviewed	
STATEWIDE	ALL	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> Either	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> Either	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> Either	
Risk Level	Acceptance	Posted Sched/Preset Bond	Declined Interview	Acceptance Not Known	
ALL	ALL	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> Either	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> Either	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> Either	
Interview ID	From Date	To Date	In-Patient Treatment	Assess/Pending on Arrest	In Custody
	09/17/2015	09/17/2015	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> Either	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> Either	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> Either

Only My Charge Counties

Search Results

Interview ID	Interview Date	Risk Level	SSN	Last Name	First Name	DOB	Charge County	Holding County	Gender
--------------	----------------	------------	-----	-----------	------------	-----	---------------	----------------	--------

Pretrial Release Information Management (PRIM)

Pretrial Release Information Management version 4.5.3.0 : 5200TSAPPS27

Reports Maintenance

Interview Search Current User: Mark_Heyerly

[Create New File](#) [Print Results](#) [Exit Application](#)

Select a Search Category

Person Interview **Case** Court Event

Case Criteria

Charge County	Case Number	Citation Number	SB4	Bail Credit Eligible
STATEWIDE			<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> Either	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> Either
From Arrest Date	To Arrest Date	Bond Type		Bail Credit Applied
09/17/2015	09/17/2015	ALL TYPES		<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> Either
Link Option Type	Administrative Release Type			Pilot Release
ALL TYPES	ALL TYPES			<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> Either

Only My Charge Counties

Search Results

Interview ID	Interview Date	Risk Level	SSN	Last Name	First Name	DOB	Charge County	Holding County	Gender
--------------	----------------	------------	-----	-----------	------------	-----	---------------	----------------	--------

PRIM Reports



Pretrial Services Report FTA and Rearrest Statistics Statewide From 07/01/2014 To 06/30/2015

Totals	Interviews	Cases	Disposed Prior	Disposed Prior in 48 hours	In Custody	Released	
	157,747	212,147	63,145	13,696	6,491	133,345	
						19,130	FTA
						13,528	Rearrest
						54	Average Pretrial Release Days
						7,632,258	Total Pretrial Release Days
						20,968	Average Daily Caseload
						101	Average MCR Days

Interviews Breakdown

Percentage Verified :	0.00%	Veteran :	4,221
Supervised Probation :	19,142	AOI Offered :	113,088
Unsupervised Probation :	10,106	AOI Completed :	59,277
Felony Probation :	0		

Cases Breakdown

Domestic Violence :	12,469
Screened as Potential Mental Health :	0
Screened as Potential Substance Abuse :	58,895
Released with Treatment Condition :	906

Interviews by Education Level

Interviews without a level: 9,624

LESS THAN HIGH SCHOOL	43,057
GED	22,806
HIGH SCHOOL GRADUATE	44,297
FORMAL VOCATIONAL TRAINING	1,999
SOME COLLEGE	26,659
AA	4,402
BA/BS	3,904
POST GRADUATE	999

Interviews By Gender

FEMALE	46,078
MALE	111,100
UNKNOWN	569

Interviews by Age

Under 18 :	129	40 to 49 :	28,409
18 to 20 :	8,843	50 to 59 :	15,461
21 to 29 :	50,959	60 to 69 :	3,764
30 to 39 :	49,552	70 or Older :	628

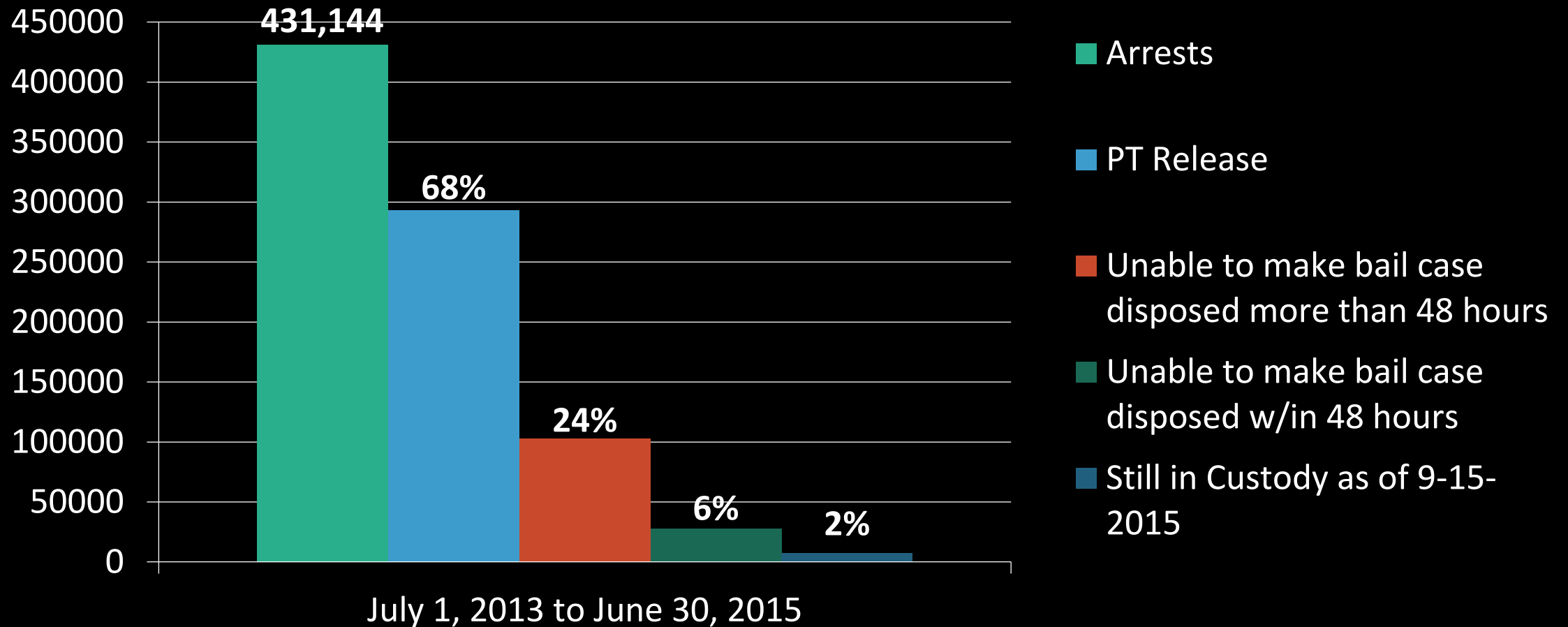
Kentucky Pretrial Services

- Created in 1976; Commercial Bail Abolished
- Statewide Program with the KY AOC
- 288 Employees; 51 Programs; 120 Counties
- Investigation, Supervision & Diversion to trial courts

KY Pretrial Process

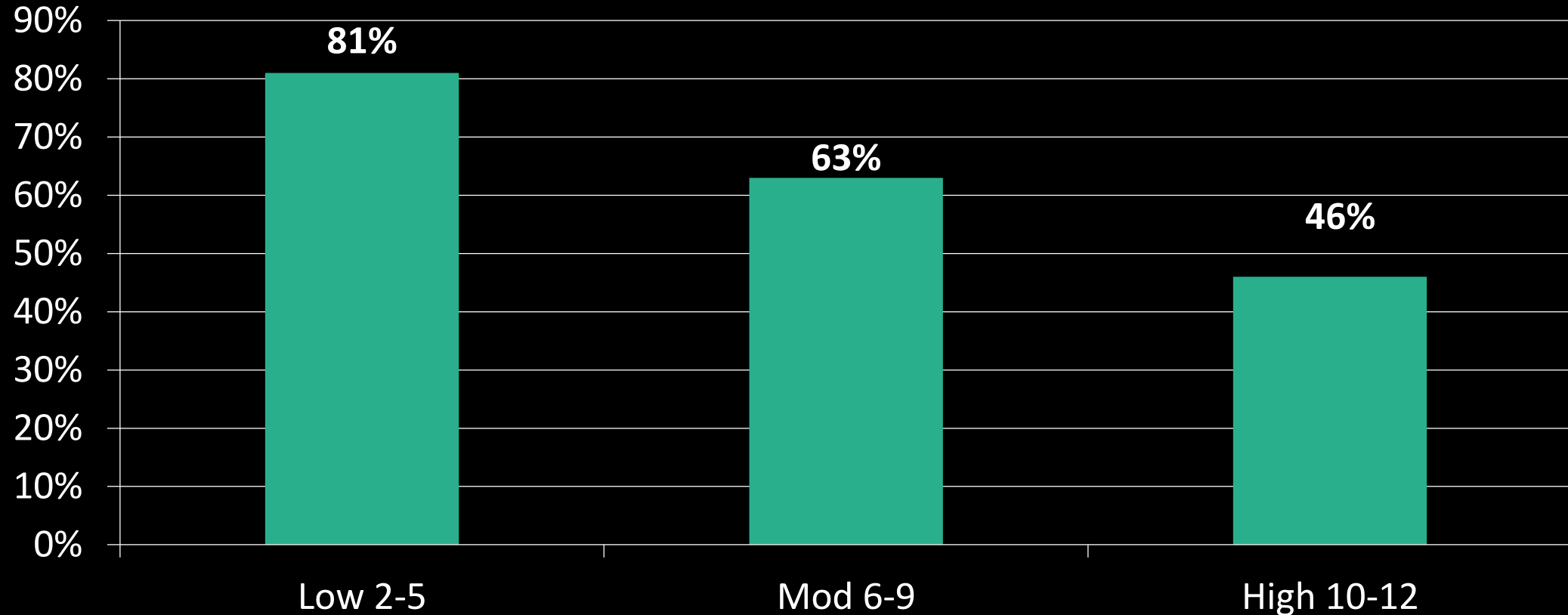
- Arrest by Law Enforcement and Booked into County Jail
- Pretrial Officer (PTO) Investigation (enters charge info, runs criminal history and completes risk assessment)
- PTO Interviews Defendant (in person or video)
- Prepares Pretrial Report

Pretrial Release Outcomes

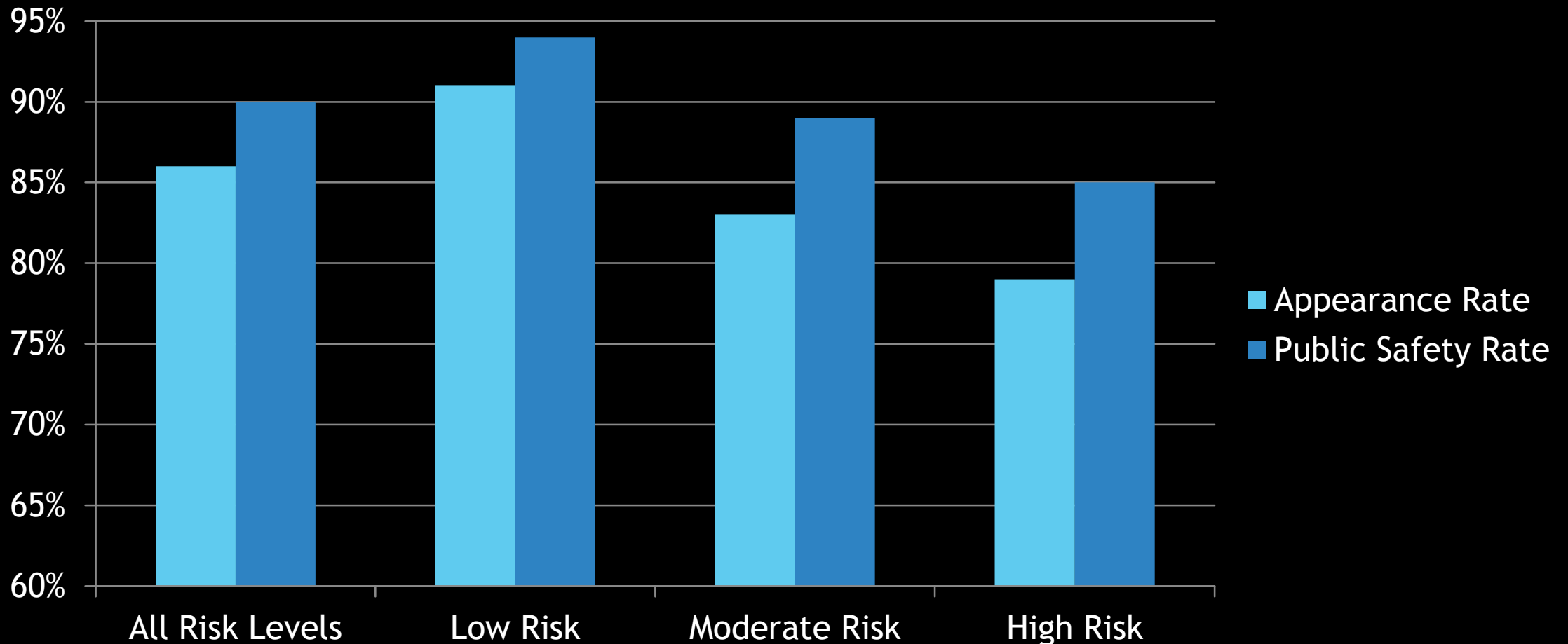


Pretrial Release Outcomes

PT Release Rate



Pretrial Release Outcomes



Pretrial Release Outcomes

- 17,165 Defendants Ordered to Supervision (82% Compliant; 28% Low Risk) in FY 2015
- Active Caseload on 6/30/2013: 3,576
- Active Caseload on 6/30/2014: 4,371
- Active Caseload on 6/30/2015: 6,068
- 182,452 Supervision Contacts (FY 2015)

Pretrial Release Outcomes

Average Length of Pretrial Status

- Released, Unsupervised Defendant = 61 days
- Released, Supervised Defendant = 108 days
- Pretrial Incarceration = 114 days

Research: Pretrial “Detention”

- Low Risk defendants held 2-3 days almost 40% more likely to have NCA pending trial than defendants held 24 hours or less
- Low Risk defendants held 8-12 days are 51% more likely to have NCA within 24 months post disposition.

Research: Pretrial “Detention”

- “Detained” defendants were 4X more likely to be sentenced to jail and 3X more likely to prison
- Jail sentences are nearly 3X longer and prison sentences twice as long
- Low risk defendants were 5.41 times more likely to be sentenced to jail and 3.76 times more likely to prison

Thank You!

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TAB 6

Presentation of the Pretrial System Analysis for
the 2nd Judicial District Court

Judge Scott Pearson

**Pretrial System Analysis
for the Second Judicial District Court,
Washoe County, Nevada**

Technical Assistance Report

by
**Barb Hankey
Don Trapp**

June 9, 2015

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Disclaimer

RE: NIC Technical Assistance No. RFQP0700COBO150067

This technical assistance activity was funded by the Community Corrections Division of the National Institute of Corrections. The Institute is a Federal agency established to provide assistance to strengthen state and local correctional agencies by creating more effective, humane, safe and just correctional services.

The resource person who provided the on-site technical assistance did so through a cooperative agreement, at the request of the Second Judicial District Court, Washoe County, Nevada, and through the coordination of the National Institute of Corrections. The direct onsite assistance and the subsequent report are intended to assist the jurisdiction in addressing issues outlined in the original request and in efforts to enhance its overall effectiveness.

The contents of this document reflect the views of Ms. Barb Hankey and Mr. Don Trapp. The content does not necessarily reflect the official views or policies of the National Institute of Corrections.

Pretrial System Analysis for the Second Judicial District Court, Washoe County, Nevada

Introduction

This report summarizes the primary findings and recommendations from a pretrial system analysis for Washoe County, Nevada. Heather Condon, Pretrial Services Program Manager acted on behalf of multiple justice system stakeholders in the county to request technical assistance in the analysis of the county's pretrial practices, with regard to its alignment with evidence based practices, and with specific regard to implementing a validated pretrial risk assessment into the decision-making process. It will also include discussions with all stakeholders so as to have clear, measurable, and attainable objectives, such as:

- The type of risk assessment or related criteria to be utilized
- How the risk information will be incorporated into the release decision process
- How will this impact the pretrial services program
- How will this impact the jail population, and related case processing issues

Method

Barb Hankey, Community Corrections manager for Oakland County, Michigan, and Don Trapp, Pretrial Supervision Program Manager for Multnomah County, Oregon provided the technical assistance to Washoe County (See Appendix A for Bios). Jail data, applicable statues, policies and procedures, related documents and background information were reviewed prior to the on-site visit. The site visit was conducted on May 12 – 14, 2015, during which time meetings with the major stakeholders were held including: Chief Justice of Nevada Supreme Court, County Managers, Washoe County Sheriff's staff, District Attorney's staff, District and Municipal Court Judges, and Public Defenders. In addition, the jail facility was toured with specific attention to the booking and pretrial processes, and defendant's first court appearances were observed (see Appendix B for agenda).

Findings and Recommendations

The findings and recommendations are organized into three groups: an overview of the current system including administrative practices, infrastructure, challenges and opportunities; jail population and process analysis; and specific recommendations regarding pretrial practices and next steps. References are appended to the report, some of which will be referred to in the body of the report; and others that may serve as a resource. Other documents may be cited within the text of the report. The source of information for the recommendations are the federal and state constitutional, statutory, and case law, national pretrial standards from the American Bar Association (ABA) and National Association of Pretrial Services Agencies (NAPSA), and recent empirical research from the social sciences/criminal justice field.

Washoe County Overview

Washoe County, at over 422,000, is the second most populous county in Nevada. Over the past 10 years, the county has experienced a 24% increase in population. In the 10-year period from 1999 to 2008, the county experienced a 25% increase in crime. During that time, the 1265-bed jail was frequently at or over capacity. The past 3 years have seen a downward trend in reported crime, a consistent annual number of bookings into custody, and an average daily population in the jail that is 85% of capacity. Washoe County has operated a pretrial services program since 1989, and in the past 10 years has developed other programs to function as alternatives to incarceration. In addition, Washoe County is served by a Criminal Justice Coordinating Committee and operates several specialty courts that focus on the specific criminogenic risk factors within the defendant population. There is evidence to suggest that the system is operating at the high-end of optimal functioning at this time. This means that incremental changes in crime, bookings, or lengths of stay in custody could cause an imbalance in the system.

However, that balance does not exist around the state, particularly in Clark County, where the 3800-bed facility (recently increased from 2800 due to overcrowding) is often over-capacity. Neither is this balance without its more pressing challenges, such as managing mentally-ill defendants in a specially designated pod at the jail, where mental assessments—or reassessments can take weeks; or defendants held without charge for 72-hours, only to be detained an additional 72 hours or longer. Despite the efforts to address the jail population by Washoe County officials, the management and case processing of pretrial defendants remains an important issue—locally and state-wide.

Recently, the Nevada Legislature, with strong backing from the Chief Justice of the Nevada Supreme Court, is taking up a measure to address this issue. Senate Bill 454 would require the use of a uniform pretrial risk assessment where a court conducts a pretrial risk assessment of a defendant. The measure would require the courts to use this assessment in court proceedings. This is part of an effort by the Supreme Court to examine sentencing practices, including the risk assessments used by the Division of Parole and Probation. This legislation would provide an important tool to ensure that every defendant is objectively evaluated as to their pretrial risk when issues of bail are considered. Further, that the conditions of release would be the least restrictive to manage or mitigate the specific pretrial risk of each defendant. The risk-informed process would prioritize public safety and equity in access and treatment.

If this legislation is passed, the state would have to identify or develop a risk assessment instrument that is standardized and validated for Nevada. This process would require at least 12 months to identify a risk assessment, develop research protocol, collect and analyze data, and develop scoring levels and associated release decision matrix. Washoe County, with its fully functioning pretrial program and coordination among criminal justice partners, is in a position to lead this effort and serve as a model for the state.

Administrative Practices

Criminal Justice Advisory Committee

Washoe County has maintained a Criminal Justice Advisory Committee (CJAC) for over twenty years. The committee meets regularly reviews an impressive range of system data reports. While originally convened to coordinate processes and activities across the county criminal justice system, in recent years its charter has narrowed with a goal “to effectively and efficiently

manage the jail population.” These coordinating committees can be very effective in aligning system practices to achieve harm reduction and maximize available resources. They function most effectively when agency heads are engaged in policy teams to examine current practice with regard to their actual impact and the supporting empirical evidence.

Diversion/Specialty Courts

Washoe County operates a wide range of specialty or diversion courts, which are focused on specific risk areas. These programs include: Family Drug Court, DUII Court, Re-entry Court, Drug Court, Misdemeanor Court, Veterans Court and Mental Health Court. The Court provides successful defendants a number of considerations from dismissal of charges to reduced incarceration and a reduction in the level of conviction. No data on the number of participants in each program or outcome data was available.

Specialty courts can facilitate the entry of defendants into appropriate “tracks” or programs, which can greatly impact case processing in a system. The Court’s consideration of sentencing alternatives, e.g. dismissal, can provide the initial motivation to engage defendants into these programs. However, sentencing alternatives must be viewed with respect to their viability. Specifically to diversion or specialty courts, are these programs successful in real crime reduction. Despite the variance in the structure and function of programs both within and across jurisdictions, there are principles of effective intervention to which successful programs adhere. These are the principles of risk, need, and responsivity:

- Risk: Programs assess potential candidates as to their level of risk and appropriateness for the program. The program should focus on high and medium risk defendants. Lower risk defendants, if included, should be managed separately and differently based on their level of risk.
- Need: Program curriculum and administration should focus on the assessed criminogenic needs of the defendants. Prescriptive programs that do not focus on these needs or have variance for levels of risk are not effective interventions.
- Responsivity: The delivery of treatment service must be cognitive-behaviorally based, taking into consideration the special needs and differences within the subject population including: gender, ethnicity, and motivation. Reliance on drug/alcohol education and 12-step models are contraindicated.

Finally, outcome data should be collected and analyzed to assess the performance of these programs, both in regard to general effectiveness, and a review of who (and why) some subjects are not successful.

Pretrial Services

Washoe County maintains a fully functioning and high performing pretrial services program providing assessment, release recommendations, and pretrial supervision, in addition to a number of ancillary services including the completion of an affidavit of indigency. The 15-staff program manages an average daily caseload of over 1000 defendants, and completes over 500 pretrial assessments per month. Pretrial supervision manages over 8000 defendant check-ins per month, approximately 8 per defendant per month. Pretrial Services maintains a station in the jail’s open booking area, and has a presence in the arraignment/bond hearings. Outcome data for the past 6 months indicate a commendable 79% successful closure rate, which includes: 8.26% FTA rate, 9.46% Revocation rate, and a 2.8% Re-arrest rate.

However, the commendable performance of the Pretrial Services Program must be viewed with respect to the fact that less than 30% of pretrial defendants are assessed. Of the 70% who are not assessed, 45% are released pretrial. The performance of those defendants on pretrial release is not known. Further, Pretrial Services is currently utilizing a subjectively weighted scale of pretrial release criteria (outlined in statute) and not a validated risk assessment in conducting pretrial reviews. The courts have established eligibility criteria for pretrial release, effectively limiting the number of defendants eligible for pretrial screening. Thus, the 30% of defendants eligible for screening, of which 69% are released, represent the system's tolerance for risk. It must be noted again that 45% of the defendants not screened by Pretrial Services are released pending trial. This raises the question of by what criteria do these defendant gain release and how do they perform with regard to re-arrest or failure to appear.

The use of a validated risk assessment, as supported by the Chief Justice and recommended in legislation under consideration, would provide the means to make valid distinctions between high and low risk defendants across the range of defendants and charges. A validated assessment would provide the court with objective, risk-informed release recommendations, including conditions or levels of supervision that are the most targeted, yet least restrictive, to manage the defendant's risk if released. There was general consensus among the stakeholders that more complete information is provided at the defendant's initial appearance. A discussion of standards for pretrial services programs follows. A risk- informed process would not only be more valid, but more efficient in terms of having a pretrial assessment at the earliest court appearance.

Expanding the pretrial process to include a full assessment and release recommendation on a larger percentage of defendants would be more than an incremental increase in workload. The expansion of services would have to be part of a deliberate effort to ensure that all pretrial releases were the result of careful assessment and the full range of release options were available. While there are some efficiencies to be gained through examining the structure of pretrial supervision, this could not be done without further investment into Pretrial Services.

Jail Analysis

Washoe County operates a 1351-bed jail facility, 1265 functional capacity, which receives an average of 20,822 bookings annually. The jail utilizes an open booking model, that includes stations for pretrial and medical. While beyond the scope of this assessment, the jail's operations appeared quite efficient, professional and orderly. The jail analysis presented here is a cursory review allowing for the identification of major trends and characteristics. The jail's population is a barometer for general system practices, including charging, booking, detention/release, and sentencing. Jail data were provided by the Washoe County Sheriff's Office, with additional information available through minutes of the CJAC meetings.

In terms of utilization, the jail's 1265 functional capacity and 20, 822 average annual bookings could be effectively managed within an average length of stay (LOS) not exceeding 22.17 days. According to data reported to CJAC, the March 2015 average LOS was 14.02. At that rate, the Washoe County Jail is utilizing 65% of the maximum available jail bed days. This is consistent with an average daily population (1077 over the past three years) that is 85% of rated capacity. Optimum capacity is generally considered to be between 90 – 95% depending on

facility size and number of bookings. Optimum capacity provides that the facility can effectively administer a classification system to ensure the safety and security for all inmates and staff. At 90%, or 1139 beds, maximum utilization for Washoe County would occur when the average LOS equaled 19.95. The current level of utilization is sustainable and can withstand modest increases or variance in either the number of bookings or the average length of stay.

Data were provided on all releases from the Washoe County Jail by type covering the period 6/1/14 to 5/31/15. A review of these data allowed for the estimate of the pretrial release rate, and the dynamics of the inmate population. A total of 20773 inmates were included in the data (99.76% of the annual average bookings). Inmates that were transferred to other facilities or jurisdictions, excluding prison transfers, comprised a relatively low 6.36% (1322 inmates). These were excluded from estimates of release and detention rates, as they are generally outside the normal process. This resulted in a subtotal of 19451 inmates.

The analysis indicated that 54% of pretrial defendants are released pending disposition of their cases (average. Recognizance release is exercised in 56% of the cases, and bond is used in 44% of these cases. While the average lengths of stay vary by type, the range is not large and follows predictable trends. For example, defendants sentenced to prison would be expected to remain in custody the longest (96.75 days), where defendants released on their own recognizance would be expected to have the shortest stay (1.4 days). Inmates release to prison can be considered a proxy measure of the highest risk defendants. The data indicate this is a relatively low percentage (5.4%). The vast majority of sentenced defendants (69.8%) were released time served, and their average length of stay was relatively short (23.39 days). This could relate to the practice of defendants being released after pleading, but prior to sentencing.

Release and Detention Practices, 2014 - 2015 (data from Washoe County Sheriff's Office)

TYPE OF RELEASE	NUMBER	PERCENT	Avg. Length of Stay
<i>Total Inmates = 19451</i>			
Pretrial	10506	54%	10.58 Days
Court Services OR	2701	13.88%	1.4 Days
Judge OR	3188	16.3%	19.77 Days
Bail/Bond	4616	23.73%	5.45 Days
Sentenced	6197	31.85%	21.9 Days
Time Served	4328	22.25%	23.39 Days
Prison	1050	5.39%	96.75 Days
Dismissed	564	2.89%	23.76 Days
Time Pay (fines)	518	2.66%	6.51 Days
Judge Release	1348	6.93%	14.27 Days
Total	19451	93.74%	13.64 Days

Mentally Ill Defendants:

Washoe County, like many jurisdictions around the country is struggling to manage the population of mentally ill persons who become involved in the criminal justice system. There is a lack of community-based resources and there is only one residential program for persons committed by the court. That facility is not secure and not staffed or equipped to handle residents who may be in crisis or are acting out. In those situations, police are called to respond and extract the resident from the facility. These are high risk situations for both the police and the resident.

In terms of case processing, there is also a considerable wait time to be evaluated for competency by a state-certified examiner. At the time of this report, there were 18 defendants waiting for an evaluation. In response, the Washoe County Jail has allocated a pod for use as a Mental Health Unit. At the time of this report there were 51 inmates in that unit. In addition, the Nevada Legislature is considering a bill, SB 10, which would allow for jail-based mental health treatment. The source of sustained funding for that treatment remains unclear.

Despite the laudable goal of providing a safe, custodial setting and jail-based mental health treatment, efforts should be focused on developing community-based resources that effectively divert mentally ill persons from the criminal justice system. The current model imposes physical and legal barriers for persons with mental illness to return to the community. Moreover, it does not lessen the need for a range of community-based treatment and related services. It is this lack of community-based resources that makes the current model necessary.

The treatment of criminally-involved, mentally-ill persons lies along the continuums of both the criminal justice and mental health treatment systems. A collaborative effort that effectively triages subjects for appropriate placement in services based on their risk and needs will yield the most positive, long term benefits. Efforts to develop resources for community based treatment, with coordinated case management from both systems, and facilitated access are recommended. Additionally, the development of a crisis triage center, where persons experiencing acute symptoms or acting out can go for stabilization, instead of jail, is strongly recommended. This will improve the safety of subjects, staff, and law enforcement.

Recommendations

The following recommendations are presented to provide a framework from which the stakeholders in Washoe County can work in order to address issues surrounding pretrial services and case processing. Included in the recommendations are sources of contact for further information on each subject.

As with any agency, Washoe County faces challenges and opportunities within their criminal justice system. These challenges and opportunities are identified below as they set the context for the recommendations which follow. The following themes will be referenced repeatedly; collaboration, information sharing, data driven decision making and outcome focused measures. These are structures and characteristics that will serve to strengthen the relationships between stakeholders and that will be necessary to improve and guide decision-making.

- **Coordination and collaborative decision-making:** ongoing criminal justice issues, from arrest to disposition, should be overseen by a coordinating committee. This committee should be comprised of stakeholders from across the system, Court, Sheriff, District Attorney, Public Defenders, Pretrial/Probation, and Court Administrator. The committee should be charged with overall justice system practices and policies. Accordingly, committee members should be able to make policy decisions, or otherwise represent their agency. Operational committees, working groups, special projects, etc. should all be chartered by this group. The purpose would be to ensure that all proposed policy changes are examined for their potential impact on other system partners and resources.
- **Data driven decisions:** Policy decision impacting the system should be based on available data as to their impact and efficacy. The above referenced steering committee as well as agency heads should regularly examine data related to their agency's performance and impact on the system. Data should be used to develop benchmarks from which programs and policies may be evaluated. Measurement and the means to gather, maintain, and report data should be included in all policy/program discussions.
- **Outcome Measures:** Related to data-driven decisions. The County's agencies utilize a variety of information systems to manage individual programs. However, there is a consistent lack of major outcome measures that are entered or reported. These are central to an understanding of how well a program or policy functions, and how to address performance issues. Data entry of outcomes is a necessary, but insufficient first step. Outcomes and strategies to maintain or improve them must become part of the culture of the organization---from the County Commissioners, to agency heads, to program supervisors. This culture helps to ensure that all business practices are focused on improving both service delivery and improving outcomes. This promotes effective use of resources and public accountability. The Criminal Justice Advisory Committee should work to define what these outcome measures are, how will they be measured, and by whom (see Measuring What Matters in References). These data should be developed to answer specific questions regarding program effectiveness, resource utilization, and service delivery.

1. Revise the charter of the Criminal Justice Advisory Committee.

The Criminal Justice Advisory Committee has been an important force for change and for the coordination and delivery of criminal justice services in Washoe County. It is recommended that the charter for this committee be expanded to include policy review and development across the system, requiring the presence of all agency heads. Additionally, the committee should adopt a decision making model that is firmly supported by data and informed by the research in effective interventions. Specific issues or areas, such as pretrial services, can be addressed through the formation of smaller committees. Recommendations and / or solutions are then presented to the full CJAC for passage and implementation. The documents *Guidelines for creating a Criminal Justice Coordinating Council* by Robert C. Cushman (2002) and *Keeping your Criminal Justice Coordinating Council Going Strong* by Michael R. Jones (2013) are both excellent sources of information for CJACs.

2. The CJAC should develop benchmarks, performance measures and objectives for the criminal justice system.

The CJAC should be focused on policy-level issues, which matches well with member qualifications and positions. In order for the members to effectively evaluate the impact of policy on local systems, empirical data is needed. The system needs to know “where it is” and “where it wants to go” before policy decisions are made. The use of empirical data to drive decisions helps to ensure that anecdotal and politically charged decision-making is kept to a minimum. The CJAC should craft objectives for the system which are designed to achieve required and agreed upon outcomes. These might include objectives such as maintaining the jail population at to particular target number or reducing recidivism by a certain percentage. In order to achieve these objectives the CJAC needs to establish clear, specific, and transparent baseline and performance measurements. These measures may include but certainly are not limited to:

- number of cases by case type;
- number of pending cases;
- age of pending cases;
- number of cases at different stages in the case processing continuum;
- number of cases that proceed or "fall out" by decision point;
- number and type of dispositions by case type;
- number and type of release decisions by case type;
- average sentence length;
- number of probation revocations for technical violations and for new offenses;
- number of bench warrants issued or failures to appear;
- number of continuances;
- length of time between initial appearance and disposition by case type.

For more information on setting performance measures, determining outcomes and establishing objectives see *Evidenced Based Decision Making: A Starter Kit & Measuring What Matters: Outcome and Performance Measures for the Pretrial Services Field* both published by the National Institute of Corrections.

In addition, CJAC should consider the development of a “data warehouse” for program and system measures. Questions or concerns often arise after data tracking measures or reports are developed. The data warehouse would serve as a system-wide resource to answer these questions. Issues such as minority overrepresentation, special offense categories such as domestic violence, firearms, or driving under the influence, or special indicators such as: gang affiliated, mental health issues, etc.

3. Adopt and implement a pretrial risk assessment

Knowing the risk a defendant poses to the community is essential for a judge to make a sound release / detention decision. NRS 178.4853 (1-10) lists factors that a judge must take into consideration when setting bail. However, the statute does not indicate how these factors are linked to pretrial misconduct or if one factor may be more predictive than another. While these factors must be taken into consideration that doesn't mean they are all predictive of pretrial misconduct. Risk assessment research has now identified those factors that are most associated with pretrial failure. These factors have been turned into pretrial assessment tools that determine the probability a defendant will return to court and remain arrest free during the pretrial period. These probabilities are assigned levels which assist in identifying basic risk categories of defendants:

- a) Low risk defendants that can be safely released into the community pending trial without additional interventions.
- b) Moderate risk defendants whose risk can be minimized through the use of appropriate release conditions, community resources, and / or supervision
- c) High risk defendants for whom no condition or combination of conditions can reasonable assure the safety of the community or appearance in court, and need to be detained pending trial.

Implementing a pretrial assessment has substantial benefits for the criminal justice system. It increases the public safety by assuring that those defendants who pose a danger to the community are detained. Additionally, specialized assessments for specific risk issues, e.g., domestic violence, mental illness, etc, can be utilized to further assist in release decision-making and supervision (See an example of a domestic violence assessment in Appendix E). It can help manage the jail population by identifying defendants that do not need to be detained, thereby more effectively using scarce jail beds. It reduces disparity in bail decisions for similarly situated defendants and it helps to advance a release / detention decision that is based on risk rather than socio-economic status.

There are many pretrial assessment tools within the public domain that could be adopted for use by Washoe County (see Appendix C for example). Washoe County also has the option of contracting with a researcher to develop their own pretrial risk assessment tool. Any tool selected should be validated on the local population to ensure that the tool is predicting pretrial misconduct within probability percentages acceptable to Washoe County. A comprehensive sample of risk assessment tools may be viewed on the Pretrial Justice Institute (PJI) or the National Criminal Justice Association (NCJA)

websites at www.Pretrial.org/solutions/risk-assessment/ or www.ncjp.org/pretrial/risk-assessment-instruments-validation respectively.

4. Expand the pretrial interview to include all bail eligible defendants

Standard 3.3 (a) of the National Association of Pretrial Services Agencies (NAPSA) indicates “*In all cases in which a defendant is in custody and charged with a criminal offense*, (emphasis added) an investigation about the defendant’s background and current circumstances should be conducted by the pretrial services agency or program prior to a defendant’s first appearance in order to provide information relevant to decisions concerning pretrial release that will be made by the judicial officer presiding at the first appearance.” The application of the NAPSA Standards, and any resulting policy recommendations must of course be consistent with applicable state statutes.

NRS 178.484 (1) indicates that “a person arrested for an offense other than murder of the first degree must be admitted to bail.” Section (4) goes on to say that “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.” Therefore virtually every person booked into the Washoe County jail is bail eligible and should be afforded a pretrial interview and risk assessment. The pretrial program is not currently conducting an assessment on all bail eligible defendants. Every attempt should be made to assess any defendants that are statutorily eligible for release. Providing judicial officers with information pertaining to the defendant’s risk for pretrial misconduct allows for better release / detention decisions to be made. Providing this information on all defendants, at the earliest possible time, ensures that unnecessary detention (which can lead to jail crowding) is avoided.

5. Discourage the use of financial bond

NAPSA Standard 1.4 (a) indicates that “each jurisdiction should adopt procedures designed to promote the release of defendants on personal recognizance.” Standard 1.4 (c) goes on to say that “Release on financial conditions should be used only when no other conditions will provide reasonable assurance that the defendant will appear for court proceedings. *Financial conditions should never be used in order to detain the defendant*” (emphasis added). Research has shown that financial bond does not affect public safety or court appearance but does have a substantial effect on jail bed use. Two-thirds of the nation’s jails are filled with pretrial defendants many being detained not because they pose a threat to the community, but because they cannot afford to post even a few hundred dollars. When a defendant is unable to post a financial bond and remains in jail, the cost of their detention is the sole responsibility of the county. In addition there are other negative consequences to the use of financial bond.

The research “shows 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 who are released during the pretrial period. These relationships hold true when controlling for other factors, such as current charge,

prior criminal history and community ties.”¹ Further low risk defendants who are held pretrial for as little as 2-3 days are 40% more likely to commit a new crime before trial and 22% more likely to fail to appear than those held no more than 24 hours. The longer low risk defendants are held, the more intense the effect. Those held 31 days or more are 74% more likely to commit new crimes pretrial and 31% more likely to fail to appear. The negative effects of pretrial detention also carry forward to long term recidivism with those defendants being up to 51% more likely to recidivate post adjudication. By holding low risk defendants simply due to their socio-economic status the system, albeit unwittingly, is contributing to community harm.

But perhaps most importantly, the use of financial bond takes the detention / release decision away from the judge and places it with a third party. The defendant’s continued detention or release is decided by someone outside of the criminal justice system. The definition of who is a “good risk” for these third parties often greatly differs from that of the criminal justice system. This discrepancy can lead to the release of dangerous criminals while those who pose minimal risk are detained. Limiting the use of financial bond and determining released based on risk, through a pretrial assessment, reclaims that judicial decision making authority.

On a final note, the Department of Justice filed a *Statement of Interest* on February 13, 2015 in the case of *Varden v. City of Clanton*. The Statement supports the use of fair, individualized determinations for release based on risk of dangerousness and flight and calls the constitutionality of fixed bail schemes that rely solely of the defendant’s ability to pay into question.

6. Develop supervision strategies based on risk

The pretrial assessment tool will identify defendants who fall into the probability of low, moderate and high risk. In keeping with the “risk principle” of evidenced based practices supervision strategies should match the level of risk posed by the defendant. This means prioritizing supervision and treatment services for the higher risk defendants. This would include the frequency with which defendants are required to check-in. Not all risk levels require the same amount of supervision, and in fact research shows that over-supervision of low risk defendants can increase recidivism. Washoe County should consider differential levels of supervision where the frequency of contact is driven by the level of risk.(See Appendix D for an example of a pretrial case management matrix)

Conditions of bond should also be the *least restrictive* while achieving the pretrial goals of court appearance and remaining arrest free during the pretrial period. Managing risk is not about the number of conditions imposed, but rather the appropriateness and efficacy of those conditions. Moderate to high risk defendants are appropriate for supervision if the risks they pose can be mitigated through appropriate interventions. A discussion of pretrial conditions and their efficacy can be found in the document *State of the Science of Pretrial Release Recommendations and Supervision* (VanNostrand, Rose,

¹ *Rational and Transparent Bail Decision Making: Moving From a Cash-Based to a Risk-Based Process*, (PJI / MacArthur Foundation.2012).

Weibrech, 2011). While more research needs to be done regarding conditions of release, the research does show that the one of best way to increase court appearance is through court reminder notifications. Pretrial should incorporate court reminder notices / calls for all defendants on supervision as a way to combat fail to appear. Expanding the use of electronic monitoring, especially for high risk defendants who might not otherwise gain release, should also be explored.

The implementation of the risk tool may result in an increased number of defendants being placed on supervision. Incorporating differential levels of supervision may assist in managing caseloads but pretrial supervision may require more staff as demand for their services increases.

7. Develop and communicate the process for handling violations of pretrial supervision.

Policies and procedures governing pretrial supervision practices should be developed and communicated across the stakeholders. This should include the release recommendation guidelines (or matrix) based on risk, special considerations for specific risk issues, e.g., domestic violence, mental illness, etc., contact standards and expectations, and response to violations. Clarity in these practices will improve the consistency in their application and increase confidence in their administration.

In addition, as the rate of pretrial revocations exceeded the FTA rate, this practice warrants further examination as well. Pretrial misconduct is generally comprised of two categories; failing to appear and being arrested or alleged to have committed new criminal behavior while on release. Most agencies have policies dictating how defendants with these types of misconduct are to be handled. However, supervision agencies must also deal with a third type of behavior; technical violations. A technical violation occurs when the defendant fails to comply with a condition of release such as failing to check-in as directed, or having a positive drug test. Many agencies struggle with how to handle technical violations. The reasoning behind this struggle is often posed through a question; if a defendant is appearing in court as directed and has not engaged in new criminal behavior (the two stated purposes of bond) should a technical violation matter?

Of course each jurisdiction must answer this question for themselves. Standard 4.3 (a) of the NAPSA indicates that, "The selection of an appropriate sanction for violation of conditions should take account of the seriousness of the violation, whether it was "willful", and whether what the defendant did (or failed to do) actually impaired the administration of the court or heightened a risk to public safety". In reply to this standard many jurisdictions have begun to develop violation response guides. These guides list the types of violations and the possible sanctions that could be imposed for the differing violations. The key to making these response guides work, is the policy that is developed in conjunction with the guide. The policy addresses details such as who may give the sanction, under what circumstances sanctions are given, who receives notification of sanctions and when revocation or warrant is appropriate. Some jurisdictions give pretrial services limited authority in determining sanctions for low level

violations. Often referred to as an “administrative sanctions”, this method allows for a swift response to a violation without the use of expensive resources like jail and court time. Jurisdictions need to be thoughtful about policy that requires the incarceration of defendants solely for technical violations. This practice can lead to unnecessary detention of defendants and jail crowding.

8. Define and develop the coordination of pretrial supervision between Pretrial Services and the Department of Alternative Sentencing.

Pretrial supervision in Washoe County is currently conducted by two agencies. Consistent with the recommendations above, guidelines for supervision by risk level should be developed to include the coordination between the Pretrial Services Program and the department of Alternative Sentencing. There is an opportunity to utilize the strengths of each program to provide a full continuum of risk-based supervision that will minimize duplication of efforts and maximize available resources while ensuring positive outcomes.

9. Administrative Practices with regard to Pretrial Services

Administrative practices can in some cases, albeit unintentionally, contribute to jail crowding, delays in case processing or inefficiencies / inequities within the system. The following administrative practices are brought to your attention as they may warrant consideration in the future.

- Currently defendants are ordered to pretrial supervision via a court order. However many conditions of release are subsequently determined by Pretrial Services. Absent specific statutory authority, this practice is vulnerable to challenge. In the case *People v. Rickman*, 178 P.3d 1202 (Co.2008) the court found that the setting of bail conditions is part of the court’s judicial function and as such may not be delegated to another party even with their consent. NRS 178.484 (11) indicates that the “court” may impose reasonable conditions on a defendant prior to their release as deemed necessary. No statutory authority for Pretrial Services performing the function could be found.
- There is an order from the Reno Municipal Court dated January 22, 2015 indicating that Washoe County Pretrial Services may not release defendants who are charged with certain offenses on their own recognizance. While current charge has been shown to be predictive of pretrial misconduct in several risk assessments, it is not the only factor. As Washoe County moves to implement a pretrial risk assessment tool, this order may warrant reexamination. Moving the emphasis from charge, to level of risk, will as the order indicates “...adequately protect the health, safety and welfare of the community and/ or the nature and seriousness of the danger to alleged victim(s) of crime and good cause appearing.”

References and Resources

- American Bar Association. (2007). ABA Standards for Criminal Justice, Third Edition, Pretrial Release. Chicago, IL: American Bar Association.
- American Probation and Parole Association. (2011). Promising Practices in Providing Pretrial Services Functions within Probation Agencies: A User's Guide. American Probation and Parole Association: Lexington, KY.
- National Institute of Corrections. (2002). Guidelines for developing a Criminal Justice Coordinating Committee. Cushman, Robert C. NIC Accession Number 017232. Washington, D.C.: U.S. Department of Justice.
- National Institute of Corrections. (2011). Measuring What Matters: Outcome and Performance Measures for the Pretrial Services Field. NIC Accession Number 025172. Washington, D.C.: U.S. Department of Justice.
- Pierce-Danford, Kristy & Guevara, Meghan. (2013). Creating an Effective Pretrial Program: A Toolkit for Practitioners. Crime and Justice Institute at Community Resources for Justice. Californians for Safety and Justice.
- Pretrial Justice Institute. (2010a). Pretrial Services Program Implementation: A Starter Kit. Washington, DC: Pretrial Justice Institute.
- Pretrial Justice Institute. (2010b). Responses to Claims About Money Bail for Criminal Justice Decision-Makers. Washington, DC: Pretrial Justice Institute.
- Schnacke, T. R., Jones, M. R., & Brooker, C. M. B. (2010). The History of Bail and Pretrial Release. Washington, D.C.: Pretrial Justice Institute.
- Schnacke, T. R., Jones, M. R., & Brooker, C. M. B., & (2011a). Glossary of Terms and Phrases Relating to Bail and the Pretrial Release or Detention Decision. Washington, D.C.: Pretrial Justice Institute.
- Schnacke, T. R., Jones, M. R., & Brooker, C. M. B., & (2011b). The Third Generation of Bail Reform. DULR Online, the Online Supplement to the Denver University Law Review. Denver, CO: University of Denver Sturm College of Law.
- Solomon, Freda F. (2013). CJS's Queens County Supervised Release Program: Impact on Court Processing and Outcomes. New York City Criminal Justice Agency INC. New York: NY.
- VanNostrand, M., Rose, K. J., & Weibrecht, K. (2011). State of the Science of Pretrial Release Recommendations and Supervision. Washington, DC: Pretrial Justice Institute.

Appendix A

Bio for Don Trapp

Don Trapp is the manager for the Pretrial Supervision Program in Multnomah County, Oregon. He has worked in community correction in Oregon since 1988, and is an Associate Faculty of Criminal Justice at Portland State University. He has served as the Project Manager for the Department of Community Justice's evidence-based practices initiative, and continues to provide training to staff in Multnomah and other Oregon counties on evidence-based case management practices. Don has served as a consultant with the Crime and Justice Institute and has provided technical assistance to local jurisdictions through the National Institute of Corrections. Don has a Master's Degree in Psychology from Portland State University, has conducted workshops and provided trainings for corrections agencies on implementing evidence-based practices, managing offender risk, and organizational change and development, and is the author of several papers in these subjects.

Bio for Barb Hankey

Ms. Hankey started her career in criminal justice in 1988 with Oakland County Pretrial Services. While there she worked as a line staff investigator interviewing felony and misdemeanor defendants within various secure settings. In January 1993 she took the position of Chief Probation Officer for the Troy District Court. She rejoined Pretrial Services in 1995 as the Supervisor; she was promoted to Chief of Field Operations for Community Corrections and currently holds the position of Manager for Community Corrections.

Ms. Hankey's experience includes the development, design, and implementation of programs which act as alternatives to incarceration. She also has expertise in the area of pretrial services, and has spoken on these topics at many state, local, and national conferences. Ms. Hankey has been an instructor with the American Jail Association (AJA), the National Institute of Corrections (NIC), and has acted as a consultant for the Pretrial Justice Institute. Ms. Hankey is a member of the National Association of Pretrial Service Agencies, American Probation and Parole Association, and the NIC Network for Pretrial Executives.

Ms. Hankey earned both her Bachelor of Arts Degree and her Master's in Administration from Central Michigan University.

Appendix B

Agenda for Washoe County Site Visit May 12-14, 2015

05/12/15 (T)	Department	Representative Name(s)
0800 - 0845	District Court (DC)	Pretrial Tour (Courts) / Meet & Greet
0900 – 0950	Pretrial (Jail) – (PRT)	Tour – Jail, Booking, PRT (@ WCSO)
1000 – 1050	Reno Justice Court (RJC) ARR	RJC - Video Arraignments (@ WCSO)
1100 – 1150	Washoe County Sheriff's Office (WCSO) / Research & Develop. (R&D)	WCSO Rep., Shannon Hardy, Karen Burch (@ WCSO)
1300 – 1350	DC	Judge Sattler, Judge Stiglich, Jackie Bryant
1400 – 1450	Alternate Public Defender's Office (APD)	Jennifer Lunt
1500 – 1550	Public Defender's Office (PD)	Jeremy Bosler, Ryan Sullivan
1600 - 1650	RJC	Judge Pearson, Steve Tuttle, Tami Neville

05/13/15 (W)	Department	Representative Name(s)
0800 - 0830	DC – Court Tech	Craig Franden
0830 – 0950	DC ARR	Dept. 8 – Court docket (Judge Stiglich)
1300 – 1350	Reno Municipal Court	Judge Howard, Cassandra Jackson (@ RMC)
1400 – 1450	Sparks Municipal Court	Judge Barbara McCarthy (telephone conference)
1500 – 1550	Sparks Justice Court	Judge Wilson, Anita Whitehead
1600 - 1650	District Attorney's Office	Bruce Hahn

05/14/15 (TH)	Department	Representative Name(s)
0900 – 0950	Assist. County Manager	Joey Orduna Hastings (9 th & Wells, Building A)
1000 – 1050		Debrief
1200 - 1300	CJAC - All Stakeholders	Wrap up – NIC Presentation (Dept.10)

Appendix C

REVISED VIRGINIA PRETRIAL RISK ASSESSMENT TOOL

Risk Factor	Criteria			Assigned Points	Score
1. Charge Type	If the current offense is a drug offense (MCS, DCS, PCS, including attempts) or is an offense charged under ORS Chapter 166 or 181.			1 Point	
2. Pending Charges	If the defendant had one or more charge(s) pending in court at the time of arrest.			1 Point	
3. Outstanding Warrant(s)	If the defendant had one or more warrant(s) outstanding in another locality for charges unrelated to the current arrest.			1 Point	
4. Criminal History	If the defendant had one or more misdemeanor or felony convictions.			1 Point	
5. Two or more Failure to Appear Events	If the defendant had two or more failure to appear events.			2 Points	
6. Current Residence	If the defendant has had three or more address changes in the past 12 months.			1 Point	
7. Employment	If the defendant is employed, in school, or otherwise engaged as a primary caregiver for a child for less than 20 hours per week.			1 Point	
8. History of Drug Abuse	If the defendant has a history of drug abuse.			1 Point	
SCORE					
Risk Score	0 – 2	3 – 4	5 - 6	7 - 9	
Appearance Rate	92%	87%	75%	48%	
Safety Rate	100%	93%	93%	89%	
Success Rate	82%	70%	59%	26%	
Presumptive Release Decision	Release on Recognizance	Release to PRS		Refer to PRS	Detain
Risk Level	Low	Medium		High	
Supervision	None	Basic Monitoring		Pretrial Supervision	
		<ul style="list-style-type: none"> -Phone Reporting -Check-in physically after court appearances -LEDS Monitoring -Case management meetings as needed 		<ul style="list-style-type: none"> Phone Reporting weekly -Check-in physically after court appearances -LEDS Monitoring -Case management meetings as needed -Substance testing if ordered -Electronic monitoring -Home/field visits 	

ASSESSMENT:

The defendant's risk score of ____ is consistent with defendants with a success rate of _____ and safety rate of _____. The defendant's criminal history includes ____ (similar, varied, unrelated) offenses in the past 3 years and _____ lifetime. The defendant has ____ prior FTA's in the past 3 years, and _____ lifetime.

Factors to consider indicating the possibility of violations if released:

RECOMMENDATION:

Defendant be released on their own Recognizance

Defendant be released to Pretrial Release Services, with the following special conditions:

- _____
- _____
- _____

Defendant be referred to PRS for further investigation, e.g., establish victim safety plan, verify alternate housing and/or treatment resources,

Release be denied. It does not appear any conditions of supervision would be adequate to assure that the defendant would comply with the terms of pretrial release.

Pretrial Case Manager

Date

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 <u>SUPERVISION:</u> Reporting via phone (weekly), collateral contacts Monitoring of A & D use, or other prohibited activities
MEDIUM Scores 5 – 7 on Revised VPRA	MODERATE Conditionally Release	<u>MONITORING:</u> Reporting via phone (bi-weekly) Report in person after court
LOW Scores 0 – 4 on Revised VPRA	HIGH Presumptively Release	

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 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	Number of Missing Items					
	0	1	2	3	4	5
0	0	0	0	0	0	0
1	1	1	1	1	1	2
2	2	2	3	3	3	3
3	3	4	4	4	4	5
4	4	5	5	5	6	7+
5	5	6	7+	7+	7+	7+
6+	7+	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.