Benefits and Outcomes of Pretrial Services

California Institute for Mental Health Webinar
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Pretrial Justice: An Overview

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The Pretrial System

- Arrest
- Booking
- Diversion
- Court Appearances
- Pretrial Supervision

Pretrial Outcomes

- Return to Court
- Public Safety
Pretrial Diversion and Specialty Courts

- Diversion is defined as any voluntary option in which defendants undergo alternative criminal case processing that results in dismissal of the charge(s) if certain conditions are satisfied (NAPSA, 2008)
  - Opportunity to triage resources to serious crimes and higher-risk defendants, helping with docket management and reducing jail costs
  - Provides option for rehabilitation of lower-risk defendants

- Specialty courts, e.g. drug court & mental health court, provide options for diversion or alternative case processing of individuals with specific needs

Pretrial Supervision

- Pretrial supervision offers county justice systems intermediate options between release on one's own recognizance and remand to jail for those defendants facing formal prosecution

- In contrast to pretrial diversion:
  - Pretrial supervision is not voluntary
  - Successful completion of pretrial supervision does not result in charges being dropped
Pretrial & Realignment

California County Jail Population

Sentenced 37%
Unsentenced 63%

Source: Board of State and Community Corrections, 2013
Why Focus on Pretrial?

- **The Pragmatic**
  - Reducing the number pretrial defendants in jail creates needed space for sentenced offenders
  - Using a risk-based system ensures that the highest risk defendants (and offenders) can stay in jail, while the lowest risk are released
  - Several CA jurisdictions are under federal consent decree and have caps on their jail population; several more have populations above rated capacity

- **The Philosophical**
  - Protecting constitutional rights, using the least restrictive means to ensure return to court, and protecting public safety
  - It’s just the right thing to do

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Legal & Evidence-Based Practices
Legal Foundations

Right to Counsel

Presumption of Innocence

Right Against Self-incrimination

Right to Equal Protection Under the Law

Right to Due Process of Law

Right to Bail that is Not Excessive

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Legal Foundations

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

“The right to release before trial is conditioned upon the accused’s giving adequate assurance that he will stand trial and submit to sentence if found guilty ... Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is ‘excessive’ under the Eighth Amendment.”

United States v. Salerno (481 U.S. 739 (1987))

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

- **What Works…**
  - Release, supervision, or incarceration based on an actuarial risk-assessment instrument

- **What Doesn’t…**
  - Money bond, charge-based release structures, and over-supervision or incarceration of low-risk defendants

Risk Assessment

- Who is likely to appear in court, and unlikely to pose a threat to public safety if released pending trial?

- Pretrial risk assessment places defendants into categories of risk in a manner that predicts the likelihood of either an arrest on a new charge or failure to appear in court.
  - A variety of risk assessment tools are available
  - Each jurisdiction must validate on their population
  - Can be done with or without an interview
Laura and John Arnold Foundation

- Extensive national research on pretrial risk assessment and the impact of jail

- Findings include:
  - Increased risk of new crimes both pretrial and within two years for low-risk defendants who are incarcerated
  - Benefits of pretrial supervision for moderate- and high-risk defendants
  - Link between pretrial incarceration and likelihood of prison sentences, as well as increased length of stay in prison

- [http://www.arnoldfoundation.org/research/criminaljustice](http://www.arnoldfoundation.org/research/criminaljustice)

Public Safety Assessment (PSA)-Court

- Non-Interview Pretrial Screening Tool
- Research based on 750,000 cases from 300 jurisdictions

(Redacted text)

- Risk factors included:
  - Pending case
  - Active warrant or prior FTA
  - Prior misdemeanor or felony convictions
  - Prior violent convictions
  - Currently on felony probation/parole

## Colorado: Secure vs. Non-Secure Bonds

In terms of public safety, there was no statistically significant difference in the rates of pretrial success between those on secure vs. unsecure bond.

<table>
<thead>
<tr>
<th>Risk Level</th>
<th>Unsecured Bond</th>
<th>Secured Bond</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (Lowest)</td>
<td>93%</td>
<td>90%</td>
</tr>
<tr>
<td>2</td>
<td>84%</td>
<td>79%</td>
</tr>
<tr>
<td>3</td>
<td>69%</td>
<td>70%</td>
</tr>
<tr>
<td>4 (Highest)</td>
<td>64%</td>
<td>58%</td>
</tr>
<tr>
<td>Average</td>
<td>85%</td>
<td>76%</td>
</tr>
</tbody>
</table>


However, secured bonds contributed to substantially more pretrial detention because of longer times to post bond.

- All statistical comparisons were statistically significantly different on days 1 through 9.
Court Date Reminder Studies

- Nebraska, 2010: appearance rate for reminded group – 92%, for control group – 88%.

- Multnomah County, OR, 2005: FTA rate for group receiving an automated reminder was 16%, compared to 28% for the group not receiving a call.

- Jefferson County, CO, 2005: FTA rate reduced from 23% to 11% when household reached and to 7% when defendant reached.

Structured Pretrial
There’s Not a “Right” Way

- Successful pretrial programs operate in courts, probation, sheriff’s offices, and independent agencies, both public and private
- Several partners must be engaged to develop an effective, efficient pretrial continuum
- Can the system:
  - Avoid arrest and booking for least serious crimes
  - Base decisions on risk
  - Provide accurate, timely information to the court
  - Supervise defendants as appropriate
  - Respond to violations

National Standards

- The American Bar Association (ABA) and National Association of Pretrial Services Agencies (NAPSA) have developed national standards for pretrial release practices
- The California Association of Pretrial Services (CAPS) has adopted standards for local practice
- The ABA and NAPSA standards advocate for the use of risk-based pretrial decision-making rather than a system based on financial bond
The Role of Providers

- Diversion programming
- Specialty court programming
- Risk assessment
- Supervision
- Monitoring (e.g. drug testing)
- Access to health insurance & medical care

Tools & Resources
Creating and Effective Pretrial Program:  
a Toolkit for Practitioners

- California-specific overview of:
  - Legal and evidence-based practices
  - Pretrial assessment, diversion, and supervision
  - Program measurement and enhancement

- Sample tools for system assessment and defendant risk assessment

- Flexible strategies that can be tailored to local systems

http://www.safeandjust.org/resources/2013-06-creating-an-effective-pretrial-program

Creating and Effective Pretrial Program:  
a Toolkit for Practitioners

**Jail Assessment: Questions to Ask**

- What proportion of people in the county jail are able to secure pretrial release, and how does this number compare to the state average?
- How do money bail amounts in your county compare with those for the same crimes in other California counties?
- How many people assessed as low-risk are being released on personal recognizance and/or transferred to pretrial, non-custodial supervision programs?
Creating and Effective Pretrial Program: a Toolkit for Practitioners

Pretrial Assessment: Questions to Ask

- What are the goals of our pretrial system?
- What are the demographics of the pretrial population?
- How are pretrial defendants currently managed?
- What are the policies and procedures of individuals and agencies that are part of pretrial decision-making?
- What statutes govern local pretrial decision-making?
- How does local practice compare to national standards?

Resources

- Crime and Justice Institute at CRJ
  www.crj.org/cji
- Pretrial Justice Institute
  www.pretrial.org
- Californians for Safety and Justice
  www.safeandjust.org
- National Association of Pretrial Services Agencies
  www.napsa.org
- California Association of Pretrial Services
  www.pretrialservicesca.org
History of Pretrial Services

- Early 1960's: Overcrowded jails in New York with horrible conditions of confinement
- 1961 Manhattan Bail Project: Vera Institute found low level defendants stayed in jail because they couldn't afford bail, found if arrestees had ties to community they would appear for court if released on Own Recognizance (OR)
- 1965: 56 jurisdictions had formed bail projects
- 1968: first pretrial agency formed in Washington DC
- 1968: ABA published legal standards for pretrial
What is Pretrial Services Today In California?

- Varies greatly from County to County
- Pretrial Services investigates arrestees in order to determine if they are appropriate for release.
- Information is compiled into a written report, which is provided to Court with a recommendation as to release based on risk level.
- If released with terms, some agencies then supervise individuals to ensure they make all court dates and do not commit any new offenses.
- Pretrial Diversion

Goals of Pretrial

**Main Goal**

- Ensure all defendants appear for all court dates and do not commit new offenses during adjudication process

**Secondary Goals**

- Help defendants by assisting them gain access to services
- Reduce costs to County by saving jail bed days
- Jail population management
- Most importantly, right thing to do for the accused
National Organizations that Endorse Pretrial Services

- American Bar Association
- International Association of Chiefs of Police
- The Association of Prosecuting Attorneys
- The National District Attorneys Association
- The National Judicial College
- The Bureau of Justice Assistance
- National Institute of Corrections
- American Jail Association
- National Association of Counties
- American Probation and Parole Association
- American Council of Chief Defenders
- Attorney General’s Office
- American Civil Liberties Union
- The Council for State Governments
- The Tribal Judicial Institute

Santa Clara Facts

- South Bay Area
- Land area: 1315 square miles
- Population: 1.78 million
- Seventh most populous county in California
- Two jail facilities housing about 4000 inmates
Pretrial Services in Santa Clara

- Program started in 1969 with a grant
- Made independent county department in 1971
- Department consists of three units: 24/7 Jail Unit, Supervision Unit and Court Unit
- 41 positions, annual budget 5.8 million

Organization of Department

- Jail Unit
  - Operates 24/7, interviews all jail bookings with fresh arrests
- Court Unit
  - Represents all departments cases in court
- Supervision Unit
  - Supervises all individuals released by court on Supervised Own Recognizance Program (SORP)
- Administration Unit
  - Oversees operations
**Jail Unit**

- Interviews all felony fresh arrests
- Records checks, verifications, reference checks, victim contact
- Probable cause determinations
- Risk Assessment completion
- Arraignment reports
- Court presentations 3 times/day
- Reviews release terms with defendants before release
- Reviews between 1100-1200/month

**Court Unit**

- Update jail report for cases not released at jail, after charges filed by DA
- Completes records check, RAI and investigative report for Court
- Appears in court at arraignment hearings, violations of release terms
- Completes investigations on arrest warrants for Self Surrender Program
- Makes release recommendations using RAI for EMP, GPS and alcohol monitoring.
- Supervises small caseload, around 30, low risk defendants
Supervision Unit

- Supervises SORP defendants for compliance with release terms
- Assists defendants in accessing services: substance abuse, MH, homeless, employment, etc.
- Operates drug testing station
- Supervise EMP program
- Reminds OR cases of Court Dates

Services vs. Sanctions/Punishment

- Drug testing
- EMP
- Counseling/Treatment
- Charging for services
- Net-widening, over supervision based on risk level, OR/SORP/EMP
Court Reminder Program

- Study of Santa Clara defendants in 2012 indicated they preferred text, email and cell phone call, not mail or call to residence
- Department was using mail and residence call
- 2013 added texting, email and cell
- Currently defendants receive reminder letter week before court, then reminder call day before court, text reminder day of court
- Would like to add rides to court, resource and union issue

Homeless/Mentally Ill

- Work closely with Custody Health prior to recommendation for release, what does defendant need to be successful in community?
- If open MH case, work with MH case worker
- Assist with finding placements for defendants, work closely with service providers, families of defendants, public defenders
- Ensure compliance with prescribed medications
- Referrals to Reentry Center
- Success rates for this population lower than regular population
Bail Industry

- Requires defendants pay on average 10% of bond for release, non-refundable
- No supervision services provided and individuals released based on ability to pay, not risk to community
- Only focus is to ensure defendants appear in court so their bond is returned
- Bail has been abolished in most countries, some states and local jurisdictions

Benefits and Outcomes of Pretrial Services

Questions