

Pretrial Justice Reform A Policy Guide for State Policy Makers

EXECUTIVE SUMMARY

On September 10 and 11, 2014, the National Criminal Justice Agency convened a focus group consisting of six State Administering Agency (SAA) executives and six subject matter experts endorsed by the Pretrial Justice Institute. The focus group, made possible by a grant to NCJA from the Public Welfare Foundation, met to deliberate the following:

THE PROBLEM

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 It is dangerous, outdated, unfair and expensive, costing taxpayers more than \$9 billion each year without doing enough to protect public safety.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

THE SOLUTION

Jurisdictions must conduct an empirical *risk assessment* of all defendants in custody awaiting their initial appearance in court and provide *supervision and monitoring* for defendants released by the court, when appropriate. This system delivers on the purpose of our bail system – to protect public safety and assure appearance in court.

ROLE OF THE SAAS

SAAs can play an influential role in implementing pretrial justice reform. However, local jurisdictions do not routinely engage SAAs in examining current practices and planning improvements in the management of non-adjudicated offenders. What do SAAs need to know? And, what can they do to encourage the development of strategies to accomplish pretrial justice reform?

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POLICY AND IMPLEMENTATION GUIDE FOR THE SAA

This document serves as an implementation guide for SAAs. Below are questions to consider when planning and implementing pretrial service programs.

- 1. Understand how pretrial works in your state.**
 - a. Review state constitution, applicable statutes, court rules, case law
 - b. Is your state a “right to bail” or “right to bond” state? (For example, state constitution or statutes require that bail has to be set for all but capital offenses.)
 - c. Who establishes bond schedules in your state? Are they set in local jurisdictions? Is there consistency throughout the state or is there conflict, i.e. “justice by geography”?
 - d. Does your state have a “preventive detention” statute? (Allows judge to disallow bail or bond to protect public safety)
 - e. How is bail handled in your state? Through commercial bail bondsmen? If so, this industry has an enormous lobby and opposes any change that would impact its business.
 - f. What resources are available for pretrial supervision? (For public safety, mental health or substance abuse treatment, etc.)
- 2. Determine if jail and court data are accessible and exchangeable throughout your state.**
- 3. Gather information critical to assessing the jurisdiction’s current pretrial activity, practice, and outcomes.**
 - a. Numbers of jail admissions, by reason
 - b. Daily jail population
 - c. Average length of stay, by risk level
 - d. Average bond amounts per charge
 - e. One-day jail snapshots:
 - i. Total number of defendants in jail today
 - ii. Number on pretrial status
 - iii. Number on probation or other holds
 - iv. Number serving sentences
 - f. Are arrestees screened by law enforcement using a field-based risk assessment tool? Is information shared with the court, prosecutor, and defense counsel?

- g. Is an assessment tool currently utilized for pretrial purposes? Is it one that has been validated? Has it been re-validated after a period of use? Is the use of the assessment tool being implemented with fidelity?
 - h. Percentage of defendants who see a judge
 - i. Percentage of defendants released, by type of release
 - j. Percentage of high risk defendants who are released
 - k. Number of people who plead guilty and are released
 - l. Percentage of released defendants who receive a court reminder
 - m. Rates of compliance with court conditions of release
 - i. Court appearance rates
 - ii. Technical violations
 - iii. Rate of rearrest
 - iv. Rate of rearrest for a violent crime
 - n. Anecdotal narratives are important and powerful.
 - o. If data is not available, or if there are gaps in certain areas of the state, could it become accessible with technical assistance provided to localities?
 - p. Is the Statistical Analysis Center (SAC) housed in the SAA office? Or, does the SAA work closely with the SAC or another researcher? Could a researcher be enlisted to assist with needed technical assistance?
 - q. If an assessment tool is utilized for pretrial purposes, is it one that has been validated? Has it been re-validated after a period of use? Is the use of the assessment tool being implemented with fidelity?
4. **Host or join a statewide, cross-system, interdisciplinary discussion.**
- a. Include all system players from both adult and juvenile justice levels, both management level and knowledgeable line workers: law enforcement, prosecutors, judges, state/local judicial offices, defense counsel, legislators, victim advocates, county pretrial staff, behavioral health practitioners, governor's office, local Criminal Justice Coordinating Councils (CJCCs), county commissioners. Understand who has power in the state, and

include representation from those entities – potential champions of the cause. Include those that will be impacted by change. Include at least one pretrial expert in the group. Decide whether or not to include commercial bondsmen.

- b. Share information and data, as outlined above, regarding the status of pretrial in your state.
- c. Define terminology, i. e. “bail”, making certain that everyone in the group has the same understanding. (See *PJI’s Glossary of Pretrial Terminology* cited below)
- d. Make sure that public safety is at the heart of all discussions.
- e. Understand that changing pretrial is a cultural change and that is a very difficult thing to do.
 - i. New research deals with risk instead of money and charge.
 - ii. This means that every statute or constitution may be outdated and must be changed for the system to change.
 - iii. Understand “change fatigue” and consider that factor in planning and timing.
- f. Understand your state’s bail laws, systems, and practices (See #1 above)
 - i. Since the bail system started in the 1200’s, bail has meant release.
 - ii. In America and most likely in your state,ailable defendants are being kept in jail; unailable defendants are released as a result of money – specifically, commercial surety.
 - iii. America and your state need a “best practice” in this area.
- g. Create a vision for your state
 - i. State pretrial reform can happen “bottom-up” or “top-down” – do not hesitate to start top-down.
 - ii. Start by asking “who do you think should be held prior to trial?” This is a philosophy issue/values conversation.
 - iii. Ask “what is the end goal?”
 - iv. Ask “what is our value regarding the use of jail? What is the purpose of detention?”
 - v. Come up with a value statement and keep going back to it.

- vi. Understand that mid-level risk is the challenging area – more complex than low-level or high-level risk. This category requires careful thought because it could be one that causes failure, or is, at least, the hardest to mitigate.
 - vii. Understand that passing new laws and effecting change is only the beginning. Training is needed for system workers implementing changes, i.e. risk-based supervision.
 - viii. Implementing change that can be institutionalized is the biggest challenge. Judges tend to have the longest tenures in the system.
 - ix. Find a way to codify the changes. If reform is to be sustainable, there is an important state role and funding mechanisms are needed.
 - x. Build implementation science and understanding classic failures into your planning and technical assistance.
- h. Create a communications strategy (<http://www.pretrial.org/infostop/comms/>) including:
- i. How to talk to representatives of various aspects of the system to address their fears and concerns
 - ii. How to respond when incidents occur
 - iii. Media toolkit or reporter bootcamp (to explain nuances)
 - iv. Twitter, Facebook, Linked In, blogs
- 5. Consider the inclusion of pretrial reform in JAG strategic planning.**
- a. Fund a statewide seminar for interested parties
 - b. Fund model programs – see [BJA's 2014 SMART Pretrial solicitation](#) as an example
 - c. Support data collection, accessibility , exchange
 - d. Support, enable, or provide technical assistance
 - e. Support assessment tool validation, re-validation, and studies to see if assessment tool is being implemented with fidelity.
- 6. Access online resources, as discussed in Focus Group (to be merged with comprehensive list of resources on NCJP website).**
- a. Various PTJ organizations and foundation websites
 - i. [Pretrial Justice Institute](#) (PJI)
 - ii. [Public Welfare Foundation](#)

- iii. [Laura and John Arnold Foundation](#)
- iv. [Bureau of Justice Assistance](#) (BJA)
- v. [MacArthur Foundation](#)
- vi. [National Institute of Corrections](#)
- vii. [National Center for State Courts](#)
- viii. [National Conference for State Legislatures](#)
- b. [National coalition for pretrial reform](#)
- c. Annie Casey Foundation's [Juvenile Detention Alternatives Initiative](#)
- d. [State Justice Institute](#)
- e. [BJA's Justice Reinvestment Initiatives](#)
- f. [Active Implementation Hub](#)
- g. [PJI's Glossary of Pretrial Terminology](#)
- h. [*The Jefferson County Bail Project: Lessons Learned From a Process of Pretrial Change at the Local Level*](#)
- i. [National Association of Pretrial Services Association](#) (includes accreditation information)