

PRETRIAL PROGRESS:
**A SURVEY OF
PRETRIAL PRACTICES
AND SERVICES**
IN CALIFORNIA



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About Californians for Safety and Justice

Californians for Safety and Justice is a nonprofit project of the Tides Center working to replace prison and justice system waste with common sense solutions that create safe neighborhoods and save public dollars. As part of that work, our Local Safety Solutions Project supports innovative efforts by counties to increase safety and reduce costs by providing toolkits, trainings, peer-to-peer learning and collaborative partnerships. LocalSafetySolutions.org

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INTRODUCTION

For years, California has experienced crowding in its county jails. This problem has been exacerbated by the significant number of people detained in jail while awaiting trial, many for nonviolent offenses and often because they cannot afford bail. Because these large pretrial populations cost taxpayers money and take up scarce jail space (and because recent policy changes give counties more responsibility for individuals accused of or convicted of committing lower-level crimes), many California counties are now investing in their pretrial systems.

These approaches assess individual risk factors to inform whether a person should remain in jail or be released pending their trial, with or without conditions of release. County leaders, including sheriffs, chiefs of probation and judges, are considering how to best assess individual risk, incorporate this information into pretrial decision-making and effectively supervise defendants in the community to increase court appearance rates, minimize pretrial misconduct and reduce unnecessary use of jail.

Pretrial services have the potential to reduce jail populations and move justice systems toward more risk-based decision-making. Therefore, the counties implementing pretrial practices are becoming pioneers in a larger shift toward reducing over-reliance on incarceration and instead aligning local resources with best practices — a shift with significant public support.

Individuals detained pretrial can experience instability in their work and personal lives. For example, a survey of people who could not afford bail in Maryland found that 25% feared losing their jobs and 40% said they would lose their homes.⁹

To provide a broad overview of pretrial services across the state, Californians for Safety and Justice partnered with the Crime and Justice Institute at CRJ to survey California counties about local pretrial practices.

The survey was administered electronically in March and April 2015. A representative from each of the state's 58 counties responded to the survey (for more information, see the Methodology explanation at the end of this brief).

The 15-item survey addressed a range of practices for managing pretrial populations, from pretrial diversion to jail expansion. However, the survey placed emphasis on core functions of pretrial proven to reduce failures to appear in court and pretrial misconduct, specifically: screening arrestees for eligibility for pretrial release; applying an empirical risk assessment instrument to inform release decisions; and offering a range of pretrial supervision options for individuals who are released to the community.

It is important to note that this survey focused on certain functions of pretrial services and did not encompass all pretrial best practices. Other actions by stakeholders within the criminal justice system are also considered best practices, including early review of charges by a seasoned prosecutor and the presence of defense counsel at the first appearance. (An early role for prosecution and defense ensures that defendants are charged appropriately and released if no charges will be filed, and that defendants have an advocate present as bail determinations are being made.)

Though pretrial law and research help determine what constitutes an effective pretrial system, there is significant variation in how those principles are implemented across the country. For example, in California's counties pretrial services reside in different branches of government, use a variety of risk assessment tools and employ diverse supervision techniques. Though this survey did not delve deeply into the details of pretrial operations, it captures a variety of approaches that are moving the state toward research-based pretrial practices.

WHY PRETRIAL SERVICES MATTERS

The following facts underscore why voters, policymakers and local officials increasingly support new approaches to pretrial populations:

- ✓ 51 jails in California were operating over capacity, and 20 counties faced court-ordered jail population caps, as of June 2014.¹
- ✓ California jails made emergency releases of 8,294 unsentenced individuals because of population caps in the month of June 2014.²
- ✓ 62% of people, on average, in California county jails were awaiting trial or sentencing, as of September 2014.³ Many people remain in custody pretrial because they cannot afford bail.⁴
- ✓ The median bail amount in California (\$50,000) was more than five times the median amount in the rest of the nation (less than \$10,000) in 2009.⁵
- ✓ African-American and Latino defendants are more likely to be detained before trial than whites in part because of an inability to afford bail.⁶
- ✓ People jailed before trial more commonly plead guilty and receive longer sentences than those (with similar profiles) who are released pending trial.⁷
- ✓ On average, it cost California counties \$114 per day to hold someone in jail (\$41,563 annually) in 2011, though costs can be higher, such as \$124 per day in Alameda County and \$158 in San Diego.⁸

KEY FINDINGS

While this brief provides greater detail on a variety of pretrial issues and county responses, some key findings include:

- A majority of California counties now use pretrial services to manage their jail populations.
- There has been significant growth in pretrial services since the implementation of Public Safety Realignment in 2011, suggesting that the reform may have helped to drive the recent increase in pretrial strategies.
- Probation and sheriff departments are playing the leading role in implementing and adapting these pretrial approaches.
- Counties with pretrial services in place seem less likely to be forced into early release of individuals than counties without such practices in place.
- Collaboration among agencies is not always easy but has been critical in the success and proliferation of pretrial services.
- Pretrial services have helped justice systems more broadly think about how to incorporate risk assessments into their decision-making.

SURVEY FINDINGS

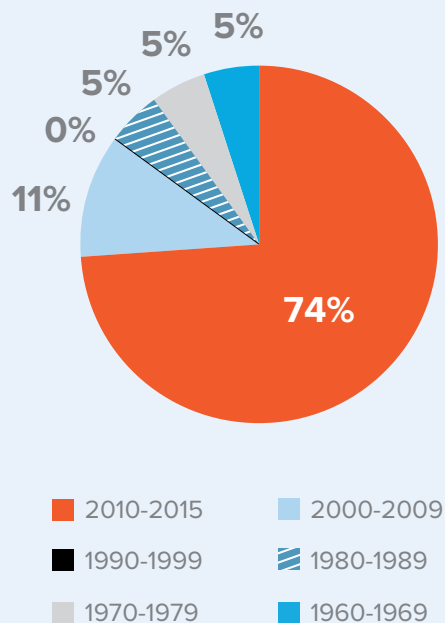
Pretrial Services Are Increasingly Available

When asked if their counties have formal pretrial services, 46 of 58 respondents replied in the affirmative. As defined by the survey, “pretrial services” includes any effort to provide information to judges for pretrial release decisions and/or to monitor conditions of pretrial release. While this broad definition allowed participants to respond based on their own county’s definitions, the survey also asked respondents which formal functions their pretrial release services program, agency or unit provide. Results by function are discussed below and are shown in figures 3 and 4.

Pretrial Services Have Especially Grown in Recent Years

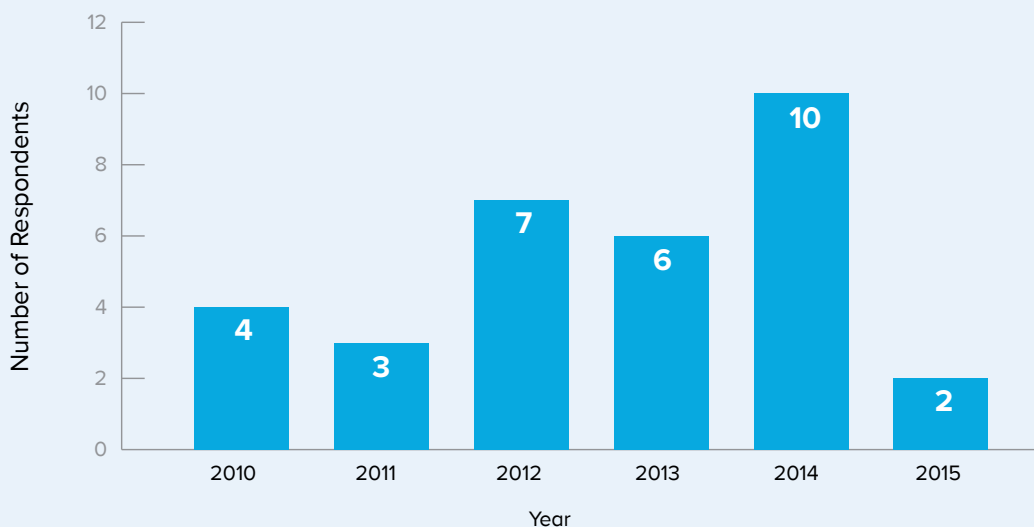
Of the 46 counties that offer some form of pretrial services — and who answered the question about inception dates — 32 (70%) established these functions within the last five years. Notably, 26 (57%) implemented pretrial services in 2012 or later, subsequent to the enactment of Public Safety Realignment in 2011.

FIGURE 1. DATE OF PRETRIAL SERVICES INCEPTION



Note: Three respondents did not provide a program start date.

FIGURE 2. NUMBER OF PRETRIAL PROGRAMS IMPLEMENTED BY YEAR



Use of Pretrial Core Services

Research has demonstrated that pretrial services are most effective when a jurisdiction:

- Screens defendants for release eligibility;
- Administers a validated risk assessment to defendants prior to their first court appearance;
- Provides information to the court in order to inform judges' release decisions; and
- Provides supervision for defendants who are released pretrial.

These functions are core services, not an exhaustive list of pretrial best practices. Of the 46 counties with formal pretrial services, 29 (63%) reported that they provide all four core services. It is notable that 24 (75%) of the pretrial protocols established in the past five years include all four core services, as opposed to 33% of those established prior to 2010. This difference likely reflects increasing familiarity with pretrial best practices and growing access to research-based risk tools. An overview of all of the functions included in pretrial release and supervision services is provided below.

Pretrial Screening and Assessment

Of the 46 counties with formal pretrial services, the vast majority conducts pretrial screening and assessment and provides information to the courts for release decision-making. Additionally:

- 42 counties (91%) report that they use a pretrial Risk Assessment Tool.
- Of these, 15 (36%) use the Virginia Pretrial Risk Assessment Instrument (VPRAI).
- 16 (38%) use the Ohio Risk Assessment System-Pretrial Assessment Tool (ORAS-PAT).
- Four counties (9%) use a risk assessment tool that has been validated locally (which may have been adapted from an existing research-based tool).
- The remaining seven counties (15%) use a variety of tools, including the COMPAS, PSA-Court and proprietary tools.
- Five jurisdictions (11%) provide information, recommendations, court reminders or supervision but do not use a risk assessment tool.

WHAT DOES VALIDATED MEAN?

“Validation” involves a process of empirical review to show that a tool actually works to achieve its intended goal with a designated population. In the case of pretrial services, examples may include predicting who will fail to appear for their court date or who will commit a new offense when released pretrial. It is important to “validate” risk assessments because tools that were designed for one population may not necessarily work as intended for a different population.

Pretrial Supervision Services

Thirty-eight counties provide supervision and monitoring of court-ordered release conditions. A summary of key supervision services is presented in Figure 4. This is not an exhaustive list but represents the most common supervision functions. (Note: Only one county reported that pretrial services provides supervision but does not conduct screening or risk assessment.)

Court date reminders are an effective method for increasing court appearance rates and can be an efficient use of resources, depending on how they are employed.

- Of the 32 counties that issue court date reminders, all use telephone reminders, and most (69%) do so via live phone calls.
- 11 jurisdictions use some combination of mail, email and text messaging in addition to telephone reminders.

- Eight jurisdictions use an automated system to issue court date reminders either by telephone or by telephone, email and text.
- One county issues alerts through GPS monitors.
- One county issues automated phone calls for arraignments only and conducts manual calls for all other court hearings.

Review of Detained Defendants

For some defendants who are initially detained, a change in circumstances or availability of new information may make them better candidates for release. The pretrial services entity reviews the cases of defendants who have been detained to identify changes in release eligibility in only one out of four counties.

FIGURE 3. PRETRIAL RELEASE SERVICES

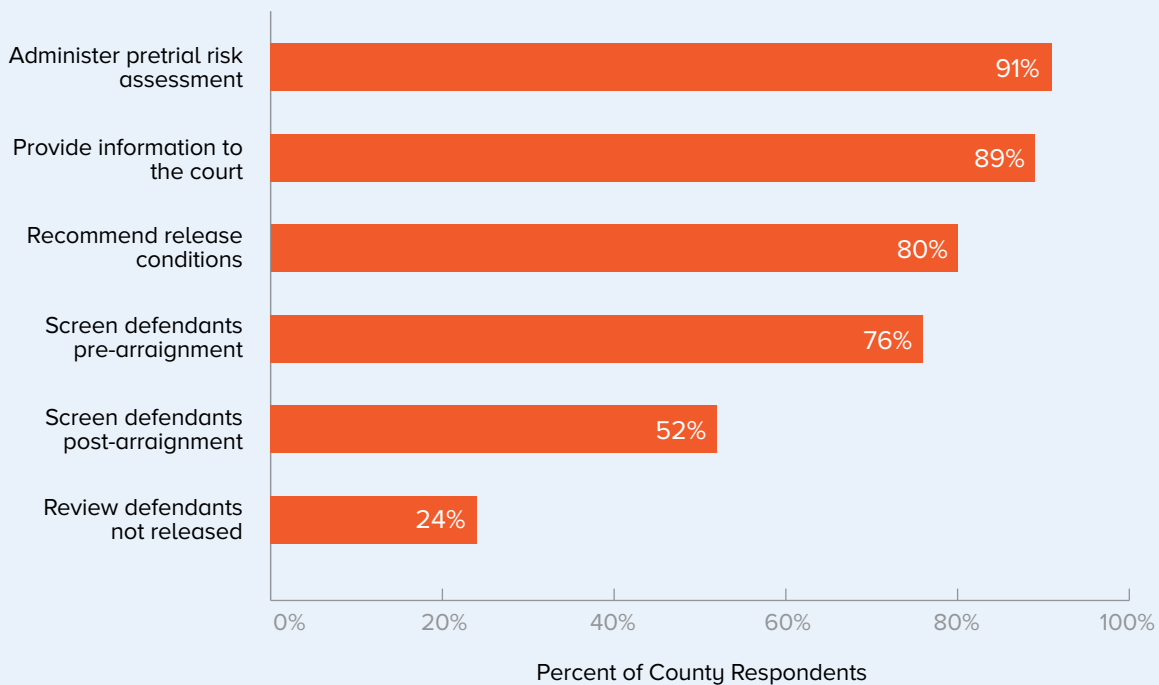
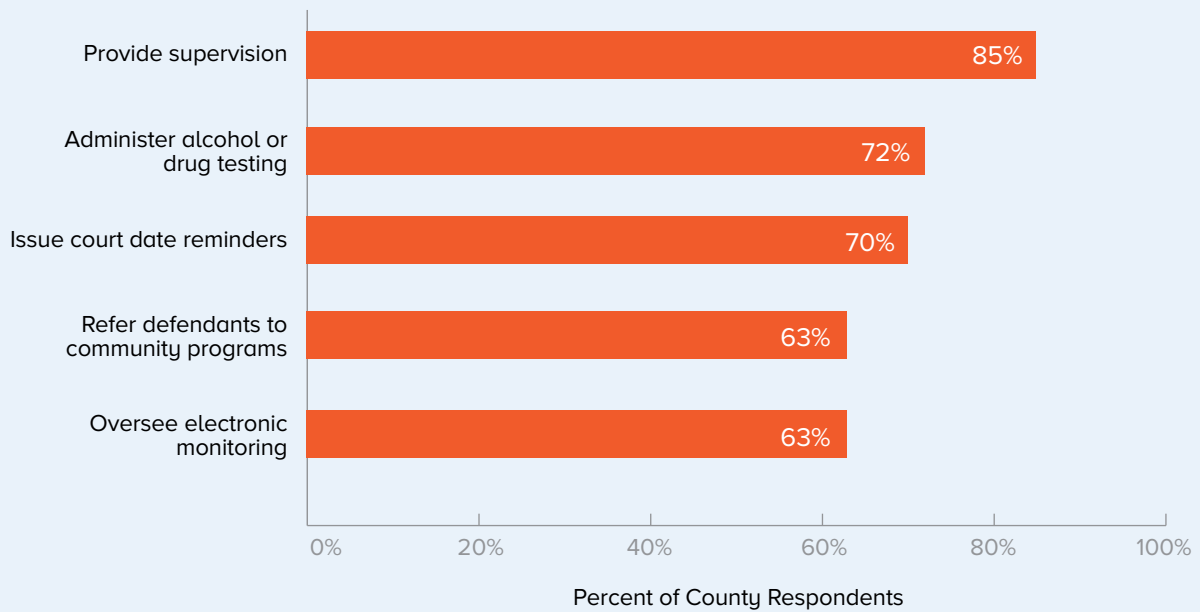


FIGURE 4. PRETRIAL SUPERVISION SERVICES



Agencies Taking the Lead on Pretrial Services

When asked which agency or agencies is responsible for providing pretrial services, answers varied:

- Probation Department (43%)
- Sherriff's Department (13%)
- Courts (4%)
- Independent nonprofit organization (4%)
- Independent county department (2%)
- Multiple agencies manage pretrial services (34%)

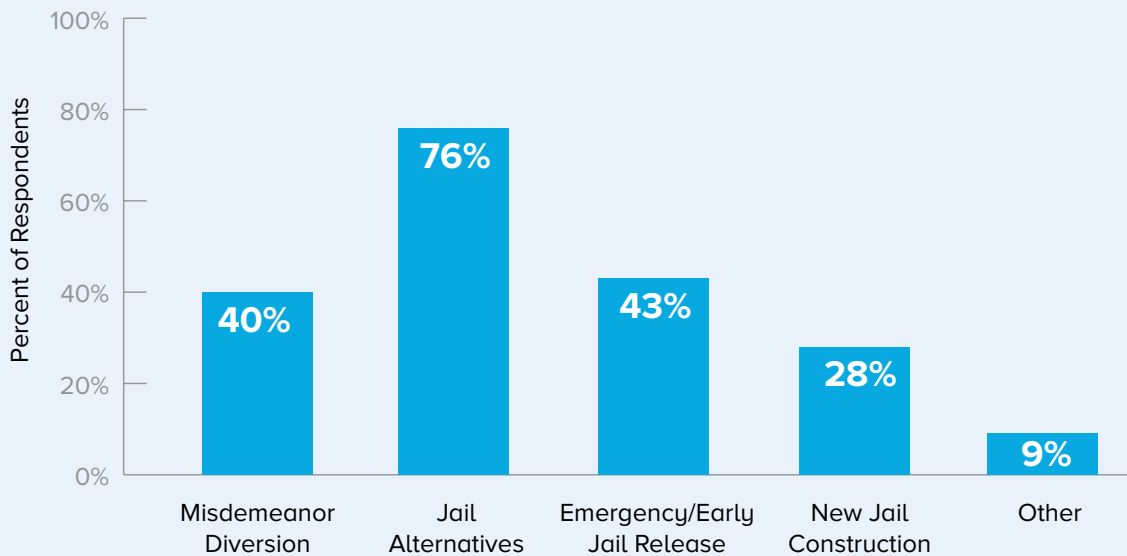
Pretrial Services Hours and Staffing

Respondents were asked to report the number of full-time employees (FTEs) assigned to direct service components of pretrial release and/or supervision activities. The survey defined FTE as the total number of hours worked by all employees divided by the number of hours in a full-time schedule. FTEs could be assigned to any agency involved in pretrial services, not just the lead agency. Responses ranged from 0 to 178 FTEs, with Los Angeles County reporting the largest pretrial staff. Nearly half of the respondents report having fewer than four FTEs dedicated to pretrial services.

TABLE 1. PRETRIAL SERVICES STAFFING

Number of Pretrial Staff FTE	Number of Respondents (N=47)
Less than 1 FTE	9
1-3 FTE	11
4-9 FTE	15
10-21 FTE	8
41 FTE	1
178 FTE	1
Unknown	1

FIGURE 5. OTHER PRETRIAL POPULATION MANAGEMENT STRATEGIES

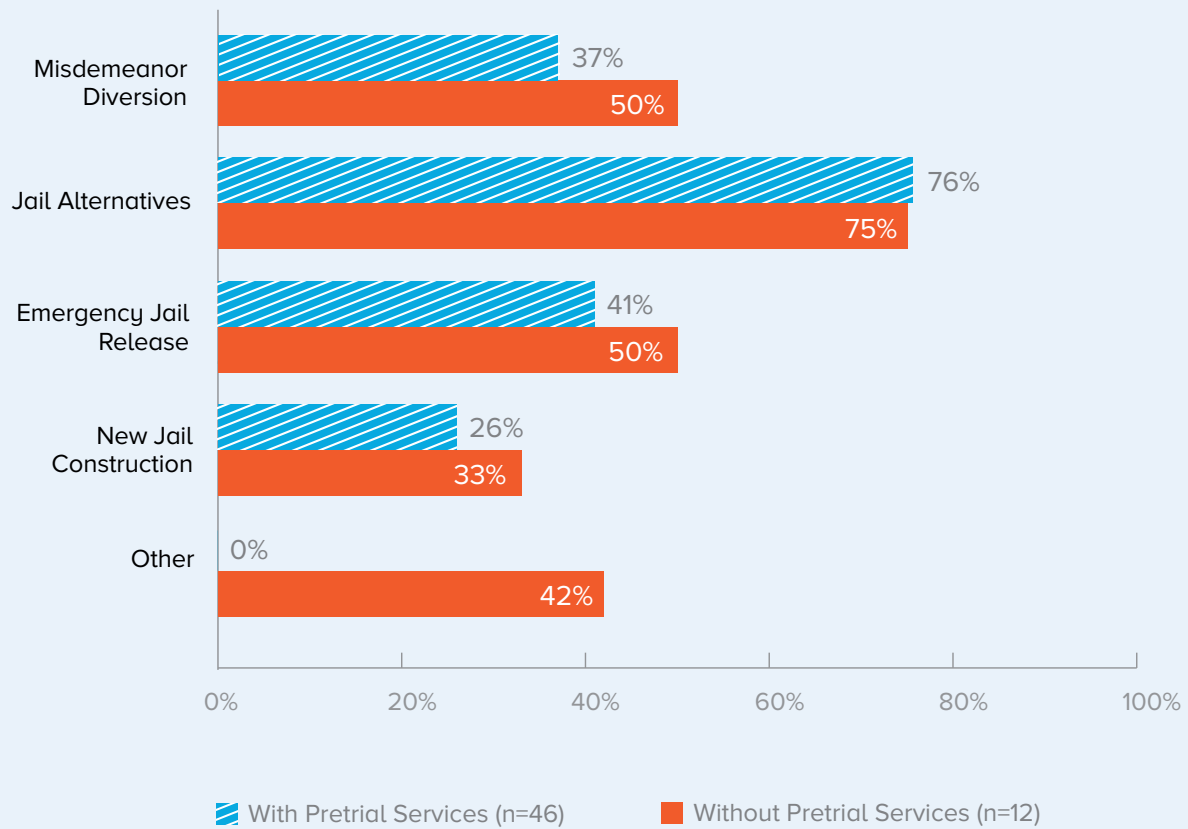


Examples of Pretrial Population Management Strategies

The survey asked respondents about their efforts to manage the local pretrial population beyond providing formal pretrial services. The survey did not specify a timeframe or define the response options; rather the question was designed to learn the relative use of various methods. Forty-four counties indicated that they have used jail alternatives to manage their pretrial population.

Of those 44 counties, 30 have also implemented misdemeanor diversion, constructed new jails or used emergency jail release. Three counties have implemented all four of these pretrial population management solutions. Responses in the “other” category include early disposition court, pre-filing diversion, expanded use of citation release, expedited pre-arraignment release and electronic monitoring.

FIGURE 6. PRETRIAL POPULATION MANAGEMENT STRATEGIES USED BY COUNTIES WITH AND WITHOUT FORMAL PRETRIAL SERVICES



Counties Without Formal Pretrial Services

Of the 58 counties surveyed, 12 reported that they do not have any formal pretrial services. The survey asked respondents to explain the primary reason for not offering pretrial services. Two respondents noted that they were in the process of implementing pretrial services, and two responded that the relevant stakeholders had discussed establishing pretrial services but had not yet begun implementation. Six responded that a lack of funding or resources was the primary barrier. Nearly all counties without formal pretrial services used one of the population-management strategies for their jails shown in Figure 6 (eight had implemented two or more of these strategies).

PRACTITIONER PERSPECTIVES: ACCOMPLISHMENTS AND CHALLENGES

To provide greater insight into the benefits and challenges of implementing pretrial services — and to give context to the survey findings — the survey included two open-ended questions. The first asked respondents to note their county’s most significant pretrial accomplishment over the past two years. The second asked counties about their biggest challenges to managing pretrial release and supervision services over the past two years.

Accomplishments

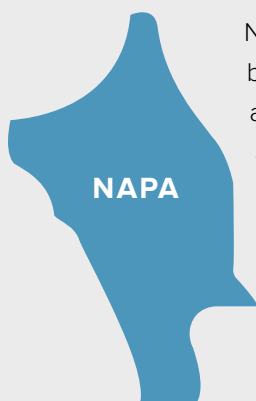
Successful Implementation

Nearly two-thirds of respondents from counties with formal pretrial services noted their accomplishments related to establishing risk-based release practices. Several others pointed to the implementation of empirically-based risk assessment tools, the ability to prioritize release and supervision based on assessed risk, the expanded and expedited release of low-risk defendants, and increasing the number of defendants screened and assessed prior to their first opportunity for pretrial release.

CASE STUDY: NAPA COUNTY

Napa County has implemented an innovative pre-arraignment release operation as a joint venture between the probation department and the judiciary, with critical support from the district attorney and other county agencies. Individuals arrested for a new felony offense in Napa are screened and assessed by pretrial services staff within the probation department, who prepare daily reports for an on-call judge.

In these reports, pretrial services makes a release recommendation based on assessed risk, allowing the on-call judge to make a release decision within 24 hours. This process allows Napa County to release defendants prior to their arraignment hearing.



Napa was initially motivated to reduce the county’s pretrial detainee population but discovered that expediting the release of low- and moderate-risk arrestees also had the benefit of less disruption to the defendant’s work, housing, family and other prosocial ties. **Napa’s pretrial release program also provides risk-based supervision, with success rates consistently above 90%.**

Crime rates have remained stable in the county — evidence that Napa’s pretrial efforts are helping to maintain public safety. Napa officials cite a strong culture of interagency collaboration and trust, as well as the outspoken support of their presiding criminal judge, as keys to their success.

CASE STUDY: HUMBOLDT COUNTY

Humboldt County established its Supervised Release Program (SRP) in April 2012. The pretrial services program is jointly staffed by the probation and sheriff's departments. To ensure that their operation is truly integrated, the sheriff and chief of probation developed a Memorandum of Understanding outlining the roles, responsibilities and reporting relationships for SRP staff and managers from both departments.

The departments also developed joint mission, vision and values statements for pretrial services to ensure that all partners are working toward a common goal. In August 2014, the Sheriff's Department replaced its charge-based emergency release decision tool with a risk-based system. Sheriff's department staff use the Ohio Risk Assessment System-Pretrial Assessment Tool (ORAS-PAT) to assess all qualifying defendants at booking. Any defendant scoring below a set threshold is released immediately with a promise to appear. Defendants who are detained are given a more thorough assessment and investigation by the SRP, which then makes a release recommendation to the court.

Humboldt County Superior Court judges have a range of release options for defendants, from minimal supervision to electronic monitoring. Their success rate for supervised defendants is just over 50%, in part because supervision is reserved for defendants who would otherwise be detained. More than 60% of supervised pretrial defendants are high risk, and 37% are homeless. Humboldt's joint operation allows the county to use risk-based decision making to keep the jail population at a safe level, and to ensure that all defendants whose risk can be safely managed have the opportunity for pretrial release.



Positive Pretrial Outcomes

Several respondents noted that they had increased the rate of pretrial release and reduced the jail population — while increasing public safety — by enabling risk-based release decisions and by reducing the need for emergency release. One respondent stated, for example, that “the pretrial release program has helped to decrease the need for early release on convicted sentences.” Another credited pretrial services with helping the county to “keep the jail population down in spite of rising numbers due to AB 109.”

In many counties, high rates of success with pretrial practices have built confidence in risk-based release and supervision. One respondent noted that “the program continues to be well-utilized by the courts despite the jail not being at capacity.” Another respondent cited the county's accomplishment in connecting defendants with substance abuse treatment. Providing this service has helped them not only to gain stability and get on the path to recovery but has also resulted in reduced jail sentences for defendants who have demonstrated progress in treatment.

System Collaboration and Risk-Based Decision-Making

Respondents in jurisdictions that achieved success in building a collaborative effort noted that among their greatest accomplishments. Several respondents pointed to the use of risk assessment in pretrial decision-making as a major success. Others report that they have been able to build support and increase “buy-in” over time, as demonstrated by expanding the use of risk-based decision-making and/or bringing more partners to the table. One respondent pointed to the sustainability of an operation that “has continued for over five years, once grant funded but now with financial support from local justice stakeholders” as evidence of the

county’s continued support for collaborative pretrial justice efforts.

Challenges

Pretrial Services Staffing

More than one in four survey respondents indicated that staffing was a serious challenge to managing pretrial services. Interestingly, staffing shortages appear to affect agencies of various sizes and budgets. One respondent noted that the county suffered from a “lack of staffing at the pre-trial level for meaningful assessments” while another stated that insufficient funding for staff made it difficult to “provide the right amount of supervision for those released on pretrial supervision.”

CASE STUDY: CONTRA COSTA COUNTY

Contra Costa’s Pretrial Services launched in March 2014, is a product of true interagency collaboration and leadership by the courts, probation, public defender, sheriff, the county reentry coordinator and district attorney. An interagency working group jointly planned and developed the pretrial services operation over several months in 2013. The group collaboratively designed a pilot program, drafted implementation plans and developed procedures.



Training on pretrial justice was offered to personnel from each agency, as well as to judges and community-based providers prior to launch. The current operation is jointly staffed and reflects a highly efficient workflow that relies on technology and coordination. Paralegals employed by the Public Defender’s Office conduct the initial screening and interview defendants.

Interview information is then transmitted to the Probation Department via e-mail to conduct a criminal record check, complete the risk assessment, verify residence and employment, and transmit a report electronically to the court. For defendants assigned GPS and/or continuous alcohol monitoring, the Sheriff’s Office provides supervision and the Probation Department monitors court dates and collects data.

The interagency working group meets monthly to troubleshoot and monitor performance as the county prepares to locally validate their risk tool. To date, approximately 85% of supervised defendants have appeared in court and remained crime free during the pretrial period, and the pretrial release program has helped to reduce the jail population by an estimated 3-5% (by allowing the supervised release of defendants who would otherwise be detained).

Some respondents from larger agencies with ample resources to hire staff indicated that positions went unfilled due to difficulty finding qualified staff. Others from smaller counties stated that the size of their departments made it difficult to dedicate sufficient staffing to pretrial services.

Stakeholder Support

Of respondents from jurisdictions with formal pretrial services, nearly one-third stated that stakeholder buy-in — and judicial support in particular — was a major challenge to the effective management of pretrial release and supervision services. Respondents gave a range of examples. Many were related to the lack of risk-based decision making, stating that, “Courts

are not paying much attention to the results of the tool and are making detention/OR decisions independently.”

Others cited the lack of accountability when defendants violate their release conditions and “the Court routinely reinstates with no consequences.” Still others pointed to difficulty gaining stakeholder agreement about which defendants can be safely released under which conditions, especially when “their belief is that all offenders should be in jail regardless of the lack of space in the jail.”

CASE STUDY: SANTA CLARA COUNTY

Santa Clara’s Office of Pretrial Services is an independent county agency established in 1969. In recent years, Santa Clara has developed a robust performance-measurement and reporting system based on performance indicators and outcome measures recommended by the National Institute of Corrections (in its 2011 publication *Measuring What Matters*).



As a result, the pretrial justice partners in Santa Clara are able to use data-driven planning and decision making to improve pretrial outcomes. Specifically, Santa Clara’s Office of Pretrial Services compiles monthly statistics, tracking judges’ release rates, defendant outcomes and the proportion of releases that are consistent with assessed risk. They share these reports with the courts, system partners and the Board of Supervisors, allowing for ongoing improvements, communication and coordination.

An example of Santa Clara’s continuous innovation includes expanding, in 2013, their court reminder system to use text and email notices (after a survey of defendants on communication preferences), resulting in a 3% decrease in the rate of failure to appear (FTA). The Office of Pretrial Services is also developing a pretrial app for defendants that will provide information on court dates, times, and the location of courts, drug testing, support services and other information.

Eligible Defendants

Nearly one-third of respondents from counties with formal pretrial services also mentioned the difficulty in screening and assessing a sufficient number of pretrial defendants. Many noted stringent, charge-based eligibility guidelines imposed by local leadership. Several respondents noted that many defendants are released on bond prior to being assessed for release or seen by a judge. In many jurisdictions, only felony defendants are booked into the jail and receive a risk assessment.

Stakeholder Collaboration

A number of respondents cited collaboration among agencies as a challenge. Some examples included the need to avoid duplication of efforts across agencies, the challenge of a coordinated response when defendants violate release conditions, and communicating with a number of judicial officers and court staff. These challenges were noted by jurisdictions of all sizes but were most pronounced in some of the larger counties.

One county described implementation across several jails and numerous courtrooms as their biggest challenge: “collaborating with numerous court staff and bench officers across the county regarding our new protocols was not an easy task. Bringing all of the stakeholders to the table during the implementation and development of the pretrial program also proved to be a challenge.”

CASE STUDY: RIVERSIDE COUNTY

Implementing a pretrial risk assessment tool in Riverside County was a major undertaking. The probation department assumed responsibility for pretrial services from the Administrative Office of the Courts in 2012, after which they implemented the Virginia Pretrial Risk Assessment Instrument (VPRAI). This research-based tool has proven effective not only in Virginia but also in several other jurisdictions in California where it is in use.



Probation officials spent months developing protocols for administering the tool, training staff on how to conduct defendant interviews, establishing processes to ensure accurate assessment and data collection, and making sure that risk-based release and pretrial supervision had the full support of their partner agencies.

Riverside has overcome many implementation hurdles, including training pretrial staff at all four jails, ensuring that the tool is used consistently throughout the county, and ensuring that probation supervisors and the Technology/Quality Assurance Department continually collect the right data.

Developing a validation sample can be a lengthy process, even in a large county. Riverside began collecting data for validation in the summer of 2014 and expects to complete the process by the fall of 2015. By validating the tool locally, the county will have more confidence in a proven instrument that can help them to better predict failure-to-appear and recidivism rates for their local population.

RECOMMENDATIONS

It is clear from the results of this survey that many counties are expanding their pretrial services and others are in the process of developing these functions. This is important, considering the changing landscape in California, as voters and state and local policymakers seek to replace ineffective policies and practices with approaches that reduce both recidivism and costs.

The following recommendations aim to inform the conversation about the role that evidence-based pretrial practices can have in this changing landscape. While local counties have a great deal of discretion in how pretrial functions are implemented, state policy plays a key role in aligning California with best practices in the field.

1. Maintain the Diversity of Pretrial Implementation Strategies. There should not be a “one size fits all” approach to California pretrial practices. Though standards in the field require certain elements, such as the use of a validated risk assessment, there is room for variety in how these elements are implemented in each county per their particular needs, agencies, opportunities and challenges.

2. Increase Rate of Pre-Arrestment Screening. Thirty-three counties report that they screen defendants prior to arraignment, which provides essential information to the judge at arraignment and can expedite the release of low-risk individuals. Under current California statute, the requirement for a bond schedule creates the potential for higher-risk individuals to “bond out” pre-arrestment, or for lower-risk individuals to remain in jail on a bond they cannot afford. However, with screening information available, defendants can learn of their eligibility for pretrial release and supervision, and judges can determine the best combination of financial and non-financial terms for each defendant.

In addition to expediting screening, jurisdictions should maximize the number of defendants screened. Screening rates may be limited due to available resources available or narrow eligibility criteria, but this increases the likelihood that higher-risk defendants might be released without pretrial supervision while lower-risk individuals remain in jail.

3. Expand the Use of Pretrial Risk Assessment. Pretrial risk assessment instruments predict the likelihood of pretrial misconduct and failures to appear among defendants, and 38 counties report that they currently have an assessment in place. Using these instruments to assign a risk level to individual defendants provides information beyond the charge to assist judges in making bail decisions. Having this information allows judges to make informed decisions to deviate from a bond schedule and impose appropriate conditions of release. It is critical to note that counties should validate their risk assessment and track how it is being used, to ensure its effectiveness in predicting risk within their county.

Since many counties still require emergency releases to stay below rated capacity or court-ordered population caps, risk assessment tools can also help to inform emergency release decisions. This is not a substitute for pretrial services, but if emergency releases are necessary, a risk assessment tool can guide decisions on who can remain in the community most safely.

4. Increase Use of Misdemeanor Diversion. Current California statute allows for misdemeanor diversion for certain offenses, including drug offenses. However, less than half of counties are taking advantage of this opportunity. With the likely increase in misdemeanants under Proposition 47, expanding diversion programs provides an alternative to formal case processing and a pathway

to voluntary treatment for interested defendants. The National Association of Pretrial Services Agencies has promulgated standards for diversion.

5. Measure Outcomes. The two primary measures of pretrial success are increasing court appearance rates and reducing pretrial misconduct. Additionally, effective pretrial services can improve the efficiency of case processing and reduce

unnecessary jail utilization. As counties implement pretrial functions, a performance measurement system is essential to track local outcomes, and any state level policy change should include a mechanism for measuring impact. Fortunately, because of the relative brevity of the pretrial phase, a tracking system is more straightforward and easier to implement than at other points in the criminal justice system.

BEST PRACTICES IN PRETRIAL

This brief addresses core pretrial functions that align with national standards, legal principles and research, including:

- **Screening for Release Eligibility:** Prior to arraignment, screen arrestees (according to local criteria) for pretrial release eligibility. This can be done at the point of arrest so that lower-risk individuals can be summonsed to court, at the point of booking (to divert from jail) or prior to arraignment (to inform judicial decisions).
- **Assessing Defendant Risk:** Screening should include administration of an empirical risk assessment instrument that assesses likelihood of failure to appear and pretrial misconduct. A variety of tools are available.
- **Informing Release Decision Makers:** To help judges make informed decisions about release conditions, pretrial officials should ensure that risk assessment and other relevant information are available at arraignment.
- **Supervising Defendants in the Community:** If released, various supervision options should be available, ranging from court reminders to regular check-ins with a pretrial services officer. Access to voluntary treatment and services are also beneficial.

Pretrial best practices also include system practices beyond pretrial services, such as:

- **Reviewing of Charges by Experienced Prosecutor:** Seasoned prosecutors can assess the likelihood that a case will proceed and on which charge, reducing the likelihood that bail decisions will be impacted by overcharging.
- **Assigning Defense Counsel Early:** A recent Maryland Supreme Court case upheld the right to counsel at first appearance and provides the opportunity for additional information and advocacy for the defendant.
- **Basing Decisions on Risk:** The research is clear that financial bond, including cash and surety bonds, have not been proven effective in ensuring return to court. The federal system and Washington, D.C., have nearly eliminated monetary bail, while other jurisdictions have moved to decision-making that emphasizes risk over money.

SURVEY METHODOLOGY

To develop the survey sample, CJI compiled a list that included the most appropriate pretrial contact in each county (ranging from contacts in probation and sheriff departments to courts or independent organizations). County survey recipients were sent a link in April 2015 and were asked to forward the survey to a county representative with sufficient knowledge to answer the questions. In June 2015, officials in each county were sent a copy of the county's results and given the opportunity to correct information, if necessary. Where possible, this request was sent to both the probation and sheriff's departments, as well as to independent agencies or courts (where they were designated as the lead pretrial services providers). If contacts could not be obtained for both the sheriff and probation departments, survey participants were asked to share the response with county partners.

ENDNOTES

¹ Magnus Lofstrom and Brandon Martin, *California's County Jails* (Public Policy Institute of California: April 2015).

² Magnus Lofstrom and Brandon Martin, *California's County Jails* (Public Policy Institute of California: April 2015).

³ Unsentenced detainees include people awaiting trial or sentencing. Sonya Tafoya, *Pretrial Detention and Jail Capacity in California* (Public Policy Institute of California: July 2015).

⁴ Allen Hopper, Margaret Dooley-Sammuli, and Kelli Evans, *Public Safety Realignment: California at a Crossroads* (American Civil Liberties Union of California: March 2012), p. 18.

⁵ Sonya Tafoya, *Pretrial Detention and Jail Capacity in California* (Public Policy Institute of California: July 2015).

⁶ Meghan Sacks, Vincenzo A. Sainato, Alissa R. Ackerman, "Sentenced to Pretrial Detention: A Study of Bail Decisions and Outcomes" *Am. Journal of Criminal Justice* 40 (2015), pp. 661-681; Stephen Demuth, "Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees" *Criminology* 41 (2003), pp. 873-908.

⁷ Allen Hopper, Margaret Dooley-Sammuli, and Kelli Evans, *Public Safety Realignment: California at a Crossroads* (American Civil Liberties Union of California: March 2012), p. 22.

⁸ The average \$113.87 cost represents a weighted statewide average daily cost per detainee among all type II and III jails in 2011. Gary Wion, *Average Daily Cost to House Inmates in Type II and III Local Detention Facilities* (Board of State and Community Corrections: September 2012)

⁹ The Abell Foundation, *The Pretrial Release Project: A Study of Maryland's Pretrial Release and Bail System* (2001), p. 52.

