

COUNTY JAILS AT A CROSSROADS

AN EXAMINATION OF THE JAIL POPULATION
AND PRETRIAL RELEASE



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EXECUTIVE SUMMARY

County governments provide essential services to create healthy, safe, vibrant and economically resilient communities. Maintaining safe and secure communities is one of the most important functions of county governments. Most counties are involved in almost every aspect of law enforcement and crime prevention, including policing, judicial and legal services and corrections. Counties own 87 percent of all jails in the United States through which they provide supervision, detention and other correctional services to more than 700,000 persons in an effort to protect public safety and reduce recidivism.

Effective jail management along with fair justice system policies and practices results in strategic management of the jail population and prudent county spending on the corrections system. One way to effectively manage the jail population is to improve the pretrial release process. Pretrial policies and practices involve defendants awaiting resolution to their case. Using the results of a 2015 NACo survey of county jails, an examination of the pretrial population in jail and policies impacting pretrial release in county jails finds:

MAINTAINING
SAFE AND SECURE
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MOST IMPORTANT
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- 1 THE MAJORITY OF THE CONFINED COUNTY JAIL POPULATION IS PRETRIAL AND LOW RISK.** Two-thirds of the confined population in county jails is pretrial and the proportion reaches three-quarters in almost half of county jails. This trend is more pronounced in jails located in small counties — with less than 50,000 residents — and medium-sized counties — with populations between 50,000 and 250,000 residents. Forty (40) percent of responding county jails use a validated risk assessment at booking. Most often, these jails identify a majority of their confined jail population as low risk. Because these tools are used at booking, when defendants are admitted to jail after arrest, jails are identifying most of their pretrial population as low risk.
- 2 COUNTY JAILS ARE CAUGHT BETWEEN COURTS' DECISION-MAKING AND INCREASES IN THE JAIL POPULATION AND JAIL COSTS.** Pretrial release decision-making is a product of the court. Understanding the impact of courts' decision-making, especially during pretrial, on the jail population is important especially for counties with rapidly rising jail populations and costs. According to the U.S. Bureau of Justice Statistics, the jail population increased by 20 percent between 2000 and 2012 with the pretrial population comprising a rising share, while county corrections costs soared by 74 percent. Forty-four (44) percent of responding county jails to the 2015 NACo survey stated that managing jail costs is one of their top challenges. Reducing the jail population — especially the number of people with mental illnesses — is a priority for almost three quarters of responding jails. More than 65 percent of county jails report that their county boards are willing to collaborate on reducing the jail population and jail costs. Counties can act as conveners, bringing together the court and jail to discuss and implement strategies that may effectively address the pretrial population in jail.
- 3 SOME COUNTY JAILS SUPERVISE PRETRIAL DETAINEES OUTSIDE OF CONFINEMENT.** A third of responding county jails to the 2015 NACo survey release pretrial detainees from custody and supervise them in the community through different types of community based programs, depending on the needs of the detainees. These programs may be focused specifically on pretrial supervision — where the type of supervision used varies on a case-by-case basis — or deal with both pretrial and convicted populations

through health treatment, electronic monitoring, home arrest and work release. Most county jails have more than one type of program. Pretrial supervision programs focus overwhelmingly on the pretrial population (95 percent of their population), followed by physical health care and behavioral health treatment programs in which close to half of the supervised population is pretrial. Overall, few pretrial detainees are placed in these programs. Only 28 percent of the detainees released by respondent jails in 2014 were pretrial. The county jail programs that supervise pretrial persons are just one part of the larger county pretrial system that includes formal pretrial services agencies that provide information on defendants to judges for the pretrial release decision; policies that force release pretrial detainees when the jail population reaches a certain capacity; and bond review practices.

For the companion case studies and interactives, see the County Jails at a Crossroads website at www.naco.org/CountyJails

COUNTY JAILS AT A CROSSROADS
AN EXAMINATION OF THE JAIL POPULATION AND PRETRIAL RELEASE

NACo WHY COUNTIES MATTER PAPER SERIES • ISSUE 2 • JULY 2015 • www.naco.org

MILWAUKEE COUNTY, WISCONSIN
THE OPPORTUNITY FOR CHANGE

Milwaukee County's Community Justice Council was formed in 2008 with the goal of ensuring "a fair, efficient, and effective justice system that enhances public safety and quality of life in our community." As part of that goal, the county applied for and was chosen to be part of the National Institute of Corrections' Evidence-Based Decision Making in Local Criminal Justice Systems initiative. As leaders began to examine their local criminal justice system, they began to learn about evidence-based pretrial reforms and realized Milwaukee County's pretrial system could be improved upon. "Our pretrial supervision back then was one size fits all," says Chief Judge Jeffrey Weimers. "If you were released pretrial, you were monitored by our agency and everyone got the same supervision regardless of their circumstances. We were overusing resources and monitoring fewer people."

MILWAUKEE COUNTY'S MODEL
Milwaukee County contracts with a non-profit organization called JusticePoint, Inc., to handle the majority of its pretrial services. These services begin with a screening of all individuals who are booked into the jail and face a bail decision to assess their risk for pretrial misconduct, which is defined as missing court or being arrested while on pretrial release. Screenings take place 24 hours a day, seven days a week, using the Milwaukee County Pretrial Risk Assessment Instrument, the county's intake interview and the county's pretrial grants, which recommends supervision conditions based on a person's risk level and other predictors.

Milwaukee County's grants uses six predictors of pretrial outcomes, including:

- cases filed
- prior failures to appear
- arrest while on bond
- employment/care-giver status
- residence, and
- substance abuse

MILWAUKEE COUNTY, WISCONSIN
POPULATION: 956,406 (2014 estimate)
COMMUNITY MAKEUP: 100% URBAN

For the full report and the companion case studies, see the County Jails at a Crossroads website at www.naco.org/CountyJails

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MESA COUNTY, COLORADO
THE OPPORTUNITY FOR CHANGE

Mesa County, Colo., historically operated a pretrial bail system like many other jurisdictions in the United States, where cash and surety bonds are the primary ways a defendant is released and empirical information is not available. Mesa County's chief judge read an article about evidence-based bonding out of jail while many low-risk defendants were in jail. This assisted Mesa County in making changes to its system. This assistance did not come with any financial to take action.

Mesa County's system was set up appropriately. He started in 2003, and in 2005 Mesa County was chosen as one of seven from the National Institute of Corrections (NIC) to analyze its system. This assistance did not come with any financial to take action.

trial system is lacking results. Mesa County is now trying to break down county Criminal Justice System to ensure that assistance from the and set up and questions comes in other discussed what side:

MESA COUNTY, COLORADO
POPULATION: 148,255 (2014 estimate)
COMMUNITY MAKEUP: 87% URBAN | 13% RURAL

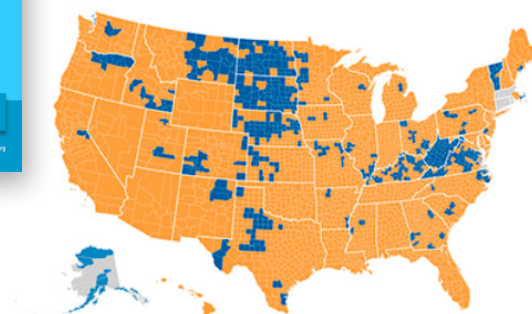
Full report and the companion case studies, see the County Jails at a Crossroads website at www.naco.org/CountyJails

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MORE FROM THE REPORT

INTERVIEW WITH THE AUTHOR

Dr. Natalie Ortiz discusses the critical insights gained in her research



EXPLORE THE DATA

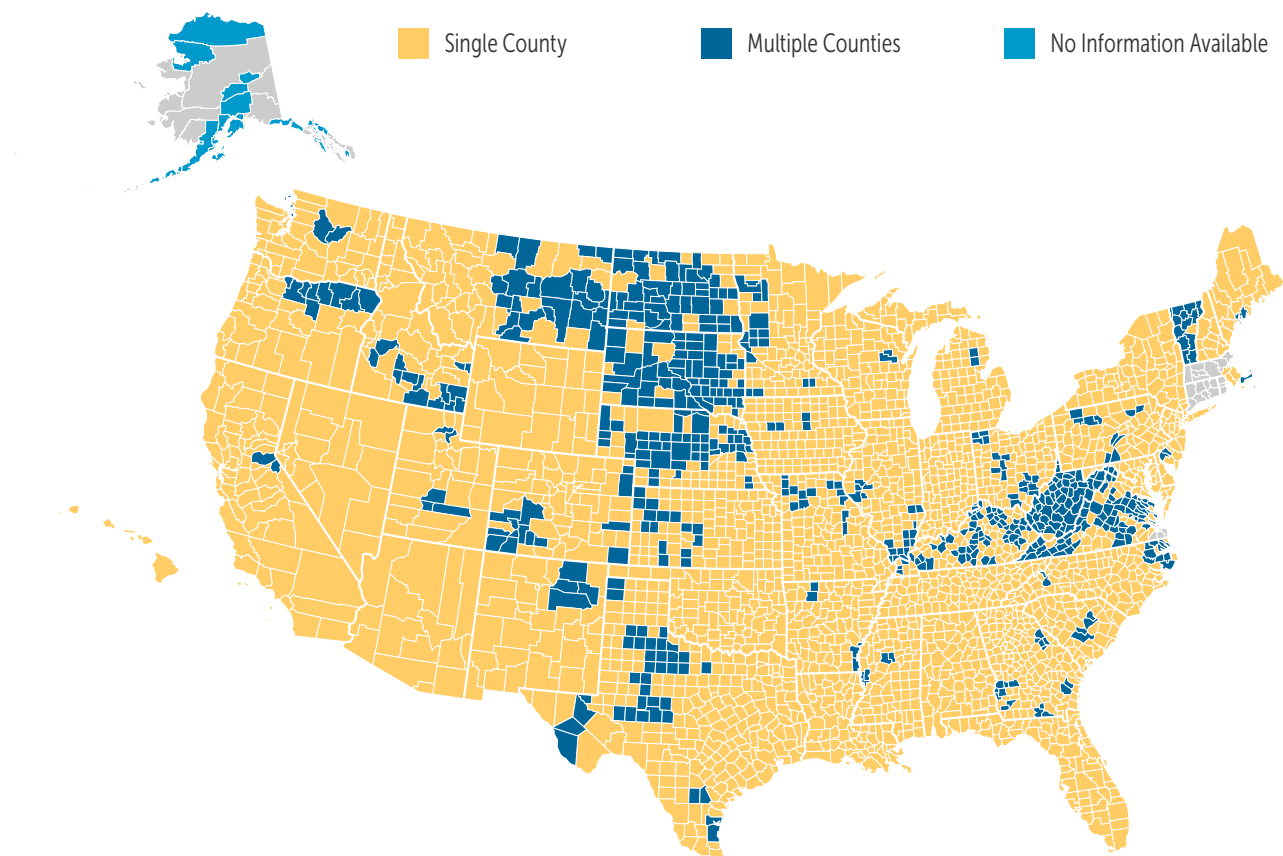
INTRODUCTION

Counties are the front door to the criminal justice system. Counties uphold the law, prosecute crime, ensure due process during criminal proceedings and protect public safety by detaining and incarcerating individuals who are a risk to community safety and security. Overall, counties invest \$70 billion dollars annually on law enforcement, court and legal services and county corrections systems.¹ County court systems are responsible for processing and resolving criminal cases, with key players including judges, district attorneys and public defenders. Counties own 87 percent of all jails in the United States receiving more than 700,000 individuals who have been arrested; booking and processing them; and, contingent on decisions made within the court system, supervising them in a secure jail facility (See Map 1). Because of their position within the courts and corrections systems, counties play an unmatched role in the administration of justice.

COUNTIES
ARE THE
FRONT DOOR
TO THE
CRIMINAL
JUSTICE
SYSTEM.

MAP 1.

COUNTY JAIL OPERATIONS IN THE UNITED STATES, AS OF JUNE 2015



*Parts of Alaska and Massachusetts colored in grey do not have county governments.

Source: NACo analysis of National Public Safety Information Bureau data, as of June 2015.

Notes: A county jail is defined as a county confinement facility that operates as more than a short-term holding or lockup facility (less than 72 hours). Alaska has a unified jail and prison system, where the State of Alaska Department of Corrections operates jails. The "single county operated jails" category include counties that operate their own jail and are not part of any other county or regional jail system. The "multiple county operated jails" category includes counties that are part of a regional jail system and counties that contract with another county for jail services, as there is no information available to separate the two categories.

Pretrial is an integral part within the administration of justice. Pretrial is a process involving cases and defendants moving through the court system, beginning with arrest, formal booking into jail and ending with adjudication when a decision on the case is reached by a judge, whether by plea, trial or placement in a diversion program.² Individuals in the pretrial stage have been charged with committing a crime, but have not been convicted and are awaiting resolution to their case. The pretrial process can take a week, several months or more than one year, depending on legal circumstances.

COUNTIES HAVE AN IMPORTANT ROLE IN PRETRIAL DECISION-MAKING.

The pretrial stage of the criminal justice system uses a combination of law enforcement, court and county jail resources. County policies and practices in both courts and jails determine release from jail during the pretrial stage. Through bail, the court sets the conditions of release (for definitions, see Key Terms Used in this Report).³ Even in cases in which the charge or status of the defendant bars the presumption of eligibility for pretrial release under state law, a judge can release a defendant after a bail hearing, if the defendant fulfills the conditions of release.⁴ Defendants may secure release from jail pretrial, depending on their ability to meet the financial or non-financial conditions set by the court. In cases where the court denies a defendant pretrial release or the defendant is held on bond, the individual remains in custody in the county jail while the case against them moves through the court system. Even in jail, however, a defendant may participate in the county jail's community based supervision programs that supervise pretrial detainees outside of confinement. Further, county jails can have an indirect role in deciding who is placed in a supervision program, if the eligibility of the pretrial detainee to participate in the program depends on the classification level determined by the jail.

THE PRETRIAL RELEASE DECISION HAS A SIGNIFICANT IMPACT ON COUNTIES.

The pretrial release decision greatly affects counties. The size of the pretrial population in county jails is largely the result of judicial decision-making.⁵ Pretrial detention imposes significant costs to counties. According to the U.S. Attorney General, county governments spend around \$9 billion annually on jailing defendants while they are awaiting their trial.⁶ In addition to direct county jail costs, detaining the pretrial population produces indirect costs. Pretrial detention may result in defendants losing employment, adversely affecting family relationships and creating economic hardship for the defendant's financial dependents, increasing the family's dependence on the county safety net. Further, defendants incarcerated during pretrial may experience the reduction or loss of access to health care and social services, which are difficult to provide in county jails.⁷ Pretrial detainees are more likely to be sentenced and receive longer sentences compared to defendants who were out of jail confinement during pretrial, regardless of similarity in offense type and other relevant legal and case factors.⁸ These case outcomes are more severe for lower and moderate risk defendants who are detained pretrial.⁹

This research provides a baseline for the role of county jails in pretrial release, their challenges and solutions. The study draws upon the results of a National Association of Counties survey of 1,322 county jails conducted between March and April 2015 (hereafter "2015 NACo survey"). The 2015 survey received responses from 282 county jail jurisdictions (21.3 percent response rate).

This study is the first to examine the participation of county jails in pretrial release. The report identifies the pretrial status and risk level of the county jail population and variations across counties of different population sizes. Further, this research analyzes the challenges that county jails face with their pretrial and overall jail population. The study details to what extent county jails use community based programs to release pretrial detainees from confinement in jail and supervise them in the community. In addition, the research examines the presence of other county policies and practices that may result in the release of the pretrial population from jail. This report provides a first step in understanding the role of counties in pretrial release.

KEY TERMS USED IN THIS REPORT

BAIL is the legal mechanism that allows for release of a defendant from jail, with or without conditions that assure the appearance of the defendant in court and the overall safety of the community.¹⁰

BEHAVIORAL HEALTH TREATMENT (INCLUDING SUBSTANCE ABUSE AND MENTAL HEALTH) is a community based supervision program in which the jail releases participating convicted inmates and/or pretrial detainees from confinement for behavioral health treatment and related services.¹¹

BOND REVIEW includes the process, whether formal or informal, of reviewing the bond conditions that have prevented a defendant from securing pretrial release.

CLASSIFICATION LEVEL is determined by county jails using an assessment system for housing purposes within the jail facility of the confined jail population.¹²

COMMUNITY BASED SUPERVISION PROGRAMS are run by jails to supervise participating detainees and/or inmates outside of confinement. Types include but are not limited to work release/work furlough, house arrest, electronic monitoring, day reporting and pretrial supervision.

CONVICTED INMATES are persons in county jails who entered a guilty plea, a plea of no contest or have been tried and convicted of the crimes of which they were accused, including individuals on probation and/or parole.¹³

ELECTRONIC MONITORING is a community based supervision program in which the jail keeps track of the location of participating convicted inmates and/or pretrial detainees released from jail with a device that transmits data.¹⁴

EMERGENCY RELEASE is the releasing of some of the confined jail population when the jail comes within its maximum capacity as determined by county policy.

FORMAL PRETRIAL SERVICES AGENCIES provide one or more of the following pretrial functions: Interviewing defendants for the purposes of the bail or pretrial release decision; providing information to the court to assist a bail commissioner, magistrate or judge with making the bail or pretrial release decision and/or supervising defendants released pretrial and monitoring their compliance with conditions of bail or pretrial release.¹⁵

HELD ON BOND DETAINEES are pretrial detainees who were granted release by the court but unable to post the bail bond amount and detained in jail as a result.¹⁶

HOME ARREST/HOME DETENTION is a community based supervision program where participating convicted inmates and/or pretrial detainees must remain in their homes as a requirement of release from jail.¹⁷

LOW RISK inmates and/or detainees are at a lower risk of committing certain behaviors than other groups within the criminal justice population, as identified at booking by the jail with the use of a validated risk assessment tool.¹⁸

HIGH RISK inmates and/or detainees are at a higher risk of committing certain behaviors than other groups within the criminal justice population, as identified at booking by the jail with the use of a validated risk assessment tool.¹⁹

PHYSICAL HEALTH TREATMENT (INCLUDING CHRONIC DISEASE) is a community based supervision program in which the jail releases participating convicted inmates and/or pretrial detainees from confinement for medical and physical health treatment and related services.²⁰

PRETRIAL DETAINEES are persons in county jails who have been charged with committing a crime, but have not been convicted of those charges and are awaiting resolution to the case against them.²¹

PRETRIAL SUPERVISION is a community based supervision program through which the county jail releases pretrial detainees from confinement and supervises them using a variety of conditions or methods until the criminal case against them is resolved.²²

VALIDATED RISK ASSESSMENT is a tool that predicts the risk of certain behaviors, such as re-arrest or recidivism, through statistical analysis using data on the criminal justice population.²³

WORK RELEASE is a community based supervision program in which the jail releases participating convicted inmates and/or pretrial detainees from custody so that they may continue working. Depending on the jurisdiction, these inmates may have to return to a jail facility at night.²⁴

FINDINGS

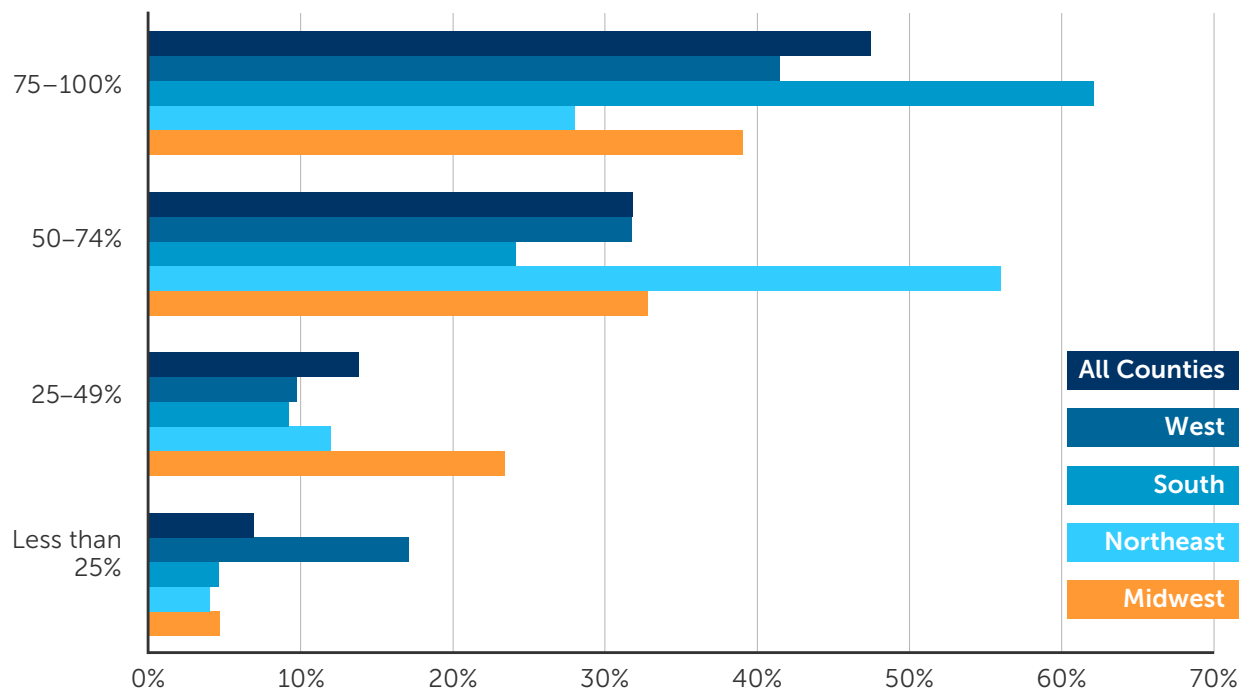
1. THE MAJORITY OF THE JAIL POPULATION IS PRETRIAL AND LOW RISK.

County jails supervise both convicted inmates and pretrial detainees through a combination of confinement and community based supervision. Community supervision depends on the availability of community based supervision programs and the populations supervised by the programs must meet certain eligibility criteria. Most of the population supervised by county jails is confined. Overall, 79 percent of the population supervised by county jails responding to the 2015 NACo survey was confined on January 31, 2015, while 21 percent was supervised in the community.²⁵

Most of the individuals confined in county jails are awaiting resolution to their case. In January 2015, 67 percent of the total confined population in responding county jails was pretrial. This trend is evident in jails located in small counties (67 percent) — with less than 50,000 residents — and medium-sized counties (69 percent) — with populations between 50,000 and 250,000 residents. The pretrial population confined in jails is larger in the South, where responding county jails reported that 71 percent of their population was pretrial. Further, in almost two thirds of responding southern county jails, pretrial detainees represent more than three-quarters of the confined population (See Figure 1). In most regions, the largest share of responding jails report pretrial populations above 75 percent of

MOST OF THE INDIVIDUALS CONFINED IN COUNTY JAILS ARE AWAITING RESOLUTION TO THEIR CASE.

FIGURE 1. CONFINED PRETRIAL POPULATION AS PERCENTAGE OF TOTAL CONFINED JAIL POPULATION, PERCENT OF RESPONDING COUNTIES BY CENSUS REGION, JANUARY 2015



Source: NACo survey, March–April 2015.

Notes: Pretrial population confined in responding county jails on January 31, 2015. Alaska, Connecticut and Rhode Island do not have county operated jails.

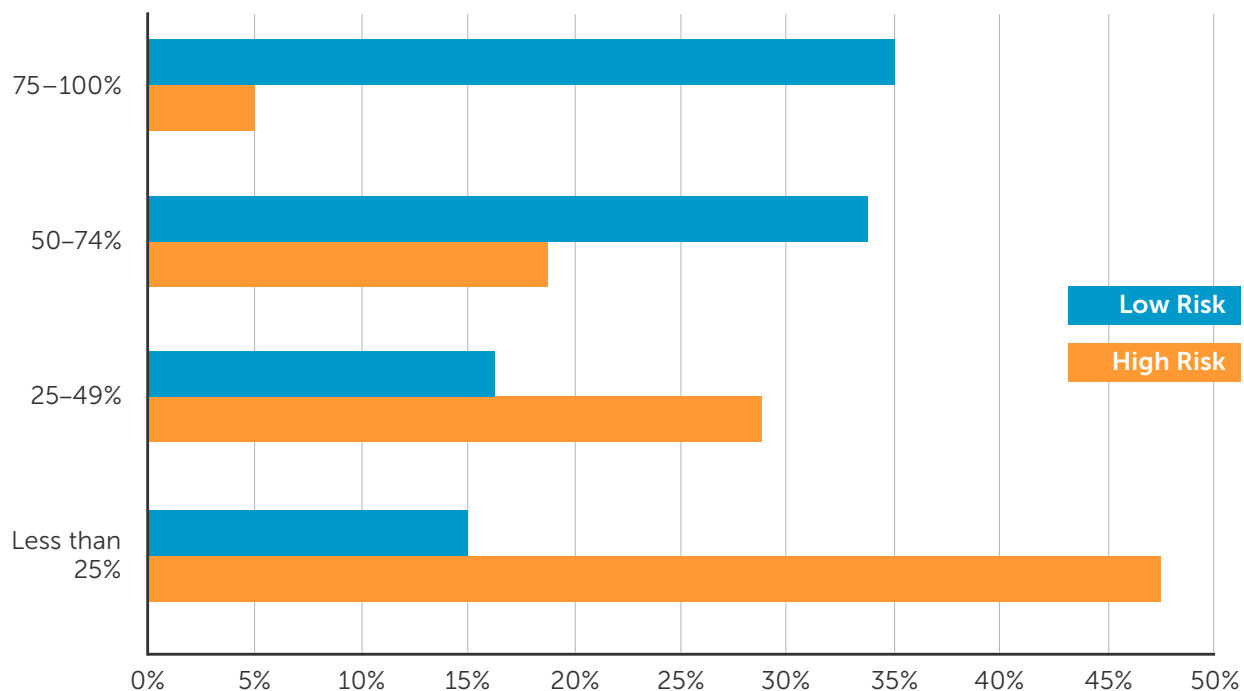
their jail population, except the Northeast. In northeastern counties, the majority of county jails reported the pretrial population was between 50 and 74 percent of the confined population.

MOST OF THE JAIL POPULATION IS LOW RISK. Forty percent (40%) of responding county jails use a validated risk assessment at booking, which allows them to better understand the risk level of people booked into jail to public safety and whether and how to effectively manage this risk (for definitions, see Key Terms Used in this Report).²⁶ In some counties, the assessment tools used at booking may also identify other risks, such as failure to make court appearances.²⁷ The majority of responding county jails that use a validated risk assessment determined that their incarcerated jail population presents a low risk of new criminal conduct (See Figure 2). Sixty-nine percent (69%) of jails reported that more than half of their detainees are classified as low risk, as assessed at booking. In contrast, only five percent assessed more than 75 percent of their jail population as high risk.

County jails supervise both pretrial detainees and convicted inmates, but the majority of the population confined in county jails is pretrial. County jails that use risk assessment tools identify the majority of their jail population at a low risk of new criminal conduct. The pretrial release decision is up to the court that sets the conditions of release.

FIGURE 2.

PERCENT OF CONFINED JAIL POPULATION BY RISK LEVEL, PERCENT OF RESPONDING COUNTIES USING A RISK ASSESSMENT, JANUARY 2015



Source: NACo survey, March–April 2015.

Notes: Pretrial population confined in responding county jails on January 31, 2015. Risk level is identified by the jail at booking with the use of a validated risk assessment tool. Alaska, Connecticut and Rhode Island do not have county operated jails.

2. COUNTIES ARE CAUGHT BETWEEN COURTS' DECISION-MAKING AND INCREASES IN THE JAIL POPULATION AND JAIL COSTS.

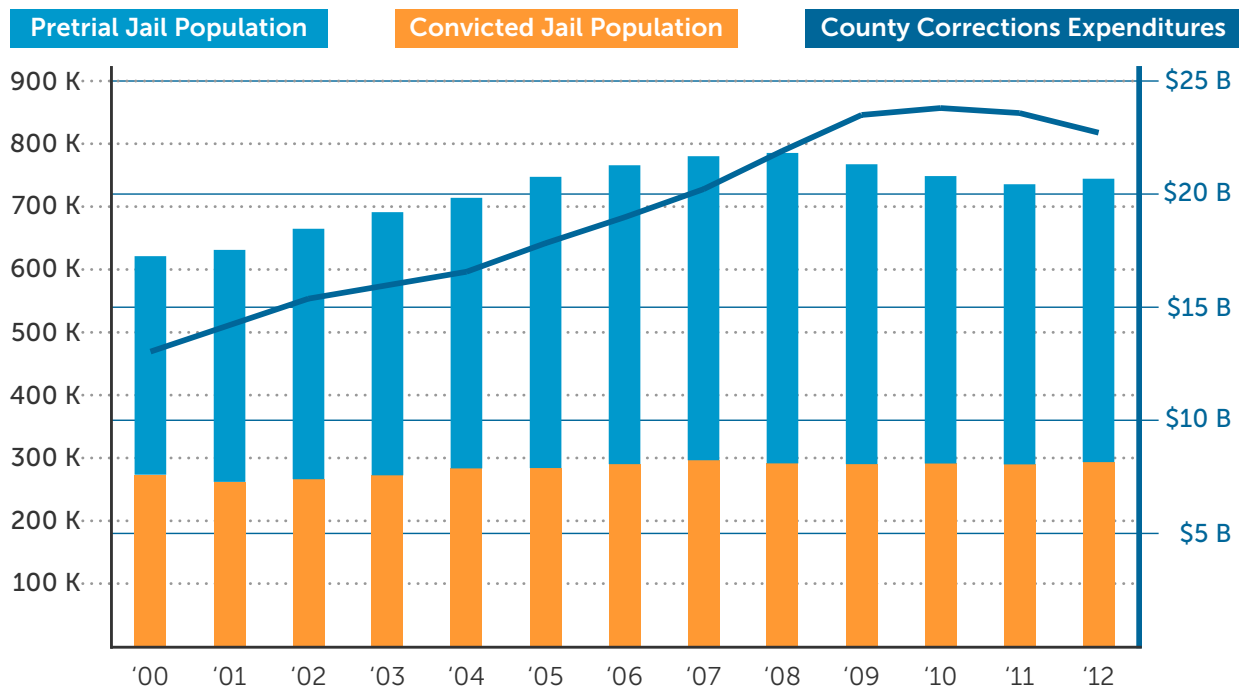
County jails face increasing costs, while more individuals awaiting trial are in jail. However, the court decides the conditions of pretrial release.²⁸ Understanding the impact of courts' decision-making, especially during pretrial, on the jail population is important for counties. The U.S. Bureau of Justice Statistics provides a national view of the trends in jail population and county corrections expenditures over the last 15 years, while the 2015 NACo survey offers insight to the current challenges identified by county jails.

The court sets the conditions of pretrial release through bail. The purpose of bail is to ensure the appearance of the defendant in court for hearings related to their case and to protect the safety of the community.²⁹ A defendant may be released on their own recognizance in which they make a promise to the court to return for subsequent court proceedings or the court may impose conditions on the defendant's release, depending on the offense of which the defendant is accused. The court may impose financial and non-financial conditions of release. Supervision by a pretrial supervision program or participation in a diversion program are common examples of non-financial conditions.

Most often, the court uses financial conditions for pretrial release. The defendants have to pay according to bail schedules that set a dollar amount based on the defendant's current charge. Oftentimes, defendants use cash or commercial bonds to meet the financial

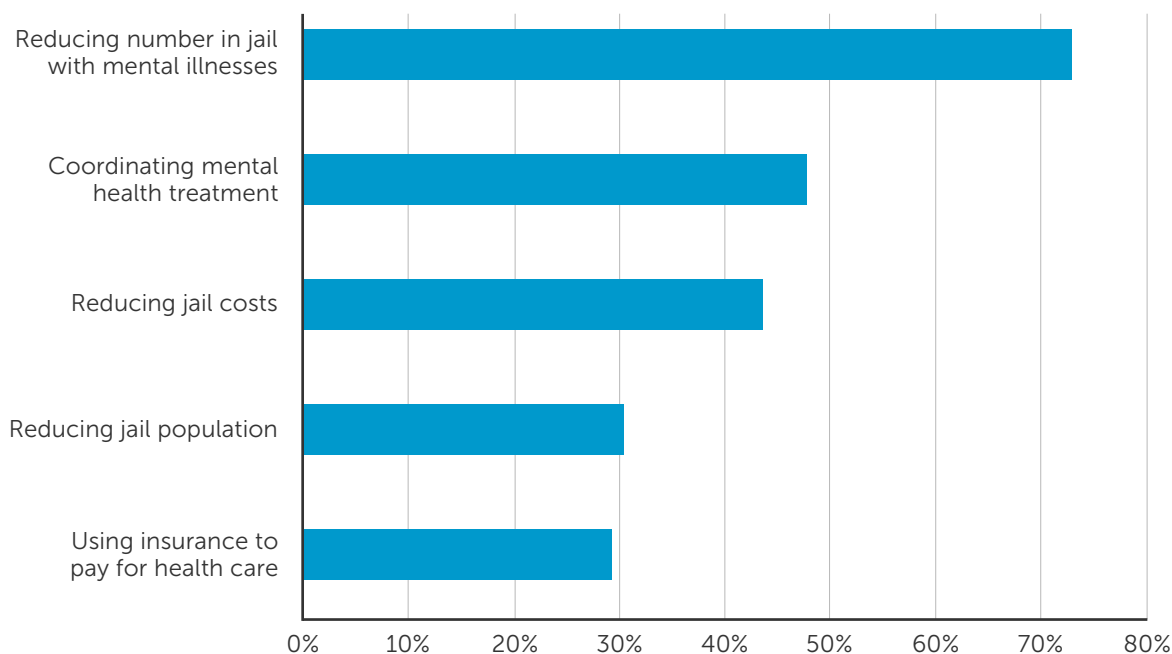
RIISING JAIL
POPULATIONS
AND COSTS
ARE A TOP
CHALLENGE
FOR COUNTY
JAILS.

FIGURE 3. JAIL POPULATION AND COUNTY CORRECTIONS EXPENDITURES, 2000–2012



Source: NACo analysis of Bureau of Justice Statistics data.

Notes: Jail population reflects the confined population in county jails. County level corrections expenditures were not available for 2001 and 2003. Alaska, Connecticut and Rhode Island do not have county operated jails.

FIGURE 4.**TOP 5 CHALLENGES OF COUNTY JAILS, PERCENT OF RESPONDING COUNTIES, MARCH–APRIL 2015**

Source: NACo survey, March–April 2015.

Notes: The 2015 NACo survey asked county jails to rank their top three priorities and challenges, as of March–April 2015. The percentage reported in the graph reflects responding counties that identified that issue among their top three priorities and challenges. Alaska, Connecticut and Rhode Island do not have county operated jails.

conditions of pretrial release, if they have the means to meet them. In cases when the defendants cannot meet the financial conditions of release, they remain in jail, held on bond. For example, the U.S. Bureau of Justice Statistics reported that more than one-third of felony defendants in large counties were unable to meet their financial conditions for pretrial release and thus held on bond in jail in 2009.³⁰ Although there are no national level data on similar rates for misdemeanor cases, pretrial detention rates (i.e., remaining in jail custody through disposition) in misdemeanor cases range from 22 percent on average in Kentucky counties to 48 percent in cases with bail amounts less than \$1,000 in New York City.³¹

RISING JAIL POPULATIONS AND COSTS ARE A TOP CHALLENGE FOR COUNTY JAILS. At the same time, counties are confronted with rising jail populations and soaring jail costs. Incarcerating pretrial detainees is a significant component of this phenomenon. According to the U.S. Bureau of Justice Statistics, the jail population increased by 20 percent between 2000 and 2012, while county corrections costs soared by 74 percent (See Figure 3). Between 2000 and 2014, the U.S. Bureau of Justice Statistics reported that the share of confined pretrial detainees in jails rose from 56 percent in 2000 to 63 percent by 2014.³² Forty-four percent (44%) of responding county jails to the 2015 NACo survey reported that reducing jail costs is one of their most serious issues currently; 30 percent identified reducing their jail population as one of the most pressing challenges (See Figure 4). Respondent county jails that tend to confine higher rates of pretrial detainees were more likely to report reducing the jail population and jail costs as top priorities.

In some county jails, these upwards trends resulted in additional pressure on the physical capacity available. Fifteen percent (15%) of responding county jails to the 2015 NACo survey reported confined populations at

or above the capacity of their facilities at the beginning of the year (See Figure 5). An additional 27 percent of respondent jails indicated that the current total confined population is within 20 percent of its capacity. When a jail is approaching its capacity, the jail loses flexibility to accommodate even small increases in the jail population.³³

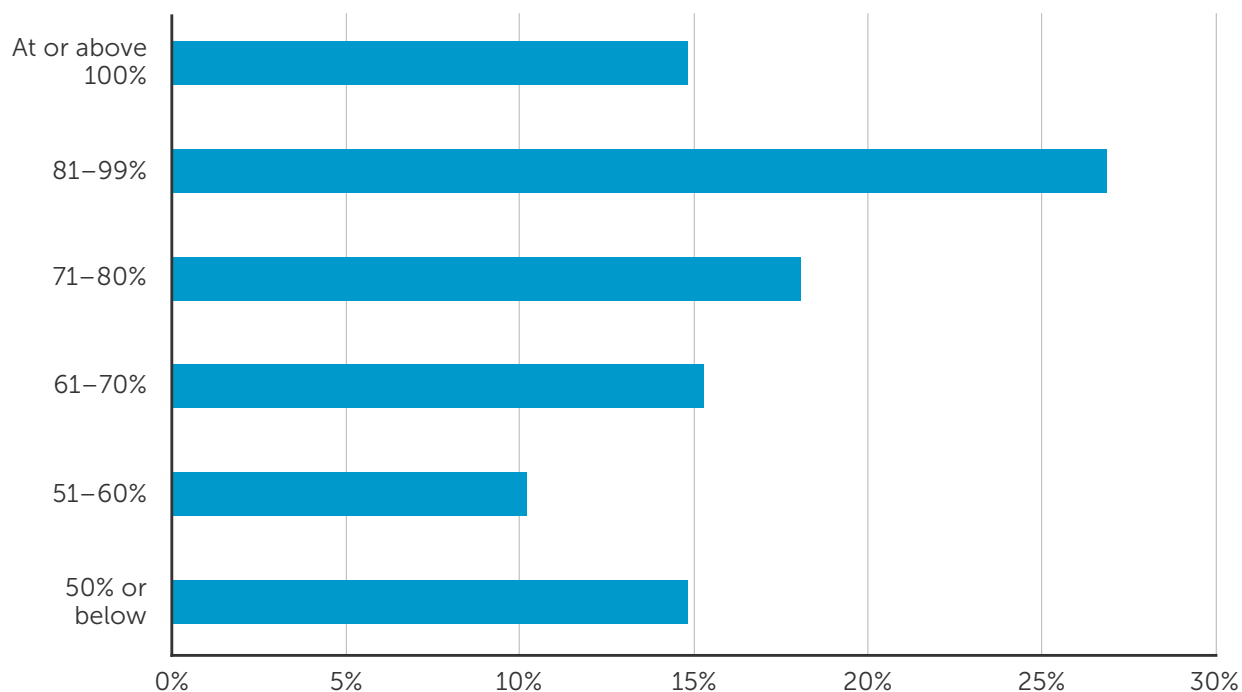
COUNTY JAILS CONFRONT A MYRIAD OF CHALLENGES, WHICH RELATE TO THE JAIL POPULATION AND JAIL COSTS.

REDUCING THE NUMBER OF PEOPLE WITH MENTAL ILLNESS IN JAILS IS OF THE HIGHEST PRIORITY FOR COUNTY JAILS. Three-quarters of the responding county jails identified reducing the number of people with mental illness in jail as one of their top three priorities and almost half of county jails reported that coordinating services and treatment for the jail population with mental illness is a top challenge. While there are no national level assessments of the percentage of the pretrial population with a mental illness, the U.S. Bureau of Justice Statistics estimates that 21 percent of the jail population experiences symptoms of a diagnosable mental illness and only 17 percent of them receive treatment.³⁴ Incarcerating people with mental illness is a significant source of cost increases, given the cost of treatment and the need to provide effective care of an illness that requires long term treatment.³⁵ Studies have shown that jails spend two to three times more money on detainees with mental illnesses that require intervention than on other people in custody.³⁶

REDUCING THE
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FIGURE 5.

THE OCCUPIED CAPACITY OF COUNTY JAILS, PERCENT OF RESPONDING COUNTIES, JANUARY 2015



Source: NACo survey, March–April 2015.

Notes: Capacity status on January 31, 2015. Alaska, Connecticut and Rhode Island do not have county operated jails.

COUNTY BOARDS WORK TOGETHER WITH THE JAILS ON THEIR CHALLENGES.

COUNTY BOARDS WORK TOGETHER WITH THE JAILS ON THEIR CHALLENGES.

County boards can act as conveners, bringing together the court and jail to discuss and implement strategies that may effectively address the pretrial population in jail. Jails are accountable to county boards, especially on budget approval. More than 65 percent of responding county jails reported that their county board is willing to collaborate on reducing the jail population and costs. In some counties, county jails have a tight working relationship with their county boards, with 14 percent of responding county jails identifying their county boards as very collaborative on reducing jail costs and 12 percent expressing the same opinion on reducing the jail population.

Some county jails are taking an evidence based approach to jail population management. The data enables the county boards, courts and jails to better understand what populations may be better supervised in the community than in jail, including the pretrial population. Almost one-quarter of responding county jails reported that implementing best practices and data driven policies to manage the jail population is one of their top three priorities. A smaller number identified as a current priority using data on the jail population to develop policies and practices that would strategically manage the flow of convicted inmates and pretrial detainees in and out of the jail.

County jails are at a crossroads. The jail population, and especially the pretrial population, is growing, while county corrections costs are registering a steep upward trajectory. This resulted in a substantial proportion of jails to operate near, at or above capacity. In the same time, the court has ultimate authority over pretrial release. The dynamic between courts and jails during pretrial is central to understanding the prevailing population and costs trends within county jails. County jails understand the need to reduce the jail population, including for particular groups within the jail population that drive up jail costs. County boards are an important partner in working with county jails and courts to reduce the jail population and costs.

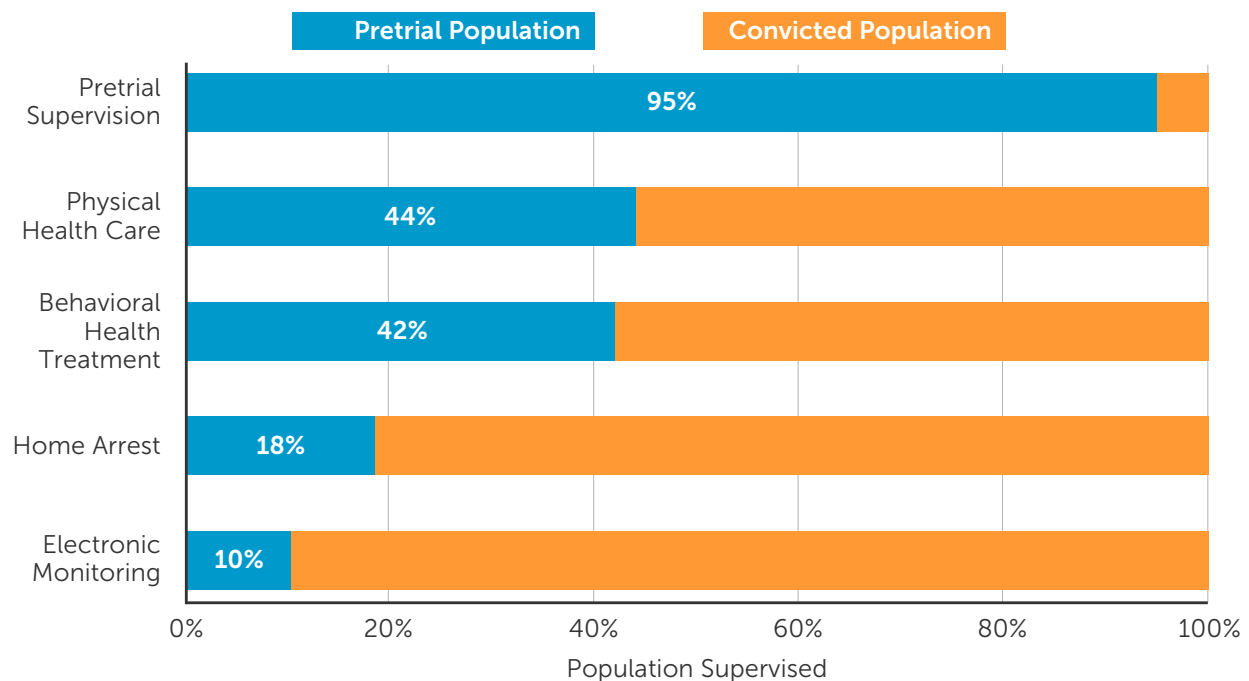
3. SOME COUNTY JAILS SUPERVISE PRETRIAL DETAINEES OUTSIDE OF CONFINEMENT.

County jails supervise a small number of pretrial detainees and convicted inmates out of the jail through community based supervision programs. Forty-three percent (43%) of respondent county jails to the 2015 NACo survey use at least one type of community based program for pretrial and/or convicted inmates and most often they have three or more community based programs. The programs can vary by the method of supervision (electronic monitoring, home arrest, day reporting, treatment programs, including for behavioral and physical health care) to the type of inmate supervised (such as pretrial supervision). Other programs include reentry and alcohol monitoring programs. Overall, the respondent county jails supervise only 21 percent of their population outside of confinement.

Pretrial release is a limited occurrence in county jails. A third of responding county jails release pretrial detainees from custody and supervise them in the community through different types of community based programs, depending on the needs of the detainees. Only 28 percent of the 2014 releases into the community based supervision programs of respondent county jails, however, were pretrial detainees. Pretrial supervision programs focus overwhelmingly on the pretrial population (95 percent of their population), followed by physical health care and behavioral health treatment programs in which close to half of the supervised population is pretrial (See Figure 6). Between 10 and 20 percent of the supervised individuals in home arrest and electronic monitoring programs are pretrial detainees.

PRETRIAL
RELEASE
THROUGH
COUNTY JAIL
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PROGRAMS
IS A LIMITED
OCCURRENCE.

FIGURE 6. THE TOP 5 COUNTY JAIL PROGRAMS USED FOR PRETRIAL SUPERVISION AND THEIR SUPERVISED POPULATIONS, 2014



Source: NACo survey, March–April 2015.

Notes: The top five programs are ranked by percentage of pretrial detainees supervised by the program. Programs may be designed to provide supervision to pretrial and convicted populations simultaneously. Other program types supervising pretrial detainees include work release programs, day reporting programs and other programs not elsewhere classified.

THE COURT IS THE MAIN ENTITY AUTHORIZING PRETRIAL RELEASE INTO COMMUNITY BASED SUPERVISION PROGRAMS.

The court is the main entity authorizing pretrial release into these programs. A judge permits pretrial release and not the county jail, even when the county jail has a community based supervision program for pretrial detainees. Many states have statutes that allow for citation and release — including release after arrest and booking — but these state statutes usually limit release to cases involving some misdemeanors and take into consideration additional factors and decision-making criteria.³⁷ For example, responding county jails reported state statute(s) as the source of pretrial release authority for only 36 percent of the physical health care treatment programs supervising pretrial detainees, the highest among all types of programs involving pretrial detainees. County boards can be another source of pretrial release authority, but at a lower rate than state statutes.

County jails have an indirect role in deciding who is placed in a supervision program because they work with the court to determine eligibility for the programs. They are likely to use more than one type of criteria to determine eligibility. Eligibility requirements for programs that supervise pretrial detainees are generally based on a combination of criminal history and current charges in addition to institutional criteria, such as an assessment score or classification level (for definitions, see Key Terms Used in this Report). Given the county priority of protecting public safety, most community based supervision programs limit participation to pretrial detainees who do not have a prior serious, violent and/or sexual felony conviction(s) nor are currently charged with a serious, violent and/or sexual felony. A small proportion of programs limit participation to pretrial detainees without any felony record; however, in a majority of programs, a felony record does not adversely affect eligibility for supervision in community based programs.

Institutional criteria, such as a risk assessment score or classification level, provide a means for county jails to influence the eligibility of pretrial detainees for release and supervision. For example, responding county jails reported that 46 percent of pretrial supervision programs use some type of risk assessment to determine eligibility for the program. The approach to risk classification used to identify eligible pretrial detainees varies by program, particularly among program types that are less frequently used to supervise pretrial detainees. At the same time, county jails are nearly as likely to rely on classification level to determine eligibility as they are on a risk assessment score. There are important differences between classification level and risk assessment scores as the factors used to determine where to house an inmate in the jail may have no direct relationship to the factors used to determine risk to public safety.³⁸

County jails with programs supervising pretrial detainees keep track of the outcomes of these programs, at different rates depending on the program. About 40 percent of responding county jails with programs supervising pretrial detainees indicated that they or another department within the county monitors and tracks program success rates. Electronic monitoring, home arrest, pretrial supervision and work release are more likely to register success rates (49 percent of responding county jails with these types of programs). In contrast, 21 percent of responding county jails keep track of the outcomes of day reporting and physical health and behavioral health treatment. The most common success measure used by counties is compliance with program rules (i.e., no program violations). Success may include more than one type of measure, however. For example, pretrial supervision programs are just as likely to use program violations to determine success rates as new arrests and failures to appear or report.

COUNTY JAILS WITH PROGRAMS SUPERVISING PRETRIAL DETAINEES KEEP TRACK OF THE OUTCOMES OF THESE PROGRAMS.

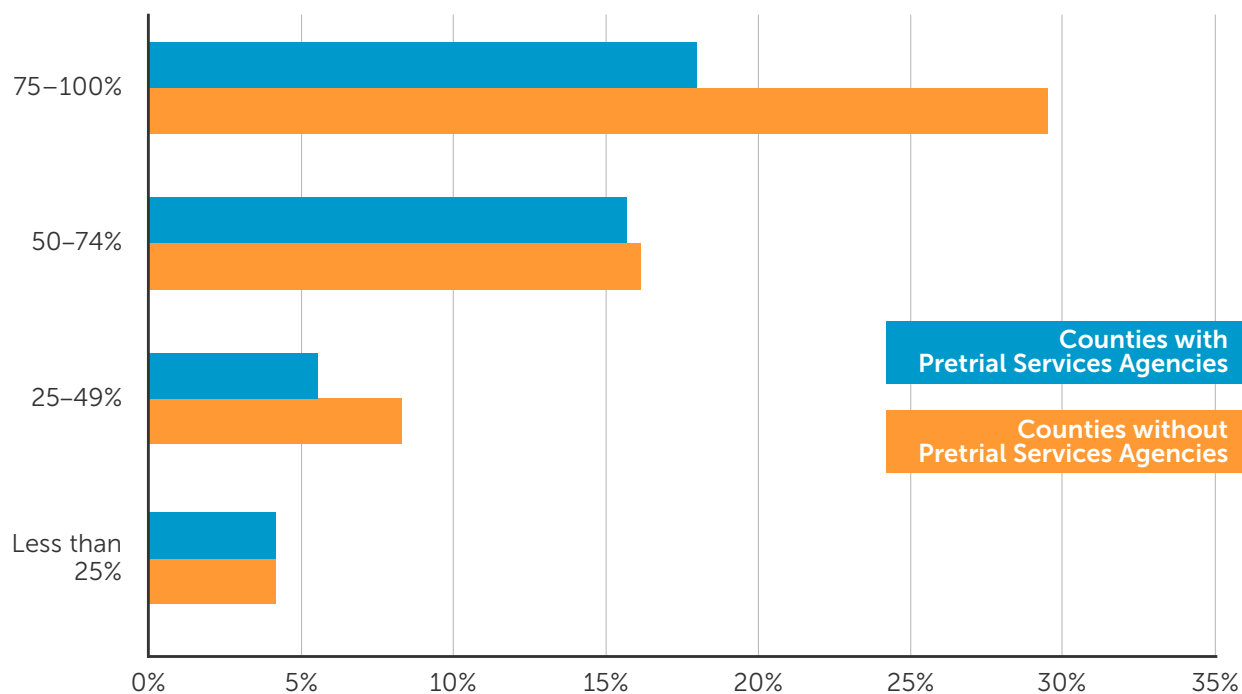
PRETRIAL RELEASE THROUGH COMMUNITY BASED SUPERVISION PROGRAMS IS PART OF A WIDER COUNTY PRETRIAL SYSTEM.

Counties with jails with community based supervision programs are more likely to report having a formal pretrial services agency in their county. Forty-four percent (44%) of responding county jails that have at least one pretrial supervision program are in counties with a formal pretrial services agency. A formal pretrial services agency interviews defendants for the purposes of the bail decision, provides information to the court to assist the release decision, supervises those released on bail and monitors compliance with release conditions set by the court. In counties with a formal pretrial services agency, the jail is less likely to have a larger pretrial population incarcerated (more than 75 percent of the total jail population) (See Figure 7). Depending on their comprehensiveness and other policies within the county, formal pretrial services agencies may contribute to lower pretrial detention rates.³⁹

The bond review process lends an additional dimension to understanding the ongoing dynamic between the court and the jail in pretrial and the important role of court decision-making in assisting jails in managing the confined pretrial population. Bond review provides a way to reevaluate the financial conditions that are preventing a pretrial detainee from being released from jail (See Key Terms Used in this Report). Most responding county jails indicated that their counties — 56 percent — have a bond review process, either formal or informal, in place to review the custodial status of pretrial detainees who are held in jail custody on

FIGURE 7.

PRETRIAL POPULATION IN JAIL IN COUNTIES WITH AND WITHOUT PRETRIAL SERVICES AGENCIES, BY PERCENT OF RESPONDING COUNTIES, JANUARY 2015



Source: NACo survey, March–April 2015.

Notes: Pretrial population confined in responding county jails on January 31, 2015. Pretrial services agencies were defined for responding county jails using the definition of formal pretrial services agencies in the Key Terms Used in this Report. Alaska, Connecticut and Rhode Island do not have county operated jails.

bond. Formal bond review may include bond reduction hearings or similar proceedings as specified in state statute whereas an informal process may involve meetings between the court and the jail to review the bond conditions of pretrial detainees in jail.

County jails benefit from bond reviews done soon after the defendant is held in custody on bond, as any time spent by a person in jail translates into jail costs. However, the evidence from the 2015 NACo survey shows that time is not a factor in deciding when bond is reviewed; the county bond review process is equally as likely

to review bond after a defendant has been in custody for less than two weeks as they are to review bond after a defendant has been in custody for more than two weeks. Further, a significant proportion of counties — 39 percent — responding to the 2015 NACo survey do not conduct a bond review after a certain length of time in custody, which may result in unsystematic custodial reviews. Responding county jails indicated that some community based supervision programs may be used to supervise pretrial detainees held in jail on bond.

Emergency release policies are another mechanism within counties that may result in the release of pretrial detainees from confinement. These policies are typically used when the jail comes within its maximum capacity and entails the release of some of the population to alleviate pressure on jail space. Although these types of policies are not traditionally considered within the scope of counties' pretrial release policies, these policies can result in the release of the pretrial population from jail and do not necessarily provide any supervision after release. Thirteen percent (13%) of responding county jails to the 2015 NACo survey reported having an emergency release policy in place at the time of the survey and that pretrial detainees may have been released as a result. Jail capacity and population challenges have been persistent over time as the likelihood of county jails reporting the implementation of an emergency release policy has not changed over the last three decades.

A limited number of county jails use community based supervision programs for pretrial supervision and pretrial detainees account for a small share of the total population that is actually released from jail and supervised in the community through these programs. The court authorizes pretrial release the county jail and allows jails to use community based supervision programs. Most often, county jails use multiple community based supervision programs for pretrial supervision, depending on the needs of the pretrial detainees in the programs. County jails have an indirect influence on pretrial release, as they have some input on the eligibility criteria and in establishing some of the eligibility mechanisms. County jails' pretrial supervision programs work in conjunction with other elements of the county pretrial system, such as pretrial services agencies, bond review and emergency release.

COUNTIES WITH
JAILS WITH
COMMUNITY BASED
SUPERVISION
PROGRAMS ARE
MORE LIKELY TO
REPORT HAVING A
FORMAL PRETRIAL
SERVICES AGENCY
IN THEIR COUNTY.

CONCLUSION

County jails are at a crossroads, simultaneously confronting increasing pressures on physical capacity, growing jail populations and soaring jail costs. Pretrial release is part of solving this set of circumstances. Pretrial release with supervision levels that are appropriate to reduce risk can be effective, ensuring court appearances and protecting public safety.⁴⁰ Most of the people incarcerated in county jails are not convicted, but waiting for their trial. Further, most of the individuals confined in county jails are low risk, as shown by the evidence from the 2015 NACo survey. Reducing both the financial costs and the number of incarcerated — especially people with mental illnesses — is at the top of the agenda for county jails. There is a strong sense of partnership between the jails and county boards to achieve these goals.

The current pretrial release system makes the challenge of reducing costs and jail population more difficult for county jails and county boards. County jails have limited influence on who gets released, given that courts have the most pretrial release authority. The courts also decide whether a county jail has the authority to use a community based supervision program for pretrial detainees. Understanding this dynamic is important for counties, especially for jail population management, controlling corrections costs and warding off litigation related to overcrowded facilities.⁴¹

Effective jail cost and population management require the expanded use of pretrial release and pretrial supervision, given the large share of pretrial detainees confined in jail. Some county jails release and supervise pretrial detainees through county funded community based supervision programs. This number is limited as these programs are operated by county jails through consent with and in collaboration with the court. The county pretrial system extends beyond supervision programs in county jails to pretrial services agencies, bond review and emergency release policies.

Counties have an unmatched role in the pretrial process because of their unique position within the courts and corrections system. Increasingly, county jails use best practices and data to develop policies and practices that reduce the jail population.⁴² Population data, such as case status and risk level, provides critical information to jail administrators and county officials on who is in jail and why they are there and may help with identifying jail alternatives.⁴³ County boards have the convening power of all the parties in the pretrial system and courts have the authorizing power over pretrial release. Any long term sustainable solution for pretrial release requires collaboration across the county justice system, including local law enforcement, the court and corrections system. Counties are in a strong position to lead the way in pretrial release, developing strategies and leveraging resources that not only assist in managing the county jail population, but safeguarding public safety.

COUNTIES ARE IN A STRONG POSITION TO LEAD THE WAY IN PRETRIAL RELEASE, DEVELOPING STRATEGIES AND LEVERAGING RESOURCES THAT NOT ONLY ASSIST IN MANAGING THE COUNTY JAIL POPULATION, BUT SAFEGUARDING PUBLIC SAFETY.

METHODOLOGICAL APPENDIX

This report analyzes the results of a Web-based survey of county jails, conducted between March and April 2015. The National Association of Counties (NACo) developed the survey to better understand the role of county jails in pretrial release, including the extent to which county jails use community based supervision programs to supervise pretrial detainees, and the policies and practices that affect how county jails operate these programs.

The survey included 33 questions across six sections. These sections examined:

- The types of community based programs run by county jails, the policies and practices of those programs, including how release into those programs is determined,
- The policies affecting county jail population levels, including jail population caps and emergency release policies,
- The number of unconvicted and convicted inmates supervised,
- The use of screening and assessment tools used during the booking process,
- Additional processes the county criminal justice system uses to manage the pretrial population in jail, and
- Additional issues affecting the county criminal justice system.

NACo developed the sampling frame for the survey using 2014 jail data purchased from the National Public Safety Information Bureau (NPSIB). The NPSIB provides the names of jail administrators in 2,411 county jail jurisdictions (i.e., counties with one or more jails), excluding jails in Alaska where jails and prisons are a unified system under the Alaska Department of Corrections. NACo obtained the email addresses for jail administrators in 1,606 county jail jurisdictions from the American Jail Association (AJA). Upon sending the survey, NACo found that the emails for 284 county jail administrators were invalid. The availability of email addresses of jail administrators limited the size of the sample to 1,322 counties (54.8 percent of county jail jurisdictions identified by NPSIB).

In March 2015, NACo sent the survey to 1,322 jail administrators or equivalents within the jail management structure (e.g., sheriff, correctional chief, director of department of corrections) and kept the survey open for a month. The sample receiving the survey includes 99 regional jails that serve multiple counties. Similar to county jails, NACo sent the survey to the administrator of the regional jail. In preparation of the distribution of the survey, AJA sent an email to its membership notifying them of the survey and encouraging participation. NACo sent reminder emails at two different points during the collection period to non-respondents. AJA also sent a reminder email to its membership two weeks before the close of the survey.

Overall, 282 county jail jurisdictions completed the survey, which represents 21.3 percent of the sample. Regional jails account for 3.6 percent of responding jurisdictions.

Responding county jails closely represent the population distribution of jurisdictions that received the survey. Medium and large counties (by 2014 population size) responded to the survey at higher rates relative to their distribution in the sample (See Table A1). Medium counties represented 43 percent of responding counties compared to 38 percent of the sample and 33 percent nationally. Large counties were more likely to respond to the survey relative to their representation in the sample of county jails (9 percent compared to 7 percent).

Responding county jails generally represent the regional distribution of jurisdictions. County jails in the South have lower response rates in comparison to the sample (39 percent responding compared to 49 percent in the sample) (See Table A2). County jails in the Midwest responded to the survey at the same rate as their distribution of county jail jurisdictions nationally (29 percent), while northeastern and western county jails responded at higher rates relative to the distribution of those regions in the sample.

TABLE A1.**POPULATION DISTRIBUTION OF COUNTY JAILS
AND RESPONDING COUNTY JAILS**

COUNTY POPULATION SIZE	COUNTY JAILS (%)	SAMPLE OF COUNTY JAILS (%)	RESPONDING COUNTY JAILS (%)
SMALL	62.3	54.9	47.5
MEDIUM	32.8	38.4	43.3
LARGE	4.9	6.8	9.2

Note: Total may not sum to 100% because of rounding.

TABLE A2.**REGIONAL DISTRIBUTION OF COUNTY JAILS
AND RESPONDING COUNTY JAILS**

CENSUS REGION	COUNTY JAILS (%)	SAMPLE OF COUNTY JAILS (%)	RESPONDING COUNTY JAILS (%)
MIDWEST	29.1	25.0	29.1
NORTHEAST	7.1	8.1	11.4
SOUTH	48.1	48.6	39.4
WEST	15.7	18.5	20.2

Note: Total may not sum to 100% because of rounding.

ENDNOTES

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COUNTY JAILS AT A CROSSROADS

AN EXAMINATION OF THE **JAIL POPULATION**
AND **PRETRIAL RELEASE**



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