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COUNTY ROLES AND OPPORTUNITIES IN PRETRIAL JUSTICE

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Nearly 11 million people were admitted to county and other local jails in 2015, and more than 721,000 individuals are held in a jail on any given day.¹ Although the jail population has been decreasing in recent years, jail populations increased by 20 percent between 2000 and 2012 and county corrections costs rose by 74 percent. Incarcerating individuals before trial is a major contributor to these increased costs: More than 450,000 people in jail on any given day are awaiting court action on a charge, which means they have not been convicted and are presumed innocent.³

Individuals who are held in jail pretrial tend to have worse outcomes than those who are released. For example, individuals held for eight to fourteen days were 56 percent more likely to be rearrested before trial and 51 percent more likely to recidivate after completing their sentence than individuals who were held for 24 hours or less.⁴ Similarly, defendants who were held in jail before trial received jail sentences nearly three times longer than those who were released at some point.⁵

Ninety percent of these people remain in jail only because they have not posted a bond,⁶ and many cannot pay even low bail amounts. One study found that 50 percent of individuals in jail could not afford to pay their bails set at under \$5,000,⁷ and another study found that 85 percent of individuals couldn't afford to pay an amount of \$500 or less.⁸

Housing a person in a jail costs an average of \$85 per day, which means that counties are spending \$38 million a day, or \$14 billion a year, jailing individuals before they have been convicted of a crime.⁹ As county jails across the country seek to safely reduce costs and populations – a 2015 NACo survey found that 44 percent of jails identify lowering costs as their most serious issue and that 15 percent of county jails had a population at or above capacity, with 27 percent within 20 percent of capacity – decreasing the number of individuals held pretrial can be a very effective way of addressing these issues.

This document will outline some of the many proven policies and processes counties can implement to reduce pretrial jail populations, make more effective use of resources and maintain, or even improve, public safety.

LEADERSHIP AND CONVENING POWER

County elected officials act as conveners, bringing together the court, jail, law enforcement and other stakeholders to discuss and implement strategies that may effectively reduce the pretrial population in jail. County boards and commissions should regularly engage with jail leaders – not only because jail budgets are generally set by county leadership, but also because any modifications to the justice system will likely have an impact on the jail population. As the “end point” for an individual who is involved with the justice system, it is important to consider how modifications to other programs or systems might affect the jail. Jail leaders can provide crucial insight and information to all stakeholders about the impact other agencies’ policies are having on the pretrial jail population.

Ask the right questions. County leaders are tasked with setting their jurisdictions’ priorities, allocating resources to meet those goals and ensuring that taxpayer dollars are used effectively and efficiently. The justice system is neither effective nor efficient in many jurisdictions, but leaders may not have a full understanding of why this is the case in their county – or how to improve their system. Asking the right questions about what’s going on in your community is an essential first step to gaining a full understanding of the efficacy of your local justice system, and if the many resources allocated to that system are being used as effectively as possible. Below are a few basic questions that every county leader should know the answer to:

- Who is in the jail?
- What are they charged with?
- Why are they in jail (unable to post money bail, risk level, serving a sentence, etc.)?
- How long do individuals stay in the jail? And how long do pretrial individuals stay in the jail?
- How much does it cost to house a person in the jail (and are there different costs for individuals with health or behavioral health issues)?

Encourage and institutionalize collaboration. County elected officials can informally set a tone that encourages collaboration across agencies and programs, which can enhance information sharing and lead to more effective use of resources. Counties can also make collaboration a part of the official working agenda, by creating planning teams – often called criminal justice coordinating councils (CJCCs). A CJCC has members from county government, such as commissioners and managers/administrators, and the justice system, including municipal law enforcement departments, and should also include members from agencies that interact

with the justice system, such as health and human services, as well as community-based service providers, business partners and members of the public.¹⁰ By regularly bringing together stakeholders, CJCCs provide an opportunity to comprehensively examine and address justice system policies and programs.

The **Palm Beach County, Fla.**, Criminal Justice Commission (CJC) was created by county ordinance in 1988, after an assembly of private sector business leaders and the county commission came together to address the rising costs of criminal justice. The CJC currently has 32 members, 21 of whom are from the public sector, including local, county, state and federal criminal justice and governmental agencies. Ten members are private sector business leaders nominated by the Economic Council and appointed by the Board of County Commissioners, and there is one at-large member of the clergy. The full commission meets once a month, and 14 subcommittees address issues such as reentry, behavioral health, community engagement and youth violence. The CJC has been critical in developing reentry programs, implementing Crisis Intervention Training, creating the first community court in Florida and establishing the county’s pretrial services agency.



ENSURE COOPERATION AMONG ALL PRETRIAL STAKEHOLDERS

Any effective pretrial system will include elements from many different programs and agencies in, and sometimes around, a jurisdiction. Sheriffs, police, city jails, county jails, judges, local health and human services programs, community service providers and more all play a role in developing policies, implementing programs and providing treatment that make up the continuum of pretrial services. In many cases, a policy – or change to a policy – in one agency or program will have effects on other agencies and programs; stakeholders in an effective pretrial system will communicate with each other so no agency is unknowingly impacted by another agency's change, and all partners thoughtfully consider the impact of their policies and programs.

Work with city police. In many counties, city police are responsible for much of the day-to-day investigations and arrests while county sheriffs are responsible for running the jail, guarding courtrooms and providing law enforcement activities in unincorporated areas.¹¹ Police departments' arrest policies can have a major impact on jail populations, and jails' release decisions (such as late-night releases) can affect the likelihood of an individual being rearrested.¹² Because these systems are so intertwined, cooperation and information sharing between local police, the jail and county leaders is imperative. For example, a study of the **Los Angeles County, Calif.**, jail population found that different police departments across the county have varying policies about whether to issue a citation in lieu of arrest to an otherwise-eligible individual who does not have proper identification.¹³ Booking these individuals into

the county jail takes up considerable county resources, and the county is working to expand law enforcement access to technology that makes identification, and thus cite and release, easier.¹⁴

Work with judges. Judges play a critical role in pretrial justice, as they are generally who make pretrial release decisions (unless an individual is diverted before appearing in court). Counties should work with judges to ensure they are knowledgeable about how their jurisdiction is implementing evidence-based pretrial decision-making, such as the use of validated risk assessments and the availability of appropriate pretrial services and supervision.¹⁵ Because county judges often see individuals charged with minor offenses who will be assessed as low risk – and thus generally can be safely released before trial – it is particularly important that they are comfortable with such assessments and pretrial supervision options available to them. When judges understand how all these elements can guide their pretrial release decisions, county justice systems will function more effectively.

Communicate with state leaders. There are many state policies and regulations that impact county pretrial justice systems. For example, many states have implemented sentencing reforms aimed at reducing prison populations but which have in many cases led to increased jail populations.¹⁶ Similarly, state legislation changing or eliminating the use of money bail can increase costs to counties.¹⁷ County leaders should engage with state leaders to educate them about impacts and costs of state laws and regulations. This can be done in any number of ways, such as inviting state legislators or criminal justice leaders to local pretrial justice planning meetings, providing publications, data reports or testimony to state leaders or volunteering to be on state-led task forces or planning committees related to pretrial justice.



Make connections with health and human services partners. Data show that 64 percent of the jail population has a recent history or symptoms of mental illness,¹⁸ and nearly three-quarters of these individuals also have co-occurring substance use disorders. People with mental illnesses tend to stay longer in jail and have higher recidivism rates than individuals without these illnesses. After counties use risk and needs assessments or otherwise identify that a person is in need of behavioral health treatment as part of their pretrial release plan, he or she needs to be connected with programs and agencies to provide those services. Counties can run pretrial services and treatment programs on their own -- whether through probation, courts or the jail -- in conjunction with county health or behavioral health agencies or by contracting with community-based organizations to provide treatment.²¹

ESSENTIAL PROGRAMS AND POLICIES

An effective pretrial justice system is made up of many different programs, policies and services. The pretrial system will not look the same in every county, but all counties should strive to utilize risk-based decision making and provide appropriate supervision, diversion and treatment options.

Risk and needs assessment. An important element of risk-based decision making is the use of a screening tool that can identify individuals' needs (such as behavioral health issues) and a validated risk assessment to determine an individual's likelihood of appearing in court for his or her hearing and the likelihood that he or she will be rearrested while out on pretrial status.²² Counties should use needs assessments to appropriately tailor services or interventions to individuals who need them. Evidence-based risk assessments use factors shown by research to be predictive of outcomes, such as criminal history and current age.²³ Most risk assessments determine if a person is low, medium or high risk, and the judge then uses this information to decide whether to release a person, and under what conditions. Any risk assessment must also be locally validated, to make sure that the results are accurate in that particular jurisdiction.

Universal screening. Locally validated risk assessments and screenings should be administered to every defendant who is eligible for release by statute. Both the National Association of Pretrial Services Agency (NAPSA) and the American Bar Association's (ABA) Standards support the idea of universal assessment.²⁴ For example, counties should not limit the use of a risk assessment based on charge, as research has shown that the pending charge is not an indicator of likelihood of flight or reoffense before trial.²⁵ Universal screening ensures that all individuals are treated fairly and given an equal opportunity for release before trial.

Milwaukee County, Wis., screens all individuals 24 hours a day, seven days a week, using the county's intake interview and the pretrial praxis, which recommends supervision conditions based on a person's risk level and other predictors. These release conditions can include supervision and case management services such as call reminders, referrals to programs or services aimed to reduce risk and/or address issues that led to the person's involvement in the justice system, electronic monitoring or a combination of any of these.

Pretrial services. Just as important as universally implementing a validated risk assessment is the availability of pretrial services: If you want to release an individual pretrial under conditions of supervision and/or treatment, there need to be resources that can address those requirements. Examples of effective pretrial services include checking in with a pretrial case manager, court date reminders, drug testing, GPS supervision and/or treatment referrals.²⁶ Many of these services can be performed by existing agencies or departments, such as probation. It is also important to match pretrial services and supervision to an individual's assessed risk level. Research has shown that providing the most intensive supervision and treatment for people assessed as high risk results in the greatest reductions in recidivism, but that requiring intensive programming for people assessed as low risk can actually increase their recidivism.²⁷

In **Caldwell County, Texas**, a pretrial officer staffed out of the county probation department reviews the jail roster daily to identify inmates who have been unable to post bond and then screens these individuals to determine eligibility for pretrial release.²⁸ The pretrial officer reviews the circumstances of the offense, criminal history and conducts a risk assessment; the results of this screening are presented to the judge for a pretrial release decision. Pretrial release conditions can include regular contact with the pretrial officer and/or participation in treatment and drug testing, among others; the conditions, referrals, and frequency of reporting are based on the individual's assessed risk level. The pretrial officer also refers individuals with substance use issues to community-based treatment providers, and sends out court date reminders.²⁹

Diversion. Law enforcement officers are typically the first contact an individual has with the justice system, and these officers can play a critical role in pretrial justice. Because so many individuals who are held pretrial have a behavioral health issue, training officers to identify an individual who is suffering from a mental health or substance use crisis and direct that person into appropriate treatment rather than arresting him or her is an important mechanism for pretrial diversion. Crisis Intervention Training (CIT) is one of the most popular mechanisms for this. CIT brings together law enforcement, mental health providers, hospital emergency departments and individuals with mental illness and their families to improve responses to people in crisis.³⁰ Law enforcement officers undergo 40 hours of training that helps them to identify individuals in a mental health or substance use crisis, teaches verbal de-escalation skills and identify mental health resources for assisting people in crisis.³¹

Counties across the country are also developing crisis stabilization centers, which are “one-stop shops” where individuals can be taken to safely detox, stabilize and/or be referred to services rather than taken to jail. Arresting and booking an individual can take hours in some jurisdictions, and these drop centers provide a safe alternative where individuals can receive treatment and law enforcement officers can return to the streets sooner and focus on more serious crimes.

Pima County, Ariz., opened its Crisis Response Center (CRC) in 2011. The CRC is the hub of a comprehensive, coordinated crisis-care network: Services are provided 24 hours a day, seven days a week, 365 days a year and include everything from crisis stabilization services for adults and youth to nonemergency crisis transportation to peer and family support. In its first year of operation, the CRC provided crisis stabilization services to almost 13,000 individuals and reduced average law enforcement custody transfer time from several hours to 10-15 minutes.³²



Experienced prosecutors and defenders. Most people probably think about the role of public defenders in pretrial justice, but prosecutors also play a critical role: Initial charges can determine an individual’s eligibility for pretrial release or services. Prosecutors and defenders often have more in common than expected -- at the root of both of these jobs in the charge to ensure individuals are treated justly in the justice system. Prosecutors and defenders also recognize the value of accurate and reliable information that can be used in pretrial decision making, and tend to agree that low-risk people can safely be diverted away from the justice system.³³ Prosecutors and defenders can work together to recommend appropriate diversion or deflection programs, rather than jail time, that will best assist defendants – and ultimately impact public safety. Research has shown that inefficient or underfunded public defense systems lead to higher rates of pretrial detention and incarceration, which in turn lead to higher costs for counties and worse outcomes for individuals and communities.³⁴

DATA AND INFORMATION SHARING

The “right questions” listed above are just the beginning point for any effective pretrial justice system. Determining the answers to any of these questions requires counties to track, analyze and continually monitor information and data regarding individuals in the justice system. As a starting point, counties can focus on gathering and understanding data about their jail populations.

Collect and analyze data on an ongoing basis. In order to accurately gauge the effectiveness of pretrial decision-making, programs and services, jurisdictions need to collect and analyze data not just every so often but on a regular basis. Ongoing data collection ensures that the systems or programs are working effectively and are not having unintended consequences. For example, if a county moves risk assessment responsibility to a new agency, continual monitoring of data such as individuals' length of stay can ensure that the change hasn't caused administrative or other delays.³⁵ Ongoing monitoring and analysis of the many elements that make up the pretrial system provides a high-level view of how the system is working, and what trouble spots may require attention. This type of evidence can also provide support for ongoing or additional funding for pretrial programs and services.

Work with what you have. Counties do not need to invest in expensive software or systems to understand who is in their pretrial system. The answers to the "right questions" suggested above likely can be found in existing jail or court data – it's simply a matter of extracting this information. When **Mesa County, Colo.**, started analyzing its pretrial outcomes, it tracked all the information using Excel spreadsheets. Pretrial officers updated the spreadsheets before going home each day and daily administrative support staff double checked the data. Staff also spent time once or twice a month examining closed cases to see what they could learn from the outcomes. Some of the outcomes Mesa County monitored in Excel were:

- the local predictive value of its risk assessment tool
- court appearance rates by risk category
- public safety rates by risk category
- average length of stay by risk category
- number of those held in jail by risk category
- percentage of pretrial program costs by risk category and supervision level, and
- bonds ordered by risk category and by offense.

Develop mechanisms to share information among pretrial partners. As mentioned above, there are many elements of a pretrial system, and ideally counties will collect data on all of those touch points. As the sources of these data will vary, key stakeholders from each agency or program will need to come to agreement about what can and will be shared across agencies and systems. Counties may choose to develop MOUs or other information-sharing agreements, as well as universal release of information forms, to be used across agencies. Another important aspect of information sharing is development of shared definitions. Using the same definitions for key measures such as recidivism makes it far easier to store, collect and compare data from different systems and evaluate outcomes.

For citations, visit the electronic version of this document at **www.naco.org**





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