



# The Delivery of Pretrial Justice in Rural Areas

A GUIDE FOR RURAL COUNTY OFFICIALS



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Senior Project Associates  
Pretrial Justice Institute



## About PJI

PJI is the nation's only non - profit dedicated to advancing safe, fair and effective juvenile and adult pretrial justice practices and policies. For more information, visit [www.pretrial.org](http://www.pretrial.org).

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## About NACo

The National Association of Counties (NACo) is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,068 counties. NACo advances issues with a unified voice before the federal government, improves the public's understanding of county government, assists counties in finding and sharing innovative solutions through education and research, and provides value-added services to save counties and taxpayers money. For more information about NACo, visit [www.naco.org](http://www.naco.org).

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*Public opinion polls have shown that the public wants to see more informed pretrial release decision-making. A 2012 poll of Republican voters in Florida found that 91 percent believe that risk should be the main factor used in determining pretrial release, and 59 percent are supportive of supervising appropriate defendants in the community rather than keeping them in jail until their trials.*

*Another 2012 poll showed that 91 percent of residents of Mecklenburg County, N.C., believed that it was extremely important for the judge to be provided with detailed information about a defendant at the first appearance in court.*

*Key findings from Lake Research Partners telephone polling in 2012 concludes that support for pretrial justice reforms are broad and intense, traversing partisan, regional, racial and other demographics lines.*

In many urban jurisdictions, significant efforts have been made in recent years to realize the vision of a coordinated, evidenced-based pretrial justice system. These efforts have been supported by a number of policy statements from national organizations, numerous publications on best practices, analyses of performance measures, validation of pretrial risk assessment instruments and dozens of training sessions conducted for judges, prosecutors, defense attorneys, law enforcement officials, community providers and pretrial justice staff. As extensive as these efforts have been, they are geared toward large jurisdictions with high volumes of criminal cases.<sup>1</sup>

Yet two-thirds of the nation's counties are rural. These counties are home to 51 million people<sup>2</sup>, or roughly 15 percent of the U.S. population. Moreover, there is evidence suggesting that rural counties are as focused, if not more, on enhancing pretrial justice as their urban and suburban counterparts – 44 percent of all pretrial justice programs that were started between 2000 and 2009 were in rural counties.<sup>3</sup> Thus, attention to promoting and enhancing pretrial justice must include rural counties.

The experiences of delivering pretrial justice in larger, metropolitan counties, where a large volume of cases and corresponding resources exist are valuable and can inform rural pretrial justice. However, rural jurisdictions are characteristically different and face a set of unique challenges that must be addressed to successfully implement pretrial justice. These include:

- » Long distances for defendants to travel for supervision appointments and to attend court
- » Low case volumes that move system stakeholders to search for multi-county approaches to providing justice
- » Limited personnel and infrastructure require staff to perform multiple roles, and
- » Lack of community-based experts and resources.

On the other hand, there are several strengths that rural jurisdictions can build upon to address these challenges, including:

- » Rural relationships can be more flexible and responsive than large bureaucracies
- » Small scale can lead to big innovations
- » Sharing resources regionally can save money, and
- » Local culture is geared toward problem solving.

This is a guide for elected officials seeking to enhance existing or develop new pretrial justice practices in rural areas. By identifying the characteristics, strengths and challenges in rural jurisdictions and combining these factors with the lessons and experiences of urban, suburban and rural pretrial justice programs, national standards and best practices, this guide offers a set of recommendations to enhance local policies and practices within the context of rural settings.



*59% of surveyed rural pretrial justice programs conduct their initial interviews and investigations before the defendant's first court appearance.*



# Pretrial Justice Today

*Both rural and urban jurisdictions are challenged by rising jail populations and the associated costs to taxpayers.*

## The Evidence for Enhancing Pretrial Justice

**A** brief examination of data shows why so much attention has been paid to enhancing pretrial justice in recent years. Between 1990 and 2008, the jail population in the United States doubled, rising from 400,000 inmates to 800,000. Much of this increase was driven by the pretrial detainee population, which rose from 50 percent of the total jail population in 1996 to 61 percent currently.<sup>4</sup> Between 1982 and 2006, county expenditures on criminal justice grew from \$21 billion to \$109 billion. County spending on jails alone rose 500 percent over that period.<sup>5</sup>

With most counties in the country experiencing severe financial hardships, these spending levels can no longer be sustained. Driving up jail populations is the increased use of money bond, which many defendants cannot afford to pay. Safely downsizing the jail populations through pretrial justice is a strategy that has proven successful in many counties across the country and can be replicated with fidelity in rural areas to achieve public safety goals while reducing costs.

Although it has been widely documented in the literature that the current system of bail bonding is unsafe, discriminatory, and ex-

pensive,<sup>6</sup> its use is on the rise. Sharply contrasted, nearly all pretrial justice programs:

- » Report using objective risk criteria to assess if someone can be safely released into the community under supervision
- » Base decision-making and practice on evidence, research and national standards
- » Are accountable to the court system for public safety outcomes
- » Produce better outcomes than money bonds, and
- » Cost significantly less than jail.

As the field of pretrial justice becomes more evidence-based, the practice of exclusively using money to sort out who is released from jail pending trial and who must remain in jail becomes unnecessary and obsolete. Under pretrial justice standards, judges, prosecutors, defense attorneys and law enforcement receive consistently prepared information on defendants that identify the risk to reoffend or fail to appear for court, in addition to a long list of alternatives that take into account the circumstances and characteristics of each arrestee, rather than the amount of money available to them.

These alternatives range from “release on recognizance” (a commitment to obey certain conditions) for the lowest risk defendants to “detention with no possibility



of release” before trial for the highest risk defendants, and offer a wide range of individually tailored alternatives in between. The data has consistently shown when defendants are released pending trial without having to post a money bond, the overwhelming majority stay out of trouble and do come back to court when required.<sup>7</sup>

## Pretrial Justice Policy Statements and Standards

A number of key stakeholder groups, including the National Association of Counties (NACo), the Association of Prosecuting Attorneys, American Jail Association, International Association of Chiefs of Police, American Council of Chief Defenders, the National Association of Criminal Defense Lawyers, National Sheriffs Association, and the American Probation and Parole Association, have issued **policy statements** supporting the enhancement of pretrial justice.

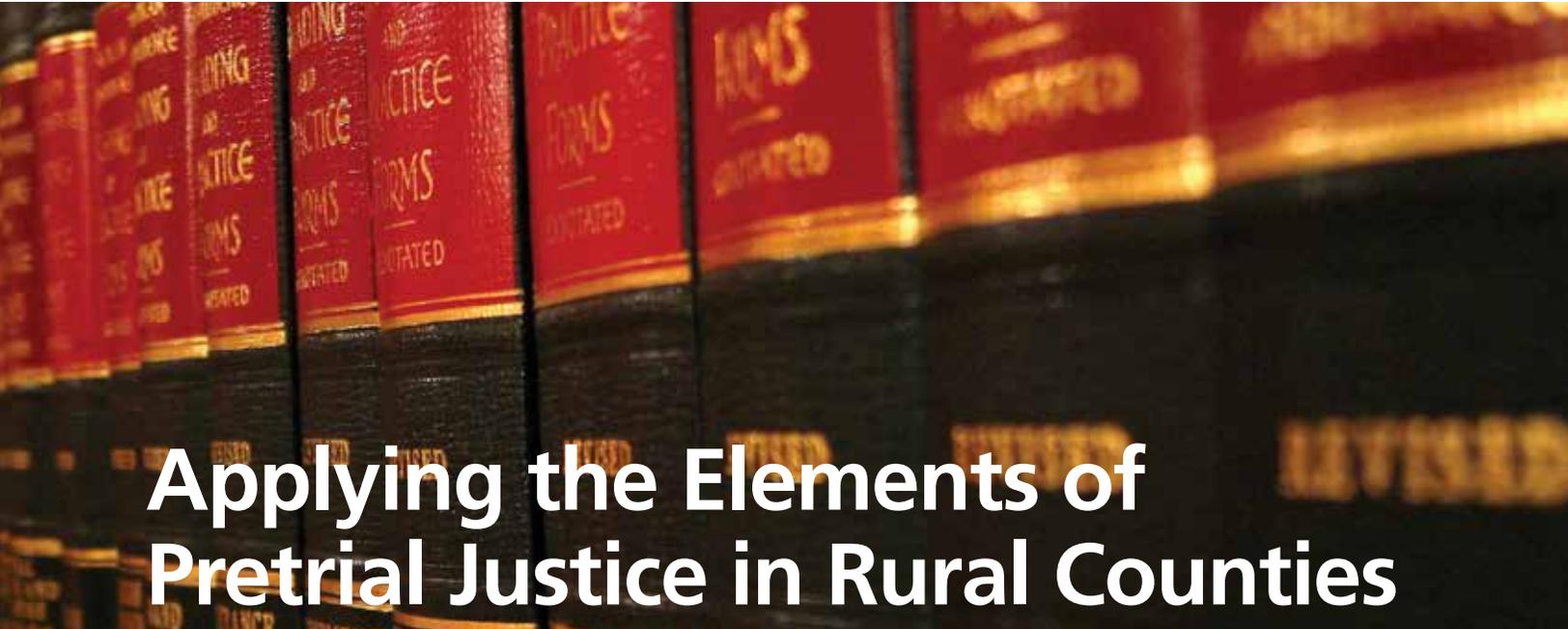
These policy statements are framed by the Eighth Amendment to the United States Constitution, the Bail Bond Act of 1966, and for nearly 50 years now the American Bar Association’s (ABA) set of standards for delivering pretrial justice.<sup>8</sup> These standards are based on the Bill of Rights, Supreme Court

case law, state statutes, researched practices producing the “best outcomes,” which defined over time most broadly as protecting victims and the public, safeguarding the judicial process, and more recently, doing these things in the most cost effective manner possible.

NACo, in its American County Platform, updated in 2009, calls for many of these same elements. NACo calls on all counties in the country, including rural counties, to provide for interviews, risk assessments of all persons booked into county jails, reporting to the judicial officer presiding at the initial court appearance.

NACo also calls on all counties to use the least restrictive release conditions calculated to reasonably assure court appearance and protect community safety. These are typically set forth by state statute, and *start* with release on recognizance (promise to appear in court), *graduate* to release on non-financial conditions that are supervised by court or law enforcement or a third party equivalent (such as a nonprofit contracted to provide such justice to a county or circuit), and *end* with detention without bail for those for whom no conditions can reasonably assure public safety or appearance in court.<sup>9</sup>

*26% of surveyed rural pretrial justice programs serve multiple counties within their states, including one, Kentucky’s, which serves the entire state.*



# Applying the Elements of Pretrial Justice in Rural Counties

**T**his section explores the functions performed by pretrial justice programs, how rural jurisdictions have been seeking to address those functions, and examines policy issues relating to pretrial justice, including the availability of detention for defendants who pose significant risks, the availability of citation release for those who pose minimal risks, the early screening of cases by prosecutors, and the early involvement of defense counsel. The information provided in this section regarding rural pretrial justice practices was obtained through surveys of rural jurisdictions and follow up telephone interviews.<sup>10</sup>

## Pretrial Justice Program Functions

**Collaboration to develop multi-county pretrial justice.** Most urban and suburban pretrial justice programs in the country serve individual counties. As is the practice in other areas of providing government services to rural areas, many rural pretrial justice programs serve multiple jurisdictions, allowing rural counties to share resources.

### EXAMPLES FROM THE FIELD

There are several different approaches to providing pretrial justice at a multi-county level. These include:

- » A statewide pretrial justice program. In Kentucky, for example, the pretrial justice program operates at the state level under Kentucky's Administrative Office of the Court. The program divides the state into 50 pretrial districts, 26 of which are in exclusively rural areas.
- » A government-run multi-county pretrial justice program. The Riverside Criminal Justice Agency covers about one-half of the Sixth Judicial District of Virginia. The

agency was established in 1995 to provide local probation and drug and mental health court services to two rural counties and one rural city in that judicial district. In 2000, the agency started providing pretrial justice services. The agency is governed by a Community Criminal Justice Board comprised of judges, prosecutors, defense, law enforcement, the sheriff and community members from each of the three jurisdictions. The Board of Supervisors of each locality appoints board members.

- » Services provided by a private, non-profit organization. Maine Pretrial Services is a private, non-profit

organization that provides pretrial justice programs by contracting with individual counties in Maine. It currently serves nine Maine counties, seven of which are rural. It also provides drug courts to some of the counties. When contracts are signed with the individual counties, staff are hired and assigned to the particular county. In each of the counties it serves, the program uses the pretrial risk assessment instrument that was empirically derived and validated in Virginia. The program hopes to validate that instrument for the Maine population.

**Screening, interview and investigation.** As noted, NACo and the ABA state that all defendants who have been arrested on criminal charges should be interviewed **before** their initial appearance in court. Ideally, the interview takes place in the period between a defendant's arrest and first appearance in court before a judicial officer. Some programs, due to resource limitations, conduct their interview and investigations after the initial bail-setting hearing, but this approach is not ideal since judges are forced to make release decisions without the benefit of the information provided by pretrial services. As a result, some defendants may be released with insufficient conditions, and others will spend need-less time in jail.

#### EXAMPLES FROM THE FIELD

In Kentucky, where 26 multi-county districts served by the statewide pretrial justice program are in exclusively rural areas, staff have faced challenges in getting interviews completed. Staff may have to drive long distances to a jail several counties away to conduct just one

or two interviews. The program has tried setting up the capacity to conduct interviews remotely through a video system but has run into bandwidth problems. As a result, the program is now looking into using web cams and Skype to do remote interviews.

**Assessing level of risk.** The ABA Standards on Pretrial Release make two key points relevant to risk assessment. First, that the risk assessment should be based on "objective" criteria. Second, the standards also state that "the information gathered in the pre-first appearance investigation should be demonstrably related to the purposes of the pretrial release decision and should include factors shown to be related to the risk of flight, threat to the safety of any person or the community and to the selection of appropriate release conditions."<sup>11</sup>

The factors that are most predictive of flight and re-arrest vary slightly among jurisdictions, as do the weights that are assigned to each factor, but most validated pretrial risk assessment instruments contain the following factors: current charge, prior criminal history, prior history of failure to appear, whether there are any pending cases, current residence, employment, and history of substance abuse.<sup>12</sup>

Validating risk assessment instruments where there are so few cases to study is a challenge facing many rural jurisdictions. Several rural pretrial justice program administrators reported adopting instruments that have been validated by an urban county within the state, or even from another state.

#### EXAMPLES FROM THE FIELD

The eight rural programs from Virginia that participated in the survey use a pretrial risk assessment instrument that was validated in a mix of urban, suburban and rural counties in Virginia in 2003, and then re-validated in 2009. Maine Pretrial Services, which serves nine counties in that state, also uses the tool that was validated in Virginia, as does the pretrial justice program that serves Canyon County,

Idaho. The program in rural Kandiyohi County, Minn., uses an instrument that was validated for Hennepin County, Minn. The statewide pretrial justice program in Kentucky uses a pretrial risk assessment instrument that was validated across all jurisdictions in the commonwealth, including the rural counties. (Copies of the Virginia and Kentucky validated pretrial risk assessment instruments are presented in the Appendix.)

*85% of surveyed rural pretrial justice programs make recommendations to the court based on the least restrictive conditions.*

*26% of surveyed rural pretrial justice programs review cases of detained defendants on a regular basis.*

**Recommending viable, least restrictive release options to address identified risks.** According to statutes and national standards, conditions of pretrial release should be related to the risk identified for each individual defendant and should be the least restrictive necessary to reasonably assure the safety of the public and appearance in court. Aside from the legal reasons to do so, use of the least restrictive conditions assures the most economical use of limited supervision resources. Moreover, research has shown that adding unnecessary conditions of release for low risk defendants can actually increase non-compliance for that population. As one researcher has noted, “[t]he law tells us that a person has a right to release on the least restrictive terms and conditions, and the research tells us that is going to produce the best outcomes.”<sup>13</sup>

#### **CASE REVIEW**

What happens if someone has conditions set by the court for release but the defendant cannot satisfy them? This is typical in the case of money bonds and more recently observed when conditions of release involve supervision fees charged to defendants (such as drug tests, electronic monitoring, or general supervision by a court or law

enforcement officer). Regardless of the reason, some defendants authorized for release by the court at first appearance are not released. Part of a high-functioning pretrial justice system is a case-review mechanism for monitoring all defendants detained and informing the court about their status to allow for a reconsideration of the conditions of release that resulted in detention.

**Effective community supervision strategies.** The Pretrial Release Standards of the National Association of Pretrial Services Agencies state that pretrial justice programs “should establish appropriate policies and procedures to enable the effective supervision of defendants who are released prior to trial under conditions set by the court. The agency or program should: (i) monitor the compliance of released defendants with assigned release conditions; (ii) promptly inform the court of facts concerning compliance or noncompliance that may warrant modification of release conditions and of any arrest of a person released pending trial; (iii) recommend modifications of release conditions, consistent with court policy, when appropriate; (iv) maintain a record of the defendants’ compliance with conditions of release; (v) assist defendants released prior to trial in securing employment and in obtaining any necessary medical services, drug or mental health treatment, legal services, or other social services that



would increase the chances of successful compliance with conditions of pretrial release; (vi) notify released defendants of their court dates and when necessary assist them in attending court; and (vii) facilitate the return to court of defendants who fail to appear for their scheduled court date.”<sup>14</sup>

Pretrial supervision may be a challenge for rural pretrial justice programs as the county or counties served by the program may span a very large geographical area and may not have much, if any, public transportation. This can make it difficult for defendants to report to the program for regular supervision appointments, including drug testing, and to make court appearances. This problem can be exacerbated if the defendant has lost his or her driver’s license either because the current charge is Driving While Intoxicated or the defendant is still under a license suspension for a previous drunk driving charge. There are a number of different strategies reported by rural programs to meet the need for information and face-to-face contact with transportation challenges and limited time and funding.

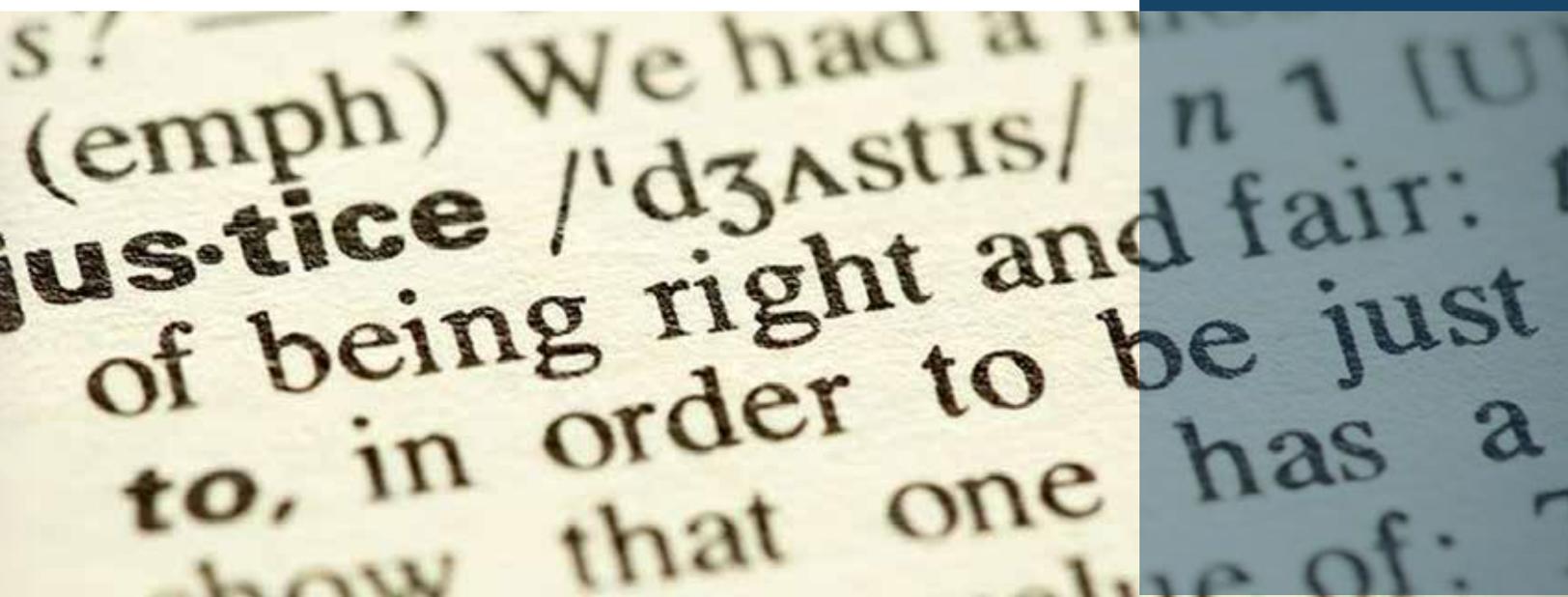
#### EXAMPLES FROM THE FIELD

In Canyon County, Idaho, the pretrial justice program, which is under the Sheriff’s Department, arranges for defendants with transportation or distance issues to report to law enforcement agencies closer to their homes. Maine Pretrial Services does the same. The Gallatin County, Mont., program allows defendants with

alcohol testing conditions to report to their local police stations. The program in Centre County, Pa., allows staff to meet with defendants in public places closer to the defendants’ homes, such as libraries or churches. The Riverside Criminal Justice Agency, which serves three rural Virginia localities, uses remote alcohol testing technology.

**Court date reminders.** The ABA says that pretrial justice programs should establish procedures to remind defendants of their upcoming court dates.<sup>15</sup> These reminders, which can be through telephone, mail, e-mail or twitter, should specify the date, location, and time of the appearance. Recent research has shown that this simple act can have a dramatic impact on reducing the likelihood of failure to appear, cutting failure to appear rates in half, or even more.<sup>16</sup>

*51% of surveyed rural pretrial justice programs report that a defense attorney is present at the initial appearance.*



*24% of surveyed rural pretrial justice programs make telephone reminder calls to defendants, and 4% send defendants reminder notices by mail.*

**Providing crime victims with mechanisms for reporting apparent violations of pretrial release conditions.** The victims' rights amendments, part of many state constitutions, require that criminal justice agencies notify victims of developments in a case, such as the date and time of hearings and any release of the defendant or offender. Some pretrial justice programs around the country alert victims about the initial appearance of the defendant in court and the pretrial release status of defendants. Developing relationships with victims is important for another reason. Often victims will have important information about a defendant's compliance with pretrial release conditions, and it is important for victims to know that they should convey any such information to the pretrial justice program.

**Data collection, analysis and reporting the outcomes of pretrial justice functions.** It is important that pretrial justice programs track their outcomes and performance. In 2011, the Pretrial Executive Network, a group of about a dozen program administrators convened by the National Institute of Corrections, developed a list of outcome, performance, and mission critical measures for pretrial justice programs (see Appendix C).<sup>17</sup>

Collecting data on these measures has been one of the most neglected functions of pretrial justice programs, whether they are large programs serving major urban centers or tiny programs serving small rural areas. Tracking outcomes, public safety measures and costs is vital in the current economic environment. While rural pretrial justice programs may not have the same resources that are available to their counterparts in larger jurisdictions, they do have one advantage – the relatively smaller volume of cases means that there are fewer cases to be tracked.

#### EXAMPLES FROM THE FIELD

Maine Pretrial Services utilized federal funds from a re-entry grant to develop an automated information system that could be used for its pretrial justice work.

## Policies Affecting Pretrial Justice in Rural Areas

**Preventive detention protocols.** The laws in several states recognize that some defendants present risks that are so high that no condition or combination of conditions of release can reasonably assure the safety of the community or appearance in court. In these situations, laws give the court the authority to hold these defendants without bail. Pretrial justice programs can help the court identify who these defendants are through the risk assessment process and bring these defendants to the attention of the court.

#### CITATION RELEASES

Using citation releases, instead of making a full custodial arrest, a law enforcement officer issues a directive, similar to a traffic ticket, to appear in court on a specific date. This reduces the number of people being admitted to jail on new charges.

The use of citation releases can be especially beneficial in rural areas, where law enforcement officers may have long distances to drive to transport people to jail. Citation releases save transport time and reduce costs associated with transport, booking and lodging. This can have a significant cost benefit in rural jurisdictions where few law enforcement officers may be on duty at any given time.

The ABA Standards state: “[A] police officer who has grounds to arrest a person for a minor offense should be required to issue a citation in lieu of taking the person to the police station or to court. In determining whether an offense is minor, the police officer should consider whether the alleged crime involved the use or threatened use of force or violence, possession of a weapon, or violation of a court order protecting the safety of persons or property.”<sup>18</sup>

**Early involvement of the prosecutor.** The Standards of the National District Attorneys Association state that prosecutors have the responsibility to screen cases “at the earliest practical time”<sup>19</sup> to “eliminate from the criminal justice system those cases where prosecution is not justified or not in the public’s interest.”<sup>20</sup> Moreover, prosecutor offices should provide the training and guidance to prosecutors assigned to this task to enable them to use sound discretion in making these decisions.<sup>21</sup> The commentary to these standards state: “It could be argued that screening decisions are the most important made by prosecutors in the exercise of their discretion in the search for justice.”<sup>22</sup> In addition to screening cases early, prosecutors should also be present at the initial appearance of the defendant in court. At the hearing, the prosecutor should make appropriate representations on behalf of the state on the issue of pretrial release.<sup>23</sup>

#### EXAMPLES FROM THE FIELD

In the rural counties served by Maine Pretrial Services, and in rural Canyon County, Idaho, prosecutors review each case between the time of arrest and the defendant’s initial appearance in court to determine whether to issue a complaint before that hearing. In addition, the pretrial justice programs in these jurisdictions provide the prosecutors with the pretrial justice report so that they are prepared to make representations regarding pretrial release at the initial court appearance.

**Early appointment of defense attorney.** NACo urges rural counties to “implement multi-county public defender systems that would enable a full-time public defender to cover a multi-county circuit similar to multi-county district attorney offices. A full time public defender should be an active participant in the local criminal justice system.”<sup>24</sup>

Providing defense representation at the initial court appearance for indigent defendants is a challenge in all types of jurisdictions – large and small. But the benefits of doing so are significant. A 2000 study conducted in Baltimore, Md., showed that defendants provided with representation at the bail-setting hearing were released more often and spent less time in jail than those not represented, with no impact on public safety rates.<sup>25</sup>





# Recommendations for Elected County Officials

*93% of surveyed rural pretrial justice programs provide supervision services for defendants on pretrial release.*

To establish or enhance pretrial justice in rural areas requires leadership, collaboration, and a series of next steps for county officials. From Kentucky and Virginia to Idaho and Maine, examples from the field illuminate lessons learned and inform how pretrial justice can be tailored to work in the rural context, with a number of rural tactics showing great promise. A crucial lesson that emerges from successful rural efforts is the importance of collaboration on multiple levels—multi-county partnerships, state and local governments, and local agencies in rural communities.

Ultimately, any approach should ensure that the ABA Pretrial Justice Standards be used for comparison so that new programs, or improvements made to existing pretrial justice are made through the existing Jail Population Management Collaborative or Criminal Justice Coordinating Committees (CJCC) using program data to make necessary policy and program adjustments.

## TO ESTABLISH OR ENHANCE RURAL PRETRIAL JUSTICE PROGRAMS:

**1. Develop coordinated, system-wide approaches for pretrial justice planning, implementation and monitoring.** Rural counties that don't have such groups, often called Criminal Justice Coordinating Committees (CJCC), should establish one. In many cases, a signed partnership agreement or memorandum of understanding between, the courts, the jails, state's attorney and defense helps establish the authority and oversight of pretrial justice and can span several counties within a region.

These committees should undertake the planning, implementation and monitoring of pretrial justice, tackling

tasks such as: **analyzing jail data, monitoring public safety data and mapping pretrial decision-making** (see appendices); **adopting a policy statement or resolution supporting pretrial justice; determining the administrative locus, program funding and management of pretrial justice programs; and ensuring that pretrial justice programs reflect national standards and best practices.**

**2. Review local ordinances and state statute pertaining to pretrial release decision-making for their compatibility with the pretrial standards outlined by the American Bar Association.** The law, professional standards and

research demonstrate that pretrial release decisions should be guided by risk assessment, not by defendants' access to money.

**3. Adopt regional approaches to providing defense representation.** In 2011, NACo adopted new policy urging rural counties (typically counties of fewer than 50,000 residents) to implement multi-county public defender systems, which allow a full-time public defender to serve within a multi-county circuit similar to multi-county district attorney offices.<sup>26</sup> According to the research, a full-time defender, active in the local criminal justice system and present at initial hearings, can play a significant role in safely reducing the number of defendants held unnecessarily at the pretrial stage.

**4. Educate constituents on pretrial justice through local, regional and state symposiums.** Publications, newsletters, conferences, trainings and technical assistance can build support for needed changes within the broader community and among stakeholders. Use the latest national polling results to help inform messaging and communications related to pretrial justice.

**5. Collect and analyze program and public safety data.** Routine data collection and reporting should be used to understand how the jail is being used, to illustrate the impact of the risk assessment instrument on the jail population and public safety, and to produce regular results reports to stakeholders. Cost benefit analysis can help make the case for using less expensive pretrial alternatives.

**6. Ensure that the ABA standards for pretrial justice programming are in place by advocating for changes within the system at the policy level.** Although multiple challenges exist in achieving these standards, there is capacity to change the status quo through collaboration with a variety of criminal justice agencies, including the judiciary, prosecution, defense, law enforcement and community-based providers. The public clearly supports the outcomes of quality pretrial justice programs as evidenced in recent public polls. Now, more than ever, multiple funding and learning opportunities exist at the local and national levels through a variety of sources (PJI, NIC, NACo), and the pretrial justice field offers a number of practices that can be replicated or tailored effectively to rural areas.

*46% of surveyed rural pretrial justice programs use risk assessment instruments that have been validated; 8 of these programs are located in Virginia, which uses a statewide validated tool.*



## APPENDIX A – ABA PRETRIAL RELEASE STANDARDS

### AMERICAN BAR ASSOCIATION (ABA) PRETRIAL JUSTICE STANDARDS

- » The use of citation releases by law enforcement in lieu of custodial arrests for non-violent offenses when the individual's identity is confirmed and no reasonable cause exists to suggest the individual may be a risk to the community or any other individual, or to be a risk to fail to appear in court.
- » The elimination of automatic, predetermined money bond schedules set with regard only to the arrest charge, instead requiring all arrestees to be individually assessed for risk of re-arrest and flight, prior to any pretrial release.
- » The screening of criminal cases by the prosecutor's office before the initial appearance to make sure that the charge before the court at the defendant's first appearance is the charge on which that the prosecutor is moving forward, and to make early assessments of the defendants' eligibility for any available problem-solving courts or diversion programs.
- » The presence of a defense counsel at the initial appearance who is prepared to make representations on the defendant's behalf for the court's pretrial release decision.
- » The existence of a pretrial services function that:
  - Interviews all defendants who are in custody before the initial court appearance;
  - Compiles the information that the court is required by law to take into consideration in making a pretrial release decision, and submits that information to the court;
  - Assesses each defendant's level of risk to be a danger to the community and to fail to appear in court using scientifically validated risk criteria;
  - Recommends to the court viable, least restrictive release options to address identified risks;
  - Has available and uses preventive detention protocols for defendants who pose unmanageable risks to public safety;
  - Provides accountable, transparent and evidence-based community supervision strategies that are aligned with the risk principle, which states that defendants should be provided with supervision that is commensurate with their identified risk levels ;
  - Provides court date reminder notices for all defendants;
  - Provides crime victims and others with mechanisms for reporting apparent violations of pretrial release conditions; and,
  - Provides regular reports to the court on the outcomes of individuals released pretrial.

## APPENDIX B – PRETRIAL RISK ASSESSMENT INSTRUMENTS

The following two pretrial risk assessment instruments have been validated in multiple jurisdictions, including rural counties, within their respective states – Virginia and Kentucky. Rural counties seeking to implement a pretrial justice program can “borrow” one of these instruments and use it as an interim risk assessment tool until there is an opportunity to validate it for the county.

### VIRGINIA PRETRIAL RISK ASSESSMENT INSTRUMENT

Risk Factor	Criteria	Assigned Points
Charge Type	If the most serious charge for the current arrest was a felony	1
Pending Charges	If the defendant had one or more charges pending at the time of arrest	1
Criminal History	If the defendant had one or more misdemeanor or felony convictions	1
Failure to Appear History	If the defendant had two or more failure to appear convictions	2
Violent Conviction History	If the defendant had two or more violent convictions	1
Length at Current Address	If the defendant lived at the current address for less than one year prior to arrest	1
Employed/ Primary Care Giver	If the defendant had not been employed continuously for the past two years and was not the primary caregiver of a child at the time of arrest	1
History of Drug Abuse	If the defendant had a history of drug abuse	1

The points assigned to each of the nine factors are used to calculate a total risk score, which ranges from 0-9. The point totals are then grouped into risk levels as suggested by the data, so that the lower the risk level the lower the probability of failure to appear in court or a rearrest.

Risk Level	Point Totals
1 (lowest)	0, 1
2	2
3	3
4	4
5 (highest)	5-9

### KENTUCKY RISK ASSESSMENT INSTRUMENT

Scoring Items	Points	
	Yes	No
Does the defendant have a verified local address and has the defendant lived in the area for the past twelve months?		2
Does the defendant have verified sufficient means of support?		1
Is the defendant’s current charge a Class A, B, or C Felony?	1	
Is the defendant charged with a new offense while there is a pending case?	7	
Does the defendant have an active warrant(s) for Failure to Appear prior to disposition? If no, does the defendant have a prior FTA for felony or misdemeanor?	2	
Does the defendant have prior FTA on his or her record for a criminal traffic violation?	1	
Does the defendant have prior misdemeanor convictions?	2	
Does the defendant have prior felony convictions?	1	
Does the defendant have prior violent crime convictions?	1	
Does the defendant have a history of drug/ alcohol abuse?	2	
Does the defendant have a prior conviction for felony escape?	3	
Is the defendant currently on probation/ parole from a felony conviction?	1	

### CUT-POINTS FOR THE PRETRIAL RISK ASSESSMENT INSTRUMENT

Risk Level	Point Totals
Low	0-5
Moderate	6-13
High	14 and higher

## APPENDIX C - LIST OF PERFORMANCE AND OUTCOME MEASURES FOR PRETRIAL JUSTICE PROGRAMS

### THE OUTCOME MEASURES INCLUDE THE FOLLOWING:

- » **Safety rate:** The rate at which defendants on release go through the pretrial period without being charged with any new offenses.
- » **Appearance rate:** The rate at which defendants appear for all their court dates.
- » **Concurrence rate:** The ratio of defendants whose supervision level or detention status corresponds with their assessed risks of pretrial misconduct.
- » **Success rate:** The percentage of released defendants who (1) are not revoked for technical violations of the conditions of their release, (2) appear for all scheduled court appearances, and (3) are not charged with a new offense during pretrial supervision.
- » **Pretrial detainee length of stay:** The average length of stay in jail for pretrial detainees who are eligible by statute for pretrial release.

### THE PERFORMANCE MEASURES IDENTIFIED BY THE PRETRIAL EXECUTIVE NETWORK INCLUDE:

- » **Universal screening:** The percentage of defendants eligible for release by statute or local court rule that the program assesses for release eligibility.
- » **Recommendation rate:** The percentage of time the program follows its risk assessment criteria when recommending release or detention.
- » **Response to defendant misconduct:** The frequency of policy-approved responses to compliance and non-compliance with court-ordered release conditions.
- » **Pretrial intervention rate:** The pretrial justice program's effectiveness at resolving outstanding bench warrants, arrest warrants, and capiases.

### THE MISSION CRITICAL DATA INCLUDE:

- » **Number of defendants released by release type and condition:** The number of release types ordered during a specific time, i.e., month or year.
- » **Caseload ratio:** The number of supervised defendants divided by the number of case managers.
- » **Time from non-financial release order to start of pretrial supervision:** Time between a court's order of release and the pretrial justice program's assumption of supervision.
- » **Time on pretrial supervision:** Time between the pretrial program's assumption of supervision and the end of program supervision.
- » **Pretrial detention rate:** Proportion of pretrial defendants who are detained throughout the pretrial period.

Collecting data on these measures has been one of the most neglected functions of pretrial justice programs. Whether they are large programs serving major urban centers or small programs serving rural areas, demonstrating the impact is vital. While rural pretrial justice programs may not have the same resources that are available to their counterparts in larger jurisdictions, they do have one advantage – the relatively smaller volume of cases means that there are fewer cases to be tracked.

## APPENDIX D - RURAL PRETRIAL SURVEY RESULTS

While this survey was not designed to be an exhaustive list of rural pretrial justice programs, it includes 41 rural pretrial justice programs: eight of which are located in Virginia, seven in New York, six in Minnesota, and four in Pennsylvania.<sup>27</sup>

### RURAL PRETRIAL JUSTICE PROGRAMS SURVEYED

State	Number of Pretrial Justice Programs Surveyed
Colorado	2
Hawaii	1
Idaho	1
Illinois	2
Indiana	1
Iowa	1
Kentucky	1
Maine	1
Minnesota	6
Montana	1
Nevada	1
New Hampshire	1
New York	7
North Carolina	2
Ohio	1
Pennsylvania	4
Virginia	8
<b>TOTAL</b>	<b>41</b>

**Program Service Areas:** Twenty-nine programs (71%) serve a single county; ten (26%) serve multiple counties within a state; and one program, Kentucky’s serves the entire state, and thus includes urban, suburban, and rural counties.

**Rural Demographics:** Fifteen programs (37%) serve a population of less than 50,000 people; twelve (32%) serve populations ranging between 50,000 and 100,000; nine (24%) serve populations ranging from 100,000 to 500,000.

**Annual Program Budgets:** Eighteen programs (44%) had annual budgets of less than \$200,000; ten (24%) had budgets that ranged between \$200,000 and \$500,000; four (10%) had annual budgets between \$500,001 and \$800,000; seven (17%), all serving multiple counties, had budgets over \$800,000.

**Program Staffing and Operations:** Seven of the programs (18%) have just one staff person, six (15%) have two staff; nine (22%) have between three and five staff; ten (24%) have between six and ten staff. Not surprisingly, programs that serve multiple counties have more staff. The Maine pretrial justice program, which serves 10 counties, has 22 staff dedicated to pretrial justice duties. The statewide Kentucky program has 264 staff who cover all urban, suburban and rural areas in the state.

Starting salary ranges for line staff varies from \$20,000 and \$30,000 in 13 (34%) of programs to \$30,001 and \$40,000 in 26 (63%) of the programs. Starting salaries for program administrators range from \$30,000 and \$40,000 for six (15%) programs, \$40,001 and \$50,000 for six (15%) programs, \$50,001 and \$60,000 for 13 (32%) programs, \$60,001 and \$70,000 for six (15%) programs, and over \$70,000 for eight (20%) programs.

Examining program hours of operation, 32 (78%) are open only during regular business hours. The remaining nine (22%) are open extended hours, including three that operate 24 hours a day.

Pretrial justice programs are located within a number of different administrative settings, including: the court, the jail, the probation department, independent agencies, or through contracts with non-profit groups. Twenty-five of the programs surveyed (66%) are administratively located within probation departments. Three programs (7%) are located in the courts and four (10%) in the jails. Another three (7%) are operated by private, non-profit organizations, and four (10%) are independent agencies.

The following table profiles 40 of the 41 rural pretrial justice programs that participated in the survey. Since the Kentucky program serves the entire state, that program is not included in this table. The programs are listed in order of the size of the staff.

## APPENDIX D

**CHARACTERISTICS OF RURAL PRETRIAL JUSTICE PROGRAMS**

<b>Staff Size of Program</b>	<b>Jurisdiction(s) Served</b>	<b>Population of Jurisdiction(s) Served</b>	<b>Annual Budget of Program</b>	<b>Administrative Location</b>
1	Single County	Less than 50,000	Less than \$200,000	Probation
1	Single County	Less than 50,000	Less than \$200,000	Sheriff/Jail
1	Single County	Between 50,000 and 100,000	Less than \$200,000	Probation
1	Single County	Less than 50,000	Less than \$200,000	Probation
1		Between 50,000 and 100,000	Less than \$200,000	Probation
1	Single County	Less than 50,000	Less than \$200,000	Probation
1	Single County	Between 100,00 and 500,000	Unknown	Probation
2	Single County	Less than 50,000	Less than \$200,000	Probation
2	Single County	Between 50,000 and 100,000	Less than \$200,000	Probation
2	Single County	Between 100,00 and 500,000	Less than \$200,000	Independent Agency
2	Single County	Less than 50,000	Less than \$200,000	Probation
2	Single County	Less than 50,000	Less than \$200,000	County Manager
2	Single County	Less than 50,000	Less than \$200,000	Private, Non-Profit
3	Single County	Less than 50,000	Less than \$200,000	Sheriff/Jail
3	Single County	Less than 50,000	Less than \$200,000	Probation
3	Single County	Between 50,000 and 100,000	Less than \$200,000	Independent Agency
3	Single County	Less than 50,000	Less than \$200,000	Probation
4	Single County	Between 50,000 and 100,000	Less than \$200,000	Probation
4	Single County	Between 50,000 and 100,000	Between \$200,000 and \$500,000	Courts
4	4 Counties	Between 50,000 and 100,000	Less than \$200,000	Probation
4	4 Counties	Less than 50,000	Between \$500,000 and \$800,000	Probation
5	3 Counties	Between 50,000 and 100,000	Between \$200,000 and \$500,000	Probation
6	Single County	Between 100,00 and 500,000	Between \$200,000 and \$500,000	Private, Non-Profit
6	2 Counties	Between 100,00 and 500,000	Between \$200,000 and \$500,000	Probation
7	4 Counties	Less than 50,000	Between \$200,000 and \$500,000	Probation
8	Single County	Less than 50,000	Between \$200,000 and \$500,000	Probation
8	Single County	Less than 50,000	Between \$200,000 and \$500,000	Probation
9	Single County	Less than 50,000	Between \$200,000 and \$500,000	Probation
10	Single County	Between 100,00 and 500,000	Between \$500,000 and \$800,000	Sheriff/Jail
10	Single County	Between 50,000 and 100,000	Between \$800,000 and \$1,500,000	Independent Agency
10	2 Counties	Between 50,000 and 100,000	Between \$200,000 and \$500,000	Probation
10	2 Counties	Between 100,00 and 500,000	Between \$500,000 and \$800,000	Probation
12	Single County	Between 50,000 and 100,000	Between \$500,000 and \$800,000	Probation
16	Single County	Less than 50,000	Between \$800,000 and \$1,500,000	Probation
37	12 Counties	Between 500,000 and 1,000,000	Between \$1,500,000 and \$10,000,000	Private, Non-Profit
61	14 Counties	Between 100,00 and 500,000	Between \$1,500,000 and \$10,000,000	Courts
Unknown	Single County	Between 100,00 and 500,000	Between \$200,000 and \$500,000	Sheriff/Jail
Unknown	Single County	Between 50,000 and 100,000	Between \$800,000 and \$1,500,000	Probation
Unknown	Single County	Between 50,000 and 100,000	Unknown	Private, Non-Profit
Unknown	4 Counties	Between 100,00 and 500,000	Between \$800,000 and \$1,500,000	Independent Agency

## APPENDIX E - ADDITIONAL RESOURCES

- » **Jail Population Management:** Elected County Officials' Guide to Pretrial Services, National Association of Counties, Bureau of Justice Assistance and Pretrial Justice Institute. With shrinking budgets and growing jail populations, counties across the nation are facing tough decisions on how to control county criminal justice costs while maintaining public safety. This document provides an overview for elected county officials on the roles that they can play in managing jail populations and reducing costs through the establishment or improvement of pretrial services and establishment alternatives to money bail. This document is available at <http://www.pretrial.org/Reports/PJI%20Reports/Jail%20Population%20Management%20Elected%20County%20Officials%20Guide%20to%20Pretrial%20Services%20>.
- » **Pretrial Services Program Implementation:** A Starter Kit. Pretrial Justice Institute. This “how-to guide” is an essential resource to jurisdictions attempting to establish or improve their pretrial services programs. It provides the steps that a jurisdiction should take in implementing the functions of a pretrial justice program, and a planning and implementation checklist. The appendices contain such materials as examples of interview forms, mission statements, policies and procedures, and job descriptions used by pretrial justice programs. This document is available at <http://www.pretrial.org/Reports/PJI%20Reports/PJI-StarterKit.pdf>.
- » **Promising Practices in Providing Pretrial Services Functions Within Probation Agencies:** A Users Guide, Pretrial Justice Institute and American Probation and Parole Association. With an increasing number of pretrial services programs being housed within probation departments, the Pretrial Justice Institute partnered with the American Probation and Parole Association to develop this Users Guide. This document should be very a useful tool to those jurisdictions who run or are planning on running their pretrial services program out of probation or parole. It describes the challenges that must be addressed in providing these functions within a probation setting and lists several strategies for successfully doing so. This document is available at <http://www.pretrial.org/Featured%20Resources%20Documents/APPA%20Guide%20Book.pdf>.

## Endnotes

- 1 Many of these efforts have been funded by the Bureau of Justice Assistance, an agency of the Office of Justice Programs, U.S. Department of Justice.
- 2 Kenneth M. Johnson, "Rural Demographic Change in the New Century: Slower Growth, Increased Diversity," Carsey Institute Issue Brief, 44, Winter 2012, at 1.
- 3 "2009 Survey of Pretrial Services Programs," (Washington, D.C.: Pretrial Justice Institute), 2010.
- 4 Todd Minton, *Jail Inmates at Mid Year 2010: Statistical Tables* (Washington, D.C.: Bureau of Justice Statistics, 2011).
- 5 Bureau of Justice Statistics' Justice Expenditures and Employment Extracts series.
- 6 Rational and Transparent Bail Decision Making: Moving From A Cash-Based to a Risk-Based Process (Washington, D.C.: Pretrial Justice Institute, 2012); Melissa Neal, *Bail Fail: Why the U.S. Should End the Practice of Using Money for Bail* (Washington, D.C.: Justice Policy Institute, 2012); and Spike Bradford, *For Better or For Profit: How the Bail Bonding Industry Stands in the Way of Fair and Effective Pretrial Justice* (Washington, D.C.: Justice Policy Institute, 2012).
- 7 For example, in the District of Columbia, 85 percent of defendants are released without having to post a money bond; 88 percent appear in court for all their hearings and 88 percent go through the pretrial period without a new arrest. The D.C. Pretrial Services Agency: *Lessons From Five Decades of Innovation and Growth*, (Washington, D.C.: Pretrial Justice Institute).
- 8 The first edition of the ABA Pretrial Release Standards was issued in 1968. These Standards have been updated several times, most recently in 2007. *ABA Standards for Criminal Justice: Pretrial Release (Third Edition)*, (Washington, D.C.: American Bar Association, 2007.)
- 9 National Association of Counties, *Justice and Public Safety, American County Platforms 2011-2012*, p. 10.
- 10 In 2009, the Pretrial Justice Institute conducted a survey of pretrial services programs nationwide. (The full survey report, *2009 Survey of Pretrial Services Programs*, can be downloaded at [www.pretrial.org](http://www.pretrial.org). Thirty-five pretrial services programs identified themselves in that survey as serving rural areas. These 35 programs were re-contacted in 2012 and asked to provide any necessary updates to the survey information. Six additional rural pretrial services programs were identified and completed the survey in 2012. Follow up telephone calls were then conducted with administrators of ten rural pretrial services programs.
- 11 ABA Pretrial Release Standard 10-4.2.
- 12 Cynthia A. Mamalian, *State of the Science of Pretrial Risk Assessment* (Washington, D.C., Pretrial Justice Institute, 2011).
- 13 National Symposium on Pretrial Justice: *Summary Report of Proceedings* (Washington, D.C.: Bureau of Justice Assistance, 2012), at 21.
- 14 *Standards on Pretrial Release: Third Edition*, (National Association of Pretrial Services Agencies, 2004), Standard 3.5(a).
- 15 ABA Pretrial Release Standard 10-1.10(b)(xi).
- 16 Jefferson County, *Colorado Court Date Notification Program: FTA Pilot Project Summary*, November 2005; Matt Nice, *Court Appearance Notification System: Process and Outcome Evaluation* (Multnomah County: Multnomah County Budget Office, March 2006); Matt O'Keefe, *Court Appearance Notification System: 2007 Analysis Highlights* (June 2007); Wendy White, *Court Hearing Call Notification Project* (Coconino County: Coconino County Criminal Justice Coordinating Council and Flagstaff Justice Court, 2006); Mitchel N. Herian and Brian H. Bornstein, "Reducing Failure to Appear in Nebraska: A Field Study," *The Nebraska Lawyer*, (September 2010).
- 17 *Measuring What Matters: Outcome and Performance Measures for the Pretrial Services Field* (Washington, D.C.: National Institute of Corrections, 2011).
- 18 ABA Pretrial Release Standard 10-2.2.
- 19 *National Prosecution Standards: Third Edition* (Alexandria: National District Attorneys Association, 2009), Standard 4-1.1.
- 20 *Id.*, Standard 4-1.3.
- 21 *Id.*, Standard 4-1.2.
- 22 *Id.*, Commentary to Standard 4-1.
- 23 *Id.*, Standard 4.4.4.
- 24 National Association of Counties, *Justice and Public Safety, American County Platforms 2011-2012*.
- 25 Douglas L. Colbert, Ray Paternoster, & Shawn Bushway, "Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail," *Cardozo Law Review* 23 (2002), 1719, 1720.
- 26 *Indigent Defense in Rural America. Justice and Public Policy Platforms and Resolutions: 2011-2012*, National Association of Counties, at 4-5.
- 27 This is not meant to be an exhaustive list of all pretrial services programs in the country that serve rural areas. It includes those that had participated in the survey.

Effective pretrial justice in rural communities requires collaboration on multiple levels — multi-county partnerships, state and local governments, and local agencies.



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