

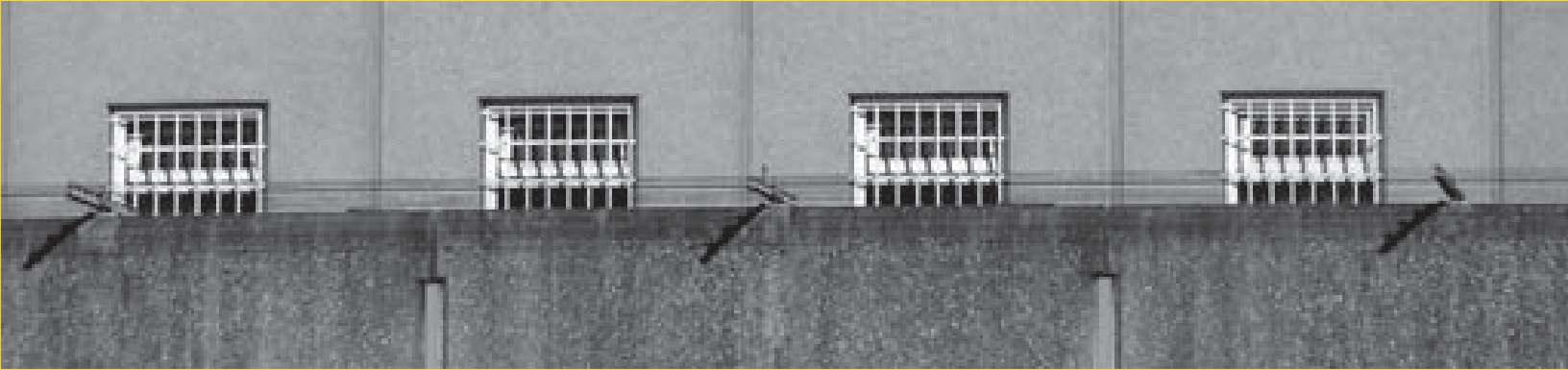


Jail Population Management: Elected County Officials' Guide to Pretrial Services

September 2009



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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.

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What is the problem?

With shrinking budgets and growing jail populations, counties across the nation are facing tough decisions on how to control county criminal justice costs while minimizing the effects on public safety. According to national data, local governments spend more on criminal justice than state governments or the federal government. Since 1982, the direct expenditure on criminal justice by local governments has grown from almost \$21 billion to over \$109 billion by 2006.¹

Rising Jail Populations and the Impact on County Budgets. There has been a significant rise in jail populations since 1990, in spite of a significant decrease in the reported crime rates during the same period. The National Crime Victimization Survey, conducted by the Bureau of Justice Statistics, reports that from 1994-2005, violent

1 Bureau of Justice Statistics' *Justice Expenditure and Employment Extracts* series.

crime rates have declined, reaching in 2005 their lowest level ever recorded. Compare this against Chart One.²

The increase in jail population has come with great cost to counties. Overall, counties have seen more than a **500 percent** increase in jail spending since 1982. In 2006, voters struck down an unprecedented majority of proposed county jail construction projects.³

Who is Really in Jail? Despite the public perception that jails are full of dangerous, hardened, or incorrigible criminals placed there as punishment for their crimes, national data on county jails present a different picture. County jails primarily house pretrial defendants (Chart Two). According to national data, two-thirds of jail

2 Bureau of Justice Statistics, *Prison and Jail Inmates at Midyear Series: 1990, 1992, 1994, 1998, 2000, 2002, and 2004*. U.S. Department of Justice.

3 "Most Jail Construction Projects Failed in 2006 Elections," *Correctional News* 12/30/2006.

Chart One: Jail populations on rise

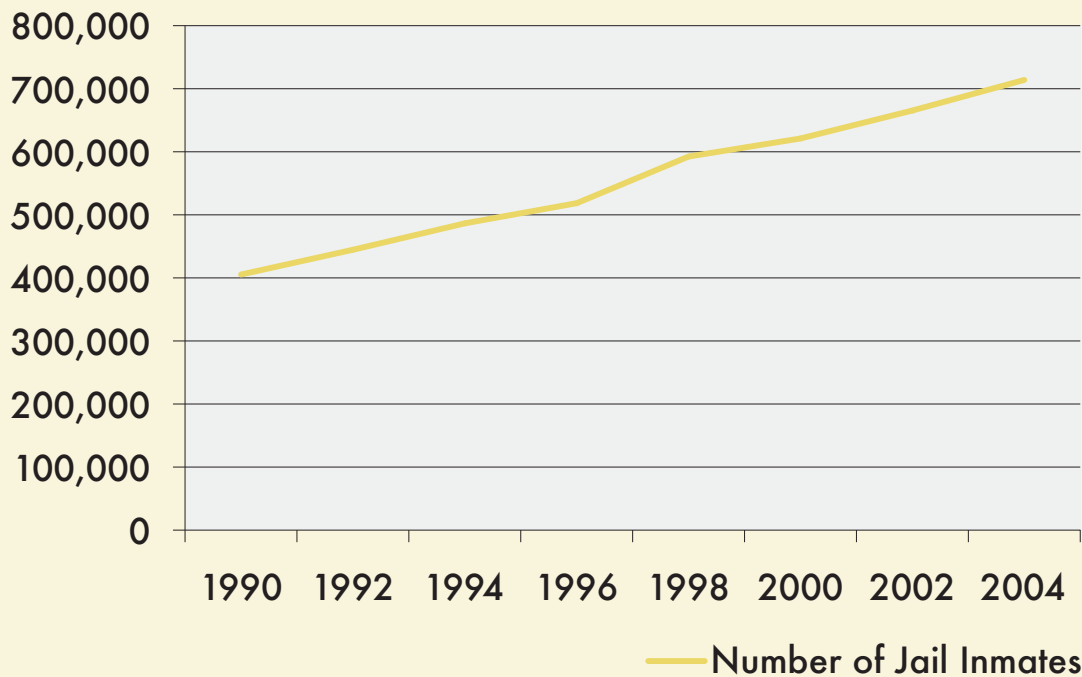
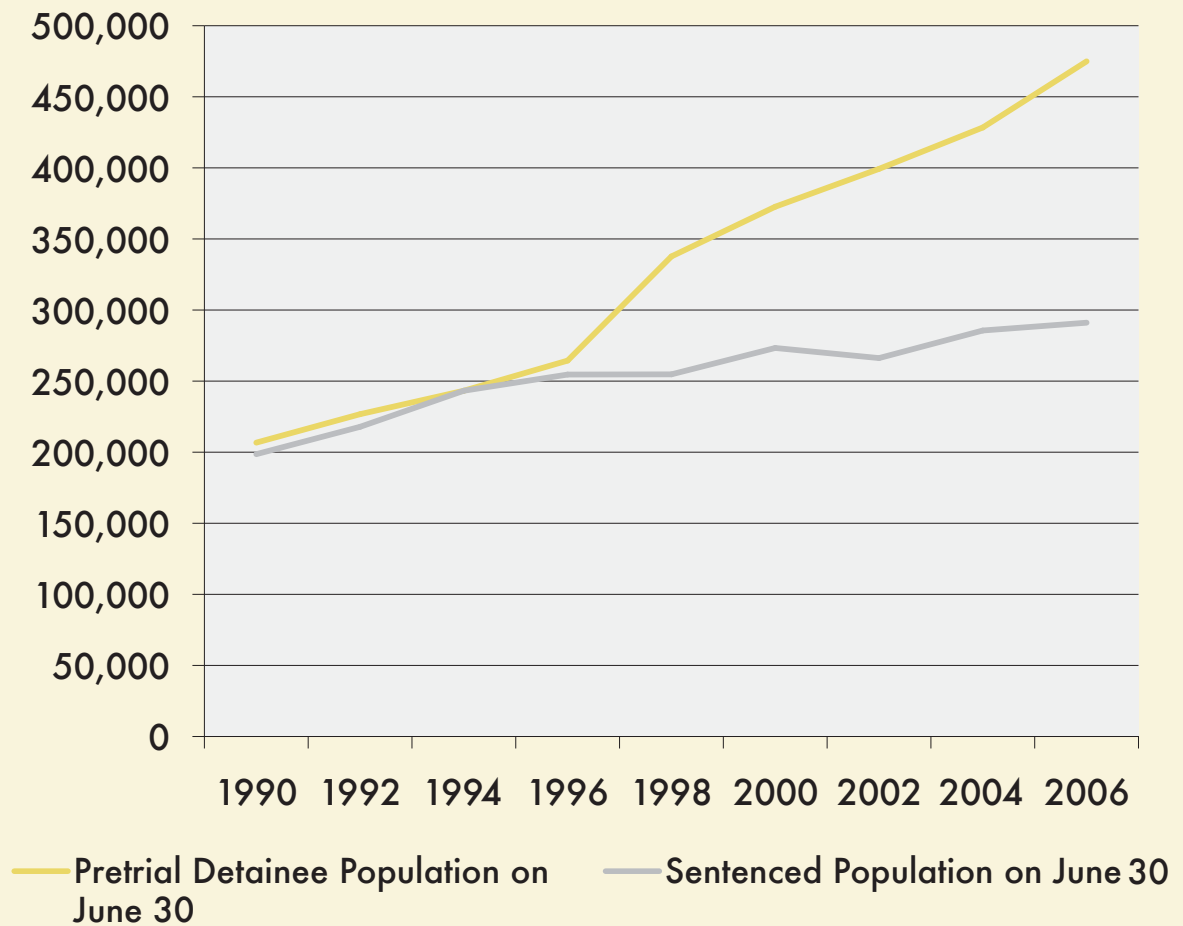


Chart Two: Pretrial vs. sentenced populations



inmates are in an un-convicted status, up from just over half in 1996.⁴

Overall, data show that of all the *un-convicted inmates* in jail on any given day, almost 35% have been charged with violent offenses, 22% with property offenses, 23% with drug charges, and 20% with public-order charges.⁵ For most communities, those arrested have been arrested before, and a very small number of arrestees are making up a large majority of the arrests. In

⁴ Data from the Bureau of Justice Statistics' *Jail Inmates at Midyear* series, 1996 – 2008.

⁵ Bureau of Justice Statistics. *Special Report: Profile of Jail Inmates, 2002*. July 2004, U.S. Department of Justice.

Lincoln, Nebraska, police reported that the list of individuals arrested 200 times or more had tripled in a six-year period. An analysis done in late 2007 in Athens-Clarke County, Georgia, showed that most of the male jail inmates were on their tenth stay in jail, and one was on his 112th. A majority of counties are spending significant resources on a small number of individuals. Dealing more effectively with those individuals during the pretrial stage of the system can translate into substantial cost savings.

Actions to address this can start as early as the initial court appearance. The court has several options when faced with bail setting, based solely on what the county provides via financial and/or non-financial release.

Financial release options include:

- commercial surety bond (defendant pays fee plus possibly collateral to bail agent),
- deposit bond to the court (defendant),
- full cash bond to the court (defendant), and
- property bond to the court (defendant).

Non-financial release options include:

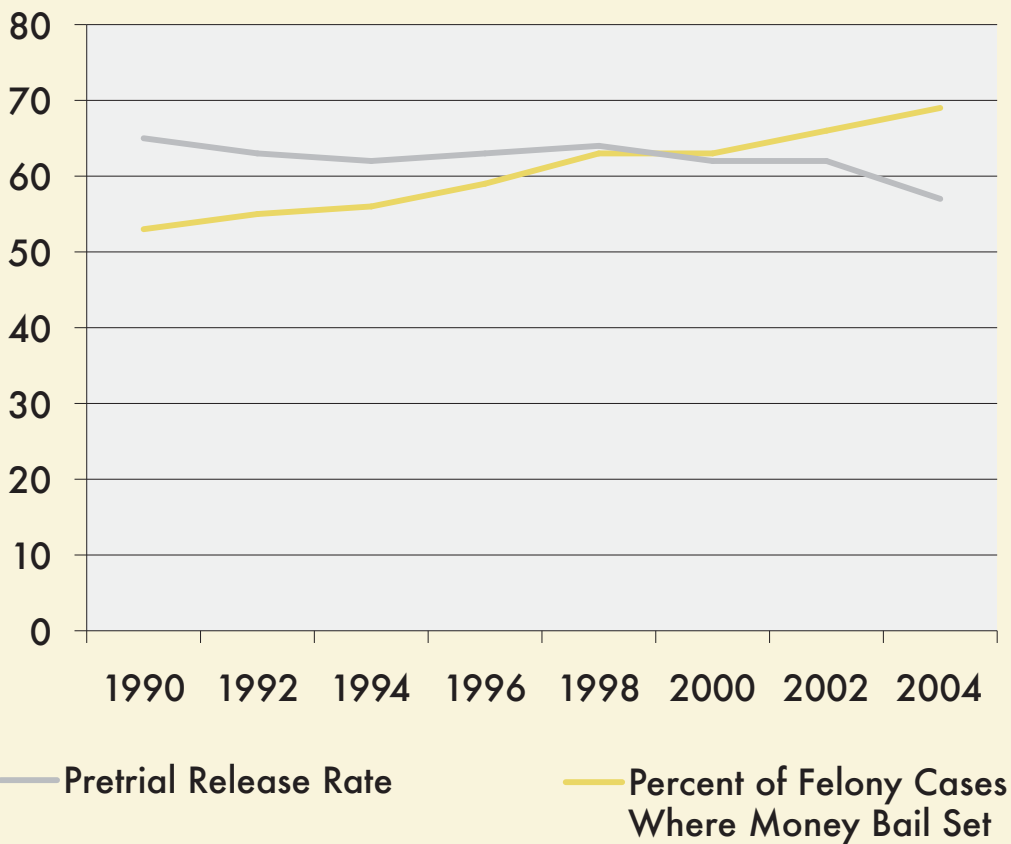
- released on own recognizance,
- conditional/supervised release (to a pretrial program), and
- unsecured bond (financial amount set but nothing required up front).

While no national data are collected on the pretrial release practices for misdemeanants, data

are available for felony defendants.⁶ Data show that financial bail is now set in **two-thirds** of felony cases nationwide, up from only half in 1990. As courts have imposed more and more financial bonds, the net result has been an increase in jail populations. This is because **5 out of 6** felony defendants detained pretrial were unable to post the financial bond ordered by the court. As Chart Three illustrates, there was a flip in 1998, whereby pretrial release rates for felony defendants decreased to the same degree that the use of money bail increased. These are not large bond amounts – the most common bond set was

⁶ All data from this section was taken from or extrapolated from: Bureau of Justice Statistics. *Pretrial Release of Felony Defendants in State Courts, SCPS 1990-2004*. January 2008 revision, U.S. Department of Justice.

Chart Three: Relationship between setting money bail and pretrial release rates



under \$10,000. With commercial surety bond, the most common type of financial release, the “decider” in these cases becomes any commercial surety agent in the community looking for business; the factor being considered is the defendant’s ability to pay the fee and offer collateral.

Of those released on non-financial conditions, typically all go back to their communities to work and to live within 24 hours of the court’s decision. The county absorbs the cost of detaining anyone financially released by the court but who cannot meet the financial release conditions. This trend is expected to continue, even accelerate, as a result of the current economic crisis across the country.

The number of jail inmates, both felony and misdemeanor, who are in an un-convicted status and considered “releasable” by the court has significant effects on jail population management. In a very short time, they become the primary cause of a county’s need to expand jail capacity by building expensive new facilities.

One effective strategy many counties use to reduce jail populations while maintaining community safety is an ideal pretrial services program. NACo’s 2009 American County Platform calls for counties to establish alternatives to money bail such as pretrial services programs.

Why does this matter to elected county officials?

Elected county officials have unique oversight of and responsibility for the local criminal justice and social services systems. This allows them to construct policies that account for improvements in both systems at the same time. There is an opportunity present to impact the pretrial population at the jail, and do so without unnecessarily endangering public safety and without usurping the roles of other governments or their officials. This document provides a set of recommendations that can ensure local resources are wisely used and that residents are protected from both victimization and wasteful spending.

In order to be effective with front-end criminal justice resources, the county must support an ongoing **jail population management collaborative**. Data from all parts of the system are vital to understanding the full scope of the factors contributing to jail populations and should be routinely provided to the collaborative. At a minimum, law enforcement, jail



administrators, judges, court administrators, prosecutors and defenders should be members of the collaborative.

The population of a jail is driven by two factors – the number of admissions and the length of stay. At the most basic level, jails should be able to provide county officials with figures on admissions, average length of stay, and average daily population. With this information, discussions about safely reducing the population can begin. If there are sub-populations within the jail who can be targeted for either release before admission or reducing their length of stay, they should be identified. Given analysis of national data, four times as many defendants serve time pre-trial than are incarcerated after conviction,⁷ consuming costly jail resources.

To ensure that jail operations are effective and that the correct people are being held in jail, county officials will need to continually engage in a process of asking for and reviewing data. A regular review of reports should be an agenda item for the collaborative.

Second, it would be beneficial for counties that do not currently have a **pretrial services program**⁸ to look into implementing one; for counties that already have a pretrial program, managing it well should be a top priority.

⁷ Malcolm M. Feeley, *The Process Is The Punishment: Handling Cases In A Lower Criminal Court* (1992).

⁸ National District Attorneys Association and the American Bar Association both have published professional standards calling for the establishment of pretrial services programs and the abolishment of bail bonding for profit. NDAA's National Prosecution Standards (1991) 45.1(c3) and ABA Standards for Criminal Justice, Third Edition, Pretrial Release (2002) 10-1.4.

Average Pretrial Programs¹

- Serve jurisdictions of 500,000 or less
- Half operate with 10 or fewer staff, administratively housed in courts or probation
- Annual budget of \$500,000 or less
 - » Starting salary of a Program Director/Administrator is between \$30,000 and \$90,000, depending on the size of the program. Sixty percent of program directors make less than \$70,000.
 - » Most line staff's starting salary is between \$30,000 and \$40,000.
- 69% of programs interview defendants before initial bail setting appearance
- One-third interview more than 5000 defendants per year, one-third 1000-5000 defendants per year, and one-third interview 1000 or fewer
- Almost half have validated the risk assessment instrument they use
- One-third call the defendant before the court date
- More than half produce an annual public report of performance

¹ Pretrial Justice Institute, *2009 Survey of Pretrial Services Programs*. Washington, DC.

What is an effective pretrial services program?

For the past 50 years, pretrial services programs have helped assure that defendants appear for court proceedings without wasting costly jail beds on defendants who can safely be released. Pretrial services programs play an important role in helping judges make more informed bail decisions by providing comprehensive information on each defendant. Through the use of research-based instruments to assess a defendant's likelihood to appear in court, remain arrest-free

while on pretrial release, and need mental health or substance abuse treatment, pretrial services programs provide a cost-effective and safe method for recommending release into the community. Once judges reach their pretrial release decision, pretrial services programs supervise the defendant in the community and notify the courts of any violation of release conditions.

Comprehensive pretrial services programs have the following operational elements:

1. Screening of every person arrested and booked into county jail.
2. Interview and investigation of information prior to a defendant's first appearance before a judge or magistrate or bail commissioner.
3. Use of research-based risk assessment instruments that guide appropriate release decisions and supervision conditions to assure return to court and public safety (see Appendix C).
4. Supervision of pretrial release conditions and regular reports to the court of both positive and negative outcomes.
5. Reminder of court date shortly before it is to occur.

Although operating a pretrial services program may appear fiscally challenging for small or rural counties, there are many models for providing these services cost-effectively, such as establishing a multicounty program, partnering with community- and faith-based organizations or incorporating pretrial services within existing structures such as jail administration or probation. A recent survey of existing pretrial services programs shows that the number of counties utilizing multi-county programs *doubled* from 2001 to 2009.⁹ Most pretrial services programs serve jurisdictions with populations of 500,000 or less.

⁹ Pretrial Justice Institute, *2009 Survey of Pretrial Services Programs*. Washington, DC.



In central Virginia, eight counties have pooled resources for pretrial services, which are administered by the nonprofit OAR/Jefferson Area Community Corrections (OAR/JACC). Counties in Virginia have engaged in comprehensive pretrial services since the state enacted the Pretrial Services Act in 1994. The act gave cities and counties state funding to establish their own pretrial services agencies to systematically improve the ability of judicial officers to assess defendants' risk to public safety while assuring their appearance in court.

“Because OAR/JACC has a long history of successfully providing pretrial services, we as counties are able to take advantage of that expertise, maximize our resources and achieve a higher quality of service and effectiveness by working with them,” says Albemarle County Executive Bob Tucker. “Without this multicounty arrangement, it would be a challenge to provide the level of services available through OAR/JACC.”

Albemarle County serves as the fiscal agent for OAR/JACC's pretrial services, but all of the counties that partner with OAR/JACC are represented on a Community Criminal Justice Board that reviews monthly reports and quarterly narratives on the work and progress of the organization's pretrial services. OAR/JACC dedicates six specially trained staff members to pretrial services. They interview and screen defendants using Virginia's validated risk-assessment tool on-site at two regional jails, complete record checks, make recommendations to the court and provide supervision to those who are released under certain conditions, which often include in-person visits, drug testing and substance abuse evaluation.

In 2007–08, the program completed roughly 1,200 interviews and pretrial investigations, made recommendations to the court in half the cases and received 687 placements for supervision. Of those under the supervision of OAR/

JACC, 85 percent successfully avoided re-arrest and appeared in court for trial or sentencing — better than the national average, according to the Bureau of Justice Statistics.¹⁰ As a result, the central Virginia counties saved hundreds of jail-bed days, their most expensive criminal justice resource.

Meaningful pretrial release supervision comes with associated costs, but pretrial release programs are **more cost-effective** than jail for those who can be safely supervised in the community. A study in 2007 by the North Carolina Governor's Crime Commission and Justice Analysis Center¹¹ collected data on 10 pretrial services programs operating in the state (either county or privately-run by a nonprofit). The following outlines the cost comparisons they found:

- The average daily number of individuals on pretrial release: 174
- The average length of stay on pretrial release: 118 days

10 *Pretrial Release of Felony Defendants in State Court: State Court Processing Statistics, 1990-2004*. Bureau of Justice Statistics, Department of Justice. Washington, DC, 2007.

11 *Pretrial Service Programs in North Carolina: A Process and Impact Assessment*. Department of Crime Control and Public Safety, North Carolina Governor's Crime Commission, October 2007.

- The average costs per person on pretrial release: \$6.04 per day
- The average cost of jail: \$57.30 per day
- Total cost of pretrial release for 118 days = \$123,870
- Total cost of jail if they had not been released = \$1,175,131
- **Average annual savings to counties: \$1,051,261**

Pretrial services programs provide for public safety and can protect alleged victims and the community-at-large by monitoring defendants awaiting trial. According to national data, overall rates of appearances in court and the ability to remain arrest-free while on release have varied only slightly over the last two decades. Court appearance rates have consistently been between 76 and 79 percent for those released pretrial. Their ability to remain arrest-free while pending trial has ranged from 79 to 87 percent for both misdemeanors and felonies. For felonies alone, the arrest-free rates are even higher, ranging from 87-90 percent over the last 20 years.¹² Programs that meet national professional standards and that are held accountable provide an invaluable service to the county.

12 *Pretrial Release of Felony Defendants*. November 2007, Bureau of Justice Statistics, U.S. Department of Justice.



How do you start a program or improve the one you have?

While statutes and laws vary by jurisdiction, there are national professional standards that pretrial services programs work to meet. The American Bar Association, the National District Attorneys Association, and the National Association of Pretrial Services Agencies have published standards for pretrial release and diversion programs. In addition, there is a national certification available to pretrial professionals. More information on these is listed in the Resources section at the end of this document.

Elected county officials can be instrumental in starting a program if one does not currently exist. There are several steps to follow to ensure that you have all the information you need and the program that is created is high functioning. The policies and procedures for the pretrial stage must result from a **collaborative process**, in which all criminal justice system stakeholders (including others such as victim advocates, community health and treatment providers)

are involved and working towards consensus. Regardless of the science behind your risk assessment instrument, defendants are human beings and thus true predictability is impossible. A team that stands together in the face of adversity, as the result of the collaborative process, has given counties the data and support that enables explanations for any systemic aberrations that might occur, without placing blame on one system actor or another.

First, understand the current release and detention decision-making process, in addition to collecting data. Who has the authority to do what? Can you map out the flow of decisions and steps in the front-end of your system? *Second*, through the collaborative, establish a vision, the goals, and objectives of the pretrial services program. Ensure that these are reached through consensus, and that each stakeholder has a chance to express their concerns and come to peace with the decisions made by the group. Each stakeholder must be able to defend the program as if he or she was its inventor – even if there are things about it that were achieved by compromise. Work this process until it gets to a level of cohesiveness.



Third, conduct the necessary administrative tasks:

- Determine the most efficient and effective location for the program (under the sheriff, at the jail, in probation, under court services, etc.).
- Determine the budget and staffing needs based on the policies and procedures outlined via the collaborative.
 - » Ensure resources are provided for monitoring and reporting out on program performance measures.
- Add additional staff as needed (there are pretrial services trainings provided by national organizations and the federal government, and maybe some within your state as well).

How do you manage the collaborative and the pretrial services program?

Elected county officials can exercise a direct management role of both jail population management collaboratives and pretrial services programs. There are a series of questions that criminal justice system stakeholders can and should answer on a regular basis, regardless of the existence of either a collaborative or a pretrial program. A report template can be created and given to each system stakeholder for the purpose of contributing his or her data on a monthly basis. This allows all stakeholders to see how their work contributes to the overall management of the jail population. Appendix A provides examples of what can be asked, along with answers for which you might strive.

Measuring the performance of the local criminal justice system as a whole, specifically the pretrial services program, should not be reduced to a single outcome. What information should be used to understand if the pretrial services program is working at an optimal level? How can the county official best direct the county's tight fiscal resources?

Many pretrial services programs are measured by failure to appear or re-arrest rates. A county with a 1% failure to appear rate or a 2% re-arrest rate may seem high performing, until it is discovered the pretrial program only interviews half of those arrested and booked, and the judges only release 10% of those recommended. Digging deeper into the practices of pretrial services programs, as well as the other system stakeholders mentioned before, can illuminate areas of opportunity to save county resources by improving those practices.

Counties with pretrial services programs might use Appendix B as a starting place for data collection.

A Case in Point – the District of Columbia

The District of Columbia Pretrial Services Agency (PSA) provides an example of a program that tracks performance of the pretrial stage of the DC justice system. DC has one of the oldest and largest pretrial programs in the country. It has a long and well-deserved reputation for providing quality services to its jurisdiction. In recent years, PSA is nearing the end of an evolution



toward a “performance-based results-oriented organization.”¹³ The mission of PSA reads: *The D.C. Pretrial Services Agency honors the constitutional presumption of innocence and enhances public safety by formulating recommendations that support the least restrictive and most effective non-financial release determinations, and by providing community supervision for defendants that promotes court appearance and public safety and addresses social issues that contribute to crime.*

Out of that mission, the program has identified three goals:

1. Support judicial officers in making the most informed and effective nonfinancial release determinations throughout the pretrial period. PSA will formulate and recommend to the courts the least restrictive release conditions to assure that the defendant will appear for all court dates and not pose a threat to any person or to the community while on release.
2. Provide effective monitoring or supervision of pretrial defendants, consistent with release conditions, so that they return to court and do not engage in criminal activity while under pretrial supervision.
3. Provide for, or refer defendants to, effective substance abuse, mental health, and social services that will assist in assuring that defendants return to court and do not pose a danger to the community.

Two outcomes that the program tracks are the percentage of defendants rearrested for violent and drug crimes during the period of pretrial release, and the percentage of cases in which a defendant failed to appear for at least one court hearing. The program has worked to make certain that it can provide that data. In PSA’s fiscal year 2008, 12% of defendants were rearrested while on pretrial release. For released defendants, 2% committed a violent crime while on release. Twelve percent of released defendants failed to appear for at least one scheduled court appearance.¹⁴

13 District of Columbia Pretrial Services Agency, *Strategic Plan: FY 2005 – FY 2010*.

14 DC Pretrial Services Agency FY2008 Organizational Assessment Report

While these are two very important outcomes for any pretrial services program, PSA recognizes that there is a third, equally important, outcome – maximizing safe release.

As a result of PSA’s successful work to provide high-quality services to the bench and the community, financial bail is used very sparingly in the jurisdiction. The majority of defendants are released on their own recognizance or to PSA with conditions they monitor. The remaining defendants, those for whom no conditions or combination of conditions will suffice, are held with no bail. Thus, a judge makes a decision, aided by the information and options provided by PSA, which results in the immediate release or the assured detention of the defendant. They do not use the practice that is typical in many other counties whereby judges set high bail amounts in hopes that the defendant will not be able to post it, thus staying in jail.

The PSA works very closely with its funding authority, as well as with judges, prosecutors, defenders and other key local officials, to review its work as it continuously strives to maintain an effective balance of maximizing release and minimizing failure. **The key to their success has been the ability to collect and report on data in a time frame that can impact policies and practices.**

Conclusion

The role of the county official is essential in jail population management, specifically through the management of the pretrial population. It is the county official who can take the lead to establish or improve a jail population collaborative, bringing all system stakeholders together. If pretrial services exist or are deemed to be a needed service, the county official can play a role in ensuring that the program is overseen by informed managers, asking the right questions, and being committed to improving jail functioning for the benefit of the community at large. Committing to pretrial programs can save county dollars and increase the functioning of the local jails by releasing and supervising those who pose manageable risk.

Resources

The **Pretrial Justice Institute (PJI)**, in partnership with the National Association of Counties Research Foundation (NACoRF) and with funding from the Bureau of Justice Assistance, is available to provide **free** education, guidance and technical assistance on effective pretrial services to elected county officials across the nation. For local assistance, elected county officials should contact Cherise Fanno Burdeen or Timothy Murray at www.pretrial.org or 202-638-3080.

The American Bar Association, the National District Attorneys Association, and the National Association of Pretrial Services Agencies' national standards on pretrial release and diversion can be found at www.pretrial.org/Resources.

The National Association of Counties Research Foundation (www.naco.org) offers education and technical assistance for our nation's counties in a variety of important issue areas, including criminal justice. The American County Platform outlines NACo's support for pretrial services. Through the platform, NACo encourages alternatives to the money bail system such as release on recognizance and supervised release programs, establishing quality intake and screening assessments to select persons for pretrial services and for data purposes, and greater use of non-financial pretrial release options. The American County Platform suggests that it is the primary responsibility of the counties to ensure public safety and at the same time protect the constitutional rights of convicted and pretrial persons.

Bureau of Justice Assistance Justice Assistance Grants (JAG). The JAG Program allows states, tribes, and *local governments* to support a broad range of activities to prevent and control crime based on their own local needs and conditions. JAG blends the previous Byrne Formula and Local Law Enforcement Block Grant (LLEBG) Programs to provide agencies with the flexibility to prioritize and place justice funds where they are needed most. Once a state's funding is calculated, 60 percent of the allocation is awarded to the state and 40 percent to *eligible units of local government*. States also have a variable percentage of the allocation that is required to "pass through" to units of local government. This amount is based on each state's crime expenditures. Additionally, the formula calculates direct allocations for local governments within each state, based on their share of the total violent crime reported within the state. Local governments that are entitled to at least \$10,000 awards may apply directly to BJA for Local JAG grants. One of the six JAG purpose areas is to support prosecution and court programs, which allows for improving the operational effectiveness of the court process by expanding prosecutorial, defender and judicial resources and implementing court delay reduction programs, including pretrial services.



Appendix A: Questions for Managing a Collaborative

Suggested Question	Who Should Answer	Ideal Answer and Why I Need to Know as the Elected County Official	My Current Answer
Is there a written policy about the issuance of citations instead of arrest for low-level offenses?	Law Enforcement	Yes. They include having to document any reason they arrest instead of cite (over-riding the policy). This is important because even one day in jail, especially the day of booking, is expensive.	
Are there regular reports that include specific data on the average length of stay, broken out by status (pretrial vs. sentenced)?	Jail Administrator	Yes. This provides details regarding an expensive county expenditure. It also identifies the scope of the opportunity for cost savings via pretrial services.	
Does the report include specific data about length of stay by offense type?	Jail Administrator	Yes. I need to know if my more-serious defendants are being detained while those who would probably receive probation or a fine are needlessly being held awaiting disposition.	
Does the report (or any other report) show the number of jail beds currently leased to the federal government (including immigration), state, and/or other counties?	Jail Administrator	Yes. I need to know how much revenue we are currently generating so I can compare it to the beds we could have available if we had an ideal pretrial services program. And I need to know if I have to lease or add bed capacity, how costs compare with what others are paying for bed space.	
Does the report provide specific data on costs associated with overtime?	Jail Administrator	Yes. Overtime costs our county money.	
Are these overtime costs due to crowding or some other issue?	Jail Administrator	If it's due to jail crowding, I should explore if the crowding is due to inefficiencies in, or ineffectiveness of, our pretrial justice system.	
Are there regular reports on criminal case activity?	Courts	Yes. The number of cases brought, dismissed and the speed of case processing impacts jail populations.	

Suggested Question	Who Should Answer	Ideal Answer and Why I Need to Know as the Elected County Official	My Current Answer
Are there written policies regarding the issuance of continuances in criminal cases? Do you know what the policy is?	Courts	Yes. Delays in case processing for defendants awaiting disposition in jail cost the county more money than those cases where the defendant is on release.	
Is there a regular court docket for defendants detained pretrial who have been charged with low-level offenses?	Courts	Yes. Moving cases faster when the defendant is in jail can help us save money. This is especially true among those detained pretrial who have served the maximum sentence that would be imposed.	
Are there specialty courts?	Courts	Yes. Diversion has a direct impact on both short term and long term criminal justice costs.	
Are they grant-funded or locally funded?	Courts	Grant funded programs can be a good way to pilot test an idea, but ultimately, successful programs must become part of our general operations.	
Do those courts increase or decrease your jail population?	Courts	Using jail as a sanction in specialty courts, however, can increase our jail costs and must be closely monitored to measure effectiveness and graduated sanctions must be used.	
Are bonds forfeited after failure to appear?	Courts	Yes, otherwise funds the county is entitled to through the contract with the insuring agent will not be realized. And if bonds are not required to be forfeited when a defendant fails to appear, there is no incentive to return said defendant.	
Is court-appointed counsel available to each defendant at first appearance?	Defenders	Yes. The defense counsel must be present to review the pretrial interview and release recommendation and advocate on behalf of the defendant.	

Suggested Question	Who Should Answer	Ideal Answer and Why I Need to Know as the Elected County Official	My Current Answer
Do they represent clients at bail setting?	Defenders	Yes. This moves cases faster and with less needless detention pretrial.	
Do they file motions to have bail reduced?	Defenders	Yes. This moves cases faster and with less needless detention pretrial.	
Are regular reports provided on the activities of the prosecutor's office?	Prosecutor	Yes. Their policies can have an unintended impact on county jail costs.	
Do the reports provide specific data on the average time between arrest and the decision to formally charge?	Prosecutor	Yes. The length of time between arrest and charging decision has a direct impact on the jail population – too long = high pretrial populations if they are not released to supervision. Early screening (even casual) expedites processes and typical dismissal rates are around 50%.	
Are there written policies for prosecutors regarding bail/pretrial release (i.e., bond schedule, prohibition against ROR for certain offenses)?	Prosecutor	Yes, because these policies have a direct impact on jail populations. Asking for bond in every case impacts jail costs and public safety.	
Does your county have diversion programs? Are they pre or post-plea?	Prosecutor	Yes. Pre-plea diversion programs allow for true diversion from prosecution and a reduction in the collateral consequences of a criminal record. For many charges, to delay the connection to community-based services (treatment, mental health) until after the plea is economically ineffective. The more individuals in my county with a criminal record, the lower my tax base. Post-plea diversion programs take longer than pre-plea, thus consuming jail resources needlessly.	
Does the prosecutor prioritize detention cases over those on pretrial release?	Prosecutor	Yes. Those who have been released by the court on bond but not yet posted bond are costly residents of the jails. Moving those cases through the system faster can reduce the costs.	

Appendix B: Pretrial Data Collection Questions

Suggested Question	Who Should Answer	Ideal Answer and Why I Need to Know as the Elected County Official	My Current Answer
Are there regular reports with specific data about defendants on pretrial release (ROR, surety, supervised release)?	Pretrial Services Program or Court Administrator or Clerk of Courts or Jail Administrator – whoever is responsible for documenting the release type.	Yes. How defendants are released, and at what rate, have cost implications for the county.	
How are defendants identified for alternatives to pretrial detention?	Pretrial Services Program	Interviews of each and every arrestee are conducted at the jail, and information is verified, in advance of the first appearance/bail setting hearing.	
Are all arrestees screened to determine appropriate pretrial release options?	Pretrial Services Program	Yes. Initial screening of individuals at the time of arrest allows the proper information to be gathered and verified. This information can then be used at the bail setting hearing. It can also be used to ensure people with mental illnesses are not released into the community without being connected to services. This increases public safety.	
Is a locally validated pretrial risk assessment instrument used?	Pretrial Services Program	Yes. It was objectively validated within the last three years.	
Does the pretrial program provide supervision?	Pretrial Services Program	Yes. Through call-ins, monitoring of court conditions such as drug testing or curfews, and possibly in-person meetings.	
Does the pretrial program provide proactive court date reminders for those on release?	Pretrial Services Program	Yes. Other counties have shown that simply reminding defendants of their court date within 24 hours of that date can reduce failures to appear.	

Suggested Question	Who Should Answer	Ideal Answer and Why I Need to Know as the Elected County Official	My Current Answer
If the court provides proactive notification, how is that done?	Pretrial Services Program	We use an automated calling system, or a text-messaging system.	
Is there a review of those who failed to make bail? If so, after how long?	Pretrial Services Program	Yes. The pretrial program does this within 30 days of their first appearance or bail setting hearing. They check to see if those released by the court have been released and if not, the reason for their failure to be released.	
How do we measure the performance of the pretrial stage of our system?	Pretrial Services Program	We measure the performance of that system in the following ways: 1) percentage of arrestees interviewed, 2) rate of and time to release based on those recommended for release, 3) rates of compliance with pretrial release conditions, 4) appearance rates for all court events, and 5) crime-free rates for those on release. They also track the average length of stay in jail for those in a pretrial status and when they rise above the baseline measure, they examine the cause. They also track the overall pretrial vs. sentenced population of the jail and when it rises above our baseline, they examine the cause. All this is done via the Jail Collaborative.	

Appendix C: Pretrial Risk Assessment

What is a pretrial risk assessment instrument?

While they differ from county to county, a risk assessment instrument (or tool) is typically a form (either completed by hand or computerized) where information from the pretrial interview/investigation, criminal history records, and current offense are used to answer a set of questions. The goal is to assess the risk that the defendant will be re-arrested or fail to appear in court while on release pending trial.

The answer to each question on the instrument provides a corresponding point score. At the end, the points are added together and a final score is produced. This score is then usually compared to a decision scale that may identify a defendant as low, medium or high risk. Another type of tool might use a yes/no scheme – where a single answer “no” may produce a recommendation against non-financial pretrial release. This information/recommendation is then presented to the bail setter so that he or she can make the most informed pretrial release or detention decision. Point-scales are the most popular kind of risk assessment instrument.

Several jurisdictions’ risk assessment instruments are posted at www.pretrial.org/PretrialServices/Essential-Functions/Pages/ObjectiveRiskCriteria.aspx.

What does it mean to “validate” a risk assessment instrument?

Having a validated risk assessment instrument means that the tool the county uses has been shown, through the objective collection and rigorous analysis of data, to have predictive value for the defendants in your system. Many counties start their programs by borrowing a risk assessment instrument from another county. Comparing several counties’ tools reveals that they often contain different items. What’s predictive in one county is not always found to be predictive in another. The key is to collect information on your own defendants and then, through sophisticated statistical methods that factor in the influence of other items considered in the risk assessment, analyze how often you are correctly predicting risk of rearrest or flight.

Why does my county need one?

There are four reasons to have a validated risk assessment instrument. The first reason is to ensure objectivity. Research has shown that release/detain recommendations informed by a neutral and objective assessment of the risk the person poses provide for more objectivity than when those recommendations are based on professional judgment alone. Often counties use validated risk assessments to reduce racial disparity or other types of bias about an individual. A second reason is for uniformity. Research has shown that having a risk assessment instrument increases the equality of the bail decision-reducing disparity from one courtroom to another. A third reason is to document a set of locally valid predictive factors that judges, defenders, prosecutors and pretrial professionals can understand, thus improving system collaboration. While the nature of the criminal justice system is adversarial to ensure protections of the individual, system-wide policies must be collaborative in order to ensure that they are working toward the goals of public safety and cost effectiveness, not conflicting with them. A final reason is that utilizing a pretrial risk assessment instrument provides transparency, a window into how recommendations are being made.

How do I get one or validate the one I already use?

There are a number of ways to devise a new risk assessment instrument or validate one you have been using. The key to either of these is data. If you neither use a tool now nor know what data to collect, the Resources section at the end of this document can point you in the right direction. Often, counties borrow an instrument from a similar county (demographics, crime statistics, etc.) and start collecting necessary data in an automated system in order to validate the instrument or create a new one.

Graduate programs at local universities can be a great resource to counties. Locate a university with programs in statistics or social science (criminal justice, sociology). Contact the chair of that department to discuss a possible project for a student who needs a Master’s thesis or dissertation topic. Creating a validated risk scheme for your county is a terrific project for a graduate student. There are also a number of commercial and nonprofit consultants who provide this service, along with other critical jail population and pretrial services assessment services that can assist you.

Appendix D: Profile of an Ideal Pretrial Services Program

Community Stakeholder Collaboration: The pretrial services program has a collaborative with regular meetings. The pretrial services program provides regular (quarterly) public reports about aggregate performance outcomes.

Mission Statement: The pretrial services program has a concise, written mission statement. The mission statement is more than the statutory language incorporating the program; it reflects the program's aims and purposes.

Operations Manual: The pretrial services program has a written, up-to-date "how to" manual that explains in detail the procedures that must be followed in performing each function of pretrial operations. The manual explicitly details the procedures for the pretrial interview, records check and verification, release assessment, supervision, and use of information systems.

Information System: The pretrial services program maintains a systematic automated case tracking and information system for the following purposes: monitoring defendant pretrial performance, measuring program performance/effectiveness, validating program practices, diagnosing problems, and testing the impact of implemented or proposed changes. Two types of information are needed to accomplish these: defendant-specific and aggregated numbers.

Training: The pretrial services program has a structured orientation and training program for new staff, ongoing training for line staff, and management training for supervisory staff.

Population Targeting/Universal Screening: The pretrial services program interviews, prior to the initial appearance before a judicial officer, everyone arrested or charged with an offense over which the court(s) that it serves has jurisdiction, with the following possible exceptions:

Those arrested solely on a probation or parole violation;

Those arrested for charges that are statutorily excluded from consideration by the pretrial services program;

If the defendant is released by other means before the initial court appearance; and,

System factors preclude interviews of certain defendants, such as imminent release by virtue of disposition at the initial court appearance.

Pretrial Interview: The interview elicits information concerning the defendant's community ties, criminal history, and mental health or substance abuse problems.

Records Check: Both in and out of county, including out of state, criminal records are checked, including arrests and dispositions. Also checked are the defendant's present criminal justice status (e.g., whether or not the arrestee has a pending charge or hold) and history of failure to appear.

Verification: Verification consists of confirming the information provided by the defendant by contacting references, and when discrepancies arise, re-interviewing defendants. Programs attempt to verify as much information as possible prior to the initial appearance. If the defendant is not released because of unverified information, the program continues verification efforts until as much, if not all, of the pertinent information is verified. The court is immediately notified when such verification occurs.

Risk Assessment: The pretrial services program uses a locally validated risk assessment instrument that in a consistent and equitable fashion effectively assesses the defendant's likelihood of failing to appear at future court hearings or of posing a risk to community safety, if statutorily prescribed. The assessment

tool was developed as a result of independently conducted research and reevaluated at least every three years.

Procedures exist to ensure that program staff in fact use the assessment instrument and use it consistently. A supervisor checks every report before it is presented to the court.

Recommendations: Based on an assessment of the defendant, the pretrial services program makes a recommendation to the court as to an appropriate release/detention decision. A range of options is available, such as release on recognizance, restrictive non-financial conditions, and as the last resort financial conditions (financial conditions are only imposed to assure appearance). Conditions are recommended on a graduated basis from least to most restrictive. Where applicable (i.e., in states with preventive detention legislation), recommendations indicate if preventive detention is appropriate.

Submission of Report to Court: The pretrial services program submits a written and/or oral report to the court and sends to the defense counsel and prosecutor in advance of the hearing. Pretrial staff are either present in court or are readily available to the court. Recommendations are made based on an appropriate set of supervision conditions, not based on the expected outcome by the bench. Records are kept as to the rate of acceptance of recommendations made to the court.

Supervision and Monitoring: Supervision includes contact supervision and referral or provision of services. Supervision plans are individualized and based on a scheme of graduated contacts and level of supervision dependent on pretrial performance. Compliance of defendants in supervision is monitored and recorded in the automated information system. A final report on the defendant's compliance with release conditions is prepared to assist in the compilation of pre-sentence report information. The effectiveness and reliability of community-based treatment and referral services used by the program is monitored regularly by the program and reported to the court on a quarterly basis.

Court Date Notification System: The pretrial services program carries out or supplements court date reminders to all defendants under their supervision. The reminder specifies the date, location, and time of appearance at least 24 hours before each subsequent court appearance. When no court date is issued at the time of the court appearance, the program provides written notification of the telephone number and name of a person to call who will provide such information (i.e., the date, time, and exact location of the court appearance).

Location and Return of Defendants Who Fail to Appear: The pretrial services program has procedures for attempting to locate and return defendants to court to preclude the issuance of a bench warrant as well as procedures for resolving the warrant once issued.

Review of Pretrial Custody Population: The pretrial services program reviews the pretrial detainee population at least weekly to determine if factors associated with the initial detention decision still apply and reports findings to the court.

Appendix E: Coordinating County Services During Pretrial Supervision

Pretrial services programs can serve a valuable function as a gatekeeper to other countywide services. According to many studies, rates of both mental health and substance abuse disorders are significantly higher in criminal justice populations than in the general population. Often unstable housing and underemployment accompany these issues.

A county's pretrial services program, through screening and assessment, can help identify needs and check if the defendant is already participating in a treatment program. Substance abuse, mental health issues, and other criminogenic factors can increase the risk of nonappearance and rearrest pending trial. Coordination of services during the pretrial stage can improve outcomes for the defendant, both in the short term (making court dates) and long term (ensuring continuity of care may shorten involvement with the criminal justice system). Elected county officials should emphasize coordination of countywide services during the pretrial stage. Cost efficiencies can be realized when duplication of services are reduced.

Example: Cuyahoga County (Ohio) Mental Health Court Initiative

Development of the Mental Health Court Docket became a critical collaborative initiative between the criminal justice and the mental health treatment systems. In 2002, the Court of Common Pleas along with Suburban Court partners developed the Mental Health Court Docket model for presentation and ultimate acceptance at the Eighth District Judicial Conference. The focus of this collaboration is to identify existing programs and services that serve these populations; to identify the gaps in services, and expand resources; to enhance communication and training which ultimately provides an efficient, effective and consistent criminal response. The objectives of the collaboration are early identification and linkages to treatment services for offenders with mental illness or those offenders that are developmentally disabled. Services include screening, assessment and sentencing responses, assertive community treatment, and crisis intervention teams.

To be eligible for the Mental Health Court Docket, clients must meet the following criteria per the diagnosis of a mental health professional.

1. A defendant is deemed to have a confirmed serious mental illness if within the previous six months, prior to arraignment, there is a clinical diagnosis of severe mental illness with a psychotic feature. This includes schizophrenia, schizoaffective, and other psychotic disorders. Clients diagnosed as having a mental disorder other than psychosis are ineligible for the clinical components but may be eligible and supervised by the probation component.

2. A defendant is deemed to be eligible if there is a clinical diagnosis that the defendant meets current Developmentally Disabled Offender eligibility of an IQ of 75 or less and/or an adaptive skills deficit.

Program Highlights:

- ▶ Mental Health Liaisons provide recommendations to assist the Suburban Courts and Police Departments with the mentally ill and developmentally disabled offender.
- ▶ Mental Health Liaisons visit the jails within 24 hours to provide evaluations and recommendations to the Police and Courts.
- ▶ Access to the jails psychiatric ward and NorthCoast Behavioral Healthcare for stabilization.
- ▶ Attorney consistency; an attorney appointed to defend the offender in the suburban courts is the same attorney who represents the offender at the Common Pleas felony level.
- ▶ The County Prosecutor and Public Defenders office have a designated point person for the Mental Health Court Docket.
- ▶ Specialized training for all individuals who interact with the offender; Judges, Attorneys, Police Officers, Probation Officers, etc.
- ▶ Improved and enhanced communication with the County Mental Health Board, Associated Boards and linkages to appropriate resources.
- ▶ Specialized judicial practices to address the mentally ill offender.

Appendix F: Talking Points/Action Steps

What is the problem?

- ▶ Since 1982, the direct expenditure on criminal justice by local governments has grown from almost \$21 billion to over \$109 billion in 2006.¹
- ▶ There has been a significant rise in jail populations since 1990, in spite of a significant decrease in the reported crime rates during the same period.
- ▶ Jails primarily house pretrial defendants. According to national estimates, two-thirds of jail inmates are in a pretrial status.
- ▶ Overall, data show that of all the *unconvicted inmates* in jail on any given day, most are non-violent: almost 35% have been charged with violent offenses, but 22% with property offenses, 23% with drug charges, and 20% with public-order charges.²
- ▶ Data show that financial bail is now set in **two-thirds** of felony cases nationwide, up from only half in 1990.³
- ▶ *As courts have imposed financial bonds, the net result has been an increase in jail populations.* This is because **only half** of felony defendants released through financial conditions were able to meet that bond. The result is use of expensive jail space.
- ▶ One effective strategy many counties use to reduce jail populations while maintaining community safety is by having a high-functioning pretrial services program.

1 Bureau of Justice Statistics' Justice Expenditure and Employment Extracts series.

2 Bureau of Justice Statistics. Special Report: Profile of Jail Inmates, 2002. July 2004, US Department of Justice.

3 Bureau of Justice Statistics. Pretrial Release of Felony Defendants in State Courts, SCPS 1990-2004. January 2008 revision, US Department of Justice.

Why does this matter to me?

- ▶ As the stewards of local resources, county officials can ensure they are wisely used and that their constituencies are protected from both victimization and wasteful spending.
- ▶ If there are sub-populations within the jail who could be targeted for either release before admission or reducing their length of stay, they should be identified.
- ▶ It would be beneficial for me to explore implementing a pretrial services program. **(Or).** It's time to ensure I am managing well the pretrial services program I have.
- ▶ Pretrial release programs are **more cost-effective** than jail for those who can be safely supervised in the community.
- ▶ A study in North Carolina in 2007 showed the program saving the county over \$1 million in jail bed days during a three-month period.

What is a pretrial services program?

- ▶ Pretrial services programs play an important role in helping judges make more informed bail decisions by providing comprehensive information on each defendant.
- ▶ Once judges reach their pretrial release decision, pretrial services programs supervise the defendant in the community and notify the courts of any violation of release conditions.
- ▶ The number of counties utilizing multi-county programs *doubled* from 2001 to 2009.⁴ Most pretrial services programs serve jurisdictions with populations of 500,000 or less.

4 Pretrial Justice Institute. 2009 Survey of Pretrial Services Programs. Washington, DC

Action Steps

- ▶ Start or reinvigorate a **jail population management collaborative**, where all criminal justice system stakeholders (including others such as victim advocates, community health and treatment providers) are involved and consensus is achieved.
- ▶ *First*, understand the current release and detention decision-making process, in addition to collecting data. Who has the authority to do what? Map out the flow of decisions and steps in the front-end of the system.
- ▶ *Second*, through the collaborative, establish a vision, the goals, and objectives of the pretrial services program. Ensure that these are reached through consensus, and that all stakeholders have a chance to express their concerns and come to peace with the decisions made by the group.
- ▶ *Third*, conduct the necessary administrative tasks:
 - ▶ Determine the most efficient and effective location for the program (under the sheriff, at the jail, in probation, under court services, etc.)
 - ▶ Determine the budget and staffing needs based on the policies and procedures outlined via the collaborative.
 - Ensure resources are provided for monitoring and reporting out on program performance measures
 - ▶ Hire a director and staff, provide them with training (there are pretrial services trainings provided by national organizations and the federal government, as well as within your state depending upon where you are).
 - ▶ Collect and analyze data.

