

EFFECTIVE PRETRIAL PRACTICES IMPLEMENTATION TOOLKIT

DEVELOPED BY THE CHIEF PROBATION OFFICERS OF CALIFORNIA
AND THE PRETRIAL JUSTICE INSTITUTE

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California is on the verge of a monumental shift to its justice system. Removing wealth as the determinant of who is detained pretrial and who is not has the potential to positively influence community safety, individual liberty, and racial equity. However, as with any wide-ranging state policy reform, the ultimate impact will be determined by how the law is implemented at the local level. Probation chiefs are positioned to shape the future of pretrial justice, both as leaders of their departments and partners in the broader county criminal justice system.

The Effective Pretrial Practices Implementation Toolkit is intended to provide a high-level overview of key topics in local pretrial justice, along with analysis, practice guidance, and resources for probation chiefs. Each section includes an overview of the topic, implementation checklists when applicable, and additional resources for those seeking more detailed reference materials. Consider this toolkit as a “quick-start” guide.

The future of pretrial justice in California is uncertain, as stakeholders await the fate of SB 10, which will be subject to voter referendum in November 2020, and the case of *In re Humphrey*, which is pending before the state Supreme Court. As probation chiefs await decisions in both of these arenas, there is still the opportunity to implement state-of-the-art, legally sound, and research-based pretrial practices. As a first step in this process, this toolkit integrates the best practices in local pretrial justice with the requirements of SB 10. This will include a focus on the components of pretrial that are in probation’s purview, assessment and monitoring, as well as additional elements of effective systems that require collaboration across stakeholder groups.

This toolkit was developed in collaboration with the Chief Probation Officers of California and the Pretrial Justice Institute (PJI). PJI is a national, non-profit organization working for safe, fair, and effective juvenile and adult pretrial justice by promoting reforms in policing, bail, and diversion practices and policies. Decades of experience have made PJI a hub of useful information and pragmatic strategies. We are continuously developing innovative ways to disseminate what we know and cultivate vital networks of expert practitioners who can share the latest perspectives on what works. Additional resources are available on our website, www.pretrial.org, and through our online community and resource library, the University of Pretrial, at university.pretrial.org.

THE PRETRIAL JUSTICE SYSTEM

OVERVIEW

Like many facets of criminal justice, the pretrial justice system is comprised of several disparate components and includes a number of decision makers. Coordination among those decision makers determines whether pretrial functions as a true system, and collaboration with community groups and impacted individuals determines whether the system is viewed as fair and legitimate.

“Pretrial” encompasses decision points ranging from initial contact with law enforcement, which may or may not result in arrest, through disposition of a case. The goals of pretrial justice, as prescribed in federal law and upheld by the Supreme Court, are:

- Maximizing public safety;
- Maximizing pretrial release; and
- Maximizing court appearance.

Most state constitutions and statutes, including California’s, follow the federal precedent regarding the role of bail in achieving these goals: liberty is intended as the norm, and conditions of release are permissible when needed to reasonably assure appearance in court and public safety. When no condition or combination of conditions can provide this reasonable assurance, then pretrial detention is permitted. The challenge within pretrial systems is to determine how to best achieve a balance between court appearance, public safety, and pretrial release.

The most influential pretrial decision points are described in the table below, along with their impact on the pretrial balance. Attention to each of these decision points allows local justice systems to determine the balance that works for them—police responding to community disturbances while avoiding criminalization of mental illness, courts protecting the public while safeguarding due process, and pretrial officers holding defendants accountable while avoiding a revolving door at the jail. Probation does not have a direct influence on all of the decision points, but they are included here to place probation’s role in context.

Additionally, decisions at each of these points has the potential to contribute to another pervasive imbalance--racial, ethnic, and gender disparities. Any attempt to address bias within pretrial assessment requires data collection, monitoring and transparency, while providing the same level of attention at each decision point outlined below.

Deflection/Pre-Arrest Diversion

Individuals with mental and behavioral health issues are a frequent challenge for law enforcement and the jail. The option to divert to clinical or other support services can prevent individuals from entering the pretrial system.

Citation in Lieu of Arrest

Requiring or permitting law enforcement to issue citations when certain criteria are met (e.g. nonviolent charges, verifiable identity) can reduce the frequency of custodial arrests for people who are likely to be released at booking or first appearance.

Delegated Release Authority

Delegated release authority allows jail staff or pretrial officers to release individuals prior to first appearance, again avoiding unnecessary jail stays. (SB 10 requires delegated release for people with low- level non-violent charges without pretrial assessment.)

Pretrial Assessment

A validated actuarial pretrial assessment tool provides information on the statistical likelihood of success on pretrial release, and can be used to inform, but not replace, judicial decisions. Assessments are not intended to be the determinant of pretrial detention, but they are part of an overall strategy to increase pretrial release.

Review of Charges by a Seasoned Prosecutor

Bail decisions and assessment scores are heavily influenced by the current charge, though charges are often reduced or dropped once the prosecution has the opportunity to review available evidence. Early review of charges can allow for more accurate bail decisions or dismissal of unsustainable cases pre-arraignment.

Presence of Defense at First Appearance

Defense representation at first appearance allows the defense to present unique aspects of the case for the judge's consideration, thus upholding the constitutional requirement for individualized bail decision making. Defense attorneys can also work with their defendants to arrange for needed treatment or other community-based supports. (SB 10 provides for indigent defense at preventive detention hearings, though best practice encourages representation at the first bail determination.)

First Appearance/Bail Determination

The judicial decision at first appearance must be individualized to the circumstances of the case, and the judge must weigh pretrial release, public safety, and court appearance. (SB 10 includes a presumption of release under most circumstances and a requirement for a separate, timely hearing for preventive detention.)

Bail Review

Bail review allows parties to a case to request judicial review of individual bail determinations. (The Humphrey case resulted from a request for bail review in San Francisco. SB 10 allows for a judicial review of either terms of release or preventive detention as a result of a change in circumstances.)

Preventive Detention Hearings

Best practice indicates that a full adversarial hearing is required for preventive detention, with the onus on the prosecution to make the case for detaining an individual under most circumstances. (SB 10 aligns with best practice, though because it allows for a wide detention eligibility net, court rules at the state and local level will have a significant impact on preventive detention rates.)

Pretrial Diversion

Pretrial diversion is a voluntary option for arrested individuals that provides alternative criminal case processing and often results in the dismissal of charge(s) upon successful completion. Diversion is most successful when it is collaboratively implemented and has clear criteria for participation.

Pretrial Monitoring

For individuals with higher scores on pretrial assessments (indicating a lower likelihood of pretrial success), community monitoring can increase the likelihood of pretrial success. Monitoring should include the least restrictive conditions necessary and incorporate graduated responses to violations.

Case Processing

The longer the pendency of a case, and the more hearings that take place, the more opportunities exist for pretrial failure. Streamlined case processing increases the effectiveness and efficiency of the pretrial system.

PRETRIAL JUSTICE SYSTEM RESOURCES

Where Pretrial Improvements Are Happening

This quarterly publication of the Pretrial Justice Institute provides updates on pretrial system improvements around the country, including legislation, litigation, and local practice change.

Great Ideas Policy and Reform: Want to Reduce Drugs in Your Community? You Might Want to Deflect Instead of Arrest

This brief article in Policing Magazine describes the role and benefit of deflection.

What Pretrial Systems Look Like Without Money Bail

This issue brief from the Pretrial Justice Institute describes what pretrial justice system without money bail can look like.

Top Takeaways from Smart Pretrial in Yakima County, Washington

Yakima County, Washington engaged in comprehensive local pretrial system reform as part of the Smart Pretrial Demonstration Initiative. This brief describes their major system changes and their impact.

Procedural Justice

This website from the Center for Court Innovation provides an overview of procedural justice and resources for increasing the legitimacy of your justice system.

THE ROLE OF PROBATION IN PRETRIAL JUSTICE

PROBATION AND PRETRIAL SERVICES

In many jurisdictions, probation is a natural choice for taking on pretrial assessment and monitoring functions. Probation officers are familiar with the role of assessments in the criminal justice system and providing recommendations and reports to judges. As Chairs of the Community Corrections Partnerships, California's probation chiefs are in a natural position to convene pretrial stakeholders, examine local pretrial decision points, and identify opportunities for improvement.

At the same time, probation must recognize when pretrial services require different functions and goals. People with pretrial status are entitled to the presumption of innocence, and as such, officers must be careful to abide by the principle of least restrictive conditions. With regard to assessments, pretrial services are concerned only about new criminal activity during the usually short period that someone is on pretrial release, while probation officers may be concerned about the chance of long-term recidivism.

Probation departments and their judicial partners can have a substantial impact on pretrial outcomes through:

- Thoughtful selection of an assessment and a related decision-making framework, which will link assessment results to terms of monitoring;
- Limiting conditions of release to the least restrictive necessary;
- Ensuring that resources are allocated to effective conditions of release;
- Offering referrals to available community-based support services outside of the purview of probation; and
- Developing an infrastructure for administrative responses to violations.

True systemic changes generally require an intrinsic commitment on the part of stakeholders, as well as a shared vision for what the system could be. For chiefs who wish to achieve the goals of public safety, court appearance, and pretrial release, they can consider:

- Leading a formal collaborative charged with pretrial system improvement;
- Developing a shared statement of vision, values, and goals for the pretrial system;
- Engaging in a process of system mapping, review of baseline data, and identification of priorities for system improvement; and

- Creating a detailed implementation and sustainability plan as well as broader system improvement.

This role is familiar to probation chiefs; they have been asked to lead several major reform initiatives over the past several years. Both SB 10 and the impending Humphrey decision may offer another opportunity to contribute to the overall improvement of criminal justice in California through the application of legal and evidence-based pretrial practices.

OPERATIONAL READINESS

In addition to the legal and evidence-based practices of pretrial, probation departments must also consider the infrastructure needed to fulfill their assessment and monitoring functions.

PRETRIAL SERVICES OPERATIONAL CHECKLIST

- What is the target population for the program's services?
- What is the program's access to criminal history records, including prior convictions, prior failures to appear in court, current status on probation, parole or pretrial release, and current and past jail stays?
- Will staff need to interview a defendant before the initial bail hearing?
 - If so, what access do staff have to defendants to complete those interviews in time for the initial bail hearing?
 - What is a typical number of defendants needing to be interviewed before the initial bail hearing?
 - What time is the initial bail hearing held?
 - Do you have the resources available to complete the interviews in time for the initial bail hearing?
 - Have the interview questions been developed?
- Where is the initial bail hearing held?
 - Will staff attend the hearing?
 - Are bail hearings held in multiple locations in your jurisdiction?
 - If so, do you have the staff to cover those hearings?

- What information will be presented to the court at the bail hearings?
 - Will the information be presented in a written report or an oral report?
- What is the program's expected supervision caseload, broken down by supervision levels?
 - Do you have the staff resources to manage such caseloads?
- Have the program's policies and procedures been recorded in writing and distributed to staff?
 - Have staff been trained on the policies and procedures?
 - Are quality control measures in place to assure staff fidelity to policies and procedures?
- Is an information system in place to capture data on program activities and outcomes?

EFFECTIVE IMPLEMENTATION

In addition to legal and evidence-based practices specific to pretrial, the body of research known as "implementation sciences" is relevant to the success of pretrial system improvements as well. Implementation sciences describe the components necessary to implement an intervention in a way that achieves its desired outcomes. Very often, implementation failures are blamed on flaws in the intervention itself, when in fact the intervention was put into place incompletely or ineffectively.

The National Implementation Research Network, NIRN, is the authority on implementation research, and offers a model for comprehensive implementation as well as an online training and resources through their Active Implementation Hub. NIRN articulates drivers of effective implementation, including dimensions of competency, leadership and organizational structure; it also describes stages of implementation that can be used to diagnose progress and plan for next steps. Reviewing this literature prior to and during implementation will allow probation leaders to more effectively address potential roadblocks on the path from adopting new policy to achieving desired outcomes.

THE ROLE OF PROBATION RESOURCES

Pretrial Release and Probation: What is the Same and What is Different?

This analysis by Timothy Schnacke explores the legal and practical similarities and differences between probation and pretrial, and examines how they can effectively coexist in the same agency.

National Implementation Research Network's Active Implementation Hub

This website is a repository for implementation sciences resources, tools, and lesson plans.

Implementation Drivers: Assessing Best Practices

This NIRN tool is a helpful checklist of factors that influence successful implementation.

IMPLEMENTING PRETRIAL SERVICES RESOURCES

Pretrial Services Program Implementation Starter Kit

This document acts as a guide for jurisdictions that do not currently have a pretrial services program but are planning on implementing one. It contains information and resources, or where to find them, that are required when starting a pretrial services program, including state and national standards, core functions, research findings, steps to implementation, and examples of programs.

BUILDING A LEGAL AND EVIDENCE-BASED PRETRIAL SYSTEM

LEGAL AND EVIDENCE BASED PRACTICES IN PRETRIAL

Effective pretrial justice systems are built on a framework of Constitutional and statutory principles, legal precedent, research, and best practices. Alignment with this framework allows local and state systems to best balance the constitutional rights of individuals and the goals of the pretrial system. Subsequent sections of this toolkit are focused on research and best practices in pretrial justice; this section will summarize relevant legal principles. For those who are interested in a more comprehensive legal analysis, the resources section contains detailed reference materials.

In summary, the following legal principles are central to the administration of pretrial justice:

Right to Bail:

This is the right to release through the bail process, as codified in federal law and many state constitutions. The Supreme Court has ruled that the right to bail is not absolute; release on bail can be denied with due process.

Purpose of Bail:

The two Constitutionally permissible purposes of bail are to assure appearance in court and maintain public safety. (These are also the stated criteria for bail in SB 10.)

Excessive Bail:

The 8th Amendment of the Constitution prohibits bail that is excessive. While this is a helpful guiding principle, there is little substantive case law or statute defining what is meant by “excessive.”

Individualized Determination:

In the case of *Stack v Boyle* (1951), the Supreme Court upheld that, “[s]ince the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant.” Courts must consider the unique circumstances of an individual when making a bail determination, and because of this, no one-dimensional standard, like a bond schedule, should be used solely to make a bail determination.

Due Process:

The 5th and 14th Amendments of the Constitution both stipulate that no one can be deprived of life, liberty, or property without due process of law. Procedural due process requires government officials to abide by fair and transparent policies and practices, while substantive due process protects certain fundamental rights of individuals. Both elements apply in the administration of pretrial justice. (The pending *Humphrey* case cites the Due Process and Equal Protection Clauses of the 14th Amendment.)

Presumption of Innocence:

The concept of “innocent until proven guilty” is one of the more well-known tenants of U.S. law, and it influences the way that individuals are treated in the pretrial phase. Neither jail nor conditions of release can be used as punishment, and pretrial interactions, including assessment and monitoring, must be designed to protect rights to due process and against self-incrimination.

Presumption of Release:

Federal law and Supreme Court precedent uphold a presumption of release pretrial, and as Justice William Rehnquist said, “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” However, rising pretrial detention rates over the last three decades are at odds with this principle.

Least Restrictive Conditions:

Federal law and Supreme Court precedent also uphold a presumption of release on the least restrictive conditions necessary to assure return to court and public safety. (This principle is also included in SB 10.) Legal precedent does not define what “least restrictive” means, though research points to the fact that most individuals who are released pretrial will be successful with little or no intervention.

Ability to Pay:

Across the U.S., including in California, monetary bond schedules are being challenged on the grounds that they violate

the Equal Protection clause of the 14th Amendment, in that some individuals can pay to secure their release while others can't pay and are detained. In response to this, some jurisdictions have implemented "ability to pay" determinations to prevent detention solely based on economic status. Unfortunately, a clear standard for making these determinations has not been established, and it perpetuates the unsubstantiated notion that financial conditions of release are effective. (If the California Supreme Court upholds the Humphrey decision, the state may need to determine a standard for ability to pay. If SB 10 goes into effect, the state will instead eliminate money bond and any potential for wealth-based detention.)

Preventive Detention:

Preventive detention is the ability to deny pretrial release with due process after determining that no condition or combination of conditions is sufficient to reasonably assure public safety or return to court. To also uphold the Constitutional presumption of release, preventive detention should be limited to a narrow, charged-based eligibility net. (SB 10 includes provisions for preventive detention, and though the law includes a presumption of release for most individuals, there is still broad authority for detention by the court that could run counter to Constitutional principles.)

As states and localities implement pretrial system improvements, attention to these legal principles is critical. The way that new policies and statutes are ultimately implemented will determine whether local systems uphold individualized determinations, presumption of release, and other rights afforded individuals in the system.

LEGAL AND EVIDENCE-BASED PRETRIAL SYSTEM RESOURCES

Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform

This comprehensive guide traces the history of bail law and policy throughout U.S. history and provides as a comprehensive analysis of the pretrial legal framework.

Glossary of Terms Relating to Bail & Pretrial

This glossary defines terms related to bail and pretrial and offers analysis as to how the terms fit into legal and evidence-based pretrial systems.

Key Features of Holistic Pretrial Justice Statutes and Court Rules

This report explores aspects of statutes and laws that may help or hinder achievement of key pretrial goals.

"Model" Bail Laws: Re-Drawing the Line Between Pretrial Release and Detention

This paper is designed to help craft and justify language articulating who should be released and who should be eligible for detention through a study of the history of bail, the fundamental legal principles, the pretrial research, and the national standards on pretrial release and detention.

Guidelines for Analyzing State and Local Pretrial Laws

This document provides a "how-to" guide for analyzing pretrial laws and rules and identifying potential targets for reform.

PRETRIAL ASSESSMENTS

OVERVIEW

Actuarial pretrial assessments are designed to assess the statistical likelihood of pretrial success, specifically court appearance and public safety while on pretrial release. These assessments are intended to inform the conditions of pretrial release; they are not intended to guide release or detention decisions. Pretrial assessments inform individualized bail determinations made by judicial officers or others with release authority; they are part of a comprehensive strategy to support a presumption of release.

It is important that local jurisdictions still engage in a deliberative and thoughtful process of selecting an assessment so that all interested parties can learn about the options and weigh in on a selection. Some pretrial assessments have the potential to perpetuate, rather than mitigate, bias in the criminal justice system based on the information used. One of the major concerns about assessments is that they employ “black box” algorithms that lack transparency in how their scores are generated. Discussing the factors included in the assessment and how they are weighted will help to address these concerns. In general, jurisdictions should be wary of proprietary assessments that do not disclose weighting and scoring.

Validated assessment instruments include items that are correlated with court appearance and public safety. Often, this includes:

- Age
- Current and pending charges
- Criminal history
- History of failure to appear
- Substance use
- Convictions for crimes of violence

To address potential bias, modern tools often avoid social and economic stability factors, and they also use conviction rather than arrest to mitigate bias due to policing practices.

An assessment must be implemented with fidelity, meaning that all users follow the protocols as designed, and local resources and culture will drive which assessment is the best fit. Assessments can be effective with or without an interview, depending on local preference and resources. A key driver of effective implementation is whether the information needed to score the tool is available in a timely fashion, and that assessments and recommendations can be completed within the timeframes outlined in the statute. Research

from the Laura and John Arnold Foundation shows that more than a day in detention can have a detrimental impact on future criminal behavior, so timely assessment (and release when appropriate) has a direct effect on public safety. Therefore, availability of information should be a key factor in each county’s assessment selection process.

Finally, local validation of an assessment is essential to ensure that the instrument is predictive of outcomes on a local population. If courts or probation departments do not have the resources to complete a validation internally, then partnerships with local researchers or a university may be beneficial. The volume of pretrial assessments being completed will drive the amount of time it takes to complete a validation study. If multiple jurisdictions with similar demographics are using the same assessment, then a joint validation may be possible; this is practical for smaller populations who are not able to achieve statistical power for a validation.

The use of specialized assessments or “trailer tools” for domestic violence, lethality, substance use, or mental health are beyond the scope of this toolkit, but local jurisdictions may wish to explore these options as well.

ASSESSMENT SELECTION CHECKLIST

- Is the scoring and weighting of the items on the tool transparent?
- Has the assessment been validated, and are the methodology and results of the validation publicly available?
- Has the assessment been evaluated for racial and gender bias?
- Do you have the resources available to successfully implement the tool?
 - A scoring guide is available
 - Training materials and/or an expert trainer are available
 - Definitions of each element are clear, and the necessary information is available to scorers
 - IT systems are in place, or can be put in place, to score an automated instrument
- Do judges have confidence that the instrument will provide accurate and trustworthy information?

- Do pretrial staff have confidence that the instrument can inform the terms of pretrial release?
- Have community advocates had the opportunity to weigh in on the selection process and have their concerns addressed?
- (SB 10 requirement) Is the assessment on the list approved by the Judicial Council?

ASSESSMENT IMPLEMENTATION CHECKLIST

- Have all impacted stakeholders been educated on the instrument, how it was developed and validated, how it is scored, and how the results can be used?
- Is an inter-agency workgroup in place to develop detailed processes for how the assessment will (and will not) be used?
- Is information available to score the assessment in a timely way?
- Has a process flow been designed and implemented for scoring the tool, developing a recommendation, and providing the score and recommendation to the court, prosecution, and defense?
- Is a data collection process in place to track the assessment process, scores and assessment levels, recommendations, bail decisions, and pretrial outcomes? Is this data disaggregated by race, ethnicity, and gender?
- Is a quality assurance process in place to ensure that eligible individuals are assessed, and that assessment scores are accurate?
- Has a local validation study been designed, and is data collection underway?

PRETRIAL ASSESSMENT RESOURCES

Choosing the Right Pretrial Assessment [webcast]

To access this webcast, you must create a free account at the University of Pretrial, university.pretrial.org, and join the Pretrial Justice Community. This webcast describes key considerations for selecting and validating and assessment, and offers an example from Palm Beach County, FL.

Pretrial Assessment Can Produce Race-Neutral Results

This issue brief from the Pretrial Justice Institute discusses how assessments can be used in a way that does not exacerbate racial disparities.

Pretrial Assessment Resource Page

This curated resource page includes links to several pretrial assessment resources within the University of Pretrial library.

The Use of Pretrial Risk Assessment Instrument: A Shared Statement of Civil Rights Concerns

This statement by the Leadership Conference articulates concerns with assessment from a civil rights perspective, and offers guidance on how to implement tools in a way that mitigates bias.

Race and Gender Neutral Pretrial Risk Assessment, Release Recommendations, and Supervision: VPRAI and Praxis Revised

This study describes the scoring, weighting, and validation of the Virginia Pretrial Risk Assessment Instrument.

Psapretrial.org

This website provides comprehensive resources for the implementation of the Public Safety Assessment.

SB 10 PROVISIONS RELATING TO ASSESSMENTS

The use of pretrial assessment is a hallmark of SB 10 and represents a move toward more informed, objective decision making. The statute itself is quite detailed on this topic, and the Judicial Council is responsible for both the selection of approved tools and guidelines on their use. Local jurisdictions will then have the responsibility to choose a tool that fits local culture and resources, to implement that tool with fidelity, and to ensure that the tool is trusted by the courts, relevant system stakeholders, and interested members of the community. This is no small feat, given the controversy that surrounds pretrial assessment and its potential for racial bias. SB 10 acknowledges these concerns and attempts to mitigate them, but ultimately it will be local use that determines whether concerns about bias are well founded. Very few assessment tools available in the field meet the criteria of having been validated for racial and gender bias, so it is likely that the list approved by the Judicial Council will be relatively short.

Key Definitions and Requirements

§1320.7 (f) “Pretrial risk assessment” means an assessment conducted by Pretrial Assessment Services with the use of a validated risk assessment tool, designed to provide information about the risk of a person’s failure to appear in court as required or the risk to public safety due to the commission of a new criminal offense if the person is released before adjudication of his or her current criminal offense.

(g) “Pretrial Assessment Services” means an entity, division, or program that is assigned the responsibility, pursuant to Section 1320.26, to assess the risk level of persons charged with the commission of a crime, report the results of the risk determination to the court, and make recommendations for conditions of release of individuals pending adjudication of their criminal case, and as directed under statute or rule of court, implement risk-based determinations regarding release and detention. The entity, division, or program, at the option of the particular superior court, may be employees of the court, or employees of a public entity contracting with the court for those services as provided in Section 1320.26, and may include an entity, division, or program from an adjoining county or one that provides services as a member of a regional consortium. In all circumstances persons acting on behalf of the entity, division, or program shall be officers of the court. “Pretrial Assessment Services” does not include supervision of persons released under this chapter.

(k) “Validated risk assessment tool” means a risk assessment instrument, selected and approved by the court, in consultation with Pretrial Assessment Services or another entity providing pretrial risk assessments, from the list of approved pretrial risk assessment tools maintained by the Judicial Council. The assessment tools shall be demonstrated by scientific research to be accurate and reliable in assessing the risk of a person failing to appear in court as required or the risk to public safety due to the commission of a new criminal offense if the person

is released before adjudication of his or her current criminal offense and minimize bias.

Information to be Provided Prior to Arraignment

1320.9. (a) Prior to arraignment, or prior to prearrest review for those persons eligible for review, Pretrial Assessment Services shall obtain all of the following information regarding each detained person, other than those persons booked and released under Section 1320.8:

1. The results of a risk assessment using a validated risk assessment instrument, including the risk score or risk level.
2. The criminal charge for which the person was arrested and the criminal history of the person, including the person’s history of failure to appear in court within the past three years.
3. Any supplemental information reasonably available that directly addresses the arrested person’s risk to public safety or risk of failure to appear in court as required.

(b) The district attorney shall make a reasonable effort to contact the victim for comment on the person’s custody status.

(c) Prior to prearrest review pursuant to subdivision (a) or (b) of Section 1320.10 or Section 1320.13, or prior to arraignment, Pretrial Assessment Services shall prepare a report containing information obtained in accordance with subdivisions (a) and (b), and any recommendations for conditions of the person’s release. Options for conditions of release shall be established by the Judicial Council and set forth in the California Rules of Court. A copy of the report shall be served on the court and counsel.

(d) The report described in subdivision (c), including the results of a risk assessment using a validated risk assessment instrument, shall not be used for any purpose other than that provided for in this chapter.

SUPERVISED RELEASE

OVERVIEW

It is important to make a clear distinction between the monitoring function of pretrial release and probation supervision. Pretrial monitoring is short-term, and it is designed to reasonably assure that a person will return to court and remain crime-free in the community. It is not intended for treatment, and unlike probation supervision, its goal is not long-term recidivism reduction.

Probation officers are familiar with targeting interventions through the incorporation of the risk principle (prioritizing treatment toward people with higher risk), the need principle, the responsivity principle, the idea of dosage and the treatment principle. In the case of pretrial release, however:

“The application of [the community corrections principle of targeting interventions] should be modified due to the pretrial legal foundation. Remember that conditions of bail should be related to the risk of failure to appear or danger to the community posed by the defendant during the pretrial stage, be the least restrictive reasonably calculated to assure court appearance and community safety, and be related to the risk posed by an individual defendant and intended to mitigate pretrial risk.”¹

Matching release conditions to likelihood of pretrial success is not just the legal standard; it is supported by research. The Laura and John Arnold Foundation demonstrated that individuals who score “low” on an assessment do not benefit from pretrial monitoring, while those who score “moderate” or “high” are more successful in the community if they are supervised. The term “high risk” is relative, and in many jurisdictions, data show that people who are assessed “high” are still more likely than not to remain safely in the community. While it may be appropriate that those who score as “high risk” are not eligible for release pre-arraignment, pretrial services may still recommend release for these individuals, and probation departments must be prepared to monitor them in the community.

RELEASE CONDITIONS MATRICES

A Release Conditions Matrix (RCM), sometimes referred to as a Decision-Making Framework, connects the results of a pretrial

assessment to conditions of pretrial release. As the name indicates, an RCM only references terms of pretrial release; it is not used to make detention decisions. The axes of the matrix can reference assessment score and charge level, or in the case of the PSA assessment, different scales within the assessment. The RCM is used by the court to set conditions of release and used by pretrial officers to guide pretrial monitoring.

An RCM should adhere to the legal principle of the least restrictive means necessary to assure court appearance and public safety. Unfortunately, there is not a great deal of research regarding which conditions are both effective and least restrictive for individuals on pretrial release. Research does tell us:

- Court date reminders have been proven effective in several studies for increasing court appearance rates, and this is recommended as the only intervention for individuals assessed “low”.
- There is no evidence supporting universal drug testing as a strategy for improving pretrial outcomes, so the best practice is to only order substance testing if it is related to the offense with which the individual is charged.
- There is no evidence supporting the efficacy of electronic or GPS monitoring for preventing new criminal activity, and it is one of the most intrusive community-based interventions. However, it often increases a judicial officer’s comfort with releasing a person who might otherwise be detained. Use of electronic monitoring should be limited to individuals who are assessed “high” and would otherwise be ineligible for pretrial release.

Within these limited guidelines, there are many examples of DMFs in the field that can be used for guidance, depending on the assessment tool that is in use. Common conditions include:

- Court reminders
- Criminal history checks
- Check-ins with pretrial officers (either by phone, kiosk, or in-person)
- No contact orders
- Substance testing (when linked to the instant offense)
- Electronic monitoring

¹ Marie VanNostrand, Legal and Evidence-Based Practices: Application of Legal Principles, Laws, and Research to the Field of Pretrial Services, at 27 (CJI/NIC 2007).

Note that there is no treatment programming on this list. Individuals cannot be mandated to treatment pretrial, since participation in a treatment program may result in self-incrimination. However, voluntary treatment options can and should be offered to individuals pretrial, based on community availability, and pretrial officers should be prepared to offer referrals for health services (physical, behavioral and mental health), housing, employment, etc. based on the needs that are presented. If individuals choose to voluntarily access these services, it can help to bolster their success in the community.

These terms of release are generally grouped into monitoring levels that correspond to assessment results within the matrix. The matrix then serves as a guide when setting terms of release, though judicial officers still have the option to increase or decrease monitoring levels at their discretion if they deem it necessary. In order for the matrix and related monitoring to be effective, both the courts and probation must trust it, and the matrix should be developed collaboratively to increase buy-in. Sharing the matrix publicly also provides an opportunity for transparency in the pretrial process.

SAMPLE RESPONSES GRID

MOST SERIOUS CHARGE						
PRETRIAL RISK CATEGORY	LESS SERIOUS MISDEMEANOR	MORE SERIOUS MISDEMEANOR	LESS SERIOUS OR NON-VIOLENT FELONY	DRIVING UNDER THE INFLUENCE	DOMESTIC VIOLENCE	SERIOUS OR VIOLENT FELONY
LOWER	Recognizance Release with Court Reminder	Recognizance Release with Court Reminder	Recognizance Release with Court Reminder	Recognizance Release with Basic Supervision	Recognizance Release with Basic Supervision	Recognizance Release with Enhanced Supervision (if Released); or Detained
MEDIUM	Recognizance Release with Basic Supervision	Recognizance Release with Basic Supervision	Recognizance Release with Basic Supervision	Recognizance Release with Enhanced Supervision	Recognizance Release with Enhanced Supervision	Recognizance Release with Enhanced Supervision (if Released); or Detained
HIGHER	Recognizance Release with Basic Supervision	Recognizance Release with Enhanced Supervision	Recognizance Release with Enhanced Supervision	Recognizance Release with Enhanced Supervision (if Released); or Detained	Recognizance Release with Enhanced Supervision (if Released); or Detained	Recognizance Release with Enhanced Supervision (if Released); or Detained

SAMPLE SUPERVISION LEVELS

PRETRIAL SUPPORT LEVEL	DESCRIPTION
NO ACTIVE SUPERVISION NEEDED	Court date reminder notices
BASIC MONITORING	Weekly reporting by telephone, court date reminder notices, monthly criminal history check
ENHANCED MONITORING	Weekly reporting by telephone, monthly criminal history check, monthly in-person reporting to case manager or kiosk, drug/alcohol monitoring if indicated, court date reminder notices
INTENSIVE MONITORING	GPS monitoring, weekly in-person reporting to case manager or kiosk, drug and alcohol monitoring if indicated, monthly criminal history check, court date reminder notices

PRETRIAL MONITORING CHECKLIST

- Are probation, the courts, and other stakeholders working collaboratively to develop a release conditions matrix (RCM)?
- Is the RCM linked to the assessment that the jurisdiction has selected?
- Does the RCM include distinct levels of monitoring that are linked to assessment score and charge, or to different scales within the assessment?
- Are interventions for “low risk” individuals limited to court reminders?
- Is the use of drug testing and/or alcohol monitoring limited to those who have a related charge?
- Is the use of GPS tracking and electronic monitoring limited only to those who would otherwise be ineligible for pretrial release?
- Are conditions designed to limit logistical hurdles (e.g. phone vs. in-person check-ins for individuals living in large rural counties)?
- Do pretrial officers have referrals available to address identified needs of defendants?
- Is data being collected on assessment score, charge, monitoring level, and pretrial outcomes?

PRETRIAL MONITORING RESOURCES

American Bar Association Standards for Criminal Justice, Third Edition: Pretrial Release

The American Bar Association has promulgated standards on pretrial and bail practice.

Exploring the Impact of Pretrial Supervision on Pretrial Outcomes

This study by the Laura and John Arnold Foundation demonstrated efficacy of pretrial monitoring for “moderate” and “high risk” individuals.

PSA Implementation Guides: Guide to the Release Conditions Matrix

To access this resource, you must create a free account at psapretrial.org. This guide describes the process of creating a release conditions matrix to accompany the PSA assessment, and includes several sample matrices.

Race and Gender Neutral Pretrial Risk Assessment, Release Recommendations, and Supervision: VPRAI and Praxis Revised

This study includes the updated Praxis release conditions matrix that accompanies the Virginia Pretrial Risk Assessment Instrument.

We've Chosen and Assessment: Now What? [webcast]

To access this webcast, you must create a free account at the University of Pretrial, university.pretrial.org, and join the Pretrial Justice Community. This session provides an overview of features of pretrial release conditions matrices and shares an example from Montana.

Yakima County, Washington Pretrial Justice System Improvements: Pre- and Post- Implementation Analysis

This report on Smart Pretrial efforts in Yakima County, Washington includes the release conditions matrix used with the PSA assessment as Appendix D.

SB 10 PROVISIONS RELATING TO COMMUNITY MONITORING

SB 10 allows Pretrial Assessment Services and judicial officers to release individuals on “supervised own recognizance release” depending on charge and assessment score. The Judicial Council will promulgate rules regarding pretrial monitoring standards, and probation departments will be responsible for implementing those standards. Though the law goes into great detail regarding eligibility for release, there is minimal detail as to what supervised release should look like. The California Judicial Council sets guidelines for pretrial monitoring under SB 10, and it is then the responsibility of each county to develop a matrix. In some cases, the assessment selected by the county will have detailed guidelines on the development of a companion release conditions matrix.

Key Term

§1320.7 (j) “Supervised own recognizance release” means the pretrial release of an arrested person who promises in writing, but without posting money or a secured bond, to appear in court as required, and upon whom the court or Pretrial Assessment Services imposes specified conditions of release.

Procedures Relating to Persons with Low-Risk or Medium-Risk Assessment

§1320.10. (a) Pretrial Assessment Services shall conduct a prearraignment review of the facts and circumstances relevant to the arrested person’s custody status, and shall consider any relevant and available information provided by law enforcement, the arrested person, any victim, and the prosecution or defense.

(b) Pretrial Assessment Services, using the information obtained pursuant to this section and Section 1320.9, and having assessed a person as having a low risk to public safety and low risk of failure to appear in court, shall release a low-risk person on his or her own recognizance, prior to arraignment, without review by the court, and with the least restrictive nonmonetary condition or combination of conditions that will reasonably assure public safety and the person’s return to court. This subdivision does not apply to a person booked and released under Section 1320.8 or a person who is ineligible for consideration for release prior to arraignment as set forth in subdivision (e).

(c) Pretrial Assessment Services shall order the release or detention of medium risk persons in accordance with the review and release standards set forth in the local rule of court authorized under Section 1320.11. A person released pursuant to the local rule of court shall be released on his or her own recognizance or on supervised own recognizance release, prior to arraignment, without review by the court, and with the least restrictive nonmonetary condition or combination of conditions that will reasonably assure public safety and the person’s return to court. This subdivision shall not apply to a person booked and released under Section 1320.8 or a person ineligible for consideration prior to arraignment pursuant to subdivision (e) of this section. Pursuant to Section 1320.13, courts may conduct prearraignment reviews and make release decisions and may authorize subordinate judicial officers to conduct prearraignment

reviews and make release decisions authorized by this chapter.

(d) A person shall not be required to pay for any nonmonetary condition or combination of conditions imposed pursuant to this section.

§1320.11. (a) A superior court, in consultation with Pretrial Assessment Services and other stakeholders, shall adopt a local rule of court consistent with the California Rules of Court adopted by the Judicial Council, as described in subdivision (a) of Section 1320.25, that sets forth review and release standards for Pretrial Assessment Services for persons assessed as medium risk and eligible for prearraignment release on own recognizance or supervised own recognizance. The local rule of court shall provide for the release or detention of medium-risk defendants, support an effective and efficient pretrial release or detention system that protects public safety and respects the due process rights of defendants. The local rule shall provide Pretrial Assessment Services with authority to detain or release on own recognizance or supervised own recognizance defendants assessed as medium risk, consistent with the standards for release or detention set forth in the rule.

Procedures Relating to Persons with High-Risk Assessment

Individuals who are assessed “high risk” or those with charged with certain crimes are not eligible for release pre-arraignment; however, these individuals can subsequently be released by a judge at arraignment.

§1320.17. At arraignment, the court shall order a defendant released on his or her own recognizance or supervised own recognizance with the least restrictive nonmonetary condition or combination of conditions that will reasonably assure public safety and the defendant’s return to court unless the prosecution files a motion for preventive detention in accordance with Section 1320.18.

Note: SB 10 prescribes minimal conditions of release on one’s own recognizance, including:

- *A promise to appear at all times and places, as ordered by the court;*
- *A promise not to depart this state without the permission of the court;*
- *Agreement to waive extradition if the person fails to appear as required and is apprehended outside of the State of California;*
- *Acknowledgment that he or she has been informed of the consequences and penalties applicable to violation of these conditions of release; and*
- *Agreement to obey all laws and orders of the court.*
- *Beyond this, any terms of release are determined by the court, informed by a recommendation from Pretrial Assessment Services.*

RESPONDING TO VIOLATIONS

OVERVIEW

Not unlike probation violations, several factors influence rates of pretrial violations and subsequent revocations:

- The number and type of release terms that are a condition of bond
- A released individual's behavior in the community
- Probation's policies when responding to violations of terms of release
- Local court rules regarding issuance of warrants and pretrial revocations.

Violations can include new criminal activity, failures to appear, and technical violations of terms of release. Strategies can be put in place to respond effectively to each category.

In the case of new criminal activity, if a warrant is issued or petition for revocation is filed, the court can apply the same criteria for pretrial release as they would for a new arrest. The new charge may change the individual's assessment score or detention eligibility, but it does not need to categorically result in detention. At a subsequent court appearance, the court will still have the option to revoke the individual's bond if it is now deemed that no condition or combination of conditions will reasonably assure pretrial success.

Failures to appear in court are very rarely the result of an individual willfully fleeing the jurisdiction; often, it is a result of a logistical hurdle or poor organization. Court reminder systems have proven

very successful in increasing appearance rates, whether by mail, text, or phone, and many jurisdictions are undertaking programs to provide bus passes or other supports to get individuals to court on time. These interventions can be administered through the supervising authority or through the public defender's office.

Case processing also plays a role in preventing FTA. More hearings, and more time between those hearings, increases the opportunity for FTA. This is also true for new criminal activity; the longer the pretrial period, the more opportunities there are for failure. Streamlining the pretrial court process, within the confines of due process, can increase pretrial success overall.

As mentioned earlier, the more terms of release an individual is expected to abide by, the greater the likelihood that they will violate the terms of their release. Limiting conditions can reduce the overall likelihood of technical violations. In addition, developing administrative responses to technical violations, also a familiar concept for probation departments, can hold individuals accountable without the need for a return to jail. A template for a response grid is included below.

Collecting data on violations and subsequent responses is essential to identify opportunities for improvement. Are certain groups failing to appear at higher rates, like homeless individuals? Are racial biases present in who is being revoked and who is being released? Are responses consistent across monitoring officers, and across judges? These data can reveal opportunities for education, additional community-based interventions, and accountability.

SAMPLE RESPONSE TO COMPLIANCE AND NON-COMPLIANCE PROTOCOL

(courtesy of Claire Brooker, modified by the Chief Probation Officers of California)

RESPONSE TO NON-COMPLIANCE PROTOCOL					
SUPERVISION CONDITION	TYPE OF VIOLATION	VIOLATION LEVEL (MINOR, MODERATE, SEVERE)	VIOLATION RESPONSE (LOW, MEDIUM, HIGH) BY SUPERVISION LEVEL		
			ADMINISTRATIVE	STANDARD	INTENSIVE
		Minor	Low	Low	Low
		Moderate	Low	Medium	Medium
		Severe	Medium	High	High
		Severe	High	High	Revoke
		Severe	High	Revoke	N/A
		Severe	Revoke	N/A	N/A

RESPONSE TO COMPLIANCE PROTOCOL

SUPERVISION CONDITION	COMPLIANCE STANDARD	COMPLIANCE LEVEL (FULL, PARTIAL, NON-COMPLIANT)	COMPLIANCE RESPONSE BY SUPERVISION LEVEL		
			ADMINISTRATIVE	STANDARD	INTENSIVE

DEFINITIONS: TYPES OF VIOLATIONS

MINOR VIOLATIONS	MODERATE VIOLATIONS	SEVERE VIOLATIONS
Generally, involves violations that show a lapse in judgment and do not cause harm to defendant or others.	Violations that appear to show a disregard for court orders and pretrial monitoring but did not cause harm or potential harm to others.	Violations that appear to show a willful and/or repeated disregard for court orders and pretrial monitoring and/or violations which cause or present a risk of harm to themselves and/or others.

TYPES OF VIOLATION RESPONSES*

LOW RESPONSE	<ul style="list-style-type: none"> • Work directly with the defendant: <ul style="list-style-type: none"> o Call and get into contact with the defendant o Verbally reinforce conditions of monitoring with defendant o Work with defendant to identify barriers to compliance and opportunities to support compliance
MEDIUM RESPONSE	<ul style="list-style-type: none"> • Work directly with the defendant: <ul style="list-style-type: none"> o Call and get into contact with the defendant o Verbally reinforce conditions of monitoring with defendant o Provide written reminder of conditions of monitoring to defendant o Work with defendant to identify barriers to compliance and opportunities to support compliance • Work with partners: <ul style="list-style-type: none"> o Consult with contacts provided by the defendant o Consult with defense attorney

TYPES OF VIOLATION RESPONSES* (CONT.)

HIGH RESPONSE	<ul style="list-style-type: none"> • Work directly with the defendant: <ul style="list-style-type: none"> o Call and get into contact with the defendant o Verbally reinforce conditions of monitoring with defendant o Review and have defendant sign monitoring contract again o Work with defendant to identify barriers to compliance and opportunities to support compliance • Work with partners: <ul style="list-style-type: none"> o Consult with contacts provided by the defendant o Consult with defense attorney • Staff with a supervisor: <ul style="list-style-type: none"> o May increase office contact requirements o May request modification of bond conditions o May request a summons to report to pretrial supervision
REVOKE SUPERVISION REQUEST	<ul style="list-style-type: none"> • Send report to the court and request that the court terminate monitoring

**The supervision agency recognizes that there will be some limited exceptions to this protocol and reserves the right to use discretion and deviate from it when necessary.*

TYPES OF COMPLIANCE RESPONSES*

ONE-TIME	<ul style="list-style-type: none"> • Provide a one-time incentive: <ul style="list-style-type: none"> o A pass to convert one in-person check-in to a phone call o (Other?)
LONGER-TERM	<ul style="list-style-type: none"> • Provide a longer-term incentive: <ul style="list-style-type: none"> o Reduce the type and frequency of monitoring conditions within the current level of monitoring o Reduce the person's monitoring level o Provide a compliance report to the court and attorneys o (Other?)
VIOLATION RESPONSE	<ul style="list-style-type: none"> • Return the person to the previous higher level of supervision • Refer to the response to violations protocol. • (Other?)

**The supervision agency recognizes that there will be some limited exceptions to this protocol and reserves the right to use discretion and deviate from it when necessary.*

RESPONDING TO VIOLATIONS CHECKLIST

- | | |
|--|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> Are conditions of release the least restrictive necessary to ensure return to court? <input type="checkbox"/> Is case processing streamlined in a way to minimize the number of court appearances and the overall duration of the pretrial period? <input type="checkbox"/> Are court reminder systems in place, and/or are resources available to assist individuals with transportation to court? | <ul style="list-style-type: none"> <input type="checkbox"/> Are individuals who violate conditions of release and/or fail to return to court subject for release screening, and able to remain in the community if eligible? <input type="checkbox"/> Does probation have an administrative responses grid in place to limit revocations for technical violations? <input type="checkbox"/> Are the courts and probation collecting data on frequency and types of violations as well as revocation rates, and is the sheriff's department collecting data on the population of violators in jail? |
|--|---|

SB 10 PROVISIONS RELATING TO RESPONDING TO VIOLATIONS

Under SB 10, individuals who violate their conditions of pretrial release, whether a technical violation or a new crime, are eligible for detention. This creates the potential for a revolving door into the jail if violations result in pretrial revocations, but it also creates an opportunity for thoughtful leadership from probation departments.

Conditions Creating Presumption of Detention

The statute includes a presumption of detention for those who violate conditions of release.

§1320.13 (i) There shall be a presumption that no condition or combination of conditions of pretrial supervision will reasonably assure the safety of any other person and the community pending arraignment if it is shown that any of the following apply:

1. The crime for which the person was arrested was committed with violence against a person, threatened violence or the likelihood of serious bodily injury, or one in which the person committing the offense was personally armed with or personally used a deadly weapon or firearm in the commission of the crime, or personally inflicted great bodily injury in the commission of the crime.
2. At the time of arrest, the person was on any form of postconviction supervision, other than court supervision or informal probation.
3. The arrested person intimidated, dissuaded, or threatened retaliation against a witness or victim of the current crime.
4. The person is currently on pretrial release and has violated a condition of release.

Terms of Warrant Not Binding on Court or Pretrial Assessment Services

However, when a warrant is issued for a violation, the court is not required to detain the individual, and must provide justification for an order that does not include book and release. Once the individual has been booked into the jail, the terms of the warrant are non-binding, and the individual can be assessed and potentially released by Pretrial Assessment Services.

§ 1320.23. (a) If the court issues an arrest warrant, or a bench warrant based upon a defendant's failure to appear in court as

required, or upon allegations that the defendant has violated a condition of pretrial or postconviction supervision, the court may indicate on the face of the warrant whether, at the time the defendant is arrested on the warrant, the defendant should be booked and released, detained for an initial review, detained pending arraignment, or detained pending a hearing on the violation of supervision.

(b) If the prosecution, law enforcement, or supervising agency requests a warrant with a custody status for the defendant other than book and release, the agency shall provide the court with the factors justifying a higher level of supervision or detention.

(c) The court's release or detention indication on the warrant shall be binding on the arresting and booking agency and the custody facility, but is not binding on any subsequent decision by a court or Pretrial Assessment Services. The indication is, however, one factor that may be considered by Pretrial Assessment Services or the court when determining the person's custody status in subsequent proceedings.

(d) If the person is arrested on a misdemeanor warrant, the determination of the person's custody status shall start with the procedures set forth in Section 1320.8. If the person is arrested on a felony warrant, the determination of the person's custody status shall start with the procedures set forth in Section 1320.9.

RESPONDING TO VIOLATIONS RESOURCES

Responding to Violations [webcast]

To access this webcast, you must create a free account at the University of Pretrial, university.pretrial.org, and join the Pretrial Justice Community. Representatives from Lucas and Mecklenburg Counties share some new approaches to responding to technical violations.

DATA COLLECTION AND ANALYSIS

OVERVIEW

Good data is essential to good practice across the criminal justice system, and pretrial is no exception. Data collection helps identify problems and solutions, and measures progress toward goals. The structure for dashboard development and review are likely already in place at the local level, given the overall move toward evidence-based probation practices in California over the last decade. These existing structures simply need to be tailored for pretrial measures. A sample data dictionary for common pretrial process and outcome measures is provided below, and the resources section contains examples of data dashboards used in local pretrial systems.

Local systems require dashboards at regular intervals to monitor implementation of pretrial practices, assess the quality and effectiveness of interventions, and identify opportunities for further system improvement. Developing effective dashboards requires:

- Comprehensive and accurate data collection;
- Timely analysis and reporting;
- Collaborative review of the data and its implications, and
- Subsequent action to address deficiencies.

For jurisdictions seeking a new approach to pretrial data review and improvement, the Plan-Do-Study-Act (PDSA) cycle can be a useful tool for data-driven process improvements as an evidence-based practice is being implemented. Plan-Do-Study Act is a model for rapid cycle improvement that is a component of the NIRN implementation sciences model, and detailed resources on this approach are included below. Individual dashboard measures, such as the percentage of eligible individuals who are assessed, can be used as part of a PDSA cycle, and iterative cycles can be performed until benchmarks are met.

SAMPLE PRETRIAL DATA DICTIONARY FROM THE SMART PRETRIAL DEMONSTRATION INITIATIVE

CATEGORY	DATA	DEFINITIONS	
LAW ENFORCEMENT DATA	1A. Calls for Service	1A1. # of calls for service by type of offense	Categories: Felony, Misdemeanor, Criminal Traffic, Ordinance Violations [within each category, if you are able to provide further breakdown by primary offense (e.g., homicide, robbery, DUI, criminal trespass, etc.) please do]
		1A2. # of times crisis intervention teams dispatched	Crisis intervention team = trained officers and/or other specialists that respond to calls in which there is a possible mental health issue
	1B. Arrests	1B1. # of arrests by type of offense	Same category definitions as above
		1B2. # of VOP bench warrants issued	Same category definitions as above
		1B3. # VOP arrests	Same category definitions as above
	1C. Citations	1C1. # of citations issued by type of offense	Same category definitions as above
		1C2. # of citation releases who receive a court date reminder	

CATEGORY		DATA	DEFINITIONS
DELEGATED RELEASE	1D. Delegated Release Authority	1D1. # of arrestees eligible for release under delegated release authority	This would apply to cases where the judiciary has delegated pretrial release authority to non-judicial officers (e.g., jail or pretrial services staff). It would not apply to defendants released on citation by law enforcement or defendants released by judicial officers.
		1D2. # of arrestees released under delegated release authority	Of those defendants who are eligible for delegated release, how many are released that way?
PROSECUTION AND DEFENSE DATA	2A. Case Screening	2A1a. # of cases screened by prosecutor, by type of offense/charge	Categories: Felony, Misdemeanor, Criminal Traffic, Ordinance Violations [within each category, if you are able to provide further breakdown by primary offense (e.g., homicide, robbery, DUI, criminal trespass, etc.) please do]
		2A1b. # of these cases that were screened by prosecutor prior to the initial bail hearing	
		2A2. # of cases rejected for prosecution, by offense/charge type	
	2B. Charging	2B1. # of felony cases charged, by case type	Categories: Felony, Misdemeanor, Criminal Traffic, Ordinance Violations [within each category, if you are able to provide further breakdown by primary offense (e.g., homicide, robbery, DUI, criminal trespass, etc.) please do]
		2B2. # of misdemeanor cases charged, by case type	Same category definitions as above
		2B3. # of felony cases presented by law enforcement	Same category definitions as above
		2B4. # of misdemeanor cases presented by law enforcement	Same category definitions as above
		2B5. # of declinations by case type	Declinations defined as cases screened in which no charges were filed or case was not presented to Grand Jury (does not include No True Bills)



CATEGORY		DATA	DEFINITIONS
PROSECUTION AND DEFENSE DATA (CONT.)	2C. Diversion/ Deferred Prosecution	2C1. # of defendants eligible for diversion programs by case type	
		2C2. # of these defendants placed in diversion programs, by case type	
		2C3. # of defendants successfully completing diversion, by case type	
		2C4. # of defendants who did not complete diversion, by case type	
	2D. Defense Representation	2D1. # of defendants represented at initial bail hearing	
		2D2. # of defendants not represented at initial bail hearing	
	2E. Case Processing	2E1. Average # of days from arrest to charging by case type	
		2E2. Average # of days from charging to disposition by case type	
		2E3. Average # of days from arrest to disposition, by disposition type	
		2E4. Average # of days from arrest to disposition, by disposition type, and detention status	
2E5. Average # of court hearings per defendant			
PRETRIAL DATA	3A. Pretrial Detention	3A1. # of defendants who remained in pretrial detention until case disposition, by case type, pretrial risk level, bond type (secured or unsecured), bond amount, and pretrial length of stay	Categories for case type: Felony, Misdemeanor, Criminal Traffic, Ordinance Violations [within each category, if you are able to provide further breakdown by primary offense (e.g., homicide, robbery, DUI, criminal trespass, etc.) please do.] Length of Stay categories: Less than 24 hours; 1-2 days; 3-6 days; 7-10 days; 11-30 days; 31 to 180 days; more than 180 days
		3A2. For defendants not released pretrial, # of instances where the court recorded the reasons why	

CATEGORY		DATA	DEFINITIONS
PRETRIAL DATA (CONT.)	3B. Release on Recognizance	3B1. # of defendants released on unsecured bond/recognizance, by case type, pretrial risk level, bond amount, and pretrial length of stay until release	Categories for case type: Felony, Misdemeanor, Criminal Traffic, Ordinance Violations [within each category, if you are able to provide further breakdown by primary offense (e.g., homicide, robbery, DUI, criminal trespass, etc.) please do.] Length of Stay categories: Less than 24 hours; 1-2 days; 3-6 days; 7-10 days; 11-30 days; 31 to 180 days; more than 180 days
		3B2. # of these defendants who had at least one failure to appear, by risk level, case type, and supervision level	
		3B3. # of these defendants who had at least one charge for new criminal activity that allegedly occurred during pretrial release, by risk level, case type, and supervision level	
	3C. Bail Review	3C1. # of defendants who received a bail review hearing, by case type and risk level.	Categories for case type: Felony, Misdemeanor, Criminal Traffic, Ordinance Violations [within each category, if you are able to provide further breakdown by primary offense (e.g., homicide, robbery, DUI, criminal trespass, etc.) please do]
		3C2. # of these defendants who were released pretrial after this bail review hearing, by case type and risk level, and by bond type and amount	Categories for case type: Felony, Misdemeanor, Criminal Traffic, Ordinance Violations [within each category, if you are able to provide further breakdown by primary offense (e.g., homicide, robbery, DUI, criminal trespass, etc.) please do]
		3D1a. # of defendants assessed for risk by case type and risk level	Categories for case type: Felony, Misdemeanor, Criminal Traffic, Ordinance Violations [within each category, if you are able to provide further breakdown by primary offense (e.g., homicide, robbery, DUI, criminal trespass, etc.) please do]
		3D1b. # of defendants not assessed for risk by case type	Categories for case type: Felony, Misdemeanor, Criminal Traffic, Ordinance Violations [within each category, if you are able to provide further breakdown by primary offense (e.g., homicide, robbery, DUI, criminal trespass, etc.) please do]



CATEGORY	DATA	DEFINITIONS	
PRETRIAL DATA (CONT.)	3D. Assessment & Supervision	3D2. # of defendants, by risk level and case type, in which the pretrial agency overrode the typical recommendation for cases of this risk level and type	
		3D3a. # of these completed risk assessments shared with the court (bail setting judge) at the initial bail hearing	
		3D3b. # of these completed risk assessments shared with the prosecutor at the initial bail hearing	
		3D3c. # of completed risk assessments shared with the defense attorney at the initial bail hearing	
		3D4. # of supervised defendants, by case type and risk level, and by bond/release type (OR, secured)	
		3D5. # of supervised defendants who received court reminders/notifications, by case type and risk level	
		3D6. # of supervised defendants who had at least one failure to appear, by risk level, case type, and supervision level	
		3D7. # of supervised defendants who had at least one charge for new criminal activity that allegedly occurred during pretrial release, by risk level, case type, and supervision level	
		3D8. The number of defendants on pretrial supervision whose pretrial performance records were made available to the sentencing court.	
		4A1. Average daily population by detention status and case type	Detention status categories preferred: Pretrial, Sentenced, VOP, ICE Hold, Awaiting Transfer

CATEGORY		DATA	DEFINITIONS
JAIL DATA	4A. Jail Population	4A2. Average daily population of pretrial detainees by risk level	
		4A3. # of jail bookings by admission type and case type and by risk level (if available)	
		4A4. # jail bookings by zip code	Top 10 Residence Zip Codes contributing to jail admissions
	4B1. Average length of stay by detention status (reason for release), case type, and risk level		
4B. Length of Stay	4B2. # of inmates released by LOS category, detention status, risk level, and case type	Length of Stay categories: Less than 24 hours; 1-2 days; 3-6 days; 7-10 days; 11-30 days; 31 to 180 days; more than 180 days	

DATA COLLECTION AND ANALYSIS CHECKLIST

- Do local stakeholders have a commitment to, and process in place for, regular review of pretrial data (either on a monthly or quarterly basis)?
- Do agencies responsible for pretrial decisions have an automated data system and a data collection process in place?
 - o SB 10 requirement: data collection process for courts and probation
 - o Additional agencies recommended for inclusion: Law enforcement, district attorney and public defender
- Do agencies responsible for pretrial decisions have the capacity to analyze and report data in a digestible format?
- Have local stakeholders set benchmarks for performance that match local values and are data-informed?
- Does probation have an internal process in place for the collection, analysis, and review of assessment and monitoring data by management and frontline staff (either on a weekly or monthly basis)?
- Has probation set internal benchmarks for performance that are data-informed?

DATA COLLECTION AND ANALYSIS RESOURCES

Measuring What Matters

This document offers strategies for measuring pretrial effectiveness. Outcome measures, performance measures, target measures, and “mission critical” data are presented.

National Implementation Research Network: Improvement Cycles

This suite of tools provides information on improvement cycles in the context of effective implementation and specifics on the use of the Plan-Do-Study-Act cycle.

Public Safety Assessment Guide to Outcomes and Oversight

To access this resource, you must create a free account at psapretrial.org. This guide describes measures for monitoring and improving the implementation of the Public Safety assessment.

Smart Pretrial Session Five: Crunching the Numbers: Using a Pretrial Data Dashboard [webcast]

To access this webcast, you must create a free account at the University of Pretrial, university.pretrial.org, and join the Pretrial Justice Community. This session describes key elements of a pretrial data dashboard and shares an example from the City and County of Denver, CO.

SB 10 PROVISIONS RELATING TO DATA COLLECTION

SB 10 requires that the Judicial Council collect data from local courts for annual reporting to the legislature, and it mandates the Board of State and Community Corrections (BSCC) to conduct an evaluation of the implementation of the law. The law also requires the use of validated pretrial assessments, which will necessitate local validation studies if they have not already been completed. While these data will be valuable, they are only a component of a broader data collection and analysis plan necessary for data-driven decision making at the local level.

Bi-Annual Submission of Data Required

To comply with SB 10, local courts must collect the following information pertaining to pretrial assessments, decisions to detain or release individuals, pretrial release outcomes.

§1320.24 (b) The Judicial Council shall identify and define the minimum required data to be reported by each court. Courts shall submit data twice a year to the Judicial Council. Data will include, but not be limited to, the number of incidences in which individuals are:

1. Assessed using a validated risk assessment tool, and the risk level of those individuals.
2. Released on own recognizance or supervised own recognizance pursuant to:
 - (A) Subdivision (b) of Section 1320.10.
 - (B) Subdivision (c) of Section 1320.10.
 - (C) Section 1320.12, disaggregated by risk level.
 - (D) Section 1320.13, disaggregated by risk level.
3. Detained at:
 - (A) Arraignment, disaggregated by risk level.
 - (B) A pretrial detention hearing, disaggregated by risk level.
4. Released pretrial on own recognizance or on supervised own recognizance release who:
 - (A) Fail to appear at a required court appearance.
 - (B) Have charges filed for a new crime.
5. Considered for release or detention at a preventive detention hearing.

(c) Pursuant to a contract under subdivision (a) of Section 1320.26, courts may require the entity providing pretrial assessment services to report the data in this section to the Judicial Council, where appropriate.

(d) On an annual basis, each court shall provide the following information to the Judicial Council:

1. Whether the court conducts prearrest reviews pursuant to Section 1320.13.
2. The estimated amount of time required for making release and detention decisions at arraignment and preventive detention hearings.
3. The validated risk assessment tool used by Pretrial Assessment Services.

Independent Evaluation of Implementation

1320.30. (a) Upon appropriation by the Legislature, the Board of State and Community Corrections shall contract with an academic institution, public policy center, or other research entity for an independent evaluation of the act that enacted this section, particularly of the impact of the act by race, ethnicity, gender, and income level. This evaluation shall be submitted to the Secretary of the State Senate and the Chief Clerk of the State Assembly by no later than January 1, 2024.

To support the implementation of SB 10, probation departments will likely need a two-track approach to dashboarding: an internal dashboard focused on day-to-day pretrial activities, used for management purposes, and an external, inter-agency dashboard, used for collaborative decision making.

SB 10 COMPLIANCE CHECKLIST

- Does probation have the capacity to conduct a local validation of the selected pretrial assessment tool, or the resources to partner with an external agency to conduct a validation?
- Beginning October 1, 2019, will probation and the courts have the infrastructure in place to collect data required for reporting to the Judicial Council?
- Does probation have some flexible capacity to respond to requests for data related to the BSCC evaluation, which will be forthcoming?



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