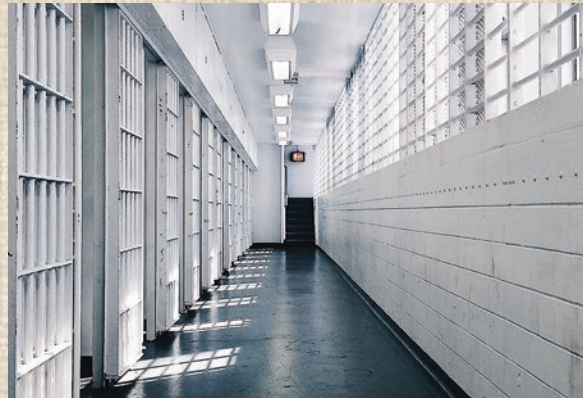


New Challenges and Promising Practices in Pretrial Release, Diversion, and Community-Based Supervision



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March 2020



POLICE EXECUTIVE
RESEARCH FORUM

The points of view expressed herein are the authors' and do not necessarily represent the opinions of all Police Executive Research Forum members.

Police Executive Research Forum, Washington, D.C. 20036
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Printed in the United States of America

ISBN 978-1-934485-56-9

Graphic design by Dave Williams.

Front cover photos are courtesy: (top row) Thomas Hawk on Foter.com / CC BY-NC, Jason Farrar on Foter.com / CC BY-NC-ND; (middle row) www.cemillerphotography.com on Foter.com / CC BY-SA; and (bottom row) Houston Recovery Center, Sobering and Addiction Recovery Programs; Dominic Sagar on Foter.com / CC BY-NC-SA; Houston Recovery Center.

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Acknowledgments

This report summarizes the second national conference organized under PERF's Sheriffs Initiative, which focuses on challenges faced by sheriffs' departments across the country. Many sheriffs have been telling PERF that criminal justice reform is becoming a major issue in their communities. Bail bond systems are being scrutinized, and more communities are exploring new approaches to pretrial release, diversion, and community-based supervision. So PERF decided to convene a meeting on this important topic.

Our meeting brought together sheriffs, corrections officials, probation and community supervision officials, community-based partners, researchers, and subject matter experts. I want to thank all who participated in this meeting and contributed to our discussions. (See Appendix A for a list of participants at the conference.)

I especially want to thank Sheriff Ed Gonzalez and members of the Harris County (TX) Sheriff's Office (HCSO) for helping us develop the meeting program and for serving as hosts. On the evening prior to the meeting, the Sheriff's Office provided tours of the county's diversion and community-based supervision facilities, including the NeuroPsychiatric Center, the Houston Recovery Center, the Judge Ed Emmett Mental Health Diversion Center, and the Diversion Desk at the Joint Processing Center (all featured in this report). Special thanks to Project Manager Frank Webb and Major Mike Lee for

their assistance in planning our conference and for helping to arrange the facilities tours.

As Harris County is demonstrating, pretrial justice is a collaborative effort. Our meeting benefited from the participation of Harris County District Attorney Kim Ogg, Houston Police Chief Art Acevedo, Director of Pretrial Services Kelvin Banks, Assistant Public Defender Te'iva Bell, Harris Center Director Wayne Young, and Director of Community Supervision and Corrections Dr. Teresa May.

I am also grateful to the subject matter experts and practitioners who made presentations during the conference: Sue Ferrere, Director of Impact at the Pretrial Justice Institute; Sheriff Daron Hall of Davidson County (TN); Major Mike Merican of the St. Mary's County (MD) Sheriff's Office; and HCSO Project Manager Webb. Their perspectives on key issues helped to frame the day's discussions.

I also want to thank Stephen Douglas, a former client of the Open Door Mission, which is one of the social service partners that works with Harris County to help individuals who are diverted from the criminal justice system and into community-based programming. At our meeting, Mr. Douglas spoke candidly about his personal struggles and how the Open Door Mission program helped to turn around his life. He provided real-life testimony about why this work is so important.

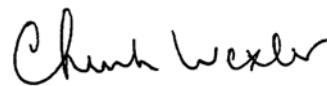
PERF staff members deserve credit for arranging our conference and producing this

report. Leading PERF's Sheriffs Initiative is Senior Associate Dan Alioto, a retired 23-year veteran of the St. Mary's County (MD) Sheriff's Office. Dan oversaw all aspects of this project and ensured that it was a success. Senior Research Associate Matt Harman and Senior Research Assistant Amanda Barber conducted research and developed the agenda for the meeting. Research Assistant Nora Coyne was lead author of this report, with contributions from Dan Alioto and Matt Harman. Nora also oversaw meeting logistics. Assistant Communications Director James McGinty created and organized the visuals used at the meeting and helped Membership Coordinator Balinda Cockrell to manage registration and email communications with meeting attendees. My Executive Assistant Soline Simenauer helped

keep me organized and focused throughout this project.

Chief Program Officer Kevin Morison has overall management accountability for PERF's Sheriffs Initiative. He and Communications Director Craig Fischer edited this final report. This document was designed and laid out by Dave Williams. Photography was provided by Itani Gardens Media.

PERF is grateful to the Howard G. Buffett Foundation for its continued support of our Sheriffs Initiative, which is now in its third year. As the former Sheriff and now Undersheriff of Macon County, IL, Howard Buffett understands first-hand the challenges facing America's sheriffs' offices. He has been strongly supportive of PERF's efforts to find creative solutions to those challenges.



Chuck Wexler
Executive Director
Police Executive Research Forum
Washington, D.C.

EXECUTIVE SUMMARY:

Sheriffs Are Working to Create a Smarter, Safer Pretrial Justice System

In recent years, the role of sheriffs has expanded and become more complex. Holding criminal suspects and offenders accountable remains at the core of what sheriffs do, but sheriffs are also finding themselves on the front lines of social issues such as untreated mental illness, substance abuse, and homelessness. Sheriffs' offices are confronting these challenges on the streets, as part of their enforcement responsibilities, and in their jails, which hold many people with mental illness and addiction issues.

In fact, jails have become the largest provider of mental health services in some counties. Sheriffs' offices are developing new approaches to offering treatment and related services to the growing number of inmates in their custody with mental illness.¹

In addition to helping people in their custody, many sheriffs are now looking for alternatives to arrest and incarceration of suspects who have been charged with low-level offenses and are dealing with mental illness, substance abuse, or other issues.

This represents a major shift in approach for many sheriffs. Sheriffs increasingly are looking for ways to keep certain categories of people out of their jails and instead to steer them into community-based services, where their mental

health and addiction issues can be addressed more effectively.

On May 10, 2019, PERF brought together nearly 100 sheriffs, corrections and other law enforcement leaders, probation and community supervision officials, social service partners, researchers, and subject matter experts to explore how sheriffs' offices are approaching these issues. The PERF conference was a wide-ranging discussion of the concepts behind pretrial release, pre-arrest diversion, and community-based supervision, and the implementation of these programs. This report summarizes the key points from the meeting and the research that went into it.

Reversing the Trend of Increasing Jail Populations

The changes being implemented by sheriffs' offices are reversing a three-decade-long trend of growing jail populations in the United States. From 1983 to 2013, the average daily population of jails in the United States more than tripled, reaching 731,000. These increases were driven in large part by an increase in the number of defendants in jail awaiting trial. Many of these suspects had been arrested for relatively low-level offenses and were experiencing mental illness, substance abuse, and/or homelessness.

The effects of poverty: Because many pretrial defendants have limited resources, they are unable to pay even modest bail amounts to

1. *Managing Mental Illness in Jails: Sheriffs Are Finding Promising New Approaches*. September 2018. Police Executive Research Forum. <https://www.policeforum.org/assets/mentalillnessinjails.pdf>

secure their freedom until their cases are adjudicated. As a result, traditional pretrial practices that rely on monetary bail have had a disproportionate impact on individuals who are poor.

Costs of incarceration: Keeping defendants in jail is costly. Sheriffs' officials at the PERF meeting reported that it can cost \$100 per day or more to house an inmate in the general jail population. That amount can easily double for inmates who require psychotropic medication or housing in specialized mental health units within jails. Community-based services usually cost a fraction of that.

Limitations of jails: In addition to being less costly, many pretrial reform programs are providing suspects and minor offenders with better treatment services than they could obtain in jail. As much as jails have advanced in recent years to provide new services to persons with mental illness or drug addiction issues, the fact remains that most jails are not equipped to provide the range of needed services. And because jails typically house inmates for relatively brief periods of time, they cannot provide the continuity of care that many people with mental illness or drug addiction require. Getting these individuals into community-based treatment services increases the chances of long-term success, which means fewer interactions with the criminal justice system in the future.

Unintended consequences of pretrial detention: Research presented at the PERF meeting suggests that holding *low-risk defendants* in jail for even a few days can actually increase the likelihood they will be arrested for additional crimes and/or will fail to appear in court once they are released pending adjudication. Sue Ferrere of the Pretrial Justice Institute cited a 2013 study, published by the Laura and John Arnold Foundation, which found that low-risk defendants who spent two to three days in jail on pretrial detention were almost 40% more likely to commit new crimes pending trial than those who were released within one day.²

While the Arnold Foundation study did not explore the reasons behind this finding, others have pointed out that because many low-risk defendants work in low-wage or temporary jobs, even brief periods of detention can disrupt their lives and put their employment at risk, which can increase the chances they will commit additional crimes to support themselves.³ So rather than putting the public at greater risk, pretrial release programs *directed at low-risk defendants* may actually help to reduce recidivism and increase public safety.

Three Agencies That Are Driving Change

At the meeting, PERF heard from jurisdictions that are implementing changes and achieving promising results:

- **Davidson County, TN** revamped its Pretrial Release Program by increasing the use of automation, standardizing the risk assessment process, and expanding options for community-based supervision of low-risk defendants. Sheriff Daron Hall reported that in just one year, the number of suspects on pretrial release rose 73%, and the average daily jail population declined by 32%, resulting in cost savings of \$2.7 million in 2018. The county did experience an increase in the number of minor offenders who failed to appear for court proceedings, but there was no measurable impact on overall crime in Davidson County.
- **Harris County, TX** rolled out a comprehensive pre-arrest diversion program that allows sheriff's deputies and police officers to divert certain suspects in low-level crimes from jail to a range of facilities that specialize in mental health services, detox, and treatment for addiction.

2. Lowenkamp, Christopher T., Marie VanNostrand, and Alexander Holsinger. *The Hidden Costs of Pretrial Detention*. Laura and John Arnold Foundation, 2013. <https://nicic.gov/hidden-costs-pretrial-detention>

3. Dobbie, Will, Jacob Goldin, and Crystal S. Yang. 2018. "The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges." *American Economic Review*, 108 (2): 201-40. <https://www.aeaweb.org/articles?id=10.1257/aer.20161503>

One of those facilities is a Sobering Center that provides a place for police to take an individual who might otherwise be arrested for being intoxicated in public. At that facility, individuals not only can “sober up,” they can also receive peer coaching from specialists who have dealt with addiction themselves.

The impact on the criminal justice system has been substantial. Between 2010 and 2018, the number of people arrested by the Houston Police Department for public intoxication decreased 96%, from over 20,000 to just 785.

- **St. Mary’s County, MD** limited the use of cash bail for many offenses and implemented a sophisticated risk assessment process. The new system has resulted in an increase in the number of people on pretrial release and a decrease in the population of pretrial defendants in jail. As in Davidson County and elsewhere, the cost savings from these changes have been significant.

In all three of these jurisdictions, forward-thinking sheriffs recognized that the status quo of arrest and incarceration of low-risk defendants with mental illness and addiction issues was costly and did not necessarily promote public safety. So, working with other criminal justice partners and community-based services, they revamped programs or started new ones that were more efficient, consistent, and fair in how they deal with these low-risk defendants.

Legislative and Legal Changes

In some states, change is coming about through legislation or the courts.

- **New York State** enacted legislation that, beginning in 2020, eliminates cash bail for anyone accused of dozens of misdemeanor and nonviolent felony offenses. And in cases where bail is still allowed, judges are required to factor into bail decisions a defendant’s ability to pay. However, some law enforcement leaders in New York have expressed concern that the new law may negatively impact public safety because it takes away judicial discretion

and automatically releases suspects accused of certain serious crimes, such as burglary and stalking.⁴ With some crimes increasing in New York City in the first few months of 2020, officials in the state are closely monitoring the impact of the bail reform law and are considering adjustments that would give judges greater discretion in some pretrial decisions.

- **New Jersey**, which operated almost strictly on a monetary bail system until 2017, also eliminated cash bail and instituted a presumption of pretrial release for all defendants, unless a judge decides that a defendant poses a serious risk to public safety and is unlikely to appear in court. New Jersey retained judicial discretion and implemented a risk assessment tool to help determine which defendants may be a threat to public safety and/or would fail to appear in court if released.
- In **California**, pretrial systems that had relied heavily on monetary bail have been successfully challenged in court. In a 2018 case, *In re. Humphrey*,⁵ a defendant accused of robbing and threatening a neighbor successfully challenged his \$350,000 bond as a violation of due process and equal protection under the law, because he could never afford to pay that amount. In a second case in 2019, *Buffin v. City and County of San Francisco*,⁶ the court ruled that San Francisco’s bail schedules were unconstitutional because they undermine the presumption of innocence.

Whether changes are enacted by state legislatures, imposed by the courts, or implemented by individual jurisdictions, pretrial release and pre-arrest diversion are becoming increasingly common and accepted practices, primarily for defendants accused of relatively minor, nonviolent crimes.

4. McKinley, Jesse, Alan Feuer, and Luis Ferre-Sadurni. “Why Abolishing Bail for Some Crimes Has Law Enforcement on Edge.” The New York Times. Dec. 31, 2019. <https://www.nytimes.com/2019/12/31/nyregion/cash-bail-reform-new-york.html>

5. <https://caselaw.findlaw.com/ca-court-of-appeal/1886990.html>

6. <https://law.justia.com/cases/federal/district-courts/california/candce/4:2015cv04959/292405/314/>

The Importance of Risk Assessment Tools

At the heart of many pretrial reform efforts are risk assessment tools. These are formal instruments that use mathematical calculations, based on a number of factors, to help predict how likely a defendant is to commit new crimes while on pretrial release, and how likely defendants are to appear in court as directed if they are not incarcerated before trial.

There are many risk assessment tools in use today. Most of them analyze a set of factors, including a defendant's age, substance abuse and criminal history, employment and housing stability, family relationships, and community ties. At the PERF meeting, participants explored how agencies are using risk assessment tools, and the benefits and shortcomings of various methods.

Participants at the conference noted that it is important for agencies to periodically evaluate their risk assessment tools, to determine whether they are accurately predicting which defendants are most likely to appear in court as required and avoid any new arrests or criminal activity while awaiting trial.

Collaboration and Availability of Social Services

A key element of any pretrial justice program is collaboration among many types of agencies. Any pretrial reform initiative must be a joint effort of law enforcement agencies, prosecutors, the defense bar, judges, mental health care agencies, social service providers, and others.

Harris County, TX is a prime example of how collaboration can work. The county has been able to implement a wide-ranging pre-arrest diversion program because all of the key agencies in the criminal justice system, mental health care systems, and community-based services are part of the process.

Another critical part of a successful pretrial justice program is the availability of services for individuals who need them. Most sheriffs recognize that their jails should not be the leading provider of mental health care and addiction services in their communities. Instead, service providers, both public and private, must step in to fill the need. Meeting participants emphasized that having treatment services available and accessible is key to the long-term success of the pretrial reforms that are being implemented. This can be a challenge in some smaller, rural jurisdictions that may lack the resources to provide treatment and other services.

Many Sheriffs Are Leading the Way

In many jurisdictions, sheriffs are moving beyond their traditional enforcement and incarceration responsibilities and are embracing new approaches to managing criminal suspects who are better served outside the justice system. These approaches focus on assessing risks, directing people who need help into services, and preserving limited enforcement and jail resources for the most serious offenders who pose a risk to the community.

This report captures some of the pioneering efforts among sheriffs who are driving change. They can serve as a guide to other agencies and jurisdictions that wish to change how their pretrial justice systems operate.

As these reforms are implemented, it will be important for sheriffs, police chiefs, and other public safety officials to monitor how reforms may impact public safety in their communities. While the initial results in many jurisdictions suggest that reforms have not led to increases in crime, officials in New York State are closely watching any impact the sweeping bail reforms enacted at the beginning of 2020 may have on public safety in that state. This will be a key issue for officials to track.

Pretrial Justice: A National Perspective

Note: This chapter is based largely on a presentation at PERF's conference by Sue Ferrere, Director of Impact at the Pretrial Justice Institute.

Increasing Populations of Pretrial Detainees

Beginning in the early 1980s and continuing over the next three decades, America's jail population surged.⁷ According to the Vera Institute of Justice, from 1983–2013, the average daily population of U.S. jails more than tripled, from 224,000 to 731,000.

One factor driving this increase was the rise of pretrial incarceration. In 1983, pretrial detainees accounted for approximately 40% of the total jail population; the other 59% were convicted offenders. (The conviction status of the other 1% was unknown.)⁸ By 2013, the makeup of the jail population had reversed: 38% were convicted offenders and 62% were pretrial detainees (see Figure 1).⁹

7. Subramanian, Ram, Ruth Delaney, Stephen Roberts, Nancy Fishman, and Peggy McGarry. *Incarceration's Front Door: The Misuse of Jails in America*. Vera Institute of Justice, 2015. <https://www.vera.org/publications/incarcerations-front-door-the-misuse-of-jails-in-america>.

8. *Jail Inmates 1983*. U.S. Department of Justice, Bureau of Justice Statistics, 1983. <https://www.bjs.gov/content/pub/pdf/ji83.pdf>.

9. *Jail Inmates at Midyear 2013 – Statistical Tables*. U.S. Department of Justice, Bureau of Justice Statistics, 2014. <https://www.bjs.gov/content/pub/pdf/jim13st.pdf>



Sue Ferrere,
Director of Impact,
Pretrial Justice
Institute

Not only were more people being jailed, but inmates were also spending more time in jail. Between 1983 and 2013, the average length of stay in jail increased from 14 days to 23 days.¹⁰

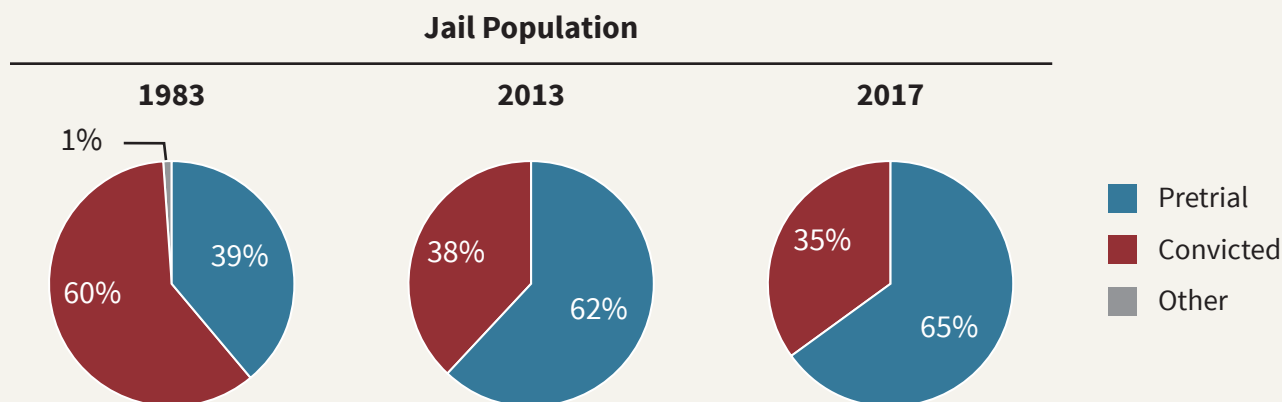
More recent data from the Bureau of Justice Statistics shows an overall 12% *decrease* in the jail incarceration rate from 2007 to 2017. During this time, however, pretrial detainees accounted for a *growing percentage* of the total jail population, increasing from 62% in 2013 to 65% in 2017.¹¹

Although overall arrest rates have declined nationally in recent decades, the rate of

10. Subramanian, Ram, Ruth Delaney, Stephen Roberts, Nancy Fishman, and Peggy McGarry. *Incarceration's Front Door: The Misuse of Jails in America*. Vera Institute of Justice, 2015. <https://www.vera.org/publications/incarcerations-front-door-the-misuse-of-jails-in-america>.

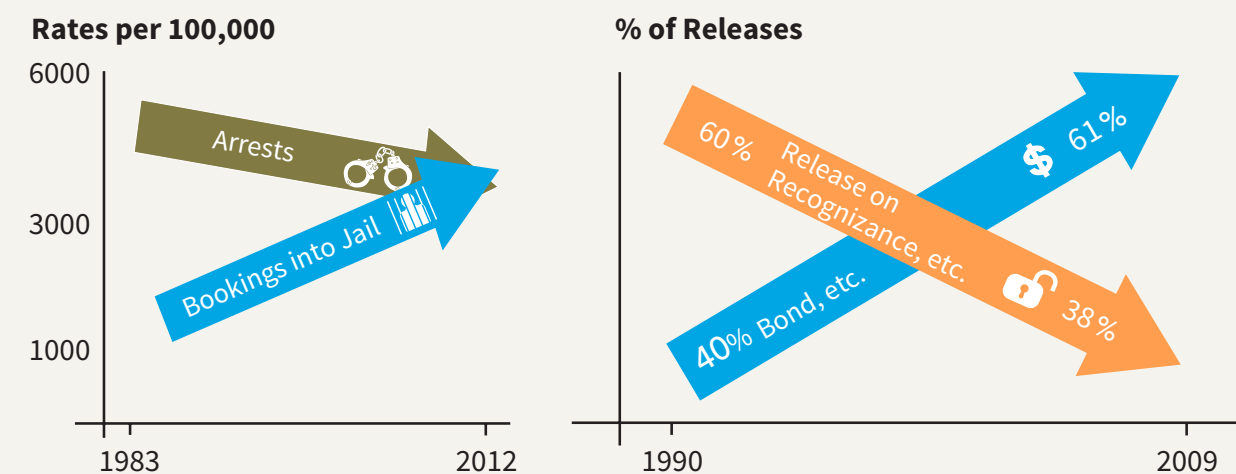
11. Zeng, Zhen. *Jail Inmates in 2017*. U.S. Department of Justice, Bureau of Justice Statistics, 2018. <https://www.bjs.gov/content/pub/pdf/ji17.pdf>

Figure 1. Change in the Makeup of the U.S. Jail Population: 1983, 2013, and 2017



Source: U.S. Department of Justice, Bureau of Justice Statistics

Figure 2: Changes in Arrest Rates, Jail Bookings, and Pretrial Release



Source: Vera Institute of Justice: *Incarceration's Front Door: The Misuse of Jails in America*

bookings into jail actually increased.¹² This was driven, in part, by an increased reliance on bond and financial conditions for release and less use of release on recognizance.¹³ In 1990, 60% of felony defendants released from jail received non-financial conditions such as release on recognizance, compared to 40% released

on financial conditions such as private bonds. By 2009, these percentages had flipped: 61% of felony defendants were released on financial conditions and 38% were released on non-financial conditions such as release on recognizance.¹⁴

Researchers at the Vera Institute of Justice concluded that these high rates of incarceration are disproportionate to crime rates in the United

12. Ram, Delaney, Roberts, Fishman, and McGarry.

13. Ibid.

14. Ibid.

States, out of line with historical incarceration rates, and out of line with other nations' incarceration rates.

The increasing percentage of jail inmates who are awaiting trial, rather than convicted offenders, has prompted some criminal justice officials and elected leaders to rethink their approaches to pretrial detention. Some jurisdictions have eliminated or sharply restricted the use of monetary bail, in order to reduce the disparity in incarceration rates between defendants who have financial resources and those who do not. Other jurisdictions have implemented a range of pretrial release, diversion, and community-based supervision programs.

The Growth of Risk Assessment Tools

To help criminal justice leaders make informed decisions about pretrial release, a growing number of jurisdictions are turning to **risk assessment tools**. These are mathematical instruments that consider a number of factors to estimate the likelihood that a defendant will fail to appear for court or will commit another crime if released prior to the adjudication of his or her case. These factors include details about the arrestee's criminal history, if any, and the extent to which the arrestee has ties to the community that would make the arrestee less likely to flee the jurisdiction of the court.

In the past, many judges informally considered some of these types of factors in making decisions about bail and release of defendants. The goal of using a formal, standardized mechanism is to make better-informed, fairer, and more uniform choices about who should be eligible for non-monetary pretrial release. (See pp. 17–18 for information about a risk assessment tool in Davidson County, TN.)

“Often, dangerous people you should be able to keep in jail are able to bond out,” said Harris County, TX Sheriff Ed Gonzalez. “And sometimes you have people who are considered low-risk and nonviolent, and yet they end up committing serious crimes down the road. We really need to become more sophisticated in terms of making these decisions from an evidence-based perspective.”

Even a Brief Detention May Result in Worse Outcomes

Research has found that when people who register as a low risk on a pretrial assessment are nevertheless detained, even for a relatively brief period of time, they are *more likely* to experience a series of adverse effects than their counterparts who are released more promptly. A 2013 study by the Laura and John Arnold Foundation found that for low-risk defendants, as length of time in jail before trial increases, so does the likelihood of a new arrest upon release. Low-risk defendants who spent 2 or 3 days in jail after arrest were 39% more likely to commit new criminal activity while their cases were pending than were low-risk defendants who were released within one day after arrest.¹⁵

Many low-risk defendants may work in low-wage or temporary jobs. For them, being detained for even just a few days can disrupt their lives and threaten their employment. This, in turn, may increase the chances that they will turn to crime to support themselves.

This same effect held for recidivism rates post-adjudication as well. Low-risk defendants who spent 8–14 days in pretrial detention had a 51% greater chance of new criminal activity within two years when compared to low-risk defendants released within one day. Low- to medium-risk defendants who spent measurable time in pretrial detention also had higher fail-to-appear rates, an increased likelihood of being



Harris County, TX
Sheriff Ed Gonzales

15. Lowenkamp, VanNostrand, and Holsinger. “The Hidden Costs of Pretrial Detention.” (2013). https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs-FNL.pdf

sentenced to jail or prison, and longer sentences upon conviction than defendants who were released from jail more promptly.¹⁶

Secured vs. Unsecured Bonds

There are two basic types of monetary bail bonds:

- **Secured bonds**, in which defendants must pay up front in order to be released from custody, and
- **Unsecured bonds**, in which defendants are released from custody and pay only if they fail to appear in court.

A 2013 Pretrial Justice Institute study in Colorado found similar court appearance rates among defendants released on both **secured bonds** and **unsecured bonds**.¹⁷ Furthermore, monetary bonds are not always an effective tool for promoting public safety. A defendant released on a secured bond can commit a new crime but not forfeit the original bond amount. Secured bonds are forfeited only if the defendant fails to appear in court.

Recent Trends in Pretrial Justice

There is an emerging trend toward evidence-based pretrial justice that places only a limited reliance on monetary bail. Some jurisdictions are focusing on maximizing court appearances and public safety by adopting a more informed pretrial release system. Such a system strives to balance three complementary goals—ensuring the arrestee’s appearances in court, protecting public safety, and maintaining the presumption of innocence.

Ms. Ferrere of the Pretrial Justice Institute said that four legal principles support this type of approach:

1. Use of bail should be limited to two purposes, as established by case law: to **prevent flight risk** and **promote public safety**.
2. The system must be based on **individualized decision-making**. Defendants should not necessarily receive the same bond amount or conditions simply because their alleged crime is the same, because individual circumstances differ and need to be considered.
3. Release must be based on the **least restrictive conditions** that can ensure appearance in court and protect public safety.
4. There is a **presumption of innocence throughout the pretrial process**, and equal protection and due process rights must be maintained.

Some States Are Implementing Pretrial Reform

A series of lawsuits and new legislation are changing the pretrial landscape in parts of the country.

California: In California, for example, a pretrial system that relied heavily on monetary bail was successfully challenged in court on due process claims. The 2018 case, *in re Humphrey*, involved a defendant, Kenneth Humphrey, who was arrested for allegedly robbing and threatening his neighbor. Mr. Humphrey was being held on a \$350,000 bond. He challenged his bail decision on the grounds that the amount was impossible for him to pay and therefore violated due process and equal protection. The 1st District Court of Appeal ruled in his favor, and the case is pending review by the California Supreme Court.¹⁸ In a second case in California, *Buffin v. City and County of San Francisco*, the United States District Court for the Northern District of California ruled in 2019 that San Francisco’s bail schedules were unconstitutional because they assume detention instead of innocence.¹⁹

16. Ibid.

17. Jones, Michael R. *Unsecured Bonds, The As Effective and Most Efficient Pretrial Release Option*. University of Pretrial Library. Pretrial Justice Institute, October 2015. <https://university.pretrial.org/viewdocument/unsecured-bonds-the>.

18. “In Re Humphrey.” Justia Law, n.d. <https://law.justia.com/cases/california/court-of-appeal/2018/a152056.html>.

19. “Buffin v. City and County of San Francisco.” <https://law.justia.com/cases/federal/district-courts/california/candce/4:2015cv04959/292405/314/>.

New York State: In New York State, the legislature in 2019 passed a package of criminal justice reform measures (S1509C/A2009C) that included the following provisions, which went into effect in 2020:

- Elimination of monetary bail in most misdemeanor and nonviolent felony cases, including crimes such as burglary, stalking, assault without serious injury, and many drug offenses.
- Elimination of straight pretrial detention (“remand”) in all misdemeanor cases.
- Mandatory consideration of the ability to pay when monetary release conditions are imposed.
- A prohibition against charging individuals any fees related to the conditions of their non-monetary release, such as costs of GPS monitoring or drug testing.

A Retired Judge and Prosecutor Assesses the Future of Bail in California

An article by David Minier, a retired judge and former district attorney, excerpted below, explains how the policy issues and politics of pretrial reform are playing out in California:

“The Humphrey decision, although not binding statewide, sent nervous courts scrambling to comply, hastily adopting risk assessment guidelines and adding probation officers to implement them. It also nudged California lawmakers to enter the fray. In August 2018, the Legislature passed, and the governor signed, Senate Bill 10, heralded as the most progressive reform in the country. Money bail was to be abolished. Pretrial release of defendants was to be determined by ability to pay, along with risk of further criminality and failure to appear. A judge could hold defendants in jail without bail, however, by finding them dangerous.

“Then a strange thing happened. Reformers who had championed the legislation now complained that cautious judges could refuse to release defendants they deemed dangerous. And, since defendants could no longer buy pretrial freedom with money bail, more, not fewer, would remain in jail. California’s 3,200 bail agents joined reformers in opposing the law, which would destroy their livelihood and their industry’s annual \$2 billion business. These unlikely allies backed a referendum petition to put Senate Bill 10’s implementation on hold until voters could decide for or against it. They succeeded, collecting over 575,000 signatures in 70 days.

“The future of money bail in California is now scheduled to be decided by the electorate in the November 2020 election.

“But referring Senate Bill 10 to voters could turn out to be a useless act. The California Supreme Court may ... decide the issue themselves. The court has agreed to review *In re Humphrey* and determine whether continued use of money bail violates the California Constitution. Chief Justice Cantil-Sakauye likely telegraphed the high court’s ruling when she branded the system ‘unsafe and unfair.’”²⁰

20. Minier, David. “Money bail inherently discriminates between rich and poor. It should be replaced.” The Fresno Bee, September 13, 2019. <https://www.fresnobee.com/opinion/readers-opinion/article235036917.html>

- A 48-hour grace period for failing to appear when a bench warrant is issued.^{21 22}

While the full impact of New York’s law on crime and public safety may not be known for some time, some law enforcement leaders in the state are concerned that the law takes away too much discretion from judges and prevents the type of individualized, pretrial decision-making that considers both the crime and the defendant’s history.

“When you have individuals that are standing before a judge and immediately being released, and essentially everyone in the room knows that this person is a danger to the community, I think we need to look at the system and make sure that judges can make common-sense decisions,” New York City Police Commissioner Dermot F. Shea said in a radio interview.²³ Commissioner Shea and others fear that without proper supervision, more defendants released pending trial will not appear in court and will commit new crimes while on release.

New Jersey: New Jersey completely transformed its approach to pretrial release with passage of the 2017 Criminal Justice Reform Act. Prior to that law, the state operated almost exclusively on a monetary bail system. Nearly every defendant, regardless of charges or other factors, received some type of monetary bail. The Criminal Justice Reform Act reversed that policy and instituted a presumption of pretrial release for all defendants, unless a judge determines that a defendant poses too much of a risk to public safety or is unlikely to appear for their assigned court date.

To support this policy shift, pretrial assessments and new services were implemented statewide. The state began using the Public Safety Assessment (PSA) tool developed by Arnold Ventures to classify defendants into one of five risk categories. The fifth and highest risk level is the only one in which pretrial detention of the defendant is recommended. All other risk levels come with pretrial monitoring recommendations of various degrees.²⁴ Cash bail is now considered a last resort for judges in New Jersey, mostly used only after a defendant violates conditions of their release.

The early results of these changes have been promising. According to the 2018 annual report of the New Jersey Courts, the state’s pretrial jail population decreased by approximately 44% between 2015 and 2018. Only 6.4% of defendants were detained pending trial in 2018, and just 102 defendants out of 44,383 had to post bail, mostly due to violating conditions of their release.²⁵ Despite concerns from bail reform critics, crime rates in New Jersey have continued to decline, and the rate at which defendants committed new crimes on pretrial release remained consistent with previous years.²⁶

21. Rempel, Michael, and Krystal Rodriguez. *New York’s Bail Reform Law: Major Components and Implications*. Center for Court Innovation, April 2019. <https://www.courtinnovation.org/publications/bail-reform-NYS>.

22. *What’s Happening in Pretrial Justice?* University of Pretrial Library. Pretrial Justice Institute, July 24, 2019. <https://university.pretrial.org/viewdocument/where-pretrial-improvements-are-hap-2>.

23. Dole, Kimberly. “Police Commissioner Dermot Shea: ‘This job is really about the people.’” WINS-1010 Radio, December 3, 2019. <https://1010wins.radio.com/articles/dermot-shea-this-job-is-really-about-the-people>

24. “Pretrial Services Program.” New Jersey Judiciary, May 2017. https://www.njcourts.gov/forms/12088_cjr_pretrial_svcs_brochure.pdf.

25. *2018 Report to the Governor and the Legislature: Criminal Justice Reform*. New Jersey Judiciary. Pp. 7, 36. April 2019. <https://university.pretrial.org/viewdocument/new-jersey-courts-2018-report-to-th>

26. *2018 Report to the Governor and the Legislature*. New Jersey Judiciary, April 2019. P. 13. <https://njcourts.gov/courts/assets/criminal/2018cjannual.pdf?c=dSE>.

Background on Monetary Bail

Individuals in pretrial detention account for the majority of America's jail population. According to the Annual Survey of Jails, a study conducted by the U.S. Department of Justice, Bureau of Justice Statistics (BJS), in 2017 about 65% of jail inmates were awaiting trial, and the remaining 35% had been convicted and/or sentenced.²⁷ Persons in pretrial detention either have been denied release or are unable to post a monetary bond set for them.

Many of the individuals in pretrial detention cannot afford even modest bail amounts to secure their release. The Federal Reserve Board estimates that four in ten Americans would not be able to afford an emergency \$400 expense without borrowing money or selling something.²⁸ Average bail amounts vary by jurisdiction and by factors such as the severity of the criminal charge. According to BJS, urban courts have a median bail amount of \$11,700 for felony defendants.²⁹

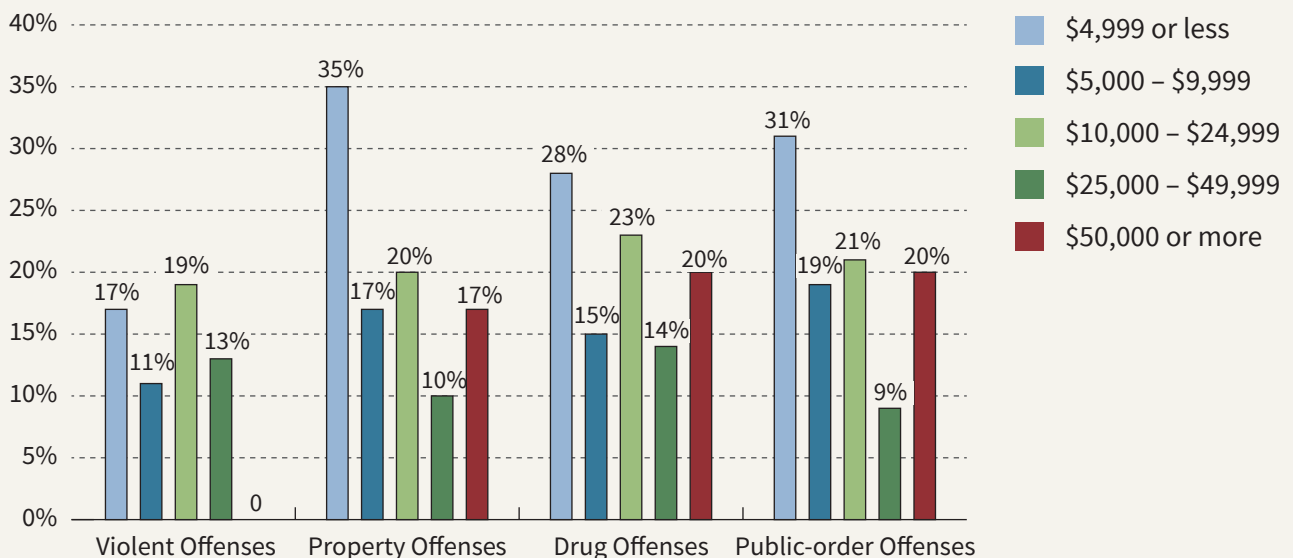
In a 2009 study of pretrial release of felony defendants in the 75 largest counties in the United States, BJS found that among defendants detained pretrial, only one in ten had been denied any opportunity to obtain release by posting bail. (Defendants who are not allowed to post bail and obtain release often have been charged with a serious violent crime, are considered too dangerous to release, or are considered unlikely to return to court or meet other conditions of release.)

However, the large majority of pretrial detainees, approximately 90%, were incarcerated because they were not able to meet the financial conditions of their release.³⁰

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Figure 3: Bail Amounts for Felony Defendants in Large Urban Counties

Bail amount for felony defendants in the 75 largest counties, by most serious arrest, 2009



Source: Bureau of Justice Statistics: *Felony Defendants in Large Urban Counties, 2009 - Statistical Tables*

27. Zeng, 2018.

28. *Report on the Economic Well-Being of U.S. Households in 2017*. Board of Governors of the Federal Reserve System, May 2018. <https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf>. Page 2.

29. Reaves, Brian A. *Felony Defendants in Large Urban Counties, 2009 - Statistical Tables*. U.S. Department of Justice, Bureau of Justice Statistics, 2013. <https://www.bjs.gov/content/pub/pdf/fdluc09.pdf>.

30. Ibid.

Defendants who are allowed to post bail but cannot afford to pay it on their own often turn to a private bail bond company. Defendants pay a premium to the company, usually about 10% of the assigned bail amount, and the bail bond company posts bail on behalf of the defendant. The premium is nonrefundable, even if the defendant is found not guilty or if the charges are dropped. But for those who cannot afford to post the total amount of their bail, it is often a better option than being jailed while they await trial.

The use of private bail bond companies has been very common. According to BJS data, 65% of defendants released on financial bond in 1990 used a commercial bond. This percentage increased to 80% in 2009.³¹

Critics of the current bail bond system note that it often appears to be discriminatory. A 2011 study found that men of color are, on average, given higher bail amounts than white men who were charged with the same crime and had similar criminal histories.³²

Pretrial risk assessments, when designed and used properly, may help reduce these disparities by providing a more objective decision-making tool. The Pretrial Justice Institute studied Yakima County, WA as it implemented various pretrial reforms, including a pretrial risk assessment tool. Researchers found that after the county implemented the risk assessment tool and other changes, release rates for Latino/Hispanic defendants increased from 49% to 75%, and release rates among Native Americans, African Americans, and Asian/Pacific Islanders increased from 41% to 65%. Release rates for white defendants also increased, but by a lesser amount, from 64% to 73%, so the disparities were lessened.³³ It is important to note that risk assessments alone will not eliminate disparities, but they are one tool that can create a more equitable system.

The Yakima County study also found that while the number of defendants released pretrial increased substantially after the reforms were implemented, there was “no statistically significant difference observed in public safety or court appearance outcomes when compared to the pre-implementation time period.”³⁴ In other words, defendants on pretrial release were no more likely to commit new crimes or fail to appear in court after the risk assessment tool and other changes were undertaken.

31. Liu, Patrick, Ryan Nunn, and Jay Shambaugh. *The Economics of Bail and Pretrial Detention*. The Hamilton Project and the Brookings Institute, December 2018. https://www.hamiltonproject.org/assets/files/BailFineReform_EA_121818_6PM.pdf

32. Gelbach, Jonah B. and Shawn D. Bushway. *Testing for Racial Discrimination in Bail Setting Using Nonparametric Estimation of a Parametric Model*. SSRN, August 20, 2011. <https://ssrn.com/abstract=1990324>.

33. Brooker, Claire M. B. *Yakima County, Washington Pretrial Justice System Improvements: Pre- and Post- Implementation Analysis*. Pretrial Justice Institute, November 2017. <https://justicesystempartners.org/wp-content/uploads/2018/02/2017-Yakima-Pretrial-Pre-Post-Implementation-Study.pdf>.

34. Ibid.

Pretrial Justice — A Collaborative Process

One important measure of pretrial release programs is the level and types of crimes committed by individuals who are released pending trial. While studies have found that the majority of defendants are not rearrested during their pretrial period, a certain percentage—generally just under 15%—are rearrested. For instance, the D.C. Pretrial Services Agency found that in 2017, 14% of defendants on pretrial release were rearrested during their pretrial period.³⁵ Studies in New Jersey produced similar results, with 13.7% of released defendants being charged with a new indictable crime while on pretrial release in 2017.³⁶

When a defendant commits a new crime while on pretrial release, especially a serious or violent offense, there is often a backlash in the community about the decision to release the defendant. Sheriffs' agencies, because they operate and have jurisdiction over jails, frequently bear the brunt of the community's reaction. There is sometimes a public misconception that pretrial release is a sheriff's decision, rather than a judge's decision.

In reality, sheriffs' offices in some instances are taking the lead in designing and implementing new pretrial and diversion programs, but they work in partnership with the courts, prosecutors, defense attorneys, police agencies, and other criminal justice stakeholders.

At the PERF meeting, participants discussed the importance of developing collaborative pretrial justice systems:



Sheriff Daron Hall, Davidson County, TN:

Criteria for Pretrial Decisions Should Be Based on an Understanding Among Many Agencies

“Criteria for release need to be based on a collective understanding between law enforcement, the prosecutor, the judges, and others. I explain to my community that the program we administer authorizes pretrial release in many cases, but the criteria are established by the stakeholders in the criminal justice system. If decisions result in unfortunate outcomes, the program can be reviewed and evaluated by the public.”

Lori Eville, Correctional Program Specialist, National Institute of Corrections:

We Must Explain that Evidence-Based Release Criteria Are Better than a Simple Bail Schedule

“Ultimately, it is the judge's decision, exclusively, to release or detain a defendant. But prosecutors, police, sheriffs, and pretrial agencies are involved in trying to predict which defendants are dangerous or will commit new crimes if released or will not appear in court for trial, based on certain criteria. I think we have

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35. “Washington, DC Pretrial Facts and Figures.” Pretrial Services Agency for the District of Columbia, March 2018. <https://www.psa.gov/sites/default/files/Pretrial%20Facts%20and%20Figures%20-%20Updated%203.2018.pdf>.

36. 2018 Report to the Governor and the Legislature, New Jersey Judiciary. Pp. 4-5. <https://njcourts.gov/courts/assets/criminal/2018cjrannual.pdf>

to tell the community that an evidence-based pretrial release system is a far better method of public safety planning than an arbitrary bail schedule.”



Major Mike Merican, St. Mary's County (MD) Sheriff's Office:

Pretrial Release Is a Group Decision

“Letting someone out on pretrial release is a group decision. With buy-in from the judges, state's attorneys, and public defenders, everyone at the table can work together to make the best decisions they can on behalf of the community.”

Lieutenant Paul Ellison, Pinellas County (FL) Sheriff's Office:

We Have Regular Meetings of All the Stakeholders

“In Pinellas County, we brought all the stakeholders together and created a memorandum of understanding between everyone. We have regular meetings where we discuss these issues of pretrial release. At these meetings, we hammer out the details of how we will move forward in the system.”



Davidson County, TN: A More Consistent Approach to Pretrial Release

At the PERF meeting, Davidson County, TN Sheriff Daron Hall discussed recent changes that have reshaped pretrial services in his county.

The Davidson County Pretrial Release (PTR) program, which is run by the Sheriff's Office, has been in operation for over 30 years. However, Sheriff Daron Hall recognized that the program was not working very effectively, and in 2015, the Tennessee Office of Criminal Justice Programs awarded a three-year, \$350,000 grant to the Crime and Justice Institute to work with Davidson County to evaluate and improve the PTR program.³⁷

In Davidson County, after a suspect is arrested, a county bail commissioner sets a bail bond amount. In the past, commissioners would consider typical factors such as the seriousness of the charges against the defendant, whether the defendant had strong ties to the community, and whether the defendant had a history of failing to appear in court. However, the process was not standardized, and it did not use a formal risk assessment instrument to identify candidates for pretrial release.

As a result, large percentages of relatively low-risk defendants charged with misdemeanor offenses were receiving bail amounts they could

not afford and were staying in the county jail for long periods of time. In 2016, more than 12,000 people arrested for misdemeanors in Davidson County remained in jail because they were unable to post bail; almost 60% of misdemeanor defendants remained in jail for the duration of their trial. The average bail amount that year for a misdemeanor defendant was more than \$5,000.³⁸

After nearly two years of evaluation, the PTR program was completely overhauled to include more sophisticated assessment tools and other changes. The new program has been operating since April 2018.

Automation and efficiency: Before the reforms were implemented, the PTR program was cumbersome. Each defendant would go through a lengthy interview process, which required large amounts of staff time. Now, many of the initial steps in the process are automated. Staff members can easily look up police, court, jail, and previous pretrial release data and other information about the defendant. This speeds the intake process.

Risk assessment: After a defendant's information has been verified, an automated risk assessment is run to provide two scores, on the defendant's risk for (1) being rearrested

37. *Leading the Way on Pretrial Reform: Davidson County's Journey*. Crime and Justice Institute. Community Resources for Justice, 2018. www.crj.org/publication/leading-way-pretrial-reform-davidson-countys-journey/.

38. "Trapped in Jail for Being Poor: Money Bail in Davidson County Infographic." ACLU of Tennessee. July 13, 2017. <https://www.aclu-tn.org/davidson-money-bail-infographic/>.

for a new crime, and (2) failing to appear in court. The risk assessment tool was developed by the Crime and Justice Institute specifically for Davidson County and is currently being validated.

The risk of failure to appear (FTA) in court is scored on a scale of 0 to 7. Risk factors include prior FTA warrants, current arrest for property charge, current arrest for traffic offenses (non-DUI), and prior drug convictions in the last five years. The risk of a new criminal arrest is scored from 0 to 5, based on factors that include any pending case, any prior misdemeanor charge, any prior felony charge, any prior probations, and any prior FTA warrants. These two scores are then combined, to create a total score of 0 to 12.

Each defendant receives a suggested pre-trial service program that is determined by the overall risk number as well as which of the two risk factors was rated higher. A defendant with

a low risk of failure to appear but a high risk of new criminal arrest receives a different level of supervision than a defendant with a high risk of failure to appear but a low risk of new criminal arrest. (See Figure 4.)

Supervision and case management: Sheriff Hall emphasized that any pretrial system must include post-release supervision and case management. Releasing a defendant with no follow-up contact does not set the person up for success.

“Once a defendant is cleared as eligible and walks out on pretrial release, I don’t recommend you just say, ‘Good luck.’ I recommend that you stay in contact with them,” Sheriff Hall said.

Defendants assessed as low risk are generally released on their own recognizance (ROR) and are given reminders about when they must appear in court. Reminders traditionally had been made via phone calls, but the county is

Figure 4: Decision-Making Matrix for Davidson County Pretrial Release and Supervision

		New Criminal Arrest (NCA) Risk Level			
		Very Low (0)	Low (1-2)	Moderate (3)	High (4-5)
Failure to Appear (FTA) Risk Level	Low (0-1)	Release on Recognizance with text messaging option 1	Release on Recognizance with text messaging option 2	Pretrial Release, Basic Supervision 3	Pretrial Release or Secure Bond High Supervision 4
	Moderate (2-4)	Release on Recognizance for non-DUI traffic charges, with text messaging required/ Pretrial Release, Basic Supervision for others 5	Pretrial Release, Basic Supervision 6	Pretrial Release, Medium Supervision 7	Pretrial Release or Secure Bond High Supervision 8
	High (5-7)	Pretrial Release, Medium Supervision 9	Pretrial Release, Medium Supervision 10	Pretrial Release, High Supervision 11	Pretrial Release or Secure Bond High Supervision 12

Source: Davidson County (TN) Sheriff’s Office

now pilot-testing a text message program, which Sheriff Hall believes will be more effective overall.

Defendants considered medium-level risk generally receive the same court reminders, as well as a requirement of weekly check-in calls to a case manager.

Defendants assessed as high-risk receive more intensive supervision, including mandatory in-person visits with their case manager each month.

Initial Results and Remaining Challenges

Sheriff Hall reported that Davidson County has seen positive results in program outcomes in the less than two years the new program has been in effect. Between 2017 and 2018, the number of people on pretrial release increased 73%, while the jail population decreased by 32%. Sheriff Hall said Davidson County saved \$1.5 million in incarceration costs because of pretrial services in 2017. Those savings increased to \$2.7 million in 2018.

In terms of defendant behavior, Sheriff Hall said the rate of failure to appear in court among defendants released pending trial did increase from 4% in 2017 to 10% in 2018. The county is still analyzing any impact on crimes committed by persons on pretrial release, but the Sheriff said there are no indications of a major uptick in crime as a result of the revised PTR program.

Sheriff Hall described some of the challenges that pretrial systems may face as a result of the types of reforms implemented in Davidson County:

Changes in the workforce: A comprehensive pretrial release program can require changes in the workforce, with fewer correctional officers and jail managers, and more staff members who understand and can manage pretrial services programming. Recruiting and hiring practices may need changes, and even some layoffs may be required, Sheriff Hall said.

Resistance from the bail bond industry:

The bail bond industry has an interest in maintaining the monetary bail system, so conflicts are almost inevitable. The industry may conduct lobbying campaigns directed at local elected officials, including sheriffs, and other community leaders. Sheriffs should be prepared to spend significant amounts of time educating key officials about the purpose and results of pretrial release initiatives.

News media: Unfavorable or misinformed news media stories can complicate the reform process. Sheriffs should be proactive about engaging the media and providing accurate information about the issues and any changes in policies and practices.

At the PERF meeting, Sheriff Hall provided an overview of his experience with pretrial release reforms:

“People tend to believe that if someone is arrested, they’re automatically guilty. But that has yet to be determined through the court process. Until a person is convicted, in most cases he really is owed the chance to be free. But too often we sweep them into the system and paint them as guilty, which has gotten us the system of over-incarceration that we’re in today. I think society has to adjust to the thought that in most cases, people should be released unless they’ve been convicted.

“We’ve had a pretrial program for 33 years, but in the last few years we’ve made some dramatic changes. If you’ve had pretrial services for as long as we have, make sure you don’t get complacent and assume that it’s working. Looking back on it now, our old system wasn’t very effective.

“The lobby of the bonding companies is powerful, so it’s important to know that you’re probably going to have to fight them. And the media can be difficult to deal with, because when there is a failure in the world of pretrial release, I don’t think the media always does a good job of explaining the complexities of these situations.

“So it’s good to know about these challenges, expect them, and keep them in mind.”

St. Mary's County, MD: The Role of Risk Assessment Tools in a Pretrial Services Program

As pretrial services have become more widespread and sophisticated in recent years, more jurisdictions are incorporating formal risk assessment tools into their programs. Risk assessment tools are designed to help criminal justice leaders make informed decisions about who should be released from jail pending trial and under what conditions.

There are different versions of these tools; more than two dozen pretrial risk assessment tools have been identified across the country, according to research by the Pretrial Risk Management Project of the John D. and Catherine T. MacArthur Foundation.³⁹ The tools typically include some combination of the following factors:

- The defendant's age,
- Any history of substance use,
- Criminal history, including violent offenses and failure to appear in court,
- Active community supervision,
- Pending/current charges,
- Employment stability,

- Education,
- Housing/residential stability,
- Family/peer relationships, and
- Community ties.⁴⁰

The tools typically include *risk* factors, which are associated with a higher likelihood that an arrestee will fail to appear in court and/or will be arrested on new charges if released from custody. Some risk assessment tools also include *protective* factors, which are associated with a lower likelihood of failure to appear and/or rearrest.

“Although protective factors are not included in many pretrial risk assessment tools, there is more and more research showing the value they add to the risk assessment process,” the MacArthur Foundation report said. “Consideration of protective factors can increase the accuracy with which we estimate the likelihood of pretrial outcomes.”

39. Desmarais, Sarah L., and Lowder, Evan M. *Pretrial Risk Assessment Tools: A Primer for Judges, Prosecutors, and Defense Attorneys*. February 2019. <http://www.safetyandjusticechallenge.org/wp-content/uploads/2019/02/Pretrial-Risk-Assessment-Primer-February-2019.pdf>.

40. Ibid.

Pretrial Services in St. Mary's County

At the PERF meeting, Major Mike Merican, Assistant Sheriff of St. Mary's County, MD, described how the county's pretrial services program was developed. A 35-year veteran of the agency, Major Merican was the county's Detention Center warden for 10 years and served on the Maryland Correctional Administrators Association. In 2014, he was named to the Governor's Commission to Reform Maryland's Pretrial System. The Commission was tasked with analyzing pretrial services in the state and developing recommendations for improvement. The Commission proposed a set of 14 recommendations, including a uniform pretrial services program throughout Maryland and the elimination of cash bonds in most cases.⁴¹ However, the Maryland General Assembly declined to enact many of the Commission's recommendations.

With only limited movement at the state level, St. Mary's County decided to make its own changes in pretrial services. Major Merican and his team began by visiting jails, day-reporting centers, and other pretrial service programs in other jurisdictions; studied a number of risk assessment tools; and developed new policies.

St. Mary's County's Risk Assessment Tool

Individual risk assessment tools select different factors to include in the model and weigh them differently as well. St. Mary's County decided to use the same risk assessment tool used in nearby Montgomery County, MD, in part because the two counties have similar demographics and crime trends. The tool includes six sets of factors:

- Current offense,
- Current legal status,

- Severity of prior convictions,
- Previous failure-to-appear or probation violations,
- Aggravating factors, and
- Mitigating factors.

Each factor is scored, and the combined total is used to make one of three pretrial status recommendations: non-supervised release, supervised release, or detention.

The Sheriff's Office conducts the risk assessment and presents its findings to the judge. Major Merican said that in St. Mary's County, judges agree with the risk assessment recommendation approximately 70% of the time. They impose more restrictive conditions approximately 15% of the time, and less restrictive conditions in the other 15% of cases.

Depending on the risk assessment score, defendants approved for supervised release receive one of four levels of supervision, with increasingly strict requirements:

- Level One includes one in-person meeting with a Community Supervision Officer per week, and one mandatory urinalysis and breathalyzer check done every other week.
- Level Two mandates one in-person meeting per week and urinalysis and breathalyzer checks done weekly.
- Level Three requires two in-person meetings each week, two weekly urinalysis and breathalyzer checks, and the use of electronic monitoring.
- Level Four is the most restrictive. It includes house arrest, electronic monitoring, restrictions on movement, three in-person meetings per week, and three urinalysis and breathalyzer checks per week.

41. *Commission to Reform Maryland's Pretrial System: Final Report*. December 19, 2014. <http://goccp.maryland.gov/pretrial/documents/2014-pretrial-commission-final-report.pdf>

Impact of Pretrial Services

Since the pretrial release program's implementation in 2016, about one-quarter of the pretrial defendants in St. Mary's County were found eligible for release, and approximately three-quarters of them comply with the program. Most violations involve an administrative issue, such as a curfew violation or substance abuse. Major Merican said that violations for new crimes are usually for relatively minor offenses, such as tampering with or removing GPS equipment that tracks the defendant's location.

Pretrial services have resulted in cost savings, Major Merican said. St. Mary's County estimates that in 2019, each inmate costs the county approximately \$150 per day, compared to \$35 per day for community supervision.

At PERF's meeting, Major Merican offered his perspectives on pretrial services in the county:

"When we first started using our risk assessment tool, everybody wanted to stay away from it. They didn't even want to read it. But now, after four years, the judge, the state's attorney, and the public defender won't even discuss the status of the defendant without having this risk assessment information first.

"If you're going to have a risk assessment tool, you need to validate it every couple of years, to ensure that it is accurately predicting which defendants fail to appear in court or are rearrested. Sometimes conditions can change over the course of a few years, so it's very important that you validate your assessment tool periodically."⁴²

42. For pretrial risk assessments, "validation" tests whether a tool's estimated risk for an individual corresponds to the actual behavior that occurred. In other words, was the original prediction correct? For more information on the validation process, see KiDeuk Kim (2017). *Validation of risk assessment tools*. (Policy Brief Number 2017-04). Washington, DC: The Risk Assessment Clearinghouse. <https://psrac.bja.ojp.gov/ojpasset/Documents/Policy-Brief-Risk-Validation-Final.pdf>

The Pre-Arrest Diversion Model in Harris County, TX

In addition to releasing larger numbers of pretrial arrestees, many jurisdictions are reducing their jail populations by diverting suspects accused of nonviolent, minor offenses away from the criminal justice system entirely, and not making arrests in such cases.

The Harris County, TX Sheriff's Office has such a program. At PERF's meeting, Program Manager Frank Webb described Harris County's pre-arrest diversion model, which includes a dedicated Mental Health and Jail Diversion Bureau within the Sheriff's Office. Following is a summary based on Mr. Webb's presentation.

Jailing Low-Level Offenders Is Expensive and Ineffective

The Harris County Sheriff's Office realized that a significant portion of its annual correctional budget was being spent on jailing low-level suspects with mental illness and substance abuse issues. These costs are high; it costs the Sheriff's Office \$57 per day to house an inmate in general population, and \$67 per day if the inmate receives psychotropic medication. For inmates in the jail's Mental Health Unit, the daily cost per inmate skyrockets to \$232.

Detaining pretrial defendants with mental health issues not only is expensive, but it also can be counterproductive, because it often does not improve the defendants' mental health. Even though many sheriffs' offices have expanded



Program Manager
Frank Webb, Harris
County, TX Sheriff's
Office

their mental health treatment capacity in recent years, jails are not designed to be primary treatment facilities.

The Harris County Sheriff's Office wanted to reduce costs while providing a high level of care to those who need it. This led to the creation of its pre-charge jail diversion program.

"Law enforcement agencies these days are being tasked with being on the front lines of three important issues: mental illness, addiction, and poverty," said Harris County Sheriff Ed Gonzalez. "I feel that we have a role in those issues, but our role should not be at the front lines. For people with mental illness or addiction, no major improvement in their condition is going to happen in jail. Many are only going to cycle back out and continue doing the same thing.

"So if we can see what's going on with an individual, determine that they're a safe candidate to be diverted away from the criminal

justice system, and get them in a diversion program where they have a better chance of successful treatment, we're supportive of that," Sheriff Gonzalez said.

Key Features of Harris County's Jail Diversion Program

Harris County's jail diversion program connects people who are experiencing mental health or psychosocial issues to treatment programs. Here is how the process works when a sheriff's deputy or police officer encounters such a person involved in a low-level, nonviolent crime:

- **Mental health crisis:** Individuals who appear to be in an immediate mental health crisis are transported to the NeuroPsychiatric Center for a mental health evaluation and emergency hold. Operated by the Harris Center for Mental Health and Intellectual and Developmental Disabilities (Harris Center), which is the local mental health authority, the NeuroPsychiatric Center provides 24-hour crisis evaluation and treatment services.⁴³
- **Intoxication:** Individuals who are severely intoxicated may be taken to the Houston Recovery Center, also known as the Sobering Center. Opened in 2013, the Sobering Center is staffed by state-certified peer recovery specialists who have dealt with addiction in their own lives. The center has capacity to house 68 men and 16 women at a time. Clients are monitored by emergency medical technicians and receive peer coaching from staff members and behavioral health professionals.⁴⁴
- **Mental Illness:** If the suspect is not in an active state of crisis but mental health issues are suspected, the deputy calls the Diversion Hotline. This 24-hour hotline, dedicated to law enforcement, is staffed by behavioral health professionals from the Harris Center. The staff can advise the deputy if the suspect is in their client system and whether the person has a history of mental illness. The hotline staff can also check county hospital information.

Based on the suspect's history, the hotline staff will recommend whether the suspect should be diverted or not. If the deputy concurs with a recommendation that the suspect is a candidate for diversion, the next step is to call the assistant district attorney, who makes the final decision about diversion.

- **Diversion Center:** Individuals who are diverted are taken to the Judge Ed Emmett Mental Health Jail Diversion Center, which is also operated by the Harris Center.⁴⁵ Opened in September 2018, the Diversion Center has 29 beds for people whose mental illness, developmental disability, or neurocognitive disorders contributed to their criminal behavior. The Diversion Center has short-term crisis respite beds and a Crisis Residential Unit, where people can stay for up to 14 days.

At the center, clients receive psychosocial rehabilitation and case management services with a goal of stabilization. Discharged clients can continue to access services through the Harris Center.

- **Multiple opportunities for diversion:** Suspects who are not diverted are taken to the Harris County Joint Processing Center (JPC), where they can be booked into the jail. However, suspects brought to the JPC can still be diverted. Sometimes a sheriff's deputy may not immediately notice signs of mental health issues during an initial encounter.

At the JPC, each suspect is screened for mental health issues during multiple steps of the booking process. If at any point a red flag is raised about mental health concerns, the suspect is brought to the Diversion Desk and is seen by a behavioral health professional. If the Diversion Desk identifies the suspect as a candidate for diversion, the arresting deputy can then contact the assistant district attorney to discuss diverting the suspect. If they agree to divert, the person is then transferred to the Diversion Center and no charges are filed.

Any law enforcement agency in Harris County, not just the Sheriff's Office, can bring people to the diversion facilities.

43. See <https://hcpc.uth.edu/pages/public-mentalhealth/>.

44. See <https://houstonrecoverycenter.org/sobering-center/>.

45. See <https://www.theharriscenter.org/Services/Our-Services/Harris-County-Mental-Health-Jail-Diversion-Program>.

Statistics presented at the PERF meeting indicate that the diversion program is achieving its primary goals. Since 2014, approximately 6,500 people a year have been taken to the NeuroPsychiatric Center for mental health evaluation and treatment. A large number of people who might otherwise be arrested for public intoxication are instead being taken to the Sobering Center. In 2010, for example, the Houston Police Department arrested more than 20,000 people for public intoxication. In 2018 that number dropped to 785, a 96% decrease. From January to July 2019, the Diversion Center processed 1,639 low-level suspects who would otherwise have been arrested and booked into jail.

Diversion is voluntary: *Diversion in Harris County is a voluntary program, and participants are free to leave the program at any time. Even if suspects leave the Diversion Center before being fully processed, they will not be charged for the*

crime. The Sheriff's Office and its mental health partner agencies will keep diverting those who are eligible and in need of treatment as many times as necessary.

"We don't mind trying, trying, and trying again," Program Manager Frank Webb said. "We're not going to say that if you haven't succeeded, or if you've been taken to the Diversion Center five times, that we're not going to take you anymore. We're going to keep taking you there if you've committed a low-level, nonviolent crime and have mental health issues. We're going to keep trying, and hopefully, one time we're going to engage with the person, and it's going to help."

At PERF's meeting, Harris County District Attorney Kim Ogg summarized the purpose of the diversion program. "We've got an end goal that is a safer community and a fair courthouse, and I think that's what reformed criminal justice is about," she said.

Figure 5: How the Diversion Process Works in Harris County

STEP ONE

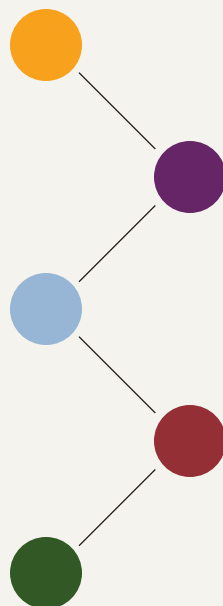
Officer on the scene with a suspect who has committed a low-level, non-violent offense. Officer believes suspect has mental health/psychosocial issues that are a factor in the crime. Suspect is not in mental health crisis.

STEP THREE

Suspect has a mental health history and is a candidate for diversion. Officer advises complainant and discusses charging options, including option to divert.

STEP FIVE

If charges are diverted, suspect is transported to Diversion Center. If charges are accepted, suspect is transported to Joint Processing Center to be booked into jail.



STEP TWO

Officer calls the Diversion Hotline to determine if suspect has mental health history and if he/she is a candidate for diversion.

STEP FOUR

Officer calls the assistant district attorney explaining situation. Assistant district attorney makes decision to accept or divert charges.

Source: Presentation by Frank Webb, Harris County Sheriff's Office

The Open Door Mission

One of the hallmarks of Harris County's diversion program is the extensive collaborations by public and private-sector organizations. One longstanding partner is the Open Door Mission.

Founded in 1954, Open Door Mission is a recovery and rehabilitation facility for men experiencing homelessness and addiction in Houston. The organization operates three programs, all of which are offered without charge to clients⁴⁶:

DoorWay Recovery: This seven-month residential substance abuse program can accommodate 147 men at a time. Social service caseworkers help clients address issues they may have ignored in the past, including medical, dental, and legal matters, and overdue taxes and child support fees.

Convalescent/Respite Care: Harris County Healthcare for the Homeless runs an on-site clinic at the Open Door Mission for its clients and the greater homeless community. The goal is to reduce or eliminate barriers to health care among homeless individuals. Up to 28 men who require additional care after an illness, surgery, or accident can stay at the Mission's partner, Harmony House Respite Care Center, following stays at hospitals in the region.

Education & Career Guidance: After going through an educational assessment, every client at Open Door Mission must complete a certain amount of education hours each week. Clients wishing to obtain a GED are paired with a tutor to help them study, as are clients whose reading or math skills are assessed below a fifth-grade level. There is an emphasis on computer literacy; all clients must pass a computer literacy exam in order to graduate from the DoorWay Recovery program.

Stephen Douglas is a former client of Open Door Mission, and today he volunteers at the Mission and advocates for jail diversion programs. Mr. Douglas attended the PERF meeting and spoke about his experience:⁴⁷

"I'm a native Houstonian and I was raised in poverty, so that's all I knew. At an early age I was diagnosed with being bipolar. It never really affected me until I got older. I ended up going to jail for some things that I really regret now. On September 5, 2018, the same day the Judge Ed Emmett Mental Health Diversion Center opened, a friend called the cops because I told her I needed help.

"By the grace of God, I didn't go to jail. I went to the diversion center and that's where they planted the seed. I knew I could do it, as long as I just kept going forward. I started doing research on recovery programs, and Open Door Mission was the first place I went to. They accepted me with open arms, and this is who I've become.

"Without Harris County's diversion program and Open Door Mission, I would have just gotten out of jail and done the same thing until I got caught again, and again, and again. I'm glad diversion programs like Harris County's are opening up."



Stephen Douglas

46. Open Door Mission. <https://opendoorhouston.org/programs/>.

47. See "Jail Diversion Program expanding to more nonviolent offenders." Fox 26 Houston. May 1, 2019. <http://www.fox26houston.com/home/jail-diversion-program-expanding-to-more-nonviolent-offenders>.

Leadership Perspectives on Pretrial Release, Diversion, and Community-Based Supervision

At the PERF meeting, several leaders from Harris County participated in a panel discussion about the role of leadership and cooperation in implementing pretrial justice initiatives.



District Attorney Kim Ogg:

For Prosecutors, A Key Factor Is Whether There Is a Victim

Bail is a judicial function. The district attorney really plays no role other than to advocate for high bond in certain cases. The change in Harris County was that, as the district attorney, I agreed to pretrial release for nonviolent misdemeanors. I do not agree to pretrial release in felonies, domestic violence, or DWI.

The dividing line for us is generally whether there's a victim in the crime or not.

Assistant Public Defender Te'iva Bell:

Conditions of Release, Not the Monetary Bond, Protect the Community

The new system takes the conditions of bond into consideration, not just the amount of money. Money does nothing to address the concerns of society and the concerns of the court. For example, on domestic assault cases, the conditions may include no contact with the victim, no threatening or harassing the victim, do not contact her at work, no contact with the children. And the pretrial release conditions may include GPS monitoring to prevent him from going near the victim's home or other locations. If you violate these geographical locations, this will automatically result in you being brought back to court, and your bond may be revoked. And you sign off on paperwork acknowledging that those are the conditions.

These conditions are what make people safer. If you have somebody who can post \$2,000 to get out on bond and he shows up at the victim's house, what are you going to do? Raise it to \$50,000? If he has unlimited resources, she's still not safe. But if a court can impose sanctions for violating an order that was put in place to ensure the well-being of the community, that helps make people safer.



Director of Pretrial Services, Kelvin Banks:

It Takes Time to Change the Culture Surrounding Pretrial Release

Even though we change policy, procedure, and practice, we implement those things into existing culture. It takes time to change culture in terms of what people are comfortable doing at any stage along the criminal justice continuum. There is always a fear that the wrong individuals are going to get out.

What do you do when that fear is increased? I think you need to use a model of "feel, felt, found." We validate the fear that there's an increase in

>> continued on page 28

public safety concern about the pretrial system. But we also say, “I know how you feel, many have felt that way. But what we have found, based on the data and the research, is that there are ways to move toward a better and safer system--and a fair system that’s less costly to taxpayers.”

Wayne Young, Director of the Harris Center:

We’re Trying to Help People Before They Get Arrested

There is an effort in our community, led by many of our elected officials, to figure out how we can engage people in mental health services earlier, before the situation escalates and they get caught up in the criminal justice system. We don’t want to have people with mental health issues going through a rotating door at the jail.



Houston Police Chief Art Acevedo:

Now We’re Actually Solving Problems, Not Just Making Arrests

The pre-arrest diversion programs in Harris County free up police resources much more quickly. We drop people off at the appropriate center, and within a matter of minutes we’re back in town. And we’re not criminalizing behavior that is more about mental illness and addiction than about crime. You have to ask yourself, “Are we interested in solving problems, or in trying to arrest our way out of a problem?” What we have now in Harris County is about solving problems.

Director of Community Supervision & Corrections Teresa May:

Different Agencies Are Working Together

One of the things that has made us successful in Harris County is the fact that the key stakeholders want to get things done and want to make things work. We try to help each other in any way possible.



CONCLUSION:

Jurisdictions Can Learn from the Experiences of Sheriffs' Offices

After years of seeing their jail populations increase, their criminal justice costs rise, and their law enforcement officers repeatedly arrest the same individuals to little effect, many jurisdictions are implementing new approaches to minor criminal offenses committed by persons with mental health issues or histories of substance abuse, homelessness, and other challenges.

Local correctional facilities have become the leading providers of mental health and substance abuse treatment services in many communities. Many sheriffs who have responsibility for managing jails have developed a wide range of treatment approaches.

However, sheriffs and other local officials in some jurisdictions are coming to realize that, rather than relying largely on jails to serve these populations, they should be looking for ways to divert some people away from jail and into government- or community-based treatment programs that are better equipped to manage the range of issues confronting these populations. This approach allows sheriffs' offices to concentrate more of their enforcement and correctional resources on serious offenders who are causing the greatest harm in communities.

PERF's May 2019 conference in Houston highlighted pretrial justice reforms implemented by a number of sheriffs' offices and their public and private-sector partners. For example:

- A growing number of jurisdictions are using risk assessment tools to help determine whether suspects are likely to commit new crimes while released pretrial, or fail to show up in court as required. These tools also help identify the types of conditions and supervision that pretrial defendants should receive.
- Some jurisdictions, such as Davidson County, TN and St. Mary's County, MD, are relying less on monetary bail. Instead, they are using risk assessment tools in deciding to release more low-risk defendants accused of relatively minor crimes pending trial. A few states, notably New Jersey and New York, have passed bail reform legislation that severely limits the use of monetary bail in most misdemeanor and nonviolent felony cases.
- Harris County, TX is among the counties that are taking a comprehensive and collaborative approach to diverting low-risk defendants accused of minor crimes away from the county jail and into treatment and other support services.

While many of these initiatives are new, some already are showing promising results. Pretrial incarceration rates, and costs, are going down in many counties. More people are receiving treatment for mental illness and drug abuse, which they might not receive in jail. Sheriffs'

agencies are focusing their resources on higher priorities, such as violent crime.

As these types of reforms continue to roll out, there are two key considerations that sheriffs, police chiefs, and other public safety officials must keep in mind.

First, jurisdictions that implement pre-arrest diversion, bail reform, and pretrial diversion programs must ensure they have the necessary community supervision and treatment resources available to serve defendants who are put back in the community. Without the appropriate services, some of these individuals will continue to experience the negative effects of untreated mental illness and addiction, and some will likely commit new crimes. While providing treatment services can be difficult in jurisdictions of all sizes, small and rural areas face particular challenges in this area.

Second, jurisdictions will need to keep a close eye on how reforms impact public safety in their communities. While initial results from jurisdictions such as Harris County, TX,

Davidson County, TN, Yakima County, WA, and the state of New Jersey suggest that crime has not increased in areas that have embraced criminal justice reform, it is critical that crime impacts be monitored closely. New York State's recently enacted criminal justice reform law, probably the most sweeping in the nation, will provide an important test case of whether reforms on this scale affect public safety. Law enforcement leaders in the state have expressed concern that the law may have gone too far in releasing potentially dangerous pretrial defendants back into the community. More research will be needed to better understand the impact that reforms are having on crime—in New York State and in other jurisdictions that have enacted bail reform measures.

As Harris County District Attorney Kim Ogg noted at the PERF meeting, everyone shares the same goal of “a safer community and a fair courthouse.” This report provides sheriffs' offices, police departments, and other agencies with models for moving forward.

APPENDIX:

Participants at the PERF Conference

New Challenges and Promising Practices in Pretrial Release,
Diversion, and Community-Based Supervision

May 10, 2019 ■ Houston, TX

Chief of Staff Robert Allen
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Harris County (TX) Sheriff's Office

Assistant Chief Jaime Ayala
Arlington (TX) Police Department

Director Kelvin L. Banks
Harris County Pretrial Services

**Assistant Public Defender
Te'iva Bell**
Harris County Public Defender's Office

Lieutenant Jeff Chamberlain
Lafourche Parish (LA) Sheriff's Office

Director Martha Danner
Division of Parole and Probation,
Baltimore

COO Heather Diaz
Open Door Mission

Captain Patrick Dickens
Polk County (TX) Sheriff's Office

Major Patrick Dougherty
Harris County (TX) Sheriff's Office

Volunteer Stephen Douglas
Open Door Mission

Ellen Dunn
Crime Lab New York

Lieutenant Paul Ellison
Pinellas County (FL) Sheriff's Office

Captain Godfrey Eta
Harris County (TX) Sheriff's Office

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Lori Eville**
National Institute of Corrections

Director of Impact Sue Ferrere
Pretrial Justice Institute

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Harris County (TX) Sheriff's Office

Deputy Jose Gomez
Harris County (TX) Sheriff's Office

Sheriff Ed Gonzalez
Harris County (TX) Sheriff's Office

Sheriff Daron Hall
Davidson County (TN) Sheriff's Office

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Arnold Ventures

Megan Herrin
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Hennepin County (MN) Sheriff's Office

Major Tony Huynh
Harris County (TX) Sheriff's Office

Deputy Robert Hydukovich
Hennepin County (MN) Sheriff's Office

Lieutenant Sheila Jones
Harris County (TX) Sheriff's Office

Major Eleanor Jones
Harris County (TX) Sheriff's Office

**Assistant Chief Deputy
Sean Jowell**
Pinellas County (FL) Sheriff's Office

**Community Supervision Officer
Bobby Kerns**
Wharton County Community (TX)
Supervision and Corrections Department

Captain Chris Kovac
Los Angeles County (CA)
Sheriff's Department

President Keith Lamar
National Black Prosecutors Association

Major Michael Lee
Harris County (TX) Sheriff's Office

Undersheriff Richard Lucia
Alameda County (CA) Sheriff's Office

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Polk County (TX) Sheriff's Office

**Pretrial Officer
Johnny Martinez**
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Sibella Matthews
University of Chicago Crime Lab

Director Teresa May
Harris County (TX) Community
Supervision & Corrections Department

**Policy Director
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Washington Association of Sheriffs &
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**Deputy Commander
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St. Mary's County (MD) Sheriff's Office

Captain John Morrison
Harris County (TX) Sheriff's Office

Jeremiah Mosteller
Charles Koch Institute

Captain Jeff Newnum
Yavapai County (AZ) Sheriff's Office

District Attorney Kim Ogg
Harris County (TX) District Attorney's
Office

Captain Angela Ordonez
Harris County (TX) Sheriff's Office

Sheriff (ret.) Gary Raney
GAR, Inc.

Division Chief Rob Reardon
Jefferson County (CO) Sheriff's Office

Chief Deputy David Rhodes
Yavapai County (AZ) Sheriff's Office

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Harris County (TX) Sheriff's Office

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Pima County (AZ) Sheriff's Department

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Harris County (TX) Sheriff's Office

CEO Tommy Thompson
Open Door Mission

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Harris County (TX) Sheriff's Office

Project Manager Frank Webb
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About the Police Executive Research Forum

To learn more about PERF, visit www.policeforum.org.

The Police Executive Research Forum (PERF) is an independent research organization that focuses on critical issues in policing. Since its founding in 1976, PERF has identified best practices on fundamental issues such as reducing police use of force; developing community policing and problem-oriented policing; using technologies to deliver police services to the community; and developing and assessing crime reduction strategies.

PERF strives to advance professionalism in policing and to improve the delivery of police services through the exercise of strong national leadership; public debate of police and criminal justice issues; and research and policy development.

The nature of PERF's work can be seen in the variety of reports PERF has produced over the years. Recent reports have addressed issues such as officer safety and wellness, officer suicide, sexual assault investigations, officer recruitment and retention, the law enforcement response to homelessness, the opioid epidemic, mass demonstrations, the changing nature of crime and criminal investigations, mobile broadband technologies, and use of force. Nearly all PERF reports are available without

charge online at <http://www.policeforum.org/free-online-documents>.

In addition to conducting research and publishing reports on our findings, PERF conducts management studies of individual law enforcement agencies; educates hundreds of police officials each year in the Senior Management Institute for Police, a three-week executive development program; and provides executive search services to governments that wish to conduct national searches for their next police chief.

All of PERF's work benefits from PERF's status as a membership organization of police and sheriffs' officials, who share information and open their agencies to research and study. PERF members also include academics, federal government leaders, and others with an interest in policing and criminal justice.

PERF is governed by a member-elected President and Board of Directors and a Board-appointed Executive Director.

For more information about PERF's Sheriffs Initiative, contact Senior Associate Dan Alioto at dalioto@policeforum.org or 202-454-8337.



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We are grateful to the Howard G. Buffett Foundation
for its support of this project and report.

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