

Partnerships *in* PRETRIAL JUSTICE:

A Law Enforcement Leader's
Guide to Understanding and
Engaging in Meaningful
Front-End Justice
System Change



Risk Assessment
Diversion
Citation in Lieu of Arrest
Enhanced Pretrial Release Monitoring

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“
REDUCE ARRESTS

REDUCE INCARCERATION RATES

REFORM THE JUSTICE SYSTEM”

Statements like these are being heard around the United States from community organizations, media outlets, and legislators, while stakeholders at the national, state, and local levels are taking a comprehensive look at how the entire U.S. criminal justice system, including the pretrial component, functions.

Ohio, New Jersey, Virginia, and Kentucky are among the states that have enacted state-level pretrial justice reform legislation, with legislation in process or on the horizon in many other states. Pilot projects and national initiatives like the Bureau of Justice Assistance's Smart Pretrial Demonstration Initiative, the National Institute of Corrections' Evidence-Based Decision Making Initiative, the Laura and John Arnold Foundation's Public Safety Assessment, and the MacArthur Foundation's Safety and Justice Challenge are providing funding, technical assistance, and guidance to several state and local jurisdictions to implement or evaluate pretrial reforms within their justice systems and setting new standards for the administration of justice.

Law enforcement can expect to see these justice system changes continue to progress and evolve. It is important for leaders to understand their role in pretrial justice, so they can navigate these changes and work with their justice system partners on developing pretrial solutions and policies that are fair, efficient, and effective.

This toolkit offers information and resources to help law enforcement leaders form partnerships, support policies and practices to improve justice outcomes for all stakeholders, and keep officers and communities safer.

“Law enforcement agencies should consider adopting preferences for seeking ‘least harm’ resolutions, such as diversion programs or warnings and citations in lieu of arrest for minor infractions.”

—President's Task Force on 21st Century Policing Action Item 4.1.1





A Road Map to Getting Started with Justice System Change



Step 1:

GET INFORMED

Some have historically perceived arrest alternatives and diversion programs as “soft on crime.” However, current research shows the impacts of traditional money bond pretrial policies on short- and long-term public safety outcomes for individuals and communities, including the threat of high-risk individuals released back into their communities on money bond, and the concern that low-risk individuals increase their risk of future arrests by being detained pretrial. States and localities are beginning to move toward risk-based decision-making in their pretrial processes, decisions, and legislation.

Law enforcement is one of the most critical components of the front end of the justice system, yet historically, law enforcement leaders were not actively engaged in pretrial decisions beyond what happens at the initial arrest. When stakeholders discuss system changes, it is critical for law enforcement to have a voice and understand the issues. The resource section of this publication contains various research studies, practical tools, talking points, and other information about pretrial justice issues that law enforcement officials can access to expand upon their knowledge of this subject. In addition to the big picture, understanding how the entire case processing system currently functions within each local jurisdiction is particularly important.



Step 2:

DEVELOP COLLABORATIVE PARTNERSHIPS

There are many significant stakeholders within state and local criminal justice systems, and the effectiveness of these systems demands a collaborative approach that includes mutual agreement and understanding about the purpose and process of the justice system. Bringing the right partners to the table from the very beginning of discussions about justice system change is key to building buy-in. These collaborative efforts are critical in developing a plan that will work for all parties, and in sustaining policies, programs, and relationships. Jurisdictions vary, but the following are typical partners to include in such an effort:

- Local-level elected officials, judges, prosecutors, defense attorneys, and other court and corrections representatives
- State-level elected officials, department of justice staff, and court personnel
- Law enforcement partners in and around each jurisdiction
- Internal law enforcement staff from all ranks
- Victim advocates
- Community organizations and advocates representing faith groups, communities of color, youth, persons with mental health issues or disabilities, veterans, and victims of domestic violence



Step 3:

ESTABLISH YOUR GOALS

The traditional justice system is a large and complex operation with many moving pieces. Taking on the reform of the entire system is an overwhelming endeavor. While broad goals like maintaining public safety or managing incarceration rates are important, justice partners should identify benchmarks and think about what targeted goals they can accomplish within those broader goals. The following are some examples of targeted goals:

- Increasing awareness of diversion options
- Improving data collection on citation in lieu of arrest use and outcomes
- Implementing a pretrial risk assessment tool
- Enhancing pretrial risk management strategies



Step 4:

IMPLEMENT YOUR PLAN

There are a variety of ways jurisdictions can implement point-of-arrest and pretrial processes that are rooted in the concepts of fairness, transparency, and procedural justice. The exact strategy or combination of strategies will vary depending on state or local statutory guidance, funding availability, and the stakeholders involved. Many of the strategies recommended to improve pretrial justice are approaches that law enforcement has been using or supporting for years, so execution of this effort might simply be a process of educating partners and incorporating the practices into each jurisdiction's overall pretrial justice plan. Regardless of the strategies put in place, informing the community about the new processes and, where possible, engaging them in the planning and implementation stages, are essential to the overall success of the initiative. This transparency and community education will generate buy-in and build support for the system improvements requiring implementation and attention.

Common Pretrial Strategies and Arrest Alternatives Involving Law Enforcement

Risk Assessment

Risk assessment tools provide a consistent, empirical way to determine a person's risk of re-arrest or failure to appear for court, so that justice agencies can make objective pretrial decisions. These tools demonstrate a



greater level of predictive accuracy than relying solely on a bail schedule or the judgment of prosecutors and judges. There are several validated risk assessment models used commonly in state and local jurisdictions, but jurisdictions may choose to develop their own assessment tool. All risk assessment tools should be tested and validated for the specific jurisdiction. Some risk assessment or proxy tools are designed to be administered by the first law enforcement point of contact or at the jail upon booking, while other tools are designed for pretrial services staff to conduct after an arrest. Specialized assessments are available for cases involving domestic violence, substance abuse, or mental health issues. The risk assessment scoring system allows judges and pretrial service administrators to assign detention, release, and supervisory conditions appropriately and consistently.

Citation in Lieu of Arrest

A citation is a written order requiring a person to appear in court or the appropriate government office at a designated date and time. State statutes, local ordinances, or agency policies may provide guidelines regarding the use of citation in lieu of custodial arrest. Law enforcement has long used the issuance of a citation in lieu of a physical arrest as a way to deal with minor offenses like ordinance violations and misdemeanors. A 2016 IACP study found that nearly 87 percent of law enforcement agencies engaged in the practice, and more than 80 percent of those had used it for 10 years or more. In appropriate cases, the use of citation in lieu of arrest can serve as a de-escalation tool to help maintain officer and community safety. Citations can also improve officers' efficiency—it takes considerably less time to issue a citation than to process a custodial arrest.

Diversion

Diversion programs redirect eligible people from the traditional arrest and detention model and refer them to services and alternative sentencing options that aim to prevent future offenses. A wide range of diversion programs exist at all levels of the justice system. Jurisdictions often tailor these programs to serve the needs of juveniles, veterans, or individuals with mental health or addiction issues. Diversion program requirements may include substance abuse treatment, counseling, mentoring, or community service. These programs depend on having strong partnerships between law enforcement and government- or community-based service providers. Some programs include on-call support for patrol officers through mobile mental health assessment or crisis response teams, while others may involve transporting a person to a partner agency for evaluation and services. Increasingly, patrol officers serve a primary role in making decisions related to engaging Law Enforcement Assisted Diversion and other similar programs, which intend to respond to low-level offenses that result from unmet behavioral health needs.

Enhanced Pretrial Release Monitoring

Through traditional and risk-based pretrial processes, many people arrested for crimes will qualify for pretrial release. Prior to release, they should receive an evaluation to determine specific monitoring conditions. Conditions for lower-risk individuals typically include periodic check-in meetings with pretrial services staff, as well as court reminders. Courts may require referral of individuals with medium to higher risk factors to substance abuse or other treatment or training programs or that they have more regular check-ins. Additionally, to mitigate specific risk factors, the court may include electronic monitoring conditions for some who qualify for pretrial release. Monitoring technologies include GPS, radio frequency devices, and smart phone apps that can relay information about the defendant's location, blood alcohol content, and other variables. These conditions, when appropriately tailored to address assessed risks, can help prevent new crimes while a person is awaiting trial. This helps minimize the risk to the community, while allowing offenders to maintain employment and stability for their families. This type of monitoring also allows for swift action if there are violations of the release conditions. Law enforcement are the first responders if electronic monitoring devices detect a serious threat, and some law enforcement agencies may have a more active role in the ongoing management and administration of monitoring programs.



Step 5:

EVALUATE YOUR POLICIES AND PROGRAMS

Effective pretrial system reforms are evidence based. The importance of data cannot be understated. Capturing data from the start of a project initiative will help determine overall effectiveness and potential areas for improvement. Many agencies collaborate with colleges and universities to plan and implement data collection and tracking, as well as benchmarking, evaluating, and conducting cost benefit analyses to show the benefit of the reforms to policymakers. Often, these researchers and organizations become great long-term additions to traditional local criminal justice policy teams and coordinating councils. In addition, thinking about how justice partners will share the data and evaluation results internally is also important.



Step 6:

SHARE YOUR SUCCESS

Sharing data outcomes is an essential piece of building support for the policies and programs with elected officials, community members, and other stakeholders. Quantitative data showing cost savings and changes in the rates of crime, failure to appear, and incarceration—along with qualitative stories of individuals affected by the changes—will inform the community about the role of law enforcement in justice system reform, which in turn will build community support to help sustain the initiatives. It will also foster feelings of legitimacy and trust in the justice system.

Sharing success also helps other jurisdictions learn about and implement promising practices. Research indicates that the public pays attention to the message of law enforcement more than that of any other justice partner. Accordingly, when law enforcement brings its voice to the pretrial conversation, that voice carries great weight. Whether simply talking to a neighboring jurisdiction, speaking at state-level meetings, or joining national conversations about new justice system initiatives, law enforcement leaders can have a significant impact on broader system change.

What Law Enforcement Leaders Are Saying About Pretrial Justice System Change

ON THE CONCEPT OF RISK-BASED DECISION-MAKING:

“In 2014, we had a high-risk person who was out on bond and shot a state trooper. During that time, it was easy for everyone to grasp the risk concept, but we need to look at ways to change the mind-set of officers, from the academy level on, about the impact of risk-based pretrial decision-making on public safety.”

—Stan Hilkey, Director,
Colorado Department of Public Safety

ON THE IMPORTANCE OF WORKING TOGETHER:

“In California, prison populations were dramatically decreased due to state-level reforms. The California police chiefs were able to respond by working collaboratively with our criminal justice partners on new pretrial solutions to ensure public safety. In a diverse state with 58 independent counties, what works for one may not work for another, but we are able to work together on options.”

—Ronald Lawrence, Chief of Police,
Rocklin Police Department, CA

ON DEVELOPING UNIQUE SOLUTIONS:

“Sometimes you have to come up with solutions that are out of your lane. We developed a pretrial electronic monitoring program that allowed people arrested for crimes, who would otherwise have been incarcerated before trial, the structure to maintain their jobs and families. Within 12 months of implementation, our re-arrest rate for serious offenders on electronic monitoring went down to 5 percent from a rate of 36+ percent of non-monitored serious offenders, which has a significant impact on our community’s safety.”

—Ken Miller, Chief of Police,
Greenville Police Department, SC

ON IMPROVING OFFICER RETENTION:

“Things like the LEAD (Law Enforcement Assisted Diversion) drug program and mental health diversion were initially not seen as desired assignments. We now have officers volunteering for these programs, as they can actually see the difference made in the lives of those assisted by the programs. In terms of retention, it has been remarkable to see a shift in culture and job satisfaction.”

—Rebecca Boatright, Senior Legal Counsel,
Seattle Police Department, WA

ON THE SIGNIFICANCE OF THE BIG PICTURE:

“The issue is a mosaic. We hear about all of the pieces—homelessness, substance abuse, and addiction. Each jurisdiction takes the largest part of the mosaic and puts it into the frame. At the federal, state, and local level, we are looking at smarter reforms in pretrial, policing, crime prevention, and prosecution. It all matters to our profession and the expectations of the people we serve. We need to recognize that positive system changes take time. Your investment in this work will outlive your career.”

—Kevin Modica, Captain,
Portland Police Bureau, OR

ON THE IMPORTANCE OF WORKING WITH VICTIM ADVOCATES IN PRETRIAL PLANNING:

“It is very important for us to remember that in many cases, the whole pretrial process is triggered because someone has become a victim of crime. It is not only logical but imperative that the victim of that crime has a voice throughout the entire justice process, and, as first point of contact, law enforcement has an important role in facilitating that.”

—Dave Porter, Chief of Police,
Dewitt Police Department, IA

Talking Points for Law Enforcement in Support of Pretrial Justice System Change

Why is this an important issue for law enforcement?

- **IMPROVING SAFETY.** A 2013 study by the Laura and John Arnold Foundation found that nearly half of the highest risk defendants are released on bail awaiting trial in jurisdictions that rely solely on money bond systems. This practice directly affects community and officer safety. Risk-based assessments and other evidence-based policies keep the most dangerous people off the street, so they cannot compromise public or officer safety.
- **IMPROVING EFFICIENCY.** Using evidence-based citation, risk assessment, diversion policies, or any combination of these, can reduce arrests and the associated time with booking and reporting, giving officers more time to get back on the road and respond to more calls.
- **IMPROVING COST EFFECTIVENESS.** While pretrial policies and programs have some associated costs, many jurisdictions see short-term gains from reducing the use of jail bed space, along with lowered arrest rates. Research from the Laura and John Arnold Foundation shows that over the long term, limiting pretrial detention of low-risk individuals reduces recidivism, which keeps future crime and jail populations down.
- **IMPROVING EQUITY.** Many people awaiting trial are at low risk for re-arrest or failure to appear for trial. Under the traditional system, these low-risk individuals with limited financial resources may stay in jail pretrial simply because they cannot afford bond, which can have serious effects on a person's employment, housing, and family.
- **IMPROVING COMMUNITY RELATIONSHIPS.** Law enforcement is the first line and most public face of the justice system, and decisions made at all points of the system can affect community and police relations. Having a fair, transparent, and effective pretrial justice system strengthens community trust in law enforcement and the justice system as a whole.

Why Now?

- **COMMUNITIES SUPPORT IT.** A 2015 study by national polling firm, Lake Research Partners, found that 74 percent of voters favor or strongly favor the use of risk assessment and, when needed, pretrial supervision to reduce unnecessary pretrial incarceration.
- **DATA SUPPORT IT.** An increasing amount of validated research supports the value of risk-based pretrial options on a person's likelihood not to reoffend and on the overall cost to the justice system.
- **CHANGE IS COMING.** In recent years, Vermont, Colorado, Delaware, Hawaii, New Jersey, and West Virginia have enacted laws regarding risk-based justice system reforms, and other states and jurisdictions are currently implementing or considering similar changes.

- **LAW ENFORCEMENT'S VOICE REMAINS STRONG.** Recent research by Lake Research Partners suggests that, on the topic of pretrial and justice system reform issues, the public pays attention to law enforcement more than any other justice system partner.

What are some common concerns?

How does the process affect accountability for offenses?

Arrest and pretrial detention alternatives do not mean that a person will not be held accountable for a crime. Rather, these strategies help ensure that the judicial process is fair, transparent, and in line with the alleged offense. Persons on pretrial release must fulfill appropriate pretrial conditions, appear in court for a final verdict, and, if found guilty, be sentenced accordingly.

How do we get buy-in from mid- and line-level officers?

Law enforcement officers enter the profession because they want to help people and keep communities safe, so as jurisdictions make pretrial justice system changes, it is important to help officers see how the changes accomplish those goals. Diversion and other pretrial programs connect people to services that can help improve their quality of life and prevent future crime. Risk assessments, citations, and appropriate pretrial monitoring system allow low-risk individuals to continue caring and providing for their families, while preventing higher-risk individuals from potentially causing harm pretrial. Highlighting both the big picture goals and the data that backs up these evidence-based practices can help improve initial buy-in and sustain support over time.

What about the victims?

It can be difficult and sometimes dangerous for crime victims to see arrested individuals released back into the community before trial. Risk-based pretrial policies factor victim safety concerns into release decisions and conditions. Law enforcement has a critical connection to victim advocates, and they can play an important role in informing the justice system about the needs of victims, including informing individual victims about their rights in the pretrial process.

What if something goes wrong?

For example, what if a person released pretrial commits a crime and the agency has to answer to the media?

Evidence-based risk assessment strategies are statistically more likely than a bail-based system to prevent future offenses by accurately identifying the risk group in which to assign a person, but no pretrial tool or system can be 100 percent accurately predictive of human behavior. Risk-based tools are practical and evidenced based. Agency leaders should share data about the success rate and validated outcomes of the tool for the whole population, while acknowledging the tragedy of any individual case. When these situations occur and something goes wrong, the partnerships the agency has built become invaluable. When all of the justice partners understand and buy in to the established pretrial process, partners can support each other in affirming the value of the policy.



Resources and Information

IACP Pretrial Justice Reform Initiative – <http://www.theiacp.org/Pretrial-Justice-Reform-Initiative>

IACP Citation in Lieu of Arrest – <http://www.theiacp.org/citation>

IACP Safety and Justice Challenge – <http://www.theiacp.org/safetyandjustice>

IACP Institute for Community and Police Relations – <http://www.theiacp.org/ICPR>

Pretrial Justice Institute – <http://www.pretrial.org>

U.S. Department of Justice, Office of Justice Programs – <http://ojp.gov>

National Institute of Corrections Evidence-Based Decision Making in Local Criminal Justice Systems
– <http://ebdmoneless.org>

Public Welfare Foundation – <http://www.publicwelfare.org/criminal-justice>

Laura and John Arnold Foundation – <http://www.arnoldfoundation.org/initiative/criminal-justice>

LEAD National Support Bureau – <http://www.leadbureau.org>

Police Assisted Addiction and Recovery Initiative – <http://paarius.org/>



Sample Risk Assessment Tools

Eau Claire Law Enforcement Proxy – <http://info.nicic.gov/ebdm/?q=node/32>

Colorado Pretrial Assessment Tool – <http://www.capscolorado.org/cpat>

Ohio Risk Assessment System – <http://www.drc.ohio.gov/web/oras.htm>

Virginia Pretrial Risk Assessment Instrument – <http://www.dcjs.virginia.gov>

Ontario Domestic Assault Risk Assessment – <http://odara.waypointcentre.ca>

See more examples at the National Criminal Justice Association Center for Justice Planning
– <http://www.ncjp.org/pretrial/risk-assessment-instruments-validation>



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