



## **Outcomes From the Smart Pretrial Initiative**

PJI  
2017

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## Introduction

When the Department of Justice's Bureau of Justice Assistance added Smart Pretrial to its Smart Suite of programs in 2014, it included the pretrial phase as part of an effort designed to use data-driven, evidence-based approaches to achieve cost savings and public safety at all phases of the criminal justice system. Within the pretrial phase, "3 Ms of Smart Pretrial" emphasized three goals: 1. Maximize public safety; 2. Maximize court appearance; and 3. Maximize the appropriate use of release, release conditions, detention, and public resources.

The goal for the Pretrial Justice Institute and its partners was to support the work of sites over three years (2014-2017) to look at data, create a vision of pretrial justice for their community, and map a path from where they were to where they wanted to be. Three sites were chosen through a competitive process: the City and County of Denver, Colorado; Yakima County, Washington; and the State of Delaware.

This brief publication highlights the best activities and accomplishments. The project evaluated the impact of moving to a system that uses validated assessment and best options in community-based monitoring to improve pretrial decision-making with a focus on safety, court appearance, cost, and fairness outcomes.

The best work of the sites was selected to showcase activities and accomplishments that

- Were helpful for moving toward more legal and evidence-based pretrial practices;
- Are an innovative part of their approach;
- Can be inspirational to stakeholders, staff, and advocates in other jurisdictions; and
- May serve as a model activity to implement in other jurisdictions.

## City and County of Denver, Colorado

Pretrial services had existed in the City and County of Denver for several decades before starting Smart Pretrial. Moreover, Denver was one of the first Colorado jurisdictions to implement Colorado's statewide actuarial pretrial assessment tool in 2012. The agency had been supervising individuals since its inception, and leadership and staff actively participate in statewide committees and organizations and national conferences. This experienced agency still found ways to improve its practices to continue to maximize release and use public resources thoughtfully.

### *Initial User of Pretrial Cost-Benefit Analysis Tool*

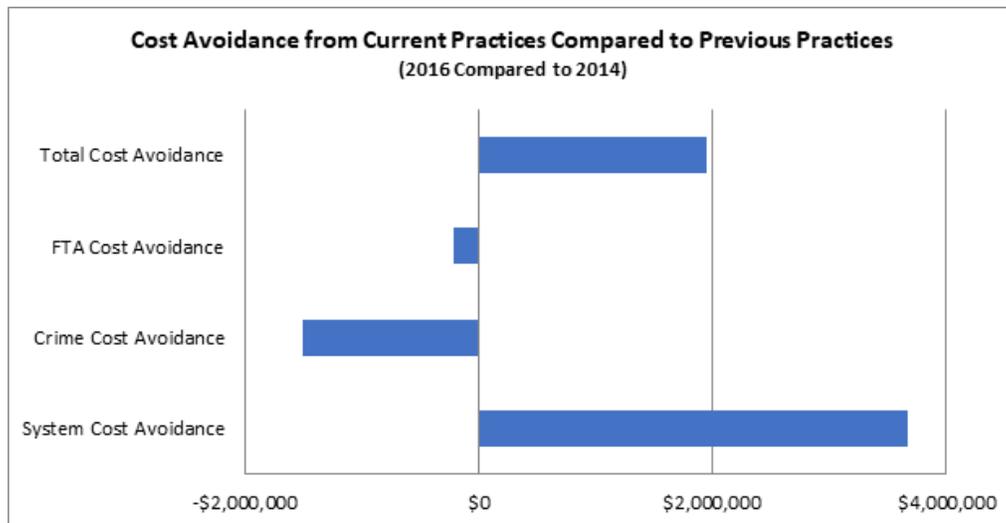
Denver was the first Smart Pretrial jurisdiction to gather the data necessary to use a free, comprehensive, web-based pretrial cost-benefit analysis tool to inform pretrial policy making and practice evaluation. While some cost-benefit analyses compare the cost of jail beds to the cost of supervision, this model allows users to examine the dynamic effects of different policy decisions, such as how releasing defendants more quickly affects public safety and jail population.

As a result of Denver's Smart Pretrial innovations, the percentage of defendants who were released pretrial rose from 54% in 2014 to 64% in 2016. The cost-benefit analysis of Denver's



new practices showed that, factoring in the costs of additional failures to appear and arrests for new criminal activity expected through the release of additional persons, Denver achieved a net savings of \$2 million a year (See Figure 1).

Figure 1

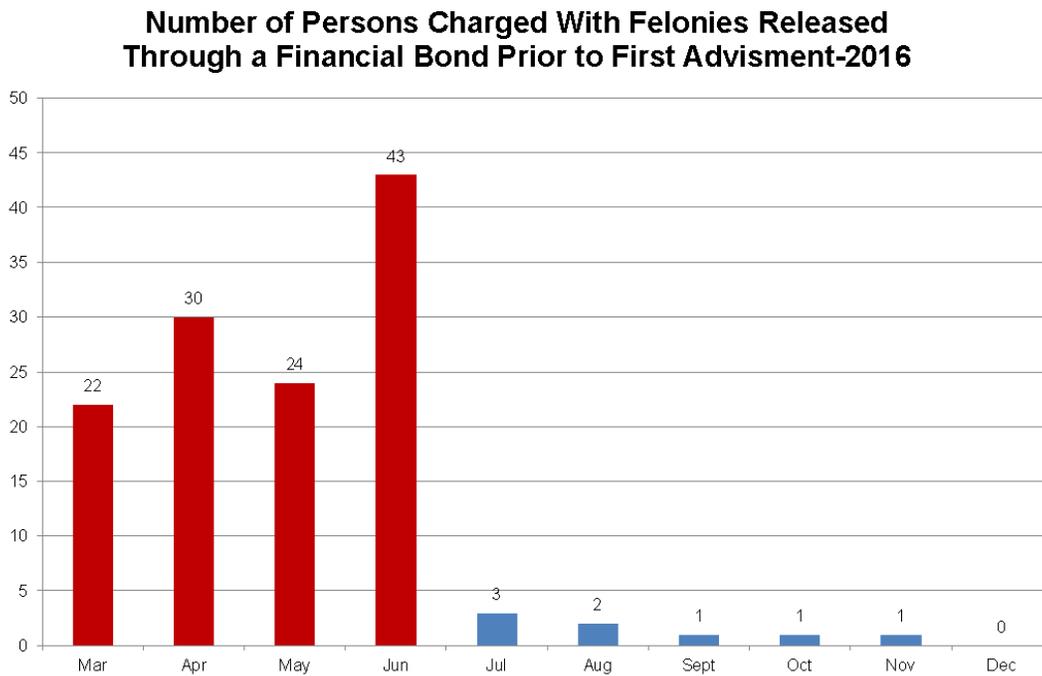


### *Implemented Multiple Best Practices*

Stakeholders in Denver implemented several new best practices, which both eliminated gaps in the system and also increased release while maintaining public safety. Denver also took steps to educate staff and institutionalize their new practices. Below are brief descriptions of the newly adopted best practices, which includes retiring the bond schedule, ensuring a prosecutor is present at first hearing, prioritizing release on personal recognizance, better calibrating community supervision according to perceived need, improving system-wide communication and training, and taking steps to institutionalize new practices and policies.

**Bond schedule is retired.** According to a pretrial system gap analysis, a small group of felony defendants could be released prior to the completion of the pretrial assessment through a charge-based financial bond schedule. In July 2016, the felony money bond schedule was eliminated, allowing individuals to be assessed and to have their release conditions set by a judge prior to their release. (See Figure 2)

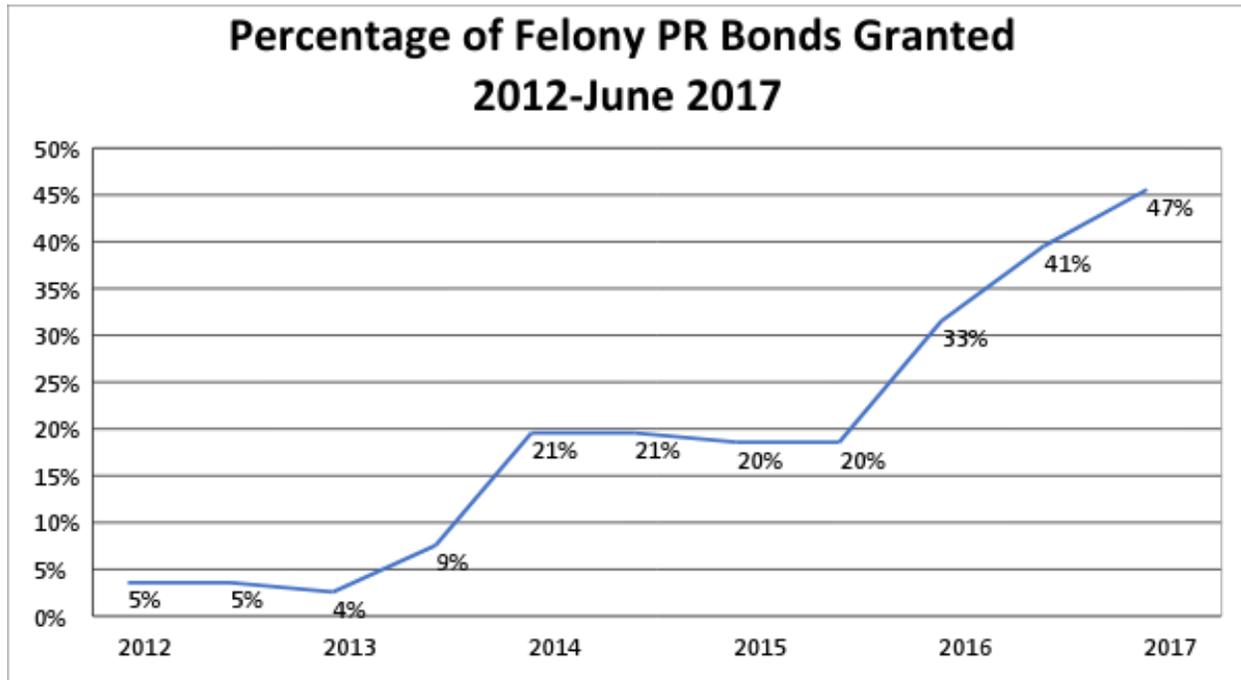
Figure 2



**Prosecutors represent the government and victims.** Before the Smart Pretrial initiative, a prosecutor was not present at felony first appearance hearings. In 2017, an experienced prosecutor, with existing staffing and funding, began to participate in first appearance hearings, joining public defenders in providing the judge with more information to make pretrial release and detention decisions. In appropriate cases, the victims are contacted for input on bond condition requirements before the initial hearing. One hundred percent of first appearance hearings are now staffed by attorneys on both sides.

**Secured money bail is replaced with personal recognizance (PR) releases, while maintaining safety.** Before the project began in 2012, only approximately 5% of people charged with felonies were released on personal recognizance (PR); the rest of those who were released obtained that release through a secured financial condition. By 2017, the rate of persons charged with felonies released on PR had grown to approximately 47%—a more than nine-fold increase. Moreover, Denver retained its already high public safety rate despite this increased PR use. (See Figure 3)

Figure 3



**Right-sizing pretrial supervision.** The jurisdiction reduced the intensity of supervision for many people who had a high likelihood of pretrial success, and reallocated the staffing resources to increase the intensity of supervision for people assessed as having a lower likelihood of success. Now, approximately 93% of people charged with felonies who are released receive some form of intervention (e.g., court date reminder only, pretrial supervision), commensurate with their assessed likelihood of success.

**Communicating with the court.** In approximately 40% of cases where a person on pretrial supervision is later sentenced, the sentencing judge, prosecutor, and defense attorney, and the post-conviction supervising agency receive a report of the positive and negative pretrial behavior of the person while on release.

**Orienting new staff.** Smart Pretrial coordinating staff partnered with in-house media resources to produce video training materials for all involved agencies.

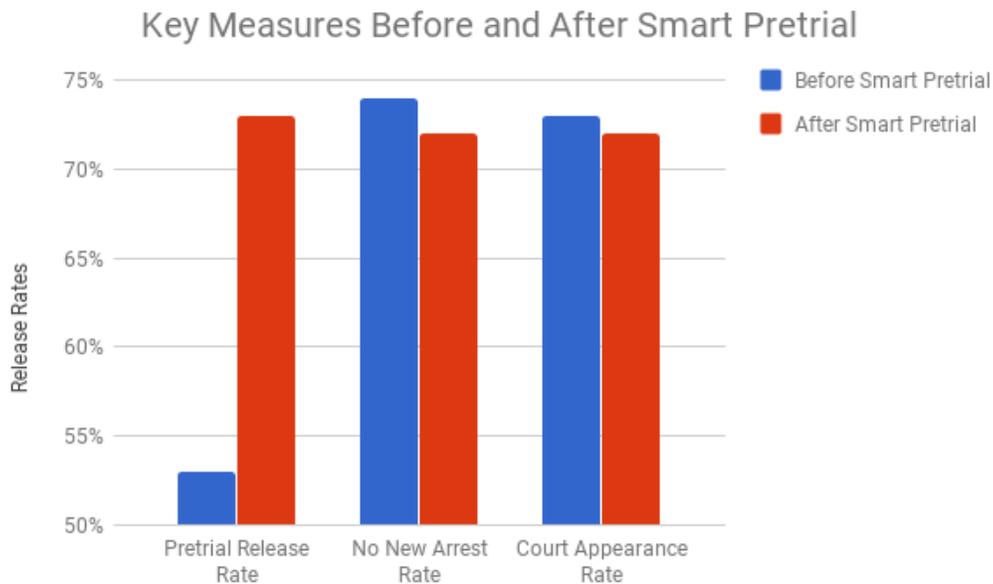
**Institutionalizing and broadening new policies.** In late 2016, the presiding county court judge issued a detailed administrative order to help sustain the new policies and practices for years to come. In 2017, the Denver pretrial services director began serving on a statewide committee that will make recommendations to improve pretrial practices across Colorado.

## Yakima County, Washington

Yakima County is an example of a smaller, more rural jurisdiction that was able to put in place legal and evidence-based practices that maximized release and reduced racial/ethnic disparities with no effect on public safety. Additionally, Yakima County was able to establish the requisite supporting resources for effective pretrial practices, including additional staff.

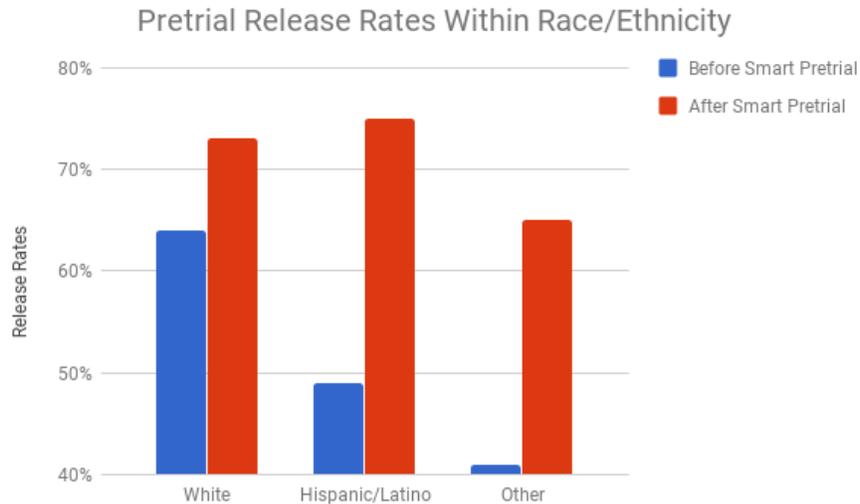
A comparison of data from before and after the Smart Pretrial initiative was launched in Yakima County found that the pretrial release rate rose from 53% to 73% while the court appearance and no new arrests rates held steady. (See Figure 4) The analysis also looked at release rates by race/ethnicity, and found that disparities for release rates among racial/ethnic groups decreased dramatically. The release rate for people identified as Latino/Hispanic increased from 49% to 75%; for those identified as Other (Native American, Black, Asian and Pacific-Islander) releases increased from 41% to 65%.<sup>1</sup> (See Figure 5)

Figure 4



<sup>1</sup> Claire M. B. Brooker, *Yakima County, Washington Pretrial Justice System Improvements: Pre- and Post-Implementation Analysis*, Pretrial Justice Institute and Justice System Partners, 2017.

Figure 5



### *Investing in Pretrial Justice*

Early in the Smart Pretrial project, Yakima County commissioners, realizing the benefits to public safety and the fairer administration of pretrial justice, authorized the use of county general funds to create a new prosecutor position, a public defender position, and three assessment and supervision staff positions. As of 2017 and equipped with the results of the new pretrial practices, the judges support a sales tax increase to permanently fund the new pretrial functions and to implement a local continuum of care for individuals with serious mental health issues and who are involved in the criminal justice system.

### *Pretrial Best Practices in Yakima County*

Yakima County undertook several new practices to streamline the administration of justice, improve the flow of information within the court system and with the community, and provide supervision where it is appropriate. A short description of each is provided below.

**Dedicated docket for first appearance hearings.** Judges and the court administrator created a dedicated docket for first appearance hearings. This reduced the wait time for a meaningful adversarial hearing for in-custody individuals by more than 80%, from an average of 12 days to 2 days.

**Actuarial assessment occurs quickly.** Yakima County began using the Laura and John Arnold Foundation’s Public Safety Assessment (PSA) tool to assess 100% of newly charged individuals who are booked into the county jail. The assessment is completed and the result is automatically generated in 8 minutes.

**Defense representation at first appearance.** Before Smart Pretrial, bail decisions were based on the personal assessments of the judge and informed by arguments from the prosecutor—without representation by a public defender. A dedicated public defender now joins the prosecutor in participating in 100% of first appearance hearings involving people charged with misdemeanors or felonies in Yakima County District and Superior Court. The defender and prosecutor provide the judge with additional information, above and beyond that resulting from the actuarial pretrial assessment tool, such as local resources available for increasing the likelihood of pretrial success.

**Community-based monitoring now occurs.** Before the project, people were released with no monitoring or supervision. Now, electronic court date reminders are sent to all people released on supervision, and the results of the assessment tool are used to better focus more supervision on those who would benefit from it. The law requires and research shows that the minimal conditions or no conditions for people with high likelihoods of pretrial success can achieve good results.

**Ongoing data analyses provide feedback.** All justice system stakeholders receive data on outcomes through a regular, monthly scorecard. Yakima’s scorecard presents six key data measures in a very simplified text format, allowing for the percentages and numbers to be quickly updated from one month to the next. Efforts are underway to expand the analyses to include outcomes for persons who are not supervised.

**Proactively engaging the public and media.** Yakima County leaders enjoy an open and transparent relationship with the local community and media. They are engaged with the community and media to explain how the pretrial system is working and why they made various changes during the Smart Pretrial project.

**Institutionalizing the improvements.** The judge who led the Smart Pretrial policy team has partnered with the other judges to prepare a local court rule to institutionalize all the new evidence-based pretrial policies and practices.

## **The State of Delaware**

The state of Delaware has a unified court and correctional system that, at the onset of the Smart Pretrial initiative, was using substantial secured money bail, no actuarial pretrial assessment, and no differentiated monitoring of released individuals. Over the course of the project, decision makers ranging from local police chiefs to the state supreme court chief justice became more knowledgeable about and helped propose changes to the law and court practices, including new legislative initiatives and newly adopted best practices, both of which are described below.

### *Legislation*

Delaware’s Smart Pretrial policy team formed a legal review committee comprising the key stakeholder group representatives. This committee is working collaboratively to re-write Delaware’s pretrial provisions in both the state constitution and in statute. These changes would give judges the tools they need to ensure the pretrial release of most cases, and the lawful, non-money-based preventive detention in a few cases.



## Best Practices

Delaware took a broad approach to its Smart Pretrial practices, bringing in many stakeholders and allowing different branches of government to communicate with each other. These changes included:

**Inclusive, top-level decision-making.** Delaware’s approach involved the top decision-makers from all three branches of state government (supreme court chief justice, legislators, governor and staff) in analyzing the pretrial system’s strengths and weaknesses and devising legal and evidence-based solutions.

**Cost-effective risk management.** Delaware’s correctional agency, which performs pretrial supervision, had previously taken a one-size-fits-all approach to its supervision strategy, using the same conditions for all cases. The agency now has a three-tiered supervision strategy, which requires consideration of the assessment and the charged offense(s).

**Data systems overhaul.** Delaware’s data systems were dramatically improved over the course of the project. Prior to the project, each agency’s information system was useful and accurate for the purpose it had been created—case management. However, some data was incomplete and sharing among agencies was difficult. The performance outcomes subcommittee is effectively working together to create a pretrial data dashboard. Dashboard development requires a collaborative effort from the courts, the DELJIS information system, the Department of Correction, and the state statistical analysis center because no one agency houses all the statewide pretrial outcomes and indicators that are needed. Delaware is beginning to build new guidelines for release and detention based upon likelihood of pretrial success (rather than access to money), which will replace the current money bail guidelines.

**Transparent information sharing.** Delaware Smart Pretrial policy team members hold periodic information sessions with state agencies and community groups to provide continuous education on legal and evidence-based pretrial justice.

## Lessons Learned from the Sites

While each of the three jurisdictions brought its own strengths and needs to the Smart Pretrial process, they also learned broader, more valuable lessons that they hope are helpful to other jurisdictions embarking on pretrial improvement:

- Money bail violates fundamental principles of fairness and equal protection and offers a false sense of security to the community and victims. As an amicus brief on the need for bail reform filed by 70 current and former prosecutors and law enforcement officials noted, the perceived fairness of the justice system is essential to its functioning. “The willingness of these victims and witnesses to report crimes to law enforcement,

cooperate with prosecutors, show up for court proceedings, and testify truthfully depends on their confidence that the system will treat them and their loved ones fairly.”<sup>2</sup>

- Lawful preventive detention must be part of a no-money pretrial system or true safety will be compromised. As long as money bail exists, some truly dangerous individuals will be able to purchase their freedom.
- Additional monitoring and supervision options and resources must be a part of a no-money pretrial system. Many, if not most, people on pretrial release will perform successfully with no or minimal conditions. However, others will need supervision and other resources to improve the likelihood of successful outcomes.
- Stakeholder team members’ relationships with each other matter. These relationships should be cultivated, with an emphasis on honesty and transparency. The in-person convenings among the sites were useful for bringing the sites’ teams together to work on pretrial issues for longer periods of times without interruption from daily work demands. In-person sharing of their struggles and their generating solutions was invaluable.
- Victim representation and law enforcement participation in policymaking is necessary. As the International Association of Chiefs of Police has stated, “While law enforcement leaders are not often responsible for the steps of the pretrial system past the point of arrest, they do have an important role in encouraging a system-wide response to the needs of victims...and can encourage other justice stakeholders to move toward a pretrial system that prioritizes public and victim safety.”<sup>3</sup>
- Progress and results will be critically limited without adequate local staff to coordinate efforts. In the Smart Pretrial model, local site coordinators (LSC) performed many essential functions. Most of the coordinators’ time was spent supporting the work of the policy teams, including collecting data, gathering background information and completing deliverables pursuant to decisions by the policy team. LSCs served as local pretrial justice experts on legal and evidence-based practices for policy-level stakeholders and their agency staff, delivering trainings, offering guidance on new policies and practices, and in ensuring data collection and analysis capacity met the initiative’s requirements as well as the sites’ needs in the future.
- Changing pretrial systems takes both intensity and stamina. While it may take a mindset akin to that of a marathon runner to reach long-term goals and make major cultural shifts, at times participants may have also have to “sprint.”

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<sup>2</sup> Brief for the Fifth Circuit as Amicus Curiae, O’Donnell vs. Harris County et al., No. 17-20333 (2017). <https://fairandjustprosecution.org/wp-content/uploads/2017/09/Harris-County-Bail-Amicus-Brief.pdf>

<sup>3</sup> International Association of Chiefs of Police, Law Enforcement’s Role in Supporting Victims’ Needs through Pretrial Justice Reform (June 2015). <http://www.theiacp.org/Portals/0/documents/pdfs/SupportingVictimsThroughPretrialReform.pdf>



- The education of stakeholders around legal and evidence based practices is not an overnight process. It takes many conversations followed by small changes that are evaluated every step of the way.
- Messaging is important. Make sure all partners understand the issues that lie ahead. Conduct several community outreach efforts once the message is established to enable consistent messaging to the community. Be prepared for pushback.
- Data is critical for evaluating pretrial reform. It's necessary to get started on good, accurate data collection at the earliest stages of system improvement efforts because it may take time and resources.
- Release data when it is ready and after it is thoroughly reviewed, and make sure the data parameters are established by the stakeholder committee.

## **Progress with Partners**

The Bureau of Justice Assistance served as funding agency and was an active partner in the Smart Pretrial Demonstration Initiative. The Pretrial Justice Institute directed and coordinated the initiative, and provided technical assistance, research, communications consultation and project management to the sites.

The work of the Smart Pretrial sites was facilitated by partner organizations who provided expertise in multiple areas of analysis and implementation.

- **Justice Management Institute**  
The Justice Management Institute (JMI) worked with each site to develop a system map and then analyze these models to identify gaps in current policy and practice.
- **W. Haywood Burns Institute**  
The Burns Institute worked individually with each site to analyze the system through a lens of racial and ethnic equality and to develop recommendations to incorporate equality into implementation plans.
- **National Judicial College**  
The National Judicial College (NJC) was an educational partner in the Initiative, as well as an advisor on the role of the judiciary.
- **Center for Legal and Evidence-Based Practices**  
The Center for Legal and Evidence-Based Practices provided written analysis of state pretrial law for each site and ongoing guidance for implementing new practices consistent with both state and federal law.
- **Justice System Partners**  
Justice System Partners (JSP) members provided technical assistance and specialized analysis as part of the initiative, including an economic consultant who worked with all sites on cost-benefit analyses and other team members who worked on technical



assistance regarding system culture and readiness for change assessment and interventions.

- **Justice Research and Statistics Association**

The Justice Research and Statistics Association (JRSA) was responsible for process and outcome measurement to document the effectiveness of Smart Pretrial strategies within and across sites.

Jurisdictions interested in undergoing a similar process of data-driven analysis and implementation for their pretrial systems should contact John Clark ([john@pretrial.org](mailto:john@pretrial.org)) at the Pretrial Justice Institute for more information.

## **Conclusion**

The Smart Pretrial initiative brought an analytical eye to the pretrial phase. Smart Pretrial gave stakeholders the tools and resources to quantify their existing pretrial practices, and then provide pathways to attaining its three main goals: 1. Maximize public safety; 2. Maximize court appearance; and 3. Maximize the use of release, release conditions, detention, and public resources. The initiative was then able to measure the progress taken toward those goals, and provide ways to sustain those practices that have been show to work best.

Data alone, however, will not do the job. Martin Luther King Jr., once said, “Every step toward the goal of justice requires sacrifice, suffering and struggle; the tireless exertions and passionate concern of dedicated individuals.” The many members of the Smart Pretrial initiative showed that their commitment and relationships to one another were an integral part of this work.