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ALASKA'S PRETRIAL TRANSFORMATION

The Crime and Justice Institute (CJI), a division of Community Resources for Justice, works to improve public safety and the delivery of justice by providing nonpartisan technical assistance, research, and other services to improve outcomes across the spectrum of the adult and juvenile justice systems, from policing and pretrial through reentry. CJI provides direct technical assistance, assessment, implementation, research, data analysis, training, facilitation, and more. We take pride in our ability to improve evidence-based practices in public safety agencies and gain organizational acceptance of those practices. We create realistic implementation plans, put them into practice, and evaluate their effectiveness to enhance the sustainability of policies, practices, and interventions.

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Alaska's new pretrial system limits the use of monetary bail and promotes greater consideration of a defendant's risk of pretrial failure in release decisions. A pretrial risk assessment provides judges with objective information about the likelihood that a defendant will commit a new crime or fail to appear if released to the community pending trial, and Alaska's statute provides guidelines for judges on how to use risk assessment information when setting monetary bail and determining pretrial supervision.

Overview

Over the past decade, the number of pretrial detainees in Alaska nearly doubled.¹ This dramatic increase fueled steady growth in the state's prison population² and came at high financial and human costs.³ At the same time, Alaska lacked tools—such as pretrial supervision and a risk assessment instrument—to balance public safety and defendants' rights.

To protect public safety while also reducing the substantial costs of pretrial detention, Alaska engaged in the Justice Reinvestment Initiative (JRI)⁴ process to identify data-driven and evidence-based solutions. In July 2016, Governor Bill Walker signed legislation establishing major changes to Alaska's pretrial system. The changes, which went into effect on January 1, 2018, included:

- Requiring the use of a **pretrial risk assessment** to determine the likelihood a defendant will fail to appear in court or be re-arrested before trial;
- Transitioning Alaska from a primarily monetary bail system to a primarily **risk-based system**, limiting the use of monetary bail while focusing pretrial release decisions on identifying and mitigating the risk an individual poses to public safety; and,
- Establishing a new Pretrial Enforcement Division under the Department of Corrections to administer risk assessments and **supervise defendants** to help ensure pretrial success.

¹ Justice Reinvestment Report of the Alaska Criminal Justice Commission (2015).

² Alaska has a unified correctional system; pretrial defendants are included in the overall prison population.

³ Lowenkamp, C. T., VanNostrand, M., Holsinger, A. (2013). The hidden costs of pretrial detention. Houston, TX: The Laura & John Arnold Foundation. Holsinger, A. (2016). Analyzing bond supervision survey data: The effects of pretrial detention on self-reported outcomes. Boston, MA: Crime and Justice Institute. (2015) Justice Reinvestment Report of the Alaska Criminal Justice Commission.

⁴ The Justice Reinvestment Initiative is a process that uses data to assess the criminal justice system, research to identify policy options to address identified system issues, consensus to develop policy recommendations and performance measurement to determine the effectiveness of the implemented policies.



Alaska's Pretrial Process Before JRI

Before 2018, pretrial release decisions in Alaska were driven primarily by money: judges set bail at amounts related to the severity of the charge, while considering supplemental information such as criminal history, employment, and community ties, when available. If a defendant could afford bail, he or she was released; if not, the person was held in jail. As a result, defendants at a high risk of pretrial failure could be released without supervision if they could afford bail, while those who couldn't afford it—frequently lower-risk defendants—were detained.

TWO TYPES OF PRETRIAL FAILURE

FAILURE TO APPEAR (FTA) A warrant is issued in response to the defendant missing a court appearance

NEW CRIMINAL ARREST (NCA) Defendant is arrested or cited for new charges while a current case is pending before the court

The vast majority of defendants who made bail, including many higher-risk defendants, were released with no pretrial supervision. There were no mechanisms in place to promote court appearance or adherence to the law. Although some third-party pretrial monitoring services existed in larger urban areas, defendants were required to pay to participate in those services. Those who could not afford the service were detained pending trial, at state expense.

Alaska's geography and the remote location of many villages and tribal areas further complicated the situation. In these areas, the closest detention facility or court can be hundreds of miles away. As a result, even defendants charged with minor offenses had to be transported to regional hubs for arraignment, at significant expense to the state. Those who were unable to make bail were detained, separated from their families and communities for long periods of time. Those who did make bail were often forced to remain in the regional hub community (the largest town in the region) pending trial, given the high costs of travel and the lack of pretrial monitoring services in the rural areas.

⁵ Lowenkamp, C. T., VanNostrand, M., Holsinger, A. (2013). The hidden costs of pretrial detention. Houston, TX: The Laura & John Arnold Foundation.

The research is clear that detaining low-risk defendants who cannot meet the financial threshold for release is detrimental to both the defendant and to public safety.⁵ Alaska's JRI legislation addressed this problem by establishing a process to provide judges more information about a defendant's risk of pretrial failure, and giving them more options to ensure that released defendants are safely supervised in the community and appear for trial. Alaska met these new statutory requirements by designing and implementing a pretrial risk assessment, implementing new statutory guidelines on pretrial release decisions, and creating a pretrial supervision program.

Alaska's Pretrial Risk Assessment

A growing body of research shows that use of an empirical risk assessment better identifies defendants at a high risk of pretrial failure than professional judgment alone.⁶

AK-2S RISK LEVELS	
High Risk	Most likely to FTA or NCA
Moderate Risk	Moderately likely to FTA or NCA
Low Risk	Least likely to FTA or NCA

The Alaska Two-Scale Risk Assessment (AK-2S), developed by the Crime and Justice Institute (CJI), was designed specifically for Alaska's population. Newly hired pretrial officers from the Pretrial Enforcement Division were trained by

CJI to properly administer the assessment. These officers conduct an assessment for every defendant who has been booked into jail prior to their first appearance before a judge.

The assessment delivers two risk scores, one that measures a defendant's likelihood of failing to appear (FTA), and another which measures the defendant's likelihood of being arrested for new criminal activity (NCA) during the pretrial period. The two scores are calculated based on a series of data points, such as age at first arrest and history of failing to appear, that are empirically linked⁷ to each pretrial outcome (i.e., FTA and NCA). The tool is efficient; much of the AK-2S is automated by pulling information from state databases, cutting down on the amount of time an officer has to spend conducting an assessment. Officers supplement that data with information from arrest and court records. The pretrial reports are then published to a secure database and can immediately be accessed via a web application by judges, prosecutors, and defense attorneys.

⁶ Dawes, R.M., Faust, D., & Meehl, P.E. (1989). Clinical versus actuarial judgment. *Science*, 243(4899), 1668-1674.
Dawes, R.M., Faust, D., & Meehl, P.E. (1993). Statistical prediction versus clinical prediction: Improving what works. *A handbook for data analysis in the behavioral sciences: Methodological issues*, 351-367.

⁷ The empirical linkage is established through the analysis conducted in the development of the assessment, and will be tested in all future validations.

ALASKA'S MONETARY BAIL DECISION MAKING MATRIX

	MISDEMEANORS*	CLASS C FELONIES*	FTA/VIOLATION OF RELEASE CONDITIONS	ALL OTHER CHARGES
LOW-RISK	Recommended OR [^]	Recommended OR	Recommended OR	Recommended OR
MOD-RISK	Recommended OR	Recommended OR	Recommended OR	No Limitations
HIGH-RISK	Recommended OR	Recommended OR	No Limitations	No Limitations

*Exceptions: violent, sex and domestic violence-related offenses; failure to appear; violation of release conditions
[^]OR stands for Own Recognizance

Focusing Pretrial Release Decisions on Risk

Under current Alaska law,⁸ there is a legal presumption that all defendants charged with non-violent, non-sex misdemeanors and Class C Felonies, as well as low- and moderate-risk defendants charged with failure to appear and/or violation of pretrial release conditions and low-risk defendants charged with any other crime, are released on their own recognizance (i.e., without having to pay monetary bail). Although own recognizance release is strongly recommended for these groups, a judge may still order financial conditions if it is in the clear interest of public safety.

For all defendants, judges may order non-monetary release conditions to protect public safety or help ensure court appearance.

Pretrial Supervision in Alaska

Alaska recognized the importance of not only improving its pretrial decisions and practices, but also investing the fiscal and human resources needed to enhance public safety by providing pretrial supervision to defendants released prior to disposition of their criminal case.

In addition to providing judges with a risk score, Pretrial Enforcement Division officers make evidence-based recommendations for pretrial release conditions that will ensure the defendant's appearance in court while maintaining public safety. Low-risk defendants should have fewer and less restrictive conditions imposed than moderate- and high-risk defendants. These conditions, which are specific to a defendant and informed by their circumstances, are designed to facilitate compliance with the court process and with the law in general.

⁸ This description reflects Alaska law as of June 14, 2018. In the 2018 Legislative Session, the Alaska legislature passed HB312, which modified the statutory requirements regarding the circumstances under which financial conditions can be ordered.

Defendants ordered to pretrial supervision report to the pretrial offices for check-ins at regular intervals and may be required to undergo random drug testing or electronic monitoring. The Pretrial Enforcement Division provides defendants with court date reminders and helps connect them with treatment or community resources. In addition to office visits, pretrial officers also contact defendants in the community and have full arrest authority, which means pretrial officers can immediately remand individuals if violations of conditions of release are discovered.

The nature of Alaska's geography and sparse population makes travelling from a rural village to pretrial hearings costly and difficult. To overcome this challenge, the Pretrial Enforcement Division has developed partnerships with state and local law enforcement and tribal governments to allow defendants to be safely monitored in their communities. Combined with the increasing use of video conferencing for court hearings, this reduces the travel costs and burdens for both the defendants and the government and ensures Alaska has a truly statewide pretrial supervision system.

The Future

Alaska is ensuring that pretrial release decisions and supervision conditions lead to more successful outcomes by embracing innovation and integrating evidence-based policies into practice.

Alaska is one of only a handful of states to have developed its own risk assessment instrument specifically designed for its unique population. As is best practice, Alaska will re-validate the AK-2S after one year of use and will regularly re-validate the tool thereafter to ensure that it is free of bias and correctly identifies defendants based on their risk of pretrial failure. The Pretrial Enforcement Division is also tracking performance metrics (such as FTA and NCA rates for released defendants) and will continue to use data to improve the system.

Alaska is focused on continuous improvement. Over the coming months and years, the state intends to continue to adopt promising practices from other jurisdictions while developing Alaska-specific innovations, including expanding pretrial diversion opportunities and using emerging technologies, such as smartphone case management apps, to improve pretrial supervision. The state has an established Pretrial Stakeholders Committee that meets regularly and is open to the public; the Pretrial Enforcement Division will use this committee to collect feedback to further improve the system.

Alaska has committed to making smarter decisions that preserve public safety while averting substantial expenditures of public dollars. Alaska's pretrial system will be one to watch in the coming years and can serve as a model to the rest of the country.