

TOP TAKEAWAYS FROM SMART PRETRIAL IN YAKIMA COUNTY, WASHINGTON

LETTER FROM PJI CEO CHERISE FANNO BURDEEN



After three years of work, the results from Yakima County are substantial and impressive. Yakima County has dramatically increased its pretrial release rate from 53% to 73%, with no changes to its public safety or court appearance rates; racial and ethnic disparities in pretrial release rates have been drastically reduced; and a dedicated docket for first appearance hearings has reduced the wait time for hearings for in-custody individuals from an average of 12 days to 48 hours.

So much of pretrial reform depends upon the unique circumstances of the jurisdiction in question. Our other sites, the state of Delaware and the city of Denver, also made significant progress, which you can read about in the report, *Outcomes of the Smart Pretrial Initiative*. The changes in Yakima, however, stand out—not only because they are so easily quantifiable, but also because the county is similar in so many ways with hundreds, if not thousands, of other non-urban counties across America.



Yakima County once had one of the highest pretrial detention rates in Washington. Its work proves to the rest of the state and the country that evidence-based pretrial practices can result in maximizing pretrial release with no changes to public safety and court appearance rates. The process that the county undertook to reach this point serves as an excellent example of the broad base of collaboration, communication, and commitment necessary for lasting and meaningful change.

A handwritten signature in black ink that reads "Cherise Fanno Burdeen". The signature is written in a cursive, flowing style.

Cherise Fanno Burdeen

Yakima County is a non-urban jurisdiction in eastern Washington state. Over the course of three years, as a result of its participation in the Smart Pretrial initiative, a demonstration project funded by the Bureau of Justice Assistance and managed the Pretrial Justice Institute, it transitioned from having very

little legal and evidence-based pretrial practices or the requisite supporting resources, to a place where pretrial decision-making is informed, deliberate, and fully integrated into the county's justice proceedings. This brief provides an overview of how county officials applied the Smart Pretrial principles and methodology to



realize these outcomes, as well as perspectives of Judge Richard Bartheld, who led the county’s Smart Pretrial policy team. (For a more detailed discussion, see *Yakima County, Washington Pretrial Justice System Improvements: Pre- and Post- Implementation Analysis*.¹)

Smart Pretrial emerged from a growing awareness that the use of money bail in most criminal systems was unfair, unsafe, and ineffective. At the most fundamental level, making pretrial release decisions based on a person’s access to money results in unnecessary pretrial detention of many people solely because they are poor; at the opposite extreme, those who pose a significant threat to public safety are able to leverage money bail to pay for their release and return to the community with little to no meaningful supervision. Smart Pretrial sought to address these and related problems by pursuing three general goals, also known as the “Three Ms of Smart Pretrial”:

1. Maximize public safety;
2. Maximize court appearance; and
3. Maximize the appropriate use of release, release conditions, detention, and public resources.

By applying the Smart Pretrial framework, which includes drafting a mission statement, analyzing current laws and court rules dealing with pretrial, and examining cases based on likelihood of pretrial success, Yakima County:

- Implemented a pretrial assessment tool for all newly charged defendants booked into the county jail;
- Significantly reduced the use of secured money bonds;

- Introduced a dedicated court docket for first appearances;
- Ensured a dedicated public defense attorney is present at all first appearances; and
- Established a pretrial services agency that provides pretrial assessment and management services.

After comparing randomly-selected cases from the pre-implementation period and the post-implementation period, these changes in pretrial practices were found to correspond with three significant, positive outcomes:

1. The pretrial release rate increased from 53% to 73%, with no changes in court appearance or new arrest rates,
2. Disparate release rates among racial/ethnic groups were dramatically reduced, and
3. People who gained release by posting bond were able to do so in a shorter time frame, because judges reduced their use of secured money bond and instead set more unsecured bonds.

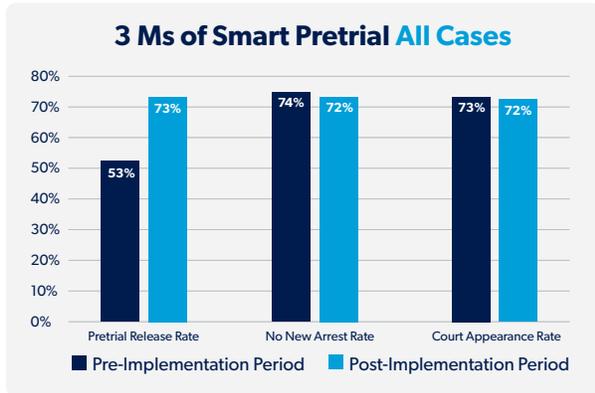
Each of these outcomes is discussed in detail below, along with a description of practices associated with each.

Finding 1: Pretrial release rates increased from 53% to 73% of all cases, with no statistically significant change in public safety or court appearance.

With the assistance of the Laura and John Arnold Foundation, Yakima County implemented the pretrial assessment tool, known as the Public Safety Assessment (PSA). Figure 1, next page, shows a 20% increase in the number of people

released following the implementation of the tool, alongside negligible changes in new arrest and court appearance rates.

Figure 1



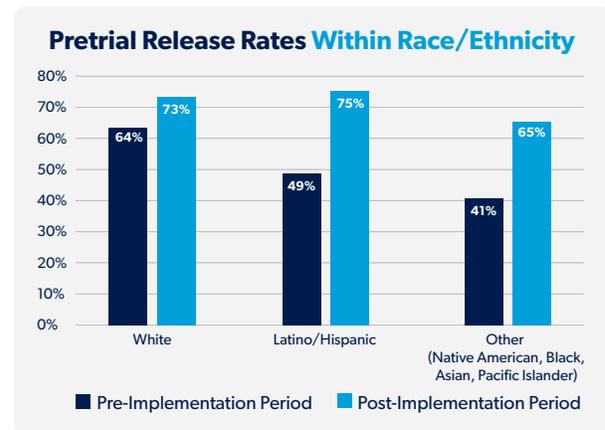
In addition to implementing the PSA, Yakima County tailored an accompanying Decision Making Framework (DMF)² to provide recommendations regarding supervised pretrial release. Depending on the likelihood of success, the DMF recommends differentiated levels of release conditions, from electronic court date reminders to more intensive supervision for those with lower likelihoods of success. In 87% of the cases where the DMF recommended release, release was set with no secured money bond (see Figure 8 in *Yakima County, Washington Pretrial Justice Improvements: Pre- and Post-Implementation Analysis*).

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 a dedicated prosecutor in participating in 100% of first appearance hearings. These positions, in addition to pretrial services, are funded out of general fund dollars. The presence of a dedicated defender and prosecutor means

that they are able to provide the judge with additional information, such as local resources available for increasing the likelihood of pretrial success.

Finding 2: Racial and ethnic disparities were significantly reduced as release rates increased.

Figure 2



Yakima County has a population of approximately 250,000 people, of whom 44% are White, 48% are Latino, and 9% are Native American, Black, or Asian/Pacific Islander (a group identified here, for statistical purposes, as “Other”).³ Prior to the Smart Pretrial initiative release rates among these three categories varied significantly: 64% of White people were released, compared to 49% of Latino/Hispanic people, and 41% of people in the third category (Native American, Black, and Asian/Pacific Islanders). As illustrated in Figure 2 above, following the implementation of the Smart Pretrial improvements, release rates in the White category went from 64% to 73%. Within the Latino/Hispanic category, release rates increased even more dramatically, from 49% to 75%. Among Native American, Black, and Asian/Pacific Islanders, the release rate increased from 41% to 65%.

Additionally, there was a statistically significant improvement in the percentage of people who could post bond more quickly in each race/

ethnicity group as courts set fewer secured bonds (see Figure 4d in *Yakima County, Washington Pretrial Justice Improvements*:

Yakima County Superior Court Judge Richard H. Bartheld chaired the county's Smart Pretrial Policy Team. Below are highlights of an interview with Judge Bartheld about his experience with the initiative.

PJI: What led you to the Smart Pretrial Project?

Judge Bartheld: Our county commissioners were concerned about the rapid increase in costs for law and justice. We discovered our jails were holding a large number of people prior to trial. This dovetailed with my frustration as the criminal presiding judge trying to make pretrial release decisions with limited information and resources.

PJI: What was this three-year process like?

Judge Bartheld: The Smart Pretrial partners provided us with a firm foundation. They provided us with system analysis, looking at our existing court dockets and suggesting changes. They provided statistical information supporting risk-based assessment rather than case-based assessments. They provided information how our existing system was impacting racial and ethnic groups. They also provided us with a critical analysis of the Washington constitution, statutes and court rules which impacted release decisions. All of this information provided us with a good foundation to build an effective and efficient pretrial release program.

PJI: How do you feel about the results?

Judge Bartheld: Very satisfied—and I'm speaking for the judges as a whole. Prior to the adoption of our pretrial program, we were releasing about 53% of the accused pretrial. We're now releasing 73% of those individuals. We found there was no statistically significant difference in public safety rates or in court appearances. Those were good results.

What we didn't anticipate was the [change in] release rates between different races and ethnic groups. This was the biggest surprise. We were able to level out the release rate disparity and make risk-based decisions uninfluenced by race or ethnicity.

PJI: Can you talk about how these changes are funded?

Judge Bartheld: The county commissioners have committed to us to keep the program going. Since we are releasing 20% more people, our county can utilize those additional beds to rent to other counties facing overcrowding. We struggled convincing our commissioners the additional money generated from rent should be utilized by the pretrial program, instead of supplementing the general fund. Presently, we are satisfied with the financial support provided.

Counties in Washington have the option of exercising a 0.1% increase in sales tax to address the needs of people with mental health issues in the court system.⁴ We noticed that we still have more people not

showing for court than we wanted... and discovered that a lot of those people were suffering from mental health problems. It was also a fortuitous circumstance where the MacArthur Foundation was also looking at pretrial reform, and the impact it had on the mentally ill. Law enforcement really had no alternative but to book people with mental illnesses into jail because they had no other place to take them*. We are looking at melding mental health services with pretrial in an effort to utilize this funding source.

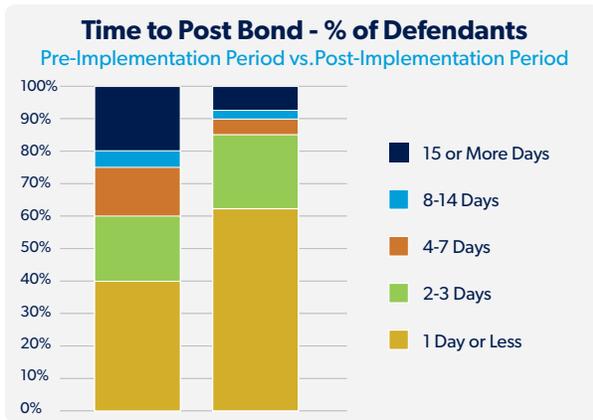
PJI: What is next for Yakima County to sustain the initiative?

Judge Bartheld: We're working on a local court rule that requires pretrial release decisions incorporate our risk assessment analysis into the state court rules on pretrial release. We also want to improve our pretrial release over weekends. That would require additional funding to add additional staff to cover weekends. We are not satisfied with our court appearance rate. Even though it is about the same as before the program, we think we can do better. The beauty of the system we developed through the Smart Pretrial Initiative allows us to make decisions utilizing data and actual analysis rather than anecdotal experiences.

*In 2017, Yakima County was selected as a Safety and Justice Challenge Innovation Fund Site by the John D. and Catherine T. MacArthur Foundation.

Pre- and Post-Implementation Analysis). These changes represent a conspicuous improvement in fairness outcomes.

Figure 3



Finding 3: Significantly more people post bond within three days.

As Figure 3, above, shows, as a result of the Smart Pretrial improvements, more than 80% of arrested people are able to post bond in three

days or less, compared to just over 60% prior to the initiative.

Several changes contributed to this increase. Judges began setting considerably more unsecured bonds in the post-implementation period (42% of bonds, compared to 13% before the changes). As a result, people posting bond in the post-implementation time period (85% of bonds posted in the post-implementation period were unsecured bonds, vs 36% in the pre-implementation period).

Additionally, the Public Safety Assessment (PSA), which Yakima County began using to assess all newly charged individuals who are booked into the county jail, is exceptionally efficient. It completes its assessment and generates a result within 8 minutes. Also, the court created a dedicated docket for first appearance hearings. This helped significantly reduce the wait time for a meaningful adversarial hearing for in-custody individuals, from an average of 12 days to two.

Conclusion

By comparing randomly-selected cases from the pre-implementation period and the post-implementation period, Yakima County has shown that moving away from secured money bonds to legal and evidence-based practices can reduce pretrial detention with no impact on public safety or court appearance. It also helped the county reduce ethnic disparities in pretrial decisions and expedite the time to post bond.

Issues still exist, especially with the continued use of secured money bond. Judges still set secured money bonds on many individuals which delays the eventual release of people legally eligible for release. Moreover, in some cases, people are allowed to post a secured money bond with no supervision requirement before they are even assessed or see a judge at first appearance.

Additionally, because a recommendation against release is interpreted as a recommendation against supervised release, those with the lowest likelihood of pretrial

success are still able to be released on secured money bond without monitoring or supervision—which, in some cases, may put individual or public safety at risk.

Implementing change is a cyclical process, with periods of evaluation and adjustment. These findings show that justice does not have a finish line. Having already achieved better results, the legal and evidence-based decision making process Yakima County has committed to hold a meaningful promise of even more progress to come.

Acknowledgments

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CITATIONS

1. Claire M. B. Brooker, Yakima County, Washington Pretrial Justice System Improvements: Pre- and Post-Implementation Analysis, Pretrial Justice Institute and Justice System Partners, 2017. <https://justicesystempartners.org/wp-content/uploads/2018/02/2017-Yakima-Pretrial-Pre-Post-Implementation-Study.pdf>
2. See Appendix for Yakima County's DMF in the Yakima County, Washington Pretrial Justice System Improvements: Pre- and Post-Implementation Analysis.
3. U.S. Census Bureau Quick Facts for Yakima County, 2015.
4. <https://www.dshs.wa.gov/sites/default/files/BHSIA/dbh/documents/5763factsheet.pdf>

