



SCAN OF PRETRIAL PRACTICES

EXECUTIVE SUMMARY
2019

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Since 2009, the year of PJI's [last survey of pretrial practices and policies](#), interest in pretrial justice has increased exponentially. Once barely an afterthought in criminal justice discussions, the front door of the criminal justice system has become the focus of policymakers, system actors, and community members committed to ending mass incarceration and racial inequality.

For the 2019 *Scan of Pretrial Practices (Scan)*, 89 counties and 2 independent cities, representing jurisdictions of high, medium, and low densities, completed all sections of the survey; an additional five counties completed some sections, and their responses were included where appropriate. For the purposes of this report, these jurisdictions are collectively referred to as counties. This *Scan* explored the nature of the changes in pretrial justice across the country, and how those real-life behaviors squared with legal principles and evidence-based practices.

Some results show promising improvements. Court reminder systems are an example of an effective strategy that promotes the goal of court appearance and respects the principle of least restrictive conditions; three out of four counties reported having some type of court date reminder system. Many areas report efforts to respond to people's behavioral health needs so that they do not enter the criminal justice system; 71 percent of counties with a pre-arrest/pre-booking program reported having a program with a mental health focus and 46 percent had a program focused on substance use needs.

At the same time, the responses show how very difficult it is to implement pretrial justice policies that move away from money-based detention, and this *Scan* presents an opportunity to pause and re-evaluate practices and how they are implemented. In some areas, for example, policies designed to reduce criminal justice system involvement were in place but were not necessarily used in practice. Ninety-one percent of counties stated that citation release was available, but only about half (53 percent) said that all or most law enforcement agencies used the process "regularly." Not quite half (47 percent) of counties reported conducting ability to pay inquiries in an attempt to prevent money-based detention. From a broader angle, many counties did not have a dedicated stakeholder group to review and discuss pretrial justice (49 percent) or offer critical training to judges, prosecutors or defense attorneys (40 percent or more).

In particular, the following areas raised concerns over system practices and resources:

- **Challenges outside of high-density areas:** Almost 40 percent of low-density counties were not able to conduct first appearance hearings within 24 hours. Middle- and low-density counties were less likely to report having options available to the judicial officer at first appearance, such as release on recognizance or release on unsecured bond.
- **Using pretrial assessment tools inappropriately:** The use of pretrial assessment tools continues to expand; two out of three counties reported using a pretrial assessment tool (also noted as "pretrial risk assessment" in the *Scan*). However, assessment tools require maintenance and administrator training to ensure that they are used as intended. Half of counties used the tools to set monetary bond, thereby reinforcing money as the key factor in release. Nearly three out of four counties (73 percent) that had a pretrial assessment tool reported using them to make the "release or detain" decision, which raises legal concerns. The detention decision should be made through a separate, rigorous hearing with full due process protections, where the government must prove by a standard of clear and convincing evidence that no conditions of release would reasonably assure the safety of the public or an individual person. It is not a decision that should be based simply on probable cause and an assessment score. Moreover, less than half of counties (45 percent) with pretrial assessment tools reported having validation studies to ensure continuing accuracy with regard to court appearance and public safety.
- **Due process protections are absent at critical decision points:** More than half of all counties (53 percent) said that defense attorneys did not meet with clients before first appearance, and only 45 percent said attorneys were present at first appearance. Research shows that the early presence of counsel is associated with greater rates of pretrial release. When a decision to detain without bail is made at first appearance, only 56 percent of counties indicated that there was a follow-up detention hearing. Only 26 percent of counties had a process to automatically review the case of anyone detained due to an inability to afford monetary bond.
- **Lack of data on basic pretrial justice measures:** No matter what strategy or tool a jurisdiction undertakes to improve its pretrial justice system, gathering, analyzing, and sharing basic pretrial justice measurements are necessary to understand how changes in practice change outcomes. At a minimum, jurisdictions should know the measurements reflecting the three goals of pretrial justice: maximizing pretrial liberty, court appearance and public safety. More often than not, jurisdictions did not have these measures.

- **Pretrial release rates (pretrial liberty):** Only 34 percent of responding counties knew their pretrial release rate, 30 percent said their county did not know the rate, and 36 percent were unsure.
- **Court appearance rates:** Only 28 percent knew their court appearance rate, defined as the percentage of individuals who are released pretrial who make all court appearances, or alternatively, the percentage of all pretrial court hearings where the accused person appeared. Thirty-six percent knew the inverse of the court appearance rate, failure-to-appear rate, defined as the percentage of people who are released pretrial who failed to appear for at least one court hearing, or alternatively, the percentage of all pretrial court hearings where the person failed to appear.
- **Public safety rates:** With regard to public safety rates, only 22 percent of counties knew the percentage of individuals who do not have a new charge filed during the pretrial period, and 29 percent knew the percentage of individuals who do not have a new arrest during the pretrial period.

After forty years of technical assistance and training available in the field, with the last decade having unprecedented attention and resources, we should be farther ahead. The number of state- and county-level working groups, commissions, bills, and lawsuits focused on pretrial justice which have come forward across the country in just the last five years outnumber those in the prior 25 years combined. And yet, based on five surveys of practice — one every decade since the 1970s — we still have drastic justice by geography.

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There is no one path to achieve the goals of maximizing pretrial liberty, court appearance and public safety, and the *Scan* reveals that there are many opportunities for counties to take on additional strategies or to adjust existing ones. We encourage jurisdictions to use this document as both an opportunity to check on how their values are reflected in practices and outcomes, and to explore new opportunities to improve their pretrial justice systems.