SANTA CLARA COUNTY CASE STUDY

USING TECHNOLOGY AND INNOVATION TO IMPROVE CLIENT CONTACT
In our series of case studies, we present jurisdictions which conduct one or more aspects of pretrial justice with excellence. The intention is to share how people worked or are working towards safe, fair and effective pretrial justice, with the hope that it can serve as an inspiration and example for others. No place is perfect, but we can’t let perfection be the enemy of the good.

With the 2018 passage of SB 10, California, our nation’s most populous state, decided to end the practice of locking people up before trial based on how much money they have. For many working on pretrial justice issues, this was a historic event, though one we marked with caution, and one that voters now must approve by referendum on the 2020 ballot before going into effect. The best laws can be undercut by a lack of dedication to the idea that pretrial liberty should be the norm. New practices, if not designed to be decarceral while balancing safety and liberty, may make things worse.

For this case study, we look to Santa Clara County, California, and its Office of Pretrial Services (SCPTS). SCPTS has cultivated a cultural shift in its work in the last decade, using data and information to monitor its progress and push for change. As the only independent pretrial services agency in California, SCPTS is unique in its structure, but nonetheless offers many useful lessons to present and future pretrial services units wherever they may be located. As with other agencies we have highlighted, this office constantly pursues improvement and embraces innovation. Many elements of SB 10 were fashioned after practices in Santa Clara County, and at least thirty-two counties in California have visited or consulted with SCPTS since Criminal Justice Realignment was enacted in 2011. We are deeply grateful to the staff of SCPTS and others within the government of Santa Clara County for their assistance in preparing this publication.

—Cherise Fanno Burdeeen
CEO, Pretrial Justice Institute
HISTORY

The Office of Pretrial Services in Santa Clara County, California (SCPTS) began with a federal grant in 1969, when local court officials sought resources to help judges make more informed pretrial release decisions, resulting in the establishment of the Pretrial Release Program. When federal funding concluded, the county took over fiscal responsibility for the program in 1974. In the years that followed, the program evolved and expanded. In 1998, the Office of Pretrial Services began on-site drug and alcohol testing, and also began electronic monitoring as an option for pretrial release. The office also created partnerships with other agencies to address the needs of people with mental health issues.

The modern era of SCPTS—the agency that it is today—began because of the bail bond industry. At the urging of members of the bail bond industry, in 2010 a county supervisor raised the issue of whether the functions of pretrial services could be absorbed by other county departments. After other departments declined to take on pretrial functions, and with the sustained support from the local court and county executive to maintain SCPTS as an independent agency, the supervisor rescinded the request and asked for an audit of the program. The audit ended up substantiating the cost-effectiveness of the program, showing that over a six-month period in 2011, the Office of Pretrial Services saved the County nearly $32 million in jail bed costs. That same year, operating under a newly-appointed director, SCPTS implemented a computerized pretrial assessment, as part of a mandate from the county to adhere to national standards.

In 2014, the county created the Bail and Release Work Group, composed of representatives from the court, Office of Pretrial Services, Office of Reentry Services, the District Attorney’s Office, Office of the Public Defender, Sheriff’s Office, the American Civil Liberties Union (ACLU), bail industry, and other local service and community organizations. The work group’s main objective was to adopt evidence-based practices to eliminate racial and ethnic disparities in the system. In 2016, the Group released its Final Consensus Report on Optimal Pretrial Justice, whose recommendations emphasized shifting the pretrial justice model away from a wealth-based system; in 2017, the Santa Clara Board of Supervisors approved six major reforms that resulted in savings from reduced jail time.

SCPTS TODAY

SCPTS has five key units to carry out its work at different stages of pretrial justice. Its information system, Pretrial Online Production System (POPS) allows for case initiation, pretrial assessment and case management, to permit continuity of information among the units.

Officers from the Jail Unit are present at all times at the county’s main jail to facilitate the earliest pre-arrainment release possible, in most cases just after jail booking. They immediately interview all people booked into jail with eligible misdemeanor and felony on-view arrests and arrest warrants. Based on information from the pretrial risk assessment, the interview (if the client is available) and the individual’s records, the officers recommend
Own Recognizance (OR), Supervised Own Recognizance Release (SORP) or denial of OR/SORP. SORP is typically used for people who have substance use needs, mental health needs or a history of domestic violence; additionally, individuals released under SORP may be subject to drug or alcohol testing, no contact orders, or electronic monitoring. These recommendations are produced and transmitted electronically to a judge around the clock. The process of conducting the interview, reviewing records and submitting a recommendation typically takes an hour; the court’s response usually takes another hour.

Only a judge may make the ultimate release or detention decision. In cases where the judge does not order release, money bond is set, and in many cases the accused person remains in jail, unable to meet that bond amount. Court Unit officers prepare reports for arraignments, and, at the judge’s request, at any court hearings for further consideration of release on OR or SORP. If bond is not posted, the individual will have an arraignment hearing within 72 hours (excluding weekends and holidays). At this hearing, the court unit updates the jail arraignment report for anyone who is not released before arraignment, and presents the information to the court to reconsider the pretrial release decision made at the jail, along with the charges filed by the district attorney. An attorney may also request an ability to pay hearing. Monetary bonds are still very common in Santa Clara County; in the 12-month period beginning October 2017, 5,052 people were released on a financial bond, although this is a significant decline from 2014, when 8,019 bonds were written. If SB 10 is enacted, then monetary bonds will no longer be an option.

Officers from the Supervision Unit monitor and ensure compliance with more intensive conditions set by the court, including providing drug testing services; referring clients to other services ordered by the court, such as mental health treatment; overseeing electronic monitoring and voluntary home detention; and providing personal reminders of upcoming court dates.

"Judges are often required to make difficult decisions with respect to the pretrial release or detention of a defendant. Judges will often make a decision to release a defendant pretrial because Pretrial Services is able to provide a level of supervision which addresses public safety and other issues considered by the judge in reaching that decision. Defendants who might not otherwise be released pretrial because of public safety or other concerns often can be released because Pretrial Services provides the supervision and oversight necessary to address the judge’s concerns."

- The Honorable Patricia Lucas, Presiding Judge, Superior Court of California, County of Santa Clara

The 2012 management audit of SCPTS revealed that staffing schedules were not ideally matched to the pattern of bookings occurring at the jail. Staff provided input and helped created scheduling options, employing some 4-day, 10-hour shifts to optimize the staffing to workload ratios. The four days on/three days off schedule made the Jail Unit assignment more desirable among staff.
The Drug Testing Unit handles random drug and alcohol testing for people released to the supervised program, and also provides drug and alcohol testing for the Proposition 36 clients of the Probation Department. The Clerical Unit assists clients with making appointments with SCPTS, processes client record checks for SCPTS and the courts, and gathers information to complete reports and assessments.

In addition to these pretrial functions, SCPTS also manages and participates in several programs to reduce contact and deeper involvement with the criminal justice system, including:

- The Self-Surrender Program allows people with arrest warrants to arrange to be screened for a Self-Surrender investigation report by SCPTS, and then surrender at the jail or court at a specific date and time. The duty judge reviews the report for possible OR/SORP release until the next court date.

- Community Awaiting Placement Services (CAPS) is a broad multi-disciplinary partnership among the Probation Department, Sheriff’s Office, Behavioral Health Services Department, Office of Reentry Services, and Office of Supportive Housing that diverts high-needs people with mental health or substance dependencies away from jail. Working together, this team supervises individuals in the community who would otherwise be in jail while awaiting a treatment bed. The CAPS team expedites the placement of individuals to treatment beds away from jail.

- The Community Accountability Program, a partnership between SCPTS and the District Attorney’s office, offers an opportunity to have charges dismissed. SCPTS targets individuals at the pre-filing stage who have been charged with crimes such as vandalism, trespassing, and shoplifting. The program requires community service as well as behavioral therapy and dismissal of the charges is available after successfully completing the program within four months. This program is expanding to include those with driving on suspended license and other charges.

- SCPTS has created a partnership with First 5 California, an organization dedicated to promoting the well-being of young children by lessening the impact of parental incarceration. When people who have children are detained before trial, SCPTS seeks their permission to make a referral to a First 5 case manager. The referral allows First 5 to provide services and support to the children’s substitute caretaker while the parent is detained.

- SCPTS is also making arrangements to have a pre-booking area in the Sobering Center, a program run by Reentry Services to provide a safe recovery space in the community. Reentry Services provides resources to any person leaving custody for any period of time; these resources including food, clothing, referrals to community services and employment assistance. SCPTS will identify people who do not need to go through the entire booking process, and instead will make referrals for them in the community.

According to SCPTS director Aaron Johnson, the goal of SCPTS is to ‘burn out the stumbling blocks’ that keep clients from succeeding.
One of the most intangible, yet powerful, ways that jurisdictions can lower detention rates is examining the system’s culture around pretrial release. Is detention easy to get or hard to get? Does the jurisdiction use assessments, and if so, do courts follow the recommendation guidelines for conditions of release?

Garry Herceg took on these issues as director of SCPTS from 2010-2016. When Herceg arrived at SCPTS in 2011, he had never worked in pretrial services, but his experience with the Annie E. Casey Juvenile Detention Alternatives Initiative (JDAI) proved relevant. JDAI seeks to reduce youth detention using a combination of strategies, including: promoting collaboration among key system actors; using rigorous data collection and analysis to guide decision making; and reducing unnecessary detention.

At the time, the agency was facing numerous challenges, including intense scrutiny from a county supervisor who called for the dissolution of pretrial services. Herceg noted that while SCPTS was using a pretrial assessment, the recommendations were not followed consistently. Staff were afraid to make release recommendations if they thought the judge would disagree, and some judges based their decisions on which pretrial staff made the recommendation. Staff were not aware of the principles of legal and evidence-based practices. Most of all, Herceg noted, some staff did not have empathy for the people they worked with and recommended detention more often than release, without the use of an assessment instrument.

Herceg took 90 days to assess what was working and what was not, and then began addressing the agency’s issues. He wrote a grant proposal to implement a new pretrial assessment, and worked hard at retraining the staff on release. Staff were told they had to follow the recommendation guidelines based on the assessment 90% of the time; data was kept on each staff, and they had to meet goals or meet with supervisors for retraining. Outside experts provided training on legal and evidence-based practices. The departmental training unit was asked to develop and provide empathy training, based on the principle that all people should be treated well. “According to its records for calendar year 2015, pretrial services officers recommended release in 85% of jail unit cases (2092 out of 2455) and 76% of court cases (4236 out of 5602).”

Herceg also developed working groups based on what he found through the 90-day assessment. Working groups met and created plans to: raise the use of the Self-Surrender Program; draft a vision statement for SCPTS; address workload distribution; and focus on practices in drug testing. He worked with staff on interview techniques, coaching and videotaping staff. Herceg also borrowed practices from the business world. A Friday “good ideas committee” meeting brings together representatives from different divisions of pretrial services to improve the pretrial process through higher level discussions.
At the same time he worked with his own staff, Herceg also held trainings for judges, prosecutors and defense attorneys on pretrial assessments and legal and evidence-based practices. In many cases, Herceg said, it took frank, one-on-one conversations with system stakeholders about pretrial assessments to make people comfortable with them.

As a result of these efforts, SCPTS has nearly doubled its pretrial release population, showing that pretrial release rates can increase with no decrease in public safety or court appearance rates. Compared to 2010, when the average daily population on pretrial release was approximately 900 persons, as of November 2018, that figure is now at 1771, a number credited to the engagement of judges and district attorneys as well as the No Cost Release Campaign through the MacArthur Safety and Justice Challenge (see page 7). At the same time, the appearance, technical compliance, and rates of arrests for new criminal activity have been equal to or better than in previous years. Over this time the local jail population has dropped from the 4200-4500 range to 3200, with some decreases attributable to Proposition 47, which recategorized some “non-serious/non-violent” crimes as misdemeanors and permitted resentencing of those serving sentences under the old law.

In a Hollywood-like twist, that same county supervisor who sought to dissolve pretrial services was later prosecuted for mishandling public funds. When he ended up under pretrial supervision, noted Herceg, “we treated him fairly,” adhering to the principles Herceg worked so hard to instill in his staff. Herceg has since left his position with SCPTS to become deputy county executive for Santa Clara County, and was succeeded by Aaron Johnson in 2016.

**EMBRACING DATA AND TECHNOLOGY TO IMPROVE PRETRIAL**

As home to Silicon Valley, it is perhaps not surprising that SCPTS has embraced the use of data and technology to improve and guide its pretrial practices. In addition to using data to motivate staff to increase release rates, SCPTS has turned to technology to inform planning for satellite offices, closely track performance outcomes, and keep in touch with clients.

SCPTS uses specialized dashboards to track issues over time. The sheriff posts daily information about the jail population which includes sentenced and unsentenced populations, and average length of stay. SCPTS receives a daily Pretrial Population Report, which allows them to see people who are assessed but not released. SCPTS currently has plans to fill a position that will allow them to take another look at who may be able to be released, based on their assessments. Additionally, SCPTS has designed dashboards around performance measures identified in the National Institute of Corrections Measuring What Matters in pretrial: court appearance, new arrests, and technical violations.
SCPTS is currently working with PJI to create other dashboards to address racial and ethnic disparities by gathering data at key decision points, reviewing the data, and determining what policy and procedure changes should be made based on the analysis of the data. Other planned dashboards will look at demographic information and zip codes, which will help inform where to place satellite offices to maximize availability to clients.

SCPTS has used its outcome data to show judges and elected officials that judges can release more people before trial, based on the high rates of court appearance and public safety. SCPTS is also able to track how closely judges follow pretrial recommendations. Santa Clara judges currently follow recommendations 75% of the time; the national recommendation is following recommendations no less than 85% of the time, though anecdotal information is showing that these deviations usually occur when the prosecutor discovers additional information not in the pretrial services analysis.

SCPTS created a Pretrial App in 2017, which allows their clients to see appointments and text their supervising officer. Approximately 15% of SCPTS clients are able to use the app, and while data is still being collected, initial data suggests there is an increase in appearance rates for those who use the app.

**Vision Statement of SCPTS**

We strive to be a national leader in the reduction of inappropriate detention by using and developing safe, innovative and proven alternatives to incarceration.

**USING COMMUNICATIONS TO IMPROVE PRETRIAL SERVICES UTILIZATION**

In California, people who are arrested may obtain release pending charges through a variety of methods at three points in time: at arrest, at booking, or at the initial court appearance. For example, the arresting officer may issue a citation, and the person arrested will sign the citation promising to appear in court, and then be immediately released. Jail officials have the ability to issue a citation to people brought in for booking, and the person arrested can be immediately released. At the initial court hearing, judges may set a bond amount required for release, or release with non-financial conditions. In Santa Clara, 25% of people who are released at the initial court hearing, that is, excluding cite and release, release on jail citations, dismissed or transferred numbers, are released on OR or SORP.

People who do not qualify for cite and release may obtain immediate release by posting bond with the arresting agency according to the county schedule. People who are booked at jail can also obtain release by posting the bond.
amount; they are released pending their court appearance, which usually occurs within 60 days. During this time, they are not supervised and have no release conditions.

In 2016, Santa Clara County officials reviewed the information available to people who were newly arrested. The group came to the conclusion that the prevalence of ads for bail bonds and private attorneys near the phones led people to believe that the only way to be released from jail was to pay a bail agent or plead guilty. In 2015, bail agents posted nearly 8,000 bail bonds in Santa Clara County, representing $19.8 million in nonrefundable premiums.

With the help of John D. and Catherine T. MacArthur Foundation’s Safety and Justice Challenge, the Bail and Release Work Group developed an informational campaign, launched in October 2017, to make more people aware of no-cost release through pretrial services. The Work Group developed the slogan, “Just Ask” and purchased the website “NoCostRelease.org” to host campaign information. The website includes an infographic depicting the pretrial process for a person seeking a no-cost pretrial release option. In the year since the campaign began, the number of bail bonds written by bail agents has declined to 5000, while OR/SORP releases have steadily increased to 4400 since the No Cost Release campaign was launched. The implementation of SB 10 would eliminate the use of bail bonds completely.

In addition to the poster, the Work Group developed a 7-minute video describing the jail booking process, public defender services, and reentry resource services. The video and
poster are visible at the county’s main jail and a correctional facility. All media are available in English, Spanish, and Vietnamese, to reflect the needs of Santa Clara’s diverse population, and the sheriff’s office makes the materials available during the booking process. To make sure that the materials were user-friendly and persuasive, the project team worked with people who had direct experience with pretrial detention and release to ask for feedback. While data is still being gathered, SCPTS did see a spike in the number of detainee calls to Pretrial Services after the launch of the campaign. The agency is also tracking page views on the website, and other measurements and analysis are in the planning stage.

**Conclusion**

SCPTS takes the very human idea to treat all people well, and combines it with technology and powerful data collection. The most profound impact of technology, Johnson notes, is to “give us a much fuller and deeper understanding of who our clients are, what their needs are, what’s standing in the way of their success, and how we can help remove those obstacles.” In this quest, SCPTS recognizes that the successes of their clients lead to a safer community.

**Endnotes**

1. Criminal Justice Realignment, or AB (Assembly Bill) 109, was a significant restructuring of the California criminal justice system where responsibility for supervising certain kinds of felony offenders and state prison parolees shifted from state prisons/parole agents to county jails/probation officers.
2. Proposition 36 was passed in 2000 and requires eligible non-violent drug offenders to serve their time in treatment, not jail/prison.
3. Ibid, p. 45