

Local Justice Reinvestment: Targeting Reforms at the Front End of the Criminal Justice System

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The substantial investment of jail resources used to detain defendants has received significant attention of late. Stakeholders, practitioners, and researchers are expanding correctional reforms that had focused mostly on post-disposition populations to now include the front end of the criminal justice system. This is certainly a positive change, but the field is lacking rigorous research testing what works with pretrial defendants and identifying a cadre of evidence-based practices for jurisdictions to implement. Given this dearth in existing knowledge about pretrial efforts, the Crime and Justice Institute is using a data-driven approach to helping jurisdictions empirically identify jail population drivers, propose appropriate reforms and promising practices, and apply a comprehensive implementation framework. By focusing on implementation, agencies integrate reforms with fidelity, monitor reform progress, and then assess the reforms for impact.

After decades of growth, the number of jail inmates and convicted prisoners in the US has begun to decline¹. This is not true, however, for the population of inmates arrested and detained in jail prior to disposition. The percent of jail inmates who are awaiting trial has increased from 52 percent of the US jail population in 1990 to 63 percent in 2014². While a growing number of states and counties have confronted the overuse of incarceration for sentenced offenders,

¹Minton, T. D. and Zeng, Z. 2015. Jail Inmates at Midyear 2014. Washington, DC: Bureau of Justice Statistics. <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5299>

²ibid; Beck, A. J. and Karberg, J.C. Jail Inmates at Midyear 2000. Washington, DC: Bureau of Justice Statistics. <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=874>

the use of jail beds to house pretrial defendants continues to increase. Since 2000, the pretrial population has accounted for 95 percent of the nation's jail population growth³.

Jurisdictions take on pretrial reform for a number of compelling reasons. In addition to jail population growth, motivating factors include the legal rights of individuals who have not been convicted, the disproportionate impact of pretrial detention on the poor⁴, and evidence that defendants who are detained until trial are more likely to be convicted and receive longer sentences than those not detained⁵. From a cost-benefit perspective, detaining defendants who pose little to no risk to public safety is an ineffective use of scarce public resources. Conversely, releasing those awaiting trial who are a great risk to public safety can be costly in terms of victimization and the resources required to arrest and prosecute those who commit new crimes upon release from detention⁶.

There has been greater awareness in recent years not only of the intractability of pretrial population growth, but also of the legal and public safety problems inherent in the current bail system. The key considerations for decision-makers during the pretrial phase, from arrest to disposition, are to ensure that defendants appear in court and to mitigate public safety risk when a defendant is released prior to trial. In most jurisdictions, these decisions are made based on the perceived risk to public safety posed by the defendant and perceived

³ Minton, T. D. and Zeng, Z. 2015. Jail Inmates at Midyear 2014. Washington, DC: Bureau of Justice Statistics. <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5299>

⁴ Human Rights Watch. (2010). *The price of freedom: Bail and pretrial detention of low income nonfelony defendants in New York City*. New York, NY.

⁵ Laura and John Arnold Foundation. (2013). *Investigating the impact of pretrial detention on sentencing outcomes*. Houston, TX: Lowenkamp, C.T., VanNostrand, M., & Holsinger, A.; New York City Criminal Justice Agency, Inc. (2012). *A decade of bail research in New York City*. New York, NY: Phillips, M.T.

⁶ Crime and Justice Institute. (2015). *A cost-benefit model for pretrial justice*. Boston, MA.

⁷ CJI is also an implementation technical assistance provider for two states that have done adult JRI reform and five states that have done juvenile JRI reform efforts. CJI also partners with the Public Safety Performance Project of the Pew Charitable Trusts and has provided Phase I technical assistance to 12 states and is currently conducting the JRI process in 3 states.

LOCAL JUSTICE REINVESTMENT INITIATIVE

Launched in 2010, the Justice Reinvestment Initiative (JRI) is a project of the Bureau of Justice Assistance (BJA). JRI supports data-driven state and local criminal justice reform efforts across the country. BJA and its technical assistance providers work with local and state leaders and stakeholders to examine correctional population trends and criminal justice outcomes and spending to identify options that improve public safety and are more cost-effective. The Crime and Justice Institute at CRJ is the technical assistance provider for eight local JRI sites⁷. CJI worked with six sites—Johnson County, Kansas; Lane County, Oregon; New York City, New York; San Francisco, California; Santa Cruz County, California; and Yolo County, California—to analyze local jail population drivers, to work with a local stakeholder group to create strategies to reduce the corrections population and spending, and to implement these strategies. CJI worked with Allegheny County, Pennsylvania and Alachua County, Florida beginning in mid 2011 to develop and implement strategies based on analysis completed in the pilot phase of JRI.

likelihood he or she will fail to appear in court. However, the defendants' ability to pay a bond also impacts their ability to be released. A 2013 report revealed that in New Jersey, 39 percent of pretrial defendants were incarcerated solely on their inability to post a financial bond⁸. A study the same year found that in Colorado there was no difference in public safety or court appearance outcomes for defendants who had to pay a bond up front versus an unsecured bond that was paid only if they failed to appear⁹. While not specific to pretrial, research has shown that the use of actuarial tools is more accurate than use of professional judgment alone¹⁰, though only about ten percent of jurisdictions in the US use these tools to inform pretrial decisions¹¹.

Just as there are many reasons to embrace pretrial reform, including constitutional, ethical and practical concerns, there are a number of approaches to doing so. The Crime and Justice Institute (CJI) at CRJ has been working with six of its eight Justice Reinvestment sites as they seek to increase fairness and efficiency and to reduce system costs through strategies ranging from expanding their capacity for defendant assessment, to enhancing supervision and bail strategies, to reviewing the status of detained defendants for potential release.

Pretrial Reform and Local Justice Reinvestment

For jurisdictions interested in reforms that improve the quality of justice and that are fiscally responsible without compromising safety, front end improvements should be high on the change agenda. This brief highlights specific strategies for making better pretrial release decisions, and for making pretrial services more effective. The brief also describes what is required to identify and implement pretrial reform within the local JRI context.

KEYS TO IMPLEMENTING FRONT END REFORMS

Regardless of the specific strategies used to bring about criminal justice system improvements, there are several elements that are indispensable to any local justice system reform effort. These include the use of data to identify and target interventions to address specific drivers of the jail population, effective collaboration by partner agencies, willingness to explore promising practices, and a commitment to taking on the challenges of implementation.

This brief highlights specific strategies for making better pretrial release decisions, and for making pretrial services more effective.

⁸ Pretrial Justice Institute. (2013). *Unsecured bonds: The as effective and most efficient pretrial release option*. Washington, DC: Jones, M.R.

⁹ American Bar Association. (2007). *ABA standards for criminal justice* (3rd ed.). Washington, DC.; National Association of Pretrial Service Agencies. (2004). *Standards on pretrial release* (3rd ed.). Washington, DC.

¹⁰ Andrews, D.A., Bonta, J., & Wormith, J.S. (2006). The recent past and near future of risk and/or need assessment. *Crime & Delinquency*, 52, 7-27.; Meehl, P.E. (1954). *Clinical versus statistical prediction: A theoretical analysis and a review of the evidence*. Minneapolis, MN: University of Minnesota. Pretrial Justice Institute. (2011). *State of the science of pretrial risk assessment*. Washington, DC: Mamalian, C.A.

¹¹ Luminosity. (2013). *New Jersey jail population analysis*. St. Petersburg, FL: VanNostrand, M.

An effective pretrial justice system also requires that all partners—including judges, attorneys, the pretrial services agency and law enforcement—are committed to minimizing the unnecessary use of pretrial detention and working together to accomplish that goal while managing risks to the community.

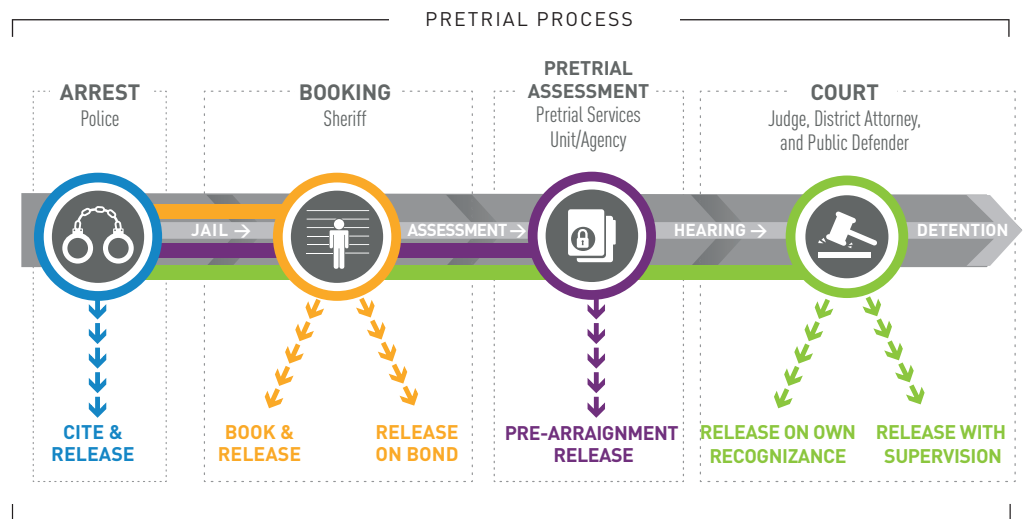
USE OF DATA TO IDENTIFY POPULATION DRIVERS AND TARGET STRATEGIES

As with all JRI strategies, pretrial interventions in CJJ’s local Justice Reinvestment sites were identified based on analysis of the factors driving local correctional populations, including jail population, court caseloads, the probation population, and other parts of the criminal justice system. A jail drivers analysis, for example, may examine what portion of the population is made up of pretrial detainees, how long they are detained, the bond amounts on which they are held, and their risk levels. This comprehensive review of the data helps explain why defendants are being held and identifies policies and practices in use that may have the unintended consequence of adding to the pretrial or overall jail population. Lastly, the jail drivers analysis informs an examination of strategies to address particular parts of the pretrial process that may be contributing to inefficiencies or where public safety outcomes could be improved.

SYSTEM COLLABORATION

In addition to data analysis, stakeholder collaboration is another essential element in Justice Reinvestment and in pretrial reform. More so than many aspects of the criminal justice system, pretrial case processing requires the coordination and collaboration of a number of stakeholders. As illustrated in the Interagency Coordination sidebar, pretrial processing often requires a number of agencies to share information and resources. An effective pretrial justice system also requires that all partners—including judges, attorneys, the pretrial services agency and law enforcement—are committed to minimizing the unnecessary use of pretrial detention and working together to accomplish that goal while managing risks to the community.

> Interagency Coordination As the diagram on the right illustrates, decisions are made and actions taken by many different criminal justice stakeholders during the pretrial process. Each decision point is an opportunity to change the trajectory of a defendant’s path. For example, the arresting officer could issue a citation and release the individual rather than take him or her into custody. The Sheriff’s Department could release the defendant upon booking based on risk-based criteria, and a judicial officer or pretrial services officer could release the person before the initial court appearance—typically referred to as a pre-arraignment release. While any one of these options could help to better use limited resources, they all require the support and coordination of all pretrial stakeholders.



IDENTIFICATION OF PROMISING POLICIES, PRACTICES AND TOOLS

Within the JRI framework, analysis of jail population drivers helps to identify policy opportunities and targeted strategies for a collaborative criminal justice agency stakeholder group to consider. The challenge with targeting evidence-based strategies to reduce the likelihood for failures to appear and new arrests during the pretrial phase is the lack of extant research in the pretrial field. Unlike the extensive research identifying evidence-based practices post-disposition, pretrial research is still in its infancy. As such, the policies, practices and tools available within pretrial will require additional rigorous research before they can be identified as evidence-based.

In addition to identifying the most promising policies, practices, and tools available to address the jurisdictions' specific challenges, it is important that local stakeholders assess the fit and feasibility of different strategies given their local context. This is one of the first steps necessary for successful implementation.

COMMITMENT TO IMPLEMENTATION

There are multiple challenges to the implementation of front end reforms — including lack of stakeholder and practitioner buy-in and engagement, poor communication across agencies, inadequate data systems or mechanisms to share data and information to inform decision making and progress, and inadequate support to monitor and assess quality assurance. Before a jurisdiction begins the process of implementing front end reforms, criminal justice stakeholders must have a clear understanding of the work ahead, and must understand the steps involved in and be committed to successful implementation. Often, the local Justice Reinvestment stakeholder group will assign agency representatives to be part of a work group that is tasked with carrying out the necessary steps to develop and put into place a new pretrial strategy. To increase the likelihood of success, the work group members in CJJ's local Justice Reinvestment sites were comprised of those who understand the implementation challenges, commit to addressing the challenges and have extensive working knowledge of the pretrial process and operations within their own agencies.

Successful implementation of front end reforms requires clearly defining the target population to be served and a process to identify that population, developing a comprehensive program design for pretrial risk assessment and supervision strategies with accompanying policies, and adopting quality assurance and performance measurement processes to monitor fidelity to the program.

Pretrial Strategies

There is no one size fits all for pretrial reform. Jurisdictions make choices guided by their local context, stakeholders and statutes. Strategies can work together to form a suite of pretrial options that balance risk and liberty. Following are examples of common pretrial reform strategies, many of which were implemented in one or more local JRI sites. As noted above, some of these strategies are research-based while others are considered promising practices. All are consistent with the national standards for pretrial release published by the American Bar Association and the National Association of Pretrial Services Agencies¹².

PRETRIAL RISK ASSESSMENT

Actuarial risk assessment tools are used throughout the criminal justice system—often to determine an individual’s likelihood of committing future crime. For nearly two decades, risk assessment tools have been used to predict the risk of pretrial failure—defined as failures to appear in court or a new arrest while on pretrial release. Early tools for identifying defendants’ suitability for pretrial release focused on ties to the community. The most common factors included in pretrial risk tools in use now include prior failures to appear, prior convictions, employment status, history of drug abuse, whether the present charge is a felony and whether the defendant has a separate pending case¹³. Pretrial risk assessments can be used to inform release decisions and appropriate release conditions. For example, low risk individuals may be released on their own recognizance, those at moderate risk may be released and supervised in the community, and those at high risk may be subject to close supervision or detained if the law allows¹⁴.

*While analyzing local data early on as a local Justice Reinvestment pilot site to determine what was driving the jail population in **Alachua County, Florida**, the local JRI work group found that between January and June 2009, 84 percent of the jail population was unsentenced on at least one charge. Through CJJ’s assistance, pretrial reform became a priority area to target. County stakeholders committed to the implementation of a pretrial risk assessment to help reduce jail use for this population.*

Using a validated risk assessment—meaning that the tool accurately predicts failures to appear and new arrest pending case disposition and properly classifies the jurisdiction’s target population as low, moderate, and high risk—is a first step in ensuring that the right defendants are detained and released, and that those who are released are supervised appropriately given their risk of failure.

¹²American Bar Association. (2007). *ABA standards for criminal justice* (3rd ed.). Washington, DC.; National Association of Pretrial Service Agencies. (2004). *Standards on pretrial release* (3rd ed.). Washington, DC.

¹³Pretrial Justice Institute. (2011). *State of the science of pretrial risk assessment*. Washington, DC; Mamalian, C.A.; Bechtel, K., Lowenkamp, C., & Holsinger, A. (2011). *Identifying the predictors of pretrial failure: A meta-analysis*.

¹⁴All states except for New York allow the denial of pretrial release either in their constitution or by statute. Generally denial of pretrial release is constitutionally and statutorily reserved for capital offenses and severe felonies. Only fifteen states provide statutory guidance, instructing agencies to use pretrial risk assessment on at least a subset of their pretrial population.

Implementation of pretrial risk assessment can be challenging. In addition to the challenges of reaching all pretrial defendants and ensuring the tool is administered accurately, pretrial service providers often find that buy-in among releasing authorities is difficult to achieve. **San Francisco, California's** nonprofit Pretrial Diversion Project provides pretrial assessment and supervision services through a contract with the Sheriff's Department. The Pretrial Diversion Project developed a pretrial risk assessment instrument in 2012 and soon thereafter began using it as part of their standard interview process with eligible pretrial defendants. While the tool informed release recommendations made by the Pretrial Diversion Project, the judges were not trained in the use of the tool, nor did they formally integrate the assessment results into their release decisions. Based on analysis conducted as part of JRI demonstrating a need for increased use of pretrial alternatives to detention, San Francisco stakeholders renewed their commitment to making risk assessment an integral part of pretrial release decisions. With support from JRI, San Francisco is implementing the Arnold Foundation's Public Safety Assessment¹⁵. During the implementation process, all criminal justice stakeholders will receive training on the tool, including judges, the defense and prosecution. The Public Safety Assessment will be administered by the Pretrial Diversion Project and used by judges to guide release decisions pre-arraignment and at arraignment. This integrated approach will help to bring about closer collaboration and broader support for pretrial risk assessment among release decision makers.

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PRETRIAL SUPERVISION

Pretrial supervision typically includes telephone check-ins, reminder texts, office visits, and calls or correspondence reminding defendants of upcoming court dates. Supervision tailored to a defendant's assessed risk and specific circumstances may include monitoring court-ordered conditions such as substance testing, electronic monitoring or curfew. Many jurisdictions also provide referrals to help meet a defendant's need for healthcare, housing, treatment and other community-based services (e.g., mental health). These programs are similar to probation and parole supervision though they are usually designed to be less intensive. Pretrial supervision programs often allow the release of a wider range of moderate to high risk defendants.

In 2009, the **New York Criminal Justice Agency** began operating a supervised release program for nonviolent felony defendants in Queens, and in 2013, a similar program began in Manhattan. Eligible defendants who are unable to post bail are released from pretrial confinement and are supervised by this agency. New York City officials announced in July 2015 that the city will expand supervised release to all boroughs to ensure that no low risk arrestees are detained because they cannot post bond. The city expects to be able to close two 100-bed wings at Department of Correction facilities due to the decreased number of pretrial detainees.

¹⁵ Laura and John Arnold Foundation. (2013). *Assessing pretrial risk without a defendant interview*. Washington, DC: VanNostrand, M., & Lowenkamp, C.T.

In many jurisdictions, if a defendant is unable to post bond and is not released at the time of first appearance before a judge or magistrate, he or she will likely remain in jail until the case is resolved or dismissed.

ELECTRONIC MONITORING

Often used in conjunction with pretrial supervision, electronic monitoring comes in two forms: location monitoring and substance monitoring. Location monitoring may be active, allowing a supervising officer to identify where the defendant is in near-real time, or passive, in which the defendant needs to be within a specified distance of a home monitoring station at certain times of the day. Substance monitoring can take the form of in-home breathalyzer units, car interlock devices, or monitoring bracelets that detect abnormal sleep patterns often associated with alcohol or drug use or that utilize trans-dermal alcohol detection.

Santa Cruz County began using a validated pretrial risk assessment and a variety of release options including supervised release in 2006. An analysis by CJI found that their pretrial release capacity was insufficient given the number of defendants who could be safely supervised in the community; the county's JRI efforts have thus, in part, focused on program expansion. Following assessment, the court may choose from a number of risk-based release options. Some low risk defendants are released on their own recognizance with the special condition of alcohol detection monitoring with no reporting or supervision requirements. Moderate risk defendants can be placed on supervised pretrial release and may receive alcohol detection monitoring in addition to reporting, substance testing, and other requirements. Higher risk defendants may be placed on intensive supervised release with the additional condition of home confinement monitored electronically. Unlike many jurisdictions that pass some of the cost of electronic monitoring on to defendants, Santa Cruz does not charge defendants a fee for electronic monitoring.

Electronic monitoring (EM) can reduce the pretrial jail population by allowing moderate to higher risk defendants to be managed in the community. It can be costly (e.g., because EM units can be lost or damaged), and time and resource intensive; however, the cost of electronic monitoring is significantly lower than detention. To date, the use of electronic monitoring in the pretrial phase has not been fully studied, but a growing number of jurisdictions are adopting this practice to ensure appearance in court and reduce the likelihood of a new crime during the pretrial period¹⁶.

STATUS REVIEW OF DETAINED DEFENDANTS

In many jurisdictions, if a defendant is unable to post bond and is not released at the time of first appearance before a judge or magistrate, he or she will likely remain in jail until the case is resolved or dismissed. National standards published by the American Bar Association and National Association of Pretrial Services Agencies recommend that pretrial services practitioners review the cases of defendants who are detained, in part because information at the time of the first appearance may not have been available. Further, the courts

¹⁶ Pretrial Justice Institute. (2009). *2009 survey of pretrial services programs*. Washington, DC.

may receive updates about defendants' compliance with conditions of pretrial supervision, and which should inform appropriate changes to those conditions. A growing number of jurisdictions are conducting these status reviews¹⁷.

Alachua County, Florida has a Central Screening Team tasked, in part, with reviewing the cases of individuals who are not released at first appearance to determine if there is a community alternative for which the defendant may qualify. As part of local JRI, Alachua County also instituted a Jail Release Coordinator to work with system stakeholders to safely and effectively reduce jail bed days. The Coordinator reviews individual cases to expedite release when possible for these target populations: misdemeanants whose cases are lingering (more than 30 days in the jail with no court activity); misdemeanor probation violators, or probation violators held on a new law violation that is a misdemeanor; inmates awaiting bed space in a residential substance abuse treatment program; those with severe mental health issues, including inmates in need of care at the State Hospital; and, inmates who require hospitalization for high-cost medical needs. The Jail Release Coordinator position was created in 2012; between that time and the end of 2014 the average end-of-month population declined 14 percent.

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COURT REMINDERS

Pretrial detention ensures a return to court, but restricting individual liberty at a great expense is not the best option for many jurisdictions. Following the example from the service and medical sectors, courts are testing methods to remind individuals of their court dates. Initial research on court reminders suggest that they may have an impact on reducing FTA rates. Court reminders are calls, text messages, emails, or letters to the defendant to remind him or her of an upcoming court date. A recent study of a pilot court reminder program from Multnomah County, Oregon found that the system reduced the overall failures to appear (FTA) rate by approximately 37 percent¹⁸.

During analysis of its jail population drivers, Yolo County, California found that failures to appear (FTA) were the second most common reason for individuals to be booked into the jail. To counteract the high FTA rate, the county plans to expand its use of an existing automated reporting and notification system to implement a court reminder system¹⁹. The county estimates this automated system expansion will reduce pretrial FTAs by 50 percent, resulting in averted costs of up to \$200,000 a year.

Increasing court appearance rates may improve court processing time and reduce backlogs. Because the result of an FTA is often an arrest warrant and sometimes detention, reducing FTAs may result in cost savings. An increasing number of jurisdictions administer court reminders through an automated service—many of which can send texts, emails and voicemails to each

¹⁷ Pretrial Justice Institute. (2009). *2009 survey of pretrial services programs*. Washington, DC.

¹⁸ This strategy was developed in JRI Phase I but was not implemented due to a combination of technical challenges and a shortened JRI Phase II period. Yolo County still plans to implement the reminder system at a later date when the technical challenges have been overcome.

¹⁹ Multnomah County. (2006). *Court appearance notification system: Process and outcome evaluation*. Multnomah County, OR: Nice, M.

defendant. New technology can also send defendants useful information such as the location of courts and testing labs, saving staff resources and offering more efficient solutions for reducing the costs associated with FTAs and noncompliance with release conditions.

REDUCED RELIANCE ON MONEY BOND

Eliminating financial bail may be the most difficult strategy to implement; in most states it requires legislative action and in many, an amendment to the state constitution. In some states, however, local jurisdictions have enough control over bail-setting practices to dictate bond amounts and determine when and how financial conditions are applied. Whether at the state or county level, moving from a money-based to a risk-based release system can help ensure that low risk defendants are not detained simply because of their inability to pay a cash bond, and that high risk defendants cannot buy their freedom.

Johnson County, Kansas found that nearly 70 percent of inmates were awaiting trial and three-quarters of defendants released pretrial were required to pay monetary bond. To address this, the county developed risk-based Release and Detention Guidelines that emphasize non-monetary release for low risk defendants. The lowest risk defendants may be released on personal recognizance. Other defendants are subject to supervision that increases in intensity based on the defendants' risk and seriousness of the current charge. Under these guidelines, only high risk defendants are required to pay monetary bond in order to be released.

ADDITIONAL PRETRIAL STRATEGIES

In addition to the strategies used by CJI's local Justice Reinvestment sites, there are other promising approaches that may help to address the overuse of pretrial detention. **Cite and release** is a strategy that occurs early in the pretrial process whereby the arresting officer, instead of transporting a defendant to the local jail, issues the individual a citation that informs the defendant of his or her court date. The decision to issue a citation is typically driven by the seriousness of the charge. For low-level offenses that carry only a fine, booking and detention are a particularly poor use of resources. Instituting a cite and release policy and process can free up police officer time, reduce the burden on booking officers in the jail, and reduce the flow of arrestees into the jail.

Pretrial diversion programs can take many forms, but they have several common features—they offer a voluntary alternative to criminal case processing, and program completion typically results in dismissal of charges or an initial guilty plea which may later be expunged. These programs are generally developed through the cooperation of multiple stakeholders and target a subset of defendants.

Conclusion

The jurisdictions highlighted in this brief vary in size and geography—from Johnson County, Kansas which has a jail capacity of 1,081 and assessed 2,118 pretrial defendants in 2014, to New York City which houses 15,000 and assessed 286,158 pretrial defendants for supervised release in 2013. Because of the large numbers of defendants passing through jails across the US, even a small jurisdiction may process thousands of pretrial defendants annually. Given the number of individuals that come into contact with the pretrial system, this stage of criminal processing offers stakeholders a valuable opportunity to increase efficiency, decrease costs, and enhance public safety. As the research base for pretrial release builds, more evidence will be available about the impact of pretrial detention and the services and supports that may have lasting benefits for defendants under supervision. In the meantime, the experiences of JRI sites illustrate that there are a number of ways to reduce the use of jail resources for pretrial defendants. By developing strategies to address the specific drivers of their pretrial detainee population, each of these jurisdictions has used a data-driven process to identify targeted interventions to reverse the trend of overreliance on pretrial detention.

For more detail on any of these pretrial initiatives or other work of the Crime and Justice Institute please contact cji@crj.org or visit us at crj.org/cji. ■

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