

THE PRETRIAL REPORTER

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Executive Summary

This issue of The Pretrial Reporter contains the following National Notes:

- Preliminary results of the fourth national survey of pretrial services programs show that a typical pretrial program is housed under the probation department, conducts its interview and investigation before the initial appearance in court, assesses risks of pretrial misconduct through a combination of objective and subjective criteria, has never validated its risk assessment procedures, is from a jurisdiction where the initial appearance is conducted via video, and has the capacity to supervise conditions of pretrial release.
- The new NAPSA Standards on Pretrial Diversion place greater emphasis on assessment and treatment protocols and address issues raised by the widespread availability of criminal records.
- The budget crisis is forcing courts and jails to make difficult choices.
- Philadelphia newspaper finds that defendants who missed court over the past three decades owe over \$1 billion in bail forfeitures.
- Four more counties have plans to start a specialty court for veterans of military service who have been arrested.
- The Annie E. Casey Foundation has released a guide for practitioners for advocating through the media for juvenile detention reform; while written for those in the juvenile detention field, its lessons can be applied to adults.

This issue also describes a study that found that jail and prison inmates are receiving inadequate mental and physical health care.

EXECUTIVE DIRECTOR'S LETTER

Dear Friends:

The Pretrial Justice Institute (PJI) and the National Association of Pretrial Services Agencies (NAPSA) are excited to announce a new partnership designed to strengthen service to the field. Starting this February, PJI began serving as the NAPSA Service Director. In addition to assuming the administrative and annual conference responsibilities undertaken tirelessly for 8 years by Marilyn Walczak, PJI will focus on increasing membership, developing robust member benefits, and collaborating with the NAPSA Board of Directors on training and technical assistance projects that deepen evidence-based policies and practices. Please visit the NAPSA website for more information on how to join NAPSA and be part of an exciting time in NAPSA's history. www.napsa.org.

EXECUTIVE DIRECTOR'S
LETTER
(CONTINUED)

This spring, PJI will conduct an unprecedented nationwide scan of practice at the pretrial stage through a grant from the Bureau of Justice Assistance. Although more than 300 pretrial services agencies currently exist, they represent the state of pretrial justice in less than 10 percent of the nation's 3,067 counties. This project will work to document the pretrial release and detention practices in the remaining 2700+ counties. Utilizing partnerships with the National Association of Counties and the American Parole and Probation Association, PJI believes that identifying the country's pretrial policies and systems is the first step toward understanding how and where resources, both government and private, should be deployed to ensure appropriate detention or release, diversion, and community safety. For more information, please contact us at pji@pretrial.org.

For more information on our Tribal work, or to request assistance, please visit www.pretrial.org.

National Notes

PRELIMINARY FINDINGS AVAILABLE FROM SURVEY OF PRETRIAL PROGRAMS

Over the past several months, PJI has been conducting a survey of pretrial services programs around the country, with funding from the JEHT Foundation. This is the fourth such survey; the others were completed in 2001, 1989, and 1979. Responses were received from 180 pretrial programs. Preliminary results of the survey are now available.

Looking at the administrative locus of pretrial programs, probation departments are the most prevalent home to pretrial programs. About 38% of pretrial programs were housed in probation departments, compared to 23% in courts, 15% in jails, 8% in private, non-profits, 13% that are independent agencies, and 3% on other settings. Over the past several surveys, there has been a clear trend away from housing pretrial programs under the courts and toward their placement in probation departments.

The survey found that 76% of pretrial programs exclude from interview and investigation at least one category of defendants, compared to 84% in 2001. The most common reason for an exclusion is having a warrant from another jurisdiction (43%), followed by being charged with a non-bailable offense (35%), and being charged with specific other crimes (27%). Nine percent of pretrial programs exclude all misdemeanor defendants and two percent all felony defendants.

Sixty-eight percent of programs conduct their interviews and investigations prior to the initial appearance in court, compared to 75% in 2001, 70% in 1989 and 92% in 1979.

The percent of programs that use strictly objective criteria in assessing risks of pretrial misconduct rose slightly from the 2001 survey – from 22% to 23%. There was a significant drop in the number of programs using only subjective criteria – ranging from between 29% and 39% in previous surveys to 12% in the current survey. The percentage using a combination of objective and subjective criteria had risen from about 40% in previous surveys to about 65% in the current survey.

The survey results suggest that pretrial programs are beginning to place a greater importance on validating their risk assessment procedures. Fifteen percent of pretrial programs reported having validated their instruments in the past year in the 2009 survey,

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compared to 11% in 2001. The figures were the same when asking about validation within the past three years. Ten percent of programs reported validating their instruments within five years, compared to 8% in the 2001 survey. Forty-eight percent of respondents reported that they had never validated their risk assessment instruments in both survey years.

Perhaps as a result of increases in risk assessment validations, pretrial programs appear to be fine tuning the factors that go into their risk assessments. For example, having a local address was factored into the assessment of risk in 92% of programs in the 2001 survey, 94% in 1989, and 95% in 1979; the figure was down to 79% in the current survey. Likewise, who the defendant lives with (family, friends, alone) was recorded as a factor for 66% of respondents in the current survey, down from 75% in 2001, 82% in 1989, and 74% in 1979.

A practice that has been growing in many jurisdictions in recent years is for the courts to set a financial bail and then combine that bail with non-financial conditions of release. The survey shows that 28% of pretrial programs make recommendations for monetary bail with pretrial services supervision of non-financial conditions.

Sixty-three percent of pretrial programs have staff present at the initial appearance. Among the pretrial programs responding to the survey, 70% report that the prosecutor is available at the initial appearance and 52% that defense counsel is present.

Fifty-six percent of pretrial programs report that the initial appearance is conducted with the use of video. Where video is used, 27% of programs report that they have staff at the jail during the initial appearance, and 62% have staff available in the courtroom.

Ninety-seven percent of pretrial programs have the capability to supervise conditions of pretrial release, up from 93% in 2001 and 81% in 1989. Twenty-seven percent of programs report having the option to refuse to supervise defendants referred by the court.

Complete results will be posted shortly on PJI's web site at www.pretrial.org.

NAPSA ISSUES REVISED DIVERSION STANDARDS

NAPSA has issued a revised version of its Pretrial Diversion/Intervention Standards. NAPSA first issued standards on pretrial diversion in 1978, and released the first revision in 1995.

A significant change in the newly revised standards is the transfer of the definition of diversion/intervention from the introduction to the discussion in the BLACK LETTER section to emphasize the

NAPSA

updates

its Pretrial

Diversion

Standards

to meet new

challenges

importance that this issue demands. According to the new Standard 1.1, pretrial diversion/intervention “is a voluntary option which provides alternative criminal case processing for a defendant charged with a crime that ideally, upon successful completion of an individualized program plan, results in a dismissal of the charges.” The purpose of pretrial diversion/intervention, according to Standard 1.2, is “to enhance justice and public safety through addressing the root cause of the arrest provoking behaviors of the defendant, reducing the stigma which accompanies a record of conviction, restoring victims and assisting with the conservation of court and criminal justice resources.”

Among the new standards in this revision are the following:

- If a defendant is on pretrial supervision at the time of enrollment in the diversion/intervention program, the court should remove the conditions of pretrial release and set a personal recognizance bond. (Standard 4.6).
- Development of a diversion/intervention plan should be based on a comprehensive assessment that encompasses more than just the crime charged, but addresses specific needs of the individual relating to reducing future criminal behavior. (Standard 5.1).
- Pretrial diversion/intervention programs should employ a variety of approaches, including rehabilitation, community service, victim restoration, and restitution, in developing plans – and conditions of plans should be matched to the level of risk of future criminal behavior. (Standard 5.4).
- Pretrial diversion/intervention programs should partner with service providers in the community who have demonstrated effectiveness and the ability to provide culturally competent and gender specific programming for participants. (Standard 5.5).
- Pretrial diversion/intervention programs should meet regularly with the community to assure that program practices are meeting the needs of the community. (Standard 9.4).

The revised standards also address a problem that has surfaced in the last decade that has significantly impacted diversion – the availability of criminal record information on the internet. An important incentive for defendants to participate in and complete a diversion/intervention program – aside from having the opportunity to address the behaviors that led to the arrest – is to have the charge dismissed and to avoid the stigma and the consequences of having an arrest record. As the standards point out, many employers use data mining companies to conduct criminal record

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checks of potential employees using the internet. There have been numerous examples of individuals who had successfully completed diversion and had their charges dropped and records expunged being denied employment or other opportunities because internet records were not updated. The standards call on pretrial diversion/intervention programs to work with policy makers to promote legislation that requires companies that conduct internet record checks to maintain accurate and timely data.

The revised standards can be downloaded at the NAPSA web site at www.napsa.org.

ECONOMIC CRISIS HITS NATION’S COURTS AND JAILS – CAN STIMULUS BILL HELP?

Courts all around the country are facing major cutbacks in staffing and services as they seek to meet the demands of shrinking budgets. At least 25 state court systems are facing budget shortfalls this fiscal year, according to the National Center for State Courts. Florida recently laid off 280 court staff, or nearly ten percent of the state total. Court staff in Utah, Iowa and Vermont have been ordered to take unpaid furloughs. New Hampshire has suspended all criminal and civil trials for a month. “You have to remember,” cautioned Utah state Senator Scott McCoy, “that the courts are a coequal branch of the government. This isn’t just some agency. It is of an entirely different magnitude in our constitutional structure.” (*Stateline.org*, 2/18/09.)

In many states, public defender programs have been bearing the brunt of cutbacks. In Kentucky, the public defender’s office is expected to run out of money two months before the end of the current fiscal year, with even more cutbacks expected next year. In Missouri, which already ranks last in the nation in per capita spending for public defenders, the state’s chief justice has issued a warning about the consequences of further cuts. “The federal constitution guarantees defendants both speedy trials and competent legal counsel,” said Missouri Chief Justice Laura Denvir Stith in testimony before the state legislature. “The inadequate number of public defenders, however, puts in question the state’s ability to meet either of these requirements. In short, if not corrected, defendants potentially could be set free without going to trial.” (*Stateline.org*, 2/18/09.)

The difficult economic times are also creating challenges for jail systems throughout the nation. For example, Sheriff Gerald McFaul of Cuyahoga County, Ohio, faced with the need to cut \$4 million from the jail’s \$81 million budget, has said that he will have to cut back on the number of inmates sent to other county jails because

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of crowding. Last year, the county paid \$10 million to house a daily average of 335 inmates in the jails of other Ohio counties. According to Sheriff McFaul, the only way to accomplish this would be to release defendants who are in jail in lieu of bail.

Cleveland City Councilman Michael Polensek is concerned that releasing defendants would endanger public safety. “We have to figure out how to keep the baddest of the bad in there and at the same time not send a message that you get arrested and you’re right back on the street. That’s not going to help us in the neighborhoods,” stated Polensek. (*Cleveland Plain Dealer*, 1/11/09.)

In Larimer County, Colorado, Sheriff Jim Alderdon was forced to lay off 18 Sheriff’s Office employees due to a \$1.8 million budget cut. As a result, he implemented a plan to book and release all arrestees, except those charged with a serious felony or who pose a threat to the community. Under a plan worked out with the court, a judge could impose conditions of release to assure pretrial supervision of those booked and released.

County Commissioner Kathy Rennels explained that the decision to book and release defendants resulted from a collaborative effort involving law enforcement, community corrections, human services, and the judiciary. “We’ve been having this conversation for a long time,” stated Commissioner Rennels. “That doesn’t make these decisions any easier, but they had to be made. I think a lot more of these decisions are going to have to be made across the state.” Emily Tompkins, Executive Director of Colorado’s Mothers Against Drunk Driving, is hesitant about the program, but explained that, “...as long as they [defendants] have to return to court and face any penalties, I trust they (Larimer County officials) are doing what they have to do.” (*Denver Post*, 2/1/09.)

The economic stimulus package signed into law by President Obama on February 17 may provide some relief for courts and jails, as well as other parts of the criminal justice system. The package contains two billion dollars for the U.S. Department of Justice’s Byrne grant program, which provides formula grants to state and local governments to improve the criminal justice system. It also includes an additional \$225 million in competitive grants to state and local justice systems. Moreover, the package contains \$144 billion to stabilize state and local budgets and forestall additional reductions in essential services.

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\$1 BILLION IN BAIL FORFEITURES UNCOLLECTED IN PHILADELPHIA

With cities and counties under increasing pressure from budget cuts, it is not surprising that uncollected bail forfeitures are being looked at as a source of revenue. The *Philadelphia Inquirer* recently conducted an examination of uncollected bail forfeitures in that city and found that defendants who failed to appear in court owed over \$1 billion in forfeitures going back to 1978. Coincidentally, Philadelphia Mayor Michael Nutter has proposed a \$1 billion cut in the city’s five-year spending plan. “The city desperately needs the money,” said Common Pleas Court President Judge Pamela Tryor Dembe. (*Philadelphia Inquirer*, 2/8/09.)

Court officials acknowledge that no financial evaluation is conducted to determine if defendants, who must deposit ten percent of the bond with the court to be released, are in a financial position to pay the balance of the bond if they fail to appear. “It makes a whole lot of sense to do that,” said Court Administrator David C. Lawrence, but, recognizing the indigency of most defendants, he added that “if we did a means test, I’d need 27 more jails.” (*Philadelphia Inquirer*, 2/8/09.)

In a Letter to the Editor to the *Philadelphia Inquirer*, PJI Executive Director Tim Murray wrote that “Philadelphia is not alone in the bail predicament. Not long ago, the district attorney in Los Angeles estimated that bail-bonding companies owed the county \$30 million over a three-year period, with statewide losses between \$100 million and \$150 million. New Jersey has closed the state’s biggest bail-bonding company, which owed \$100 million in forfeited bail bonds.” But, as Murray noted, the “even more staggering economic dimension of this issue is the taxpayer cost of jailing low-risk arrestees simply because they cannot pay. The issue isn’t who owes this money, but rather why are we using money at all....Maintaining our notion that money will keep us safe and the court system functioning will put more dangerous offenders on the street while filling our jails with those who cannot pay.” (*Philadelphia Inquirer*, 2/16/09.)

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VETERANS COURTS PLANNED IN FOUR MORE COUNTIES

Last spring, officials in Buffalo, New York, opened the nation’s first specialty court for veterans of military service. The court was established after an upsurge in the number of veterans coming through the court system, many with drug, alcohol and psychiatric problems. (See *The Pretrial Reporter*, 5-6/08.) Following the lead of Buffalo, four other counties have announced plans to implement Veterans Courts. Madison County, IL, Maricopa County, AZ, Allegheny County, PA and Hamilton County, OH are in various stages of planning for such courts. Veterans of war make up between 4% and 7% of inmates in the jails of these four counties.

The plans are to staff these courts – including judges, prosecutors and defense attorneys – as much as possible with veterans. Madison County Judge Charles Romani, himself a Vietnam veteran, finds it important that others involved in the military help these defendants. According to Judge Romani, veterans know what the defendants are going through with the rough integration back into civilian life after returning from war. “Being a Vietnam veteran, I have always been concerned with the problems that veterans face when returning home,” Romani said. “The court system needs to provide treatment for mental and/or substance abuse issues for those veterans who need it and are involved in the criminal justice system.” (*The Telegraph*, 1/11/09.) The goals of these courts are to divert defendants who are veterans from the regular criminal justice system and get them into mental health and substance abuse treatment programs. Defendants eligible typically are charged with non violent crimes. Upon successful completion under close supervision, a defendant can then avoid a criminal conviction.

Veterans of war are often victims of Post Traumatic Stress Disorder (PTSD) and brain injuries resulting from battle. It is estimated that 30-40% of returning veterans will experience some type of mental health issue as a result of their experiences. As they adjust to being back home, they often begin to display signs of these traumas. Accompanied by the stigma of asking for help, they find themselves engaging in other outlets. Veterans with substance abuse or mental health issues are often arrested for domestic violence charges, or for theft charges to finance drug usage. “Oftentimes, the afflictions we are dealing with were the result of their military service,” Hamilton County Commissioner David Pepper said. Hamilton County Common Pleas Court Judge William Mallory noted that Veterans Courts recognize that veterans have “been exposed to things that an average person hasn’t been exposed to,” and these courts can allow veterans who have been arrested to be treated “with proper tools...” (*The Cincinnati Enquirer*, 1/27/09.)

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NEW GUIDE ON MEDIA ADVOCACY AND JUVENILE DETENTION REFORM

The news media has long been seen as a battleground for influencing the public's views. Even Napoleon once stated that he "fear[ed] three newspapers more than a hundred thousand bayonets." The new guide from the Annie E. Casey's Juvenile Detention Alternatives Initiative (JDAI), "*Using Media Advocacy to Promote Detention Reform*," provides those on the front lines of juvenile justice with a different approach to today's vast media where, unlike Napoleon, people can embrace the media instead of fearing it. The practice guide describes the reasons behind media advocacy, methods to develop a well-timed and proactive media strategy, tools to create a compelling message and prepare for an interview, and how to respond to the media in the context of a crisis. The guide also provides actual examples from sites with successful media coverage. Although the guide is seen through the lens of juvenile justice officials, it should be noted that such media advocacy can be used in any criminal justice setting, including pretrial release or diversion decision making.

As the guide initially suggests, it is commonplace for the news to sensationalize an isolated incident of youth crime which in turn triggers more punitive, reactive legislation and policies. However, news stories also have the capability to promote change and increase support for justice system reform. According to the guide juvenile justice officials can use the media to "win the hearts and minds" of the public, influence public policy, advance organizational goals, and influence how a story is portrayed. Many people rely on the press to form opinions on issues and thus it is important for justice officials to work with the media to show the advantages, and importance, of change. It is stressed throughout the guide that it is always more effective to be proactive in media campaigns than simply reactive to stories. As is stated: "Juvenile justice issues will always appear in the media; the question is whether that coverage will advance or hinder positive reforms."

The media guide provides a list of key resources on public opinion and juvenile justice reform that can be used to support the message. Other effective support methods are op-ed, letters to the editor and press releases. The guide provides some general guidelines on how to draft such documents and what outlets may have the most impact. And as with the rest of the guide, examples of such documents are included as templates, along with an appendix of positive media coverage samples from JDAI sites.

To download and review the full guide, visit the JDAI Help Desk at www.jdaihelpdesk.org and click on the JDAI Practice Guides link.

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Research

STUDY FINDS INADEQUACIES IN MENTAL AND PHYSICAL HEALTH TREATMENT IN JAILS AND PRISONS

According to a study recently published in the American Journal of Public Health, 25% of jail inmates had at least one previously diagnosed mental illness at the time of booking, as did 25% of all state prison inmates and 15% of all federal inmates. The study found that most of these inmates were not being treated for mental illness at the time of their arrests – only 38% of jail inmates, 30% of state prison inmates, and 26% of federal inmates were taking psychiatric medication when arrested. Moreover, among the population of previously diagnosed inmates, only 46% of jail inmates received psychiatric medications while they were incarcerated – compared to 69% of both state and federal prison inmates.

The study also looked at the physical health of inmates, and found that about 40% of all state and federal jail and prison inmates were suffering from persistent medical problems at the time of their arrests. Of all jail inmates, 28% suffered from hypertension, 8% had diabetes, 8% asthma, 5% hepatitis, 4% kidney problems, 2% cirrhosis, and 2% HIV. Nearly 70% of jail inmates with these problems received no medical examination during incarceration. Of the 20% of jail inmates who were on medication when booked into the jail, 42% were not taking the medication while in jail. Sixty percent of inmates with conditions requiring routine laboratory monitoring, such as blood tests, received no monitoring while in jail.

The authors of the study concluded that mental and medical health treatment in jails and prisons is “far from adequate,” but noted that the findings “offer a substantial public health opportunity.” According to the authors, “minimizing inmates’ physical and mental disability is an important step in reintegrating them into family and employment roles.” Regarding the finding that most persons with diagnosed mental illnesses are not being treated at the time of their arrests, the authors concluded that “greater access to outpatient mental health care might reduce the staggering toll of crime and incarceration.” The authors recommend increasing the availability of substance abuse and mental health treatment, maintaining Medicaid eligibility while incarcerated, improved discharge planning, and increasing education, prevention and treatment of communicable diseases.

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The study used data from two reports compiled by the Bureau of Justice Statistics – the 2004 Survey of Inmates in State and Federal Correctional Facilities, and the 2002 Survey of Inmates in Local Jails.

A copy of the study, "The Health and Health Care of US Prisoners: Results of a Nationwide Survey," can be purchased and downloaded for \$10 at the web site of the American Journal of Public Health, www.ajph.org.

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