

Effective Pretrial Justice Communication

Guidelines for Champions & Spokespeople

Updated October 2014



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Bail fundamentals

The Purpose of Bail

- Protect the integrity of the court process (court appearance)
- Protect the public (rearrest)
- Guard against punishment prior to adjudication (innocent until proven guilty)

Bail Law

- Must be individualized: *Stack v. Boyle*, 342 U.S. 1 (1951)
- May consider danger: *U.S. v. Salerno*, 481 U.S. 739 (1987)

Bail in the Current System

Current Bail Decision-Making

- Offense-based – static/one dimensional. Assumes charge = risk.
- Fail to factor risks and strengths (risk) of individual defendant
- Consideration of danger not part of process
- No individual, tailored conditions imposed or monitored to mitigate risk
- Those *with* money are released w/o monitoring or supervision
- Those *without* money are not released and/or may be over-supervised

Impact

- \$9 billion annually spent on pretrial incarceration
- More than half of the most dangerous defendants – most likely to reoffend or skip court – are released
- Jail beds filled disproportionately with lower risk pretrial defendants
- Pretrial detention of lower risk defendants increases likelihood of recidivism
- Contributes to disproportionate impact on defendants who are poor and of color

Introducing Risk Assessment

The problem:

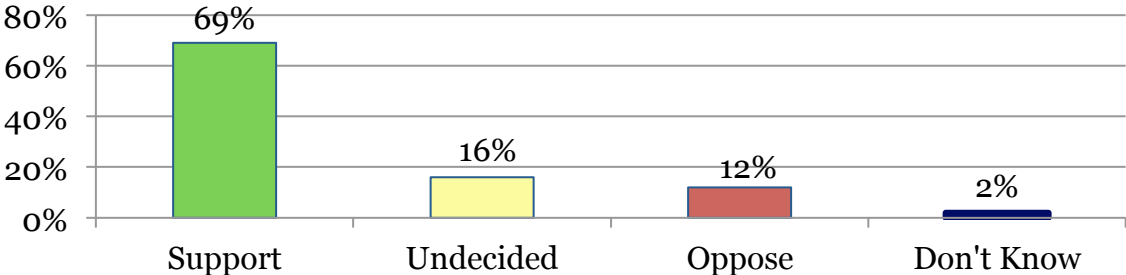
- The American system of bail is fundamentally incapable of doing the job we expect from it: it is dangerous, outdated, unfair, and expensive—costing taxpayers more than \$9 billion each year without doing enough to protect public safety.
- Those with money, regardless of the danger they pose to the community, can purchase their freedom while poor, often low-risk defendants remain in jail – an experience that actually *increases* their likelihood to offend in the future.

The solution:

- Jurisdictions must move from a resource-based to a risk-based bail decision-making process, allowing for more informed decisions at each phase in the pretrial process (from first contact with law enforcement through adjudication).
- Jurisdictions must conduct a **risk assessment of all defendants** in custody awaiting their initial appearance in court and provide **supervision and monitoring** of defendants released by the court, when appropriate.
 - Pretrial risk assessment improves public safety and has proven cost savings to taxpayers
 - Risk assessment improves our ability to identify potentially dangerous individuals or individuals who are likely to flee.
 - In addition, it allows those who are deemed eligible to return their families, jobs and communities while awaiting adjudication.
- State law should allow for the detention through due process of those too risky to be released.
- Moving to risk assessment and pretrial supervision and monitoring will require the support of all those involved in the criminal justice system.

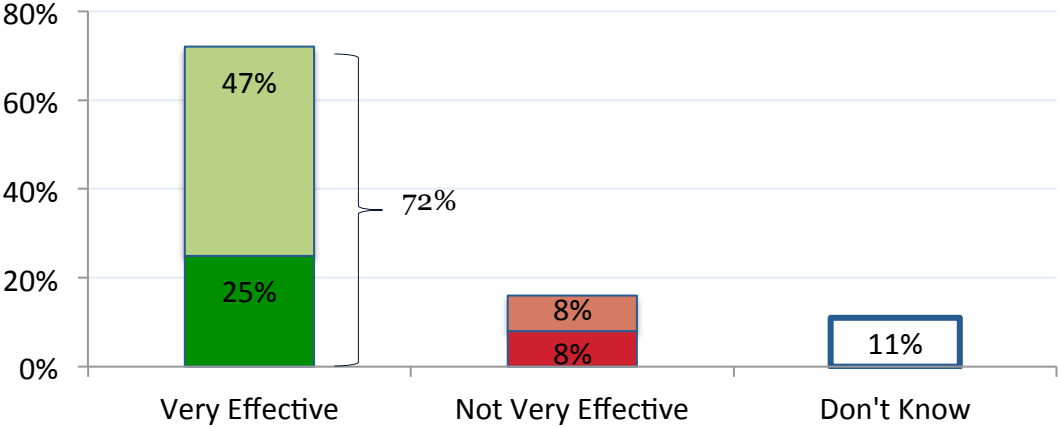
Public Opinion

More than 2/3 support Risk assessment instead of cash bail bonds



Question: Some have proposed using risk-based screening tools instead of cash bail bonds to determine whether defendants should be released from jail before trial. This risk assessment would take into account such factors as [drug use history, mental health, employment status, residency, and community ties] or [the charge in question, criminal history, any warrants or previous failures to appear for court]. Under this system, high-risk defendants would be held in jail until trial and low-risk defendants would be released with conditions and be monitored and supervised. Would you support or oppose this proposal to use risk assessment instead of cash bail bonds to determine whether defendants should be released from jail before trial, or are you undecided? [IF SUPPORT/OPPOSE] And do you feel that way strongly, or not-so strongly? (Lake Research Partners, 2012)

Over 70% perceive risk assessment as Very/Effective at protecting public safety and ensuring court appearance.

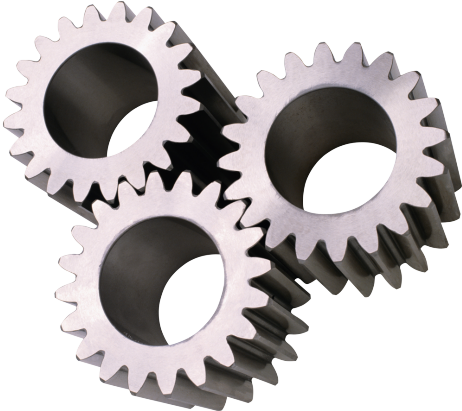


Question: I'm going to read you a list of terms used to describe the proposal of using risk-based screening tools to determine whether defendants should be released from jail before trial. For each term, tell me how effective you think it sounds when it comes to protecting public safety and ensuring appearance for trial: VERY effective, SOMEWHAT effective, NOT VERY effective, NOT effective AT ALL. If you don't know just say so and we'll move on. "Pretrial risk assessment." (Lake Research Partners, 2012)

Using Analogies

Gears

- Vehicles have several gears to accommodate varying terrains.
- We currently rely on only one “gear” in our pretrial systems: the DETENTION gear.



Hospital

- Hospitals assess patients to determine who can be treated as outpatient and who needs to be admitted.
- If most pretrial systems were hospitals, they would be admitting people for colds and sprained ankles.



Colorado Tool

In most jurisdictions, the bulk of defendants will fall within the low and medium-low risk categories and can be released with no conditions or with very minimal supervision. For example, in Colorado, nearly 70% of defendants were of low or medium-low risk. Only 8% fell within the high-risk category.

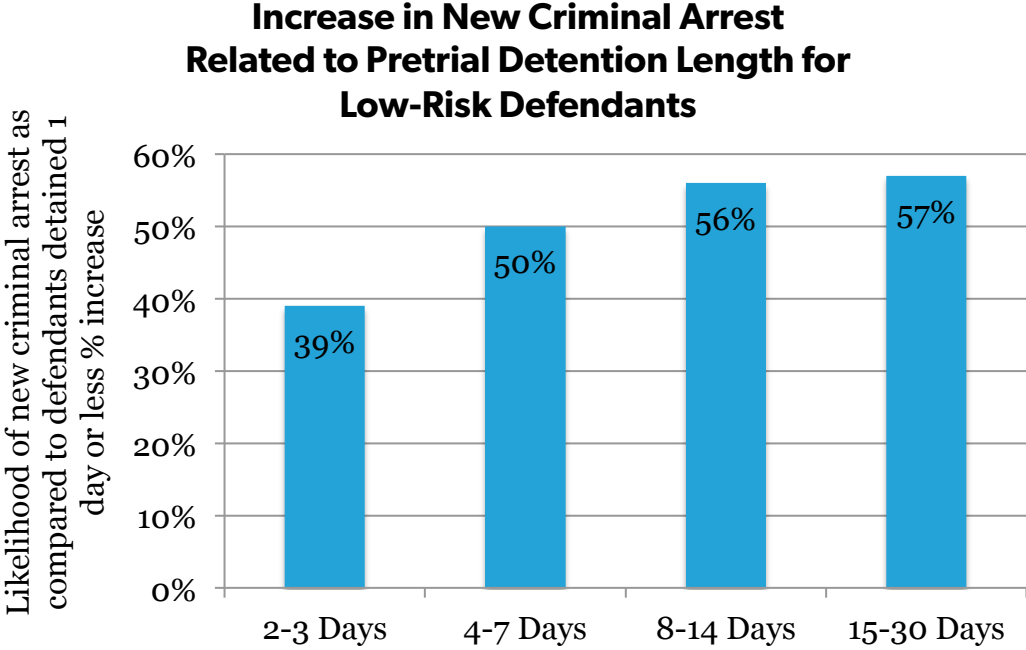
Risk Category	Public Safety Rate	Court Appearance Rate	% of Defendants
1	91%	95%	20%
2	80%	85%	49%
3	69%	77%	23%
4	58%	51%	8%

Sample Guidelines

Knowing defendants’ risk levels allows jurisdictions to tailor supervision and monitoring strategies.

Most Serious Charge						
Pretrial Risk Category	Less Serious Misdemeanor	More Serious Misdemeanor	Less Serious or Non-Violent Felony	Driving Under the Influence	Domestic Violence	Serious or Violent Felony
Lower	Recognizance Release with Court Reminder	Recognizance Release with Court Reminder	Recognizance Release with Court Reminder	Recognizance Release with Basic Supervision	Recognizance Release with Basic Supervision	Detained, or Recognizance Release with Enhanced Supervision if Released
Medium	Recognizance Release with Basic Supervision	Recognizance Release with Basic Supervision	Recognizance Release with Basic Supervision	Recognizance Release with Enhanced Supervision	Recognizance Release with Enhanced Supervision	Detained, or Recognizance Release with Enhanced Supervision if Released
Higher	Detained, or Recognizance Release with Enhanced Supervision if Released	Detained, or Recognizance Release with Enhanced Supervision if Released	Detained, or Recognizance Release with Enhanced Supervision if Released	Detained, or Recognizance Release with Enhanced Supervision if Released	Detained, or Recognizance Release with Enhanced Supervision if released	Detained, or Recognizance Release with Enhanced Supervision if Released

Arnold Foundation Research



Arnold Foundation Research

- Pretrial detention results in worse outcomes, when comparing similar defendants.
- Defendants held for entire pretrial period are:
 - Are 4x more likely to be sentenced to jail
 - Are 3x more likely to be sentenced to prison
 - Receive 3x longer jail sentences
 - Receive 2x longer prison sentences
 - Moderate- & high-risk defendants do better under pretrial supervision

Paying Money Upfront Unnecessary

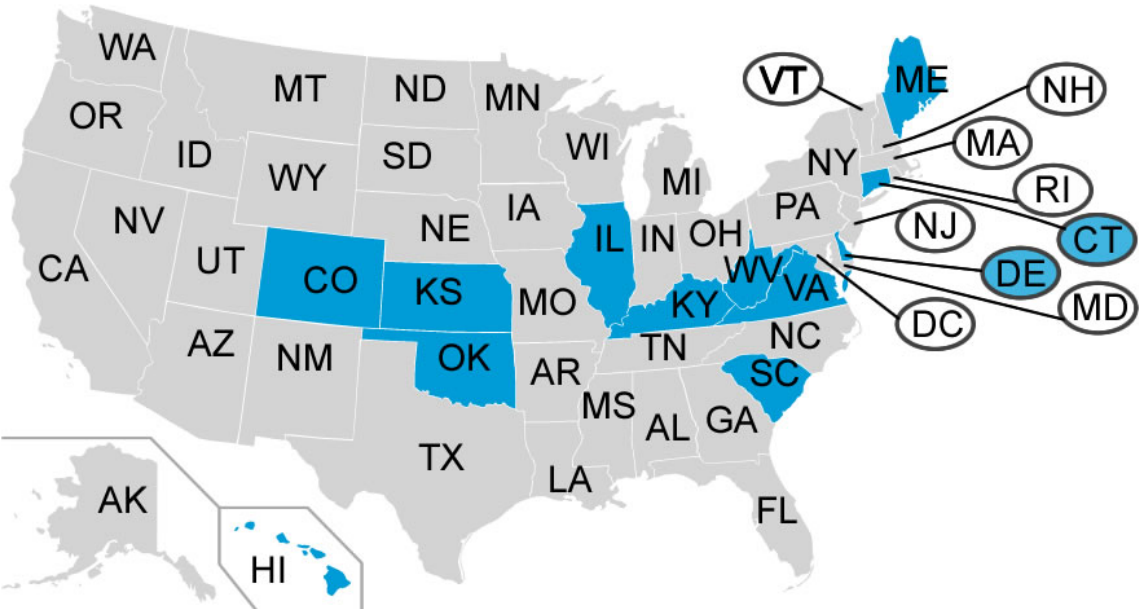
Recent research in Colorado found...

- Unsecured bonds are as effective as secured bonds at achieving
 - public safety
 - court appearance
- Higher \$ amounts of secured bonds are associated with more pretrial jail bed use but not increased court appearance rates.
- Unsecured bonds result in far fewer jail beds used than do secured bonds because more releasable defendants leave jail (94% unsecured versus 61% secured), and leave sooner.
- Unsecured bonds are as effective as secured bonds at preventing defendants who fail to appear in court from remaining at-large on a warrant.
- This information is based on a study of over 1,900 defendants in 10 counties throughout Colorado over a 16 month period.

Adoption of Risk Assessment

- An estimated 369 counties (about 10%) use a validated risk assessment.
- Each of the 94 Federal Districts is required to use the validated federal pretrial risk assessment tool.

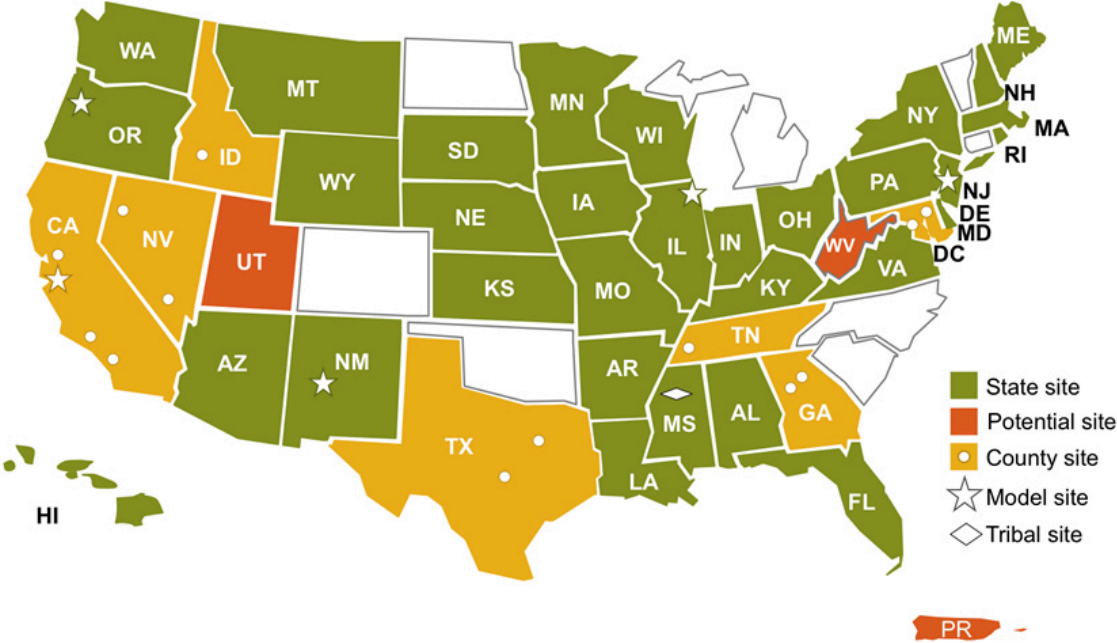
12 states (covering roughly 16% of the U.S. population) have instructed courts to consider the results of a risk assessment when making a pretrial release decision.



Pretrial outcomes in jurisdictions with high-functioning risk assessment

	Kentucky	DC
Release Rate	69%	85%
Appearance Rate	88%	89%
Public Safety Rate	91%	89%

The Juvenile Detention Alternatives Initiative (JDAI) is active in more than 200 counties, spanning 39 states plus the District of Columbia.



One in four youth live in a community that participates in JDAI.

Talking Points for Different Audiences

Different audiences respond better to different arguments, depending on their professional and personal beliefs and perceptions. Below is a collection of the main talking points of pretrial justice

- Currently more than half of the highest-risk defendants are getting released pretrial without supervision or monitoring. This poses a threat to law enforcement and the community.
- Currently, we set a high bond for potentially violent defendants and hope they can't make it. Low-risk defendants who simply cannot afford to purchase their freedom remain in jail pending trial.
- A majority of jurisdictions rely on pre-set bond amounts which enable defendants to avoid risk screening by prosecutors and the courts.
- Those with money – regardless of where they got the money or their potential danger to the community – can purchase their freedom prior to trial.
- Judges should have the ability to keep potentially violent defendants detained and not be required to set a bond amount intended to detain, which often does not.
- Prosecutors should have the ability to argue for the pretrial detention those assessed as too dangerous to be released, not high bond amounts that gamble on a defendant's ability to make that bond.
- Robust pretrial systems incorporate preventive detention statutes that allow for the detention of the riskiest defendants, through due process, until they go to trial.
- Risk assessment helps the system quickly focus on those factors that have been shown to predict pretrial failure.
- Research shows that those who are deemed appropriate for release through risk assessment are likely to make all their court appearances and are unlikely to re-offend.
- Release under risk assessment isn't a free ride. It is an opportunity to ensure justice is applied equally and efficiently and to monitor the conditions set by the courts.
- By using risk assessment tools, as well as supervision and monitoring of defendants, we protect public safety and the integrity of the court process, all at a lower cost than we do now.
- In order to ensure successful representation of defendants in the pretrial phase, the pretrial justice movement calls for adequate funding and support of public defenders' offices across the country.
- Judicial discretion is vital – and will remain so with the inclusion of a pretrial risk assessment tool.
- Keeping low-risk defendants out of jail allows them to contribute to the tax base rather than being housed at taxpayer expense.

- Studies show that defendants detained in jail while awaiting trial plead guilty more often, are convicted more often, are sentenced to prison more often, and receive harsher prison sentences than those with the same charges who are released during the pretrial period.
- There is considerable research to support the need for reform as well as overwhelming support from the public – 70% of Americans believe in using risk assessment over cash bail.
- Using actuarially-derived risk assessment tools, more than 90% of defendants score within the low to medium risk range, a population who can be safely managed in the community while posing little risk of flight or re-arrest. The tool used in Colorado only scores 8% of defendants in the highest risk category.
- Without supervision, once a defendant makes bail, regardless of risk level, he or she is out on the street and there are no back-up safeguards.

There is a **growing chorus** of groups who have called for pretrial reform around risk assessment and supervision/monitoring, including:

- American Bar Association
- American Civil Liberties Union
- American Jail Association
- American Probation and Parole Association
- Association of Prosecuting Attorneys
- Conference of Chief Justices
- Conference of State Court Administrators
- International Association of Chiefs of Police
- National Association of Counties
- National Association of Criminal Defense Lawyers
- National Center for State Courts
- National Judicial College
- National Legal Aid & Defender Association
- National Sheriffs' Association
- and more.

Targeting Your Message

When speaking with...

Judges: Risk assessment helps the courts quickly focus on those factors that have been shown to predict pretrial failure.

Law Enforcement: Currently more than half of the highest-risk defendants are getting released pretrial without supervision or monitoring. This poses a threat to law enforcement and the community.

Prosecutors: Prosecutors should have the ability to argue for pretrial detention, not high bond amounts that gamble on a defendant's ability to make that bond.

Public Defenders: Using actuarially-derived risk assessment tools, more than 90% of defendants score within the low to medium risk range, a population who can be safely managed in the community while posing little risk of flight or re-arrest. The tool used in Colorado only scores 8% of defendants in the highest risk category.

Elected Officials: Keeping low-risk defendants out of jail allows them to contribute to the tax base rather than being housed at taxpayer expense.

Pretrial Landscape

- Understanding the legislative, judicial and electoral environment is critical to developing – and delivering at the right time – the tactics to most efficiently and effectively promote the message for reform and introduction of risk assessment.
- Who are the key decision makers?
- What audience do you need to reach to influence them?
- Who do they listen to?
- When and how can you get them to pay attention?

Other Tools for You

Media Toolkit

- Pretrial Justice Reform Message Guide
- Press Protocols
- Template Opinion/Editorial
- Template Letter to the Editor
- Capturing Personal Narratives in a Story Bank
- Fact Sheets: Interested Parties Memo and Expert Availability
- Talking Points and Potential Reporter Questions
- Press Lists

www.pretrial.org

How to Apply Those Tools

- Write an **Opinion/Editorial** for submission to your local paper
- **Comment online** to reporter stories on the issue
- **Email reporters** directly with what they got right in the story, and what they should also think of
- Write a **Letter to the Editor** in response to news articles
- Write a **blog** entry for your organization's website or newsletter
- Write a **letter to your legislator** (or other influential person) and then post it on your website, social networking platforms (Facebook, Twitter, etc.)
- Work with **producers on radio programs and at your local television station** and make yourself available to comment on this issue
- Get on the agenda for **your next group or community association's meeting** to talk about this issue, explain a call to action and motivate your peers
- **Catalog stories and anecdotes** of what is happening in your community to put a local, human face on the toll this issue takes on real people and families and share these stories with your peers and advocacy organizations like the Pretrial Justice Institute

**For more information, contact the
Pretrial Justice Institute
www.pretrial.org**