



Criminal Justice Section

State Policy Implementation Project

PRETRIAL RELEASE REFORM

The greatest concerns related to bail reform are that those released before trial pose a danger to public safety and will not appear at trial. Despite these concerns, however, many pretrial detainees do not present a significant risk of flight and are unlikely to pose a public danger. The concerns are legitimate and a method to separate those posing a risk of violence from those who do not must be incorporated into pretrial release. Moreover, individuals who are released before trial pose a lower rate of recidivism. With the proper tools to measure a defendant's risk, a jurisdiction can reap financial benefits while providing a more equitable justice system.

Detaining persons simply because they cannot afford bail is unwarranted and the taxpayer implications of pretrial detention are significant given the expenses of operating detention facilities (maintaining a staff and the building) and housing detainees (providing food, clothing, bed, and healthcare). Although community safety and risk of flight are key components of a pretrial detention determination, two thirds of the 500,000 individuals sitting in jail before trial are *low bail risk*, identified as posing no significant risk to themselves or the community with a likelihood of reappearance at subsequent court dates. Proper identification and release of these individuals will decrease the costs associated with operating detention facilities and housing detainees and reduce the collateral consequences of confinement such as job loss, inability to pay child support, and eviction.

The ABA [Criminal Justice Standards for Pretrial Release](#) call for the assignment of the least restrictive bail conditions and a presumption of release pending trial. The Standards recognize that detention is appropriate if an individual presents a flight risk or the release will endanger public safety. However, detention is appropriate only after clear identification of the relevant risk factors by adequate pretrial service agencies. **State pretrial detention policy can be built upon the need to (a) ensure public safety and (b) prevent a defendant's flight from the jurisdiction – otherwise, a defendant can be released pending trial. Execution of clear policy to promote efficient pretrial detention will lead to significant fiscal savings.**

Releasing low risk defendants leads to significant savings to local and state budgets. Last year alone, taxpayers spent \$9 billion on pretrial detainees. New York City spends approximately \$45,000 annually to house a single pretrial detainee. Yet, in fiscal year 2007-08, Miami-Dade County supervised 11,101 defendants outside detention facilities at a total cost of roughly \$432 per defendant.

Confining defendants in pretrial detention will cause loss of income, leading to increased recidivism and risk to the public following the individual's subsequent release. In the Southern District of Iowa, a [case study](#) of the effectiveness of alternatives to pretrial incarceration produced significant results – the District released 15% more individuals pretrial, and found that the overall percentage of individuals whose release was not revoked due to re-arrest and new alleged criminal activity increased from 95.6% to 97.3%. The District also saved \$1.7 million in fiscal year 2008-2009.

Defendants who are economically secure with a familial structure are more likely to appear at subsequent court dates. The Southern District of Iowa not only saw a decrease in re-arrest rates of released individuals, but also observed an increased rate of return at subsequent court dates.

The ABA urges states to adopt legislation that models the current ABA [Criminal Justice Standards for Pretrial Release](#) and commends to them the Kentucky statutes: §§ 431.510, 431.515, 431.517, 431.518, 431.520, 431.523, 431.525, 431.530, 431.5305, 431.531, 431.532, 431.535, 431.540, 431.545, and 431.550.



Kentucky: Releasing Defendants while Reducing Recidivism and Saving Money

Pretrial Release in the United States

State funding for corrections in the United States has risen 272% during the last twenty years: from \$12.9 billion to \$48 billion. Unfortunately, greater spending on incarceration has not translated into a better return for public safety and recidivism. This holds true not only in post-conviction incarceration, but pretrial incarceration, as well. Although detaining a defendant prior to trial is often necessary for public safety, there are a significant number of low risk, non-violent offenders who are removed from employment, their families, and the community prior to a conviction. With the high costs of incarceration in the United States, it is essential that states establish a system to correctly identify and release these low-risk offenders. With proper tools and methods, a state can assess an individual and either (a) detain the defendant until trial, (b) release the defendant into pretrial supervision programs, or (c) release the defendant on his/her own recognizance. If a state can identify those individuals who are productive individuals and pose no threat to society, it can save taxpayer dollars, reduce recidivism, and increase public safety.

Recognizing that pretrial release is a fundamental element of a state's judicial system, Kentucky has consistently been at the forefront with model pretrial services that not only save money on incarceration costs, but also provide rehabilitation and treatment opportunities for offenders in need.

Pretrial Release in Kentucky

History

In 1976, Kentucky abolished commercial bail bondsman and implemented its Pretrial Services Agency (PSA). To date, it is one of the few states that operates its pretrial services as a statewide unified system. The PSA was created to assess pretrial defendants with the assumption that low-risk individuals would be released prior to trial, as opposed to continued confinement that costs taxpayers' money.

Since its inception over thirty years ago, the PSA has undergone significant changes to adapt to the state's currently judicial environment. A number of these changes took place recently to avoid Kentucky's predicted need to spend \$161 million more than current corrections costs to cover future growth by 2020. If the state can release more low-risk offenders prior to trial, it could avoid the roughly \$50.00 a day it costs to house an offender who, under proper supervision, can remain employed and productive within the community.

To encourage even better results, in 2006 the Kentucky legislature allotted \$172,000 to fund the Social Work Pilot Project through the state's Department of Public Advocacy. The project placed social workers at public defender offices throughout the state to assist in pretrial treatment and rehabilitation for low-risk offenders. The Social Work Pilot Project and the state's general Pretrial Services Agency have both produced successful results.

Current Program

Pretrial Diversion

The state's pretrial diversion officers are trained to be neutral in all decisions regarding treatment. The state's program has 256 employees and provides investigation and supervision services in all 120 counties in the state. Diversion provides selected individuals with non-punitive case processing if they satisfy certain conditions of release. The program is designed to help an individual before he or she develops long-term destructive behavior and is entirely voluntary, although the district judge and county attorney must approve all participants. If a participant successfully completes the program, the charges are dismissed with prejudice, and the individual avoids the stigma of a criminal record.

The program begins almost immediately after arrest when the PSA conducts an initial interview of potential participants. Eligible participants are those charged with the offenses of shoplifting, disorderly conduct, possession of marijuana, public intoxication, criminal trespassing, criminal mischief, and littering. Individuals charged with a DUI, a felony or violent crime, or those who were previously convicted or participated in diversion are ineligible. The interview consists of a risk assessment that evaluates several aspects of the defendant's life and background. Factors include: criminal record, employment, family stability, and prior substance abuse. The interviews are conducted around the clock; pretrial officers in urban areas are on duty 24 hours a day, while rural area officers are on duty 16-20 hours a day and are always on call.

Following the interview and assessment, if the defendant is released pretrial the court may impose several different conditions for release. In some instances those conditions are as little as reporting by phone; whereas other defendants may be required to report in-person, comply with random drug or alcohol testing, and subject to curfews, home incarceration, employment requirements, and counseling.

In 2005, Kentucky's PSA also started the Monitored Conditional Release (MCR) program which operates in 48 counties throughout the state. MCR implements a risk assessment that categorizes defendants into low-, medium-, and high-risk groups prior to an officer making a release recommendation to the judge. Defendants are interviewed within 12 hours of arrest and the risk assessment is meant to determine the defendant's risk to public safety and likelihood of reappearace if released from detention. The program's focus is to assist those counties that are struggling to pay the costs of housing defendants in county jail before trial.

Social Work Pilot Project

Realizing that even more can be done to save money and reduce recidivism, the 2006 legislature approved the Department of Public Advocacy's Social Work Pilot Project. The Project placed social workers at different public defender offices throughout the state. Social workers were there to assist in treating a defendant's "root" problem. Two hundred twenty nine defendants were served between 2006 and 2007. The social workers were made an integral part of the defense team and able to work with defendants regarding drug and alcohol problems, counseling, and various other treatments. Social workers were able to provide defendants with enhanced support that would not have existed otherwise.

Success and Savings

Pretrial Diversion Success

To date, Kentucky's Pretrial Services Agency (PSA) has saved the state millions of dollars in incarceration costs, as well as saving money by reducing court dockets through release and subsequent dismissal of charges. Since its establishment in 1976, the PSA has interviewed more than 2.7 million defendants. In 2008, the PSA actively monitored 3,668 diversion clients with a success rate of 71% for its general misdemeanor diversion programs. In 2008, diversion clients completed 17,313 hours of community service volunteer work and paid \$38,576 in restitution to victims.

A significant amount of the money saved is due to the Monitored Conditional Release (MCR) program. The program has conducted over 260,000 interviews. Of those interviewed 64% were released pretrial on their own recognizance or into several supervision programs. The release of almost 175,000 individuals has saved millions that can now be allocated to investigate and prosecute more serious offenses. The rate of return at later court dates was also successful: 90% of defendants attended all subsequent court appearances. In addition, 90% of released defendants did not commit new crimes while on pretrial release. The program now receives over 6,000 referrals a year and has saved \$30.8 million to date. In 2007 alone, MCR saved 540,709 jail beds.

Social Work Pilot Project Success

Between 2006 and 2007, the Social Work Pilot Project saved almost \$1.4 million in reduced incarceration costs. After taking into account the cost of the social worker's services and rehabilitation programs, the program saved \$3.25 for every dollar spent on incarceration. Recidivism was also reduced. Compared to the state's current 29% rate of recidivism, the pilot program's recidivism rate between 2006 and 2007 was only 14%. Annual net savings were \$1,605 per defendant, and 10,000 days of incarceration were saved by *each* of the program's social workers, equivalent to over 75 years of incarceration. If the program is implemented statewide, savings are projected to be \$3.1 to 4 million per year.

Conclusion

Recently, Kentucky's PSA was evaluated under the Pretrial Justice Institute's criteria that establish a pretrial program as an "Enhanced Pretrial Services Program" or "Model Program". The evaluation is made up of three categories and sixteen subcategories. Of the sixteen subcategories, Kentucky's program met or exceeded all requirements in all but one subcategory. The state fell short on the validation of its risk assessment since, as of yet, it has only validated the instrument compared to other states, as opposed to in-state validation. Along with this assessment, in 2011 the state passed into law HB 463. The bill implements significant criminal justice reforms that includes funding for pretrial services. Overall, the bill is predicted to save \$420 million over the next decade.