



SCAN OF PRETRIAL PRACTICES

2019

Acknowledgments

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Table of Contents

Executive Summary	6
Introduction	9
Methodology	12
Table M.1: Scan Participation by Density	13
Map of Participating Counties (Completed Surveys)	13
Section 1: Reducing the Number of People Involved in the Justice System	14
Section 1 Takeaways	14
Citation Release	15
Figure 1.1: Available Alternatives to Arrest by Population Density	15
Figure 1.2: Use of Citation Release (All Counties)	15
Pre-arrest/Pre-booking	16
Figure 1.3: Types of Pre-arrest/Pre-booking Diversion Programs by Population Density	16
Table 1.1: Citation Release and Jail Data	17
Key Measurements: Citation Release, Pre-Arrest/Pre-Booking Programs, Jail Populations	17
Looking Back Ten Years: Pretrial Options for People with Mental Health Needs	17
Figure 1.4: Jail Population Relative to Operational Capacity by Population Density	18
Figure 1.5: Average Daily Population by Population Density	18
Section 2: Process and Conditions After Booking	19
Section 2 Takeaways	19
Use of Bond Schedules and Delegated Release	20
Figure 2.1: Options After Booking/Before First Appearance by Population Density	20
Looking Back Ten Years: Bond Schedules	20
First Appearance	20
Looking Back Ten Years: Frequency of First Appearance Hearings	21
Key Measurements: Pretrial Release, Court Appearance, Failure to Appear, Release and Detention through Money Bond	21
Pretrial Release Population	21
Table 2.1: Availability of Data	22
The Impact of Bail Bonds on Release	23
Court Appearance	23
Looking Back Ten Years: People Supervised by Pretrial Programs	23
Conditions of Release	24
Figure 2.2: Availability of Data on Release Conditions	24
Looking Back Ten Years: Calculating Court Appearance Rate	24

Section 3: Use of Pretrial Assessment Tools	25
Section 3 Takeaways.....	25
Types of Assessment Tools or Screens Used Before Trial	26
Figure 3.1: Screens and Assessments Available by Population Density	26
Characteristics of Pretrial Assessment Tool Usage	26
Length and Type of Pretrial Assessment Usage	26
Type of Pretrial Assessment Tool Used	26
Figure 3.2: Pretrial Assessment Tools Used by County	27
When are People Assessed Using a Tool?	27
Figure 3.3: Application of Pretrial Assessment Results by Population Density.....	27
Looking Back Ten Years: Setting Monetary Bail in Combination with Supervision	28
Who Conducts Assessments and Shares Results?.....	28
Following Best Practices for Pretrial Assessment Tool Usage	28
Looking Back Ten Years: Validation	29
Using Outcomes from Assessment Tools to Guide Conditions of Release	29
Figure 3.4: Application of Pretrial Assessment Tool by Population Density.....	30
Validation	30
Key Measurements: Distribution of Levels and Concurrence Rates	31
Table 3.1: Availability of Data on Pretrial Assessment	31
Figure 3.5: Validation of Pretrial Assessment Tool by Population Density	31
Section 4: First Appearance and Detention Hearings	32
Section 4 Takeaways.....	32
Characteristics of First Appearance.....	33
Figure 4.1: Options Available at First Appearance	33
Looking Back Ten Years: Victim Notification.....	33
Figure 4.2: Protective Measures for Victims by Population Density	34
Victim Notification and Protections.....	34
Looking Back Ten Years: Presence of Prosecutors and Defense Attorneys	34
Profile of Prosecutors and Defense Attorneys at First Appearance	34
Looking Back: Bail Reviews by Pretrial Services Programs	35
Figure 4.3: Average Time Between First Appearance and Detention Hearings by Population Density.....	35
Detention Hearings	36
Looking Back Ten Years: Tracking Rearrest Rate	36
Bond Review Hearings.....	36
Figure 4.4: Availability of Bond Review (All Counties)	37
Key Measurements: Public Safety Rate	37

Section 5: Supervision and Support Services	38
Section 5 Takeaways.....	38
Pretrial Services and Supervision	39
Table 5.1: Duties of Pretrial Services	39
Looking Back Ten Years: Information Provided to Courts	40
Court Reminders	40
Figure 5.1: Percentage of Counties with Some Form of Court Date Notification by Population Density	40
Looking Back Ten Years: Pretrial Services Functions	41
Failure to Appear and Technical Violations	41
Key Measurement: Technical Violations, Readmissions and Pretrial Success Rates	41
Looking Back Ten Years: Response to Failures to Appear	42
Table 5.2: Tracking Data on Technical Violations, Readmission Rates on Technical Violations and Pretrial Success Rates	42
Section 6: Community.....	43
Section 6 Takeaways.....	43
Community-Based and Coordinated Entities.....	44
Figure 6.1: Presence of Community Entities by Population Density	44
Table 6.1: Availability of Training and Education (All Counties)	44
Training and Education	45
Communications Resources.....	45
Figure 6.2: Availability of Communications Strategies or Resources (All Counties)	45
Conclusion.....	46
Appendices.....	48
Appendix A - List of Counties and Cities	48
Appendix B - Complete Methodology	50
Appendix C - Figures and Graphs.....	52
Citations	63

Executive Summary

Since 2009, the year of PJI's [last survey of pretrial practices and policies](#), interest in pretrial justice has increased exponentially. Once barely an afterthought in criminal justice discussions, the front door of the criminal justice system has become the focus of policymakers, system actors, and community members committed to ending mass incarceration and racial inequality.

For the 2019 *Scan of Pretrial Practices (Scan)*, 89 counties and 2 independent cities, representing jurisdictions of high, medium, and low densities, completed all sections of the survey; an additional five counties completed some sections, and their responses were included where appropriate. For the purposes of this report, these jurisdictions are collectively referred to as counties. This *Scan* explored the nature of the changes in pretrial justice across the country, and how those real-life behaviors squared with legal principles and evidence-based practices.

Some results show promising improvements. Court reminder systems are an example of an effective strategy that promotes the goal of court appearance and respects the principle of least restrictive conditions; three out of four counties reported having some type of court date reminder system. Many areas report efforts to respond to people's behavioral health needs so that they do not enter the criminal justice system; 71 percent of counties with a pre-arrest/pre-bookings program reported having a program with a mental health focus and 46 percent had a program focused on substance use needs.

At the same time, the responses show how very difficult it is to implement pretrial justice policies that move away from money-based detention, and this *Scan* presents an opportunity to pause and re-evaluate practices and how they are implemented. In some areas, for example, policies designed to reduce criminal justice system involvement were in place but were not necessarily used in practice. Ninety-one percent of counties stated that citation release was available, but only about half (53 percent) said that all or most law enforcement agencies used the process "regularly." Not quite half (47 percent) of counties reported conducting ability to pay inquiries in an attempt to prevent money-based detention. From a broader angle, many counties did not have a dedicated stakeholder group to review and discuss pretrial justice (49 percent) or offer critical training to judges, prosecutors or defense attorneys (40 percent or more).

In particular, the following areas raised concerns over system practices and resources:

- **Challenges outside of high-density areas:** Almost 40 percent of low-density counties were not able to conduct first appearance hearings within 24 hours. Middle- and low-density counties were less likely to report having options available to the judicial officer at first appearance, such as release on recognizance or release on unsecured bond.
- **Using pretrial assessment tools inappropriately:** The use of pretrial assessment tools continues to expand; two out of three counties reported using a pretrial assessment tool (also noted as "pretrial risk assessment" in the *Scan*). However, assessment tools require maintenance and administrator training to ensure that they are used as intended. Half of counties used the tools to set monetary bond, thereby reinforcing money as the key factor in release. Nearly three out of four counties (73 percent) that had a pretrial assessment tool reported using them to make the "release or detain" decision, which raises legal concerns. The detention decision should be made through a separate, rigorous hearing with full due process protections, where the government must prove by a standard of clear and convincing evidence that no conditions of release would reasonably assure the safety of the public or an individual person. It is not a decision that should be based simply on probable cause and an assessment score. Moreover, less than half of counties (45 percent) with pretrial assessment tools reported having validation studies to ensure continuing accuracy with regard to court appearance and public safety.
- **Due process protections are absent at critical decision points:** More than half of all counties (53 percent) said that defense attorneys did not meet with clients before first appearance, and only 45 percent said attorneys were present at first appearance. Research shows that the early presence of counsel is associated with greater rates of pretrial release. When a decision to detain without bail is made at first appearance, only 56 percent of counties indicated that there was a follow-up detention hearing. Only 26 percent of counties had a process to automatically review the case of anyone detained due to an inability to afford monetary bond.
- **Lack of data on basic pretrial justice measures:** No matter what strategy or tool a jurisdiction undertakes to improve its pretrial justice system, gathering, analyzing, and sharing basic pretrial justice measurements are necessary to understand how changes in practice change outcomes. At a minimum, jurisdictions should know the measurements reflecting the three goals of pretrial justice: maximizing pretrial liberty, court appearance and public safety. More often than not, jurisdictions did not have these measures.

- **Pretrial release rates (pretrial liberty):** Only 34 percent of responding counties knew their pretrial release rate, 30 percent said their county did not know the rate, and 36 percent were unsure.
- **Court appearance rates:** Only 28 percent knew their court appearance rate, defined as the percentage of individuals who are released pretrial who make all court appearances, or alternatively, the percentage of all pretrial court hearings where the accused person appeared. Thirty-six percent knew the inverse of the court appearance rate, failure-to-appear rate, defined as the percentage of people who are released pretrial who failed to appear for at least one court hearing, or alternatively, the percentage of all pretrial court hearings where the person failed to appear.
- **Public safety rates:** With regard to public safety rates, only 22 percent of counties knew the percentage of individuals who do not have a new charge filed during the pretrial period, and 29 percent knew the percentage of individuals who do not have a new arrest during the pretrial period.

After forty years of technical assistance and training available in the field, with the last decade having unprecedented attention and resources, we should be farther ahead. The number of state- and county-level working groups, commissions, bills, and lawsuits focused on pretrial justice which have come forward across the country in just the last five years outnumber those in the prior 25 years combined. And yet, based on five surveys of practice — one every decade since the 1970s — we still have drastic justice by geography.

AFTER FORTY YEARS OF TECHNICAL ASSISTANCE AND TRAINING AVAILABLE IN THE FIELD, WITH THE LAST DECADE HAVING UNPRECEDENTED ATTENTION AND RESOURCES, WE SHOULD BE FARTHER AHEAD.

There is no one path to achieve the goals of maximizing pretrial liberty, court appearance and public safety, and the *Scan* reveals that there are many opportunities for counties to take on additional strategies or to adjust existing ones. We encourage jurisdictions to use this document as both an opportunity to check on how their values are reflected in practices and outcomes, and to explore new opportunities to improve their pretrial justice systems.

Introduction

History of Scans and Surveys. Since its inception as the Pretrial Services Resource Center (PSRC) in 1977, the Pretrial Justice Institute (PJI) has conducted a scan of practices approximately every ten years (1979, 1989, 2001, [2009](#)). This *2019 Scan* is our fifth scan of pretrial practices. For its first few decades, the survey of practices was confined to pretrial services agencies, which were of course limited to jurisdictions that had pretrial services programs. The 2009 survey included a two-phase/tiered effort, with one phase scanning [pretrial services programs across the country](#) (referred to as *2009 Survey of Pretrial Services Programs*)¹ and the other [an initial/baseline effort to survey broader pretrial justice system practices](#) within the nation's most populous counties, across agencies and system actors/stakeholders (referred to as *2009 Survey of Counties*).²

Reflection on rapid change. Since 2009, pretrial justice in America has changed significantly; many observers in the field have designated this era as the third generation of bail reform.³ The first generation, in the 1960's, sought to show that community ties were better indicators of an individual's likelihood of court appearance than the ability to pay a monetary bond, and thereby ushered in an era of pretrial assessment tools. The second generation was marked by the addition of public safety as a consideration in the bail decision, a practice upheld in *U.S. v. Salerno* (481 U.S. 739 (1987)). Since *Salerno*, communities have continued to avoid grappling with how to make intentional detention determinations, instead using high money bond amounts as a proxy for a detention hearing.

THE THIRD GENERATION OF BAIL REFORM IS DIRECTLY CONFRONTING THE ROLE OF MONEY BOND IN UNNECESSARY DETENTION AND ULTIMATELY, THE MASS INCARCERATION OF THE UNCONVICTED.

Although arrest rates have declined over the last 30 years, booking rates have increased.⁴ The interval between 1990 and 2009 saw an increase in the amounts of monetary bond, and people who were detained without convictions accounted for 95 percent of all jail population growth between 2000-2014.⁵ The third generation of bail reform is directly confronting the role of money bond in unnecessary detention and ultimately, the mass incarceration of the unconvicted. Aided by a host of groundbreaking research and public attention, the third generation questions the basic assumptions of our current system. We now know (again) that money bond is not necessary to improve court appearance,

and even a few days in jail are destabilizing (and, in some cases, associated with future failure to appear in court and arrests).⁶

The rapid change has been spurred by Department of Justice convenings and resources, and stakeholder associations such as the American Bar Association, the National Association of Counties, and the American Judges Association issuing [resolutions or policy statements in support of legal and evidence-based pretrial justice practices](#). The emergence of philanthropic funding, litigation challenging money-based detention, tragic and senseless deaths stemming from pretrial detention (such as those of Kalief Browder and Sandra Bland), have meant that pretrial justice has become an integral part of the national movement for racial justice and decarceration. Several states have passed laws enhancing pretrial justice and many more have bills pending in their legislatures. New Mexico and New Jersey have adopted changes to their state constitutions to end money-based detention and focus on public safety, with New Jersey nearly eliminating the use of money bond. California and New York have passed broad reforms in the last year that are awaiting implementation.

**PRETRIAL JUSTICE
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Advocates are playing a critical role not just in changing policy, but in carefully watching the design and implementation of that change. They are starting court watching efforts, creating bail funds, challenging local practices and state laws, demanding transparent and complete data, and driving community conversations about the pretrial justice system. Court watching efforts have monitored the implementation of new court rules, such as in Cook County, or held elected prosecutors and judges running on pretrial justice reform platforms to their campaign promises.

We find ourselves at a point of tremendous flux in policies and practices, with persistently divergent practices from state to state, and from county to county within states. Those who are working on pretrial justice reform are forced to constantly reassess and recalibrate their vision of pretrial justice based on new research, litigation, and growing recognition that mass incarceration is a modern incarnation of systemic racism in the United States. Changes in practice are also occurring against a backdrop of shifting public opinion; prosecutors have been winning elections based on more progressive platforms, and [recent polling](#) shows that the public does not want people detained on low-level charges and favors community-based support programs. With vigorous and swiftly evolving debate about what the improved vision of pretrial justice is, the *Scan of Pretrial Practices*

shows us the contours of what practices exist and how they are changing, and offers counties an opportunity to assess pretrial justice policies, practices, and outcomes. This *Scan of Pretrial Practices* sets out to resolve how the reality in America aligns with legal and evidence-based practices.

Recognizing that data has an important role in pretrial justice reform in creating baseline measurements and measuring progress, as well as identifying racial/ethnic disparities, every section includes a "Key Measurements," discussing how certain measurements relate to pretrial justice functioning, and how often those measurements are taken by counties.

In areas where the 2009 surveys and the current *Scan* intersected, we noted that information in sections marked "Looking Back Ten Years." It is important to note, however, that the 2009 and 2019 surveys are substantively different, reflecting changes in our views of legal and evidence-based practices. While the 2009 surveys had a heavy emphasis on pretrial services programs, for example, the 2019 *Scan* recognizes that changing pretrial justice outcomes can occur much earlier in the process with cite and release practices and deflection programs that address deeper issues such as mental health or substance use needs. Additionally, the 2009 *Survey of Counties* focused on the nation's most populous counties; the 2019 *Scan* sought to capture the experiences of low-, medium-, and high-density counties.

The *Scan* is divided into six substantive sections:

SECTION 1: REDUCING THE NUMBER OF PEOPLE INVOLVED IN THE JUSTICE SYSTEM

This section explores jail capacities, use of citation release, and the availability of pre-arrest/pre-booking diversion.

SECTION 2: PROCESS AND CONDITIONS AFTER BOOKING

This section asks questions about the use of bond schedules and delegated release authority. Respondents were also asked whether their county collected information on rates of pretrial release, court appearance, failure to appear, and detention without bail.

SECTION 3: USE OF ASSESSMENTS

This section focuses on the types of screenings and assessments administered when someone is arrested; the type of pretrial assessment tool used in that county, the length of time the assessment tool has been used, and when people are the subjects of those assessment tools.

SECTION 4: FIRST APPEARANCE AND DETENTION HEARINGS

This section asks questions about how first appearance hearings are conducted and who is present for that hearing; the involvement of prosecutors and defense attorneys in first appearance hearings; and the characteristics of detention hearings. Respondents were also asked whether they tracked pretrial release outcomes.

SECTION 5: SUPERVISION AND SUPPORT SERVICES

Counties provided information on the existence of pretrial services and where such services are housed administratively; the use of court reminder systems; and responses to failure to appear and technical violations.

SECTION 6: COMMUNITY

This section looks at resources available to system actors and community members to enhance pretrial justice, including policy committees, training and communications.

This *Scan* reflects an understanding that pretrial justice is not synonymous with pretrial services and the recognition that there are many opportunities for improved “pretrial justice” occurring before a bail decision is made or pretrial services is involved. In fact, these opportunities are present even before someone is arrested or booked into jail. Pretrial justice does not exist solely within the confines of the courtroom or the jail but should be a reflection of the values of the community; without a fundamental shift in how pretrial liberty is viewed and respected, all other reforms will be limited.

PRETRIAL JUSTICE DOES NOT EXIST SOLELY WITHIN THE CONFINES OF THE COURTROOM OR THE JAIL BUT SHOULD BE A REFLECTION OF THE VALUES OF THE COMMUNITY.

Methodology

The sampling employed for the *2019 Scan of Pretrial Practices* utilized a mixture of random and convenience sampling, including counties in all 50 states and from a full range of population densities. (The jurisdictions in this *Scan* also include two independent cities, but for the purposes of this report, will be included in the collective term counties.) The data source for the initial random sample was the 2010 U.S. Census. 3,140 counties were sorted into three

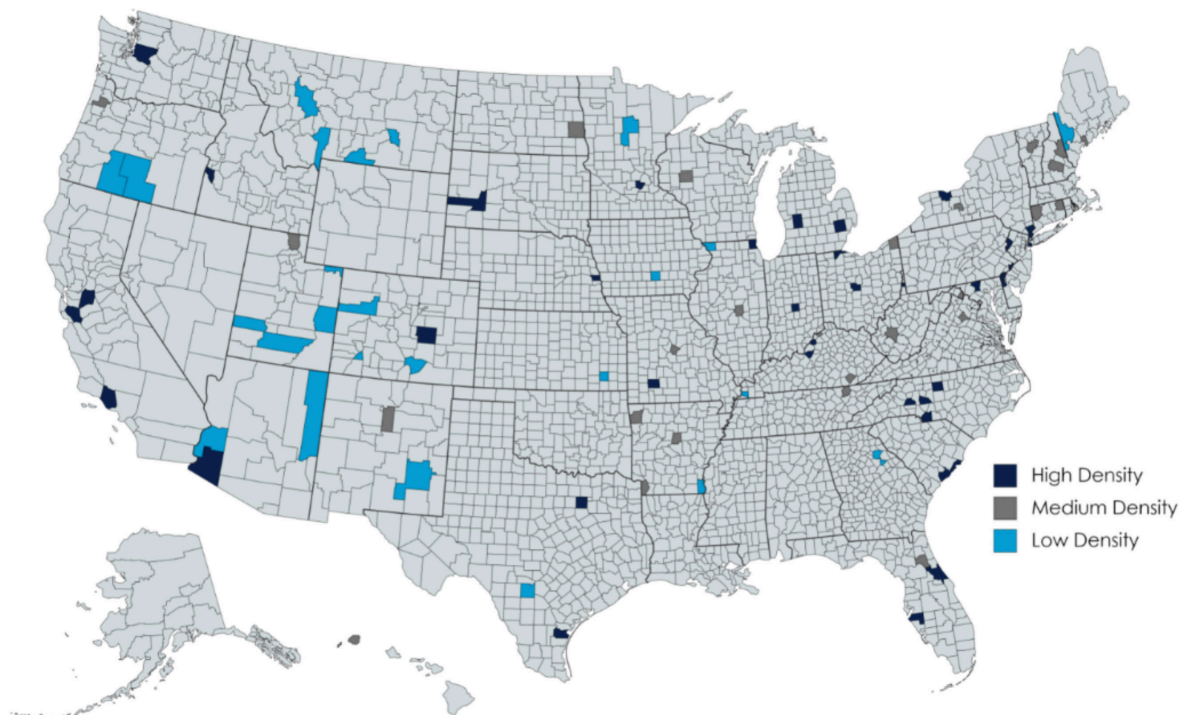
density strata: less than 50 people per square mile; between 50 and 249.99 people per square mile; and greater than or equal to 250 people per square mile. Using a random sample generator, 50 counties were selected from each stratum, a total of 150 counties. Out of the 150 initial counties, 46 responded. The remaining 104 counties were randomly replaced, while ensuring 50 counties in the sample from each stratum. Sixteen additional counties responded, bringing the total number of counties participating to 62.

In addition, 36 counties agreed to participate based on recommendations provided by partner organizations and jurisdictions, and nine counties were secured through outreach with partners. A total of 107 initial screenings were completed. The final response was 91 completed surveys, with a distribution as shown in the table below. An additional 5 counties completed portions of the survey and their responses are also included in the results below. Percentages may not add to 100 percent because of incomplete response rates, “check all that apply,” or rounding.

Table M.1: Scan Participation by Density

Population Density	High	Medium	Low	Total
Completed Initial Screenings	43	34	30	107
Completed Surveys	39	26	26	91

Map of Participating Counties (Completed Surveys)



SECTION 1

REDUCING THE NUMBER OF PEOPLE INVOLVED IN THE JUSTICE SYSTEM

A key strategy in ending mass incarceration is reducing the number of people who become deeply involved in the justice system at the front end. Many people who come in contact with law enforcement do not need to be booked into jail. Instead, most people can be given citations to appear in court at a later date with the reasonable assurance that they will appear in court with no new arrests. Still, others should not be involved in the justice system at all but come into contact with it because of behavioral health issues. In many states, the criminal justice system is the largest provider of mental health services.

The first section sought to understand the extent of programs, practices and policies that seek to reduce the number of people coming into the justice system. These questions explored how counties use citation and release, pre-arrest/pre-booking diversion, and book and release.

SECTION 1 TAKEAWAYS

- + Ninety-one percent of counties report having citation release policies, but only 53 percent report that all or most law enforcement agencies use them regularly.
- + Twenty-nine percent of counties report having a pre-arrest/pre-booking program where law enforcement can provide referrals for behavioral health needs, including 38 percent of high-density, 26 percent of medium-density, and 19 percent of low-density counties.

Citation Release

Citation release is an alternative to custodial arrest, also known as citation summons, cite and release, field release or citation, desk appearance ticket, or summons or citation in lieu of arrest. Citation release means that an individual is released with a citation and a future date to appear in court.

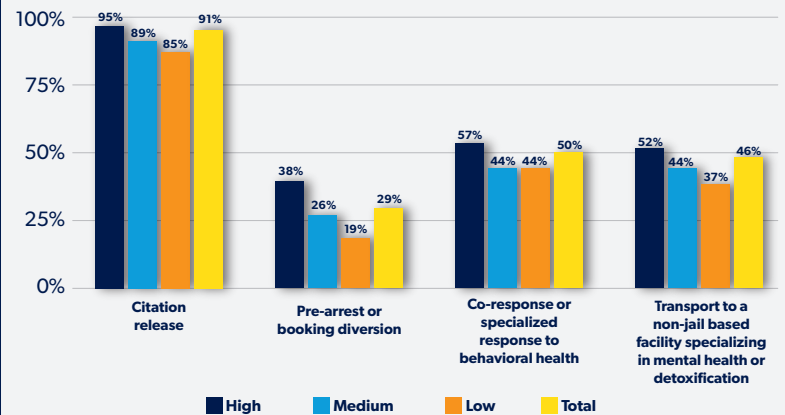
Ninety-one percent of counties reported that they had citation release policies available to law enforcement, whether by statute or local policy, with a slightly higher percentage for higher-density areas (95 percent).

(See Figure 1.1) It was the most common form of alternative to arrest in our survey, according to respondents.

Among counties that use citation release, slightly more than half (53 percent) stated that all or most of the county law enforcement agencies used citation release regularly, with lower-density areas having the highest percentage of regular use (57 percent). More than one-fourth of counties (28 percent) reported uneven usage, with some law enforcement agencies using citation release regularly and others 'rarely or never' using citation release. (See Figure 1.2)

Figure 1.1: Available Alternatives to Arrest by Population Density

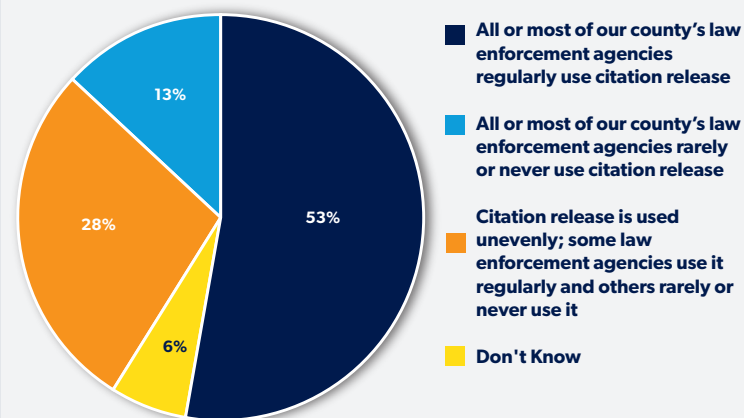
Please choose the alternatives to arrest that are available, by statute or local policy, to law enforcement in your county. Please include options that may not be available countywide, but are available in at least one agency. (Check all that apply) N=96



SEE APPENDIX D FOR LARGER FIGURE

Figure 1.2: Use of Citation Release (All Counties)

Which statement best describes the use of citation release throughout your county? Please only consider misdemeanor and felony criminal offenses. N=87

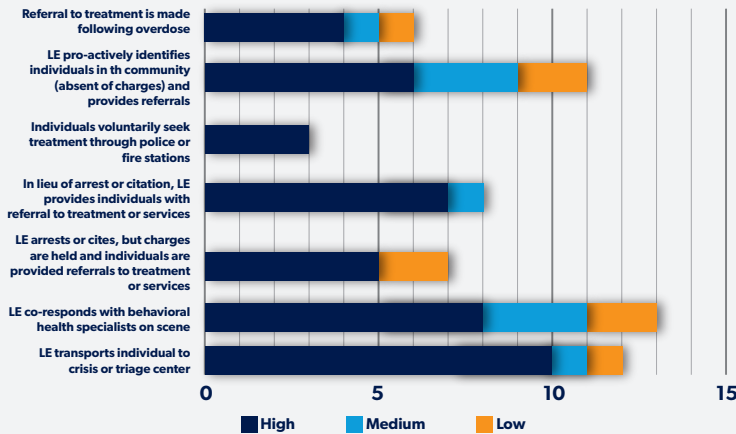


SEE APPENDIX D FOR LARGER FIGURE

In terms of what cases citation release was used for, approximately half (49 percent) of counties reported that citation release was used for "some misdemeanor cases," and 20 percent reported that citation release was used for "most misdemeanor cases." Seventeen percent reported that citation release was used for "most misdemeanor and some felony cases."

Figure 1.3: Types of Pre-arrest/Pre-booking Diversion Programs by Population Density

Which statement(s) best describes the pre-arrest/pre-booking diversion program(s) operating in your county? (Check all that apply) N=28



SEE APPENDIX D FOR LARGER FIGURE

Pre-arrest/Pre-booking

Pre-arrest or pre-booking diversion is a formal process by which law enforcement officers refer people for community services such as behavioral health treatment. In principle, an individual is completely “deflected” from the criminal justice system through these programs; however, in practice, the extent to which the criminal justice system remains involved (i.e., an arrest is made or a charge is filed) depends on the program and the jurisdiction’s policies. Many of these programs are known by a brand name, such

as Law Enforcement Assisted Diversion (LEAD), Drug Abuse Response Team (DART) or Stop, Triage, Engage, Educate and Rehabilitate (STEER).

Twenty-nine percent of counties reported having such a program, with greater numbers of counties in high-density areas having pre-arrest/pre-booking diversion programs (38 percent), compared to medium-density (26 percent) and low-density (19 percent) areas. The most common focus population was people with mental health needs; 71 percent of counties who engage in pre-arrest/pre-booking diversion had such programs. Forty-six percent of counties had a program for people with substance use needs.

When counties that reported having pre-arrest/pre-booking diversion were asked to describe the programs in operational terms, the most common programs involved law enforcement transporting individuals to crisis or triage centers for assessment. Thirteen out of 28 counties reported having such a program and an equal number had programs involving law enforcement co-responding with behavioral health specialists. Large variations exist based on county density; ten high-density counties reported having programs that allow law enforcement to transport people to crisis or triage centers, while only one medium-sized county and two low-density counties had similar programs. Only high-density counties reported having programs that allow people to seek access to treatment through police or fire stations; these programs are sometimes known as Angel, Safe Stations or PAARI (Policy Assisted Addiction and Recovery Initiative). (See Figure 1.3)

Table 1.1: Citation Release and Jail Data

	Yes	No/Don't Know
Are data on the use of citation release readily available in your county? (N=87)	24%	74%
Are data on the use of pre-arrest/pre-booking diversion readily available in your county? (N=28)	32%	68%
For 2018 (or the last year for which you have jail data), was the average daily population of your jail? N=92	8% At Capacity 15% Above Capacity 53% Below Capacity	20%
For 2018 (or the last year for which you have jail data), what percentage of the average daily population in your jail was in pretrial status? (N=92)	69% had data	25%

Key Measurements: Citation Release, Pre-Arrest/Pre-Booking Programs, Jail Populations

Throughout the *Scan*, respondents were asked whether they collected certain data related to pretrial justice functioning, and sometimes, they were asked to share that data. In Section 1, respondents were asked about whether they collected data on citation release, pre-arrest/pre-booking programs, and jail populations.

Among counties that employed citation release, very few of them regularly updated and published that data. Nearly three-quarters of respondents either did not collect data or did not know whether they collected the data. A similar question about data on the use of pre-arrest/pre-booking programs revealed similar gaps; 68 percent of respondents either had no information or were not sure whether the information existed. **(See Table 1.1)**

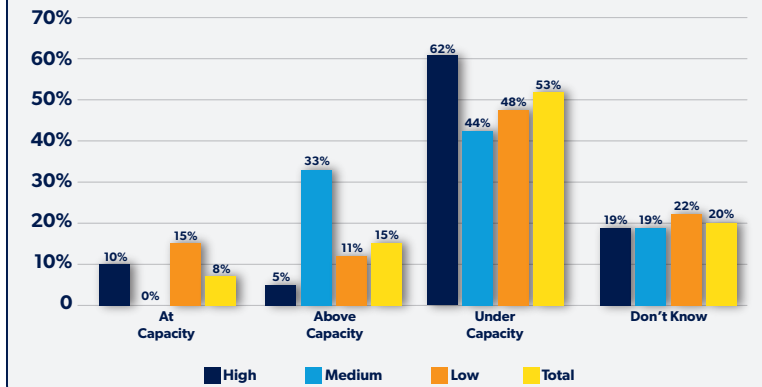
Many jurisdictions consider changes in pretrial practice when their jail populations exceed their jail capacities. Approximately one-half (53 percent) of respondents reported that their jails operated with an average daily population under operational capacity. This number varied greatly by population density: 62 percent of high-density counties

LOOKING BACK TEN YEARS: PRETRIAL OPTIONS FOR PEOPLE WITH MENTAL HEALTH NEEDS

In the *2009 Survey of Pretrial Services Programs*, the majority of programs reporting taking some type of action when faced with a person with mental health needs; 70 percent of programs reported this information to the court at initial appearance, about a third arranged for an assessment by a mental health professional before the initial appearance, and about a quarter referred the defendant for possible placement in a mental health court. The *2019 Scan* focused on programs that diverted or deflected people with behavioral health needs away from the criminal justice system and found that 29 percent of counties had such programs.

Figure 1.4: Jail Population Relative to Operational Capacity by Population Density

For 2018 (or the last year for which you have jail data), what was the average daily population of your jail? N=92



SEE APPENDIX D FOR LARGER FIGURE

reported operating below capacity, compared to 44 percent of medium-density and 48 percent of low-density counties. The number of counties with jails operating over capacity (15 percent) provided even starker contrasts; only 5 percent of high-density counties reported operating over capacity, compared to one-third (33 percent) of medium-density counties and 11 percent of low-density counties. One in five counties, on average, did not know how their average daily population (ADP) compared to operational capacity. (See

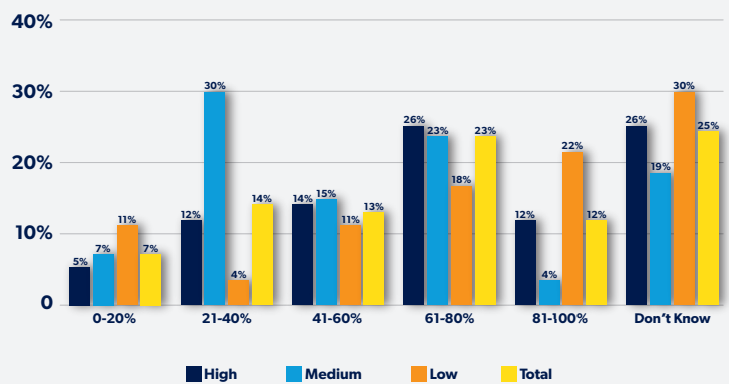
Figure 1.4) These results mirror what other recent reports have

shown: jails in less densely populated areas account for a significant portion of jail growth while jail populations in high-density areas are relatively controlled.⁷

When asked what percentage of their ADP in jail was in pretrial status, 35 percent of counties reported that people in pretrial status made up 61-100 percent of their pretrial population. One in four counties, on average, did not know what percentage of ADP was made up of people in pretrial status. (See **Figure 1.5**)

Figure 1.5: Average Daily Population by Population Density

For 2018 (or the last year for which you have jail data), what percentage of the average daily population in your jail was in pretrial status? N=92



SEE APPENDIX D FOR LARGER FIGURE

SECTION 2

PROCESS AND CONDITIONS AFTER BOOKING

Once a person comes into police custody, additional considerations arise. The deprivation of liberty and the possibility of harm in custody, whether due to conditions of confinement or the fact of confinement itself, requires a swift handling to encourage release as soon as possible. As the Supreme Court stated in *Gerstein v. Pugh* (420 U.S. 103 (1975)), “The consequences of prolonged detention may be more serious than the interference occasioned by arrest. Pretrial confinement may imperil the suspect’s job, interrupt his source of income, and impair his family relationships.” The ABA Standards for criminal justice state that persons arrested and taken into custody be taken before a judicial officer within six hours of arrest, and in jurisdictions where this is not possible, no longer than 24 hours without appearing before a judicial officer. Court rules and statutes vary on the amount of time that is permissible between arrest and first appearance, but what the research shows is that detaining people, even for a few days, when they would have a high likelihood of succeeding on pretrial release, increases the chances that they will be arrested again the future.⁸

DETAINING PEOPLE, EVEN FOR A FEW DAYS, WHEN THEY WOULD HAVE A HIGH LIKELIHOOD OF SUCCEEDING ON PRETRIAL RELEASE, INCREASES THE CHANCES THAT THEY WILL BE ARRESTED AGAIN THE FUTURE

In this section of the *Scan*, we sought to understand the mechanisms by which a person may obtain release after arrest or booking, including bond schedules and delegated release, and how frequently first appearance hearings are made available. Respondents also indicated whether they knew basic measurements of pretrial justice functioning in their jurisdictions including rates of pretrial release, court appearance, failure to appear, and detention without bail.

SECTION 2 TAKEAWAYS

- + Fifty-four percent of counties reported having a bond schedule, which does not fulfill the legal requirement of individualized conditions of release.
- + Thirty-eight percent of low-density counties did not conduct a first appearance hearing within 24 hours, along with 27 percent of medium-density and 25 percent of high-density counties.

Use of Bond Schedules and Delegated Release

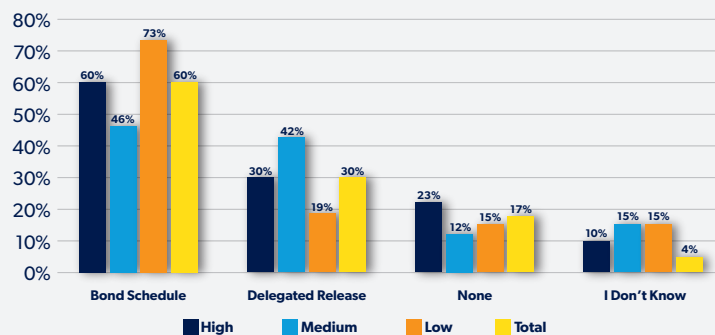
A bond schedule (also called a bail schedule) is a list of charges with corresponding pre-determined amounts of money that an individual can pay to law enforcement, the court or through a bondsman in order to be released. Bond schedules fail to

comply with the requirement that conditions of release, including monetary conditions, must be individualized to the person in question, in order to achieve the goals of reasonably assuring court appearance and public safety.

In the *2019 Scan*, 54 percent of counties stated they had a bond schedule (including 55 percent of high-density, 42 percent of medium-density and 65 percent of low-density counties) and 40 percent stated that they did not. Five percent did not know. Of those counties that had a bond schedule, ten percent said the

Figure 2.1: Options After Booking/Before First Appearance by Population Density

Once booked, what options are available for individuals to be released before first appearance in your county? (Check all that apply) N=92



SEE APPENDIX D FOR LARGER FIGURE

bond schedule was utilized at arrest, 47 percent indicated it was used at booking, and 27 percent used the bond schedule at initial appearance.

In 60 percent of counties, people could bond out according to the bond schedule; in 17 percent of counties, there were no options for release before a first appearance. For almost one-third (30 percent) of counties, after booking but before first appearance, delegated release by non-judicial staff was another option. (See **Figure 2.1**) Pretrial services staff accounted for half (50 percent) of non-judicial officers with delegated release authority.

First Appearance

For the purposes of the survey, first appearance was defined as the court proceeding where an individual is first brought before a judicial officer to learn the charge(s) that have been filed, be advised of his/her rights, and have bail set. The same proceeding might be known as a bail hearing, an initial appearance, or an arraignment.

LOOKING BACK TEN YEARS: BOND SCHEDULES

In the *2009 Scan of Counties*, 64 percent of respondents, representing the nation's 150 most populous counties, indicated that they used bond schedules.⁹ In 2019, 55 percent of high-density counties reported that they had bond schedules, indicating that this money-based practice is still widespread.

The *Scan* asked how frequently first appearances were held, and how long people were held before first appearance. Out of 91 responses, 43 counties (47 percent) held first appearances every weekday, and 38 counties (42 percent) held first appearances every day of the week. Just seven percent of responding counties met the ABA standard of holding first appearance within six hours of a person's arrest; an additional 64 percent (totaling 71 percent) held first appearances within 24 hours. Looking at first appearance times by population density, 75 percent of high-density counties reported holding first appearances within 24 hours; 73 percent of medium-density and 62 percent of low-density population reported likewise.

Key Measurements: Pretrial Release, Court Appearance, Failure to Appear, Release and Detention through Money Bond

Pretrial system functioning can be measured by the number of people who are released before trial, and how successful they are in terms of returning to court with no new arrests. The questions in this section demonstrated that many counties still lack the most basic information on how many people are released, the means by which they attain release, and how they perform while on release. Conversely, many counties also lacked information on who was detained without bail, and who was detained because they could not post money bail. (See Table 2.1)

■ PRETRIAL RELEASE POPULATION

When asked if their county knew the average daily population of people who are on pretrial release, calculated as the number of people on pretrial release each day of the year, divided by the number of days in the year, 35 percent said yes, 29 percent said no, and 36 percent did not know. With regard to the pretrial release rate, calculated as the number of people who are charged and released (by any means), divided by the total number of people charged during the pretrial period, 34 percent of responding counties knew their pretrial release rate, 30 percent said their county did not know the rate, and 36 percent were unsure. In some instances, the pretrial detention rate, which is the inverse of the pretrial release rate and measures the percentage of people detained pretrial for any reason, was tracked by counties.

**LOOKING BACK
TEN YEARS:
FREQUENCY OF FIRST
APPEARANCE HEARINGS**

In the 2009 *Survey of Counties*, 47 percent of counties, representing the nation's 150 most populous counties, reported having initial pretrial release determination hearings 24 hours day, seven days a week.¹⁰ In 2019, based on a broader array of population densities, 42 percent reported having first appearance hearing every day of the week.

Table 2.1: Availability of Data

Survey Question	Counties Responding Yes	Counties Responding No	Counties Responding Don't Know
Does your county know the average daily population of individuals who are on pretrial release? (N=92)	35%	29%	36%
Does your county know its pretrial release rate ? (N=92)	34%	30%	36%
Does your County know the percentage of arrested individuals who bond out through the money bond schedule before first appearance? (N=92)	28%	35%	37%
The court appearance rate can be defined as the percentage of individuals released pretrial who make all court appearances or the percentage of all pretrial court hearings where the defendant appeared - does your County know its court appearance rate by either of these measures? (Check all that apply) (N=92)	28% - Yes, we know the percentage of pretrial individuals who make all court appearances. 25% - Yes, we know the percentage of all court hearings where the defendant appeared.	37%	26%
The Failure To Appear (FTA) Rate can be defined as the percentage of individuals released pretrial who failed to appear for at least one court hearing or the percentage of all pretrial court hearings where the defendant failed to appear - does your County know its failure to appear rate by either of these measures? (Check all that apply) (N=92)	36% - Yes, we know the percentage of pretrial individuals who failed to appear for at least one court hearing. 23% - Yes, we know the percentage of all pretrial court hearings where the defendant failed to appear.	36%	24%

■ THE IMPACT OF BAIL BONDS ON RELEASE

A lower percentage of counties tracked the number of people who bonded out through a bond schedule before first appearance. Twenty-eight percent of counties knew the rate; 72 percent of counties either did not collect the data (35 percent) or did not know whether the data were collected (37 percent).

■ COURT APPEARANCE

Reasonably assuring court appearance was the original goal of the bail system. Under medieval English legal processes, “a system was created in which the defendant was required to find a surety who would provide a pledge to guarantee both the appearance of the accused in court and payment of the bot [compensation of grievance] upon conviction.”¹² More often than not, in the *2019 Scan*, responding jurisdictions did not know their court appearance rate, or its inverse, the failure to appear rate; either the rates were unknown or the respondents were not sure whether the data were collected.

**REASONABLY
ASSURING COURT
APPEARANCE WAS
THE ORIGINAL GOAL
OF THE BAIL SYSTEM.**

The court appearance rate is defined in the *Scan* as the percentage of individuals who are released pretrial who make all court appearances, or alternatively, the percentage of all pretrial court hearings where the accused person appeared. Twenty-eight percent of counties knew the percentage of people with pretrial status who made all court appearances; 25 percent knew the percentage of all court hearings where the accused person appeared. On average, 63 percent of counties did not know either measure (37 percent) or whether they were collected (26 percent).

The failure to appear (FTA) rate is defined in the *Scan* as the percentage of people who are released pretrial who failed to appear for at least one court hearing, or alternatively, the percentage of all pretrial court hearings where the person failed to appear. More counties were familiar with this measurement than court appearance; 36 percent knew the percentage of people with pretrial status who failed to appear for at least one court hearing, and 23 percent knew the percentage of court hearings where the person failed to appear. Additionally, 60 percent of counties did not know either measure (36 percent) or whether it was collected (24 percent).

🕒 LOOKING BACK TEN YEARS:

PEOPLE SUPERVISED BY PRETRIAL PROGRAMS

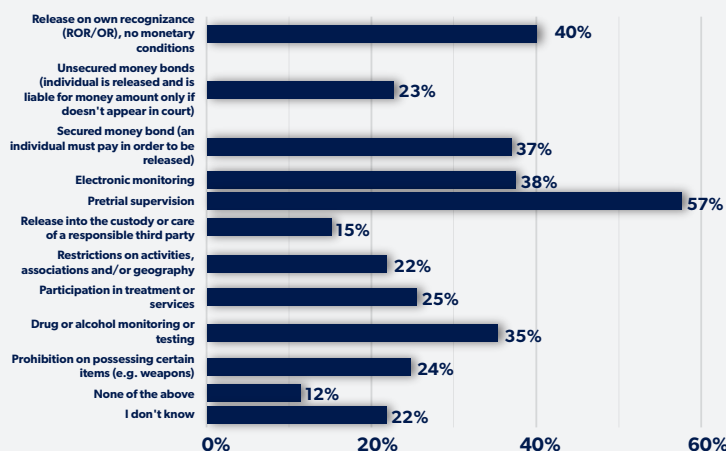
In the *2009 Survey of Pretrial Services Programs*, 68 percent of programs were able to provide information on how many people they supervised annually. Fifty percent reported having 1,000 or fewer people under supervision annually. In the *2019 Scan*, 57 percent of counties knew how many people were under pretrial supervision.¹³

■ CONDITIONS OF RELEASE

People may be released pending the resolution of their case under a variety of circumstances. On one end of the spectrum, a person may be released with only the requirement to return to court with no new arrests; at the other end of the spectrum, a person may need to meet financial obligations and/or agree to treatment or testing requirements in order to be released. Under the law, a person with pretrial status should be released with the least restrictive conditions, individualized to his or her circumstances, which reasonably assure return to court and public safety.

Figure 2.2: Availability of Data on Release Conditions

Does your county have data on how many individuals receive each of the following types of release conditions? (Check all that apply) N=92



SEE APPENDIX D FOR LARGER FIGURE

Twelve percent of counties did not track how many people were assigned any of the identified conditions of release; an additional 22 percent did not know whether the information was tracked. Fifty-seven percent of counties knew how many people were under pretrial supervision; 35 to 40 percent knew how many people were assigned release on recognizance, secured bond, electronic monitoring or drug/alcohol testing. In some cases, of course, these conditions or services may not be available. As a general rule, counties with higher population densities were more likely to indicate that they had data on various services and conditions. (See **Figure 2.2**)

LOOKING BACK TEN YEARS: CALCULATING COURT APPEARANCE RATE

In 2009, 68 percent of pretrial services programs reported that they tracked the failure to appear rate; the preferred term is now court appearance rate, since most people do return to court. Of those that kept these statistics in 2009, 79 percent said they kept that information only for people under supervision of the program.¹¹

SECTION 3

USE OF PRETRIAL ASSESSMENT TOOLS

Assessment has always been part of the pretrial justice process, whether it is an assessment made by a judicial officer based on personal and professional experience and beliefs, or an assessment made by a judicial officer informed by a tool made with local data, or more recently, a tool generated from large quantities of nationwide data. Pretrial assessment tools may play a role, when properly implemented and monitored, in demonstrating that greater numbers of people can be released before trial with fewer conditions and no negative impact on court appearance or public safety.

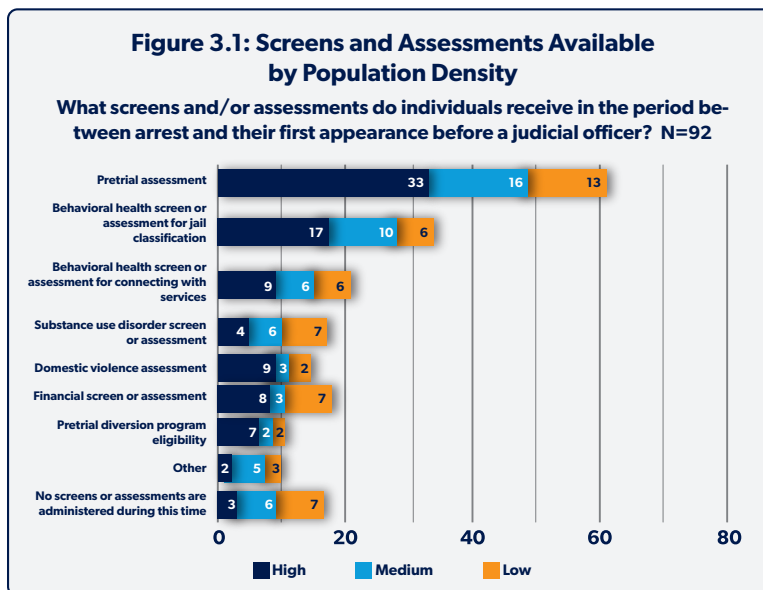
The use of pretrial assessment tools is on the rise; in 2017, approximately one in four people in the United States lived in a jurisdiction that employed a validated evidence-based pretrial assessment tool, up from one in 10 people in 2013.¹⁴ That was largely due to a few states and densely-populated regions adopting them over that time period. This *Scan* affirms that trend. When asked about what screens or assessment tools are used after arrest but before first appearance, only 17 percent indicated that no screens or assessment tools are used at all.

SECTION 3 TAKEAWAYS

- + Eighty-three percent of counties reported having screens or pretrial assessment tools between arrest and first appearance (the *Scan* noted that the term "pretrial risk assessment" may also be used by jurisdictions); they are used most heavily by high-density counties.
- + Nearly three out of four (73 percent) counties using pretrial assessment tools were using them to make the "release or detain" decision, and half of counties said they used pretrial assessment tool results to set bond amounts. Both of these practices are a misuse of pretrial assessment tools, which are designed to identify conditions of release.

Types of Assessment Tools or Screens Used Before Trial

The *Scan* asked respondents to identify all assessment tools or screens employed after arrest but before first appearance. Pretrial assessment tools were the most widely used assessment; two out of three counties used these assessments, with a heavier percentage of high-density population areas using them (80 percent) than medium-density (64 percent) or low-density counties (50 percent). Behavioral health screens for the purpose of jail classification were used by approximately one-third (36 percent) of counties; a lower percentage, 23 percent, used behavioral screenings for the purposes of connecting individuals with services. Other types of assessment tools or screens included: substance use; domestic violence; financial or indigency; or eligibility for pretrial diversion. (See Figure 3.1)



SEE APPENDIX D FOR LARGER FIGURE

Characteristics of Pretrial Assessment Tool Usage

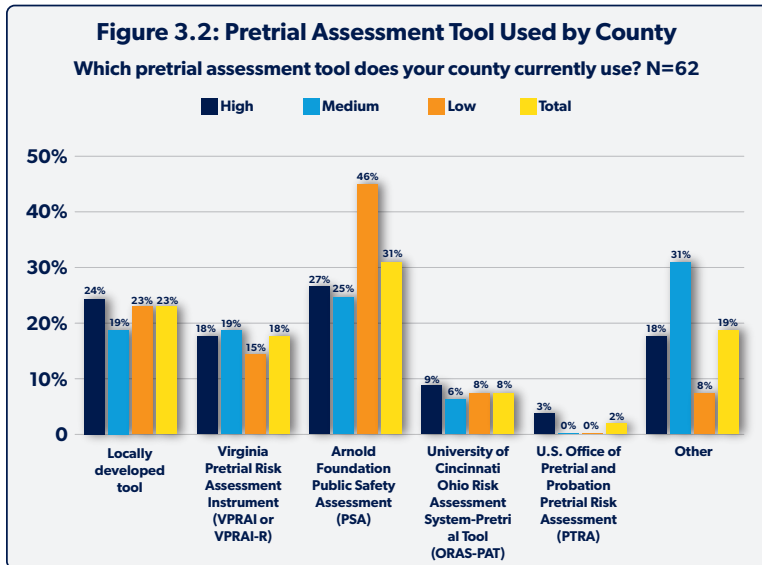
The *Scan* sought to gain more information on how pretrial assessment tools are used. The responses revealed how long pretrial assessment tools have been in use, what assessment tools are being used, and who receives the assessment tools.

■ LENGTH OF PRETRIAL ASSESSMENT TOOL USAGE

Forty percent of counties have been using pretrial assessment tools for 10 years or more. Thirteen percent of counties have been using pretrial assessment tools for 6-10 years. Of the remaining counties using assessments, 24 percent had been using assessments for 2-5 years, and 23 percent had been using assessments for less than 2 years.

■ TYPE OF PRETRIAL ASSESSMENT TOOL USED

Among counties using pretrial assessment tools, 23 percent were using a locally-developed assessment tool. The Virginia Pretrial Risk Assessment Instrument (VPRAI or VPRAI-R) made up an additional 18 percent of users, and 19 percent



SEE APPENDIX D FOR LARGER FIGURE

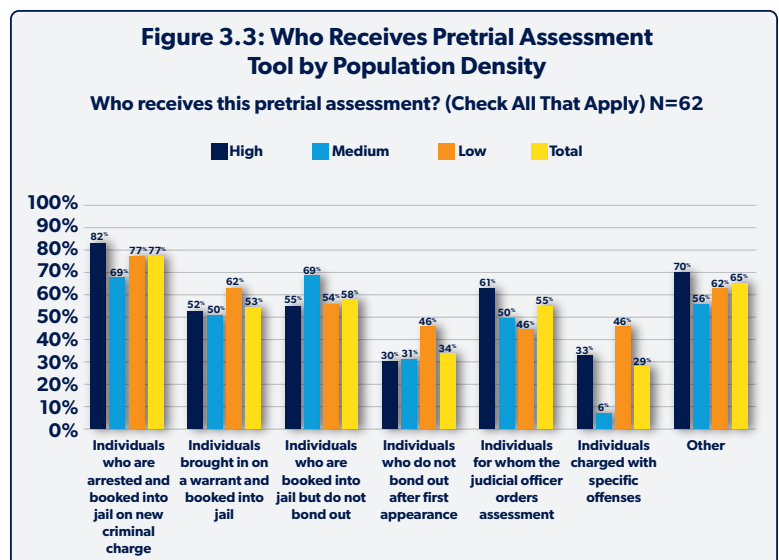
When asked to indicate all instances where pretrial assessment tools are used, 77 percent of counties who used pretrial assessment tools stated that people who are arrested and booked into the jail on a new criminal charge receive a pretrial assessment, including 82 percent of high-density, 69 percent of medium-density and 77 percent of low-density counties. Fifty-eight percent of counties who use pretrial assessment tools indicated that people who are booked into jail but do not bond out receive pretrial assessments, including 55 percent of high-density, 69 percent of medium-density, and 54 percent of low-density counties. Fifty-five percent stated that pretrial assessment tools are administered to people based on the order of a judicial officer. Less frequent forms of usage include people who do not bond out after first appearance (34 percent), or people charged with specific offenses (e.g., only felonies or only misdemeanors) (29 percent). (See Figure 3.3)

Thirty-five percent of counties who use pretrial assessment tools said people who are arrested on a failure-to-appear warrant "always" receive a pretrial assessment and an almost equal percentage (34 percent) indicated that people arrested on a failure-to-appear warrant "never" receive

of counties indicated "other." The Public Safety Assessment (PSA) was in 31 percent of counties using tools.¹⁵ The PSA accounted for almost half of the assessment usage by low-density counties (46 percent), 25 percent of medium-density counties and 27 percent of high-density counties. (See Figure 3.2)

■ WHEN ARE PEOPLE ASSESSED USING A TOOL?

The question of who is assessed using a tool, and at what intercept point, revealed a great deal of variability among respondents.



SEE APPENDIX D FOR LARGER FIGURE

LOOKING BACK TEN YEARS:

SETTING MONETARY BAIL IN COMBINATION WITH SUPERVISION CONDITIONS

The *2009 Survey of Pretrial Services Programs* asked about programs recommending money bond in combination with supervision of non-financial conditions. The Survey found that 28 percent of programs reported that they sometimes make recommendations for combining monetary bail with non-financial conditions. The *2019 Scan* shows that in half of the counties surveyed, pretrial assessments are being used to set monetary bail, showing that money and likelihood of success on pretrial release are still being conflated.¹⁶

a pretrial assessment. Out of responding counties, low-density counties were more likely to administer a pretrial assessment tool for a person arrested on a failure-to-appear warrant; 54 percent conducted assessments, compared to 27 percent of high-density and 38 percent of medium-density counties. With regard to people arrested for a new crime while on pretrial release, 63 percent of counties who used pretrial assessment tools stated that they "always" conducted pretrial assessments, three percent said they "never" conducted assessments and 31 percent said they "sometimes" conducted assessments.

Who Conducts Assessments and Shares Results?

Seventy-six percent of counties that use pretrial assessment tools stated that the assessments are conducted by pretrial services staff (79 percent of high-density, 75 percent of medium-density, and 69 percent of low-density). An additional 11 percent indicated that assessments were conducted by jail staff, and an additional 11 percent indicated "other." Seventy-one percent of counties who use pretrial assessment tools stated that assessment required an interview with the arrested individual.

Ninety-four percent of counties that use pretrial assessment tools stated that a copy of the assessment tool results is given to the judicial officer presiding at first appearance. Eighty-one percent said that a copy of the results is given to the prosecutor, including 79 percent of high-density, 75 percent of medium-density and 92 percent of low-density counties; a slightly lower percentage (74 percent) stated that defense attorneys also receive a copy, including 67 percent of high-density, 75 percent of medium density and 92 percent of low-density counties.

Following Best Practices for Pretrial Assessment Tool Usage

Employing a pretrial assessment tool requires front-end preparation, as well as ongoing quality assurance and periodic validation. It also requires explicit decisions about who will be assessed and how the results will

EMPLOYING A PRETRIAL ASSESSMENT TOOL REQUIRES FRONT-END PREPARATION, AS WELL AS ONGOING QUALITY ASSURANCE AND PERIODIC VALIDATION.

be interpreted, which should reflect local values around pretrial liberty, the use of detention, public safety and community-based supports. Without appropriate training on how assessment tools are constructed and designed to be used, and what their limitations are, assessment tools can be ignored or misused. Because the Supreme Court in *United States v. Salerno* (481 U.S. 739 (1987)) said the right to pretrial liberty should be protected through a hearing with full due process protections, including the right to counsel, pretrial assessment tools should not be used on their own to make the "release or detain" decision. Instead, current thinking promotes two uses. The research used to create or locally validate a tool provides an overall analysis of the arrested population's court appearance and public safety rates and can contribute to a dialogue about local "risk tolerance." The second use is to guide the judicial officers on what least restrictive non-monetary supervision conditions could be applied. An assessment tool or its attendant release matrix may state that "no release" is recommended, but that recommendation should then be interrogated through a separate hearing. The ABA Criminal Justice Standards Relating to Pretrial Release, Section V, assume pretrial detention occurs only after a hearing with due process protections and that detention only occurs when the court determines by "clear and convincing evidence that no condition or combination of conditions will reasonably ensure the appearance of the person as required, and the safety of any other person and the community."¹⁷

Validation is a process necessary to ensure that the tool continues to be effective at assessing rates of court appearance and public safety for that locality. Data collection and sharing is an essential component of assessment use; this process creates transparency and allows users to identify problems and progress.

■ USING OUTCOMES FROM ASSESSMENT TOOLS TO GUIDE CONDITIONS OF RELEASE

Fifty-three percent of counties used the results from assessment tools to guide non-monetary conditions

LOOKING BACK TEN YEARS: VALIDATION

The 2009 *Survey of Pretrial Services Programs* revealed that 48 percent of counties had never validated their instruments, a figure that was unchanged from the 2001 survey. However, from 2001 to 2009, there was a slight increase in counties who had conducted validation studies in the previous 1-3 years. Thirty-one percent of programs had conducted a study in that time frame, compared to 22 percent of programs in 2001.¹⁸ In the current *Scan*, out of counties that reported having pretrial assessment tools, 45 percent reported having a validation study, 39 percent reported having no validation study, and 16 percent did not know whether such a study had been conducted.

As part of the validation process, jurisdictions may elect to test additional factors to see if they should be added to the assessment tool; adding factors without validating them compromises the integrity of the assessment. More often than not, the county did not test additional factors to see whether they should be added to the assessment tool; 11 jurisdictions with validation studies had tested additional factors, but 17 either did not conduct such tests or did not know whether they had.

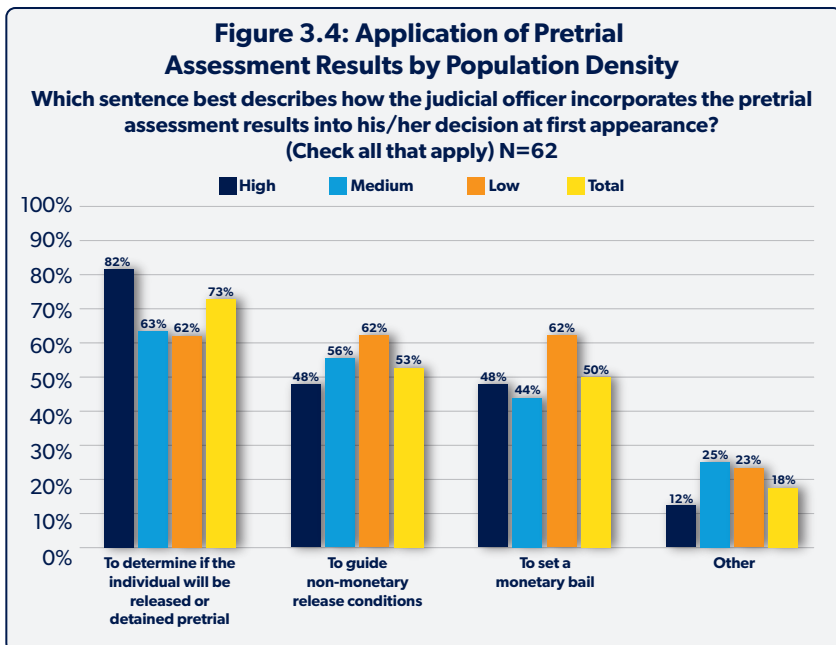
of release, which is the recommended application of assessment. However, the *Scan* also revealed that nearly three out of four respondents (73 percent) who had pretrial assessment tools used them to make the "release or detain" decision, including 82 percent of high-density, 63 percent of medium-density, and 62 percent of low-density population counties. Pretrial assessment tools should not be used for this purpose. As noted earlier, detention should remain the judge's decision, be considered only for detention-eligible

charges, and occur after a separate hearing with full due process protections. Half of counties using pretrial assessment tools used them to set a monetary bond, confounding a person's access to money and their likelihood of returning to court with no new arrests. (See **Figure 3.4**) These two examples of the misuse of pretrial assessment tools are alarming and could make jurisdictions vulnerable to legal challenges.

In some locations, decision making frameworks (DMFs) or release matrices are used to create greater consistency of release conditions for people with similar charges and assessment scores. Ideally, DMFs are created in tandem with implementation of a pretrial assessment tool. However, the use of DMFs was not widespread. Thirty-one counties (34 percent of respondents) indicated that they had DMFs, 51 counties stated that they did not have DMFs (55 percent) and 10 (11 percent) did not know. The use of DMFs was higher in more densely populated counties; 41 percent of high-density, 36 percent of medium-density, and 19 percent of low-density counties had these frameworks.

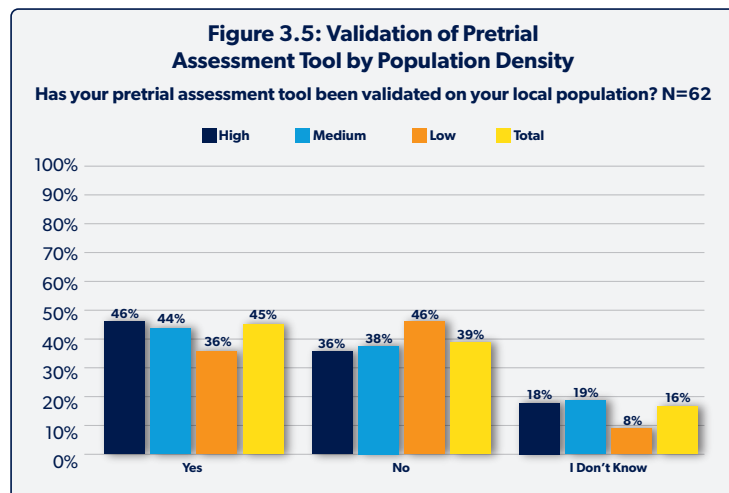
■ VALIDATION

Validation is the process of testing a pretrial assessment tool for continued accuracy; the Public Safety Assessment, for example, calls for a validation every 2-3 years. Twenty-eight counties (45 percent), out of the 62 that use pretrial



SEE APPENDIX D FOR LARGER FIGURE

assessment tools, indicated that their tool had been validated for accuracy regarding court appearance and public safety. Seven counties had the validation conducted within the last three years, and nine had conducted a study within the last year. Twelve counties either had validation studies that were more than three years old or did not know how old the study was. Sixty-one percent of counties with validation studies, or 17 out of 28, did test for gender, racial and ethnic bias in their assessments. (See Figure 3.5)



SEE APPENDIX D FOR LARGER FIGURE

Key Measurements: Distribution of Levels and Concurrence Rates

Pretrial assessment tools can provide a larger picture of how the system is functioning as a whole if that information is gathered and analyzed. Looking at how many people fall into each pretrial assessment level or category, for example, can help jurisdictions identify how to distribute resources or determine whether people are being over-supervised. Based on the review of many development and validation studies, most people coming into contact with the court should be identified as needing minimal conditions of release, i.e., return to court with no new arrests, and very few should be identified as needing extremely intensive resources or supervision. The *Scan* revealed that 44 out of 62 counties (71 percent) with pretrial assessments gathered this distribution data; 13 percent did not; and 16 percent did not know. (See Table 3.1)

Assessment tools and DMFs provide information to judges to make better decisions, and the ultimate responsibility for setting conditions or detaining someone lies with judges. That said, looking at the concurrence rate of judges - how frequently they agree with the recommendations - can be informative.¹⁹ Sixteen out of 31 counties (52 percent) with DMFs stated that they looked at concurrence rates; 8 out of 31 (26 percent) said they did not look at concurrence rates and 7 did not know (22 percent). (See Table 3.1)

Table 3.1: Availability of Data on Pretrial Assessment

Among Counties with Pretrial Assessments Tools	Yes	No/Don't Know
Does your County have data on how many persons fall into each pretrial assessment level or category? (N=62)	71%	29%
Does your County track how often there is a match between the recommendation of the decision making framework or matrix and a judge's release decision? Some jurisdictions call this a concurrence rate. (N=31)	52%	48%

SECTION 4

FIRST APPEARANCE AND DETENTION HEARINGS

The decision to detain someone before the resolution of a case is one with wide-ranging and long-lasting consequences. The overwhelming number of cases in criminal court are resolved by plea bargains, and detention creates enormous pressure to accept deals while hindering a person's ability to meet with a defense attorney.²⁰ People who are detained are more likely than their similarly-situated peers to be sentenced to jail or prison, and for longer periods of time.²¹ Pretrial detention is also associated with higher rates of future arrest, lower employment rates, and lower incomes.²²

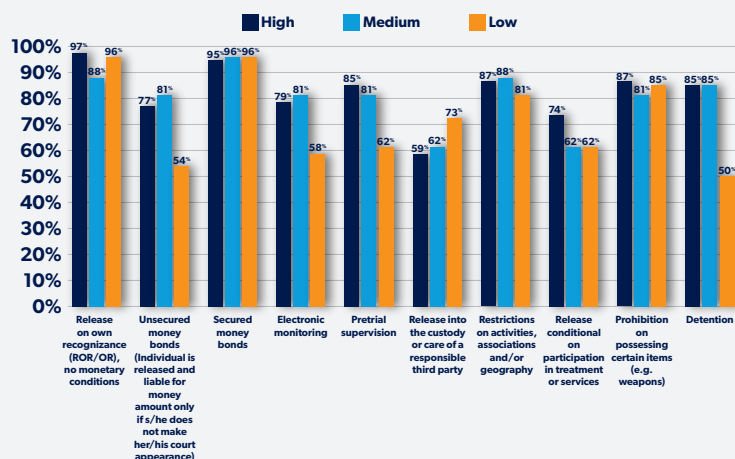
To better understand how jurisdictions decide whether a person should be released or detained before trial, the *Scan* asked about first appearance practices, defined as the court proceeding where an individual is first brought before a judicial officer to have bail set. This proceeding may also be known as a bail hearing, initial appearance or arraignment. The *Scan* also asked about detention hearings, defined as a separate, later hearing before a judicial officer with full due process protections, to decide if the person will be held without bail or released with or without conditions.

SECTION 4 TAKEAWAYS

- + Even though secured money bond was the most commonly available option for judicial officers at first appearance hearings, in almost half of all counties (47 percent), an inquiry into ability to pay a money bond was not made, including 57 percent of high-density, 28 percent of medium-density, and 52 percent of low-density counties.
- + More than half of counties (53 percent) stated that victims were notified of all court dates throughout the case, and an equal percentage indicated that victims were notified when the accused person is released.
- + More than half of all counties (53 percent) said that people did not meet with their defense attorney before first appearance.
- + After an initial decision to detain without bail at first appearance, only 56 percent of counties indicated that there was a follow-up detention hearing.
- + Only 26 percent of counties had a process to automatically review the case of anyone detained due to an inability to afford monetary bond.

Figure 4.1: Options Available at First Appearance

What options are available to the judicial officer at first appearance?
(Check all that apply) N=91



SEE APPENDIX D FOR LARGER FIGURE

Characteristics of First Appearance

When asked to identify all the ways that first appearance is conducted, 75 percent of counties indicated in-person in the courtroom, 65 percent indicated via video, and 15 percent said in-person in jail. Only low-density counties noted that they also had first appearance conducted by telephone; 19 percent of low-density counties stated they had this option.

In addition to prosecutors and defense counsel, 96 percent of counties said the accused person was present at first appearance,

40 percent said pretrial staff was present, 25 percent said the victim or a victim advocate was present (if applicable), and ten percent said the arresting officer was present. Thirteen percent said "other" was present, and four percent said behavioral health providers were present.

Secured money bonds were the most commonly-available option to judicial officers at first appearance (96 percent of counties); followed by release on recognizance (95 percent); restrictions on activities or geographical areas (86 percent); prohibitions on owning certain items (85 percent); pretrial supervision (77 percent); detention (75 percent); electronic monitoring (74 percent); unsecured money bonds (71 percent); and release into the custody or care of a third party (64 percent). The graph above (**Figure 4.1**) breaks out these options by population density.

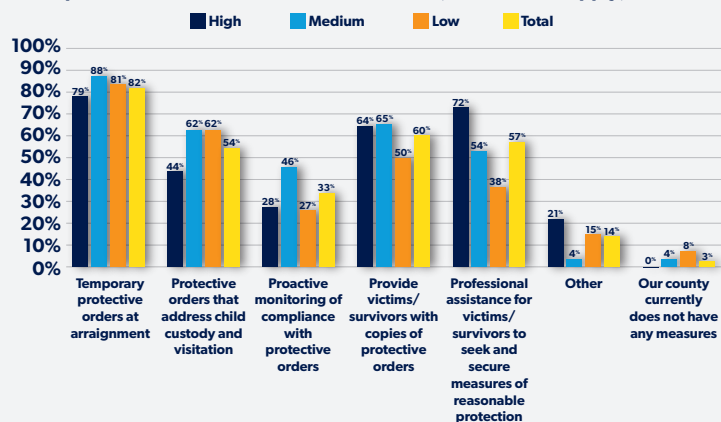
Despite secured money bond being the most commonly available option, in almost half of all counties (47 percent), an inquiry into ability to pay a money bond was not made, including 57 percent of high-density, 28 percent of medium-

LOOKING BACK TEN YEARS: VICTIM NOTIFICATION

At the time of the *2009 Survey of Counties*, involving the nation's most populous counties, 31 percent said victims were notified of the initial pretrial release hearing date in all cases, and 78 percent said the victims were notified when the accused person is released in some circumstances.²³ In the *2019 Scan* involving a broader array of population densities, 53 percent said that victims were notified of all court dates (42 percent said victims were notified of first appearance) and 53 percent said victims were notified when the accused is released.

Figure 4.2: Protective Measures for Victims by Population Density

Which of the following measures does your county offer to provide reasonable protection to crime victims and survivors? (Check all that apply) N=91



SEE APPENDIX D FOR LARGER FIGURE

density, and 52 percent of low-density counties. Seventeen percent said that the judge asks the individual what he or she can pay; 16 percent said the person submits financial information on an application or form; and 20 percent indicated "other."

■ VICTIM NOTIFICATION AND PROTECTIONS

When asked to identify all victim notification processes in place during the pretrial phase, more than half of counties (53 percent) stated that victims were notified of all court dates throughout the

defendant's case, and an equal percentage indicated that victims were notified when the accused person is released. Forty-two percent of counties said victims were notified of first appearance, 40 percent said that victims were notified of the status of the accused person, and 36 percent said that victims were notified of the location of the accused person.

As for reasonable protections offered to crime victims and survivors during the pretrial phase of a case, the following protections were made available. While temporary protective orders were available in 82 percent of the counties surveyed, the ability to enforce those protective orders by providing copies of the orders to victims/survivors (60 percent), professional assistance (57 percent) or proactive monitoring (33 percent) were not as frequently available. (See Figure 4.2)

Profile of Prosecutors and Defense Attorneys at First Appearance

When asked who was present at first appearance hearings, 76 percent of counties stated that the prosecutor was present, 45 percent stated that a public defender or appointed counsel (for all people with charges) was present, and 27 percent stated that a public defender or appointed counsel

LOOKING BACK

TEN YEARS:

PRESENCE OF PROSECUTORS AND DEFENSE ATTORNEYS

In the *2009 Scan of Counties*, 66 percent of counties said prosecutors were present at the initial pretrial release hearing, and 63 percent said defense attorneys were present. In 2019, the gap between the presence of prosecutors and defense attorneys was wider; 76 percent of counties said prosecutors were present at first appearance and 45 percent said a public defender or appointed counsel was present.

was present only for people in custody. Given that the U.S. criminal justice system is an adversarial one, predicated on two opposing but equal forces, this inequality between rates of prosecutor and defender appearance is concerning; multiple studies have shown that early access to counsel is associated with increased rates of pretrial release.²⁴ More than half of all counties (53 percent) said that people did not meet with their defense attorney before first appearance.

Prosecutors and defense attorneys who are both experienced in pretrial motions and prepared for each case can also make a difference at this critical stage by understanding the meaning of assessments, being more familiar with the nuances of the law, and having knowledge of programs that can support people on release. For both prosecutors and defense attorneys, a plurality of counties noted that the attorney reviewing the case and assessment outcomes

had 6-10 years of experience, although many counties did not know. When asked whether prosecutorial staff review cases and assessment results before first appearance, 51 percent of counties said yes, 31 percent said no, and 19 percent did not know. When asked the same question about appointed or defense attorneys, 42 percent said yes, 40 percent said no, and 19 percent did not know.

LOOKING BACK

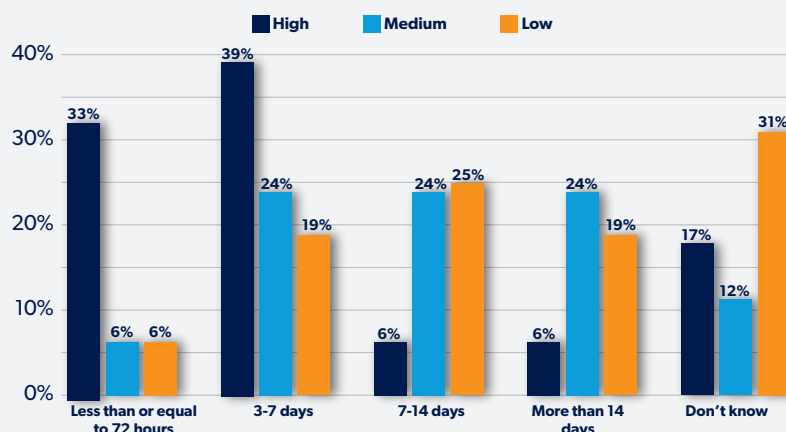
TEN YEARS:

BAIL REVIEWS BY PRETRIAL SERVICES PROGRAMS

In 2009, 39 percent of pretrial services programs reported that they conducted regular reviews of people who were detained, and an additional 16 percent said they conducted such reviews under special circumstances.²⁵ Responses from counties in 2019 suggest that automatic reviews of people who are detained could become a more widespread practice; approximately 1 out of 4 counties (26 percent) had an automatic review process.

Figure 4.3: Average Time Between First Appearance and Detention Hearings by Population Density

What is the average time between the first appearance hearing and the detention hearing? (Check all that apply) N=91



SEE APPENDIX D FOR LARGER FIGURE

LOOKING BACK TEN YEARS:

TRACKING REARREST RATE

Thirty-seven percent of pretrial services programs in the 2009 Survey reported that they tracked what was then termed “rearrest rates” (the term public safety rate is preferred now). Sixty-three percent did not.²⁶ Of the programs that did calculate this rate, 87 percent only made calculations based on people supervised by the program.

Detention Hearings

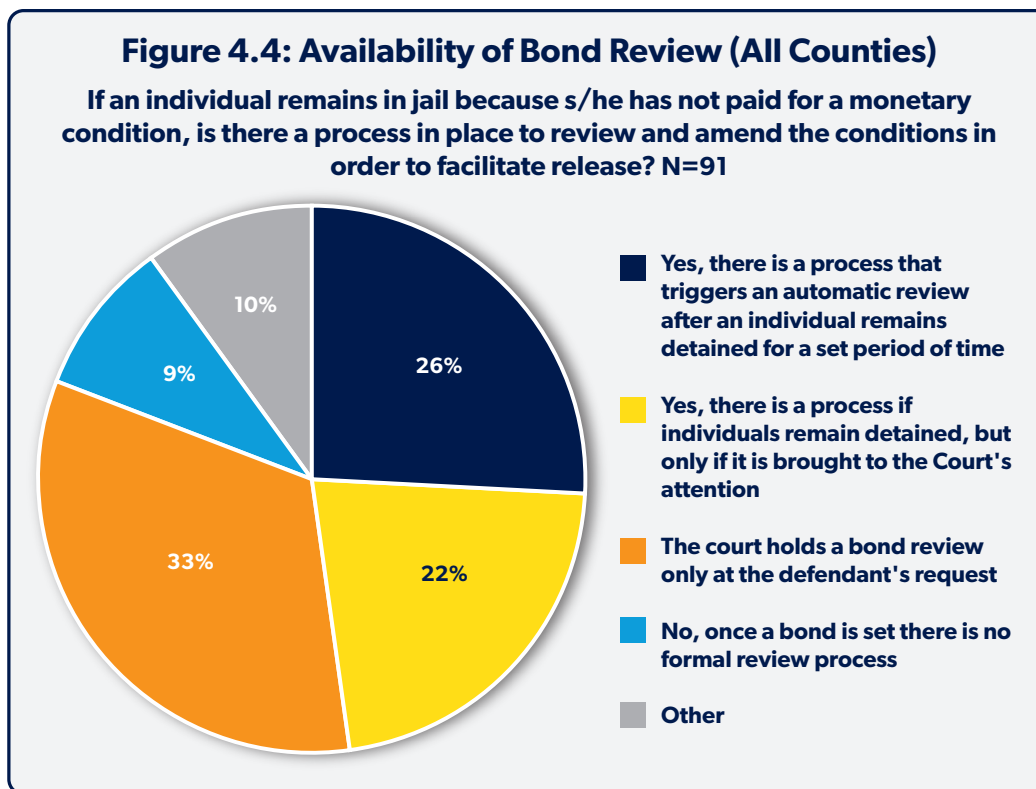
Although a person may be initially detained at first appearance, the decision of whether to hold someone for the entirety of their case or release them (with or without conditions) should take place at a detention hearing before a judicial officer, with a prosecutor and defense attorney present and full due process protections in force. Following a decision of initial detention without bail at first appearance, only 56 percent of counties indicated that there was a follow-up detention hearing with the above-described conditions. Of those counties with separate follow-up detention hearings, 92 percent stated that both prosecutors and defense attorneys were present at the detention hearings; 35 percent of counties said victims or victims’ advocates were present; 22 percent of counties said pretrial staff were present.

The average amount of time between first appearance and the detention hearing varied quite a bit. Sixteen percent of counties with follow-up detention hearings indicated that the hearings took place within 72 hours; another 16 percent indicated that the hearings took place more than 72 hours but less than 5 days after the first appearance; 12 percent said the hearings occurred more than 5 days but less than 7 days after the first appearance; and 38 percent said the detention hearing took place more than seven days after the first appearance. The remaining 20 percent of counties indicated they did not know the average time between the first appearance and the detention hearing.

In this case, population densities were associated with differences in timing. Sixty-one percent of high-density counties with follow-up detention hearings had those hearings within five days of the first appearance, but only 24 percent of medium-density and six percent of low-density indicated likewise.

Bond Review Hearings

The detention of people due solely to an inability to afford bond is a concern of many communities. The *Scan* inquired whether there was a process in place to review and amend conditions in order to facilitate release, a process also known as a bond review. Twenty-six percent of counties had a process for an automatic review after a person has been detained for a set amount of time; 22 percent allowed for such a review, but only if the case was brought to the court’s attention; 33 percent said the



court held a bond review only at the person's request; nine percent had no formal review process; and ten percent indicated "other." (See Figure 4.4)

Key Measurements: Public Safety Rate

The public safety rate, defined as the percentage of people who are not charged with a new offense while on pretrial release, is a basic measurement of pretrial justice functioning. The public safety rate reflects the extent to which people can be released with a reasonable expectation that there will be no impact on public safety.

When asked to identify all the ways that a county knew its public safety rate, twenty-two percent of counties indicated that they knew the percentage of people who did not have a new case filed on them during the pretrial period, and 29 percent indicated that they knew the percentage of people who did not have a new arrest during the pretrial period. Sixty-eight percent did not know their public safety rate.

SECTION 5

SUPERVISION AND SUPPORT SERVICES

In a majority of cases, people can be released on two conditions—return to court as scheduled with no new arrests—and they will meet these conditions. Beyond the fact that most people who are released will be successful, little is known about the impact that supervision has on pretrial success. Studies have found that court date reminders are an effective and cost-effective way to support people in returning to court. In another smaller set of cases, additional services may be desirable to reasonably assure that people will return to court with no new arrests.²⁷

In this section, the *Scan* sought to understand the extent to which pretrial supports and services are used, how they function administratively, and whether court date reminder systems are in place.

Additionally, this section examined how jurisdictions handle technical violations, which are violations of supervision conditions such as office check-ins, drug tests, geographic or contact restrictions. Having a proportional response to technical violations is necessary to honoring pretrial liberty and still meeting the goals of community safety and court appearance.

SECTION 5 TAKEAWAYS

- + Eighty-five percent of counties reported having some form of pretrial services in place, including virtually all (97 percent) high-density counties.
- + Nearly three out of four counties (74 percent) had court reminder systems.
- + When asked what steps are taken when a person fails to appear in court, 69 percent stated that an arrest warrant was issued immediately.

Pretrial Services and Supervision

Eighty-five percent of counties reported having some form of pretrial services in place, with nearly all high-density counties reporting affirmatively (97 percent), followed by medium-density (81 percent) and low-density (69 percent) counties. Administratively, these services were located in a wide variety of agencies; most commonly, counties reported that pretrial services were located within probation (26 percent) or a county department or office (21 percent). Other locales included the sheriff or jail (12 percent); court department or office (12 percent); state department or office (12 percent); non-profit agency (10 percent); or, for-profit agency (3 percent).

Counties that had pretrial services were then asked to identify the duties of the agency or department. Looking at the results in broad terms, the most common responses involved the enforcement of court orders; 92 percent stated that they supervised people, 90 percent said they monitored pretrial conditions, and 87 percent stated they responded to violations of pretrial conditions. (See Table 5.1)

Table 5.1: Duties of Pretrial Services (For counties that have pretrial services) N=91

Among Counties with Pretrial Assessments Tools	High	Medium	Low	Total
Administer pretrial assessment	82%	90%	72%	82%
Make recommendations to court on release	79%	71%	72%	75%
Supervise pretrial clients	92%	95%	89%	92%
Provide referrals for treatment and other services	76%	90%	44%	73%
Monitor pretrial conditions	87%	100%	83%	90%
Reward clients for adherence to pretrial conditions	24%	43%	22%	29%
Respond to violations of pretrial conditions	87%	90%	83%	87%
Provide court with updates on pretrial clients	76%	86%	67%	77%
Call/text/email clients about court dates	79%	62%	50%	68%
Make house visits	24%	24%	17%	22%
Administer surveillance technologies	71%	81%	61%	71%
Administer drug testing	74%	81%	78%	77%
Other	76%	90%	44%	73%

LOOKING BACK TEN YEARS:

INFORMATION PROVIDED TO COURTS

In the 2009 *Scan of Practice*, 85 percent of respondents, representing the nation's 150 largest counties, reported having a presence that could provide services such as assessment or providing information to courts, but cautioned that "76 percent of pretrial programs had at least one category of defendants who were excluded from the screening process. Thus, the finding that some screening is available in 85 percent of the counties in the survey does not imply that all defendants in these counties are screened."

To a slightly lesser extent, pretrial services involved providing information to the courts. Among those counties with pretrial services, 82 percent of counties stated that pretrial services administered the pretrial assessment tool; 77 percent provided the court with updates on people under their supervision; and 75 percent made release recommendations to the court. Seventy-seven percent administered drug testing, and 71 percent administered surveillance technologies, like electronic monitoring. Seventy-three percent provided referrals for treatment and other services. (See Table 5.1)

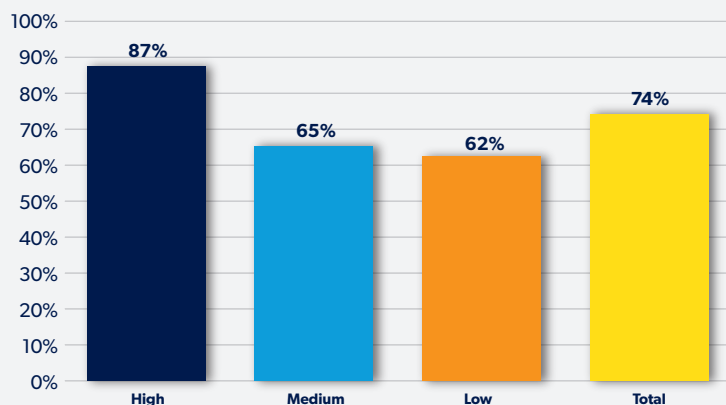
As far as more direct contact was concerned, 68 percent contacted people via phone, text or email about court dates, 29 percent rewarded people for adherence to pretrial release conditions, and 22 percent made house visits. (See Table 5.1)

Most counties (70 percent) with pretrial services reported that they had differentiated levels of supervision, while the remaining respondents reported that they did not (23 percent) or did not know whether they did (6 percent). As far as pretrial fees were concerned, 24 percent of counties with pretrial services reported that people did not pay for any release conditions. Fifty-five percent reported that they charged for surveillance technologies, 47 percent charged for treatment or other mandatory services, 38 percent charged for drug testing and 23 percent charged pretrial supervision fees. Fifty-seven percent reported charging for "other" services. Because cases are not resolved at the pretrial phase, requiring payment for the right to pretrial liberty recreates many of the same problems as secured money bond.

Court Reminders

Studies have shown that court date reminder systems result in improved court appearance rates, without creating financial hardships. Nearly three out of four counties (74 percent) reported

Figure 5.1: Percentage of Counties with Some Form of Court Date Notification by Population Density N=91



having some type of court date reminder system; 26 percent had no such systems. (See Figure 5.1) As for the type of court date reminder received, the most popular type of reminder was a text message (31 percent), followed by a call from a live caller (22 percent); an automated call (18 percent); a postcard (15 percent); and an email (13 percent).

Thirty-six percent of counties with court reminder systems reported that all people with a pending case received a court date reminder, and an additional ten percent said that the system was for people who opted in. Forty-two percent reported that only people under pretrial supervision received court date reminders and 12 percent indicated an "other" category of people received court date reminders.

Failure to Appear and Technical Violations

While many people associate a failure to appear in court with an attempt to flee the jurisdiction, the much more likely scenario is that a person has failed to appear due to personal, organizational or transportation problems. A study in New York City found that failure to appear rates dropped by up to 26 percent after implementing behaviorally-informed alterations to summons forms and pre- and post-court text messages, such as clearly required actions, dates and locations.²⁹

When asked what steps are taken when a person fails to appear in court, 69 percent stated that a failure to appear warrant was issued immediately. Thirty-three percent issued an FTA warrant after a grace period; 36 percent attempted to contact the person by phone, and 19 percent said a text message or email is sent to the person. Eighteen percent took other steps, and three percent took no steps at all.

Key Measurement: Technical Violations, Readmissions and Pretrial Success Rates

While some jurisdictions are seeking to address mass incarceration by reducing the number of people who enter the system initially, having financial conditions or imposing detention for technical violations also contributes to increasing jail populations. For the purposes of the survey, the readmission rate was defined as the percentage of people who were booked into jail, released pretrial but then subsequently taken back to jail for a technical violation. When asked if they tracked

LOOKING BACK TEN YEARS:

PRETRIAL SERVICES FUNCTIONS

In the *2009 Scan of Pretrial Services Programs*, 90 percent of responding programs noted that drug testing was available as a tool for monitoring, and 58 percent had GPS monitoring available.²⁸ In the *2019 Scan*, among counties with pretrial services, 77 percent reported administering drug testing, and 71 percent reported administering surveillance technologies, a term including GPS monitoring.

LOOKING BACK

TEN YEARS:

RESPONSE TO FAILURES TO APPEAR

In the *2009 Survey of Counties*, 68 percent of counties who made follow-up contact with people who fail to appear in court said they made a telephone call after a failure to appear; 36 percent sent a letter; and 16 percent made a home visit.³⁰ In a reflection of changing technologies, the *2019 Scan* revealed that 36 percent of counties said they made phone calls to people and 19 percent said they sent an email or text message.

data on technical violations, 41 percent of counties said they did track such data, 43 percent said they did not, and 16 percent did not know. When asked if the county knew its readmission rate, 70 percent (26 out of 37) of the counties that tracked technical violation data said that they did; 16 percent (6 out of 37) did not; and 14 percent (5 out of 37) did not know whether they tracked this data. (See **Table 5.2**)

The pretrial success rate is the percentage of released individuals who make all court appearances and are not arrested or charged with a new offense throughout the adjudication of their case. Almost half (46 percent) of counties knew their pretrial success rate; 34 percent responded that their county did not know their pretrial success rate and 20 percent did not know if their County knew its pretrial success rate or not. (See **Table 5.2**)

Table 5.2: Tracking Data on Technical Violations, Readmission Rates on Technical Violations, and Pretrial Success Rates

	Yes	No/Don't Know
Does your county track data on technical violations? (N=91)	41%	59%
(Among counties that track technical violations data) Does your county know its readmission rate for technical violations? (N=37)	70%	30%
Does your county know its pretrial success rate? (N=91)	46%	54%

SECTION 6

COMMUNITY

The consequences of a decision in a courtroom extend beyond the person subject to the decision. Families, neighbors, victims, employers and others are affected. When the decisions made by system actors are out of sync with the values of the community, distrust and discontent arise. The purpose of this section of the *Scan* is to explore the ways in which the community is involved in defining the values and policies of the criminal justice system.

SECTION 6 TAKEAWAYS

- + Almost half (49 percent) of counties reported that they did not have a dedicated stakeholder group to review and discuss pretrial policies and outcomes; 44 percent did not have a criminal justice coordinating or policy committee to work with system leaders and policymakers to engage in strategic, collaborative planning.
- + Significant numbers of counties (40 percent or more) did not offer training to judges, prosecutors or defense attorneys on key pretrial issues such as the state legal framework for pretrial justice, pretrial assessment tools or alternatives to money bond.

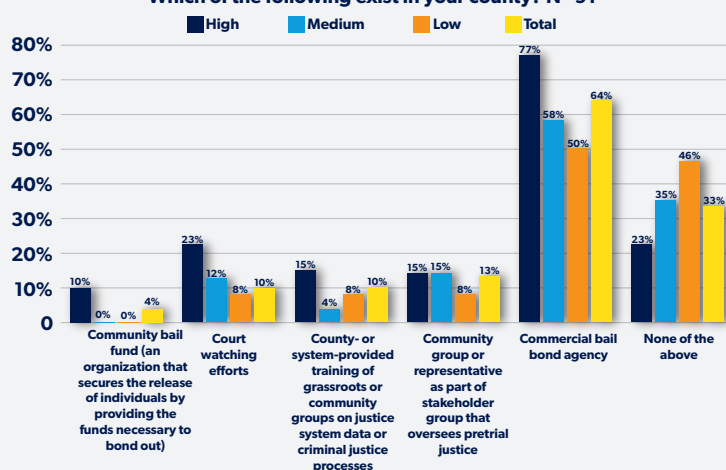
Community-Based and Coordinated Entities

Fifteen percent of counties report having court watching efforts (23 percent of high-density, 12 percent of medium-density and eight percent of low-density counties); 13 percent reported having community represented on a stakeholder

group overseeing pretrial justice. One in ten counties reported having county- or system-provided training for community or grassroots groups on justice system data or criminal justice processes. Four percent — all high-density counties — reported having a community bail fund. One in three counties had none of these entities. Commercial bail bond agencies are also a reality in many communities across the country, and frequently oppose local or state-level system change efforts. In 64 percent of the counties surveyed, a commercial bail bond agency exists (**See Figure 6.1**).

Figure 6.1: Presence of Community Entities by Population Density

Which of the following exist in your county? N=91



SEE APPENDIX D FOR LARGER FIGURE

Thirty-six percent of counties reported having a dedicated stakeholder group that reviews and discusses pretrial policies and outcomes; 49 percent reported having no such group and 14 percent did not know. A slightly larger proportion (44 percent) had a criminal justice coordinating or policy committee, which is a body of elected and appointed policymakers and justice system leaders that engage in collaborative, strategic planning; 40 percent did not, and 16 percent did not know whether they did or not.

Table 6.1: Availability of Training and Education (All Counties) N=91

	Legal and evidence-based practices or best practices	Alternatives to money bond	State legal framework for pretrial justice	Effects of pretrial incarceration	Pretrial assessment tools and/or decision making frameworks	Community engagement	Diversity, equity or implicit bias
Judicial officers presiding at first appearance	59%	45%	48%	40%	57%	14%	31%
Defense attorneys	57%	47%	47%	47%	56%	16%	24%
Prosecutors	56%	40%	47%	36%	54%	21%	24%

Training and Education

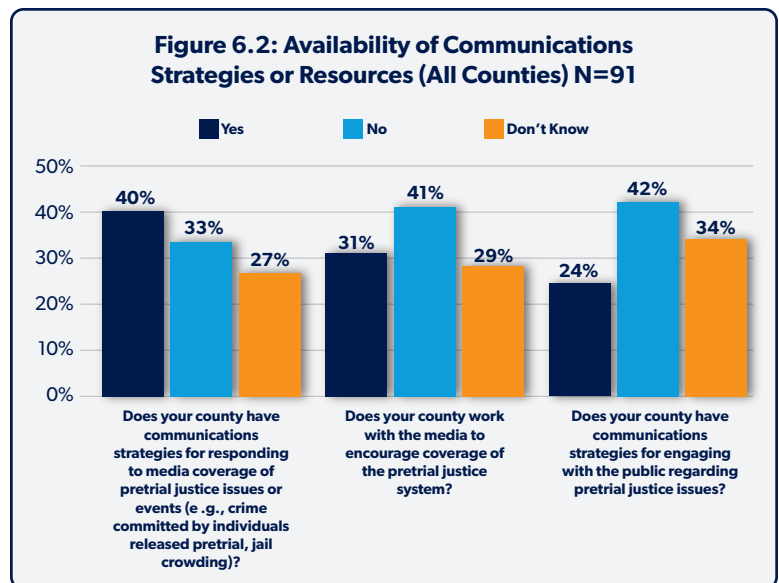
Training and education introduce and reinforce values, encourage best practices, and convey information around pretrial justice decision making. However, such training does not appear to be widely available. When asked about the training provided to key system actors, jurisdictions indicated that the following types of training were provided to the following stakeholders (see Table 6.1).

As for other system actors or community members receiving training on pretrial justice, 54 percent of counties said law enforcement received training; 36 percent behavioral health or other public health representatives received training; 36 percent said victim advocates received training; 31 percent said county administration received training; 26 percent said county commissioners received training; 20 percent said local elected officials received training; 14 percent said community groups received training. Forty-two percent said "other" groups received training. The availability of training, of course, does not reflect the extent to which it is attended or applied.

Communications Resources

As jurisdictions change policies and manage high-profile cases, a communications strategy is a critical component of change. Effective communications educate the community around key issues and help manage expectations when crises occur.

Counties were unlikely to have such strategies in place. Forty percent of counties said they had a communications strategy for responding to media coverage of pretrial issues or events; 33 percent said they did not, and 27 percent were not sure. (See Figure 6.2) Thirty-one percent said their county worked with the media to encourage coverage of the pretrial justice system; 41 percent said they did not, and 29 percent were not sure. (See Figure 6.2) Nearly one in four (24 percent) counties said they had a communications strategy for engaging the public around pretrial justice issues; 42 percent said they did not, and 34 percent were not sure. (See Figure 6.2)



SEE APPENDIX D FOR LARGER FIGURE

Conclusion

The landscape of pretrial justice has changed rapidly in the last ten years, and we expect that the next ten years will bring continued evolution. The argument for changing the paradigm of pretrial justice no longer needs to be made in America's most populous counties; what is needed now is a focus on how. Rural — low-density — jurisdictions continue to struggle with both rising jail populations and

THE ARGUMENT FOR CHANGING THE PARADIGM OF PRETRIAL JUSTICE NO LONGER NEEDS TO BE MADE IN AMERICA'S MOST POPULOUS COUNTIES; WHAT IS NEEDED NOW IS A FOCUS ON HOW.

falling resources. How will jurisdictions move away from money-based detention, deflect people with fundamental needs, and raise the well-being of their communities? How will jurisdictions come to embrace the fundamental notion that pretrial liberty should be the norm, and pretrial detention the “carefully limited exception”? How will we center equity in these efforts, and ensure that those most impacted by state and local policies lead efforts to define success?

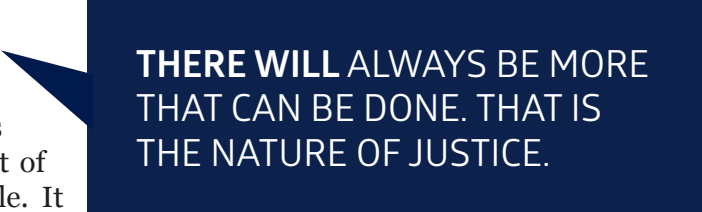
It's important to keep in mind that practices to end money-based detention and mass incarceration can take place before a bail decision is even made. New Jersey's expanded use of complaint-summons, a form of citation release, is a significant driver of the state's 44 percent drop in jail populations.³¹ Mecklenburg County, North Carolina, implemented the Public Safety Assessment, but studies show that increased rates of release occurred at the decision point before the PSA is completed, and these changes took place without negative impacts on public safety or court appearance.³²

Harm reduction strategies have been promising in addressing long-term behavioral health needs. A law enforcement-based diversion program based in Seattle that focuses on referring people to services ranging from transitional housing to drug treatment reported that its participants were 58 percent less likely to be arrested after participating in the program.³³ All of these examples suggest that no single tool or policy will be effective, and in many cases, such as supervision, we need to acknowledge areas where more research is needed.

The issues around mishandling of pretrial assessment tools also advises some caution in viewing pretrial assessment tools as a type of “magic bullet” for system dysfunction, or out of context of the entire pretrial justice system. If implemented without first interrogating the purpose of policing and jails in your community, or your stance on reducing racial and ethnic disparity, tools may at best be ignored and at worst result in increased levels of incarceration.

There are many paths to honoring the presumption of liberty as well as the safety of victims, witnesses and the community. No matter what course jurisdictions take, we urge the collection, analysis and sharing of data that both measure how the pretrial justice system is functioning and reflect the values of an inclusive definition of community. Counties need a baseline measure of where they are, and then benchmarks showing them when they are moving in the right direction, and where they need to make course corrections. This *Scan* included sections on Key Measurements, so that readers could see what measurements we consider important and necessary. All measurements should, at a minimum, include breakouts by race and ethnicity.

What this decade's *Scan* shows is that change is difficult, slow and uneven. It shows that heightened attention doesn't always translate into equitable, well-designed policies and rigorously-implemented practices. The *Scan* shows that our desire for technical fixes to cultural issues remains strong, despite the fact they do not work. All that being said, this march for pretrial justice, as a component of criminal justice, reform is still worthwhile. It requires the mindset of a journey packed with persistence and adjustment, rather than the drive to a destination. There will always be more that can be done. That is the nature of justice.

A dark blue rectangular callout box with a white triangular pointer on its left side, pointing towards the text in the paragraph above.

**THERE WILL ALWAYS BE MORE
THAT CAN BE DONE. THAT IS
THE NATURE OF JUSTICE.**

Appendix A

List of Counties and Cities

High Density

Bristol County, RI
 Bullitt County, KY
 Canyon County, ID
 Carroll County, MD
 Carver County, MN
 Catawba County, NC
 Charleston County, SC
 Colonial Heights City, VA
 Dallas County, TX
 Delaware County, OH
 Douglas County, NE
 El Paso County, CO
 Greene County, MO
 Guilford County, NC
 Kent County, MI
 King County, WA
 Kings County, NY
 Lake County, IL
 Lucas County, OH
 Manassas Park City, VA
 Manatee County, FL
 Marion County, IN
 Monroe County, NY
 New Castle County, DE
 Nueces County, TX
 Oakland County, MI
 Ohio County, WV
 Oldham County, KY
 Pennington County, SD
 Philadelphia County, PA
 Rowan County, NC
 San Joaquin County, CA
 Santa Clara County, CA
 Union County, NC

Ventura County, CA
 Volusia County, FL
 Warren County, NJ
 Westchester County, NY
 Yuma County, AZ

Medium Density

Ashtabula County, OH
 Cache County, UT
 Campbell County, TN
 Carroll County, KY
 Carroll County, NH
 Cass County, ND
 Chippewa County, WI
 Cole County, MO
 Culpeper County, VA
 Faulkner County, AR
 Jefferson County, WV
 Kanawha County, WV
 Kauai County, HI
 Knox County, KY
 Litchfield County, CT
 Macon County, IL
 Merrimack County, NH
 Miller County, AR
 Putnam County, FL
 Sagadahoc County, ME
 Santa Fe County, NM
 Washington County, AR
 Washington County, VT
 Windham County, CT
 Yamhill County, OR
 Yates County, NY
Low Density
 Apache County, AZ

Beaver County, UT
Carbon County, MT
Cass County, MN
Chaves County, NM
Chicot County, AR
Daggett County, UT
Gallatin County, MT
Garfield County, CO
Garfield County, UT
Grand County, UT
Hickman County, KY
Huerfano County, CO
Jo Daviess County, IL

Klamath County, OR
La Paz County, AZ
Lake County, OR
Lewis and Clark County, MT
Marion County, IA
Medina County, TX
Oglethorpe County, GA
Oxford County, ME
San Juan County, CO
Taliaferro County, GA
Treasure County, MT
Wilson County, KS

Appendix B

Complete Methodology

The sampling employed for the *2019 Scan of Pretrial Practices* utilized a mixture of random and convenience sampling, including counties in all 50 states and from a full range of population densities. (The jurisdictions in this *Scan* also include two independent cities, but for the purposes of this report, will be included in the collective term counties.) The data source for the initial random sample was the 2010 U.S. Census. Locations in Puerto Rico as well as geographies not included in the 2010 Population Census Data were excluded, resulting in a dataset comprised of 3,140 counties. The 3,140 counties were sorted into three density strata: less than 50 people per square mile; between 50 and 249.99 people per square mile; and greater than or equal to 250 people per square mile. Using a random sample generator, 50 counties were selected from each stratum, a total of 150 counties. Twelve states were unrepresented in the initial random sample and several states were overrepresented. Twelve counties in overrepresented states were replaced with a random sample of twelve counties from states without representation, while ensuring the quantity in each stratum remained at 50 counties.

Once primary contacts in each of the 150 counties being sampled were identified, an email with a link and instructions to complete the Initial Screening was sent. The Initial Screening (Appendix C) was a short form that included background on the project, a short video, and a link to a recent press release on the *Scan of Pretrial Practices*. Out of the 150 initial counties, 46 responded.

The remaining 104 counties were randomly replaced, while ensuring 50 counties in the sample from each stratum. The above mentioned process of identifying a primary contact and making multiple attempts to request participation was repeated with counties that replaced the initial 104 counties and did not respond or declined to participate in the *Scan of Pretrial Practices*. Sixteen additional counties responded, bringing the total number of counties participating to 62.

Every attempt possible was made to ensure all 50 states would be represented in the survey. Additional counties were identified through convenience sampling as well as oversampling states without representation.

The existing networks of the Pretrial Justice Institute as well the networks of our partner organizations also helped facilitate outreach. Partner organizations included the National Association of Counties, National Center for State Courts, the Association for Prosecuting Attorneys, the International Association of Chiefs of

Police, the National Association of Criminal Defense Lawyers, National Association for Court Management, and the National Center for Victims of Crime. All of these organizations assisted by endorsing the survey, encouraging participation, and/or providing contacts through their membership. In addition, 36 counties agreed to participate based on recommendations provided by partner organizations and jurisdictions, and nine counties were secured through outreach with partners. A total of 107 Initial Screenings were completed.

The *Scan of Pretrial Practices* was released in early March 2019 to the Primary Contacts, who were given three weeks to complete the survey. The software platform allowed for the survey to be broken up into multiple sections. The Primary Contact was not expected to be able to answer the entire survey, but could delegate sections to colleagues or community members who had better knowledge of specific topics. However, the Primary Contact had responsibility for ensuring their county completed the survey by the deadline. Delegates were only able to complete the section(s) assigned to them by the Primary Contact, but could see their county's responses for all sections.

In order to support the respondents, PJI sent multiple email reminders and created a resource page that included an orientation video, frequently asked questions³⁴, a PDF of the survey, and an email template for Primary Contacts to inform delegates that they had been assigned a section of the survey. In addition, PJI staff facilitated four virtual "Office Hour" sessions for individuals completing the survey. The final response was 91 completed surveys, with a distribution as shown in table M.1. An additional 5 counties completed portions of the survey and their responses are also included in the results below. Percentages may not add to 100 percent because of incomplete response rates, "check all that apply," or rounding.

Appendix C

Figures and Graphs

Section 1: Reducing the Number of People Involved in the Justice System

Figure 1.1: Available Alternatives to Arrest by Population Density

Please choose the alternatives to arrest that are available, by statute or local policy, to law enforcement in your county. Please include options that may not be available countywide, but are available in at least one agency.
(Check all that apply) N=96

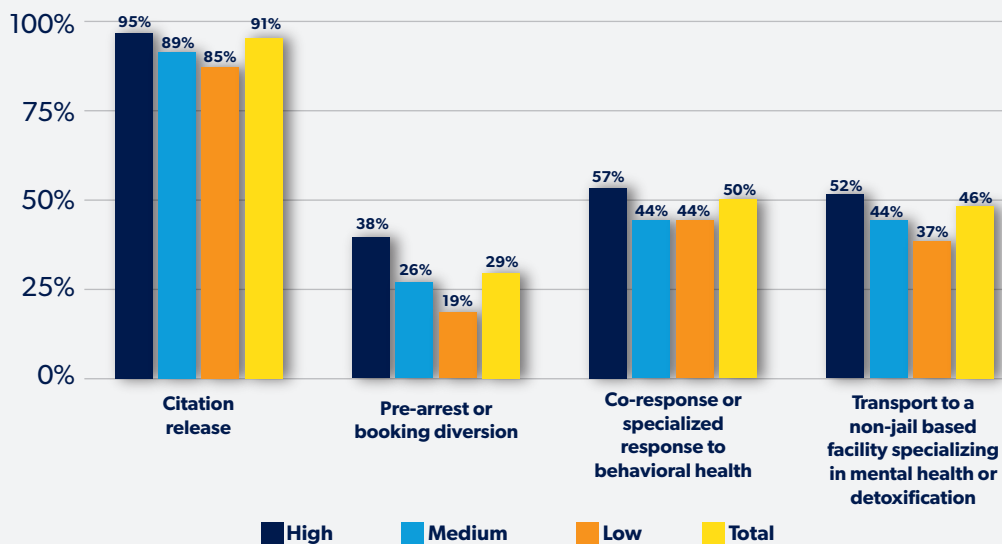


Figure 1.2: Use of Citation Release (All Counties)

Which statement best describes the use of citation release throughout your county? Please only consider misdemeanor and felony criminal offenses. N=87

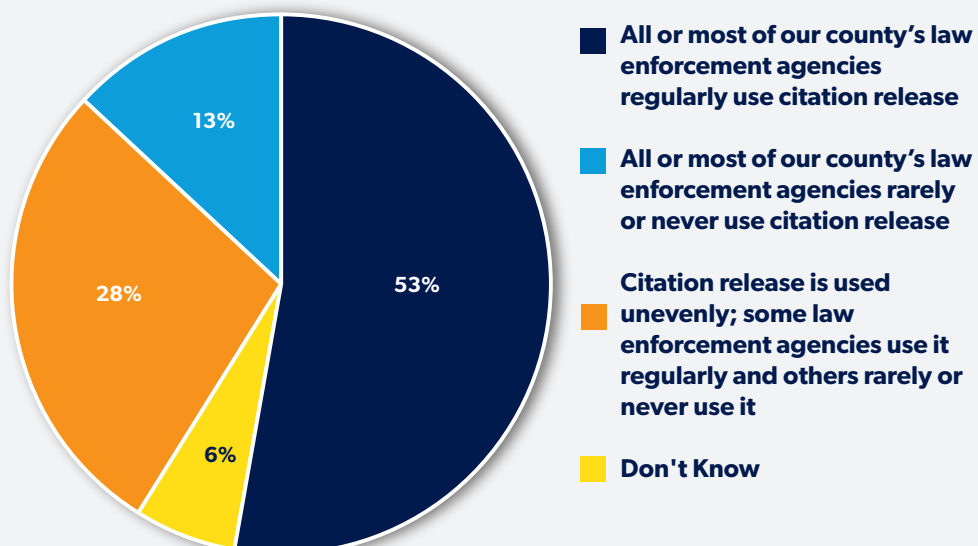


Figure 1.3: Types of Pre-arrest/Pre-booking Diversion Programs by Population Density

Which statement(s) best describes the pre-arrest/pre-booking diversion program(s) operating in your county? (Check all that apply) N=28

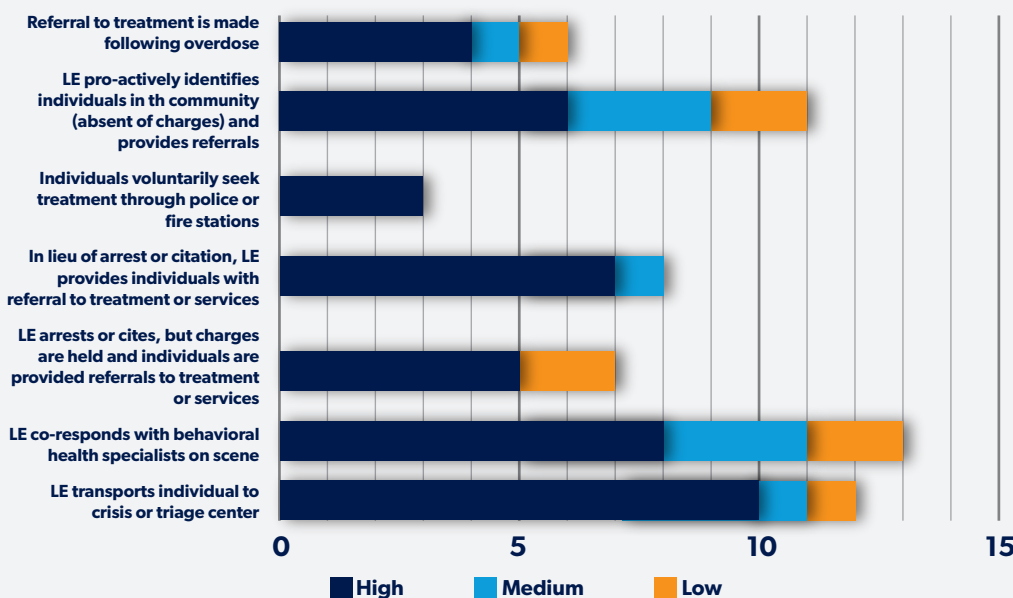
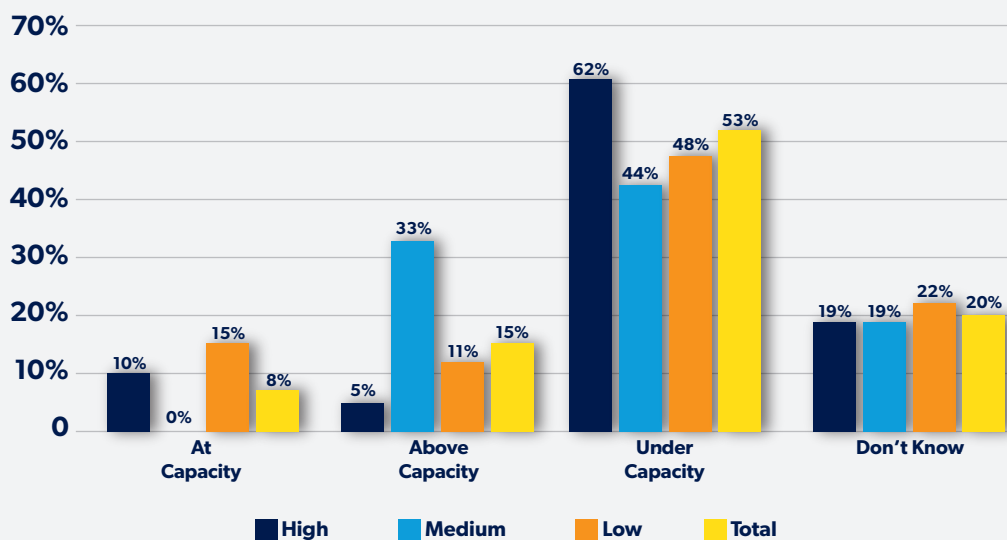
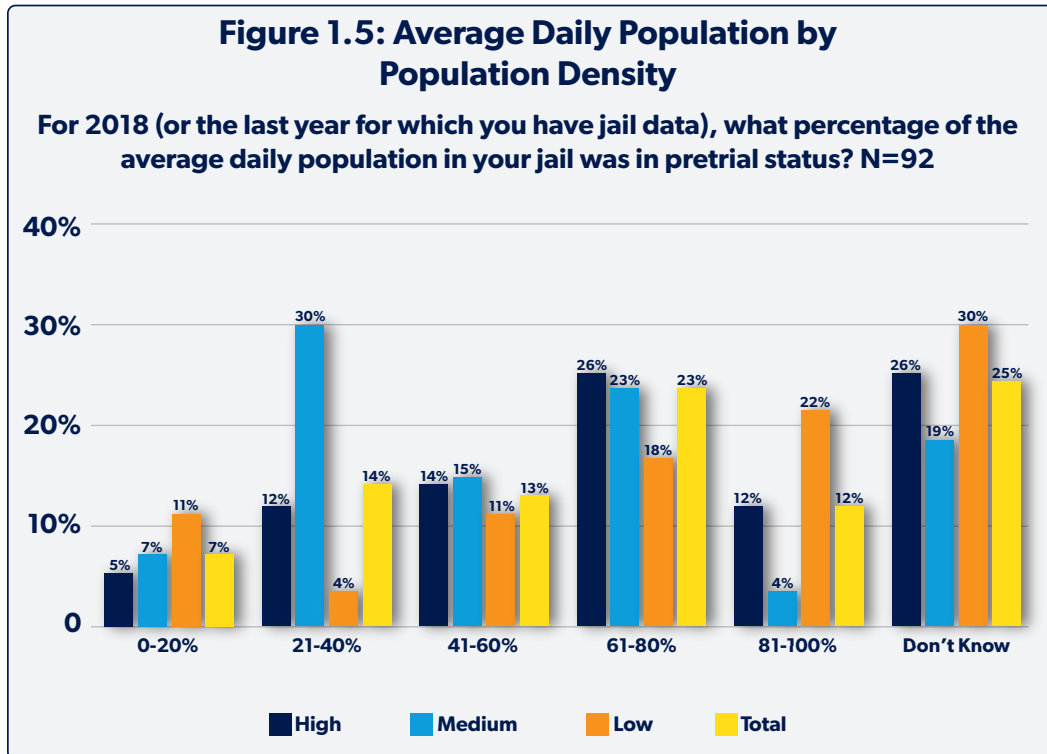


Figure 1.4: Jail Population Relative to Operational Capacity by Population Density

For 2018 (or the last year for which you have jail data), what was the average daily population of your jail? N=92





Section 2: Process and Conditions After Booking

Figure 2.1: Options After Booking/Before First Appearance by Population Density

Once booked, what options are available for individuals to be released before first appearance in your county? (Check all that apply) N=92

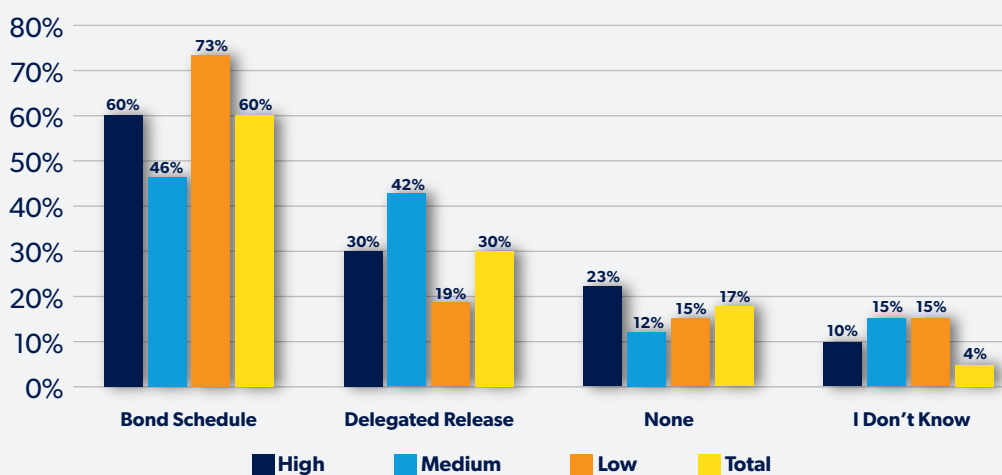
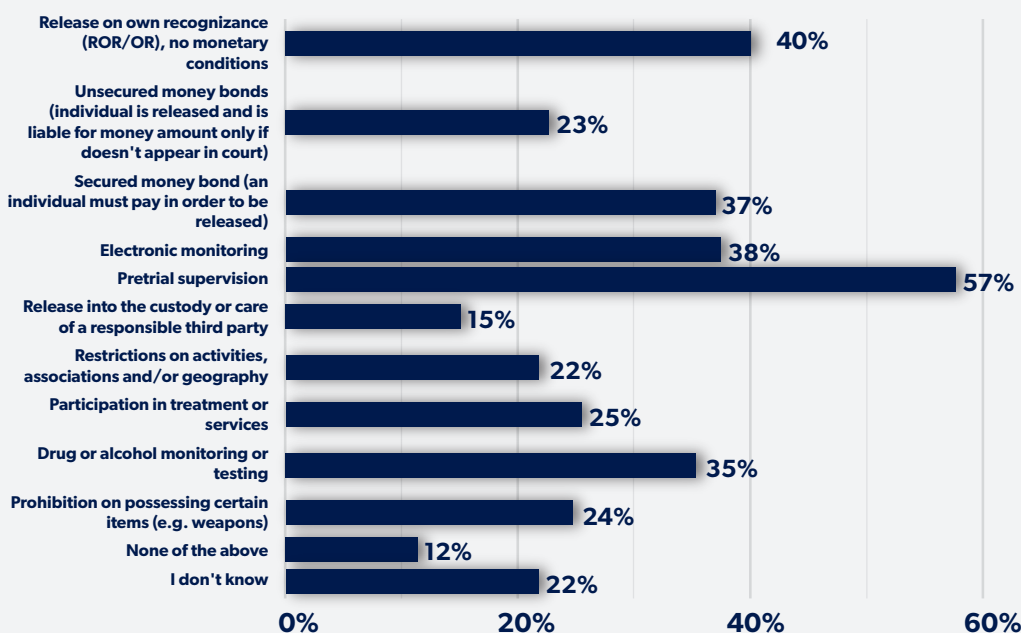


Figure 2.2: Availability of Data on Release Conditions

Does your county have data on how many individuals receive each of the following types of release conditions? (Check all that apply) N=92



Section 3: Use of Pretrial Assessment Tools

Figure 3.1: Screens and Assessments Available by Population Density

What screens and/or assessments do individuals receive in the period between arrest and their first appearance before a judicial officer? N=92

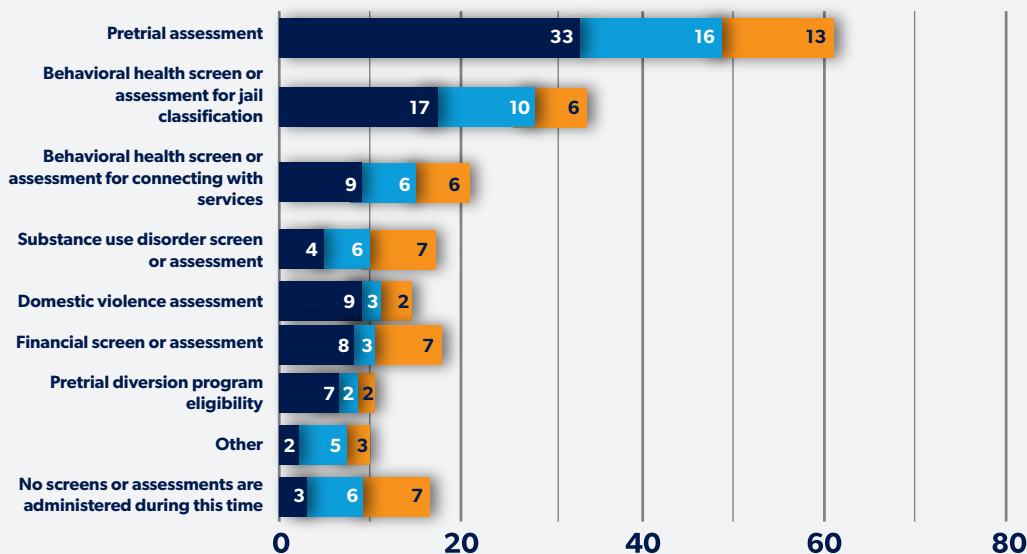


Figure 3.2: Pretrial Assessment Tool Used by County

Which pretrial assessment tool does your county currently use? N=62

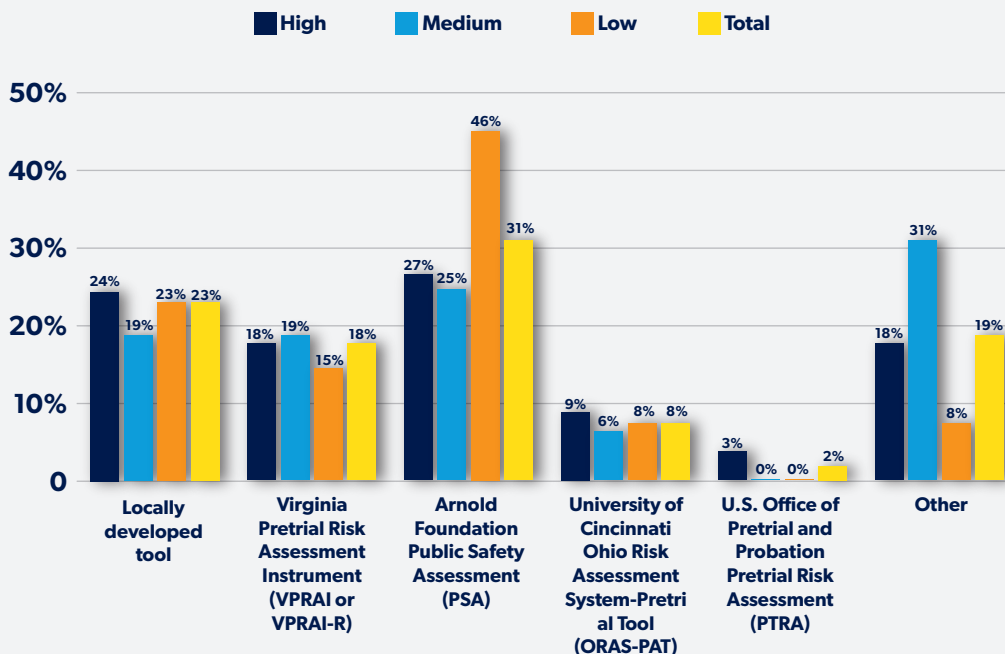


Figure 3.3: Who Receives Pretrial Assessment Tool by Population Density

Who receives this pretrial assessment? (Check All That Apply) N=62

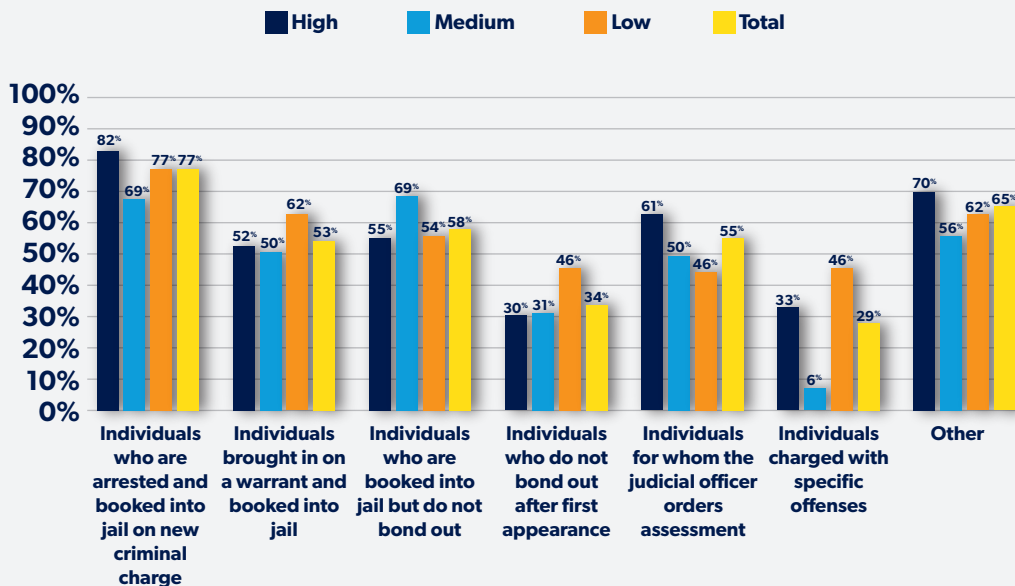


Figure 3.4: Application of Pretrial Assessment Results by Population Density

Which sentence best describes how the judicial officer incorporates the pretrial assessment results into his/her decision at first appearance? (Check all that apply) N=62

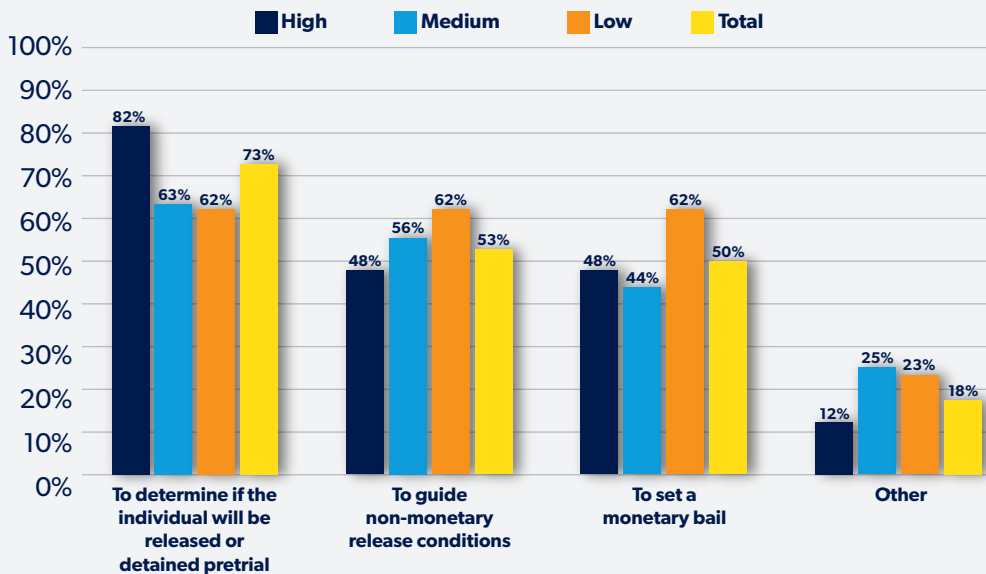
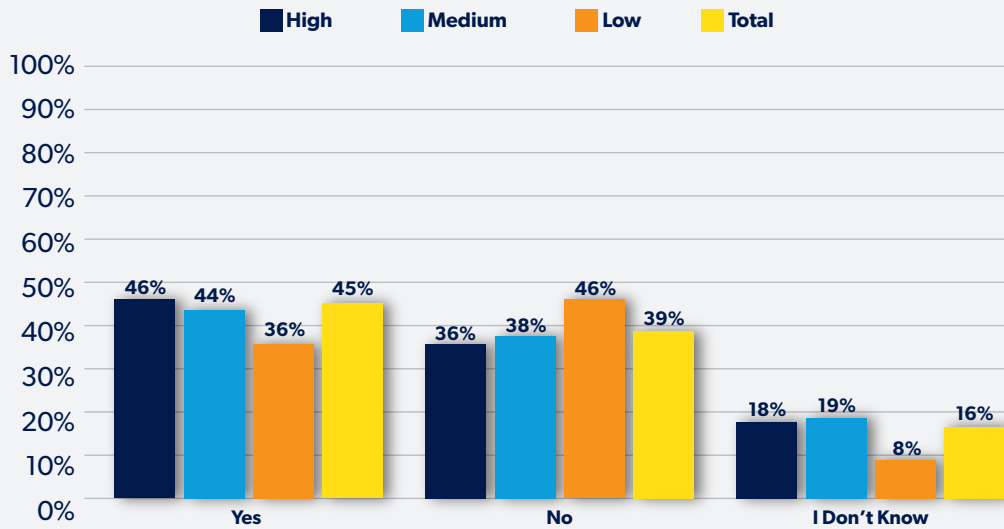


Figure 3.5: Validation of Pretrial Assessment Tool by Population Density

Has your pretrial assessment tool been validated on your local population? N=62



Section 4: First Appearance and Detention Hearings

Figure 4.1: Options Available at First Appearance

What options are available to the judicial officer at first appearance?
(Check all that apply) N=91

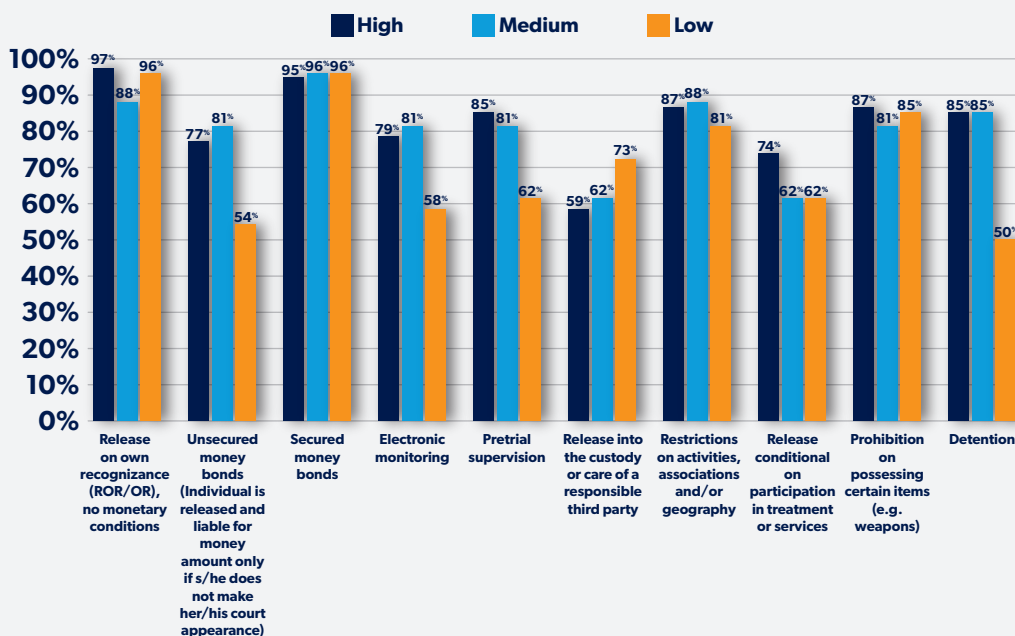


Figure 4.2: Protective Measures for Victims by Population Density

Which of the following measures does your county offer to provide reasonable protection to crime victims and survivors? (Check all that apply) N=91

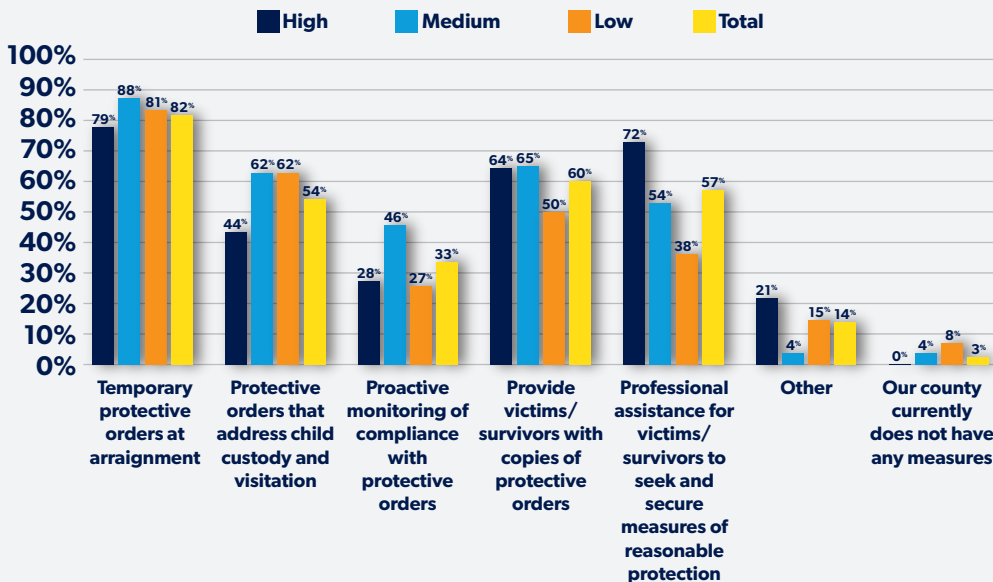


Figure 4.3: Average Time Between First Appearance and Detention Hearings by Population Density

What is the average time between the first appearance hearing and the detention hearing? (Check all that apply) N=91

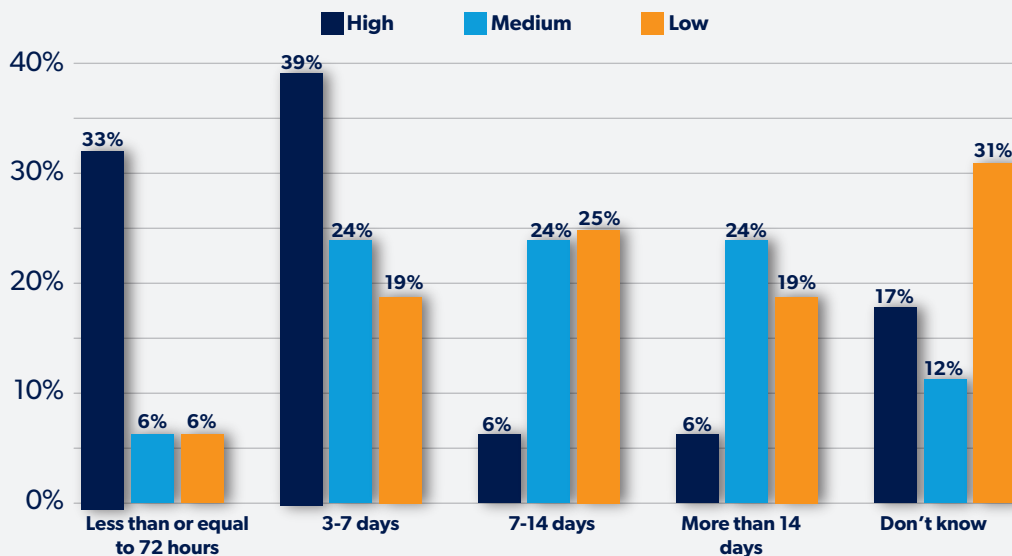
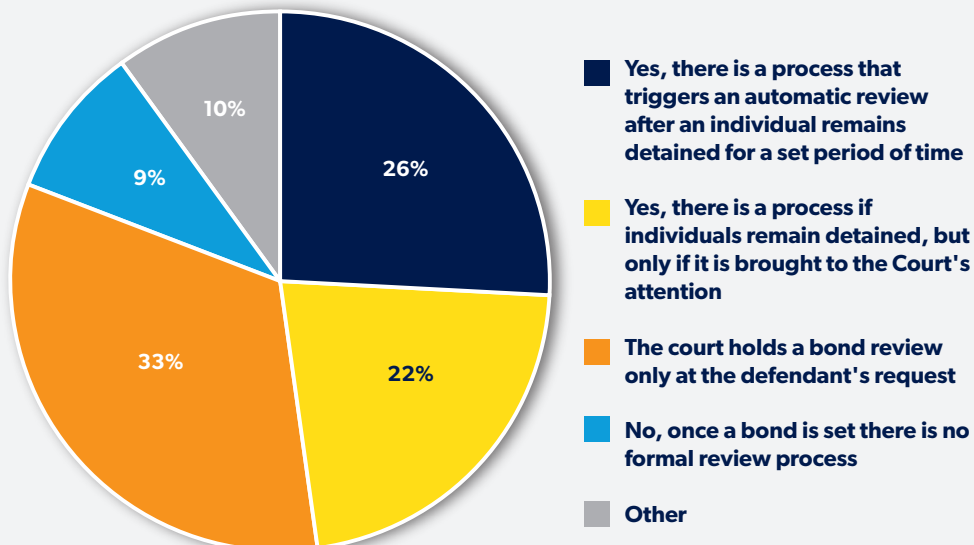


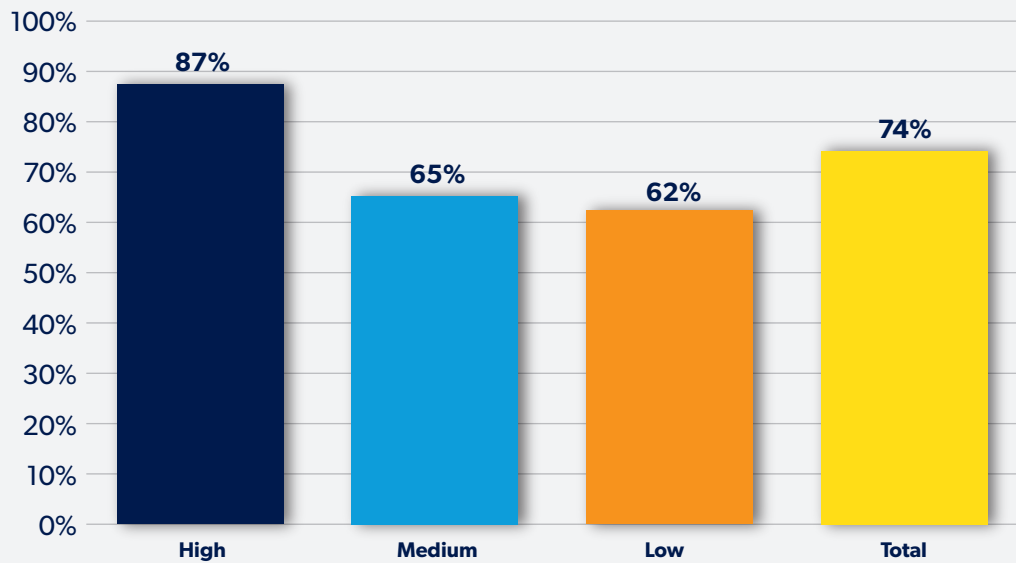
Figure 4.4: Availability of Bond Review (All Counties)

If an individual remains in jail because s/he has not paid for a monetary condition, is there a process in place to review and amend the conditions in order to facilitate release? N=91



Section 5: Supervision and Support Services

Figure 5.1: Percentage of Counties with Some Form of Court Date Notification by Population Density N=91



Section 6: Community

Figure 6.1: Presence of Community Entities by Population Density

Which of the following exist in your county? N=91

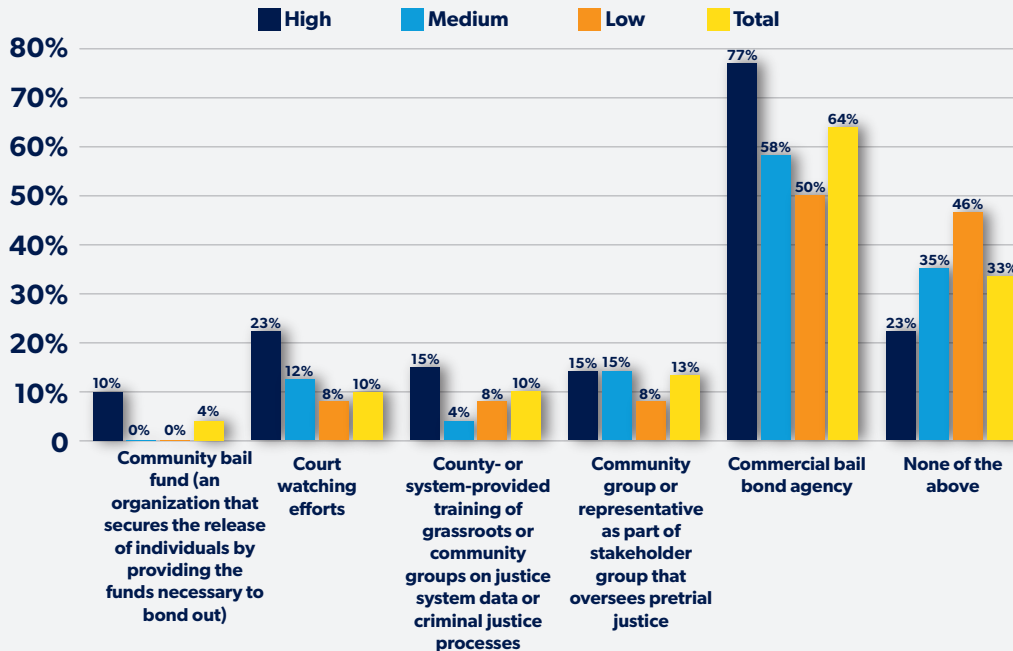
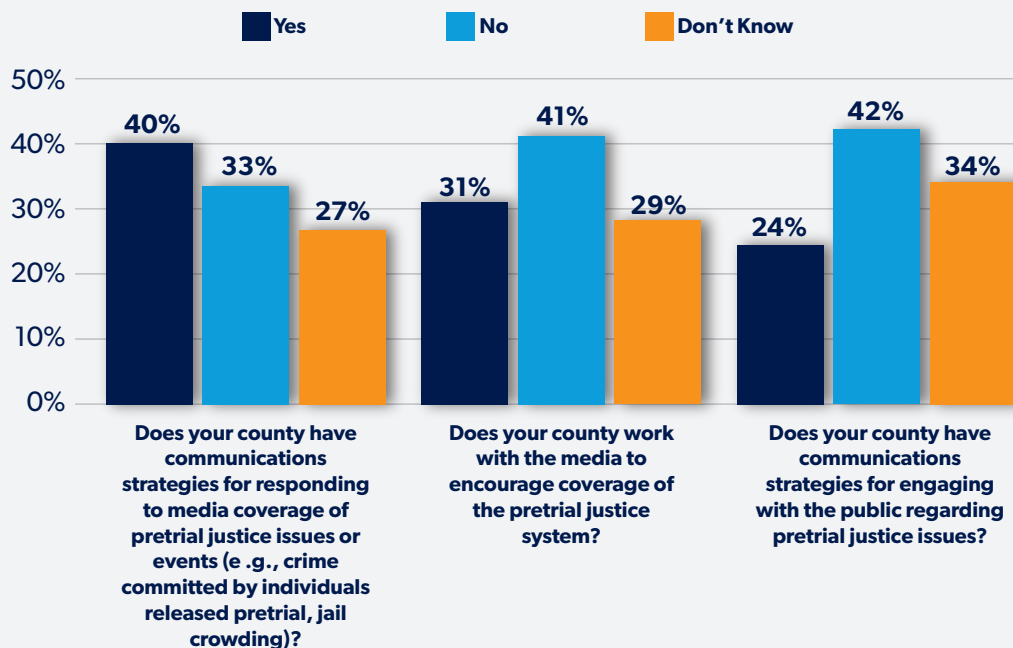


Figure 6.2: Availability of Communications Strategies or Resources (All Counties) N=91



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9. 2009 Survey of Counties, Table 7.
10. 2009 Survey of Counties, Table 3.
11. Schacke, T., Jones, M., and Brooker, C. (2010). [*The History of Bail and Pretrial Release*](#), Pretrial Justice Institute.
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13. 2009 Survey of Pretrial Services Programs, Table 40.
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15. At the time of the Scan, what is now called the Arnold Ventures Public Safety Assessment was known as the Laura and John Arnold Foundation Public Safety Assessment.
16. 2009 Survey of Pretrial Services Programs, Table 29.
17. American Bar Association Criminal Justice Standards relating to Pretrial Release, Standard 10-5.10 (g)(ii). Procedures governing pretrial detention hearings: judicial orders for detention and appellate review. 2007.
18. 2009 Survey of Pretrial Services Programs, Figure 9.
19. The 2019 Scan did not look at types of non-concurrence, that is, how often judicial decisions were more or less restrictive than recommendations by decision making frameworks. An exploration of jurisdictions that track this information and under what conditions judges set less restrictive release conditions are questions for future research.

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34. See Appendix C for the full frequently asked questions (FAQ) provided to participants.