

APPR Roadmap for Pretrial Advancement

About APPR

Advancing Pretrial Policy and Research (APPR) launched as an initiative in 2019 with support from Arnold Ventures. APPR seeks to achieve fair, just, effective pretrial practices, every day, nationwide. APPR’s mission is to demonstrate equitable improvements in pretrial outcomes through high-fidelity implementation and comprehensive research on pretrial policies and practices. All APPR implementation and technical assistance activities are led by the Center for Effective Public Policy.

Acknowledgments

This resource has been years in the making. Since APPR launched in 2019, we have worked to develop a model of what a comprehensive, legal, evidence-based, and community-centric pretrial system would look like. It was not an easy task, but we are pleased to release the *APPR Roadmap for Pretrial Advancement*. The primary authors of this work are Matthew Alsdorf and Alison Shames, co-project directors of APPR, and associate director and director, respectively, at the Center for Effective Public Policy. Special thanks to Peggy McGarry, Michael Jones, and Madeline (“Mimi”) Carter, whose work drafting and/or editing earlier versions have truly elevated this work. Thank you to the members of APPR’s Pretrial Practitioners Network, who reviewed this work and provided invaluable feedback that reflect their vast experience and expertise as on-the-ground practitioners and leaders in the pretrial field: Jeffrey Altenburg, Keith Belzer, De’Anna La Vigne Lawson, and Judge Mark Spitzer. And, of course, many thanks to the *entire* APPR team: a consortium of organizations and individuals dedicated to improving pretrial systems nationwide and making them fairer and more equitable. We are grateful for the collaborative partnership. We hope this Roadmap helps people see that change is possible and within reach—and provides actionable guidance about how to get there.

The **Center for Effective Public Policy** (cepp.com) leads all implementation and technical assistance activities for APPR.

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Introduction

The pretrial system has, in recent years, become a focus of attention for governments, civil rights advocates, the media, and nonprofit organizations. Understandably so: it is the front door of the criminal legal system, and decisions made in the early stages of a criminal case have major impacts on everything that follows. As Berkeley law professor Caleb Foote wrote in 1956, “Pretrial decisions determine mostly everything.”¹

This adage is true for individual cases: whether or not someone is detained while awaiting trial has major impacts on whether they are found guilty,² whether they are sentenced to incarceration,³ and how long those sentences are.⁴ Unnecessary detention can also disrupt lives, leading to lost jobs and housing, family instability, and even increased likelihood of rearrest.⁵

It is also true for the system as a whole: virtually all of the growth in the U.S. jail population in the 21st century is attributable to pretrial incarceration.⁶ Housing people before trial costs county and state governments at least \$14 billion annually.⁷

So, it is critical that we get pretrial decisions right. But in most of the country, the pretrial system is deeply flawed. There is an overreliance on custodial arrest instead of citations or summonses; release and detention are determined more by money than by judicial officers making intentional decisions about public safety or flight; defense counsel is not present, despite someone’s liberty being at stake; and pretrial services focus on monitoring rather than supporting people in the community. In addition, like the rest of the criminal legal system, the pretrial system suffers from systemic racism, with Black, Indigenous, and People of Color (BIPOC) disproportionately arrested and booked, subjected to higher financial conditions of release, and more frequently detained. These practices result in many people who could safely be released remaining in jail, often for long periods. And they do not enhance—and frequently undermine—community safety and well-being.

Improving the pretrial system requires a comprehensive approach; we cannot focus on a single decision point or a single agency. And the problems will not be fixed with a single solution such as an actuarial assessment tool or even the abolishment of financial conditions. Rather, we need to look at the system as a whole, involve policymakers from all agencies, and engage the community meaningfully in the improvement process.

The *APPR Roadmap for Pretrial Advancement* (Roadmap) stands on the shoulders of giants. It builds on a foundation that was set by Lori Eville and the National Institute of Corrections’s (NIC’s) *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*.⁸ It is elevated by a second NIC publication, *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*, by Timothy Schnacke.⁹ In addition, it is part of a long line of work from organizations like the National Association of Pretrial Services Agencies (NAPSA) and the American Bar Association (ABA), which have, for years, set standards for the field that demonstrate how to put fundamental legal principles into practice. This Roadmap does not replace

these foundational resources. Rather, it complements them and extends the menu of improvements that a jurisdiction can take to achieve pretrial justice.

We don't expect any jurisdiction to use this Roadmap as a literal checklist. Implementing everything recommended here would be a very heavy lift—and something very few jurisdictions are in a position to do. Instead, we hope that readers study this Roadmap, decide what is possible, and try to achieve it. Maybe a jurisdiction starts by convening a collaborative team from across the system and community. Maybe it begins by examining the first appearance hearing. Or maybe it reviews the role of law enforcement and its use of citations or diversion options. Doing *something* is always better than standing still.

We consider this a living, evolving document. The field advances. Research improves. The culture shifts. Laws may change. As transformations take place, we hope to continue to update and improve this Roadmap. We would love to hear what you think. Stay in touch with us—[directly](#) or through the [APPR Community](#). Tell us what resonates, describe how you implemented one or more of the policies, and share your successes and challenges.

Thank you for your commitment to pretrial justice and working toward a more fair, equitable system for all.

APPR

APPR is building a national network of criminal legal system and community stakeholders who foster support for pretrial justice. Its work is focused on increasing the capacity to implement fair, effective, and equitable pretrial justice, and to increase the number of state and local jurisdictions engaged in data-driven and research-informed pretrial practices. APPR does this through technical assistance that is grounded in collaboration, the law, and a commitment to increasing equity; [trainings](#) offered at no cost that cover a broad range of pretrial topics; [resources](#) and [networking opportunities](#) for people working to improve their pretrial systems; and [research](#) on the impact of pretrial improvements in select jurisdictions.

Using this Roadmap

The Roadmap has two parts: a Policy Roadmap and an Implementation Roadmap. The **Policy Roadmap** contains 11 policies and practices that apply to different parts of the pretrial system. They describe “what” your system should be doing if striving toward true pretrial justice, for instance, using citations in appropriate circumstances; diverting people pre- and post- charge; holding meaningful first appearances; and providing supportive pretrial services. The **Implementation Roadmap** includes four strategies that are key to successfully implementing these policies and practices. This includes working with a collaborative team of system and community stakeholders, including people directly impacted by the pretrial system; communicating with the public; and measuring performance.

Topics of particular importance that impact the whole system and apply to the entire Roadmap are highlighted as standalone text and appear throughout this document. These include racial equity, the use of financial conditions of release, and the value of defense counsel.

For ease of reference, the policies, practices, and highlighted topics are listed below.

Policy Roadmap

1. Adopt policies to use **citations/summons** instead of custodial arrests in appropriate circumstances.
2. Create **diversion options** to be used by law enforcement, the prosecution, and the judiciary.
3. Authorize **releases before first appearance** hearings (“delegated release authority”).
4. Conduct **meaningful first appearance hearings**, where the person charged is represented by counsel and has the opportunity to be released.
5. Detain a person pretrial **only when state law allows** and no conditions reasonably assure pretrial success, and ensure due process protections.
6. Use a locally validated, **actuarial pretrial assessment** to inform decisions about pretrial release conditions.
7. When setting release conditions, make **individualized determinations and use the least restrictive conditions**—if any are deemed necessary—that reasonably assure court appearance and community safety.
8. Offer **supportive pretrial services** to the people most likely to benefit from them.
9. Implement clear, consistent, and equitable policies for **responding to a person’s behavior** on pretrial release.
10. Process cases **swiftly and effectively**.
11. Institute a practice of **regularly reviewing people who are in jail** pretrial to determine why they are detained and whether they should be released.

Implementation Roadmap

1. Convene an **inclusive policy team** composed of both community and system stakeholders, and start by defining the vision, goals, and purposes of the pretrial system.
2. Continuously **educate system and community stakeholders** about pretrial justice.
3. Increase **public understanding** about pretrial justice.
4. **Evaluate pretrial performance measures** regularly, and continually improve policies and practices.

Highlighted Topics

- Elevating racial justice
- Counsel at first appearance
- Financial conditions of release
- Support for pretrial assessments
- Building a data infrastructure

Policy Roadmap



1. Adopt policies to use citations/summonses instead of custodial arrests in appropriate circumstances.

Spending *any* time in jail—even just a few hours or days—can have lasting impacts on someone’s life. It can result in the loss of a job, housing, or even custody of one’s children.¹⁰ People who are detained in jail are more likely to be convicted and sentenced to incarceration, and are more likely to be arrested in the future, than similar people who are released quickly.¹¹ Custodial arrest, therefore, should be used selectively and only when it is statutorily required or necessary to protect the community or an individual victim’s well-being and safety. An alternative is to use citations or summonses, which are “orders to appear” in court on a particular day and time.¹² They can be issued in the field *without taking someone to jail* when a person is suspected of a crime.

Many jurisdictions have found that citations and summonses are safe and efficient ways to handle lower-level violations of the law.¹³ Noncustodial options can help a person keep their job and housing, maintain their family ties, and be a contributing member of the community. And, given that most calls to the police are for minor offenses and neighborhood nuisance issues, the use of citations and summonses can improve the effectiveness of law enforcement by keeping officers in the community as opposed to spending time transporting people to jail.

Custodial arrest should not be the default arrest option. Citations and summonses are safe and efficient ways to handle lower-level violations of the law.

To encourage the use of citations or summonses, and to promote their consistent and equitable deployment, law enforcement agencies should adopt policies and operational guidance specifying the situations and people for whom these options are—and are *not*—appropriate. Also, they should ensure that law enforcement leadership, from the chief or sheriff to the unit supervisor, expresses their clear support for citations, summonses, and any other noncustodial options in appropriate circumstances. Finally, for citations and summonses to be effective tools, it is important that they provide clear instructions about when and where to appear in court.¹⁴

Elevating Racial Justice

Institutional racism permeates our society, including our criminal legal system. In the United States, BIPOC and people experiencing poverty are jailed at much higher rates than others. These disparities devastate the lives of the people impacted and undermine the integrity of our criminal legal system. They impede our efforts to truly deliver justice. Eliminating our current system's disparities requires a comprehensive approach to pretrial improvement that includes several essential components.

- **A recognition of systemic racism.** Systemic racism is difficult to isolate in one particular institution because it involves the reinforcing effects of multiple institutions and cultural norms—past and present—continually reproducing old and producing new forms of racism. The documented cumulative impact of systemic racism is that more people of color have been disproportionately caught in the net of the criminal legal system. System stakeholders should partner with communities to work toward the elimination of disparities in their pretrial systems.
- **An understanding of implicit bias.** Implicit bias refers to unconscious attitudes and stereotypes toward people and social groups that affect our understanding, actions, and decisions. Jurisdictions should address implicit bias through deliberate awareness-building strategies and by holding systems accountable for the impact, whether intended or not, that bias has caused.
- **A close examination of data.** Objective data shines a light on whether and how people of varying races, ethnicities, genders, and economic positions are treated, and helps uncover policies and practices that contribute to disparities. Sharing this data with all stakeholders contributes to transparency, and it can inform needs around transforming policies and practices. Jurisdictions should identify and collect local data, and evaluate whether pretrial justice goals and values are met fairly and equally across all people.
- **Meaningful community engagement.** Eliminating disparities and achieving racial equity is dependent on a genuine and meaningful relationship between system stakeholders and those impacted by structural racism (including poverty, inequity, and disproportionate rates of incarceration). Engaging community members brings a critical expertise and perspective to the policymaking table around the urgency of the dialogue and the strategies that will successfully achieve fairness and effectiveness. System and community stakeholders must work together to identify ways to make needed changes to the criminal legal system, to keep people out of the system whenever possible, and to otherwise eliminate disparities within the system.
- **Broad stakeholder collaboration.** For pretrial justice goals to be achieved, law enforcement, prosecution, defense, courts, and others who impact or are impacted by the system must work together effectively. Local collaboratives should be broadly composed and include the voices of the people most affected by the system: people charged with a crime, victims, families, and community organizations.



2. Create diversion options to be used by law enforcement, the prosecution, and the judiciary.

Diversion options can function as criminal legal system off-ramps for people who may be engaging in behavior that is harmful to themselves or others but for whom the full weight of the system is not necessary and does not serve the best interests of the community. Diversion offers the promise of avoiding the collateral consequences of traditional case processing and preserving system resources while still holding people accountable for their behavior, expanding the role of victims in the process, and linking people to services or programs that can help them modify life circumstances—such as unemployment, homelessness, or addiction—that may have contributed to the behavior that resulted in their involvement in the criminal legal system.¹⁵ As such, diversion can, in many circumstances, also contribute to a reduction in future criminal behavior.

Importantly, though, diversion should not be used in situations where charges would otherwise be dropped. If prosecution would not be pursued—for instance, if the prosecutor does not believe they can prove charges beyond a reasonable doubt—then diversion programs should not be used; instead, the person should simply be released.

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Diversion options that follow a nontraditional case processing path include pre-arrest diversion, pre-charge diversion, and post-charge/pre-conviction diversion.¹⁶

- **Pre-arrest diversion:** In cases where probable cause to arrest exists, law enforcement officers take an alternative course of action—such as “lecture and release” or referral to a program or service—to address the presumed underlying cause of the alleged legal violation (e.g., mental health concern; substance use; lack of safe, stable housing; etc.). In some jurisdictions, law enforcement diverts people by transporting them to hospitals or triage centers that can assess and address their needs, rather than arresting them. Some jurisdictions also pair specially trained officers with civilian mental health and social service workers to respond to calls, or they deploy civilians instead of uniformed, armed law enforcement to de-escalate incidents and prevent them from ending in tragedy. Pre-arrest diversion results in no arrest or referral for charges.¹⁷
- **Post-arrest/booking diversion:** This diversion option is similar to pre-arrest diversion, but the referral by law enforcement occurs after arrest and booking.
- **Pre-charge diversion:** Following referral for prosecution by law enforcement, prosecutors withhold filing charges and provide an alternative course of action (e.g., stipulate that a person remain crime-free for a specified period of time, participate in behavioral health treatment, participate in education classes, conduct community service or other types of victim restoration). Satisfactory completion of pre-charge diversion typically results in charges not being issued.

- **Post-charge/pre-conviction diversion:** Following the filing of charges by prosecution or as part of the plea negotiation process, an agreement may result in one or more specified conditions (e.g., participation in programs or services including, in some jurisdictions, a pre-plea specialty or problem-solving court). Satisfactory completion of diversion at this stage typically results in the dismissal or reduction in the level of formal charges (felony to misdemeanor or forfeiture).

The respective agencies should adopt clear policies and criteria that promote the appropriate use of diversion options at each decision point—beginning at the initial contact with law enforcement.¹⁸ In jurisdictions where few diversion options exist, new programs will need to be developed.¹⁹ Community members can be particularly valuable partners, since they have deep knowledge of the prevalent local concerns, the approaches that might be most effective in addressing them, and resources that can be rallied to offer supportive services. Another benefit of some diversion options is that they require the restoration of victims (for instance, through a restorative justice program, letter of apology, or restitution) as a condition of participation; this may yield a more prompt and satisfactory resolution for victims. Each agency should promote new diversion options and provide training to staff on how and when to use them appropriately.



3. Authorize releases before first appearance hearings (“delegated release authority”).

Keeping a person in pretrial custody when it is otherwise safe to quickly release them is costly to both the person and the system. Even just the few hours spent in police lockup or awaiting booking in jail exacts a toll and can cost the person who is detained a job, housing, or family relationships.²⁰ Indeed, research shows that people who are detained in jail are more likely to suffer these consequences—and are more likely to be convicted and sentenced to incarceration and to recidivate—than similar people who are released quickly.²¹ Keeping a person in pretrial custody also taxes the system: it contributes to jail crowding and keeps jail personnel away from other essential duties.

Keeping a person in pretrial custody when it is otherwise safe to quickly release them is costly to both the person and the system.

To expedite the release of someone who is highly likely to appear in court on their own and remain law-abiding, judicial officers may give other professionals in the pretrial system—such as pretrial agencies, law enforcement, prosecutors, or jail staff—the authority to release a person before their first appearance hearing (this is often referred to as “delegated release authority”).²² Typically, because of local policies or state laws, jurisdictions limit delegated release to people who have been charged with lower-level offenses and meet other criteria, such as having a relatively lower score on a pretrial assessment tool.

This process can replace another common type of delegated release authority: a financially based bond schedule. Allowing someone to be released based on their ability to afford a financial condition benefits the wealthy and penalizes those without financial means, all without reference to the person’s

likelihood of success when released. Using different criteria—such as a combination of a person’s assessment scores, current charges, and case-specific circumstances—presents an opportunity for release decisions to be more equitable, more consistent, safer, and more effective in protecting community well-being and safety.

As with other release policies, the jurisdiction should adopt clear policies and guidance on delegated release authority to encourage its consistent, timely, and equitable use.



4. Conduct meaningful first appearance hearings, where the person charged is represented by counsel and has the opportunity to be released.

The “first appearance” in a criminal proceeding is often a person’s first chance to be seen by a judicial officer. At this hearing, a decision is typically made about whether the person will be released before trial and under what, if any, conditions.²³ In jurisdictions that use financial conditions of release, the imposition of a monetary bond can be equivalent to an order of pretrial detention. Further, many release conditions, such as electronic monitoring, house arrest, or burdensome in-person reporting requirements, impose significant restrictions on a person’s physical freedom.

In short, the first appearance hearing is a substantive proceeding that will significantly impact both the person’s liberty and the course of the case. As such, it should not be treated as an administrative or *pro forma* matter. Instead, the person charged with an offense should be provided with competent legal representation, and both the defense attorney and prosecutor should be prepared to provide the judicial officer with all the information needed to make a sound release decision.²⁴ Victims also have a right to be heard either directly or through prosecutorial representation.

The defense should be given an opportunity to offer arguments regarding pretrial release, conditions, and diversion.²⁵ Further, since financial conditions are meant to assure release (and because wealth should not determine whether a person is detained pretrial), such conditions—if used at all—should be used only after assessing a person’s ability to pay. The judicial officer should be required to provide a rationale—whether orally or in writing—for any decision to impose conditions or to hold a person in jail. There should also be an opportunity for the determination to be appealed—or at least reviewed or reconsidered.

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Best practices are for first appearances to occur as soon as possible following arrest. Many jurisdictions require first appearance hearings to be held within 24 or 48 hours of arrest; however, this varies from jurisdiction to jurisdiction.

Counsel at First Appearance

In the majority of jurisdictions, defense counsel is not present at first appearance hearings. Yet, research demonstrates the many benefits that having defense counsel at these hearings brings to the criminal legal system, including reductions in the number of people detained pretrial and reductions in the use and amounts of financial conditions of pretrial release.²⁶ Importantly, counsel at first appearance also enhances procedural justice: people report more satisfaction with court services and an increased perception that the proceedings are fair. This, in turn, results in greater compliance with court-ordered pretrial release conditions and a greater likelihood of returning to court for future hearings. Jurisdictions should therefore require and ensure that, at first appearance, every person is represented by defense counsel.²⁷

But merely having defense counsel present at first appearance is not enough. The system must provide counsel with relevant information about the case (such as the arrest record and any pretrial assessment report, including results of an actuarial tool) in advance of the hearing and sufficient time to confer with their client in a private space. Without the relevant information and time with their client, defense counsel would not otherwise be prepared to present mitigating information to the judicial officer.



5. Detain a person pretrial only when state law allows and no conditions reasonably assure pretrial success, and ensure due process protections.

When a person comes before a judicial officer in a pretrial hearing, the judicial officer should make an explicit and purposeful decision whether to release or detain the person pretrial. Because a person charged with a crime has not been convicted, the law has a strong presumption in favor of release: the Supreme Court has held that the U.S. Constitution requires that release be the “norm” and pretrial detention the “carefully limited exception.”²⁸ Most states have constitutions and/or laws that define a group of people who can be detained before trial. Typically, this group consists of those charged with capital or other very serious crimes. Most states have also articulated (through their laws or court cases) the limited circumstances when those eligible for pretrial release can be detained. Generally, and at a minimum, those circumstances are when no condition of release, or combination of conditions, can provide reasonable assurance that the person will not flee or, in most states, will not threaten public or victim safety.²⁹

Because a person charged with a crime has not been convicted, the law has a strong presumption in favor of release.

Therefore, the decision to detain pretrial should generally involve answering two questions:

- First, is the person eligible for pretrial detention under state law?
- Second, is there no condition of release, or combination of conditions, that provides reasonable assurance that the person will not flee and will not threaten public or victim safety?

The judicial officer can order pretrial detention only if the answer to both questions is “yes.” If the person is not eligible for pretrial detention *or* if release conditions *can* provide the court with reasonable assurance of the person’s court appearance and community safety—including victim safety—the person should be released. When making this determination, the judicial officer should also consider the impact of pretrial detention on the person—including their employment, family responsibilities, and health—as well as the impact on the person’s dependents and community.

To operationalize the preventive detention process, many jurisdictions require that the state request such a hearing. However it is initiated, the judicial officer must schedule the hearing as soon as possible, keeping in mind the person who is being detained in the meantime and the time needed for prosecution and defense counsel to prepare for the hearing. At the hearing, it is essential that the person’s due process rights are protected and honored; this includes representation by counsel, the right to present evidence and to have an expeditious appeal, and the requirement that the court provide written reasons for their decision.³⁰

Importantly, if the decision is to release—which it should be in the vast majority of cases, given the strong presumption against detention—the imposition of a monetary bond as a condition of release should not result in the person’s detention. *No one* should be detained simply because they lack access to financial means.

Financial Conditions of Release

Access to money should never determine whether or not someone is released before trial. Financial conditions are not shown to improve pretrial outcomes, but they *are* shown to yield racial and economic disparities in incarceration. Therefore, APPR supports the elimination of financial conditions altogether.

Yet, most jurisdictions continue to rely heavily on financial conditions of release. This means that if a person has access to sufficient funds to pay the financial conditions set by a judicial officer—conditions that are often determined by a fixed bond schedule—the person is released. If the person does not have access to sufficient funds, they stay in jail. This might—and often does—result in the release of people with \$50,000 bonds who pose a threat to community safety and, conversely, the (often unintentional) detention of others with \$500 bonds who could safely be released.

Using financial conditions in this way contributes to the negative impacts of pretrial detention: increased pressure to make a plea deal, greater likelihood of a guilty verdict, harsher sentences, higher rates of rearrest, and disruption or loss of housing, jobs, and family. It also leads to disproportionate detention of BIPOC who, on average, receive higher financial conditions than similarly situated white people.³¹

Additionally, financial conditions have not been demonstrated to do what conditions of release are supposed to do: improve pretrial outcomes. Multiple research studies have concluded that secured conditions (where the person must pay money up front to be released) do not incentivize return to court or law-abiding behavior.³² As a federal judge noted in a nearly 200-page opinion after holding an extensive trial and reviewing all of the research to date, “The reliable, credible evidence in the record from other jurisdictions shows that release on secured financial conditions does not assure better rates of appearance or of law-abiding conduct before trial compared to release on unsecured bonds or nonfinancial conditions of supervision.”³³

Simply put, the use of financial conditions—particularly secured financial conditions—should be abolished. States should provide the courts with a process to make *intentional* detention decisions for the limited pool of people legally eligible to be detained. Absent such a structure, jurisdictions should use financial conditions only when the judicial officer finds that no other condition of release can reasonably assure a person’s appearance in court or the safety of the community. If the intention is for the person to be released, financial conditions should not be used, thus ensuring that the person will in fact be released.



6. Use a locally validated, actuarial pretrial assessment to inform decisions about pretrial release conditions.

Actuarial pretrial assessments estimate the likelihood that people will appear in court for pretrial proceedings and remain arrest-free while on pretrial release. These assessments are developed using large data sets about people who previously came into contact with the criminal legal system to identify factors that are correlated with a lower likelihood of pretrial success. Using an algorithm, the assessment provides decision makers with information about how people with similar profiles to the person in front of them have performed on pretrial release. They generate consistent and relevant data and information that can help them determine the appropriate release conditions, if any. However, they should never, by themselves, *dictate* the outcome nor should they be the sole criterion used to determine whether someone is released in the first place. As discussed in policy 5, eligibility for detention is governed by criteria and standards set forth in state and federal law.

Most people who are released will appear in court and be law-abiding, but some will need assistance to succeed.³⁴ Assessment results can help identify the people who are most likely to do well with no support and those who may benefit from assistance. Such additional assistance may include court date notifications, community support services, or some form of pretrial supervision. Assessment results can be used to help allocate these often-scarce resources to the people most in need.³⁵

Most actuarial assessments rely largely on information that is already available to judicial officers who make pretrial decisions (e.g., “rap sheets” and failure to appear records) but that is currently presented without context or analysis. With actuarial assessments, this data is consistently and transparently translated into assessment scores.

Pretrial assessment tools often serve as a catalyst for system change. Jurisdictions that adopt them can (and often do) use the opportunity to make other system improvements, such as reducing their use of financial conditions, instituting a practice of delegated release, and having counsel at first appearance.

Empirical research demonstrates that assessment tools do a good job of predicting court appearance and no new arrest, and they predict more accurately than human decision making alone.³⁶ Research also finds limited, if any, predictive bias, and assessment tools do not appear to exacerbate existing racial disparities.³⁷ While studies on the impact of pretrial assessments are ongoing, experience in the field provides reason to believe that an instrument that directs judicial attention to relevant information—along with a decision framework that generates consistent, neutral recommendations about release conditions—can contribute to making pretrial decisions more consistent and effective.³⁸

Any jurisdiction that uses a pretrial assessment should complete regular (every one to three years) validation studies to ensure that the tool is predictive for the local population overall and does not have predictive bias with respect to any subgroup.

Support for Pretrial Assessments

An actuarial pretrial assessment can play a positive role in the pretrial improvement process. Organizations such as the American Bar Association, the Conference of Chief Justices, the National Association of Pretrial Services Agencies, and the National Institute of Corrections all endorse the use of pretrial assessments as part of a comprehensive overhaul of the pretrial system.

The status quo is a system where decisions are made quickly and often based upon the judicial officer's professional (subjective) judgment alone. Yet, empirical research demonstrates that assessment tools predict court appearance and arrest-free rates more accurately than human decision making alone. Research also finds limited, if any, predictive bias, and assessment tools do not appear to exacerbate existing racial disparities.³⁹

While an actuarial assessment can't eliminate systemic bias in the criminal legal system, it can help minimize individual bias (implicit or otherwise) and make decisions more consistent and more transparent. And it offers an opportunity to document and evaluate pretrial decisions.

Indeed, many jurisdictions are undertaking significant data collection and research efforts to ensure that the assessments they adopt are not biased, that the impacts of their reform efforts are fully transparent, and that, unlike the current money-focused system, there is accountability. Data collection efforts are also demonstrating to system stakeholders that most people succeed pretrial and that only a very small number are arrested or do not appear. This contributes greatly to culture change and improved decision making.



7. When setting release conditions, make individualized determinations and use the least restrictive conditions—if any are deemed necessary—that reasonably assure court appearance and community safety.

Many decades of research indicate that most people—approximately 80 percent—will return to court and remain law-abiding when released to the community.⁴⁰ In most cases, they do this even if released solely on a promise to appear.⁴¹ However, a judicial officer may determine that conditions are necessary to reasonably assure a person’s court appearance and community safety, including victim safety. When that is the case, those release conditions should be the least restrictive possible.⁴² That is, they should limit the person’s freedom as little as possible. While pretrial release conditions are not as substantial an infringement on liberty as pretrial detention, they are often burdensome and can impair someone’s ability to contribute to preparation of their defense and/or maintain positive work, school, or family responsibilities.

Financial conditions of release are the default conditions in many jurisdictions. However, research has not shown that secured monetary bonds improve either court appearance or arrest rates.⁴³ And such conditions often result in detention. As a result, secured financial conditions should generally be considered one of the *most* restrictive conditions and, therefore, a last resort for judicial officers—if they are considered at all.

Judicial officers should avoid blanket conditions and must instead look at the person before them and decide whether conditions of release are necessary and, if so, what those conditions are.

While some may see imposing conditions on everyone—and multiple conditions on most people—as good insurance for success, the research indicates that this is actually counterproductive.⁴⁴ Ordering participation in unnecessary programming of any kind may disrupt positive activities in people’s lives and place them in settings with those who have more serious antisocial attitudes and habits.⁴⁵ Further, both community-based and government resources are limited and should be reserved for those with the highest demonstrated need (that is, those assessed as least likely to succeed), and they should not be imposed based solely on the offense charged.

Finally, longstanding legal principles maintain that pretrial decisions should be *individualized*—meaning that conditions should *not* be imposed based solely on charge or assessment scores. Judicial officers should avoid blanket conditions and should instead look at the person before them and decide whether conditions of release are necessary and, if so, what those conditions are.⁴⁶ In addition, they must ensure that conditions offer essential assistance without undermining positive factors (e.g., job, school, family obligations). While a tool such as a release conditions matrix may bring some parameters and consistency to decision making, it is incumbent on the courts to individualize conditions of release.⁴⁷ If circumstances demonstrate that a recommended condition is not necessary (or, vice versa, a condition not recommended seems useful), judicial officers should use their discretion accordingly.



8. Offer supportive pretrial services to the people most likely to benefit from them.

In many places across the nation, the services and interventions that the criminal legal system provides to people on pretrial release are undergoing a transition. In the past, these services were primarily focused on monitoring and enforcing compliance with court-ordered release conditions. Today, many agencies are moving away from this model and toward providing assistance and support. This change is the result of the field's evolving understanding of pretrial legal principles and research, a recognition that pretrial supervision is not the same as probation (and legally cannot be used as punishment), and an urgency to achieve more fairness, consistency, and economic and racial equity.

Today, many pretrial services agencies are moving away from solely monitoring compliance toward providing assistance and support.

These supportive services are offered by court systems, pretrial services agencies, and community-based providers. They vary in type and scope, but they all have one thing in common: a focus on helping people succeed while on pretrial release. Notably, many of these services are not included as court-ordered release conditions.⁴⁸ They may be *offered* to everyone or to select people by the court, defense, or a pretrial services department, depending on who is best positioned to know the people's needs and the services most likely to support success.

The services should address the various challenges or barriers that may stand in the way of a person returning to court, such as transportation or childcare needs. The services might be as simple as text or phone reminders of court dates and changes in dates. They may also include referrals to community-based services. Jurisdictions should think creatively and partner with others to develop a supportive inventory of pretrial services.

If the service is court-ordered, the released person should *not* be charged fees for the service, since an inability to pay such fees is often treated as a violation of release conditions and can result in detention.



9. Implement clear, consistent, and equitable policies for responding to a person's behavior on pretrial release.

All people who are released pretrial are expected to return to court for their pretrial hearings and remain law-abiding. But many people who are released pretrial are subject to various other court-ordered requirements, such as respecting no contact orders, maintaining or seeking employment, abiding by a curfew or travel restrictions, and complying with drug testing or alcohol monitoring. Although not all of these requirements necessarily contribute to helping the person return to court or remain law-abiding, failure to abide by these conditions may result in an administrative response by pretrial staff or a referral to court for judicial review. Depending on the nature of the noncompliance, it could result in

a modification of supervision practices (e.g., requiring the person to check in more frequently), revised release conditions (e.g., additional conditions), or, in some instances, revocation of release, resulting in pretrial detention. Given the often-discretionary nature of deciding how to respond to violations, this is a decision point where racial disparities and inconsistent treatment of people are of particular concern.⁴⁹

Implementing a clear, consistent, and equitable policy for responding to behavior while on pretrial release achieves many goals, including preventing unnecessary detention and empowering pretrial services to make service referrals or take other actions more directly connected to helping the person succeed. Such a policy would incorporate immediate, customized, specific, and meaningful rewards for positive behavior, such as shifting people to a less restrictive level of supervision or even asking the judicial officer to remove them from pretrial services entirely. The policy would also indicate that responses to negative behavior should be swift, proportionate, fair, and individualized.⁵⁰

Implementing a clear, consistent, and equitable policy for responding to behavior while on pretrial release can prevent unnecessary pretrial detention and empower pretrial services to make service referrals.

A framework for rewards and responses should be developed in conjunction with system and community stakeholders. The framework would include different levels of positive and noncompliant behavior (e.g., low, medium, high) and different responses for each level of behavior. It should examine the person's behavior and determine whether they are a threat to community safety or of failing to appear in court. Violations associated with mental or behavior health issues should be addressed in a supportive setting and not in a punitive manner. To be transparent, this framework needs to be communicated clearly and carefully with the people being supervised.



10. Process cases swiftly and effectively.

Whether the person is detained or remains in the community, lengthy case processing is harmful to the person and prejudicial to the just and fair disposition of a case. The longer the pretrial period, the more likely it is that a person will have trouble appearing at court hearings⁵¹ and continuing to comply with onerous release conditions. A lengthy pretrial period can cause problems in securing witnesses and maintaining adequate counsel⁵² and in supporting victims. Therefore, cases should be processed as swiftly as possible, consistent with administering justice and the constitutional due process rights of the person accused.

Whether the person is detained or remains in the community, lengthy case processing is harmful to the person and prejudicial to the just and fair disposition of a case.

One of the primary causes of delay is repeated postponements of proceedings.⁵³ They are frustrating to those affected and expensive for the criminal legal system. They promote distrust in the system

from victims, those accused, and the community. Postponements can only be reduced when courts, prosecutors, and defense attorneys collaborate to adopt best practices and rules around limiting adjournments and requiring attorneys to be prepared to proceed at court appearances. Exceptions should be made, however, when postponements are in the interest of the person accused.

It may be useful for an interdisciplinary team to collect and review data on case processing to identify bottlenecks or areas of delay. This will allow the jurisdiction to collaboratively implement strategies to reduce case processing times.



11. Institute a practice of regularly reviewing people who are in jail pretrial to determine why they are detained and whether they should be released.

Following the initial decision of release or detention, it is important to continue to evaluate who remains in jail before trial (a process sometimes referred to as “sequential bail review”).⁵⁴ This process might involve determining the reasons for a person’s continued detention and, potentially, whether their pretrial release conditions should be modified.

There are many reasons why the court might want to later modify the initial detention decision: it may be found that a person was unable to afford a secured bond that the judicial officer had assumed the person would meet; circumstances for the person may have changed such that they can be safely released; and/or the person may be detained for a period longer than the sentence would allow for the underlying offense. However, there is often no standardized method of identifying these instances and reviewing a case.

An increasing number of jurisdictions have begun to implement systems for conducting regular reviews of their pretrial jail population. Jurisdictions create jail population review teams to examine the jail data and identify people who should appropriately be released.⁵⁵ These teams frequently include representatives from local pretrial system partner agencies as well as community service providers, and should include people who are able to petition the court and obtain a court hearing. At the policy level, these teams use data to examine the pretrial jail population, address trends and drivers of this population, and implement policy and practice changes that further reduce unnecessary detention. At the individual level, the teams examine the reasons that people remain in detention and, where appropriate, petition the court to review and potentially modify their conditions of release. The team may implement automatic reviews of financial conditions within 24 or 48 hours after the first appearance hearing to verify that detention was intended.

Pretrial jail population review teams examine who remains in jail pretrial and identify people who can be safely released.

As with other practices, the jurisdiction should adopt clear policies and guidance regarding the purpose and scope of the jail review team. These policies should be shared with broader system partners.

Implementation Roadmap



1. Convene an inclusive policy team composed of both community and system stakeholders, and start by defining the vision, goals, and purposes of the pretrial system.

Embarking on a pretrial improvement process should begin by convening an inclusive policy team.⁵⁶ Any effort to make and support effective and lasting change requires the active participation of *all* stakeholders: those who are familiar with the daily operations of the pretrial phase, from first contact with a law enforcement officer to case resolution, and those who are impacted personally by pretrial policies and practices, such as members of the community, people charged with crimes and their loved ones, and victim advocates. Involving, from the beginning, all those with crucial expertise and perspectives ensures that pretrial policies and practices meaningfully incorporate everyone's interests, solutions, and values.

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Successfully involving community members in the policymaking process may require the jurisdiction to establish a well-defined and active role for community representatives. It may also mean changing the way system stakeholders typically conduct their business, for instance, by sharing data and information, changing meeting times and locations, or offering transportation or other assistance to enable true community participation. Using a neutral facilitator instead of a system stakeholder to guide discussions is yet another way to ensure robust engagement.

Choices about improvements to any part of the system will be more successful and sustainable when the entire team can design them, assess their impact, and decide together which to implement. Engaging all stakeholders in the system facilitates buy-in from all participants and decreases the possibility that any new policies will have unintended or unanticipated consequences. Convening this body, empowering it with the necessary authority and resources, and establishing rules and guidelines for how the group will operate are critical first steps in establishing a more just and effective pretrial system.

One of the team's initial tasks should be to create a vision for their pretrial system. A vision articulates the values that will drive their work, what they hope to achieve, and how success will be defined. From that vision, the team would decide on the concrete goals and purpose of their improved pretrial system. These would provide the framework through which to examine their current practices and determine the changes needed to achieve their goals. The policy team should affirm the goals and create workplans to drive implementation. Ultimately, the team would create written policies that codify the changes and agree on the measures to be used to assess the progress and performance of the changes. As further advancements are made, the team should continuously monitor outcomes and address challenges and opportunities for further improvement.



2. Continuously educate system and community stakeholders about pretrial justice.

Improving the pretrial system requires stakeholders to question policies, practices, and decision making processes that have been followed for decades. Ongoing education about the current system as well as pretrial law and research serves as a foundation for rethinking the system and envisioning an improved future—one that is more fair and more just.

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Examining how the pretrial system currently operates ensures that everyone working to improve it understands what seems to be working well and the ways in which it can be improved. For example, compiling an overview of the jail population helps people see who is detained in the jail and why they are there. It can also serve as a baseline to use when reviewing whether the changes had the desired effect on the jail population.⁵⁷ System mapping is another activity that helps team members examine the current system; through the exercise, people come to a joint understanding of the many steps involved in processing a criminal case.⁵⁸ It brings together policymakers, first-line supervisors, and line staff to graphically describe the pretrial system, the key decision points within the system, the information available at each decision point, and the time lapse from one key step to the next. The process brings to the surface issues for further inquiry and sometimes helps identify quick solutions to bottlenecks or inefficiencies.

It is also critical to have a solid understanding of pretrial law and research; it provides a framework around which improvements can be made. Pretrial law includes state and federal constitutions and statutes, as well as court rules and case law. It varies significantly from state to state but often provides rules or principles that must be followed when determining whom to release, whom to detain, how to detain them, and how to set conditions of release.⁵⁹ Conducting a local pretrial legal analysis and sharing the results with the policy team—as well as discussing whether local practices align with the law—is an informative and productive exercise.

Pretrial research is the evolving body of empirical knowledge that provides evidence about what works to help people return to court pretrial and abide by the law while on pretrial release.⁶⁰ Equipped with such knowledge, and after comparing current practices with what the empirical research instructs, pretrial policies and practices can be reengineered to result in a system that aligns with the law, research, and stakeholders' vision and values.

Ongoing education—not just one-off training presentations—is key to reaffirming knowledge, building support, and continuously improving as new opportunities are identified and new learnings emerge.



3. Increase public understanding about pretrial justice.

Communicating with community members and the media is an important part of building understanding and support for effective, equitable pretrial improvements. Identifying communications activities in advance of implementing any changes will help you inform audiences, increase support for pretrial improvements, and, ultimately, create a more transparent system. Communications can be used to inform, persuade, motivate, increase understanding, generate interest, raise awareness, and enhance trust in the system and its actors. Proactively engaging your community, and communicating clearly with the public and local media, will build knowledge and support for equitable and effective pretrial improvements.

Identifying communications activities in advance of implementing any changes will help you inform audiences, increase support for pretrial improvements, and, ultimately, create a more transparent system.

Jurisdictions that do not proactively communicate with community leaders, residents, and local media risk fostering assumptions and misinformation that can take months or longer to overcome. If people do not feel informed about the issues or if they have inaccurate information, they may default to outdated assumptions about crime, including an inflated sense that people on pretrial release pose more of a danger to community safety than research and data show. By developing a communications strategy, jurisdictions can create a starting point for conversations about a pretrial system that results in better outcomes for everyone.

An effective communications strategy should focus on framing messages in a way that will help achieve critical goals and objectives. In many cases, people—whether the people in the system, media, or the public—hold worldviews about crime, community well-being and safety, and the criminal legal system that might run counter to the messages you want to convey about advancements your jurisdiction will implement. Taking the time to prepare clear explanations and messages will assist in navigating those challenges and fostering more productive conversations around pretrial justice.



4. Evaluate pretrial performance measures regularly, and continually improve policies and practices.

It is critical that jurisdictions monitor their performance to ensure that the policies and practices implemented are functioning as anticipated and producing the desired results.⁶¹ This process should begin *before* any changes are made so as to establish a baseline against which to measure the effects of the changes once implemented. The policy team should identify what outcomes they aim to achieve and clearly define the metrics that will be used to determine success.⁶² Performance measures help evaluate new practices, track changes over time, and facilitate communications with others. Creating

a reporting template or dashboard can also be helpful so that, when the metrics are reported, they are accurate, actionable, and easy to understand.

With data-based knowledge, people are better positioned to periodically revise local policies and practices in their effort to institutionalize a culture of continuous improvement.

It is important that the policy team regularly review outcome data to determine what is working and what could be improved. Policy advancements always require iteration and modification if they are to achieve and maintain maximum success; policy team members will need to remain open to adjusting their decisions based on the data they receive. Community groups and the public—who have a strong interest in seeing the results of reform efforts—should participate in the ongoing assessment of the pretrial improvements and the development of effective responses or adjustments.

Building a Data Infrastructure

Making criminal legal system data available and accessible to system and community stakeholders is essential to achieving pretrial justice. With reliable data, a jurisdiction can review outcomes and measure its performance. Data allow a team to determine to what extent they are meeting their pretrial goals, for example:

- How many people are being released and detained, and what are their charges and demographics?
- To what extent are people on pretrial release remaining arrest-free and appearing in court?
- How has the jail's pretrial population changed in number and type since the new practices were implemented?

Using data to answer these and other questions expands people's knowledge beyond anecdotal information that they may already encounter and provides them with a more complete understanding of their pretrial system's strengths and opportunities for improvement. As advocates have stated: "Any attempt at real, lasting change will require a significant investment in our ability to collect, store, and share data. We cannot confirm that new policies work without tracking their outcomes. We cannot address racial injustice without data about policing practices, court processes, jail populations, and prison systems."⁶³

With access to pretrial data, people can measure the success or failure of changes and improvements. However, most jurisdictions do not currently have this ability. Therefore, any effort to improve the system of pretrial justice must be accompanied by an investment in data infrastructure to ensure that system stakeholders can measure their performance, see their problems, identify the solutions, and hold themselves accountable.

Conclusion

Making lasting improvements to the pretrial system requires changes not just to policy and practice but to organizational culture, cross-agency partnerships, and methods of engaging—in some cases, for the first time—the community. This is hard work. And, until recently, it was work that had been undertaken in earnest by only a handful of jurisdictions. But now there is a growing roster of states and counties that are deeply engaged in these efforts—for good reason. They see that pretrial improvements can pay enormous dividends: fairer outcomes, reduced jail populations, increased community safety and well-being, more efficient use of resources, and greater racial equity.

APPR is here to help, whether you're just getting started or whether your jurisdiction has been at it for years. We have a large and active community of practitioners who use the [APPR Community](#) to ask questions of their peers, share learnings, strategize about challenges, and educate themselves and each other about the latest developments in the field. The [APPR website](#) also contains a wide range of resources regarding pretrial justice, research, laws, racial equity, community engagement, and pretrial assessment. By [signing up](#) with the APPR website, you receive announcements and registration opportunities for our many training sessions on a variety of key pretrial topics. And for those looking for more hands-on assistance, we offer the opportunity to become a [Learning Site](#) and receive direct guidance from our team.

This is an exciting—and, yes, challenging—time to be engaged in this important work. We look forward to assisting you in your efforts and learning from your example.

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59. For more information, see APPR’s pretrial legal analyses (<https://advancingpretrial.org/appr/appr-resources/pretrial-legal-analyses/>).
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