

Juvenile Justice Policy and Data Board

Community Based Interventions Subcommittee Meeting

April 26, 2024

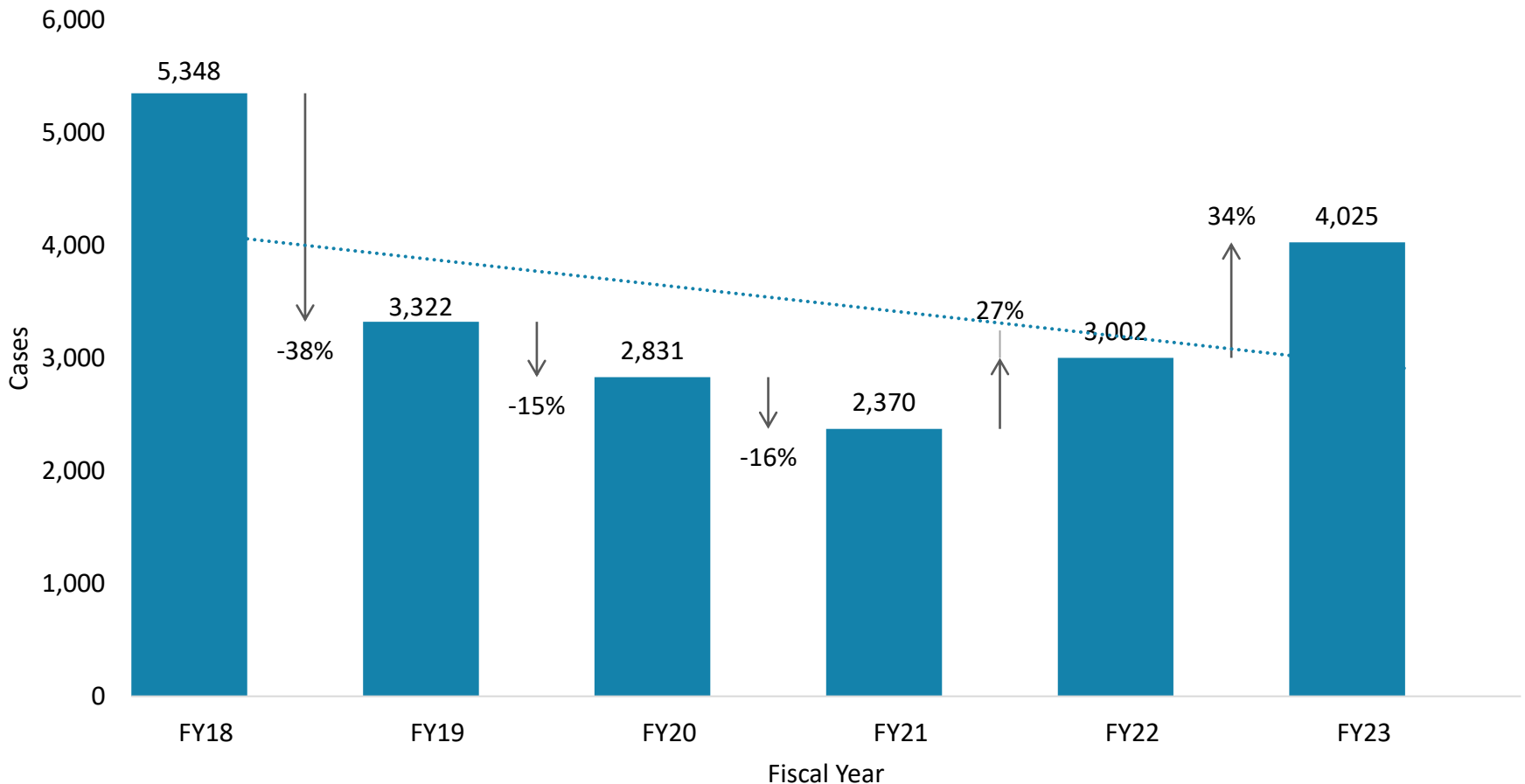
Agenda

1. Welcome and Introductions
2. Approval of November Meeting Minutes
3. Project Discussion: Key themes heard in juvenile justice pretrial phase interviews to date
4. Next Steps & JJPAD Board 2024 Work Plan

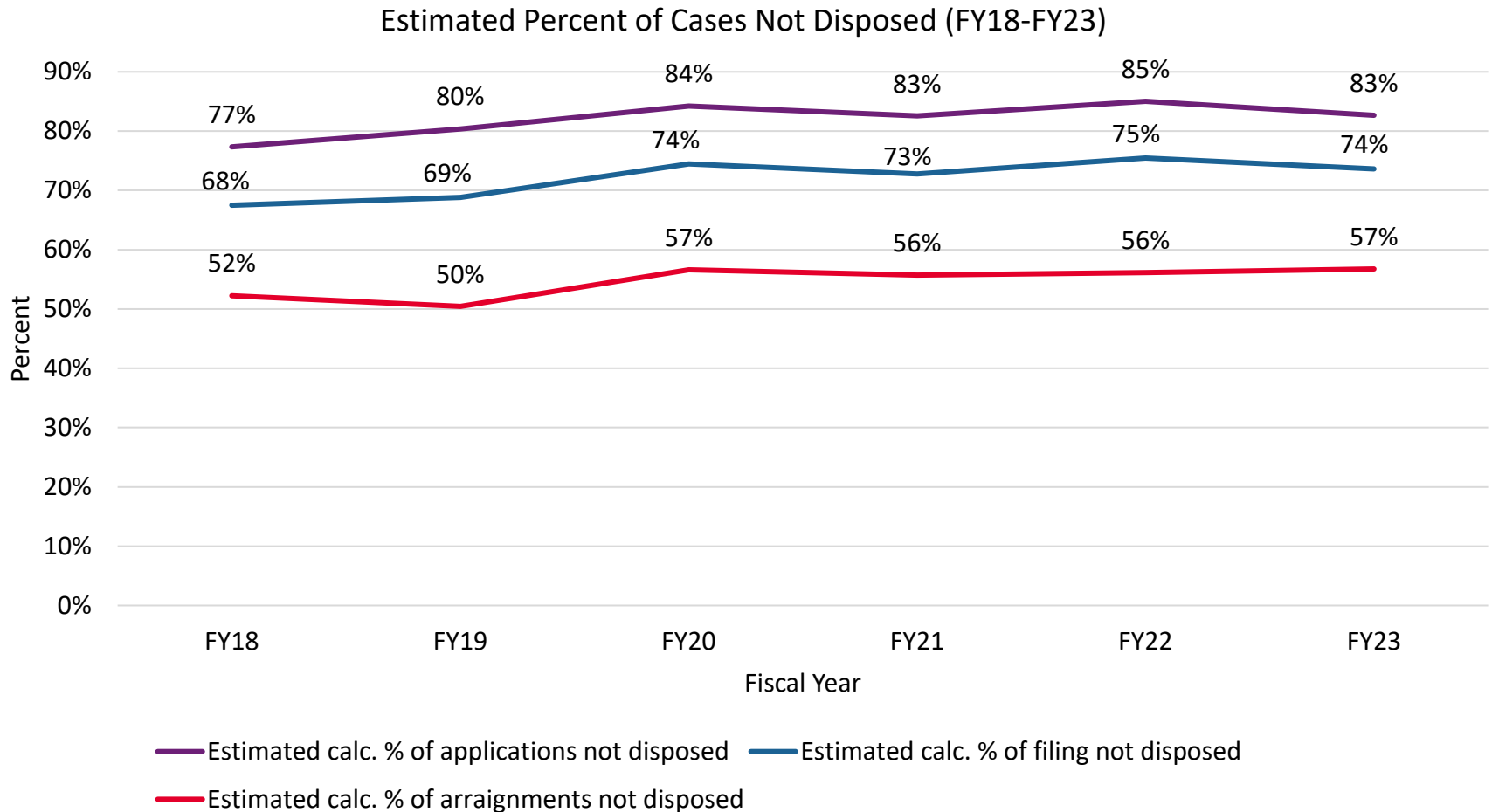
Pretrial Project: Where we've been...

Arraignments have declined 25% since CJRA, but are on the rise in recent years

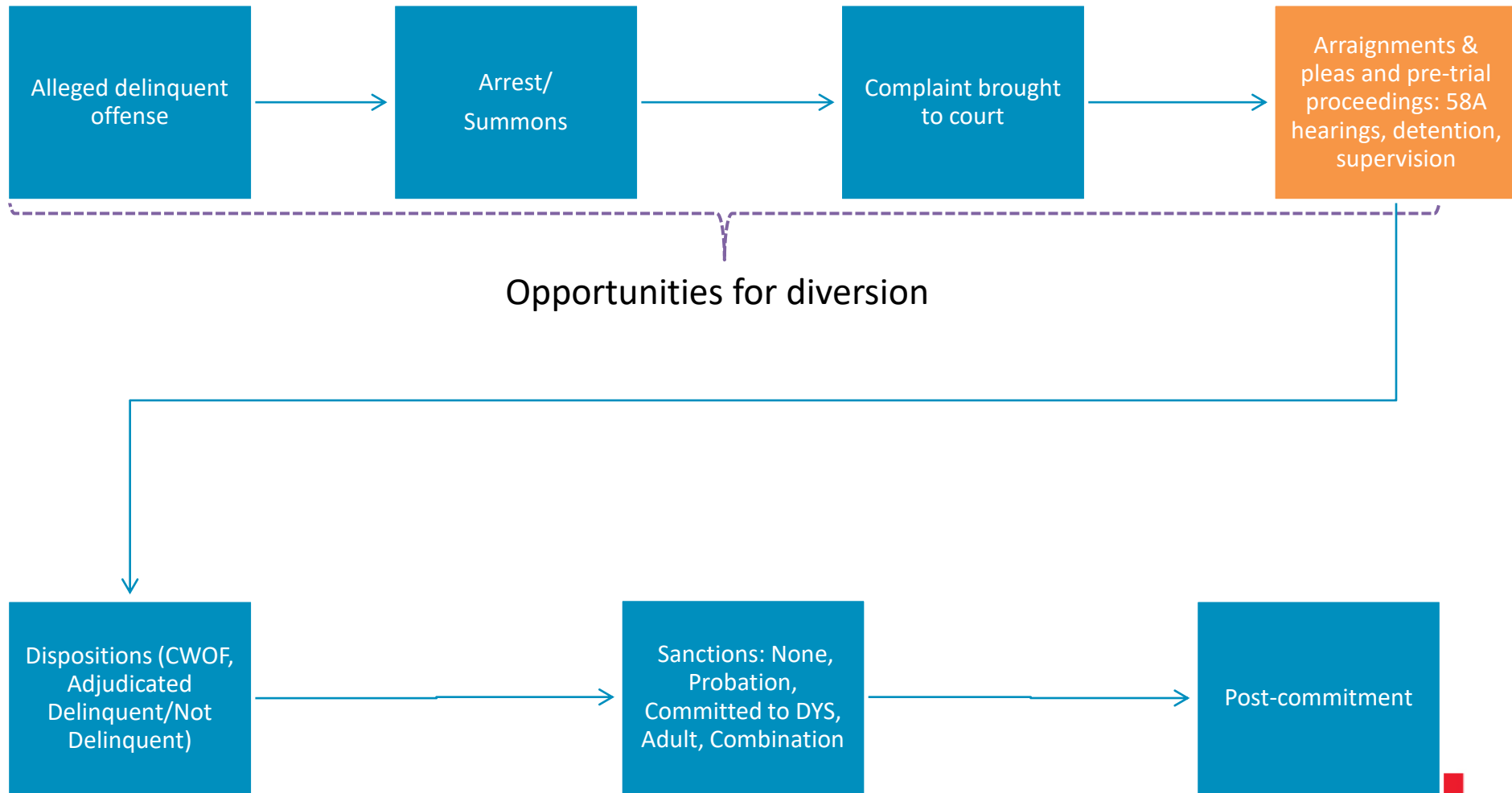
Delinquency Arraignments (FY18-FY23)



More than half of all cases arraigneded each year don't result in a disposition



Which led the Board to the “pretrial phase”

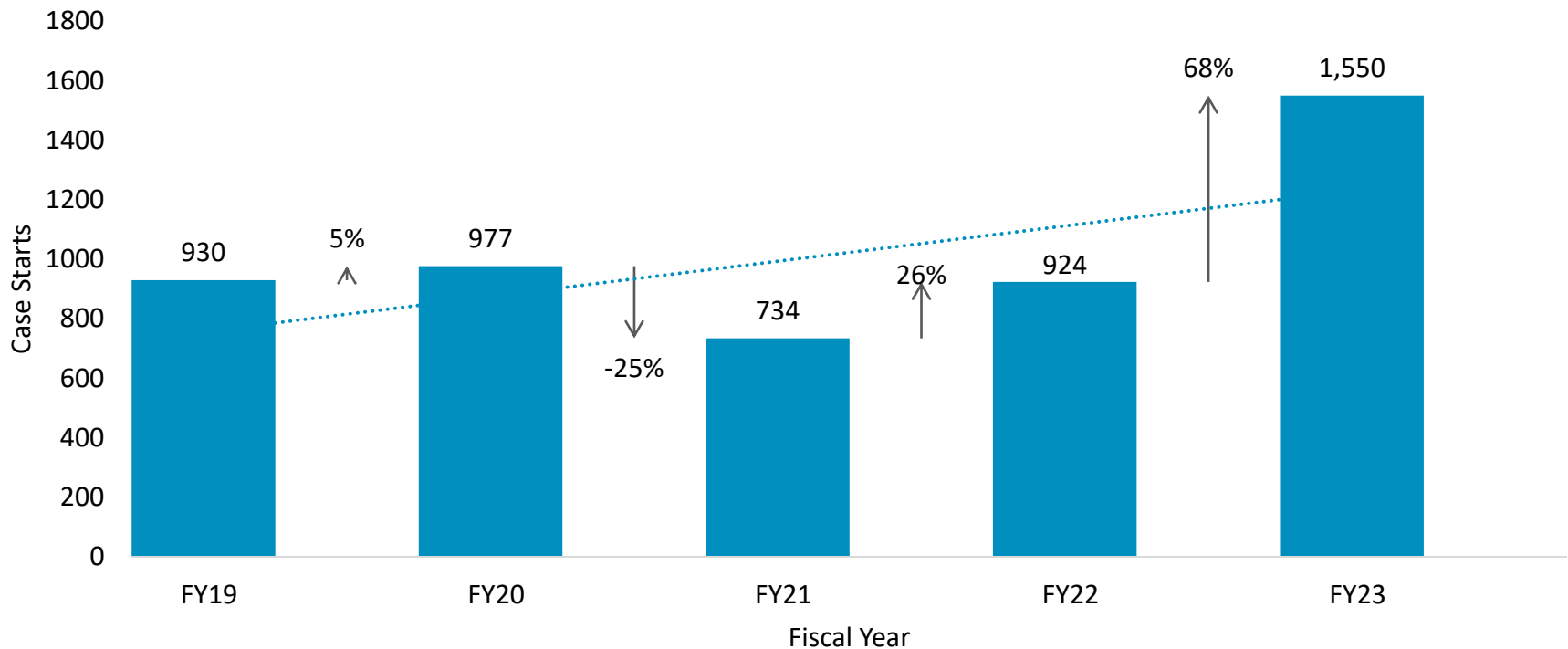


Pretrial Phase Project Key Terminology

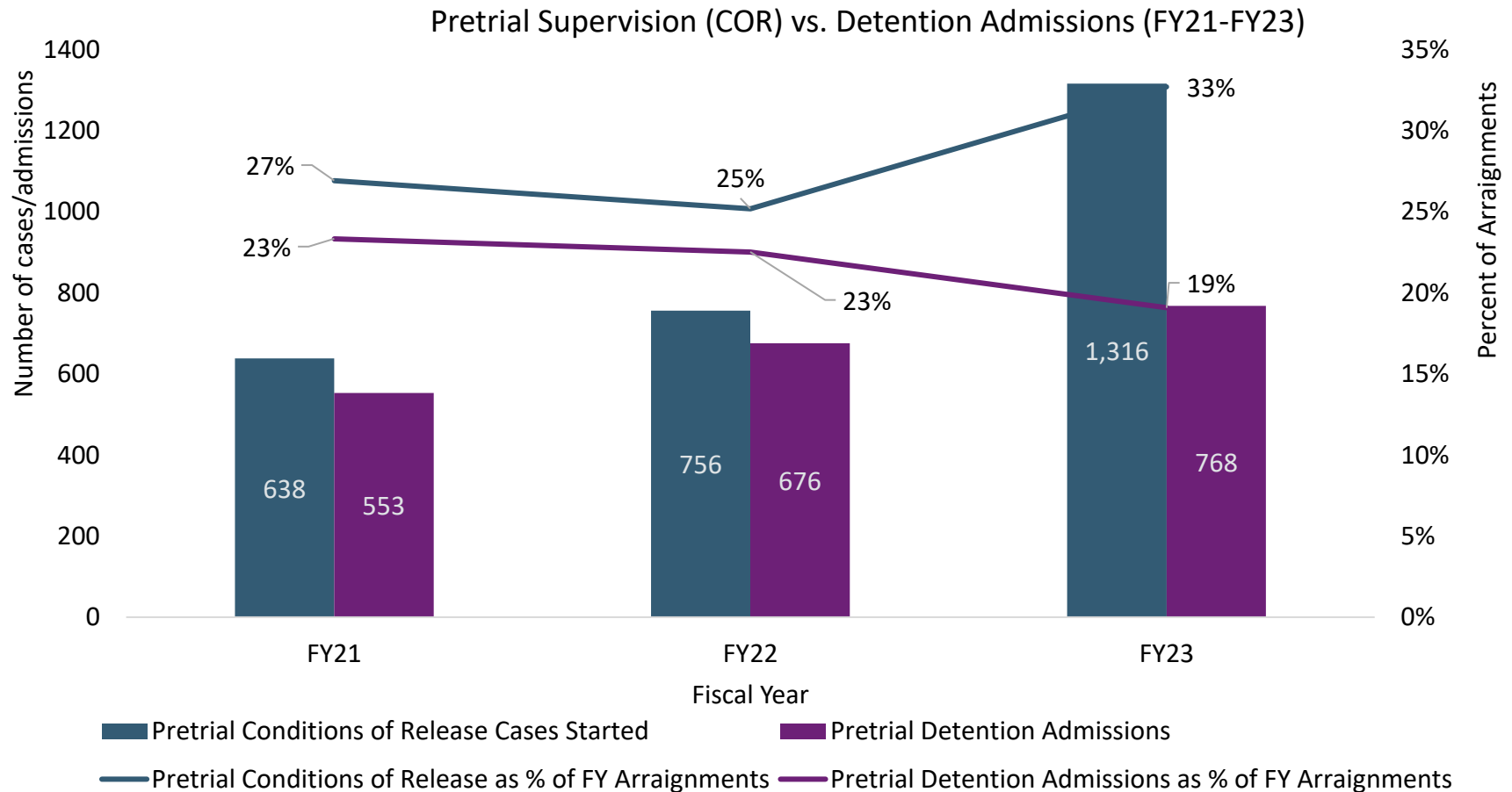
- **Cash bail:** A cash amount that must be posted to secure a youth's release from DYS pretrial detention between arraignment and disposition.
- **Pretrial conditions of release:** Terms youth must comply with, which are set by a judge. Depending on the court's order, probation either monitors the pretrial conditions or actively supervises the individual to ensure compliance with the conditions of release while they remain in the community as their case is pending.
- **Pretrial probation as a disposition:** Youth can be placed on pretrial probation as a "disposition" post-arraignment by a judge. If the youth complies with all of the conditions set by a judge, the matter will ultimately be dismissed by the prosecution. If youth fail to comply, the prosecution of the matter may resume (at the discretion of the district attorney).
- **Failure to appear:** Missing a court appearance.
- **58A "Dangerousness" Hearing:** Allows the prosecution to request at arraignment that a youth be detained without bail if the DA believes the youth is a threat to public safety. If a judge finds a youth to be dangerous and there are no conditions that would assure a youth and community's safety, the youth is held in detention prior to their trial.

The number of pretrial cases monitored/supervised by probation has increased in recent years

Pretrial Monitoring and Supervision Case Starts (FY19-FY23)

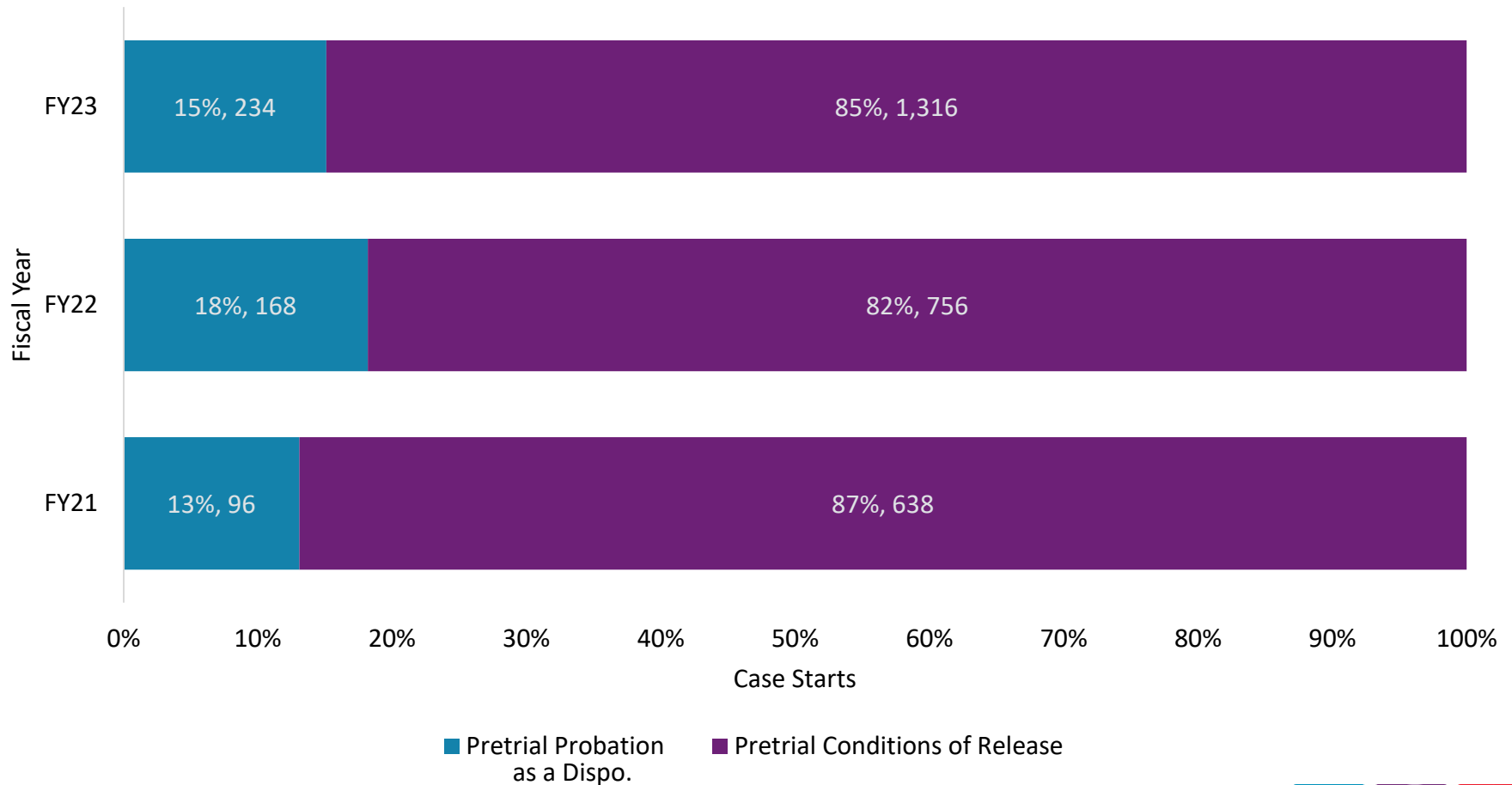


The percent of youth arraigned who have conditions of release increased in FY23



Most of these cases involve youth on conditions of release vs. PTP as a dispo

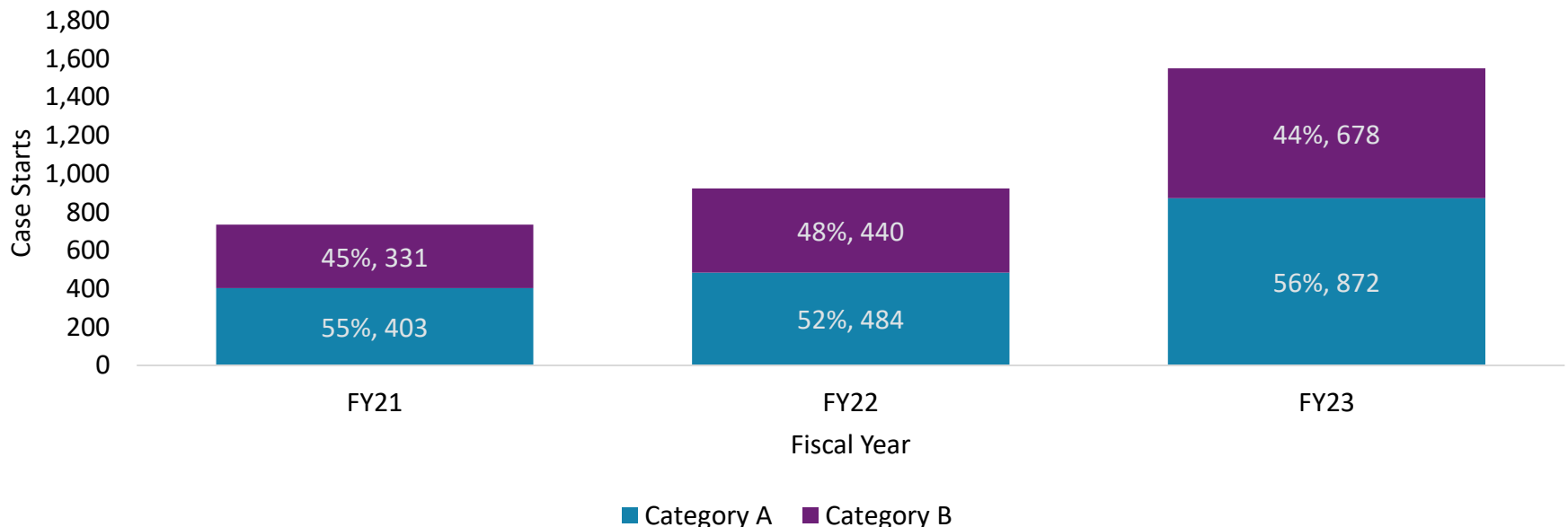
Pretrial Monitoring and Supervision Case Starts by Type of Case (FY21-FY23)



A little less than half of all probation cases during the pretrial phase are actively supervised

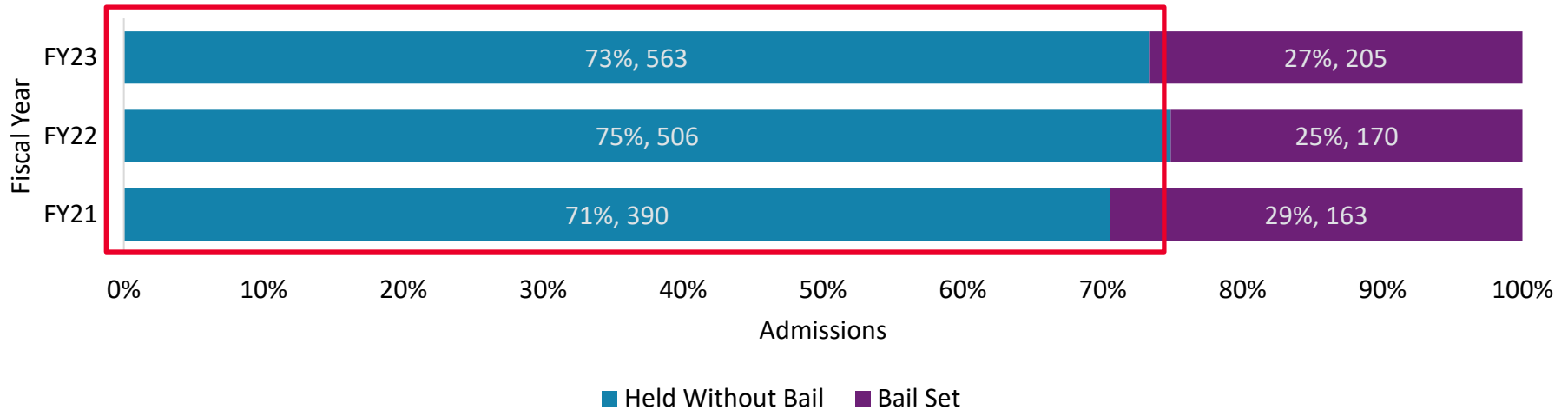
- Pretrial Conditions Type A:
 - **Do not** require active probation supervision (e.g., obey all laws and court orders, no contact/stay aways)
 - Assigned to the state Pretrial Unit, VOPs are handled by local probation office
- Pretrial Conditions Type B:
 - **Do** require active probation supervision (e.g., drug testing, report to probation, cooperate with MH/SUD treatment, GPS, home confinement, participate in programming)
 - Supervised by local probation office

Pretrial Monitoring & Supervision Case Starts by Supervision Level (FY21-FY23)

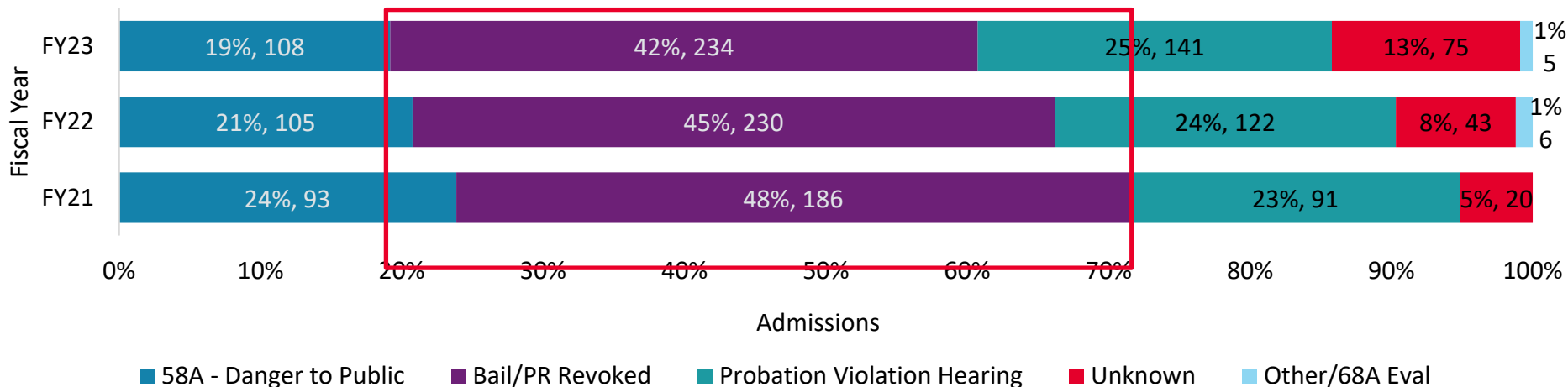


Many youth are detained without bail as a result of bail/PR being revoked

Pretrial Detention Admissions by Reason Held (FY21-FY23)

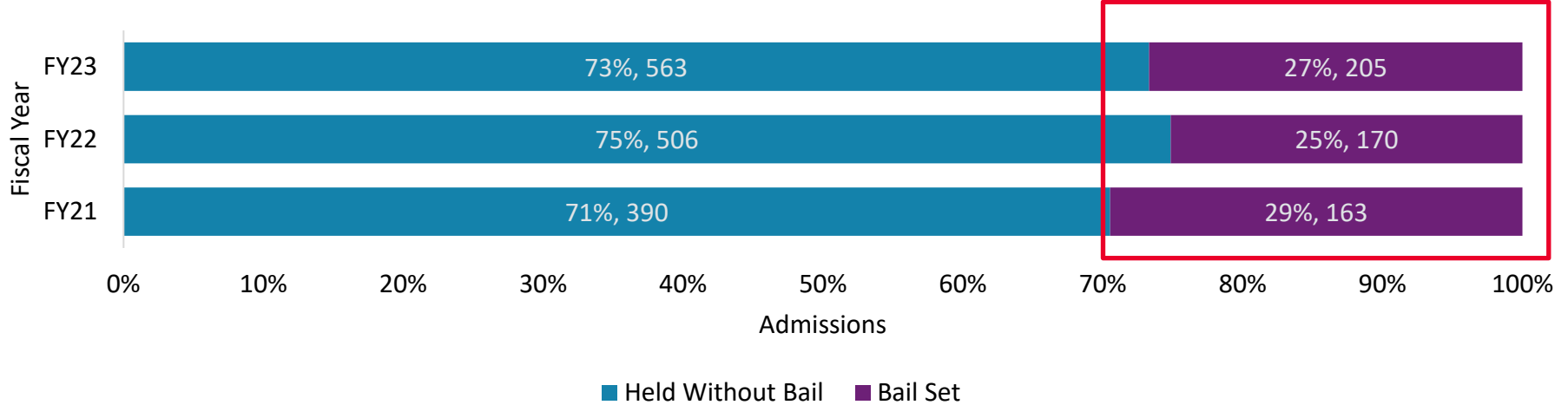


Pretrial Detention Admission by Held Without Bail Reason (FY21-FY23)

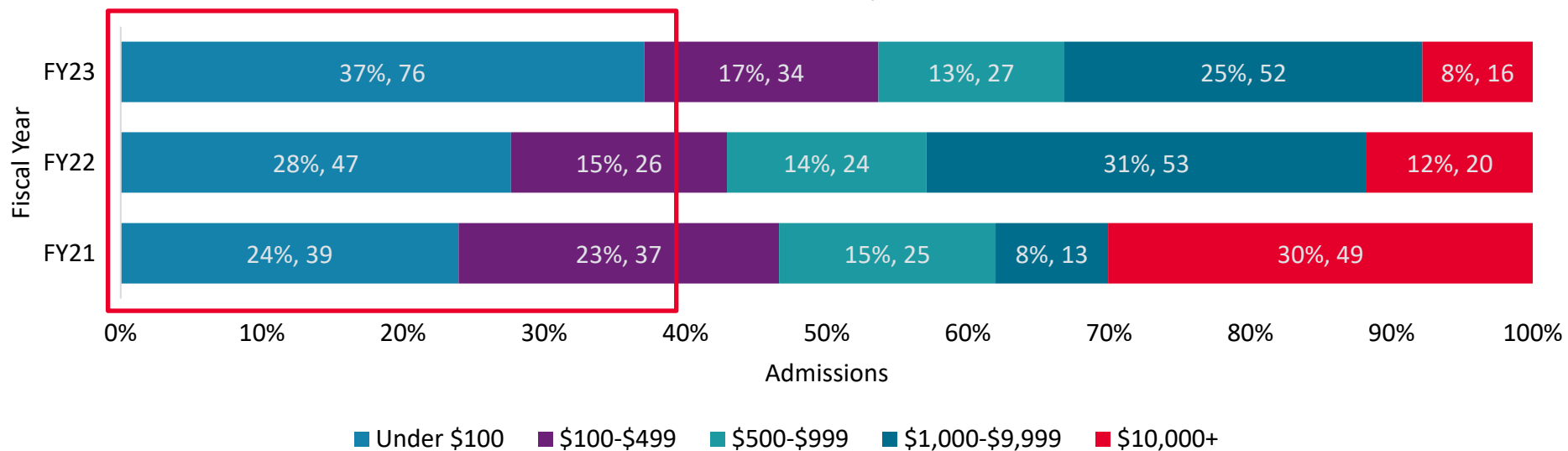


Recently, there's been an increase in detention admissions for youth held on cash bail under \$100

Pretrial Detention Admissions by Reason Held (FY21-FY23)



Pretrial Detention Admissions by Bail Amount (FY21-FY23)



Most detention admissions involve youth with high needs and/or were disproportionality Black and Latino youth

In FY23:

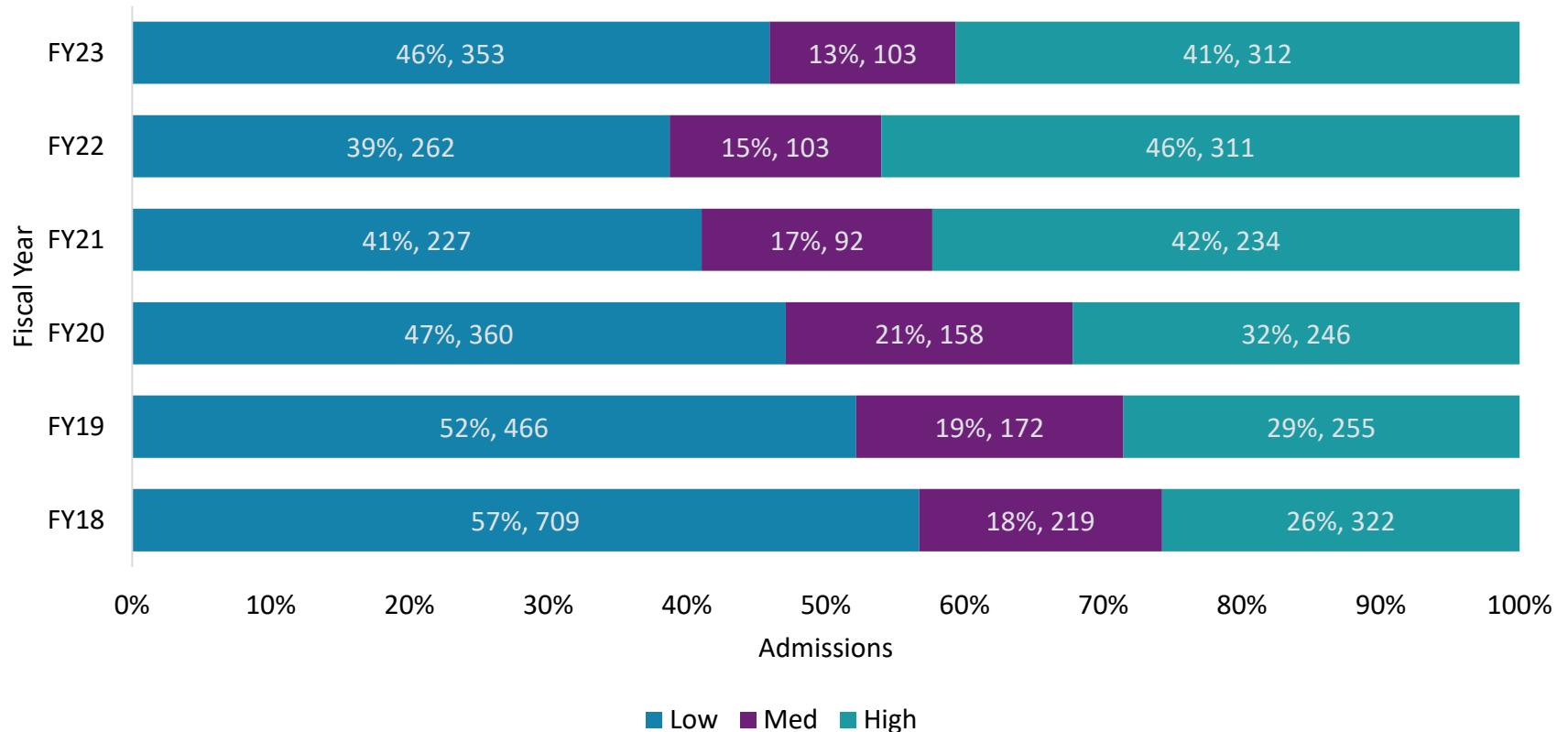
- **More than half** of youth detained pretrial had **involvement with DCF** at the time of their admission.
- **More than half** of youth detained pretrial had **an individualized education plan (IEP)**, twice the rate of Massachusetts' students generally.
- **A quarter of youth** detained pretrial had previously experienced **physical or sexual abuse or had been sexually exploited**.
- **About a third** of youth detained pretrial had identified feelings of **depression/anxiety**, almost twice the rate of Massachusetts' youth population.

Relative Rate Index (RRI) of Black and Latino youth detention admissions compared to white youth using arraignments as the base population

| Race/ethnicity | FY18 | FY22 | FY23 |
|-------------------------|------|------|------|
| Black /African American | 1.54 | 2.40 | 2.34 |
| Hispanic/ Latino | 1.71 | 2.59 | 2.55 |

Most detention admissions involve youth on lower-level offenses

Pretrial Detention Admissions by Offense Severity (FY18-FY23)



Pretrial Phase Project

Data Takeaways

- Detention admissions have been declining for some time, and recently, a growing number of admissions are for youth **held without bail**.
- Youth held without bail as a result of a **58A hearing** accounts for some, but not most detention admissions.
- Rather, the majority of youth held without bail are held **as a result of violating their pretrial probation as a dispo. conditions or bail conditions of release**.

Pretrial Project:

Key themes from interviews

Research Questions

1. Can any of these youth be diverted & served in the community?

2. What community-based interventions/supports need to exist in order to divert?

3. How can we improve pretrial success rates and reduce the need for detention?

4. What do victims want during this phase?

5. What practices can help us improve long-term outcomes for kids *and* protect public safety?

Goal

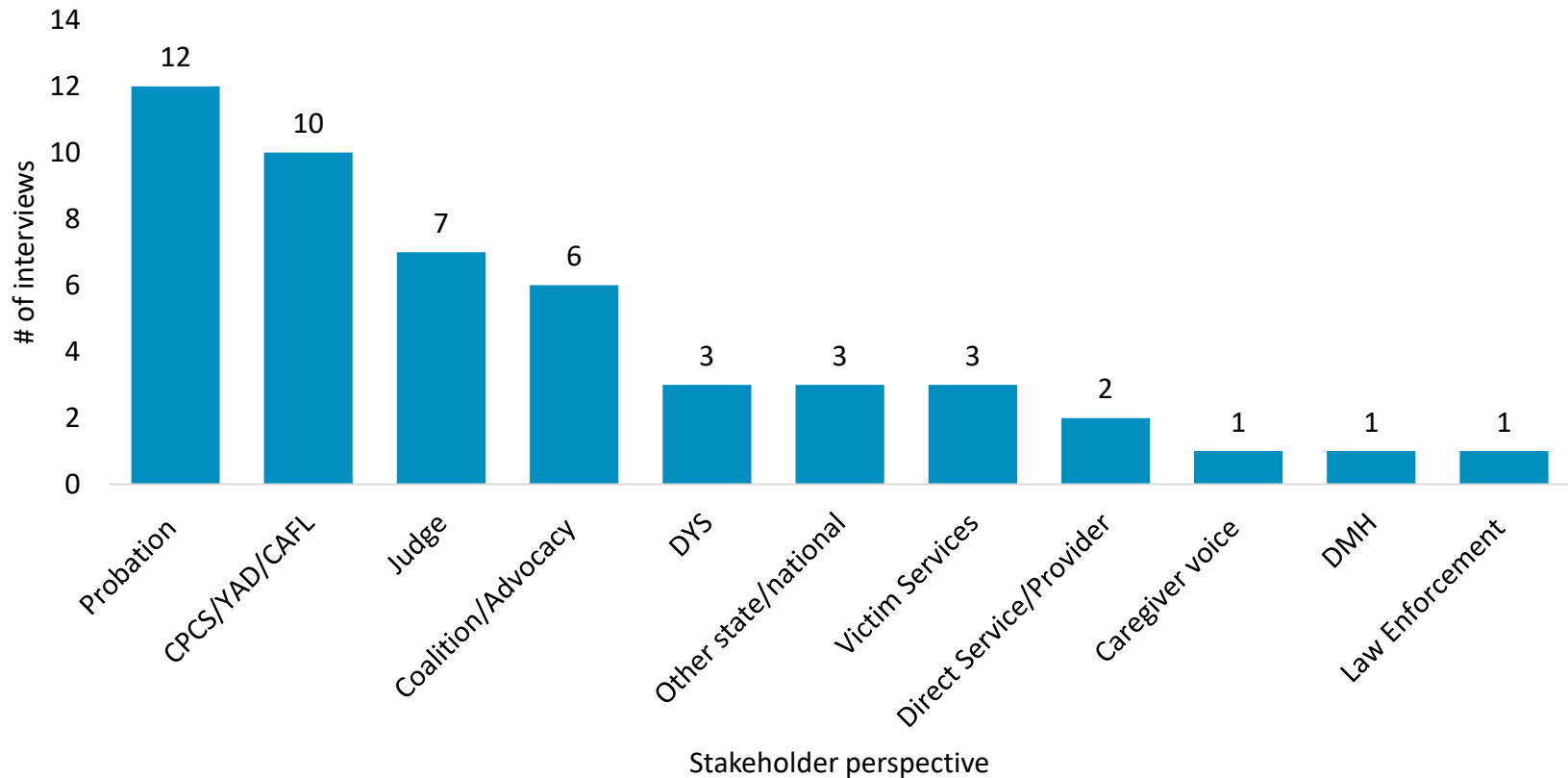
- Make recommendations to improve our system's pretrial phase
- Identify cohorts of youth that may benefit from being served in the community vs. detention
- Make recommendations to improve pre-trial community-based supports for youth

Methodology



Stakeholder interview updates

OCA-conducted 49 interviews to date (4/18)



What we're hearing...

There is a mismatch between policy and practice for holding youth on cash bail

There is a mismatch between policy and practice for setting conditions of release

There is concern about condition setting, specifically the use of GPS during this phase

People are concerned about certain regional practices

The length of time this phase can take can have negative consequences on a youth

FAILURE TO OBEY THIS ORDER MAY RESULT IN YOUR ARREST AND INCARCERATION

TO THE DEFENDANT: It is hereby **ORDERED** that you must comply with all **PRETRIAL CONDITIONS OF RELEASE** that are checked or filled in below pursuant to:

☐ G.L. c. 276, § 57, ¶ 2

(Superior Court pretrial conditions of release in cases alleging domestic violence)

☐ G.L. c. 276, § 58

(specified restrictions on personal association or conduct, or in cases alleging domestic violence, to ensure the safety of the alleged victim, any other individual or the community)

☐ G.L. c. 276, § 42A

(in cases alleging domestic violence, reasonable restrictions on the travel, association, or place of abode of the defendant, as will prevent contact with the person allegedly abused)

☐ G.L. c. 276, § 87

(pretrial conditions of release with the defendant's consent; distinguished from pretrial probation as a conditional disposition)

☐ G.L. c. 276, § 87

(conditions of release with the defendant's consent as a conditional disposition)

End Date: _____

THE FOLLOWING CONDITIONS ARE ORDERED:

- A**
- ☐ OBEY all local, state, and federal laws and court orders, including abuse and harassment prevention orders and support orders.
 - ☐ NOTIFY the probation department immediately if you change your residence, mailing address, or contact information.
 - ☐ MAKE NO FALSE STATEMENTS to any officer of the court.
 - ☐ DO NOT LEAVE MASSACHUSETTS unless you get the express permission of the court and sign a waiver of rendition.
 - ☐ SURRENDER ALL PASSPORTS AND PASSPORT ID CARDS to the court prior to release and do not seek a replacement.
 - ☐ REFRAIN FROM POSSESSION of any firearms, rifles, shotguns, destructive devices, or dangerous weapons.
 - ☐ REFRAIN FROM ABUSE and/or HARASSMENT of: _____
 - ☐ HAVE NO CONTACT, direct or indirect, with: _____
 - ☐ STAY (distance): _____ AWAY FROM: _____
 - ☐ STAY AWAY FROM (address): _____
 - ☐ RESIDE ☐ in/at: _____ ☐ with: _____
 - ☐ TAKE MEDICATION as prescribed by licensed medical provider.
 - ☐ DO NOT OPERATE a motor vehicle ☐ SURRENDER your driver's license to the court by _____ and do not seek a replacement.
 - ☐ REFRAIN FROM ☐ ILLEGAL DRUGS ☐ RECREATIONAL MARIJUANA ☐ ALCOHOL
- B**
- ☐ SUBMIT TO RANDOM TESTING or ☐ TESTING _____ times per _____
 - ☐ SIGN RELEASES to verify your compliance with terms of this order and provide verification as directed by probation.
 - ☐ REPORT TO THE PROBATION DEPARTMENT as directed by probation and/or as ordered below:
 - ☐ by phone ☐ in person _____ times per week
 - ☐ ATTEND and verify to your probation officer _____ meetings per week of ☐ Recovery/AA/NA ☐ _____
 - ☐ COOPERATE in a ☐ Mental Health ☐ Substance Use Disorder evaluation and any recommended treatment
 - ☐ Comply with REMOTE ALCOHOL BREATH TESTING.
 - ☐ Comply with ELECTRONIC MONITORING ☐ EXCLUSION ZONE(S): _____
 - ☐ HOME CONFINEMENT ☐ CURFEW: _____ ☐ OTHER: _____
 - ☐ PARTICIPATE in: _____ program and verify completion to probation by (date) _____
 - ☐ PARTICIPATE in ☐ Pretrial Services (§§ 57, 58, 58A only) or ☐ Treatment (with def. consent) _____ at CCC
 - ☐ OTHER CONDITIONS: _____

1. There is a mismatch between policy and practice for holding youth on cash bail

| Statute/Regs/Case Law | |
|---|--|
| Statute: MGL Ch. 276 Sec. 58 | <p>“Except in cases where the person is determined to pose a danger to the safety of any other person or the community under section 58A, bail shall be set in an amount no higher than what would reasonably assure the appearance of the person before the court after taking into account the person's financial resources.”</p> <p>.... “If bail is set at an amount that is likely to result in the person's long-term pretrial detention because he or she lacks the financial resources to post said amount, an authorized person setting bail must provide written or orally recorded findings of fact and a statement of reasons as to why...neither alternative nonfinancial conditions nor a bail amount that the person can afford will reasonably assure his or her appearance before the court, and further, must explain how the bail amount was calculated after taking the person's financial resources into account and why the commonwealth's interest in bail or a financial obligation outweighs the potential adverse impact on the person, their immediate family or dependents resulting from pretrial detention.”</p> |
| Case Law: <i>Brangan</i> (2017) | “a judge may not consider a defendant's alleged dangerousness in setting the amount of bail” |



1. There is a mismatch between policy and practice for holding youth on cash bail

| Policy | What we're hearing |
|---|--|
| "bail shall be set in an amount no higher than what would reasonably assure the appearance of the person before the court" | <ul style="list-style-type: none">• Youth are held on bail for circumstances other than assuring they return to court (e.g., \$1 bail for youth with DCF involvement, CSEC youth, seriousness of alleged offense)• The Juvenile Probation Arraignment/Appearance Screening Tool (J-PAST) was implemented to assess failure to appear (FTA) but – in practice– is not informing bail decision making.• Most youth show up to court regardless of J-PAST/ cash bail• The Juvenile Court's texting system is/was helpful |
| "after taking into account the person's financial resources" | <ul style="list-style-type: none">• Youth should not be expected to <i>have</i> financial resources (Something that the SJC has adopted in their rules assigning counsel to all youth)• The financial burden falls onto families |
| "...an authorized person setting bail must provide written or orally recorded findings of fact and a statement of reasons as to why, under the relevant circumstances, neither alternative nonfinancial conditions nor a bail amount that the person can afford will reasonably assure his or her appearance before the court, and further, must explain how the bail amount was calculated after taking the person's financial resources into account and why the commonwealth's interest in bail or a financial obligation outweighs the potential adverse impact on the person, their immediate family or dependents resulting from pretrial detention." | <ul style="list-style-type: none">• This isn't happening in a standard/systemized way |

2. There is a mismatch between policy and practice for setting conditions of release

| Statute/Regs/Case Law | |
|---------------------------------------|---|
| Statute: MGL Ch. 276 Sec. 58 | "...the defendant may be ordered to abide by specified restrictions on personal associations or conduct including, but not limited to, avoiding all contact with an alleged victim of the crime and any potential witness or witnesses who may testify concerning the offense , as a condition of release." |
| Case Law: <i>Norman</i> (2020) | "...Therefore, we conclude that the Legislature did not intend this provision to address dangerousness or deterrence of future crimes. Thus, the only permissible goals of pretrial conditions of release ...[are]...ensuring the defendant's return to court and [their] presence at trial, and safeguarding the integrity of the judicial process by protecting witnesses from intimidation and other forms of influence." |



2. There is a mismatch between policy and practice for setting conditions of release

| Policy | What we're hearing |
|---|---|
| <p>"...the defendant may be ordered to abide by specified restrictions on personal associations or conduct including, but not limited to, avoiding all contact with an alleged victim of the crime and any potential witness or witnesses who may testify concerning the offense, as a condition of release."</p> <p>"the only permissible goals of pretrial conditions of release ...[are]...ensuring the defendant's return to court and [their] presence at trial, and safeguarding the integrity of the judicial process by protecting witnesses from intimidation and other forms of influence"</p> | <ul style="list-style-type: none">• Many conditions of release set don't relate to victim safety and victims are not consulted• Conditions that do not reflect the alleged offense (e.g., drug testing issued for a persons related alleged offense).• Many "service-related" conditions (e.g., attend therapy). Some said those types of conditions can assume guilt, even though at this stage, youth have not been adjudicated delinquent. |

If conditions are written in a way that is protective of the victim, some are satisfied. If there aren't written conditions pertaining to the victim, sometimes they don't see it as relating to them. – Victim Services

...conditions of release that are status offense like can be handled in the CRA system and don't need to be replicated in a delinquency proceeding. -Judge



3. There is concern about condition setting, specifically the use of GPS during this phase

| Statute/Regs/Case Law | |
|------------------------------|---|
| Statute: MGL Ch. 276 Sec. 87 | “...juvenile court may place on probation in the care of its probation officer any person before it charged with an offense or a crime for such time and upon such conditions as it deems proper, with the defendant's consent , before trial and before a plea of guilty, or in any case after a finding or verdict of guilty;” |



3. There is concern about condition setting, specifically the use of GPS during this phase

Whether conditions were set under 58, 58A or 87 statute:

- Concern that too many conditions are being set, increasing youth's chance of violating
- Many people were frustrated in situations when conditions were violated but nothing happened (no hearing, no revocation, etc.)
- Youth/families are confused by the pretrial unit vs. local probation office distinction and can be frustrated trying to understand who their probation officer is when their case is assigned to the statewide pretrial unit.

If you aren't going to hold a kid for violating one of those conditions, then why set it?—Judge

Pretrial A cases are frustrating for families. They want to be able to get in contact with their child's PO.—Probation

*Its not so much that I see inappropriate conditions **but the number of conditions make it hard for our clients to meet them all.** It's hard for them [our clients] to go to weekly therapy, and get a job or do a lot of community service – a lot of our clients have a lot going on – so if it is a lot of conditions, it will be hard for them.—Attorney*



3. There is concern about condition setting, specifically the use of GPS during this phase

GPS as a condition:

- Belief that there has been net-widening as a result of using detention less
- People expressing concern that it is not developmentally appropriate for adolescents (e.g., exclusion zones that encompass schools or other prosocial activities, youth forgetting to charge them) & acts as a “scarlet letter”
- Individuals were concerned that it was being used for too long of time (>3 months)
- Many people thought having GPS *and* home confinement conditions was particularly harmful for youth, and the concern that the state was making assumptions about a child’s home life

We have been arguing against detention for youth and the over correction is that now all kids are just getting GPS. – Attorney

Some judges order it a lot...and length of time can be an issue. Plus, it can be disruptive to the family as a whole. That by default if a youth is being monitored, the whole family is....when there are tech issues and the police are called, that is extremely disruptive...All to monitor a youth who has not been adjudicated delinquent. - Probation

[GPS] usually means home confinement other than school and medical appointment. It isolates kids and limits their exercise and recreation.. -- Attorney



3. There is concern about condition setting, specifically the use of GPS during this phase

GPS as a condition:

- Many people didn't understand why it was used when there is no victim or when the victim doesn't want GPS
- Many people mentioned how resource- intensive these cases are:
 - Tech challenges: false positives, signal issues and time it takes to install.
 - Court resources: motions to change the exclusion zones and resources navigating violations

It's is a lot of responsibility for a juvenile to keep the GPS charged and obey the conditions that come with it... Once you explain [to victim] what it is, some want [it as a COR] less. – Victim Services

One client had to appear in person in court every month to attend their orthodontist appointment. It was disruptive to the family. It also puts a lot of stress on the family, when they get alert that the battery is low, or they are out of signal. -- Attorney

The logistics are underappreciated as a huge stressor (large schools without service, battery issues, etc.) Multiple kids are getting arrested because of technical issues with the GPS. One student had serious medical issues, needed surgery, and couldn't go because of GPS restrictions. -- Attorney



4. People are concerned about certain regional practices

Differences in DAO:

- Asking for cash bail when failure to appear is not a risk
- Use Dangerousness Hearings for certain offenses automatically vs. case by case (e.g., all weapons offenses, firearm discharge only)
- Offers pretrial probation as a disposition instead of pre-arraignment diversion
- Using pretrial probation as a disposition (Sec. 87) for certain cases

Differences in Attorneys:

- Advocacy for/against conditions of release
- Advocacy for/against conditions under Sec. 87

In my opinion, many of these cases [pretrial probation] should just be dismissed. – Probation

Some [ADAs] ask bail be set on every arraignment, while other more experienced prosecutors realize that is not appropriate. – Judge

I think it [58A hearings] is a knee jerk reaction – every gun case that comes in they take the 'dangerous' viewpoint. – Attorney

This DAO rarely moves for a dangerousness hearing. I can't remember the last one. – Attorney

Prosecutors should not issue conditions of release that do not have to do with appearing in court. Defense should not agree to conditions that don't relate to showing up to court. They should always object to those other conditions. – Judge

From court to court, pretrial probation is used differently. – Probation



4. People are concerned about certain regional practices

Differences in Probation:

- Some offices conducting risk/needs screens for youth on pretrial probation as a dispo.
- The extent in which J-PAST assessment is conducted and/or used in court

We fill it [J-PAST] out. But we are never asked by any party for it.- Probation

Differences in Judges:

- Holding youth with DCF involvement on low-cash bails
- Setting conditions of release
- Consulting with probation on setting conditions of release

It seems as though the only options for youth are either diversion or detention, and nothing in between.- Judge

I won't hold kids if DCF says they do not have an appropriate placement.- Judge

There is one judge who consistently checks 'B' items. No matter what. - Probation

Judges are concerned about safety if a youth is on the run or is being exploited. We go down the rabbit hole of good intention, we want to keep kids safe, so [judges] detain them with \$1 bail, which does more harm long-term. - Judge



5. The length of time this phase can take can have negative consequences on a youth

- People are concerned with the length of time between an arraignment and disposition, especially when it meant **delayed access to appropriate services** when necessary (e.g., needing to admit to the offense in order to participate in programming, no available court services in the interim).
- At the same time, people **emphasized the importance of due process** and the mechanisms to ensure due process sometimes can delay disposition (e.g., Defense counsel gathering evidence (“discovery”) from the DAO/Police, conducting evaluations and assessments, gathering witnesses)

For youth who are held:

- There were concerns about reentry, especially educational concerns
- Negative impact of detention on mental & physical wellbeing

For youth monitored by probation:

- People were concerned the longer youth were monitored, the more likely they would be to violate

No one knows how long they will be there [Detention] and there is a possibility that the kid gets out...no one feels urgency and there is uncertainty around timing. – Attorney

Discussion Questions



- Do any of these themes surprise you?
- Are there other themes you'd like to suggest?
- Do you agree/disagree with any themes?

Pretrial Project: Where we're going...

Pretrial Updated Project Plan

2024

- Interviews/surveys
- National landscape review in what other states are doing re: pretrial detention vs. probation; bail; conditions
- Review of relevant MA policies
- Speaking with youth/young adults

What other *juvenile pretrial process* information do you need to see in order to answer our research questions?

- ...Interviews with _____ stakeholders?
- ...Data?
- ...National research/best practices?

JJPAD Board 2024 Work Plan

DIY Updated Project Plan

2023

- Data analysis (DYS/Juvenile Court/Probation)
- Case file methodology presentation to Data Subcommittee
- Literature review re: national DIY trends
- Interviews of attorneys, judges, providers and advocacy community

2024

- Case file review
- Data analysis
- National landscape review in what other states are doing re: prevention
- Interviews with DCF
- Review of relevant MA policies

CBI Subcommittee

Spring

- Pre-trial key themes to date
- Pretrial national research & best practices

Summer

- Pretrial findings and recommendations draft

Fall

- DIY key themes to date and data deep dive analysis

Winter 2024/2025

- DIY key themes to date and data deep dive analysis (pt. 2)
- DIY draft findings & recommendations for the Board

OCA Public Webinar

- Friday May 10th 1-2pm
- Presentation of the FY23 juvenile justice system data & 2023-2024 JJPAD Board work plan
- Q&A

Feel free to share with
your networks!

[Click here to register in
advance](#)

Next Meeting:

Wednesday May 29th 11-12:30pm

(All meetings are virtual; Zoom information is in each calendar invitation)



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