

Juvenile Justice Policy and Data Board

Community Based Interventions
Subcommittee Meeting

July 29, 2024

Agenda

1. Welcome and Introductions
2. Approval of May Meeting Minutes
3. Project Discussion: Examples of Pretrial Reform from Other Jurisdictions
4. Discussion & Next Steps

Methodology



Research on cash bail & GPS as a condition of release (COR)

Our [national review](#) found that:

- Research shows most people appear in court.
- The research suggests that cash bail is not effective at promoting public safety or improving failure to appear (FTA) rates.
- Jurisdictions that have been successful in improving FTA rates have done so with interventions such as an automated text reminder system or arranging transportation for youth.
- GPS is not always effective or developmentally appropriate for youth



Guiding Questions

1

What states, if any, have limited the use of cash bail? What did that policy look like? What was the result of that shift in policy?

2

What states, if any, have limited the use of conditions of release, especially GPS? What did that policy look like? What was the result of that shift in policy?

3

What can Massachusetts learn from these reforms?

Pretrial Project: Examples of Pretrial Reform from Other Jurisdictions

Some states have eliminated cash bail as a COR for all defendants as part of larger pretrial reforms

Illinois – Pretrial Fairness Act (PFA)

Eliminates cash bail

Puts offense-based restrictions on detention and limits the use of pretrial detention for many defendants

Creates new pretrial hearing processes

Limits the conditions that may be placed on defendants released pretrial

New Jersey – Criminal Justice Reform (CJR)

Limits cash bail

Implemented the use of a pretrial risk assessment to guide detention and COR decisions

Includes constitutional amendment allowing for pretrial detention of defendants who pose a substantial risk of flight or danger to the community

Created NJ's speedy trial law

In 2021, Illinois passed the Pretrial Fairness Act (PFA)

In 2020 Illinois Supreme Court Commission on Pretrial Practices issued final report outlining recommendations for reform to Illinois pretrial system.

That same year the Illinois Supreme Court Pretrial Implementation Task Force was created to prioritize and implement those recommendations. Pilot sites were chosen.

January 2021, the Illinois General Assembly passed House Bill 3653 – an omnibus crime bill known as the Safety, Accountability, Fairness and Equity Act, which includes a section referred to as the PFA

Reforms under the PFA became effective September 18th 2023

Prior to reform, ability to post bail was often the only determinant in detention admissions

- **Most defendants were given cash bail as a COR.** Bail amounts tended to be substantial.
- Hearings were generally quick, reasons were not always given for setting cash bail, and **it was rarely clear what factors were considered** in the decision making.
- An average of 250,000 people were detained annually pretrial – many for short periods of time before bailing out rather than being **detained due to public safety or FTA concerns.**
- Victims reported feeling unsafe under this system, citing that regardless of the seriousness of the alleged crime, defendants could be released on bail.



The goal of the PFA was to create a system that reduced the use of detention and promoted public safety

The PFA:

- Eliminates the use of cash bail as a COR, or as a method to detain and ensures that defendants have a presumption of personal recognizance.
- Limits the use of detention [for only “detainable” offenses](#) and only after a due process detention hearing.
- Limits the use of CORs and issues special rules for the use of GPS and home confinement.
- Allows for the use of a pretrial risk assessment tool to help determine CORs and guide detention decisions.



Setting Release Conditions

Has the State filed a verified petition to detain the person pretrial, and is the petition for a hearing granted?

YES

Court must set a detention hearing. Person will be held if ordered by the Court. (110-6.1(c)(2))

NO

The person shall be released. (109-1(b)(4)) It is presumed the person is entitled to release on personal recognizance subject to conditions of release. (110-2(a)) The court must impose the mandatory conditions in 110-10(a) and may impose the additional conditions in 110-10(b).

Has the prosecution proven by clear and convincing evidence that any additional condition of release is necessary to ensure the person's appearance, the safety of a person or the community, and the person's compliance with all conditions? (110-2(b), 110-5(a))
Are the conditions the least restrictive conditions? (110-5(c))

Decisions regarding conditions of release must be individualized. (110-6.1(f)(7), 110-10(b))

TAKE INTO ACCOUNT THE FOLLOWING TO HELP MAKE THIS DETERMINATION

Court may use a regularly validated risk assessment tool to aid its determination of appropriate conditions of release. (110-5(b))

In making such a determination, the court shall take into account:

- (1) the nature and circumstances of the offense charged;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person;
- (4) the nature and seriousness of the specific, real and present threat to any person that would be posed by the person's release; and
- (5) the nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process. (110-5(a))

Court may take into account additional factors when setting release conditions for those charged with certain violent offenses related to domestic and intimate partner violence (e.g., violating orders of protection, domestic battery, stalking). (110-5(a)(6), (7))

PERMISSIBLE CONDITIONS: Conditions shall not mandate rehabilitative services unless directly tied to the risk of pretrial misconduct; and shall not include punitive measures such as community service work or restitution. (110-10(b)) Conditions must be in accordance with national best practices as detailed in the Pretrial Supervision Standards of the Supreme Court. (110-10(b)(9))

SPECIAL RULES FOR USE OF GPS: Electronic monitoring, GPS monitoring, or home confinement can only be imposed if no less restrictive conditions would reasonably ensure the person's appearance or protect an identifiable person(s) from imminent threat of serious physical harm. If imposed, the Court must set forth in the record the basis for its finding. (110-5(g), (h))

Initial
Appearance
Hearing

Detention is limited to only certain offenses, that fall under two qualifying standards

Dangerousness Standard

- State must show by clear and convincing evidence that:
 - The proof is evident or the presumption great that the defendant has committed a detainable offense; AND
 - The defendant poses a real and present threat to the safety of any person(s) or to the community based on the specific articulable facts of the case; AND
 - No condition or combination of conditions can mitigate the real and present threat to any person(s) or the community

Willful Flight Standard

- State must show by clear and convincing evidence that:
 - The proof is evident or the presumption great that the defendant has committed a felony offense listed in subsection (a) or a Class 3 or greater felony; AND
 - No condition or combination of conditions can mitigate the risk of defendant's willful flight.

Examples of detainable offenses

Dangerousness Standard

- Forcible felonies (as defined in the PFA) (e.g., treason, first degree murder, criminal sexual assault, armed robbery, etc.)
- Felonies not eligible for probation
- Stalking/Aggravated Stalking
- Violation of order of protection, stalking/no contact order or civil no contact order
- Domestic Battery/Aggravated Domestic Battery
- Sex offenses

Willful Flight Standard

- Judge can order detention of a defendant charged with any felony listed in [\(a\)\(1\)-\(a\)\(7\)](#) of the PFA OR any Class 3 (e.g., theft of less than \$500) or greater felony who has a high likelihood of willful flight to avoid prosecution.

Revocation of Pretrial Release

- PT release [can be revoked](#) only if the defendant is charged with a felony or Class A misdemeanor that is alleged to have occurred during the defendant's pretrial release & only after a hearing which must be held within 72 hours of a petition being filed or court's motion for revocation
- Neither the underlying offense or the new offense needs to be "detainable"
- Possible outcomes of the hearing include:
 - Revoke PT release and order detention
 - Deny revocation and release defendant with modified conditions
 - Deny revocation and release defendant without any modified conditions

Violations of Pretrial Release

- [For all other violations](#), the defendant may be subject to sanctions but not revocation of pretrial release. Examples include:
 - Fails to appear in court
 - Commits a Class B or C misdemeanor, traffic offense, petty offense or ordinance violation while on PT release
 - Commits a Class A misdemeanor or felony while on pretrial release for a Class B or C misdemeanor or traffic offense
 - Violates any other condition of release
- The court shall only impose sanctions if it finds by clear and convincing evidence that:
 - The defendant committed an act that violated a condition of pretrial release;
 - The defendant has actual knowledge that their action would violate a court order;
 - The violation was willful; AND
 - The violation was not caused by a lack of money
- [Pursuant to 110-6\(f\)](#), sanctions may include:
 - Written or verbal admonishment
 - No more than 30 days in jail
 - Modification of pretrial release conditions

Prior to going statewide, reforms were first implemented across 5 pilot sites

- Prior to the PFA coming into effect, the Illinois Supreme Court selected 5 pilot sites to take the lead in developing processes, tools, and practices that would be refined and shared to support statewide implementation.
- The results of which informed the creation of a [PFA toolkit](#), a framework for local decision making based on the experiences of the PFA pilot sites.
- The state also created the **Illinois Supreme Court Pretrial Implementation Task Force** to provide technical assistances to counties as they prepared to implement the PFA reforms.



Initial results indicate the law is having its intended effect

- **Detention populations are decreasing:** One [study](#) conducted found that statewide pretrial jail bookings fell 17.5% between summer 2023 (i.e., pre-PFA) and fall 2023 (i.e., post-PFA). The pretrial jail average daily populations fell 14% during that same time period.
- **Cases are critically reviewed:** In the first month of implementation, [evaluators observed 150 hearings](#), and noted that the reform resulted in longer and more substantive first appearance and detention hearings.
- **Almost all people are showing up to court:** The Office of Statewide Pretrial Services (OSPS) has reported that since the implementation of the reform, an FTA warrant was issued in only [5% of court dates](#) in the 75 counties they cover.
- **Evaluators tracking the use of GPS have not observed [“an explosion” in its use](#).** Illinois plans to start publishing electronic monitoring data publicly on the [OSPS’ pretrial dashboard](#).



Potential areas of future reform in Illinois

The [Pretrial Success Act](#), if passed, aims to provide the Illinois Department of Human Services grant making, operational, and procurement authority to distribute funds to local government health and human services agencies for:

- System navigation to help people access services
- Mental health and substance use disorder assessment, case management, and treatment according to clinical standards
- Transportation and childcare to remove barriers to court appearances



Questions?



What did you find most interesting/surprising about the PFA?

What, if anything, can be learned from the PFA?

What do you have more questions about?

In 2014, New Jersey passed voter approved Criminal Justice Reform

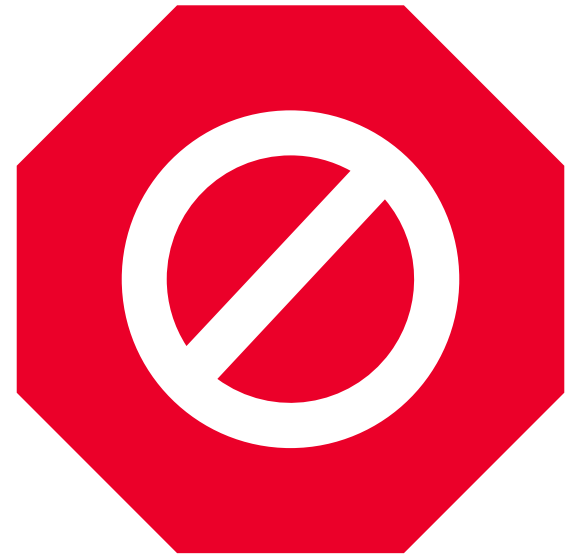
- Prior to reform, 75% of people incarcerated in NJ on any given day were awaiting trial
- The 2014 CJR aimed to decrease the number of people detained pretrial by:
 - Eliminating cash bail as a COR and as a means to detain, and instead introduce the [Public Safety Assessment](#) that includes an objective set of factors that assess risk to public safety and the likelihood a defendant will FTA
 - Ensuring the PSA be conducted as quickly as possible, so that low-risk defendants are not detained for more than 48 hours.
 - Ensuring that all defendants [are entitled to a speedy trial](#).



Detention can only be used for certain offenses

These offense are outlined in New Jersey's [Pretrial Release Recommendation Decision Making Framework](#). Examples include:

- Murder or felony murder
- Aggravated sexual assault
- Human trafficking
- Prohibited weapons and devices
- Unlawful possession of a weapon
- Burglary
- Absconding from parole



Bail reform in NJ has been successful

- **Defendants are showing up to court.** Since the start of CJR (2017), court appearance rates have hovered between [89% and 91%](#).
- **Fewer people are being held pretrial.** Between 2015 and 2022 New Jersey saw a [20% decrease](#) in its pretrial population.
- **New Jersey has seen only negligible increases in crime or re-arrest rates after implementing the CJR.** While there was an increase in crime in 2020, [only 1.2% of people released pretrial were charged with a subsequent serious offenses](#).
- **Decreased the use of pretrial detention without increasing gun violence.** [One study](#) found that from 2017 to 2019, when New Jersey saw its greatest decreases in the number of people held in pretrial detention, there was no change in fatal and nonfatal gun violence.



Questions?



What did you find most interesting/surprising about the CJR?

What, if anything, can be learned from the CJR?

What do you have more questions about?

Jurisdictions that do not use EM for juveniles

[New Hampshire](#) appears to be the only state that does not use some form of electronic monitoring in the juvenile justice system.



Electronic monitoring (EM) reforms for youth in California

In 2022, **California** recently enacted [a new law](#) that:

- requires a hearing be held every 30 days that a youth is on electronic monitoring to ensure that they are not monitored unnecessarily
- gives “good time” credit while on EM
- requires data reporting (by age, gender, race, and underlying offenses) the following :
 - the number of youth on EM annually
 - the number of days youth were on EM
 - number of days that youth were detained as a result of violating EM conditions,
 - the reasons youth were placed on EM



Electronic monitoring technological advancements

New York 2019 pilot program was conducted for youth (16-18):

- Youth's cell phone was connected via Bluetooth to a small ankle bracelet. The ankle bracelet had no GPS capabilities and did not need to be charged throughout the project; its only purpose was to ensure the cell phone was physically with the youth.
 - The two-piece GPS system meant there were more alerts (avg. 4/day) and only 5% of all alerts were accurate (i.e., entered the exclusion zone)
 - "keeping a cell phone charged was not an easy task for many of the young people in our program"
- During the later part of the project, some participants did not have an ankle bracelet at all, and check-ins were conducted throughout the day with voice verification on the cell phone.
 - 4-6 calls / day
 - Many were missed because the youth was busy with other activities or was not near the phone
- Researchers recommended to:
 - "Look at the least intrusive and complex solution that can meet the needs of a specific population."
 - When 24/7 tracking is necessary: "pick a technology that works for their day-to-day lives rather than get in the way of the ultimate goals— engagement with school, family, community and social services and resources."
- There are some "smart watch" GPS tracking devices on the market though there is no current public reporting of effectiveness

Questions?



What did you find most interesting/surprising about these examples?

What, if anything, can be learned from them?

What do you have more questions about?

Next steps: August Meeting

- Review magic wand responses from informational interviews
- Discuss draft findings and brainstorm potential recommendations



Next Meeting:

Wednesday August 28, 2-3:30pm

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



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