

Juvenile Justice Policy and Data Board

Community Based Interventions
Subcommittee Meeting

May 29, 2024

Agenda

1. Welcome and Introductions
2. Approval of April Meeting Minutes
3. Project Discussion: Juvenile Pretrial Phase National Research on Conditions of Release and Cash Bail
4. Next Steps

Pretrial Project: National Research on Conditions of Release (COR)

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



Research Notes & Limitations

- National research includes reviews of:
 - ✓ Current available research
 - ✓ Overview of what other jurisdictions are doing in the juvenile pretrial phase
- Research on some of these topics specifically in the pretrial juvenile justice system is limited, therefore, some of the studies included look at the adult system and/or are for post adjudication



The key themes from interviews informed our review questions

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

Guiding Questions

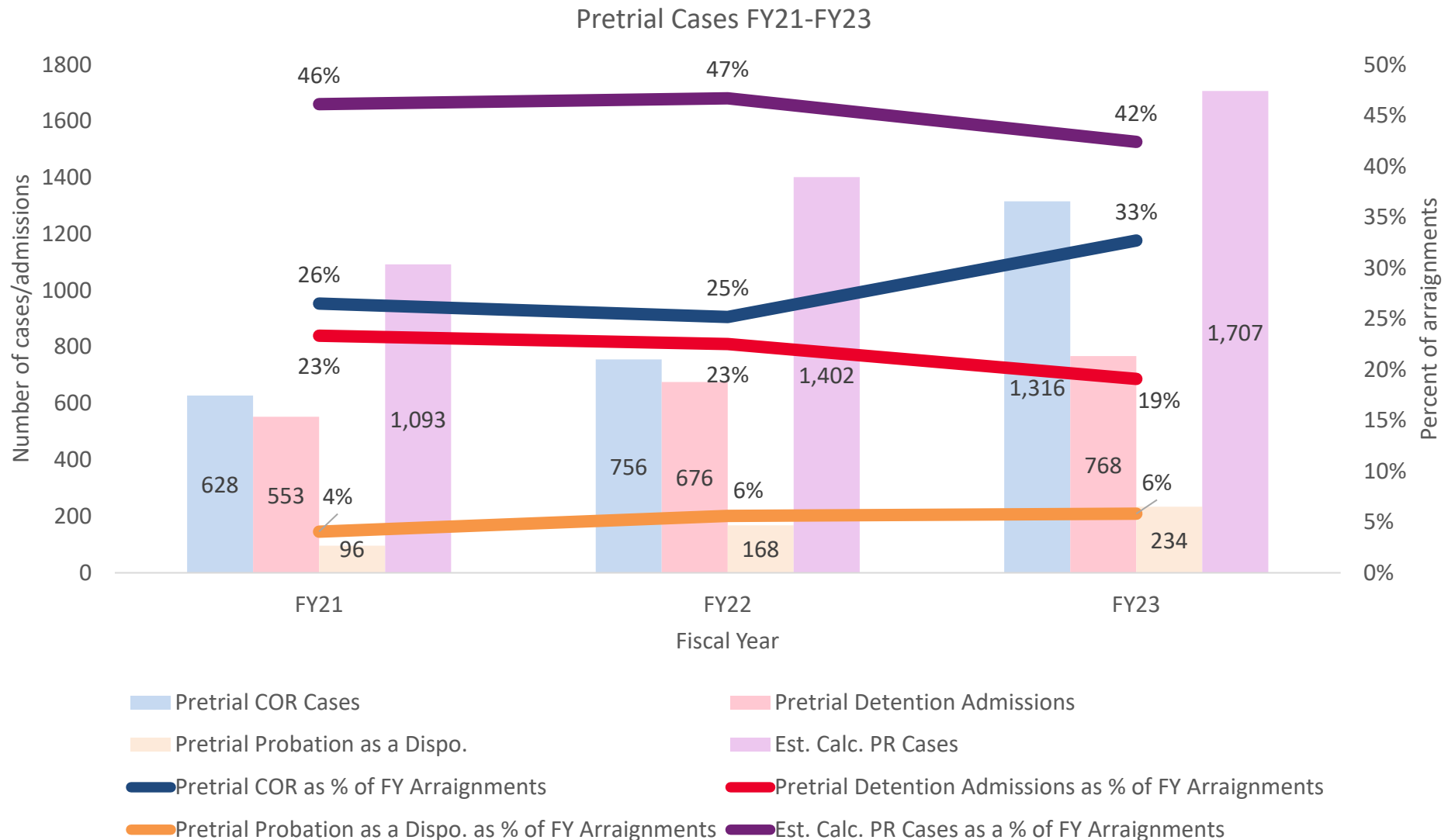
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- What are effective (e.g., promote public safety & ensure youth appear to court) and developmentally appropriate “conditions of release” for youth?
- When should GPS be used?

2

- When should monetary conditions (cash bail) of release be used?
- What are the “failure to appear rates” for youth in the juvenile justice system?

In recent years, youth are being released on conditions of release (COR) more, and on personal recognizance (PR) less



Conditions of release are informed by statute and determine if a case is *supervised* or *monitored* pretrial

M.G.L. Ch. 276 Section 58

Specified restrictions on personal associations or conduct, or in cases alleging domestic violence, to ensure the safety of the alleged victim, any other individual or the community

M.G.L. Ch. 276 Section 87

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

Pretrial Conditions Type A:

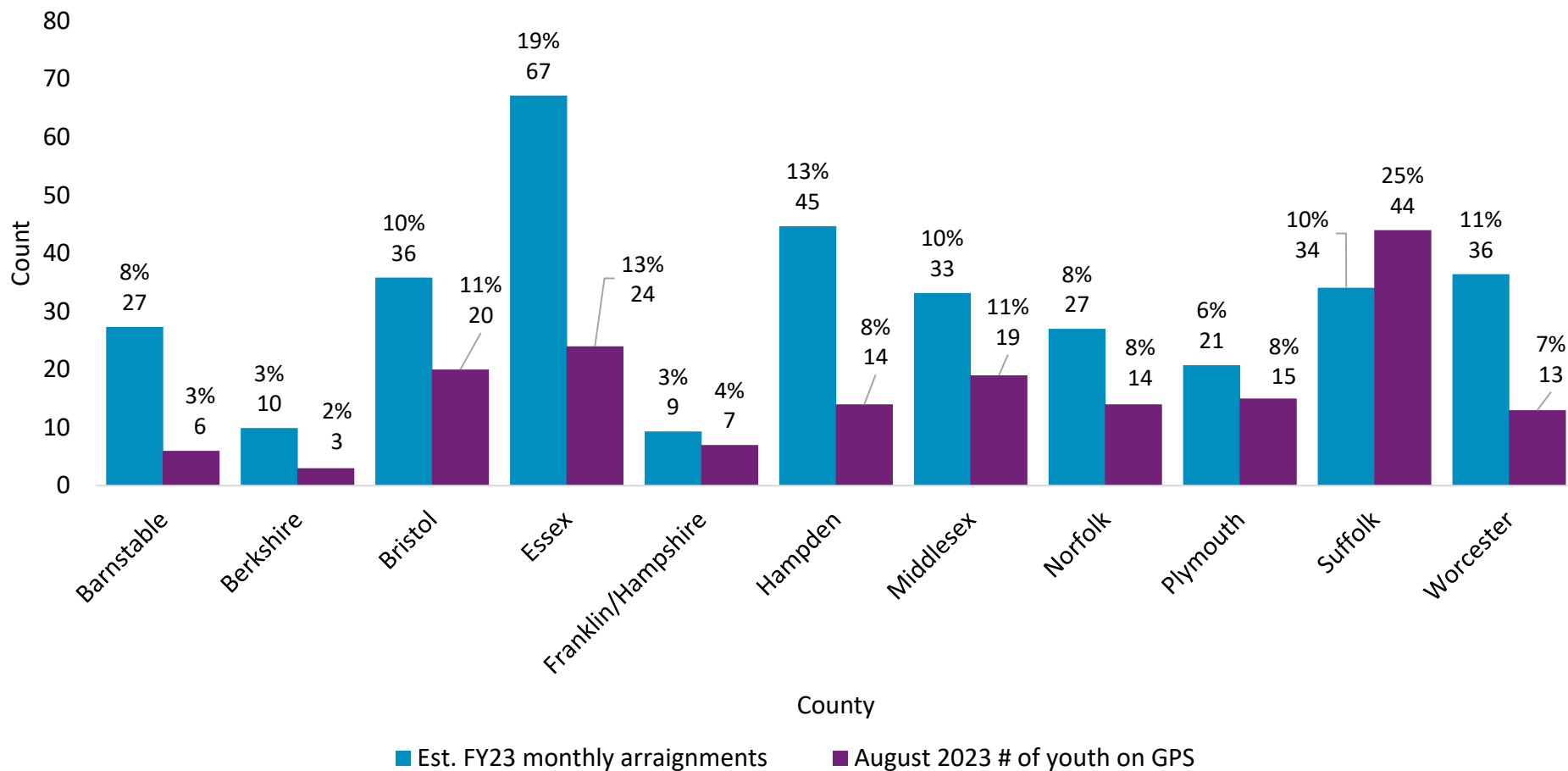
- **Do not** require active probation supervision (e.g., obey all laws and court orders, no contact/stay aways)
- Supervised by the state Pretrial Unit, violations of probation are handled by local probation office

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

While we don't have data on all CORs, we do have point-in-time GPS use

Number of youth on GPS



- What are effective and appropriate “conditions of release” for youth?
- When should GPS be used?

Research suggests that GPS may not be developmentally appropriate for youth

[Research](#) on adolescent development suggests that several developmental factors inhibit youth's ability to be successful on GPS:

- Youth often lack self-regulation skills, so abiding by the terms of electronic monitoring, such as not going outside or avoiding certain people, is very challenging.
- Youth are most likely to respond to immediate incentives, rather than far off punishments.
- GPS requires advanced planning skills that most youth have not yet fully developed. Because the monitors must always remain charged to avoid any violations, youth are required to schedule charging times at appropriate increments. Many programs also require advanced notice be granted from probation officers for youth to leave their inclusion zones for necessary activities.



- What are effective and appropriate “conditions of release” for youth?
- When should GPS be used?

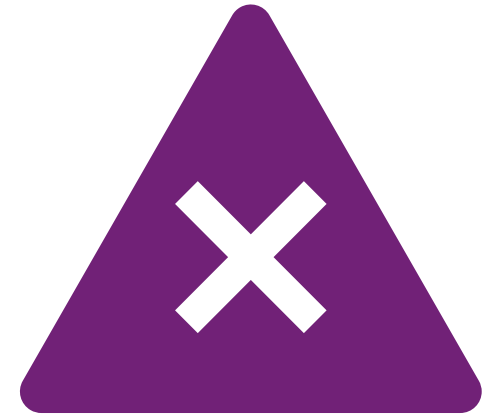
GPS can contribute to a “labeling effect” and be harmful for youth and families

- [Research shows](#) that youth who are labeled as “bad kids” are more likely to go on to make additional poor choices. The social stigma associated with wearing an electronic monitor, a visible symbol of being deemed a “bad kid”, may result in psychological damage to the youth wearing it and prevent participation in prosocial programs.
- [In one study](#) designed to understand a person’s experience on electronic monitoring, almost half of those interviewed reported that it negatively impacted their personal relationships, and 89% of probation officers reported that electronic monitoring pretrial weakened participants’ ties with friends and family and hurt relationships.
- [Research](#) demonstrates the positive impact that socialization has on youth. Electronic monitoring programs separate youth from their family, friends, and positive activities. Youth who are on home confinement, in particular, may miss out on positive after-school activities, sports, and social interactions that would support their development and provide positive outlets for their time and energy.
- [GPS bracelets](#) can cause physical harm to the wearer, with some reporting welts and rashes from the devices.

- **What are effective and appropriate “conditions of release” for youth?**
- **When should GPS be used?**

Additionally, GPS has not proven effective in improving public safety or improving rates of court appearance

- A 2020 international [meta-analysis](#) of 34 studies of the use electronic monitoring (post- adjudication) found that the use of electronic monitoring does not have a statistically significant impact on reducing re-offending (except for individuals convicted of a sex offense), and there was a mix re: GPS effectiveness on FTA rates ranging from no effect to “inconclusive.”
- In its 2020 [report](#), the Illinois Supreme Court cited [a study](#) looking at pretrial GPS use for individuals facing intimate partner violence charges leading the Court to conclude: “there is no research that indicates this condition [electronic monitoring] promotes public safety or court appearance,” but did reduce the risk of failing to appear to meetings with pretrial probation officers.
- In one Cook County [program](#), victim advocates reported that due to a number of false alarms, disruptive notifications, and a lack of response from law enforcement officials, [GPS] caused distress and degraded victims’ feelings of safety.



- What are effective and appropriate “conditions of release” for youth?
- When should GPS be used?

GPS can be– relatively– costly

- Research shows that when used as a diversion from incarceration, electronic monitoring is a cost-effective strategy. A national assessment [concluded](#) the cost of (adult) incarceration is up to six times higher than the cost of electronic monitoring.
- However, a California [study](#) of the use of electronic monitoring for high-risk parolees convicted of sexual offenses found that supervision with electronic monitoring was approximately 2.5 times more expensive than regular intensive supervision, with roughly the same outcomes.

- What are effective and appropriate “conditions of release” for youth?
- When should GPS be used?

GPS technology can be unreliable and can result in youth violating their CORs

- [One law review](#) suggests that people on electronic monitoring may receive a higher number of technical violations as a result of stringent conditions and, therefore, be supervised for longer periods of time than people on traditional pretrial supervision. Further, the author argues, there likely is net widening.
- [One study](#) conducted in California found that some counties do not exempt youth from responsibility when equipment is damaged, even if the monitoring device was damaged by no fault of the youth.



- What are effective and appropriate “conditions of release” for youth?
- When should GPS be used?

Research on probation conditions more broadly shows that there are gaps in how youth interpret and understands conditions

- **The adolescent brain is still developing, making it hard for youth to comply with some of their CORs.** Neural networks in the brain responsible for self-regulation and reward motivation do not fully develop until after age 24, which makes youth more likely to engage in risky behaviors and defy rules.
- **Youth can have a hard time remembering all the conditions set.** One [study](#) in Washington State found that youth recalled approximately one-third of conditions imposed on them.
- [Research](#) shows that too many conditions, conditions that are overly broad (e.g. obey all school rules), and conditions that do not relate to the alleged offense are developmentally inappropriate & setting kids up for failure.
- **Interventions/conditions that target risk factors result in better outcomes for youth.** They also may help ensure that probation only reaches the youth who need it most and strengthen case management services for those youth.



- **What are effective and appropriate “conditions of release” for youth?**
- **When should GPS be used?**

Examples & Guidance

- In 2022, California recently enacted [a new law](#) that requires a hearing be held for every 30 days that a youth is on electronic monitoring to ensure that they are not monitored unnecessarily. The bill also prohibited devices from being used to speak to a minor or eavesdrop or record any conversations and give “good time” credit while on EM.
- The American Probation and Parole Association [suggests](#) that electronic monitoring should be used for only those individuals who truly require a higher level of supervision, as identified by an objective risk assessment system, and only used for the minimum time necessary.

- What are effective and appropriate “conditions of release” for youth?
- When should GPS be used?

Research Summary

- Research suggests that GPS may not be developmentally appropriate for youth
- GPS can contribute to a “labeling effect” and be harmful for youth and families
- Additionally, GPS has not proven effective in improving public safety or improving rates of court appearance
- GPS is costly relative to other forms of pretrial supervision
- GPS technology can be unreliable and can result in youth violating their CORs
- Research on probation conditions more broadly shows that there are gaps in how youth interpret and understands conditions, and “less is more” in terms of number of conditions

- What are effective and appropriate “conditions of release” for youth?
- When should GPS be used?

Discussion Questions



- Did any of the research presented surprise you?
- What other questions re: GPS & CORs do you still have?
- What other examples do you want to see to inform your recommendations for improvements?

Guiding Questions

1

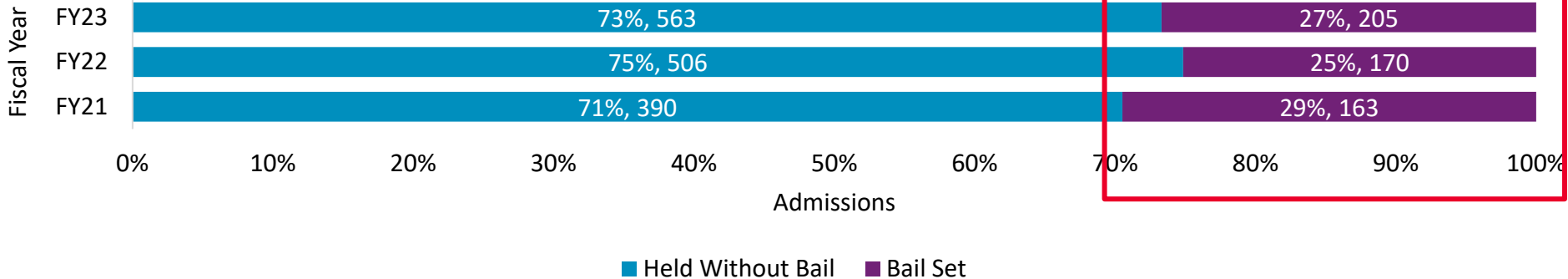
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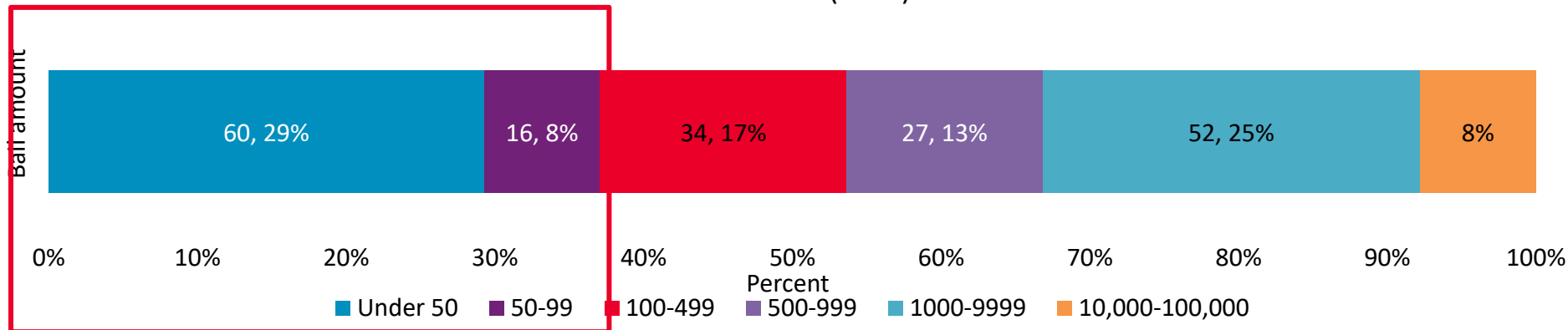
- When should monetary conditions (cash bail) of release be used?
- What are the “failure to appear rates” for youth in the juvenile justice system?

In MA, a quarter of all detention admissions are for youth with bail set, a third of which are held on less than \$100

Pretrial Detention Admissions by Bail Status (FY21-FY23)



Bail amount (FY23)



- When should monetary conditions (cash bail) of release be used?
- What are the “failure to appear rates” for youth in the juvenile justice system?

In MA, the use of cash bail is informed by both statute and case law

M.G.L. Ch. 276, Section 58

Except in cases where the court has determined that a juvenile should be held as a result of a 58A hearing, “bail shall be set in an amount no higher than what would reasonably assure the appearance of the person before the court.

... take into account:

- the nature and circumstances of the offense charged,
- the potential penalty the person faces,
- the person's family ties,
- financial resources and financial ability to give bail,
- employment record
- and history of mental illness,
- his reputation and the length of residence in the community,
- his record of convictions, if any, any illegal drug distribution or present drug dependency,
- any flight to avoid prosecution or fraudulent use of an alias or false identification,
- any failure to appear at any court proceeding to answer to an offense,
- whether the person is on bail pending adjudication of a prior charge”

Brangan v. Commonwealth, SJC, 2017

When “setting the amount of bail, whether under G. L. c. 276, § 57 or § 58, a judge must consider a defendant's financial resources, but is not required to set bail in an amount the defendant can afford if other relevant considerations weigh more heavily than the defendant's ability to provide the necessary security for his appearance at trial.”

- When should monetary conditions (cash bail) of release be used?
- What are the “failure to appear rates” for youth in the juvenile justice system?

Cash bail has not been found to be effective in improving failure to appear rates

- According to a [study](#) conducted involving over 3,900 adults in Virginia those who were unsupervised already appeared at the very high rate of 96%. When people who were released were placed on pretrial supervision, the appearance rate increased to 98%.
- [A review](#) of the current research looked at FTA rates in jurisdictions (e.g., Kentucky, Philadelphia) before and after they passed reforms that limited the use of cash bail. The review found that **limiting the use of monetary release conditions is unlikely to result in substantial change** in the rate at which defendants fail to appear in court.
- [Studies](#) of FTA rates more generally have **found that when people *do* miss court dates it is due to barriers such as:**
 - Lack of transportation
 - Illness
 - Inability to miss work or find childcare



- When should monetary conditions (cash bail) of release be used?
- What are the “failure to appear rates” for youth in the juvenile justice system?

Additionally, research suggests that the use of cash bail may not result in improved public safety

[One review](#) of bail reforms implemented between 2010-2020 in four states and nine cities and counties found that all jurisdictions saw decreases or negligible increases in crime or re-arrest rates after implementing reforms. Highlights include:

- **New Mexico:** After implementing a voter approved constitutional amendment that prohibits judges from detaining defendants solely due to inability to post bail, the safety rate, or the number of people released pretrial who are not charged with committing a new crime, increased from 74% to 83% after the reform took effect.
- **Washington D.C.:** Judges cannot set money bail that results in someone's pretrial detention, and there are limits to the amount of time people can spend in jail after their arrest. In FY22, 93% of people were not re-arrested when released pretrial.

- When should monetary conditions (cash bail) of release be used?
- What are the “failure to appear rates” for youth in the juvenile justice system?

In MA, the Juvenile Probation Arraignment/ Appearance Screening Tool (J-PAST) was implemented to predict youth's risk of FTA

The screener calculates risk of FTA based on 5 factors:

1. Current open warrants
2. Number of felony adjudications
3. School attendance
4. Prior failures to appear
5. History of mental health



However, in practice it does not appear that the J-PAST is consistently being conducted, or that judges are asking for its results.

- When should monetary conditions (cash bail) of release be used?
- What are the “failure to appear rates” for youth in the juvenile justice system?

Factors that correlate with failure to appear

[A study](#) of the New York City Juvenile Justice system looked at factors that correlate with FTA in the pretrial phase and found:

Factors that Do Correlate with Failure to Appear Rates

- An open warrant for a previous juvenile delinquency case;
- No parent or responsible adult present at probation intake;
- **School attendance of less than 30 percent in the last full semester of school;** and
- A prior warrant for a juvenile delinquency or a status offense

Factors that Do Not Correlate with Failure to Appear Rates

- Current charge type;
- Current charge severity;
- Prior juvenile delinquency placement;
- Intake source (detention facility drop-off or appearance ticket);
 - Parent not willing to supervise;
- No adult arrived at the precinct in the period immediately following the arrest;
 - Victim of the charged offense lives in the juvenile's home;
- Pending juvenile delinquency petitions at the time of intake;
 - **Past adjudication as a juvenile;** and
 - Being in foster care

- When should monetary conditions (cash bail) of release be used?
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Further, FTA has been found to be a system-wide issue

On [study done](#) in Philadelphia found that FTA was an issue across court stakeholders rather than the defendant. The study found:

- An essential witness or lawyer failed to appear for at least one hearing in 53% of all cases, compared to a 19% FTA rate for defendants.
- The defense attorney (both public & private) failed to appear for at least one hearing in 36% of cases.
- Police officers fail to appear on a subpoena almost twice as often as defendants.



- When should monetary conditions (cash bail) of release be used?
- What are the “failure to appear rates” for youth in the juvenile justice system?

Other reasons for holding youth on cash bail

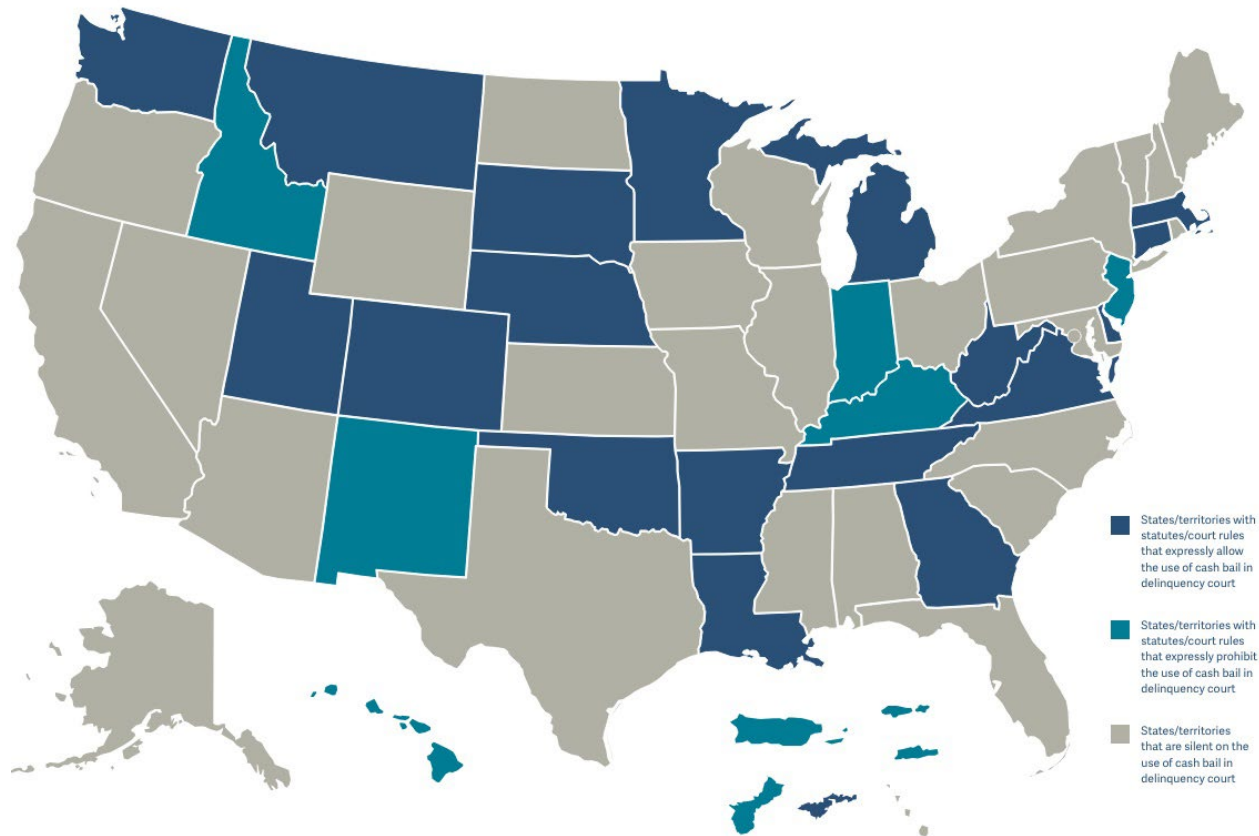
In [a national review](#) of juvenile defense attorneys, attorneys in eight states reported juvenile court judges routinely use bail as a means to keep youth in detention. Survey respondents reported judges use bail to detain youth:

- Because they believe it is for the child's "own good,"
- Based on the perceived stability of the youth's family/home life
- When youth appear in court without parents/guardians present
- As a means to "protect" youth, especially girls, from perceived CSEC concerns
- To remove youth from their "community environment"



- When should monetary conditions (cash bail) of release be used?
- What are the "failure to appear rates" for youth in the juvenile justice system?

Some states statutorily prohibit the use of bail in juvenile court



[Source](#)

- When should monetary conditions (cash bail) of release be used?
- What are the “failure to appear rates” for youth in the juvenile justice system?

Other jurisdictions have implemented reforms in an effort to reduce FTA rates

- In [Santa Clara County](#), the introduction of automated text message court date reminders reduced warrants issued for missed court dates by 20%.
- Massachusetts is currently re-starting a similar system in juvenile court.

- When should monetary conditions (cash bail) of release be used?
- What are the “failure to appear rates” for youth in the juvenile justice system?

Discussion Questions



- Did any of the research presented surprise you?
- What other questions regarding cash bail and court appearances do you still have?
- What other examples do you need to see?

National Research Takeaways

1

- The research suggests that GPS may not be developmentally appropriate for use in juvenile court, is not effective at promoting public and/or victim safety, and increases the likelihood that youth will be detained on a technical violation. GPS may be appropriate in limited circumstances for youth with a high risk of re-offending as an alternative to pretrial detention.
- Research on juvenile probation conditions more broadly show that youth have gaps in their interpretations and understandings of conditions.

2

- Research shows most youth appear in court.
- The research suggests that cash bail is not effective at promoting public safety or improving FTA rates.
- Jurisdictions that have been successful in improving FTA rates, have done so with interventions such as an automated reminder system.

Next Steps

Pretrial Timeline



Spring 2024

CBI discuss national research re: conditions of release, bail, failure to appear.

Data subcommittee [discusses COR data and bail revocations](#)

Fall/Winter 2024

CBI subcommittee finalizes draft findings and recommendations

JJPAD Board discusses findings & recommendations

Data subcommittee discusses dangerousness hearings and pretrial probation as a disposition

CBI subcommittee discusses dangerousness hearings, pretrial probation as a disposition & magic wand responses

CBI subcommittee discusses draft findings and recommendations

Summer 2024

Next Meeting:

Friday June 28th 11-12:30pm

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



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