



## Providing Pretrial Services

By Amber Widgery

West Virginia lawmakers authorized creation of pretrial release programs in 2014 to help provide a statewide response to chronically overcrowded regional jails that strain county budgets. West Virginia joins a growing number of states using or expanding pretrial services and programs, which generally are responsible for evaluating and safely supervising defendants awaiting trial.

Pretrial defendants can be released from jail in several ways. Some defendants are released on their own recognizance and supervised by a court. Others post financial bond and receive monitoring and supervision through a commercial bond agency. Still others are evaluated and released under the supervision of a pretrial release program. Risk assessments, which help identify defendants who are suitable for release, are increasingly used by states looking to employ evidence-based practices to protect the public and make the most effective use of criminal justice resources. These and other best practices for pretrial release are designed to reduce recidivism rates, improve compliance with release conditions and ensure court appearances. At least [33 states](#) and the District of Columbia currently use such pretrial programs to some degree.

### Functions of Pretrial Services Programs

The primary responsibilities of pretrial services programs are to evaluate and provide information on defendants to officials charged with releasing them, and to supervise defendants on pretrial release.

#### Evaluation

*At least 33 states and D.C. have pretrial release programs.*

Evaluation helps to identify non-violent or low-risk defendants who pose little risk to victims or the community, and who can be relied upon to show up to court. Evaluation can also identify defendants who need additional supervision, or should be detained while awaiting trial because they pose too great a risk to the public.

Evaluations performed by pretrial programs can consist of defendant interviews, verifying information gathered during an interview, contacting references and completing a risk assessment. Most risk assessments consider [factors](#) such as age at first arrest, prior convictions, prior instances of failure to appear, employment status, residence and history of substance abuse. Jurisdictions use different factors in their assessments, based on local populations. Assessments that are subject to a validation process do the best job of ensuring that risk levels

accurately represent the likelihood of reoffending among the group of defendants for which it will be used.

The results of the risk assessment and evaluation are usually provided to judicial and other release officials. West Virginia law requires that assessments be confidential and inadmissible at trial, and provided only to the court, court personnel, the prosecuting attorney, defense counsel and the defendant for purposes of pretrial release. Some pretrial programs also use this information to form recommendations for the court regarding release method and supervision conditions. For example, Virginia law specifically tasks local pretrial services officers with preparing a pretrial investigation report containing recommendations to assist courts in deciding whether to grant or reconsider bail.

Some state laws define the kind of assessment tool to be used, or alternatively, direct the development of a risk assessment. In either instance, states often provide funding to or seek assistance from outside groups to aid in the development. Ohio law, for example, requires the Department of Rehabilitation and Correction to identify a single validated risk assessment tool to be used by courts. The department contracted with the University of Cincinnati’s Center for Criminal Justice Research to develop and validate the Ohio Risk Assessment System, which was subsequently adopted by the department via rule. Colorado law does not require any agency to fund or adopt a risk assessment, but instead requires courts to use an “empirically developed risk assessment instrument” if one is practical and available. The stated goal is to improve pretrial release decisions by providing to the court information that classifies a person in custody based upon predicted level of risk of pretrial failure. The [Colorado Pretrial Assessment Tool](#) was developed by a joint partnership among 10 Colorado counties, the Pretrial Justice Institute and the JFA Institute. Funding for the partnership came from separate federal grants awarded to Jefferson County, Colo., and the Pretrial Justice Institute.

**Supervision**

Pretrial supervision includes providing services to address defendants’ needs and monitoring them to ensure they comply with release conditions and court appearances. Services can include mental health or substance abuse treatment, and referrals for housing, employment training or job placement. Many pretrial programs conduct interviews or assessments to determine and individualize services appropriate for each defendant.

Recommendations made as a result of risk assessments can help courts and pretrial programs determine suitable conditions and adequate levels of supervision for individual defendants. Statutes in at least [fifteen states and the District of Columbia](#) require that courts

*Statutes in at least 15 states and D.C. require courts to impose the least restrictive release conditions.*

impose the least restrictive conditions deemed reasonably necessary to ensure defendant appearance and community safety.

[Research](#) has shown that pretrial success is greater when the level of pretrial supervision is commensurate with a defendant’s risk level. [Over-supervising low-risk](#) defendants or under-supervising high-risk defendants leads to greater pretrial failure.

*Research shows pretrial success rates are higher with risk-based supervision.*

The [Pretrial Services Division](#) in [Broward County, Fla.](#), has three-tiers of release programming and supervision to address various risk levels of defendants. The Standard Supervision Program includes telephone check-ins, office and home visits, court reminders, and may include counseling and drug testing. The Intermediate Supervision Program involves more frequent defendant contact, requires full-time employment, and community-based supervision of defendants who are identified to have additional needs. The Electronic Monitoring/House Arrest Program supervises defendants 24 hours a day and imposes curfew and location restrictions that are enforced by radio frequency tracking, remote alcohol testing, active or passive GPS monitoring, or drive-by monitoring.

**Program Creation and Structure**

The way in which pretrial programs are created and structured varies across states and localities. Many are statutorily enabled, but they can also be created administratively, by court rule or under local procedures. Programs may be administered by courts, jails or probation departments, or operate as independent government agencies or under contract with non-profit or private organizations. In 2009, 38 percent of pretrial programs responding to a [Pretrial Justice Institute survey](#) were operating under probation departments, with an increasing number of programs identified as independent agencies.

**Statewide Programs**

More than half of all states have created or authorized pretrial programs or agencies on a statewide basis. The District of Columbia, Kentucky and New Jersey each have authorized centralized programs that are responsible for pretrial evaluation and supervision for the entire state or district.

*D.C., Kentucky and New Jersey each have statewide programs.*

New Jersey law directs the Administrative Director of the Courts to establish and maintain a statewide pretrial services program. The program is responsible for administering risk assessments to most defendants, providing recommendations to courts on release and conditions, and supervising pretrial defendants after release. Courts are authorized to revise fees in order to financially support the new state program.

Other states have authorized pretrial programs to be administered by localities within statewide statutory guidelines and reporting standards. Colorado law created statewide performance criteria and reporting standards for locally

operated pretrial programs. These local programs can be developed by community advisory boards at the instruction of the chief judge of any judicial district acting in coordination with associated counties or municipalities. Colorado’s law does not require jurisdictions to create a program and no specific state funding mechanism is in place.

*Denver County saved \$999,050 in 2012.*

The program in Denver County, Colo., has reported a reduction in jail-bed days, resulting in a savings of [\\$999,050](#) in 2012. Success rates of defendants of all risk levels exceeded initial projections. Less than 1 percent of defendants were terminated for new offenses and 98 percent of defendants appeared for all court dates. Mesa County, Colo., a more rural jurisdiction 250 miles west of Denver, has experienced similar results with a reduction of 95,630 jail-bed days in 2012 with an actual cost savings of [\\$1.5 million](#).

**Local Programs**

State legislation authorizing creation of pretrial services programs in local jurisdictions allows those programs to be tailored to local needs and resources. Alabama law, for example, addresses pretrial release programs specifically for Baldwin County. The programs are regulated by the County Pretrial Release and Community Corrections Board, which consists of the presiding circuit court judge, the county commission chair, the sheriff, the district attorney and the circuit clerk. Most defendants are eligible for release to a pretrial program at the discretion of a judicial officer.

Some local programs have been developed without or prior to any statutory authorization. At least two counties in Nevada, Las Vegas and Washoe, operate pretrial services programs under local authorization. This is common in other states as well. Seventy-eight percent of all pretrial programs surveyed by the Pretrial Justice Institute in 2009 served only a single county or city. So while pretrial services programs are often authorized by state statute, most are locally administered.

**Specialized Programs**

State law makes most defendants eligible for pretrial programs and services. However, some programs have been developed to address the specific needs of a defined population of defendants. These specialized programs sometimes exist independently or are used to supplement other, more general pretrial programs.

Specialized pretrial services programs often serve [veterans](#) and defendants who are identified as having drug, alcohol or mental-health needs, which can be co-occurring. Evaluation helps identify defendants suitable for specialized supervision or diversion programs.

*South Dakota has reduced domestic violence and repeat DUI arrests.*

The Idaho Legislature in 2014 established a statewide 24/7 Sobriety and Drug Monitoring Program within the Office of the Attorney General. It provides pretrial substance monitoring for defendants with alcohol- and drug-related cases. Programs are allowed to charge fees and to enter into contracts with local or state agencies and participating vendors, with the approval of the attorney general. At least five other states have statutorily authorized a 24/7 Sobriety Program. Several other jurisdictions in at least three states have piloted the program locally.

[Evaluations](#) of the 24/7 Sobriety and Drug Monitoring Program in South Dakota have shown that the program can significantly reduce repeat DUI and domestic violence arrests.

**Investing in Pretrial Services**

In addition to laws creating programs, states have also appropriated funding for pretrial services. [Virginia](#) increased funding by [\\$800,000](#) in FY 2013 for pretrial services programs and provided discretionary grants for technical assistance to cities and counties to develop, implement, operate and evaluate programs, services and facilities established under the Pretrial Services Act. Colorado lawmakers passed a law in 2014 that allowed money from the correctional treatment cash fund to be used for defendants enrolled in a pretrial treatment program.

States and localities have invested in pretrial programs with the intent of reducing other costs associated with detaining defendants prior to trial. Housing an inmate at a local jail costs an average of [\\$60 per day](#). Supervision can [cost](#) between \$3 and \$6 per day. Generally, state law allows programs to charge reasonable supervision fees, but do not require them. Indiana caps fees for its drug and alcohol supervision program at \$400, but also allows for other reasonable fees for education, treatment or rehabilitation services. Reallocating resources to pretrial services and supervision can reduce local and state costs, as well as contribute to better individual and system outcomes.

**Laws**

- ALA. CODE §45-2-84.02
- COLO. REV. STAT. §16-4-103, -106
- D.C. CODE §23-1301 ET SEQ.
- IND. CODE §12-23-14-16
- KY. REV. STAT. ANN. §27A.096, §431.515, KY. R. CRIM. PROC. 4.06 ET SEQ.
- N.J. STAT. ANN. §2A:162-25, §2B:1-5, -7, -9, -13
- OHIO REV. CODE ANN. §5120.114, OHIO ADMIN. CODE §5120-13-01
- VA. CODE ANN. §19.2-152.4:3
- W. VA. CODE §31-20-5g, §62-11F-2

**Enactments**

COLO. SB 163 (2014)  
IDAHO HB 461 (2014)  
N.J. SB 946 (2014)  
VA. HB 1500 (2013)

**NCSL Resources**

[NCSL Pretrial Policy Laws Database](#)  
[NCSL Pretrial Release Homepage](#)  
[NCSL Report: Trend in Pretrial Release: State Legislation](#)

**Other Resources**

[2009 Pretrial Justice Institute Survey of Pretrial Services Programs](#)  
[American Bar Association Pretrial Release General Principles](#)  
[Broward County Pretrial Services Division](#)  
[Colorado Pretrial Assessment Tool](#)  
[Chester County, Pennsylvania Pretrial Services: Veterans Programs](#)  
[Denver Pretrial Supervision Services](#)  
[Department of Justice: Pretrial Risk Assessment in the Federal Court](#)  
[Evaluation of the Pretrial Services Program Administered by the Broward Sheriff's Office](#)  
[Mesa County Pretrial Justice Profile](#)  
[National Institute of Justice: Pretrial Services Programs: Responsibilities and Potential](#)  
[National Institute of Justice Program Profile: South Dakota's 24/7 Sobriety Project](#)  
[Pretrial Justice Institute Issue Brief: Pretrial Risk Assessment May 2015](#)  
[Pretrial Justice Institute Bail in America Info Graphic](#)  
[Pretrial Justice Institute Issue Brief: Pretrial Risk Assessment 101](#)  
[Vera Institute of Justice: Evidence-Based Practices in Pretrial Screening and Supervision](#)  
[Virginia Budget Bill: Department of Criminal Justice Services](#)  
[Virginia Department of Criminal Justice Services: Comprehensive Community Corrections Act and Pretrial Services Act Report](#)

*NCSL's Criminal  
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