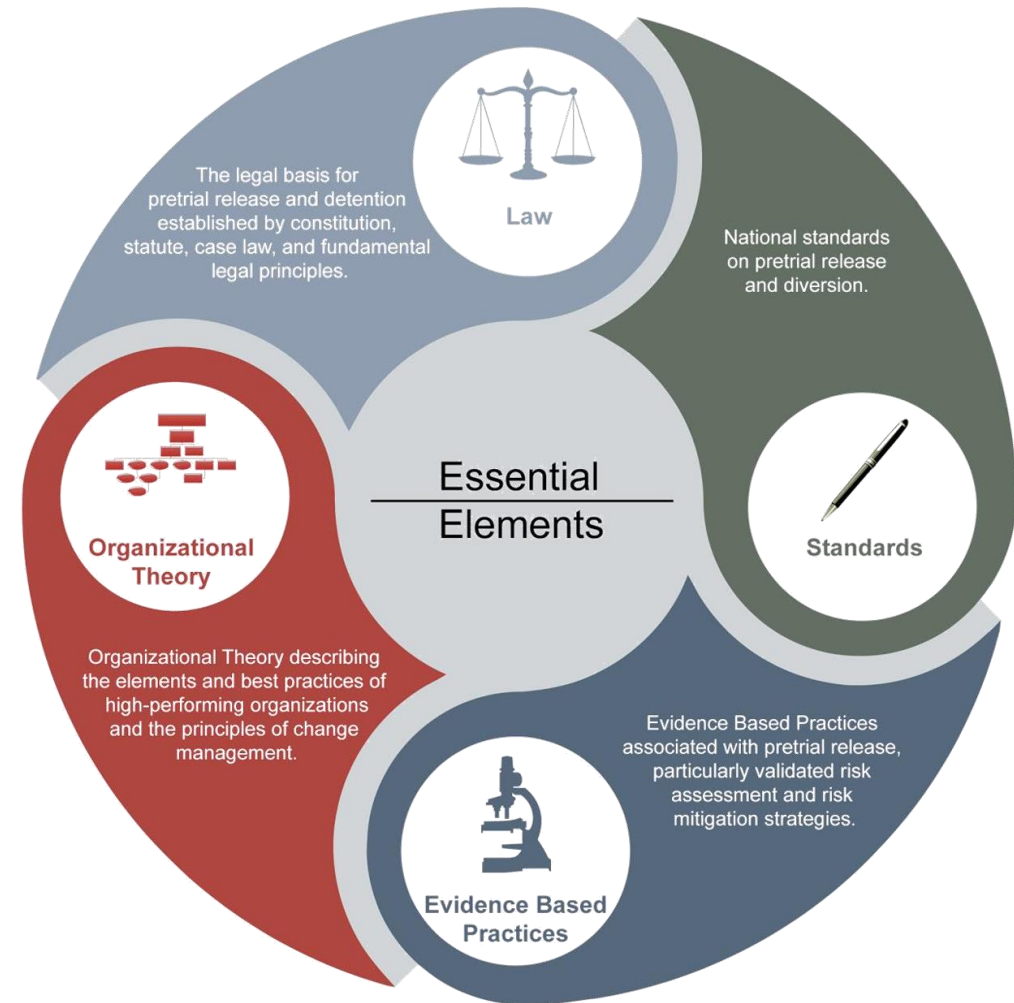


A Framework for Pretrial Justice

Elements of an Effective Pretrial System and Agency



Session Goals

1. Describe the essential elements of a high-performing pretrial services systems and agencies
2. Help participants identify the essential elements present in their agencies
3. Action plan on developing missing features or improving existing elements



Getting Bail Right.

BAIL:

DEFINITION:

Conditions and requirements to ensure a defendant's appearance in court and, where appropriate, public safety.

TENETS:

1. There is no "right to bail" in most states and the Federal system. (Present in about a quarter of states)
2. Pertains only to appearance and safety concerns
3. Individualized to the defendant's unique characteristics
4. Least restrictive means needed to ensure goals
5. Due process forbids detention on unspecified charges or without due cause.

History of Bail



<http://History of Bail>

LAWSUITS

- *Caliste et al. v. Cantrell*
- *O'Donnell v. Harris County*
- *Commonwealth v. Wagle*
- *Welchen v. Sacramento*
- *Buffin v. San Francisco*
- *Martinez v. City of Dodge City*
- *Walker v. City of Calhoun*
- *Snow v. Lambert*
- *Cooper v. City of Dothan*
- *Thompson v. Moss Point*
- *Powell v. City of St. Ann*
- *Pierce v. City of Velda City*
- *Varden v. City of Clanton*

Main Issues

- Bail schemes or schedules violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment
- No individualized bail determination based on the purposes of bail: flight and dangerousness

Neither the Constitution nor our rules of criminal procedure permit a judge to base a pretrial release decision solely on the severity of the charged offense. Bail is not pretrial punishment and is not to be set solely on the basis of an accusation of a serious crime. As the United States Supreme Court has emphasized, “[t]o infer from the fact of indictment alone a need for bail in an unusually high amount is an arbitrary act.” *Stack v. Boyle*, 342 U.S. at 6. (Rule 5-401) requires the judge to make an informed, individualized decision about each defendant and does not permit the judge to put a price tag on a person’s pretrial liberty based solely on the charged offense.

State of New Mexico v. Brown No. 34,531.

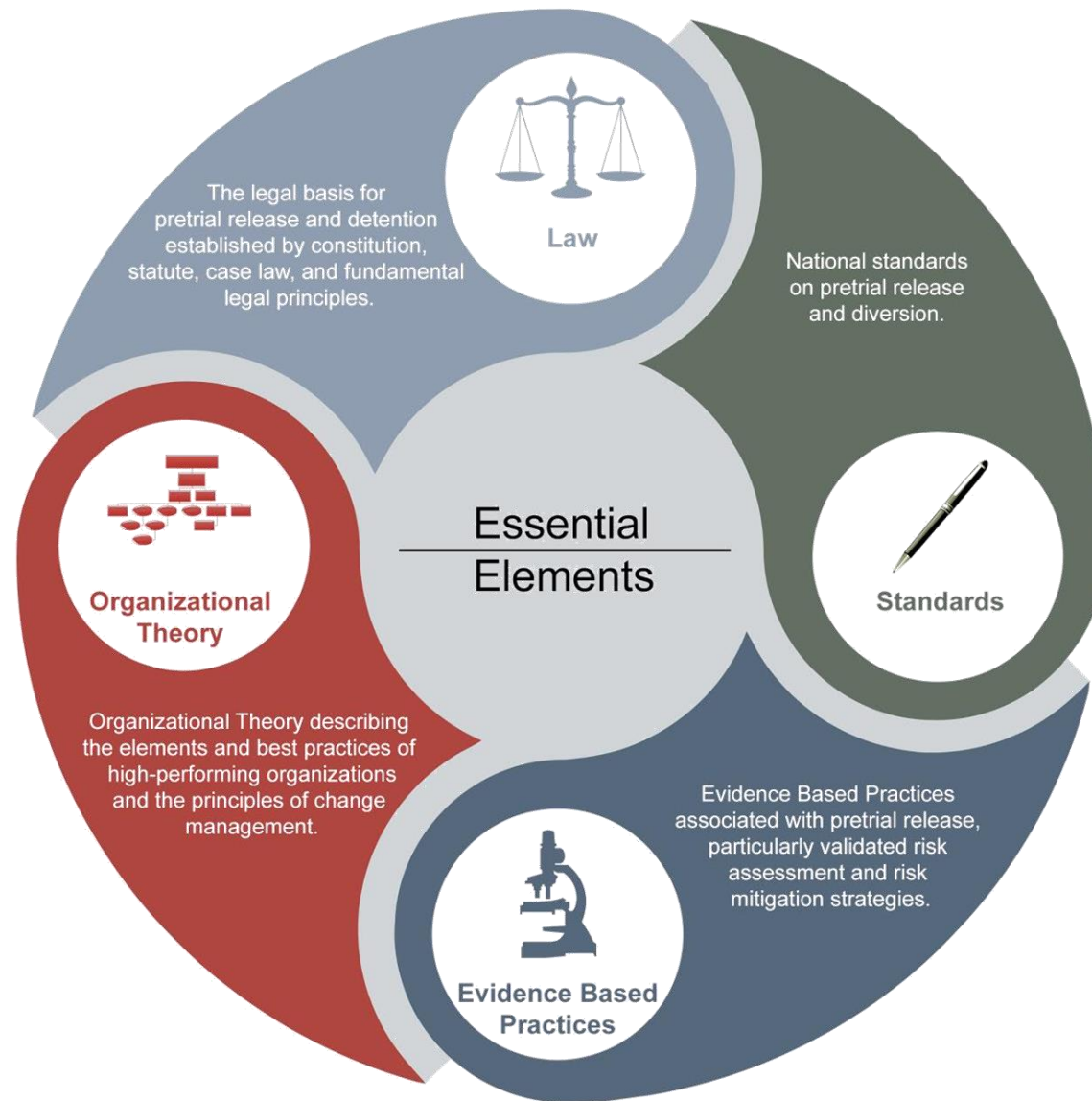
Decided: November 6, 2014

Bail Reform – The John Oliver Experience



- <https://www.youtube.com/watch?v=IS5mwymTIJU>

The Framework



Elements of an Effective Pretrial *System*

- Pretrial release and detention decisions based on risk and designed to maximize release, court appearance, and public safety
- Legal framework that includes: presumption of least restrictive nonfinancial release; restrictions or prohibition against the use of secured financial conditions of release; and preventive detention for a limited and clearly defined type of defendant
- Release options following or in lieu of arrest
- Defendants eligible by statute for pretrial release are considered for release, with no locally-imposed exclusions not permitted by statute

Elements of an Effective Pretrial *System*

- Experienced prosecutors screen criminal cases before first appearance
- Defense council active at first appearance
- Collaborative group of stakeholders that employs legal and evidence-based decision-making to ensure a high functioning system
- Dedicated pretrial services agency

Risk-based Decisions: “The 3 M’s”



Goal: To Maximize **Court Appearance**, **Public Safety**, and **Release rates**. All other essential elements flow from this defining principle.

Appearance: “Bail set at a figure higher than an amount reasonably calculated to [ensure court appearance] is ‘excessive’ under the Eighth Amendment.” *Stack v. Boyle* 342 U.S. 1 (1951).

Safety: Detention may be authorized when defendants are found “after an adversary hearing to pose a threat to the safety of individuals or to the community which no condition of release can dispel.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).

Release: “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *Salerno*.

Legal Challenges to the Status Quo



Legal Foundation

The proper legal framework greatly facilitates maximizing the 3M's, and includes:

1. A presumption of nonfinancial release on the least restrictive conditions necessary to ensure future court appearance and public safety.
2. Prohibition or restrictions on the use of secured financial conditions.
3. Provisions for detention without bail for a clearly defined and limited population of defendants who pose an unmanageable risk to public safety. Detention without bail must include robust due process protections for detention-eligible defendants and those detained.

All three of these components are interrelated and must exist within a legal framework to achieve maximized rates of release, appearance, and public safety.

(3) A judicial officer may not impose a financial condition under paragraph (1)(B)(xii) or (xiii) of this subsection to assure the safety of any other person or the community, but may impose such a financial condition to reasonably assure the defendant's presence at all court proceedings that does not result in the preventive detention of the person, except as provided in [§ 23-1322\(b\)](#).

(4) A person for whom conditions of release are imposed and who, after 24 hours from the time of the release hearing, continues to be detained as a result of inability to meet the conditions of release, shall upon application be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, on another condition or conditions, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed.

Release Options Following or in lieu of Arrest

The legal principle of release on the least restrictive conditions starts with the initial contact with law enforcement. High functioning jurisdictions use citation releases or summonses by law enforcement in lieu of custodial arrests for non-violent offenses when the individual's identity is confirmed and no reasonable cause exists to suggest the individual may be a risk to the community or miss the ensuing court date.

Criminal Case Screening

Trained and experienced prosecutors screen arrest filings before initial appearance to determine the most appropriate charge or action. Early screening helps:

- reduce needless pretrial detention based on bail decisions made using arrest charges;
- aid prosecution in determining the most appropriate recommendations for pretrial release or detention;
- dispose of weaker cases sooner and target resources to higher level cases; and
- identify defendants eligible for diversion and other alternatives to adjudication.

Screening outcomes range from dismissing or reducing charges, offering defendants referrals to diversion or problem-solving courts or preparing the best bail recommendations at the initial court appearance.

We have, for purposes of the right to counsel, pegged commencement to “the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or arraignment,” (United States v. Gouveia, 467 U. S. 180, 188 (1984), quoting Kirby v. Illinois, 406 U. S. 682, 689 (1972)). The rule is not “mere formalism,” but a recognition of the point at which “the government has committed itself to prosecute,” “the adverse positions of government and defendant have solidified,” and the accused “finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law.” (Kirby at 689).

We merely reaffirm what we have held before and what an overwhelming majority of American jurisdictions understand in practice: a criminal defendant’s initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.

Rothgery v Gillespie County, 554 U.S. 191 (2008)

Active Defense Counsel

Defense counsel engaged before initial appearance and prepared to represent the defendant regarding pretrial release/detention.

- The U.S. Supreme Court ruled in *Rothgery v Gillespie County*, 554 U.S. 191 (2008) that the initial bail hearing is a critical stage in the criminal case because liberty is at stake. Therefore, this decision point requires legal representation.
- The American Bar Association's "Ten Principles of a Public Defense Delivery System" recommend that clients are screened for eligibility and defense counsel assigned as soon as feasible after clients' arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention, or request, and usually within 24 hours thereafter.

No Locally- imposed Exclusions to Release

Pretrial systems screen all defendants eligible by statute for pretrial release consideration. Local justice systems do not impose limitations on pretrial screening and assessment eligibility beyond those established in the controlling bail law.

Collaborative Stakeholders

Inter-agency coordination that help allocate scarce resources efficiently, reduce jail overcrowding, and increase public confidence in and support for criminal justice processes, enhancing system performance and, ultimately, the integrity of the law.

Coordinating bodies include all three branches of government and other relevant stakeholders and address specific and systemic issues. Within the pretrial context, coordinating bodies analyze current performance (e.g., of detain/release decisions), and suggest opportunities for improvement.

NACo, JMI and BJA (2014). "From Silo to System: The Importance of Criminal Justice Coordinating Councils (CJCCs)" (Webinar).

http://www.naco.org/sites/default/files/event_attachments/NACo%20From%20Silo%20to%20System%20-%20Sept%202024.pdf.

QUESTIONS?

Elements of a High Functioning Pretrial Services *Agency*

- Operationalized mission
- Universal screening
- Validated pretrial risk assessments
- Sequential bail review
- Risk-based supervision
- Performance measurement and feedback

Pretrial Services Agencies

A dedicated pretrial services agency ensures that management of essential functions occurs under a single organization goal and better coordination among elements—for example, ensuring that release recommendations match supervision resources and capacity. A single management structure also provides better staff direction and motivation to critical work priorities and clearer lines of communication. The justice system has also has a single actor responsible for pretrial functions.

Preferably, the pretrial services agency should be a separate, independent entity. Jurisdictions may incorporate pretrial services agencies within a larger “parent” organization, if that component has:

1. a clearly-defined, pretrial service related function as its purpose;
2. staff assigned only to pretrial-related work with pretrial defendants; and
3. management that can make independent decisions on budget, staffing, and policy.

Risk Assessment

- Screening
 - Interviews
 - Criminal History Check
- Validated Risk Assessment
- Recommendations

Risk Management

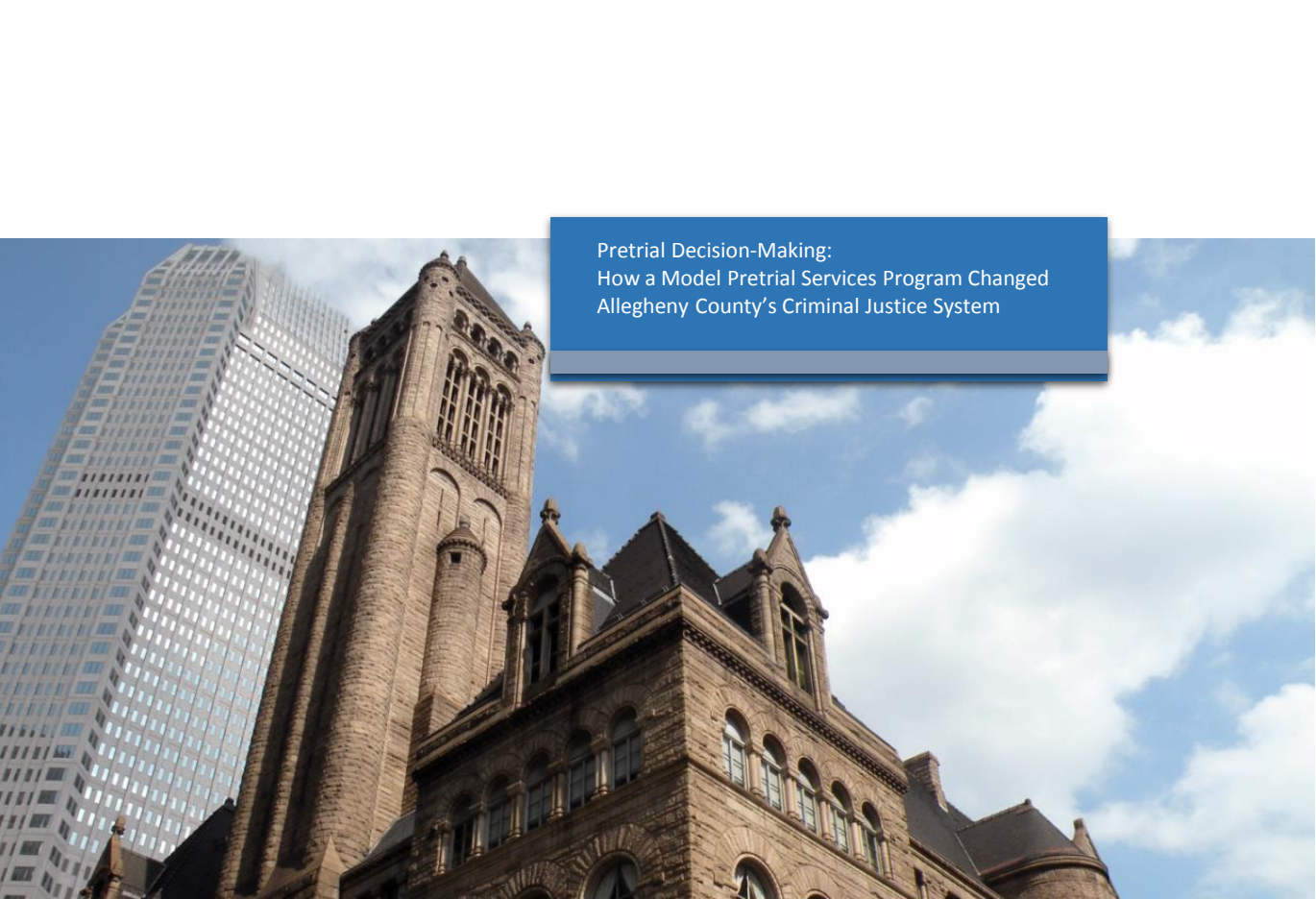
- Supervision
- Monitoring
- Support

Service Integration

- Needs Assessment
- Substance Abuse
- Mental Health

Performance Measurement

- Metrics
- Satisfaction
- Feedback



Pretrial Decision-Making:
How a Model Pretrial Services Program Changed
Allegheny County's Criminal Justice System

Within the first month after initiation of new pretrial practices in September 2007, the number of defendants processed through the Allegheny County Jail following preliminary arraignment decreased by 30 percent. Almost as quickly, Allegheny County's pretrial program went from outdated to exemplary; in fact, it is the only county-level program cited as a national model in an American Bar Association guide to pretrial release decision-making.

<http://www.alleghenycounty.us/WorkArea/DownloadAsset.aspx?id=42084>

Operationalized Mission Statement

A mission statement identifies a program's desired outcomes, importance, and focus, outlines its management, and describes why the agency is the best option to achieve the desired result.

1. Tells the world who you are, what you do, and why you're important.
2. Guides strategic and day-to-day operational decisions.
3. Provides a "brand" and focuses Leadership, Staff and Customers on goals and principles.
4. Clear leading message and principles for Management.
5. Helps define agencies within a larger organization.

PSA's mission is to assess, supervise, and provide services for defendants, and collaborate with the justice community, to assist the courts in making pretrial release decisions. We promote community safety and return to court while honoring the constitutional presumption of innocence.

Pretrial Services Agency for the District of Columbia
(2008)

Promote pretrial justice and enhance community safety

Pretrial Services Agency for the District of Columbia
(current)

Assist the courts and the City in reducing unnecessary pretrial detention.

NYC Criminal Justice Agency

Promote pretrial justice for defendants and minimize harm to the community.

Yamhill County Department of Community Justice

Henrico County Pretrial Services ensures court appearance, promotes public safety, and reinforces defendant accountability

Henrico County (VA) Pretrial Services

Outcomes

- Appearance
- Safety
- Continued Release

Strategic Goals

- Judicial Concurrence with PSA recommendations
- Continued compliant pretrial release
- Minimize rearrests
- Maximize court appearance

Strategic Objectives

- Risk assessment
- Risk-based supervision
- Behavioral Health integration
- Effective agency administration
- Measurement

To promote pretrial justice and enhance community safety

Universal Screening

Effective pretrial agencies screen for pretrial release consideration all defendants eligible for release by state statute and local court order. Programs do not exclude based on charge or other restriction not identified specifically by statute or local rule.

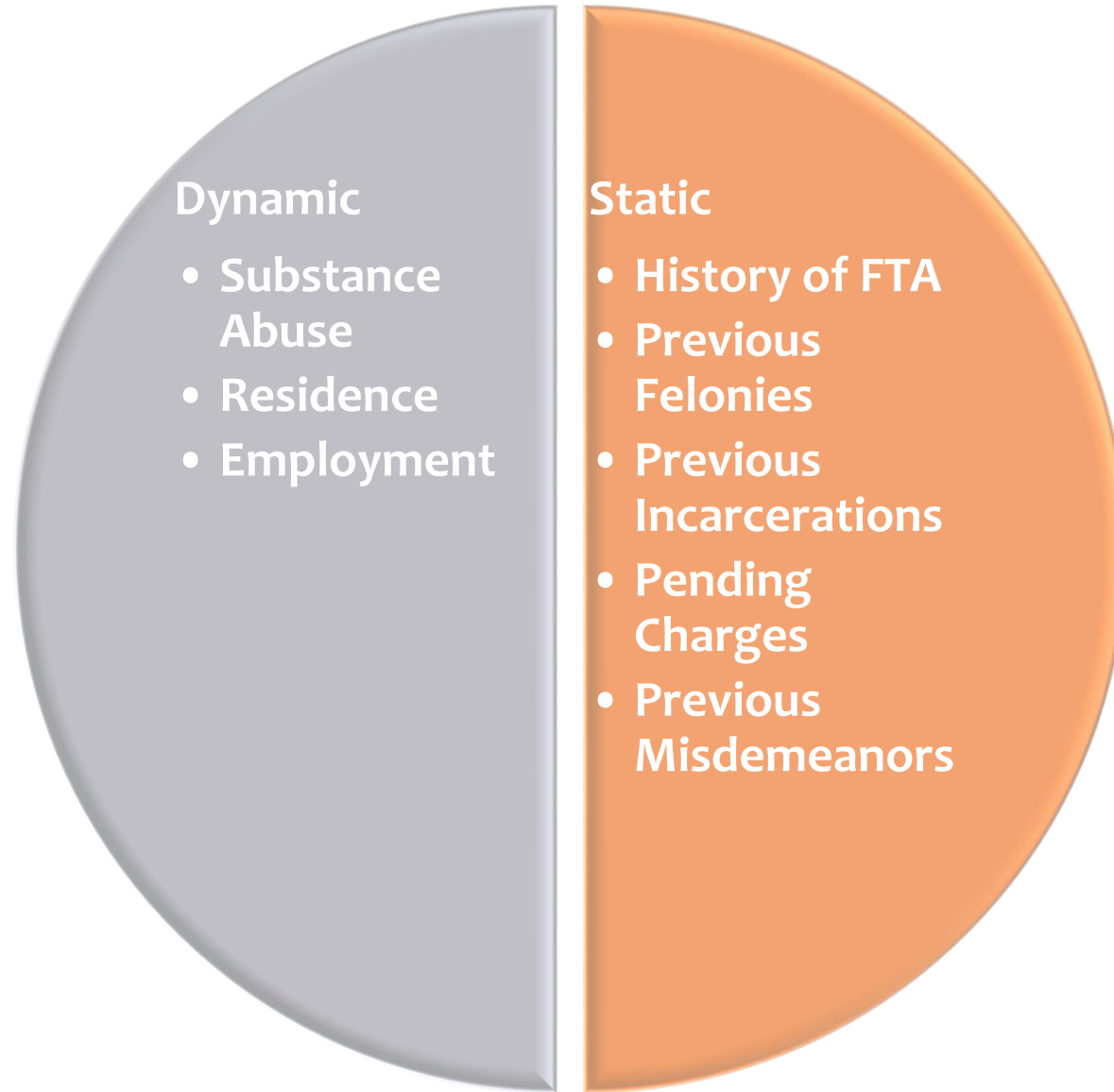
Validated Risk Assessment

Effective pretrial systems and agencies use validated assessment criteria to gauge a defendant's likelihood of FTA and rearrest. The assessment is empirical and preferably based on local research to ensure that its factors are proven as the most predictive of pretrial failure.

Separate instruments also may be used to predict the likelihood of new violent offenses, domestic violence charges, substance use disorders and mental health needs.

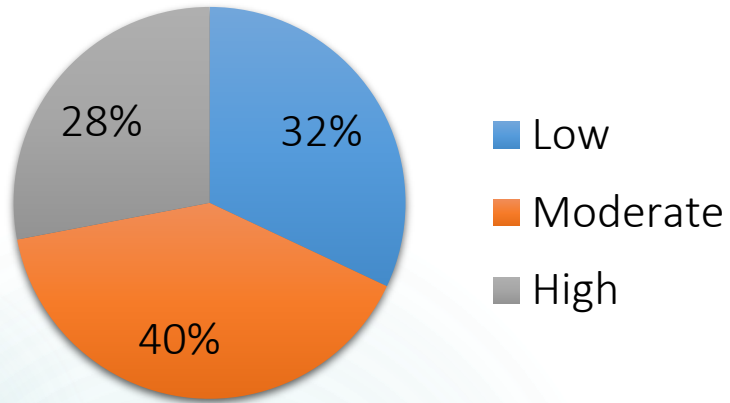
States that encourage courts to use the results of risk assessment tools in making pretrial release decisions:

- Colorado
- Connecticut
- Delaware
- Hawaii
- Illinois
- Kansas
- Kentucky
- Maine
- New Jersey
- New Mexico
- Oklahoma
- South Carolina
- Virginia

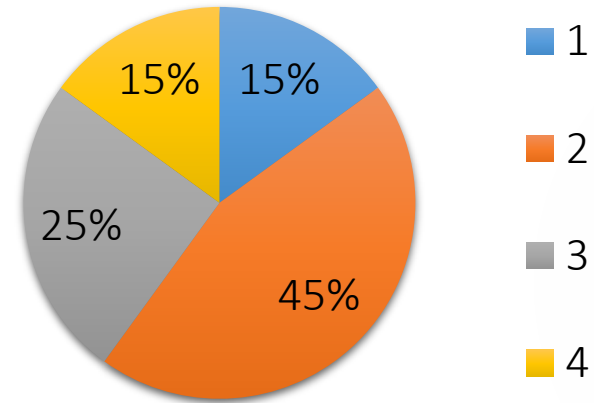


RAIs: The Results

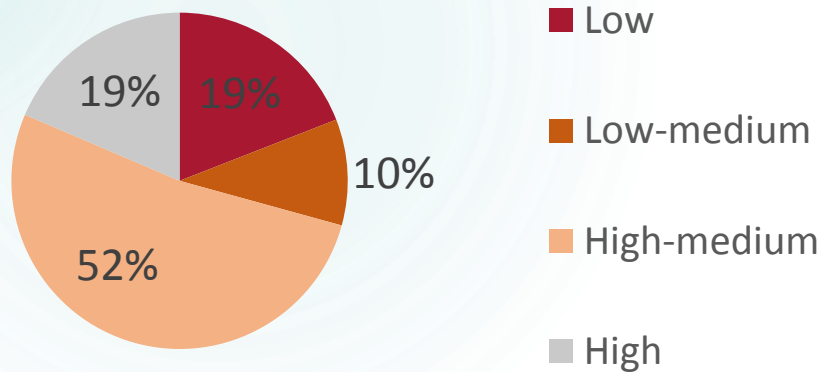
Mecklenburg County, NC



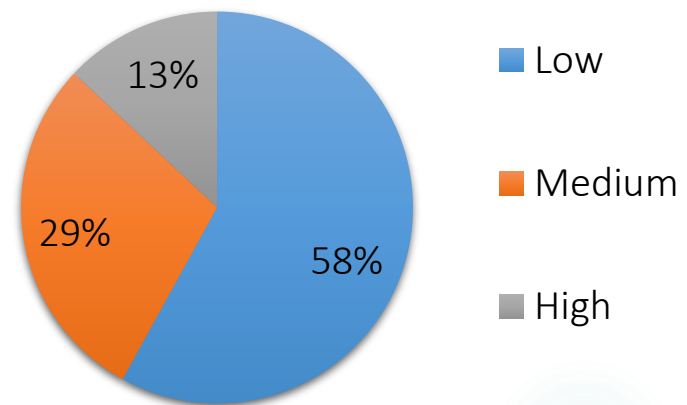
Weld County, CO



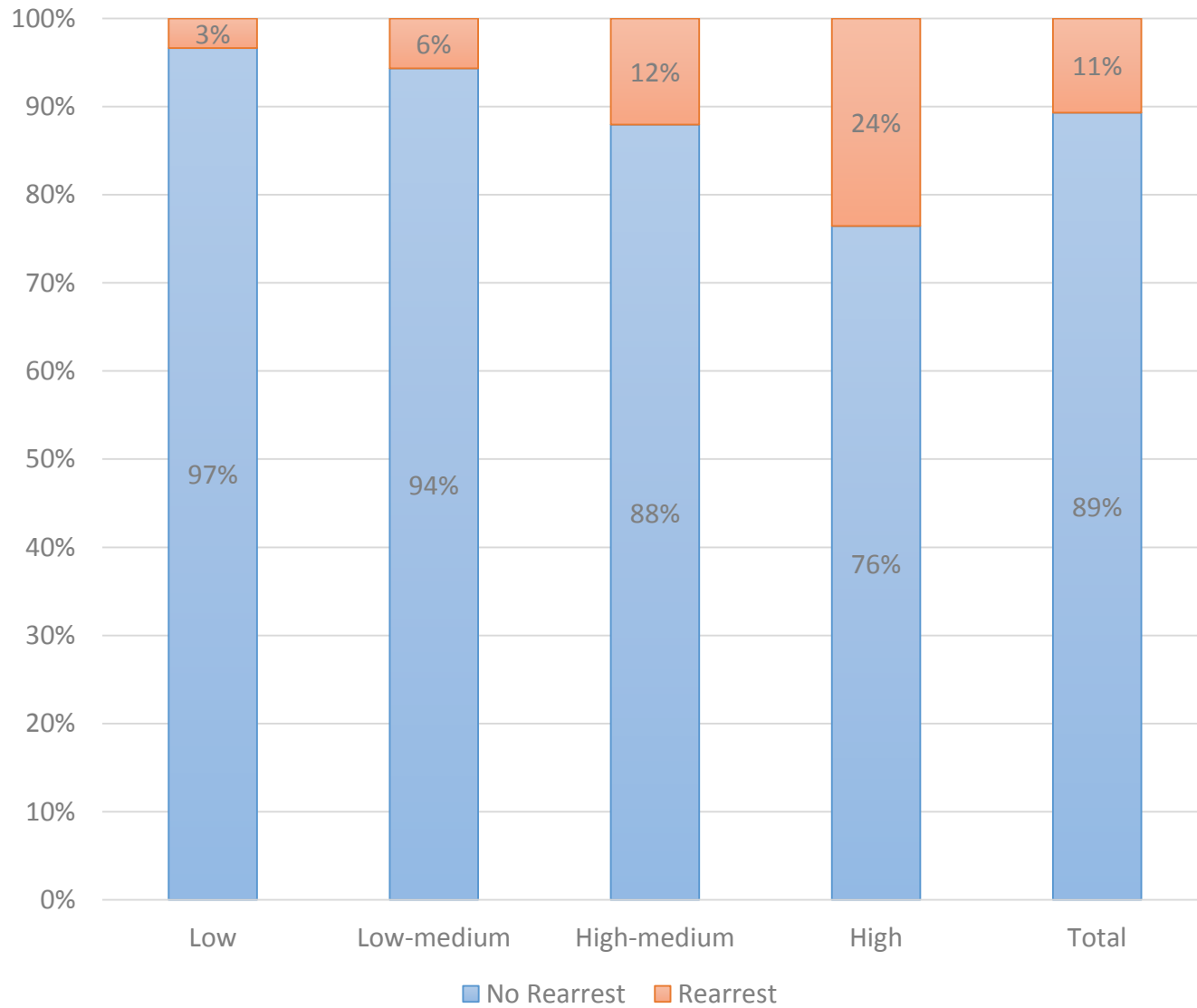
Allegheny County, PA



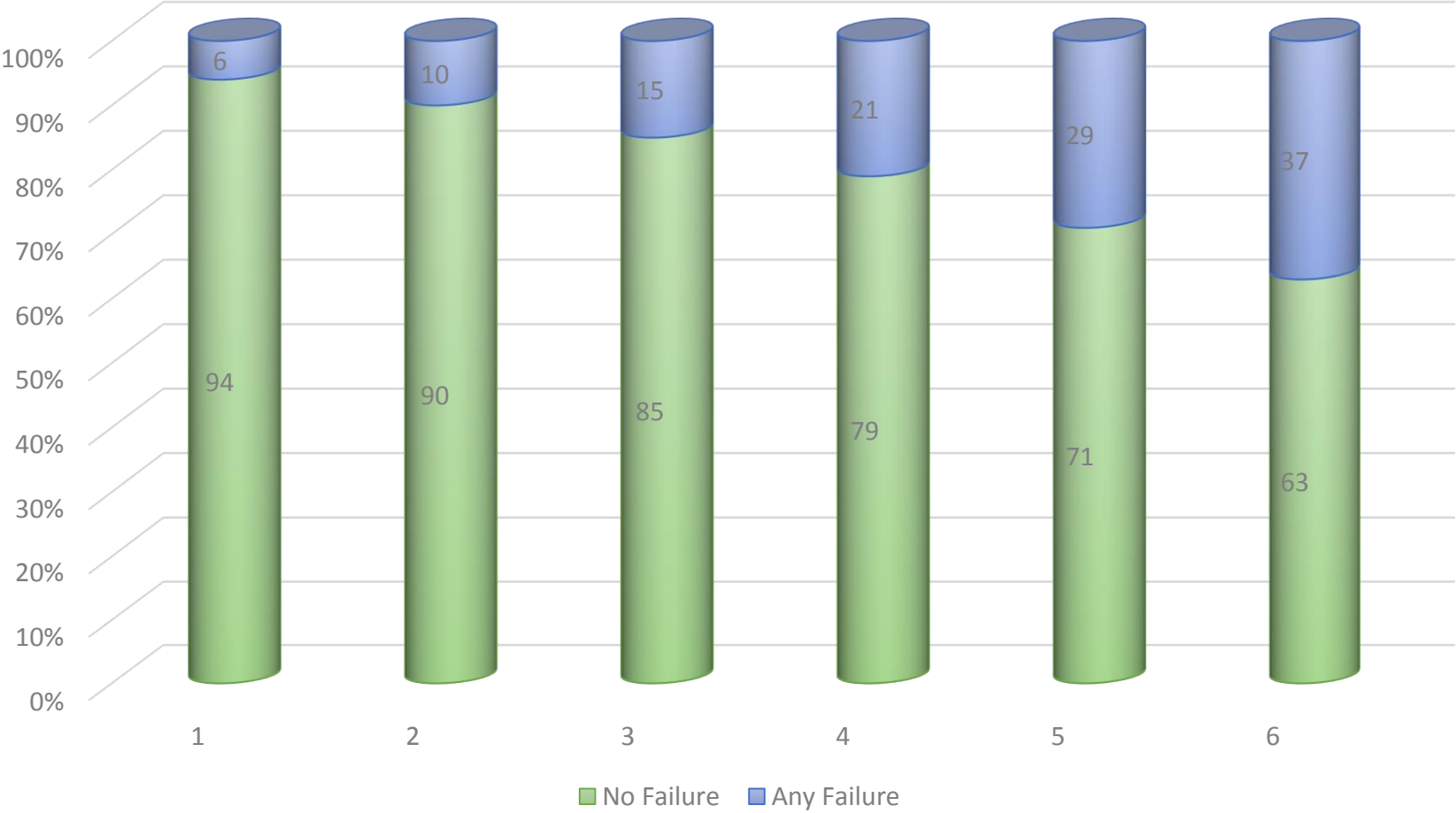
Yamhill County, OR



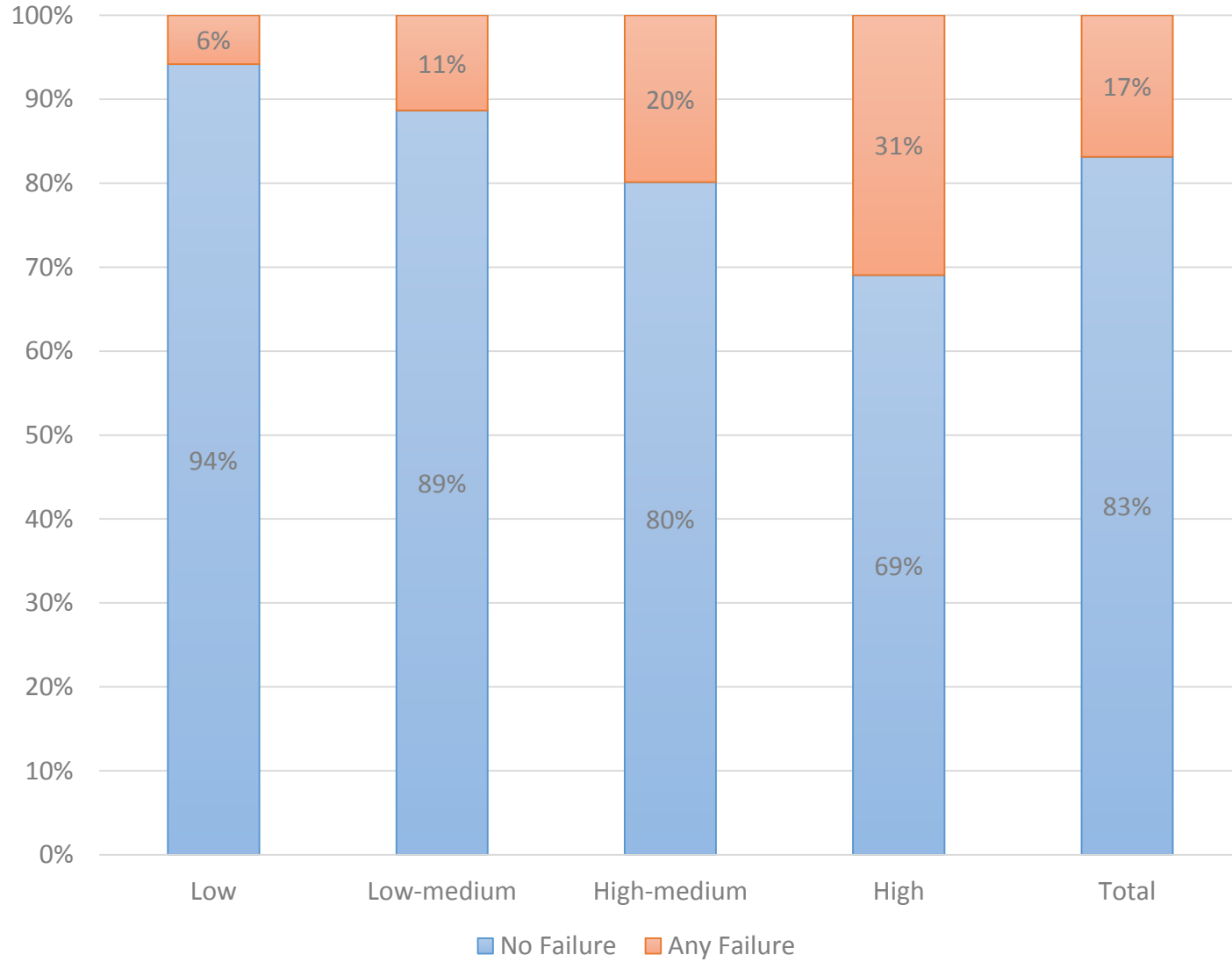
Allegheny County



Mecklenburg County, NC



Allegheny County



Appearance Rate=93%
Safety Rate= 89%

Needs assessment?

When need becomes risk

Validity and Reliability

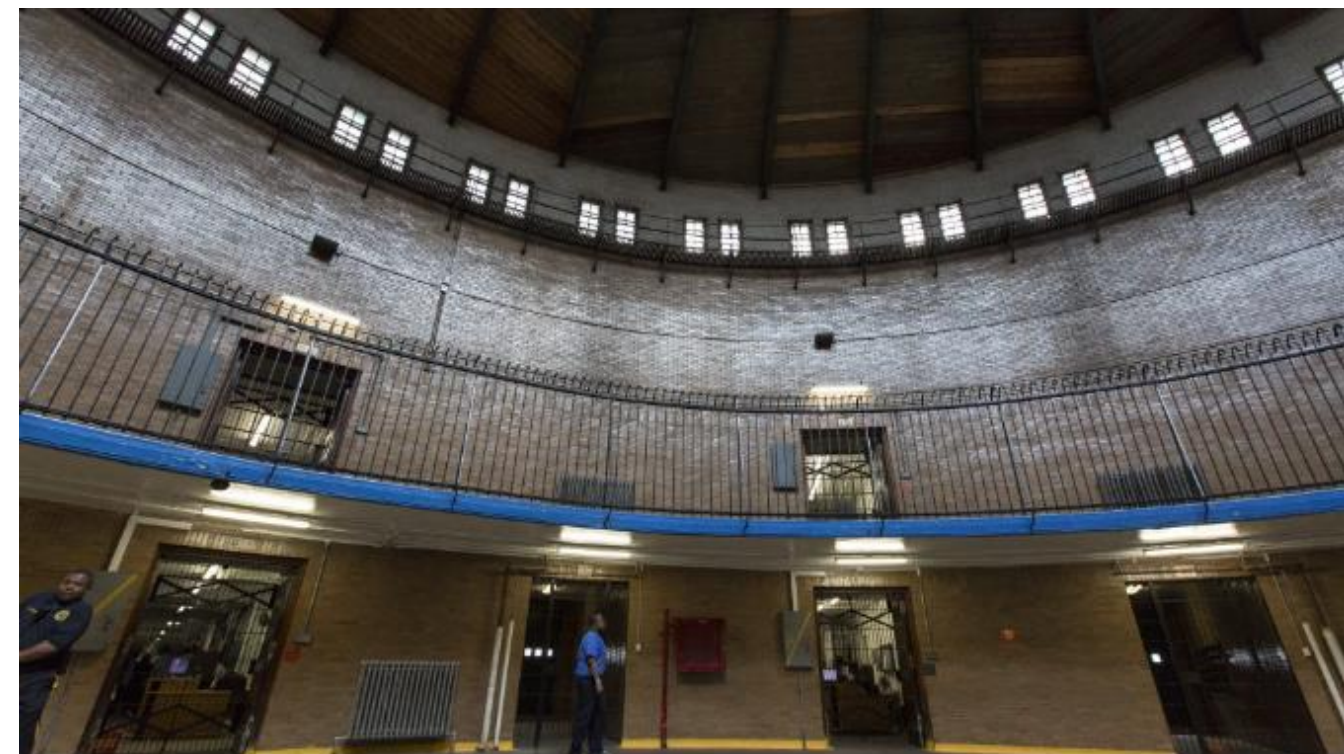
Quality Assurance is imperative

Incorporating other Tools

DV, “Violence Flag”

Sequential Review of Defendant Population

- Screening, assessment and recommendation at multiple decision points from initial appearance to adjudication.
- Focus on new or updated information about the defendant .
- Recommendations appropriate to newly assessed risk level? Depends on the RAI.
- Restrictions against conditions more stringent than the defendant's risk level suggests to "encourage" release.
- Changes in supervision levels (more/less restrictive) as a defendant's record of appearance, arrest-free behavior and condition compliance warrants.



One of the main rotundas in the Philadelphia House of Corrections. BOBBY CHEN (@RYSCHEN)

Philly slashed its jail population by almost 20 percent in just 2 years

And city officials are only partway toward their goal.

The (Early Bail Review) program launched in July 2016 and allows case review within five days for individuals in jail for non-violent offenses who have bails of \$50,000 or less and no other reason to be held in prison. This gives people an opportunity for early release, rather than forcing them to remain in custody because they can't afford a relatively small bail.

Since the program was put in place in July, the city says 84 percent of defendants who received an Early Bail Review hearing were granted release and, of those, 90 percent appeared at their next court date. The program's estimated to have saved more than 50,000 "jail inmate bed days" since its inception.

Risk Based Supervision

Supervision levels tied to assessed risk levels greatly improve outcomes. Conversely, improper supervision produces poor outcomes and wastes resources. (The “risk principle”).

According to available research, effective pretrial supervision includes:

- Notification to defendants of upcoming court dates
- Early and meaningful responses to defendant conduct
- Notification to the Court of defendant conduct and the possible need for supervision adjustment

Outcome Measures

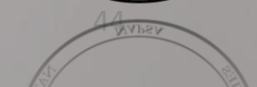
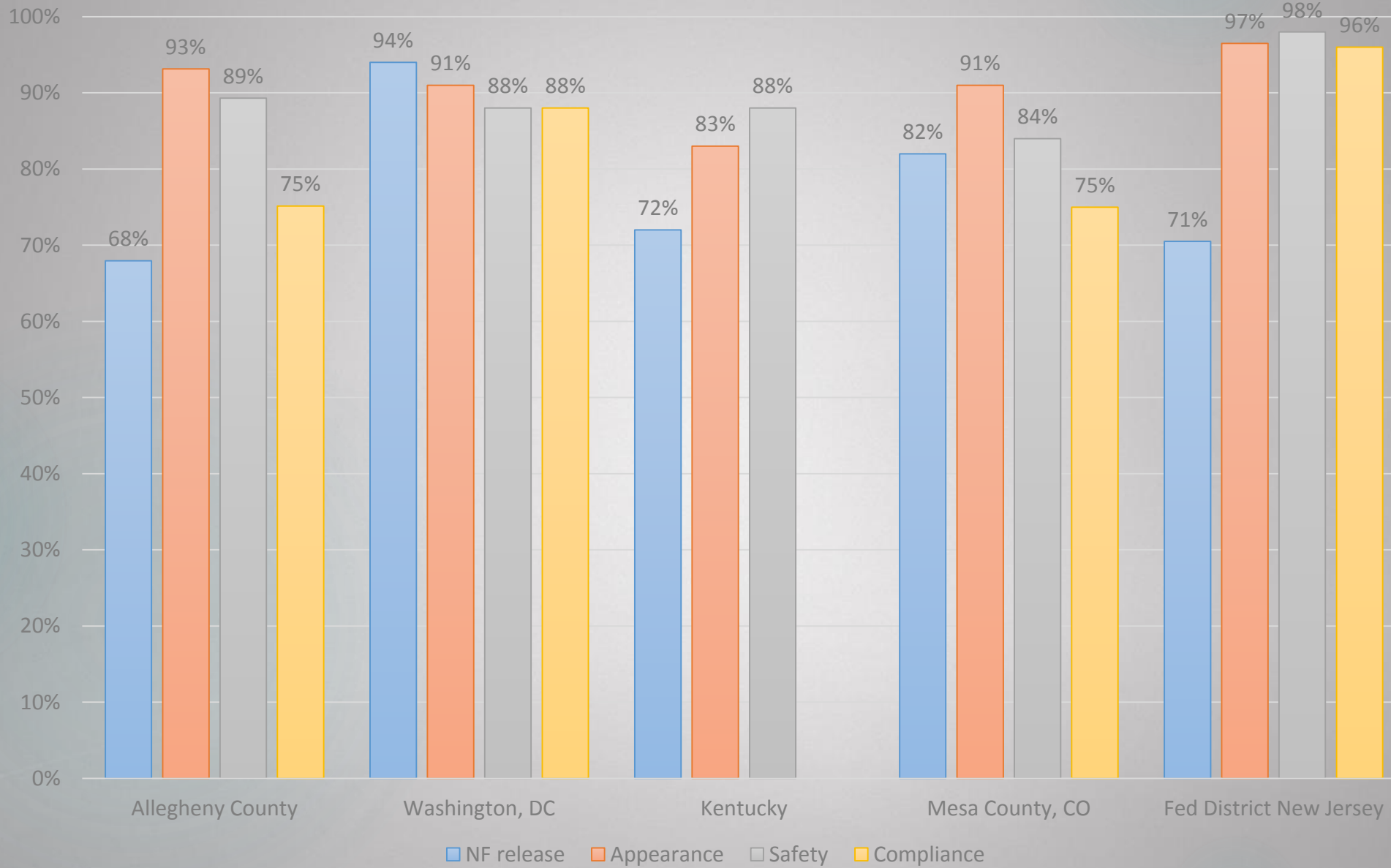
Appearance Rate: The percentage of supervised defendants who make all scheduled court appearances.

Safety Rate: The percentage of supervised defendants who are not charged with a new offense during the pretrial stage.

Concurrence Rate: The ratio of defendants whose supervision level or detention status corresponds with their assessed risk of pretrial misconduct.

Success Rate: The percentage of released defendants who (1) are not revoked for technical violations of the conditions of their release, (2) appear for all scheduled court appearances, and (3) are not charged with a new offense during pretrial supervision.

Pretrial Detainee Length of Stay: The average length of stay in jail for pretrial detainees who are eligible by statute for pretrial release.



Recap

- Pretrial release and detention decisions based on risk and designed to maximize release, court appearance, and public safety
- Legal framework that includes: presumption of least restrictive nonfinancial release; restrictions or prohibition against the use of secured financial conditions of release; and preventive detention for a limited and clearly defined type of defendant
- Release options following or in lieu of arrest
- Defendants eligible by statute for pretrial release are considered for release, with no locally-imposed exclusions not permitted by statute
- Experienced prosecutors screen criminal cases before first appearance
- Defense council active at first appearance
- Collaborative group of stakeholders that employs evidence-based decision making to ensure a high functioning system

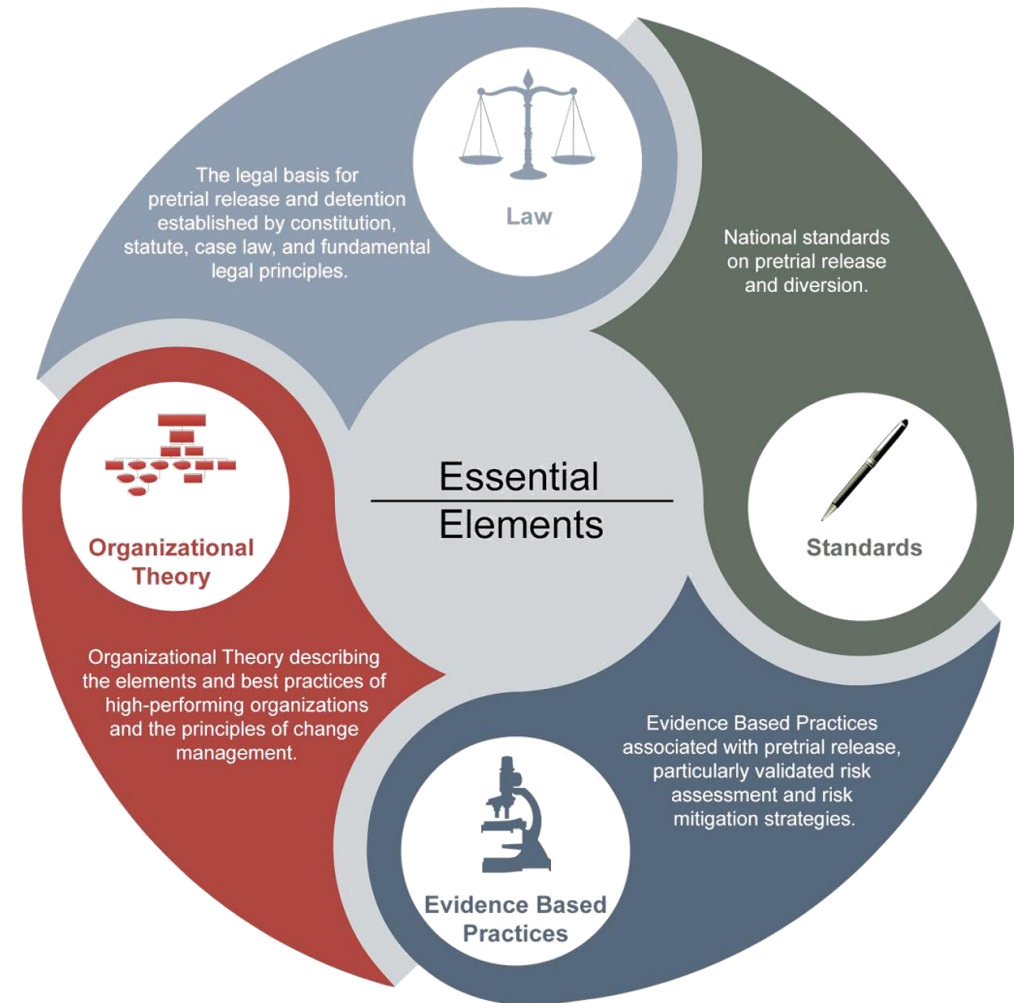
Recap

- Dedicated pretrial agency
- Operationalized mission
- Validated pretrial risk assessments
- Sequential review of release/detention eligibility
- Risk-based supervision
- Performance measurement

QUESTIONS?

A Framework for Pretrial Justice

Elements of an Effective Pretrial System and Agency



<https://nicic.gov/library/032831>