



Advancing Pretrial Justice in the States

State Activities Following the 2016–2018 Pretrial Justice Summits

Introduction

In 2012, the Conference of State Court Administrators (COSCA) adopted a policy paper calling for pretrial reforms which was subsequently endorsed by the Conference of Chief Justices (CCJ).¹ Having built consensus for the need for change, these organizations convened five regional summits to facilitate planning of state reforms. Between May 2016 and November 2018, CCJ and COSCA hosted this series of regional *Pretrial Justice Reform Summits* with support from the John D. and Catherine T. MacArthur Foundation’s Safety and Justice Challenge (SJC), a major criminal justice reform initiative supporting efforts across the country to safely reduce jail populations. The National Center for State Courts (NCSC) worked with CCJ and COSCA leadership and with other national judicial organizations to design a conference that would build awareness about and support for the more effective use of jails at pretrial release, one of the most critical decision points affecting jail populations.

The regional Summits were designed to provide a team of representatives from each participating U.S. state or territory with an opportunity to learn about contemporary pretrial justice issues, consider a suite of legal and evidence-based pretrial practices, and develop an action plan focused on pretrial justice in their home jurisdictions. The program for each Summit consisted of a dynamic mixture of plenary sessions and team planning sessions over the course of two days. Plenaries addressed topics such as the national landscape of pretrial justice reform activities; legal definitions and considerations; research on effective pretrial justice practices; approaches to, strategies for, and challenges in leading reform efforts; and operational considerations and lessons learned.

Participating in the five Summits were 49 multi-stakeholder teams of 270 state court and pretrial justice system leaders from 46 jurisdictions (43 states, 2 territories, and the District of Columbia). Three of the 43 states sent teams to attend more than one Summit. Teams typically included the chief justice and state court administrator in addition to other system stakeholders from local or statewide organizations key to the successful implementation of pretrial reforms. Examples of other stakeholders in attendance included trial court judges, trial court managers, pretrial services administrators, public defenders, prosecutors, law enforcement officials, legislators, and county funding officials.

Following the regional Summits, NCSC contacted the leadership of participating states and territories at periodic intervals to invite information about the pretrial justice activities reinforced by or undertaken as a result of the Summits. Of the 46 participating jurisdictions, 31 responded to NCSC requests for information as of the Fall of 2019. This brief summarizes those responses.

¹ For more information about COSCA and CCJ’s efforts to improve pretrial practices, see [COSCA’s policy paper](#) on pretrial release and [CCJ’s endorsement](#) of the paper’s recommendations.

State Activities to Advance Pretrial Justice, 2016 – 2019

1. *Strategic planning.* Judicial leadership in thirteen of the responding jurisdictions assembled a workgroup, committee, commission, or task force to focus on pretrial justice issues. Foundational work often involved a review of current practices in the jurisdiction to assess alignment with legal and evidence-based pretrial practices; ensure compliance with constitutional mandates, statutory changes, and/or court rules; and identify priority issues for further action. This frequently culminated in the preparation and submission of a report of findings and recommendations to the state Supreme Court. In at least one instance, the state task force delivered its report directly to the state legislature.
2. *Updating the legal framework.* Seventeen of the responding jurisdictions indicated that changes to the state legal framework had been under discussion, proposed, or adopted. Nine jurisdictions adopted or reported pursuing changes to court rules. Ten jurisdictions described various stages of legislative activity, ranging from preliminary discussions to the introduction or passage of constitutional amendments or statutory changes.
3. *Testing pretrial justice innovations.* Three states provided support for local pilot programs. One of these supported a county pilot project focused on strategies for improving interagency and community collaboration to better identify and provide for services that address defendant needs at the pretrial stage. Another state allocated funds for the implementation, operation, and evaluation of innovative local projects on a competitive application basis and the third plans to focus on strategies for improving local pretrial practice to achieve greater statewide uniformity.
4. *Implementing a pretrial risk assessment or other structured professional judgment framework.* Twelve jurisdictions advanced discussions on the selection, development, and/or implementation of a statewide pretrial risk assessment instrument or other structured professional judgment framework. Among states that had defined a process, approximately half discussed the development, revalidation, or expansion of a state-specific instrument. Others indicated they were working with Arnold Ventures to pilot, validate, and/or implement the Public Safety Assessment tool.
5. *Expanding the service infrastructure.* Ten jurisdictions described efforts to expand front-end services and improve access to legal representation, treatment programs, and other pretrial services. Two states described efforts to ensure access to counsel. One of those states reported that, at the time of the Summit, only three counties provided for legal representation at arraignment; all 44 counties have now executed public defense contracts. Five states sought to develop, expand, and/or enhance the pretrial services infrastructure. This was accomplished, for example, through the appropriation of funds to support pretrial services programs, the creation of a centralized state pretrial services unit, and efforts to improve coordination and collaboration with community-based treatment providers. One jurisdiction sought to leverage existing treatment services to create a diversion pathway for individuals with substance use disorders. Eight of these jurisdictions also described efforts to design, implement, test, or expand a reminder program to notify defendants of upcoming court dates, typically in the form of automated text message alerts.

6. *Developing or improving the capacity for data collection, monitoring, and data-driven management practices.* Five jurisdictions described ongoing activities focused on issues related to pretrial data collection, sharing, centralization, and analysis. Some states pursued external partnerships with data professionals and researchers to address these needs. Two states described efforts to utilize advancements in pretrial justice data or data systems to better inform management practices. One state had developed statewide pretrial supervision standards and was in the process of implementing a training curriculum on those standards (see also #7). They also described efforts to use available data to identify the unique pretrial needs of each jurisdiction, which could be used to inform a tailored approach to pretrial service design sensitive to variations in local pretrial dynamics (see also #5).
7. *Delivering education and training to judges, pretrial services professionals, and other court community stakeholders.* Several states organized statewide Summits to focus local teams on pretrial justice issues. Many of the state Summits were inspired by and modeled after the regional CCJ/COSCA Pretrial Justice Reform Summits and were conducted with technical assistance support from NCSC and the Pretrial Justice Institute under a State Justice Institute grant. Respondent feedback indicated that the state Summits were invaluable for educating local practitioners about relevant pretrial justice issues in the state, providing state leadership with an opportunity to receive input from localities regarding ongoing and emerging needs, and informing decisions about the development of appropriate state-level supports. Five jurisdictions described other education and training efforts. These included, for example, the development and/or implementation of new or updated judicial education modules on pretrial justice, as well as training for trainers and frontline practitioners on pretrial services standards, pretrial risk assessment, and available pretrial supervision and community-based treatment services.

At the time of reporting, most jurisdictions were in planning or early implementation stages. Six jurisdictions were able to share a preliminary assessment of the impacts of pretrial justice improvements on the jail population and/or on court appearance and recidivism rates. Among those providing this information, two jurisdictions reported reductions in their jail populations.² One jurisdiction described a jail population that had been growing but stabilized following the implementation of various pretrial justice improvements. Another jurisdiction noted that the composition of those incarcerated pretrial appeared to be changing to focus more on higher risk populations, with lower risk populations more likely to be released. Two states indicated that they had observed improvements in court appearance rates following the implementation of reforms.

² One respondent highlighted the achievements of a local Safety + Justice Challenge site in their state, where they had observed a reduction in the local jail population without impacting public safety or appearance rates and reduced racial disproportionality among those released pretrial.

Continuing Challenges

Jurisdictions focused on advancements to their pretrial justice systems described several considerations to be addressed as they continue their work. These are summarized below.

- *Policy framework.* Many jurisdictions noted significant local variation in current pretrial policy and practice. Some respondents described a need for additional research to better understand this landscape. In some jurisdictions, legal developments (such as pending court cases or legislation) delayed implementation of planned activities or introduced uncertainty about the path forward. Others expressed the need to clarify the legal framework governing issues such as the use of pretrial risk assessment instruments, preventive detention and the presumption of release, and the conditions to be imposed, if any, upon release.
- *Educating and engaging stakeholders.* Seven jurisdictions expressed a need to continue to inform, educate, and train practitioners and raise awareness and support among policymakers. Some jurisdictions described several emerging or ongoing challenges with stakeholder engagement, including topic or change fatigue. In one jurisdiction, state leadership sought to engage the broader community in the policymaking process but encountered challenges identifying a diverse, representative membership of community advocates and stakeholders to participate.
- *Data and technology infrastructure.* To enable enterprise-level performance monitoring, management, and research and development support, jurisdictions described significant data and technology needs. Documented challenges included but were not limited to poor data quality, missing data or data elements, and the lack of a data infrastructure to permit assessment.
- *Pretrial services.* Many states are working to develop or enhance their pretrial services programs. Those seeking to create an infrastructure for the statewide delivery of pretrial services are working to define how this new pretrial services system will operate within the existing administrative structure. Others are working to build community partnerships and provider networks, improve coordination, and educate stakeholders and the public about resources available pretrial. Several are focused on improving early justice system responses to persons with substance use disorders and mental disorders, such as by creating new opportunities for early diversion and improving access to existing community-based treatment services. Some jurisdictions engaged in the process of developing court date reminder programs have identified barriers to this service (such as a lack of mobile coverage in rural areas and challenges capturing phone numbers at the time of arrest) and are considering strategies for moving forward.
- *Resource limitations.* Several jurisdictions described a need for more funding support to expand capacity (staff, staff time, staff training) or other resources necessary to advance reforms.

Conclusion

Today, eight years since the COSCA white paper call for action, states and territories continue their work to advance pretrial justice reforms. During the regional CCJ and COSCA *Pretrial Justice Reform Summits*, participating teams realized the many challenges in the path before them. But they committed to one another to see their plans through - inspired, in part, by the words of former Chief Justice Charles W. Daniels (on New Mexico's reform efforts):³

What we found out is that it takes a lot of education to overcome this culture and these misunderstandings, and it's a never-ending job. It takes strong leadership by the Supreme Court. It certainly has in this state. Just putting words on paper and walking away clearly is not going to change this system. It takes a lot of education of the public. But, on the whole, it's worth the effort[...] It's probably the most significant improvement in our justice system that I will have seen in my time on the court, and I suspect I will never change my mind about that no matter how many more years I serve.

About this Brief

This brief was created with support from the John D. and Catherine T. MacArthur Foundation as part of the Safety and Justice Challenge, which seeks to reduce over-incarceration by changing the way America thinks about and uses jails. For more information, see www.safetyandjusticechallenge.org. This brief was authored by Dr. Jennifer Elek in collaboration with Dr. Pamela Casey and Ms. Jacquelyn Gilbreath as part of the National Center for State Courts' work on the Safety and Justice Challenge. Any points of view or opinions expressed in the brief do not necessarily represent the official position of the MacArthur Foundation or the National Center for State Courts. For more information on the NCSC's work on the Safety and Justice Challenge, see <https://www.ncsc.org/Topics/Criminal/Courts-and-Jails/Safety-and-Justice-Challenge.aspx>. For more information on state pretrial justice reform efforts, see the NCSC's Pretrial Justice Center for Courts at www.ncsc.org/pjcc.

³ Daniels, C. (May 12, 2016). Panelist remarks. How Chief Justices are Leading Reform: Approaches, Strategies, and Challenges. CCJ and COSCA Western Region Pretrial Justice Reform Summit, Santa Fe, NM.