

Pretrial Justice

Front-End Changes to Enhance Safety
and Better Manage Jail Populations

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The Purpose of Bail

1. Protect the integrity of the court process
2. Protect the public
3. Protect against punishment prior to conviction



Defining “Effective” Bail Decisions

“Effective bail decisions would foster the release of as many defendants as possible before trial, while maintaining suitably low failure to appear and rearrest rates.”

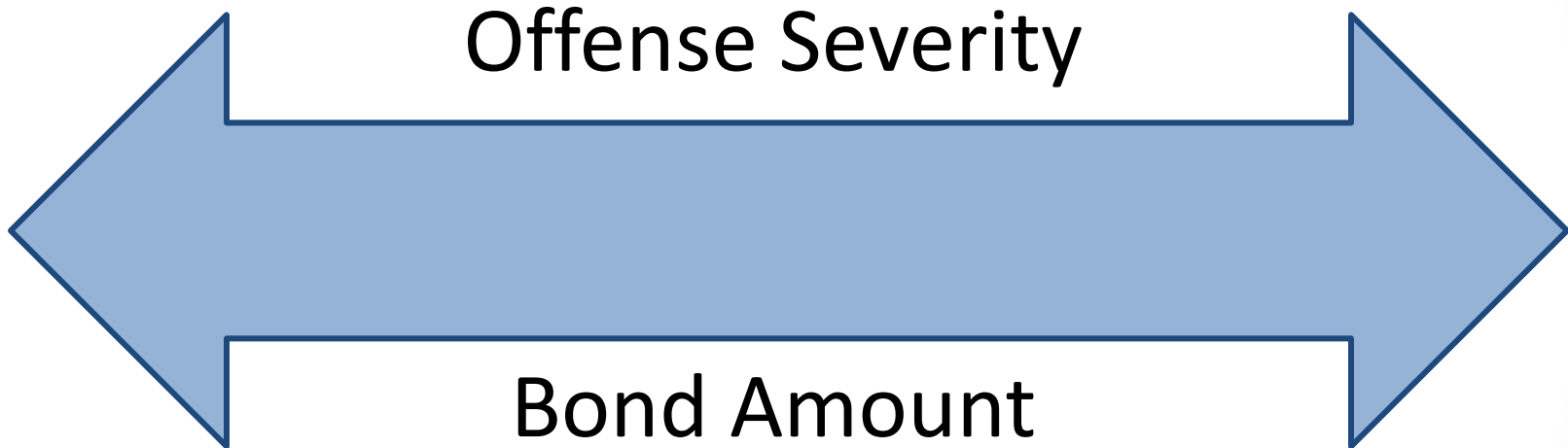
(John Goldkamp and Michael Gottfredson, *Policy Guidelines for Bail: An Experiment in Court Reform.*)

Bond Schedules

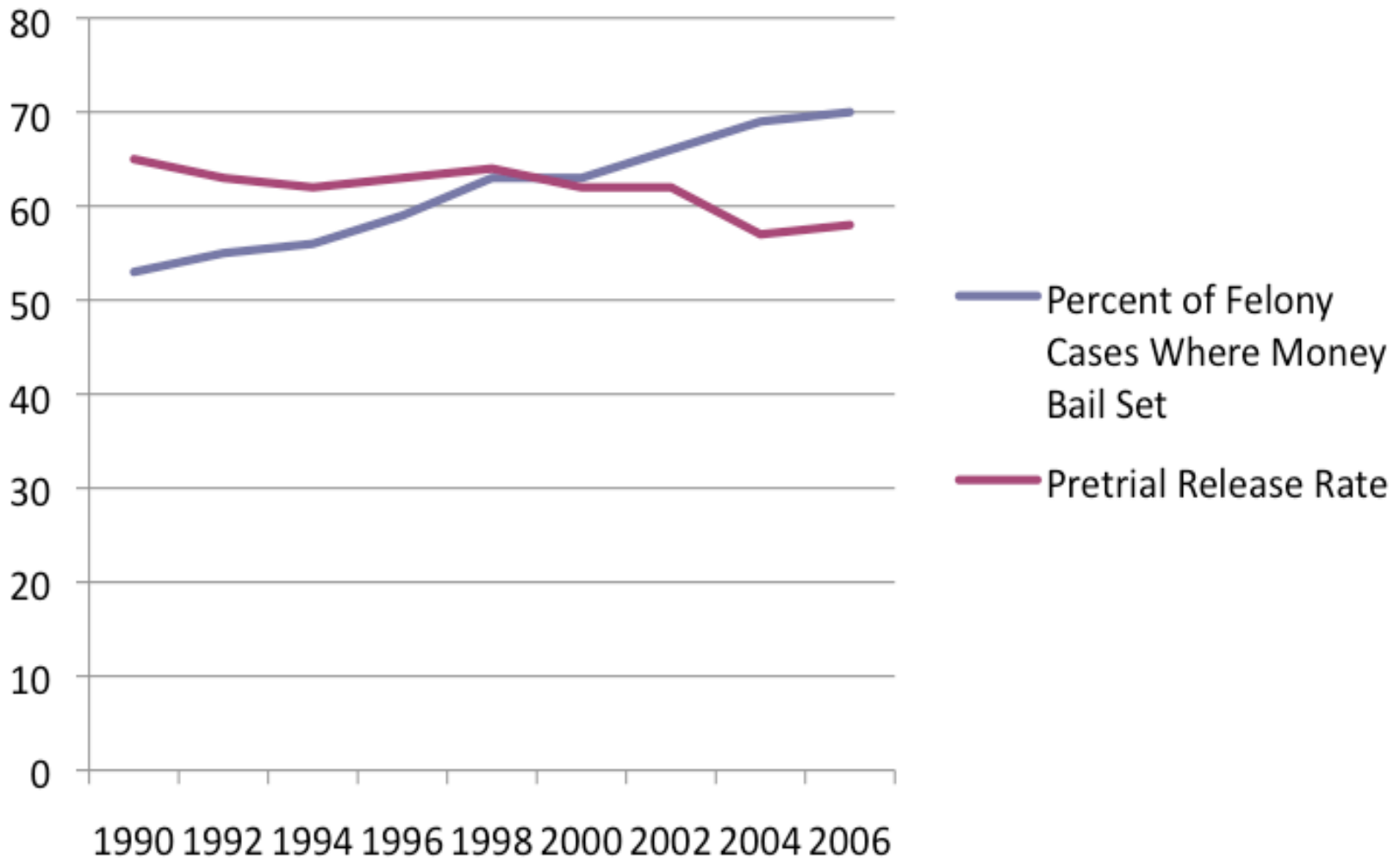
- Sometimes called “standard bond”
- The predominant mechanism for assigning bail according to the National Pretrial Justice Survey



Bond Schedule Risk Assessment



Type of Release



Time (behind bars) = \$\$\$\$\$

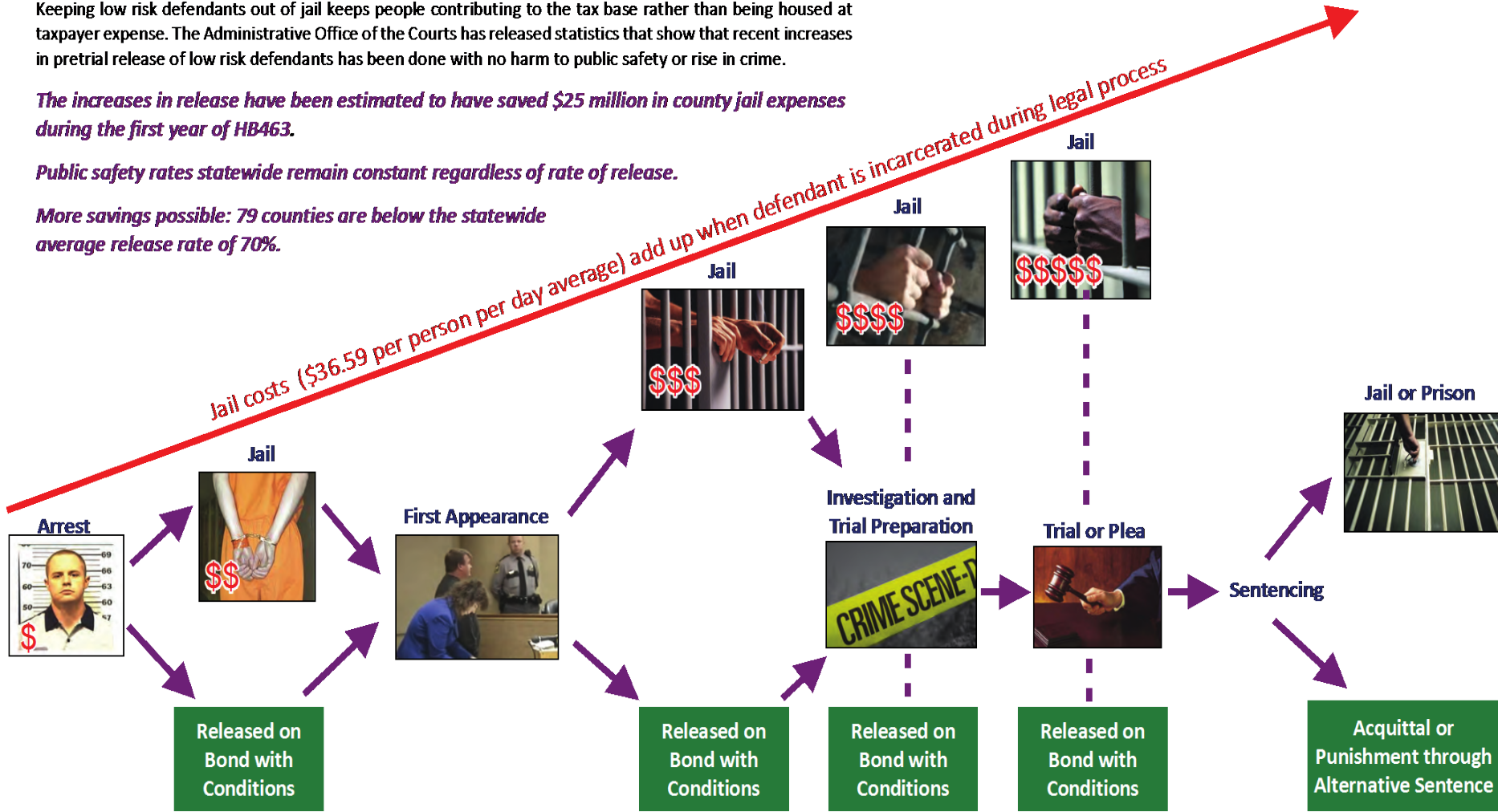
How taking advantage of pretrial release options saves serious money.

Keeping low risk defendants out of jail keeps people contributing to the tax base rather than being housed at taxpayer expense. The Administrative Office of the Courts has released statistics that show that recent increases in pretrial release of low risk defendants has been done with no harm to public safety or rise in crime.

The increases in release have been estimated to have saved \$25 million in county jail expenses during the first year of HB463.

Public safety rates statewide remain constant regardless of rate of release.

More savings possible: 79 counties are below the statewide average release rate of 70%.



→
Jail costs stop when defendant is released.

77 days at a cost of \$2,817.43 - Average length of time spent on pretrial release, according to the AOC

Length of Stay

Bond Status	Avg. LOS in Jail
Posted	12 days
Not-Posted	121 days



- For felony defendants in 40 of the nation's 75 largest jurisdictions. Source: Bureau of Justice Statistics, State Court Processing Statistics, 2006

COSCA White Paper (2012)

- “...Economic status (is) a significant factor in determining whether a defendant is released pending trial, instead of such factors as risk of flight and threat to public safety.”
- “In short, ‘for the poor, bail means jail.’”

Implications of Bail

- Maintain employment, family ties, residence, etc.
- Assist Counsel
- Access to treatment/services
- Protection of victim/public
- Public costs of detention
- Disruption of case process
- Harsher dispositions



Actuarial Risk Assessment

- What it is
 - Data driven
 - Research informed
 - Objective aid to decision making
 - Used for decades in commerce
 - Health, education, national security, etc.
- What it isn't
 - Person-specific
 - A replacement for judicial discretion

Risk Assessment

Auto Insurance

- **Age**
- Distracted driving
- Peer(s) in vehicle with driver
- Low driving skills
- Low compliance with traffic laws



Risk Mitigation

Auto Insurance



- Drivers education
- Restrict nighttime driving
- Prohibit peers as passengers
- Strict enforcement
 - Seat belts, texting, etc.

Risk Assessment

Health

Heart Attack

- Age
- Smoking
- Family history
- Obesity
- Sedentary lifestyle
- Diabetes
- Hypertension

Cancer

- Age
- Smoking
- Family history
- Obesity
- Sedentary lifestyle
- Sunlight
- Diet

Risk Mitigation

Health

- Exercise
- Medication
- Smoking cessation
- Improved diet



Risk Assessment

Pretrial Justice

- Statistically measures probability of success/failure of the two factors to consider for bail:
 - Appearance in court
 - Community safety



How Does it Work?

- Data sample is drawn and examined
- Shared characteristics measured for predictive strength
- Risk level assigned according to probabilities (low, medium, high)
- Model is tested to prevent unintended bias



Pretrial Risk Factors

- Other pending cases
- Criminal history
- Failure to appear history
- Residence
- Employment
- History of substance abuse or mental illness



Pretrial Risk Mitigation

- Case manager supervision
- GPS supervision
- Drug testing
- Stay away orders
- Curfew
- Treatment/therapy
- Preventive Detention



Improving Pretrial Justice

(COSCA)

- Analyze state law and work with law enforcement agencies and criminal justice partners to propose revisions that are necessary to
 - Support risk-based release decisions of those arrested;
 - Ensure that non-financial release alternatives are available and that financial release options are available without the requirement for a surety

Improving Pretrial Justice

(COSCA)

- Collaborate with experts and professionals in pretrial justice at the national and state levels
- Take the message to additional groups and support dialogue on the issue

Improving Pretrial Justice

(COSCA)

- Use data to promote the use of data; determine what state and local data exist that would demonstrate the growing problem of jail expense represented by the pretrial population, and that show the risk factors presented by that population may justify broader pretrial release

Improving Pretrial Justice

(COSCA)

- Reduce reliance on bail schedules in favor of evidence-based assessment of pretrial risk of flight and threat to public safety.

National Symposium Recommendations

- Expand the use of citation releases
- Risk assessment in place of bond schedules
- Prosecutorial review of all cases prior to initial appearance
- Defense counsel at initial appearance
- Trained Judicial officers presiding at the initial
- Existence of pretrial services program
- Preventive detention



Call for Pretrial Reform Since 2010



THE NATIONAL
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NACO *National Association of Counties*



The Voice of America's Counties

Pretrial Justice in Rural Areas:

A Guide for Rural County Officials

- Evidence for Pretrial Justice
- Applying the Elements of Pretrial in Rural Counties
- Recommendations for Elected County Officials in Rural Areas

Recommendation 1

Develop coordinated, system-wide approaches for pretrial justice planning, implementation and monitoring

Criminal Justice Coordinating Councils –

- *Analyze jail and public safety data*
- *Map pretrial decision-making*
- *Adopt a policy statement or resolution to reflect national standards*

Recommendation 2

Review local ordinances and state statute pertaining to pretrial release decision-making for their compatibility with the pretrial standards outlined by the American Bar Association.

Immerse stakeholders in pretrial research and evidence and compare current policies/practices to national standards

Recommendation 3

Adopt regional approaches to providing defense representation.



Recommendation 4

Educate constituents on pretrial justice through local, regional and state symposiums.

- *Promote pretrial evidence and practice examples using already existing statewide associations*
- *Convene pretrial justice symposium or conference*

Recommendation 5

Collect and analyze program and public safety data.

- *Jail Average Daily Population*
- *Jail Average Length of Stay*
- *Risk Assessment Outcomes*
- *Public Safety Outcomes*



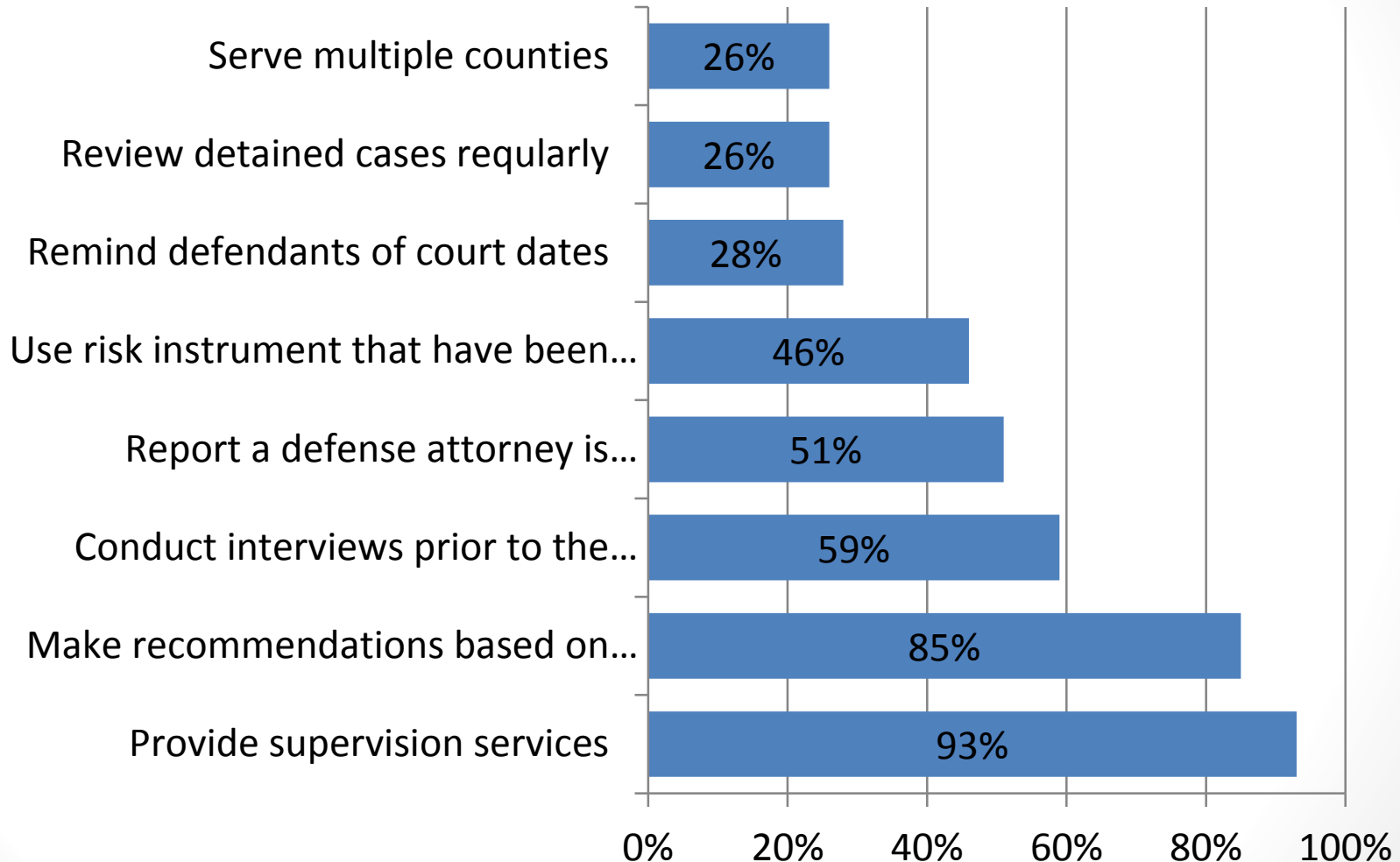
Recommendation 6

Ensure that the ABA standards for pretrial justice programming are in place by advocating for changes within the system at the policy level.

- *Provide leadership and facilitation*
- *Collaborate with judges and sheriffs*



Rural Pretrial Survey Results





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