

# Reviews of Pretrial Services and Systems in Washington

## Pretrial Reform Task Force Final Recommendations Report Summary<sup>1</sup>

The Pretrial Reform Task force was established on June 22, 2017 and was co-sponsored by the Washington State Minority and Justice Commission, Superior Court Judges' Association, and District and Municipal Court Judges' Association. Membership consisted of 55 stakeholders from all court levels, all branches of government, community organizations, and the private sector.

**Purpose:** Examine current pretrial practices in Washington and develop consensus-driven recommendations for local jurisdictions to consider when improving their pretrial systems.

**Guiding Principles:**

- > Improve the implementation of evidence-based practices
- > Support judicial discretion
- > Maximize justice for all

**Three Areas of Focus:**

1. Pretrial release and effective pretrial services
2. Court practices for assessing risk and reviewing concerns regarding actuarial risk assessment tools
3. Uniform data collection

### Final Recommendations:

#### *Pretrial Services*

**1) Governments should bear the cost of pretrial services rather than the accused:** Accused persons cannot and should not be required to incur additional costs or debts as a result of their participation in pretrial services. Pretrial services include, but are not limited to: electronic monitoring, drug and alcohol monitoring, mental/behavioral health treatment, and court reminders.

**2) Court Reminders:** The available research consistently shows that pretrial court date reminders through texts, emails, mail or phone calls are an effective method to reduce the risk of failure to appear, and should be available to all defendants.

**3) Voluntary Service Referrals:** Referrals such as mental and/or behavioral health treatment, vocational services, or housing assistance should be offered to assist defendants maintain court attendance and supervision compliance, and prevent re-arrest. Referrals should be individualized, offered voluntarily rather than as a condition of release, and should involve little or no cost to the individual.

**4) Stakeholder Involvement:** A local stakeholder group can make actionable recommendations to improve the practices and outcomes of the pretrial system, and can ensure the success of reforms by soliciting input from all participants and by making informed decisions as a team, rather than separate and distinct entities.

**5) Transportation support:** Offering free or subsidized transportation to defendants for court appointments can help ensure low-income people and people with disabilities can attend their court-ordered appointments.

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<sup>1</sup> Report can be found here: [Pretrial Reform Task Force \(wa.gov\)](https://www.wa.gov)

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### *Risk Assessment*

The Task Force takes no position on whether local jurisdictions should, or should not, adopt a pretrial risk assessment (PTRA) tool. But the Task Force does recommend that jurisdictions choosing to employ a PTRA consider the following minimum criteria before the adoption or creation of a PTRA.

**6) Identify Desired Goals:** A jurisdiction should clearly identify what it intends to accomplish in order to determine whether the use of a PTRA has been successful in reaching its stated goals, such as reducing the jail population or increasing pretrial release.

**7) Defining Terms:** A PTRA must have clear, operational definitions for “FTA” and “new offense” and jurisdictions should train all court partners on their usage.<sup>1</sup>

**8) Comparative Data:** Jurisdictions should collect data relevant to the identified goals before, during, and after implementation of the PTRA in order to measure the PTRA’s performance.

**9) Clarify Interpretations of “Risk”:** Jurisdictions must (a) understand the different kinds of “risk” a tool may measure for (non-violent versus violent offenses), (b) differentiate the factors courts must consider under Washington’s criminal rules to address the likelihood of an individual’s failure to appear (FTA), danger to the public, or interference with the administration of justice, and (c) have a deep understanding of the risk “scoring” provided by the tool.

**10) Validation for Predictive Accuracy and Race Neutrality:** The PTRA must be validated using local data prior to adoption and periodically throughout its use in order to ensure the PTRA is predicting new (violent)<sup>2</sup> offenses and FTAs with accuracy and precision.

**11) Disproportionate Racial Impact of a PTRA<sup>3</sup>:** Jurisdictions must examine whether the PTRA has or is likely to have a disproportionately negative effect on certain racial, ethnic, or socio-economic groups. This should occur before implementation of the PTRA and then periodically throughout its use.

**12) Community Participation:** The adoption and utilization of a PTRA should be transparent and should engage communities of color, marginalized groups, and victims’ rights groups in the development, implementation, and validation of any jurisdiction’s PTRA.

**13) Planning and Implementation:** Many organizations, including the National Center for State Courts, have developed materials to help jurisdictions plan for the phases of implementation. A list of

### *Data Collection*

**14) Collect and Record Data:** Jurisdictions should collect and record complete information at all points of the pretrial system, including: defendant demographics; booking and first appearance; release/detention decisions and bail; and, release, new criminal charges and failure to appear.

**15) Data Analysis:** Jurisdictions should conduct data analysis on all pretrial elements related to: time from booking to arraignment; pretrial releases and detentions; and pretrial outcomes.

**16) Data Analysis Results:** Jurisdictions should use the results of the data analysis to evaluate pretrial services and conduct improvements as necessary.

**17) Data Dissemination:** Jurisdictions should provide data analysis to stakeholders and/or the public on a regular basis.

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**18) Pretrial Services Data:** If implementing a pretrial program, jurisdictions should collect and analyze at all points of the pretrial services program, to: measure program success, identify areas of improvement, and support adherence to best practices.

**19) PTRR Data:** Jurisdictions that implement a pretrial risk assessment tool should collect data to assess (a) the concurrence between supervision level or detention status and their assessed risk; (b) the percentage of cases with release eligible defendants who received a risk assessment; and (c) percentage of judge's release decisions that differ with a risk assessment tool recommendation.

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## Bail Practices Work Group<sup>2</sup>

In 2010, SSB 6673 (Chapter 256 of the Laws of 2010) created the Bail Practices Work Group. The work group consisted of 26 members representing legislative, different levels of state and local governments, and various organizations.

**Purpose:** Study bail practices and procedures in a comprehensive manner and make recommendations to the Governor, the Supreme Court, and the Legislature.

**Areas for review:**

- > All aspects of bail, paying particular attention to legislation affecting bail and pretrial release introduced during the 2010 legislative session;
- > A validated risk assessment tool that measures or predicts the likelihood that an offender will exhibit violent behavior if released and whether judges should use this tool at bail hearings;
- > Bail practices by county, including the processes used to seek and grant bail as well as the standards by which bail is granted;
- > Whether, or to what extent, uniformity of bail practices should be required by state law;
- > The characteristics of the federal system;
- > The benefits of competitive freedom of government regulation in the pricing of bail bonds;
- > The interests of crime victims in being notified of a person's release on bail;
- > The interests of counties and cities that maintain municipal courts;
- > Legal and constitutional constraints in granting or denying bail;
- > Whether the existing regulatory, judicial, or statutory constraints on bail should be revised; and
- > The pretrial release system.

### Work Group Recommendations for the 2011 Legislative Session:

#### Recommendation #1 – Department of Corrections Risk Assessment Tool

Provide the Department of Corrections risk assessment tool to judges statewide during the pretrial process. Require the Washington State Center for Court Research to research, evaluate, and monitor the validity of the tool on an ongoing basis, every two to four years, to track the tool's effectiveness. Allocate \$200,000 in the budget for this requirement. Include a null and void clause.

#### Recommendation #2 – Failure to Appear Risk Assessment Tool

Require the Washington State Institute for Public Policy to create a risk assessment tool to assess whether an individual is likely to fail to appear at subsequent court hearings. This assessment will be used in conjunction with the Department of Corrections risk assessment tool already in existence. Allocate \$25,000 in the budget for this requirement. Include a null and void clause.

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<sup>2</sup> Report can be found here: [BailPracticesWorkGroupReport.pdf \(wa.gov\)](#)

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### **Recommendation #3 – Law Enforcement Superform**

Require all law enforcement to use a superform that includes information, to the extent that it is available, regarding domestic violence and mental health. The form should also include information regarding the victim's input or position as to the defendant's release.

### **Recommendation #4 – Mental Health Records**

Create an exception to allow courts confidential access to the mental health records of offenders for the purposes of bail and pretrial release.

### **Recommendation #5 – Definition of Bail**

There should be a generally recognized definition of what bail means, subject to further discussion.

### **Recommendation #6 – Uniform Bail Schedule**

The Legislature should not implement a uniform, statewide bail schedule. Bail schedules should be left to the discretion of the court and in the control of local jurisdictions.

### **Recommendation #7 – Bail Schedule Suspension**

The temporary suspension of the use of felony bail schedules should be allowed to lapse, so that felony bail schedules may once again be used after section 2 of HB 2625 expires on August 1, 2011.

### **Recommendation #8 – Statewide Justification of Bail Bond Agents and Notification of De-Justification**

A statewide justification system, as well as some form of statewide notification, would be beneficial. Under a statewide justification system, permit a bail bond agency to file all the primary paperwork with one regulatory agency without re-filing paperwork in every county. Under a statewide notification system, require that a presiding judge of a court notify the Administrative Office of the Courts when it de-justifies a bail bond agent. Require the Administrative Office of the Courts to notify other counties of the de-justification.

### **Recommendation #9 – Collateral**

For commercial property bonds, limit the definition of "collateral" to real property, tangible personal property, or a closed bank account. The definition should exclude savings accounts, for example, which can easily be accessed.

### **Recommendation #10 – Department of Licensing Surety Bond**

Require a bail bond agent who issues commercial property bonds to post a \$100,000 surety bond instead of a \$10,000 surety bond with the Department of Licensing, or to deposit that amount in a trust account.

### **Recommendation #11 – Background Checks**

Require that applicants for a bail bond agent license complete a background check.

### **Recommendation #12 – General Power of Attorney**

Prohibit a general power of attorney or similar contract between the bail bond agent and the client. (Continue to permit the power of attorney between the bail bond agent and the surety insurance company.)

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### **Recommendation #13 – Surrender**

Require a bail bond agent who surrenders a client to court to return the premium and recovery fee. Provide exceptions for when good cause exists to surrender the client (*e.g.*, the risk substantially increased as a result of judicial action, the client concealed or misrepresented information, or other reasonable cause). Permit the bail bond agent to recover expenses incurred under these circumstances.

### **Recommendation #14 – Department of Licensing Audit Authority**

(1) Permit the Department of Licensing to audit the trust accounts of bail bond agents and agencies (both property bond agents and bail bond agents that represent a surety insurance company) once every two years. Permit a bail bond agency to avoid an audit by submitting a financial report prepared by a certified public accountant on an annual basis. (2) Grant the Department of Licensing authority to inspect the books and records of the bail bond agent or agency when there is probable cause to believe the agent or agency has engaged in impropriety.

### **Recommendation #15 – Court Notification of Failure to Appear**

Require the court to notify the surety of the defendant's failure to appear within 14 calendar days of the failure to appear, instead of 30 days. Begin the 60-day period during which the surety can avoid execution of the bond on the date of notification.

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## Reforming Bail Practices in Washington<sup>3</sup>

### 2019 Performance Audit by the Office of the Washington State Auditor

**Purpose:** The purpose of this audit was to give stakeholders in the criminal justice system additional information about pretrial services and explore the potential for expanding their use.

**Recommendations:** The audit does not make any recommendations, but answers the following question: Can Washington use pretrial services, as an alternative to bail, to better serve qualified defendants while maintaining public safety and controlling costs?

**Answer:** On any given day, about 4,700 people held in Washington jails are candidates for pretrial services. Releasing these defendants and providing them pretrial services can save taxpayers between \$6 million and \$12 million a year.

Analyses of two Washington counties also suggest pretrial services can be effective and comparable to bail in maintaining public safety. Pretrial detention can have negative consequences for defendants, including an increased likelihood of reoffense and worse case outcomes. However, jurisdictions should also consider the additional risks to the public that may result from releasing more defendants from jail.

As this audit demonstrates, pretrial services offer an effective alternative to money bail. Releasing defendants through pretrial services is less costly than holding them in jail before trial.

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<sup>3</sup> Report can be found here: [Reforming Bail Practices in Washington - Office of the Washington State Auditor](#)