

Exploring the Potential for Pretrial Innovation in Massachusetts

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Reducing the number of inmates awaiting trial in jail through data-informed decision-making is one of the most promising innovations that Justice Reinvestment presents. Housing, feeding, and providing security for detainees is expensive, and there are also large collateral consequences. The defendant will likely lose their job, their housing, and perhaps even their children if a jail stay is required. While incarcerated awaiting trial, few detainees receive services they may urgently need to address underlying problems. Recognizing that resources can be better spent elsewhere, a number of states are moving aggressively to keep low-risk defendants out of jail.

States in the lead on adopting new pretrial procedures have been able to reduce their jail populations because they were holding a large number of defendants who did not present a danger or flight risk; these detainees were simply too poor to afford bail.²

In addition to lowering jail populations, improvements to the pretrial process have the potential to reduce racial and ethnic disparities in incarceration. Research has shown that pretrial detention is harmful to mounting a defense, and that more low-income and minority defendants are forced to await trial in jail because they cannot post the money required for their release.

While data limitations make it difficult to determine how many low-risk defendants are awaiting trial in

Massachusetts jails, the growth of the state's pretrial population at a time when arrest rates are falling is an indicator that the pretrial process may be operating inefficiently. Between 2008 and 2013, the number of arrests in Massachusetts fell by 10 percent; in contrast, the state's pretrial jail population rose by nearly 13 percent. The disparity is even larger when contrasted with the drop in the number of defendants sentenced annually to serve terms in state prisons and county Houses of Correction, which has fallen by 22 percent since 2008 (Figure 1).

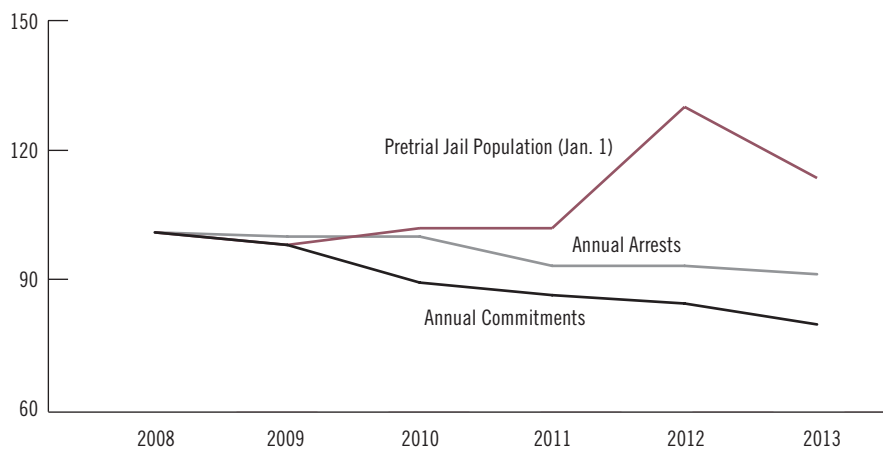
This policy brief provides a short primer on the pretrial process in Massachusetts, highlights critical issues that suggest there are opportunities to improve the system, and offers an action plan for pretrial innovation in Massachusetts.

I. Pretrial Detention in Massachusetts

When an arrest is made in Massachusetts on a new charge, the defendant is released on their own recognizance, released on bail, detained in jail because they cannot pay bail, detained in jail because they pose a danger, or detained in jail on a probation hold.³

If bail is required as a condition of release, the amount the defendant must post is set in two ways: If the arrest

Figure 1:
Massachusetts Arrests, Commitments, and County Pretrial Populations
(2008=100)



Sources: Massachusetts Sheriffs' Association, monthly count sheets; Massachusetts Department of Correction, *Prison Population Trends*; Federal Bureau of Investigation, *UCR Publications*

occurs outside court hours, a bail commissioner determines how much bail the defendant must pay and collects it from them at the police station or jail.⁴ After a bail commissioner sets bail, whether the person is able to post the

bail or not, a judge makes a bail determination at the first court appearance based on his or her own assessment of the circumstances; this bail may or may not be the same bail that the commissioner set and replaces the commis-

sioner's temporary determination of bail. Alternatively, if the arrest occurs during court hours, a judge will set bail.

Cash bail and other conditions of release are supposed to be imposed only when the judicial officer determines that release on recognizance will not secure appearances before the court. If a defendant is not admitted to bail by a judge in a District Court, then the defendant may appeal that decision to the Superior Court. Throughout the pretrial hearing process the judge may adjust bail.

In many states, those without financial means often turn to bail bondsmen, who pay the bail on behalf of the defendant in exchange for a fee, typically 10 percent of the total bond amount. This practice can be problematic for the courts (a defendant who did not put his or her own money at risk might be more likely to flee) and injurious to the defendant, who loses the bondsmen's fee regardless of the outcome of their case. Massachusetts courts effectively put bail bondsmen out of business in the 1980s by allowing defendants to pay 10 percent of their bail in cash and accepting a surety for the remaining 90 percent.⁵

Lack of data on bail makes it difficult to determine the extent to which the "10 percent" approach to cash bail is applied in Massachusetts. However, from anecdotal evidence, it appears to be widespread, keeping bail bondsmen effectively out of business.

During the pretrial process, many defendants interact with the Probation Department. Before arraignment, probation officers screen defendants for indigence (to determine whether to appoint a public defender) and provide

KEY FINDINGS

- Since 2008, the state's pretrial population has grown by nearly 13 percent, while arrests have declined by 10 percent and the number of commitments annually to state prisons and county houses of correction has fallen by 22 percent.
- Data show large racial and ethnic disparities in the population awaiting trial in jail. Black residents are overrepresented in the pretrial population by a factor of 10 in Barnstable County. As a share of Franklin County's jail population, the proportion of black detainees is nine times higher than the share of black residents in the general population; in Norfolk County, the disparity is a multiple of five.
- Minority defendants also face much higher bail. In Barnstable County, the median bail amount for African-American defendants is four times higher than for white defendants. Median bail amounts for African-Americans in Berkshire County are five times higher than for white defendants.
- Unlike many states and the federal courts, Massachusetts does not use a validated risk assessment process to make evidence-based bail decisions. Pending legislation would move Massachusetts toward a risk-informed pretrial process. If successful, this step could produce significant savings and help reduce potential racial and ethnic bias in the pretrial process.

the court with information on prior criminal prosecutions (to aid in bail determinations). Judges can also place defendants with conditions of release, including electronic monitoring, in the care of the Probation Department. As these defendants await trial, probation officers monitor them for violations of pretrial release conditions.

II. Opportunities to Enhance the Pretrial Process in Massachusetts

While the pretrial process in Massachusetts has evolved over centuries to serve thousands of defendants every year, there are a number of reasons, as outlined below, to believe that technology and data-informed processes provide compelling opportunities to enhance the performance of the state’s pretrial system.

A. The bail decision-making process is not evidence-based.

State law lays out 17 factors a judicial officer must take into account when setting financial conditions for bail, but no study has proven that these factors relate directly to a defendant’s probability of appearing for trial in Massachusetts. While some have an obvious connection (e.g., failure to appear in court for a past offense), the predictive power of others is much less certain (e.g., a history of mental illness), particularly given that some represent fairly subjective measures (e.g., the person’s reputation).⁶ The Massachusetts statute includes measures that show no correlation with risk to appear in peer-reviewed research, such as the nature of

the offense, while factors that have been tied directly to risk of flight, such as age and education, are notably absent.⁷

Because there is no mechanism for determining how much weight each indicator of risk should be given, even if each of the 17 indicators were independently backed by empirical evidence, the Massachusetts bail decision-making process would still remain largely subjective. Research shows that criminal justice decisions made in a subjective manner are, on the whole, less accurate than those informed by validated actuarial instruments that indicate risk based on statistical probabilities.⁸

B. Reliance on cash bail may disparately impact poor and minority individuals, creating inequities in the state’s criminal justice system.

Defendants who cannot afford bail await trial in jail, which rigorous research has shown presents a disadvantage for the defense.⁹ Pretrial detainees also risk losing jobs, housing, and social supports, which may make them more likely to plead guilty to charges they would have contested if they were free pretrial.¹⁰ Because lack of wealth and minority status correlate, this alone will introduce racial and ethnic disparities in criminal justice outcomes, independent of potential bias.¹¹

The figures presented in Table 1 raise concerns that this is in fact occurring in Massachusetts. The table compares each racial and ethnic group’s share of the county jail population awaiting trial (column a) to the group’s share of the total county population (column c). To control for racial and ethnic age variation, the table also provides the group’s population aged 15 to 29 as a

RISK TO REAPPEAR VS. RISK TO THE COMMUNITY

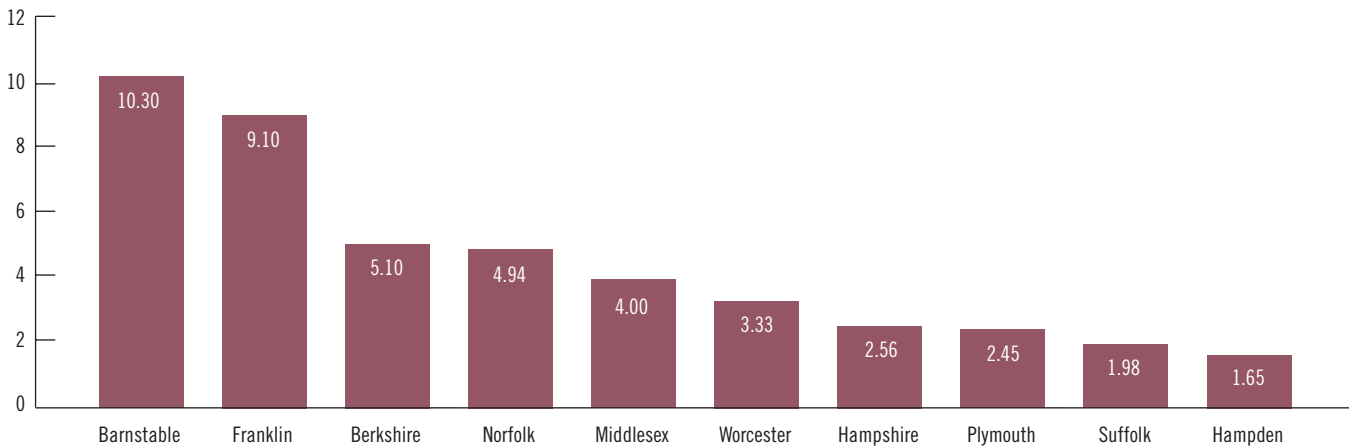
Massachusetts is known as “a failure to appear state”—meaning bail decisions are based solely on the likelihood that the defendant will return for trial. To hold a defendant on dangerousness requires a separate Superior Court hearing. If a defendant is deemed dangerous for pre-release at this hearing, they can only be held on these grounds for 90 days. Several experts interviewed during our research process suggested that some judges may impose high bail amounts in order to prevent dangerous defendants from gaining release. This could be done to avoid a dangerousness hearing or because defendants can only be held on dangerousness for 90 days. Purely from a public standpoint, this practice could be problematic as some defendants who are in fact dangerous may find the means to post the bail. Data limitations make it difficult to evaluate the extent to which this practice occurs. However, the issue illustrates the complexity of the pretrial release decision-making process. Judges must independently determine the probability of the defendant reappearing for trial and the probability that they pose a risk to the community while awaiting trial.

share of the total county population in this high-risk age cohort (column c).¹²

The most striking disparity is in Barnstable County, where black residents make up just 2.4 percent of the population but nearly one-quarter of all pretrial detainees. Black residents are overrepresented in the county’s pretrial population by a factor of 10 (Figure 2). Even with Barnstable County’s unusual

Figure 2:

Ratio of African-American Share of County Pretrial Detainees to African-American Share of County Population



Sources: Author’s analysis of data provided by county sheriffs and US Census ACS population estimates

age distribution, very little of this discrepancy is attributable to age dynamics, as black residents only make up a slightly larger percentage of the highest-risk age cohort (2.9 percent). As a share of Franklin County’s jail population, the proportion of black detainees is nine times higher than the share of black residents in the general population; in Norfolk County, the disparity is a multiple of five.

Racial and ethnic variation in the amount of bail presents a second view of potential bias. Table 2 shows the median bail for minority inmates is significantly higher than the median bail for white inmates in every county for which data are available. In Barnstable County, the median bail amount for African-American defendants is four times higher than for white defendants. Median bail amounts for African-Americans in Berkshire County are five times higher than for white defendants.

While differing racial and ethnic patterns in risk to appear for trial may fully explain observed variation in bail

decisions by race and ethnicity, without the data generated by a validated risk assessment process, it is difficult to determine the extent to which bias may also be a factor.¹³ A number of national studies have analyzed the data necessary to adequately control for risk.

C. Agencies lack data to manage the pretrial system.

While data on individual risk are critical to making informed decisions on a case-by-case basis and rooting out potential bias, data are equally invaluable for managing the overall system.

Additional action is warranted to better understand the extent to which there may be bias in the state’s pretrial system.

These studies have consistently found that racial and ethnic biases influence pretrial bail decisions.¹⁴ The disparities evident in the tables above, combined with this body of peer-reviewed research, suggest additional action is warranted to better understand the extent to which there may be bias in the state’s pretrial system.

To develop a better understanding of capacity to make data-informed decision, the Middlesex County Sheriff recently partnered with the National Institute of Corrections (NIC). The NIC technical assistance report found that no data were available to assess the efficacy of bail decisions or to monitor the use of pretrial diversion programs and their outcomes. Basic measures to gauge how

effectively defendants awaiting trial in the community are monitored, such as the number receiving supervision and the caseloads for probation officers supervising pretrial release, were unavailable. Even tracking who was in the system was difficult. For instance, compiling data on the number of probationers in custody was challenging.¹⁵

As the NIC report noted, access to these data are critical for managers because growth in the pretrial population is particularly sensitive to local decision-making (as opposed to state statute). From an operational perspective, these data limitations illustrate the difficulty of managing a system that depends on coordination between several independent branches of government.

D. Pretrial innovation can generate significant savings.

Even without adequate data, there are strong indications to suggest Massachusetts could generate significant savings through pretrial innovation. The clearest evidence is divergence in the number of arrests across the state and the number of defendants awaiting trial in county jails. Between 2008 and 2012, the most recent year for which comparable data are available at both the state and county level, arrests in Massachusetts fell by 10 percent for all crimes and 19 percent for violent crimes; the pretrial jail population moved in the opposite direction, rising by 10 percent.¹⁶

Hampden County, one of the largest systems in the state, stands out because it bucked the trend. From 2008 to 2012, arrests fell 12 percent for all crimes and 25 percent for violent crimes in Hampden County; correspondingly, the county’s jail popula-

Table 1:

Racial and Ethnic Composition of the Pretrial Detainee Population Relative to the County Population

	(a)	(b)	(c)
RACE OR ETHNIC GROUP	GROUP'S SHARE OF THE PRETRIAL POPULATION	GROUP'S SHARE OF THE TOTAL COUNTY POPULATION	GROUP'S SHARE OF THE COUNTY'S 15-TO-29 AGE COHORT
Barnstable County (June 15, 2015; N=150)			
Black	24.7%	2.4%	2.9%
White	70.0%	93.8%	88.2%
Berkshire County (2014; N=993)			
Black	15.9%	3.1%	4.3%
Hispanic	5.9%	3.8%	5.9%
White	77.5%	90.0%	87.6%
Franklin County (2014; N=1,482)			
Black	13.6%	1.5%	1.8%
White	71.4%	94.7%	91.5%
Hampden County (2014; N=4,287)			
African-American	17.5%	10.6%	10.8%
Asian	0.2%	2.3%	1.5%
Caucasian	45.7%	83.8%	70.3%
Hispanic	36.2%	22.6%	27.2%
Hampshire County (2014; N=235)			
Black	12.8%	5.0%	4.0%
White	85.1%	89.5%	81.8%
Norfolk County (July 15, 2015; N=127)			
Black	33.1%	6.7%	7.6%
White	65.3%	81.7%	77.4%
Middlesex County (October 31, 2014; N=826)			
Black	21.6%	5.4%	5.8%
Caucasian	51.5%	75.5%	69.8%
Hispanic	22.5%	7.3%	9.0%
Plymouth County (June 15, 2015; N=914)			
Black	23.5%	9.6%	9.8%
Hispanic	11.9%	3.5%	4.5%
White	61.5%	84.2%	79.8%
Suffolk County (August 19, 2015; N=609)			
Black	48.6%	24.5%	16.9%
Hispanic	31.0%	21.3%	18.4%
White	18.5%	47.5%	52.1%
Worcester County (only new arrivals; June 15, 2015; N=88)			
Black (non-Hispanic)	17.0%	5.1%	5.4%
Hispanic	21.6%	10.1%	13.0%
White (non-Hispanic)	60.2%	79.6%	74.9%

Source: County sheriffs and 2010 Census
 Note: Racial and ethnic categories labeled as provided by each county, see appendix for other annotations.

Table 2:
Median Bail Amount at Booking by Race and Ethnicity

COUNTY	RACE/ETHNICITY	MEDIAN
Barnstable (June 15, 2015)	Black (N=30)	\$20,000
	White (N=45)	\$5,000
Berkshire (2014)	Black (N=88)	\$5,000
	Hispanic (N=38)	\$2,500
	White (N=358)	\$1,000
Plymouth (June 15, 2015)	Black (N=87)	\$2,500
	Hispanic (N=36)	\$3,000
	White (N=229)	\$1,000

Source: Author's analysis of data provided by county sheriffs

tion (including sentenced defendants) declined by 20 percent.¹⁷

A recent Vera Institute analysis dissected the cost savings Hampden County garnered as its jail population declined.¹⁸ Vera found that Hampden County realized increasingly larger savings with each incremental reduction in the population. First, they reduced variable expenses like food and laundry. As the population fell further, fixed costs for labor started to come down and they fell further as entire housing units were closed.

The Hampden County data Vera collected provide a gauge for how much savings Massachusetts might generate today from pretrial innovation. For instance, assume the state's jail population had fallen 14 percent from 2008 in line with the sentenced population in Massachusetts state and county prisons (this is a good yardstick, since the sentenced population tracked very closely with changes in arrest rates through 2012). If the jail population had followed this downward trajectory, around 624 fewer beds would be required today.

Hampden County estimates the vari-

able cost per bed is \$5,840 annually. So if the 624 jail bed reduction produced only variable costs savings, the state would keep over \$3.6 million per year.

When Hampden County closed housing units (approximately 55-bed blocks), they reduced fixed costs by another \$7,200 per bed. If half of the 624 bed reductions occurred in facilities where fixed cost savings are possible (a conservative assumption since two-thirds of the jail beds are located in counties that would see a reduction of more than 55 beds), the decrease would be large enough to generate an additional \$2.2 million from these fixed costs savings. The combined fixed and variable cost savings would approach \$6 million annually.

Reinvesting these modest savings in pretrial services could result in better outcomes by helping to prevent defendants from falling deep into the system, reducing the likelihood that a first arrest leads to a tenth arrest. Over the long term, this is where the real cost savings and public safety benefits could accrue.

III. An Action Plan for Pretrial Innovation

Like all aspects of the corrections system, pretrial decisions involve risk that cannot be taken lightly. Every day prosecutors, probation officers, and judges make thousands of difficult decisions. These choices have a profound effect on the allocation of limited public safety resources. Criminal justice leaders in Massachusetts are taking a hard look at pretrial strategies to give these officials information and options that better position them to deploy our resources in ways that maximize public safety.

The Commission to Study the Criminal Justice System includes a subcommittee exploring pretrial issues. The Massachusetts Trial Court has a Pretrial Services Task Force. A number of community organizations are coordinating their efforts to advocate for change through a Pretrial Working Group. The recent agreement to partner with the Council on State Governments' Justice Center will likely draw additional attention to pretrial services. Informed by these ongoing conversations, we offer the following recommendations for consideration.

1. Implement a validated pretrial risk assessment tool to make risk-informed decisions.

A validated risk assessment tool is a battery of questions used to determine the probability that a defendant will return for trial based on the patterns of others with a similar profile. These tools are developed by empirical researchers, who use statistical techniques that determine which factors correlate with risk to appear and how

much weight to assign to each factor. Many jurisdictions, including Arizona, Kentucky, New Jersey, Ohio, Virginia, Washington, DC, and the federal court system utilize validated risk assessment tools to make decisions about pretrial release. Risk assessment data also help inform diversion decisions, conditions for pretrial release, and the level of supervision a defendant receives while awaiting trial.¹⁹

While Massachusetts can draw on lessons learned in implementing risk assessment tools in other jurisdictions, our laws require a tool that determines risk to reappear and dangerousness independently. Two risk scores are

costs associated with piloting the tool in several courthouses.

Pending legislation (H.1584/S. 802) would go one step further, requiring the creation, validation, and use of a pretrial risk assessment tool throughout the system. Defense attorneys in Massachusetts have raised concerns that the interviews a pretrial risk assessment will require could produce incriminating evidence against their clients. According to public defenders in other jurisdictions, this problem can be adequately addressed by putting in place strong protections for information gathered in pretrial interviews.²⁰ Such protections include explicit pro-

ers administer risk assessments before arraignment. They also monitor higher-risk defendants awaiting trial in order to reduce missed court dates and reoffending. Pretrial services can be delivered through an independent agency, a division of probation, or a nonprofit organization.

Maine provides pretrial services through an independent non-profit organization. The federal system uses a mix (district by district) of probation and private organizations. Kentucky and Washington, DC, have independent pretrial services agencies.²¹ Leaders in Maine estimate that they have saved millions of dollars annually by utilizing pretrial services in combination with a validated risk assessment tool.²²

The Middlesex County NIC report finds that Massachusetts's probation department is well placed to perform this function. The pending pretrial legislation calls for the creation of a pretrial services division within the Massachusetts Department of Probation. A prime advantage of running pretrial through probation is the ability to quickly scale the provision of these services uniformly throughout the state.

On the other hand, defense attorneys have raised a concern that the placement of pretrial services in probation may negate the benefits of providing pretrial service because probation officers might aggressively return defendants for violating conditions of release. Whichever way Massachusetts opts to go, the state will require workers specifically trained to manage a pretrial population, who are presumed innocent and have a unique set of risks and needs as they interface with the system.

Like all aspects of the corrections system, pretrial decisions involve risk that cannot be taken lightly.

needed to ensure that both decision-making processes are data-informed. Developing separate tools could actually improve the process. For example, when determining dangerousness independently, different tools can be used to measure risk for special categories, such as domestic violence or sex offenses.

The Legislature signaled support for developing a tool appropriate for use within our system by including \$312,500 in the Probation Department's fiscal year 2016 budget. These funds were explicitly provided for the research and development of a statistically validated pretrial risk assessment tool and documentation, training materials, and the

visions barring the use of information gathered in pretrial interviews to prove guilt in court. A number of these protections are included in the pending legislation.

2. Increase capacity to provide pretrial services.

An effective pretrial systems accurately moves defendants into four streams: diversion out of the criminal justice system, release into the community awaiting trial without supervision, release into the community awaiting trial with supervision, and pretrial detention.

Pretrial services staff are essential to an efficient system that maximizes public safety. These frontline work-

3. *Develop information systems to manage the pretrial system.*

Many experts on the Massachusetts criminal justice system believe diverting more defendants pre-arraignment would free the system up to focus resources on those that require more attention. There is also disagreement about whether the state's probation department has a sufficient number of probation officers to provide pretrial services effectively, should the state opt to rely more intensively on probation to perform these functions. Public safety officials and policymakers need better data to answer these questions.

Data from a validated risk assessment tool is one central component. For instance, these data would make it possible to gauge the number of defendants requiring pretrial supervision and the caseloads of probation officers assigned to provide these services. But other changes will be required as well. Pretrial services are delivered differently in each county. Common protocols are needed to standardize data collection to the maximum degree feasible. This will create efficiencies by reducing duplication and ensure that data standards are uniform across jurisdictions.

Massachusetts already has a strong precedent for this approach. In 2006, the state was selected to join the Annie E. Casey Foundation's Juvenile Detention Alternative Initiative (JDAI). This project introduced data-driven decision-making to reduce the use of pretrial detention for juveniles in Massachusetts. The juvenile courts now have an impressive data dashboard to monitor how detention resources are allocated.

The NIC Technical Assistance Report for Middlesex County carefully outlines

the indicators that should be included to monitor activity in the adult pretrial system. The draft legislation specifically calls upon pretrial services to collect many of these indicators and submit quarterly reports. However, the bill as currently drafted stops short of requiring the collection of data on diversion, which would call for improved integration between arrest data and case information maintained by district attorneys.

Developing procedures and integrated systems to collect these data effi-

ciently following standard protocols will require a significant effort. Working with the Trial Court, the Executive Office of Public Safety could help build this capacity across the state. There are also a number of outside groups assisting states with this work, including the Arnold Foundation and the MacArthur Foundation, the Pretrial Justice Institute, and the Vera Institute of Justice. Massachusetts could also engage with the Open Justice Broker Consortium, which includes Hawaii, Vermont, and a number of other states beginning to work collaboratively to enhance their data collection and evaluation capacity.

4. *Dramatically reduce the use of cash bail.*

As the Justice Reinvestment movement gains momentum, it has become clear that the criminal justice system in states across the country have evolved in ways that can entrap the most vulnerable. The use of cash bail is one glaring example. The extent to which cash bail is applied was startling in the NIC study—cash bail was set for 60 percent of pretrial inmates not in jail on probation or fugitive holds in Middlesex County on March 27, 2015.²³ On October 31, 2014, more than

Placing a multitude of conditions of release in lieu of cash bail is contrary to the purpose of pretrial innovation.

one out of five (22 percent) were in jail on less than \$1,000, which suggests nearly 200 low-risk inmates are behind bars in the jail on any given day because they are too poor to make bail. In 2014, the Massachusetts Bail Fund, which posts bail for select defendants in eastern Massachusetts who are too poor to post their own, posted bail for 65 defendants who were held on \$500 or less.

In combination with validated risk assessment, this situation can be remedied by the use of unsecured bonds. An unsecured bond, as opposed to a secured bond, does not require payment of cash bail upfront. Instead, the judicial officer imposes an obligation on the defendant to appear in court and abide by conditions of release or else pay a set sum of money.²⁴

Research suggests unsecured bonds are just as effective at ensuring court appearances as cash bail.²⁵ Delaware, Kentucky, Maine, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, Vermont, Virginia, Washington state, and the federal system have used unsecured bonds for years.²⁶ In 2012, 10 Colorado counties, representing 80 percent of the state’s population, implemented unsecured bonds.²⁷ Pending pretrial legislation would authorize the use of such unsecured bonds in Massachusetts.

Although the elimination of cash bail, in the mode of Washington, DC, and other such jurisdictions, may mitigate the impact of the problems pointed out in this report, it is important that the reduction in the use of cash bail does not correspond to an increase in the use of conditions of release that are not evidence-based. Conditions of release, like the imposition of cash bail, need to be determined based on data to avoid subjective and arbitrary decision-making. Placing a multitude of conditions of release in lieu of cash bail is contrary to the purpose of pretrial innovation if the conditions are applied without consulting data to tailor the conditions to the defendant and their situation.

Appendix

Sheriffs provided the data analyzed in Table 1 and 2 in various formats. The Berkshire County pretrial population data expresses the number of individuals booked, not the number of bookings. The percentages for bookings are as follows: black, 14.1%; Hispanic, 5.6%; and white, 79.6%. Data from the Plymouth County Sheriff’s Department includes the categories “Black” and “Hispanic Black.” The “Hispanic Black” category accounted for 3.4% of the pretrial population. “Hispanic Black” is counted in both the black and Hispanic rows of this table. Plymouth also specifies “Cape Verdean” (5.7% of pretrial population).

Berkshire County listed 226 bookings with a bail of \$40. These records were excluded as they most likely reflect the \$40 fee paid to bail magistrates for release on personal recognizance. If they are included, the median changes to \$2,250 for black defendants and \$2,000 for Hispanic defendants. Most of the data provided by Essex and Hampden County expressed bail amounts in ranges.

Plymouth County data shows six people held on bails of \$40. If they are included, then the Plymouth medians are \$2,500, \$3,000, and \$1,000, for black, Hispanic, and white defendants, respectively.

Endnotes

1. Alexander Jones is completing his Juris Doctor at Northeastern University School of Law. He undertook this research while serving as a law student intern for the Massachusetts Bail Fund. Benjamin Forman is research director at MassINC.
2. "A Snapshot of Pretrial Reform Activity Across the Nation" (Williamsburg, VA: National Center for State Courts, 2015).
3. A probation hold occurs when the defendant is serving probation and a probation officer determines that the new criminal charges represent a violation of that probation such that the accused not be allowed bail. Many inmates also enter jails because bail is revoked due to a new offense or because they are held on a parole violation. While these admissions represent a significant share of the jail population, this summary of the pretrial process is limited to those entering for a new offense.
4. The defendant must also pay a non-refundable \$40 fee for the services of the bail commissioner (also called bail magistrates in some contexts).
5. Fred Contrada. "Bail Bondsmen Are a Thing of The Past in Massachusetts" *Boston Business Journal* (May 25, 2014).
6. The full list, as enumerated in Mass. Gen. Laws ch. 276 § 58 includes: 1. the nature and circumstances of the offense charged; 2. the potential penalty the person faces; 3. the person's family ties; 4. the person's financial resources; 5. the person's employment record; 6. the person's history of mental illness; 7. the person's reputation; 8. the person's length of residence in the community; 9. the person's record of convictions, if any; 10. any illegal drug distribution or present drug dependency of the person; 11. any flight to avoid prosecution or fraudulent use of an alias or false identification by the person; 12. any failure to appear at any court proceeding to answer to an offense; 13. whether the person is on bail pending adjudication of a prior charge; 14. whether the acts alleged involve abuse as defined in Mass. Gen. Laws ch. 209A § 1, or violation of a temporary or permanent order issued pursuant to Mass. Gen. Laws ch. 208 § 18 or 34B, ch. 209 § 32, ch. 209A §§ 3-5, or ch. 209C § 15 or 20; 15. whether the person has any history of orders issued against him pursuant to the aforesaid sections; 16. whether the person is on probation, parole, or other release pending completion of sentence for any conviction; and 17. whether the person is on release pending sentence or appeal for any conviction.
7. Timothy Cadigan and others. "The Re-validation of the Federal Pretrial Services Risk Assessment" *Fed. Probation* 76 3(8) (2012); Marie VanNostrand and Gena Keebler. "Pretrial Risk Assessment in the Federal Court" *Fed. Probation* 73 (2009); J. Austin and others. "Evaluation of the Field Test of Supervised Release: Final Report 30" (Oakland, CA: National Council on Crime and Delinquency, 1984).
8. For example, see William Grove and Paul Meehl. "Comparative Efficiency of Informal (subjective, impressionistic) and Formal (mechanical, algorithmic) Prediction Procedures" *Psychology, Public Policy, and Law* 2(2) (1996); Don Andrews and others. "The Recent Past and Near Future of Risk and/or Need Assessment" *Crime and Delinquency* 52(1) (2006).
9. Douglas J. Klein, "The Pretrial Detention 'Crisis': The Causes and the Cure" *J. Urb. & Contemp. L.* 281, 293-294 (1997).
10. Meghan Sacks and Alissa R. Ackerman, "Pretrial Detention and Guilty Pleas: If They Cannot Afford Bail They Bust Be Guilty" *Crim. Just. Stud.* 265 (2012).
11. Carmen Denavas-Walt and Bernadette D. Proctor, "Income and Poverty in the United States: 2013" (2014), US Census Bureau.
12. Research shows that those in and around the 15-to-29-year-old demographic are most likely to commit crimes out of all age demographics. See, e.g., Daniel M. Blonigen, "Explaining the Relationship Between Age and Crime: Contributions from the Developmental Literature on Personality," *Clinical Psychol. Rev.* (2010); and Lisa Soltzenberg & Stewart J. D'Alessio, "Co-offending and the Age-Crime Curve," *J. of Res. in Crime And Delinq.* (2008).
13. One alternative might be to examine racial and ethnic patterns in charges for pretrial detainees as a proxy for risk. However, as noted previously, the nature of the offense does not correlate highly with risk to appear.
14. Stephen Demuth, "Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black and White Felony Arrestees" *Criminology* 873 (2003); Traci Schlesinger, "Racial and Ethnic Disparity in Pretrial Criminal Processing" *Justice Quarterly* 22 170 (2005); John Wooldredge, "Distinguishing Race Effects on Pretrial Release and Sentencing Decisions" 29 *Justice Quarterly* (2012); and Tina Freiburger and others, "The Impact of Race on the Pretrial Decision" *American Journal of Criminal Justice* 76 (2010).
15. Don Trapp & Stephanie J. Vetter, National Institute of Corrections, Pretrial Analysis for Middlesex County, Massachusetts: Technical Assistance Report 6 (2015).
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MassINC is an independent think tank. We use nonpartisan research, civic journalism, and public forums to stimulate debate and shape public policy. Our mission is to promote a public agenda for the middle class and to help all citizens achieve the American Dream.

ABOUT THE MASSACHUSETTS CRIMINAL JUSTICE REFORM COALITION

Established in 2013, the Massachusetts Criminal Justice Reform Coalition is a diverse group of prosecutors and corrections practitioners, defense lawyers, community organizers, and businessmen and women who find common ground in the need for corrections reform in Massachusetts. The coalition sponsors research, convenes civic leaders, and promotes public dialogue to move the Commonwealth toward data-driven criminal justice policymaking and practice.

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This paper is one in a series of policy briefs examining Justice Reinvestment in Massachusetts. Each paper explores critical issues in our criminal justice system and opportunities to improve public safety through evidence-based change in policy and practice.

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