



PRETRIAL PERFORMANCE MEASUREMENT: A COLORADO EXAMPLE OF GOING FROM THE IDEAL TO EVERYDAY PRACTICE

Michael R. Jones
Pretrial Justice Institute¹
Washington, D.C.

May 2013

¹ The Pretrial Justice Institute is a non-profit organization dedicated to advancing safe, fair, and effective pre-trial justice practices and policies. For more information visit www.pretrial.org. This project was supported by Grant No. 2012-DB-BX-K001 awarded to the Pretrial Justice Institute by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice.

ISSUE BRIEF

SUMMARY

This paper describes the process that the state of Colorado used in 2012 to develop more accurate and useful definitions for pretrial performance measurement so that the Colorado Judicial Branch, General Assembly, and Colorado Commission on Criminal and Juvenile Justice would be able to evaluate to what extent pretrial services programs are meeting the criminal justice system's needs statewide. Colorado pretrial services programs collaborated with legislative bill drafters to write statutory language that was based on nationally recognized pretrial performance measurement standards described by the National Institute of Corrections. After the legislation passed, these programs formed a team to work with one another and the Colorado Judicial Branch to create a performance measurement reporting spreadsheet that all pretrial programs would use. As a result, data fields and definitions for the statutorily mandated reporting are now standardized and reflect nationwide best practices. The first wave of data will be available at the end of 2013. When additional improvements to pretrial case processing in Colorado are made in upcoming years, the pretrial performance measurement and reporting can be adapted accordingly. Colorado's collaborative process of standardizing and regulating pretrial performance measurement can serve as an inspiration and example for individual or multiple jurisdictions in other states.

THE PROCESS OF PUTTING THE IDEAL INTO PRACTICE

In late 2011, the statutorily authorized² Colorado Commission on Criminal and Juvenile Justice, a statewide justice system stakeholder group whose mission is to enhance public safety, ensure justice, and ensure protection of the rights of victims through the cost-effective use of public resources, created a Bail Subcommittee to work specifically on system issues related to pretrial justice in Colorado. Early in the course of the Subcommittee's work, the topic of performance measurement arose. Subcommittee members concluded that the State Judicial Branch's current performance measurement was inadequate for capturing reliable and useful pretrial process and outcome data.

Each year, Colorado pretrial services programs, which are funded and administered at the county government level, are statutorily required to report to the Colorado Judicial Branch data on pretrial assessments, recommendations, and supervision, which the Judicial Branch in turn reports to the House and Senate Judiciary Committees. However, the data definitions and data fields for this reporting were not standardized across jurisdictions and had not evolved in concert with the evolution of the programs' practices over the years. The non-standardization and obsolescence had been preventing the Judicial Branch and General Assembly from obtaining a statewide picture of pretrial practices and outcomes. If statewide practices and outcomes are more appropriately measured and reported, then the Judicial Branch, General Assembly, and the Commission on Criminal and Juvenile Justice would be able to evaluate to what extent pretrial services programs are meeting the criminal justice system's needs statewide. To remedy the non-standardization and obsolescence, a Bail Subcommittee member

² Colorado Revised Statutes, 16-11.3-101.

worked with the Colorado General Assembly, pretrial services programs, and the Colorado Judicial Branch to create new statutory reporting requirements.³

House Bill 12-1310,⁴ the bipartisan omnibus criminal justice bill, included language to change several statutory provisions, one of which was the section setting forth the pretrial services programs' reporting requirements. In crafting the language, the bill's writers wanted to use state-of-the-art performance measurement from the pretrial justice field. To do this, they referred to the National Institute of Corrections' (NIC) recently published document, "Measuring What Matters: Outcome and Performance Measures for the Pretrial Services Field."⁵ NIC created this document to enable pretrial services agencies to gauge more accurately their programs' effectiveness in meeting agency and justice system goals.

When writing the new legislation, bill writers borrowed definitions and formulas for both process and outcome measures from the publication, held several meetings to obtain input from directors from most of the state's pretrial services programs and from the Judicial Branch's staff who are responsible for gathering the data each year, and educated the bill's sponsors of the importance of making the proposed changes. The changes would allow the Judicial Branch and the General Assembly to have more accurate data on pretrial services programs' (a) outcome measures for public safety, court appearance, and technical compliance, and (b) process measures for how many pretrial assessments are done annually and what kind of bonds (personal recognizance, surety, and cash) supervised defendants are receiving. As a result of the collaborative process, minimal changes were made to the bill's original language and the bill became law in June of 2012. Appendix A contains the new statutory language.

In August, 2012, and over the next four months, pretrial program directors and managers from most of the larger Colorado counties formed a team and met with a few of the counties' criminal justice coordinating committee staff, who have research and analytical expertise, to design a new reporting form that would meet the following criteria:

1. Include definitions and formulas that are compatible with the new statute;
2. Be meaningful to the programs and local system stakeholders for evaluating their performance; and
3. Be practical to collect on a case-by-case and aggregate basis.

During the process of creating the new reporting form, which was done using spreadsheet software to take advantage of easy formatting and auto-calculating features, the team had to define several

3 Maureen Cain of the Colorado Criminal Defense Bar served as the liaison between the various entities.

4 See http://tornado.state.co.us/gov_dir/leg_dir/olls/sl2012a/2012aSLHOU.htm.

5 National Institute of Corrections. (2011). *Measuring What Matters: Outcome and Performance Measures for the Pretrial Services Field*. Washington, DC: U.S. Department of Justice.

elements of the measures not available in the “Measuring What Matters” publication or in statute. For example, the definition of a “Case” required considerable discussion. Was a “Case” defined as a defendant or a court case with a docket number, or was it a case as defined by each program’s existing information system, or something else? A second example was the definition of the term “Supervision.” The team discussed whether supervision started at the moment a defendant who was court-ordered to pretrial supervision left jail on pretrial release or when the defendant reported for a supervision intake. The team had similar discussions for several other data definitions, as well as for how to count certain circumstances, such as instances when a defendant has a bond revoked because of both a failure to appear and for repeated technical violations. Team members eventually agreed to definitions that were compatible with (a) the new statute, (b) how the courts and pretrial services programs processed cases, and (c) most of the programs’ existing information systems. Appendix B contains the data fields, definitions, and counting rules the Colorado Judicial Branch and pretrial services programs ultimately agreed to use.

Finally, for all of the terms and calculations, the team agreed to only count cases that closed during the fiscal year reporting period. This was done to avoid counting the same cases during multiple time periods (years) and so that final, complete data could be gathered on the outcomes measures of public safety, court appearance, and technical compliance rates. Appendix C contains a picture of the data collection and reporting spreadsheet.

For the future, some pretrial services program staff and other pretrial justice system stakeholders stated that they hope to expand the performance measurement beyond those defendants who are placed on pretrial supervision to all defendants in the court system, including those who are summonsed or booked into jail and not ordered to pretrial supervision, and to analyze the results by defendants’ pretrial risk category as determined by an empirically-derived pretrial risk assessment instrument, such as the new Colorado Pretrial Assessment Tool.⁶ The public safety and court appearance rates, among other important measures, of all defendants would help the pretrial justice system across the state better gauge its effectiveness.

In summary, pretrial services program staff collaborated with legislative bill writers and the Colorado Judicial Branch to create more accurate and useful pretrial performance measurement that is based on nationally recognized pretrial measurement standards. The first wave of data (for Fiscal Year 2012-2013) will be publicly available in late fall of 2013. When improvements to the pretrial processing of cases in Colorado are made in upcoming years, corresponding changes to the content of the programs’ and the broader system’s performance measurement can be made. Nonetheless, the collaborative process of inserting nationally recognized performance measures into statute and standardizing the measures across multiple, independent jurisdictions can serve as an inspiration and example for jurisdictions outside of Colorado.

6 Pretrial Justice Institute & JFA Institute. (2012). *The Colorado Pretrial Assessment Tool (CPAT): A Joint Partnership among Ten Colorado Counties, the Pretrial Justice Institute, and the JFA Institute*. Washington, DC: Pretrial Justice Institute.

APPENDIX A

CRS 16-4-105 (3) (e) and (3) (f)

(e) Commencing July 1, 2012, each pretrial services program established pursuant to this subsection (3) shall provide an annual report to the state judicial department no later than November 1 of each year, regardless of whether the program existed prior to May 31, 1991. The judicial department shall present an annual combined report to the house and senate judiciary committees, or any successor committees, of the general assembly.

The report to the judicial department shall include, but is not limited to, the following information:

- (I) The total number of pretrial assessments performed by the program and submitted to the court;
 - (II) The total number of closed cases by the program in which the defendant was released from custody and supervised by the program;
 - (III) The total number of closed cases in which the defendant was released from custody, was supervised by the program, and, while under supervision, appeared for all scheduled court appearances on the case;
 - (IV) The total number of closed cases in which the defendant was released from custody, was supervised by the program, and was not charged with a new criminal offense that was alleged to have occurred while under supervision and that carried the possibility of a sentence to jail or imprisonment;
 - (V) The total number of closed cases in which the defendant was released from custody and was supervised by the program, and the defendant's bond was not revoked by the court due to a violation of any other terms and conditions of supervision; and
 - (VI) Any additional information the state judicial department may request.
- (f) For the reports required in paragraph (e) of this subsection (3), the pretrial services program shall include information detailing the number of persons released on a commercial surety bond in addition to pretrial supervision, the number of persons released on a cash, private surety, or property bond in addition to pretrial supervision, and the number of persons released on any form of a personal recognition bond in addition to pretrial supervision.

APPENDIX B

Data Definitions

| |
|--|
| Statutorily required data fields are indicated with an asterisk and are highlighted in blue. |
| * Number of Pretrial Assessments refers to the total number of pretrial assessments performed by the program and submitted to the court. |
| * Number of Pretrial Supervision Cases Closed refers to total number of closed cases by the program in which the defendant was released from custody and supervised by the program. This number serves as the denominator for the remaining calculations. A case is defined as a supervision event for a court case (i.e., one person may have multiple court cases with multiple supervision events each). A supervision event begins when supervision is ordered on a bond and the bond is posted or the date that supervision is added by court order to a person already out of custody such as in a summons case. A supervision event ends when supervision is taken off of the case due to a warrant, revocation or other event of the court. |
| * Number of These Cases with No FTA refers to the total number of closed cases in which the defendant was released from custody, was supervised by the program, and, while under supervision, appeared for all scheduled court appearances on the case. No FTA refers to the absence of an FTA noted in the court record. |
| Court Appearance Rate is an automatically calculated field. |
| * Number of These Cases with No New Filing refers to the total number of closed cases in which the defendant was released from custody, was supervised by the program, and was not charged with a new criminal offense that was alleged to have occurred while under supervision and that carried the possibility of a sentence to jail or imprisonment. Excludes cases for which jail or imprisonment is not a possible sentence. No new charge refers to the absence of new cases of any kind filed with the state's county or district courts, regardless of whether it began with a jail booking or a summons. |
| Public Safety Rate is an automatically calculated field. |
| * Number of These Cases Not Revoked for Technical Violation refers to the total number of closed cases in which the defendant was released from custody and was supervised by the program, and the defendant's bond was not revoked by the court due only to a violation of any other terms and conditions of supervision. Excludes revocations for failure to appear and for a filing for a new crime. |
| Technical Compliance Rate is an automatically calculated field. |
| * Number of These Cases Posted via Commercial Surety Bond (Bail Bonding Agent) refers to the number of cases for which the defendant was released on a commercial surety bond in addition to pretrial supervision. |
| Percent of These Cases Posted via Commercial Surety Bond is an automatically calculated field. |

Number of These Cases Posted via All Cash Bonds refers to the number of cases for which the defendant was released on a cash bond which he/she posted him/herself or released on a cash bond which someone other than the defendant who was not a commercial bail bondsman posted for the defendant (i.e., private surety), in addition to pretrial supervision.

Number of These Cases Posted via Property Bond refers to the number of cases for which the defendant was released on a property bond, in addition to pretrial supervision.

*** Total Number of All Cash and Property Bonds** is an automatically calculated field.

Percent of These Cases Posted via All Cash or Property Bonds is an automatically calculated field.

Number of These Cases Posted via Personal Recognizance/Self Bond refers to the number of cases for which the defendant was released on a personal recognizance bond, in addition to pretrial supervision. Excludes Personal Recognizance Co-Sign Bonds.

Number of These Cases Posted via Personal Recognizance/Surety Bond refers to the number of cases for which the defendant was released on a personal recognizance bond that required someone other than the defendant to sign the bond (i.e., Personal Recognizance Co-Sign Bonds), in addition to pretrial supervision.

*** Total Number of All Personal Recognizance Bonds** is an automatically calculated field.

Percent of These Cases Posted via All Personal Recognizance Bonds is an automatically calculated field.

Disclaimer: Using any data not required and highlighted in blue for any other purpose may be invalid. Because of differences in the pretrial services agencies and the jurisdictions in which they operate, these data cannot be used to compare the effectiveness of one program to another.

| Month | Number of Pretrial Assessments | Number of Pretrial Supervision Cases Closed | Number of These Cases with No FTA | Court Appearance Rate | Number of These Cases with No New Filing | Public Safety Rate | Number of These Cases Not Revoked for Technical Violation | Technical Compliance Rate |
|-------|--------------------------------|---|-----------------------------------|-----------------------|--|--------------------|---|---------------------------|
| Jul | | | | 0.0% | | 0.0% | | 0.0% |
| Aug | | | | 0.0% | | 0.0% | | 0.0% |
| Sep | | | | 0.0% | | 0.0% | | 0.0% |
| Oct | | | | 0.0% | | 0.0% | | 0.0% |
| Nov | | | | 0.0% | | 0.0% | | 0.0% |
| Dec | | | | 0.0% | | 0.0% | | 0.0% |
| Jan | | | | 0.0% | | 0.0% | | 0.0% |
| Feb | | | | 0.0% | | 0.0% | | 0.0% |
| Mar | | | | 0.0% | | 0.0% | | 0.0% |
| Apr | | | | 0.0% | | 0.0% | | 0.0% |
| May | | | | 0.0% | | 0.0% | | 0.0% |
| Jun | | | | 0.0% | | 0.0% | | 0.0% |

| | | | | | | | | |
|--------------|---|---|---|---|---|---|---|---|
| Annual Total | 0 | 0 | 0 | . | 0 | . | 0 | . |
|--------------|---|---|---|---|---|---|---|---|

| | | | | | | | | |
|-----------------|---|---|---|---|---|---|---|---|
| Monthly Average | 0 | 0 | 0 | . | 0 | . | 0 | . |
|-----------------|---|---|---|---|---|---|---|---|

| | | | | | | | | |
|------------------|---|---|---|------|---|------|---|------|
| Fiscal Year Rate | . | . | . | 0.0% | . | 0.0% | . | 0.0% |
|------------------|---|---|---|------|---|------|---|------|

APPENDIX C

| Month | Number of These Cases Posted via Commercial Surety Bond (Bail Bonding Agent) | Percent of These Cases Posted via Commercial Surety Bond | Number of These Cases Posted via All Cash Bonds | Number of These Cases Posted via Property Bond | Total Number of All Cash and Property Bonds | Percent of These Cases Posted via All Cash or Property Bonds | Number of These Cases Posted via Personal Recognizance/ Self Bond | Number of These Cases Posted via Personal Recognizance/ Surety Bond | Total Number of All Personal Recognizance Bonds | Percent of These Cases Posted via All Personal Recognizance Bonds |
|-------|--|--|---|--|---|--|---|---|---|---|
| Jul | | 0.0% | | | 0 | 0.0% | | | 0 | 0.0% |
| Aug | | 0.0% | | | 0 | 0.0% | | | 0 | 0.0% |
| Sep | | 0.0% | | | 0 | 0.0% | | | 0 | 0.0% |
| Oct | | 0.0% | | | 0 | 0.0% | | | 0 | 0.0% |
| Nov | | 0.0% | | | 0 | 0.0% | | | 0 | 0.0% |
| Dec | | 0.0% | | | 0 | 0.0% | | | 0 | 0.0% |
| Jan | | 0.0% | | | 0 | 0.0% | | | 0 | 0.0% |
| Feb | | 0.0% | | | 0 | 0.0% | | | 0 | 0.0% |
| Mar | | 0.0% | | | 0 | 0.0% | | | 0 | 0.0% |
| Apr | | 0.0% | | | 0 | 0.0% | | | 0 | 0.0% |
| May | | 0.0% | | | 0 | 0.0% | | | 0 | 0.0% |
| Jun | | 0.0% | | | 0 | 0.0% | | | 0 | 0.0% |

| | | | | | | | | | | |
|--------------|---|---|---|---|---|---|---|---|---|---|
| Annual Total | 0 | . | 0 | 0 | 0 | . | 0 | 0 | 0 | . |
|--------------|---|---|---|---|---|---|---|---|---|---|

| | | | | | | | | | | |
|-----------------|---|---|---|---|---|---|---|---|---|---|
| Monthly Average | 0 | . | 0 | 0 | 0 | . | 0 | 0 | 0 | . |
|-----------------|---|---|---|---|---|---|---|---|---|---|

| | | | | | | | | | | |
|------------------|---|------|---|---|---|------|---|---|---|------|
| Fiscal Year Rate | . | 0.0% | . | . | . | 0.0% | . | . | . | 0.0% |
|------------------|---|------|---|---|---|------|---|---|---|------|