

Foundations of Pretrial Justice

The National Landscape

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Unconvicted Inmates: Driving Jail Increases Since 1990

Since 1990, The number of **unconvicted** individuals in U.S. jails has increased by 126%, accounting for 77% of the total increase in jail populations.

Let's do the math!

Since 1990, **total jail populations** have increased by 84%.

$$\begin{array}{r} 2014 \quad 745,000 \\ 1990 \quad - 405,000 \\ \hline 340,000 \div 405,000 \\ = \uparrow 84\% \end{array}$$

During this time, the number of **unconvicted** people in jail increased by 126%.

$$\begin{array}{r} 2014 \quad 468,000 \\ 1990 \quad - 207,000 \\ \hline 261,000 \div 207,000 \\ = \uparrow 126\% \end{array}$$

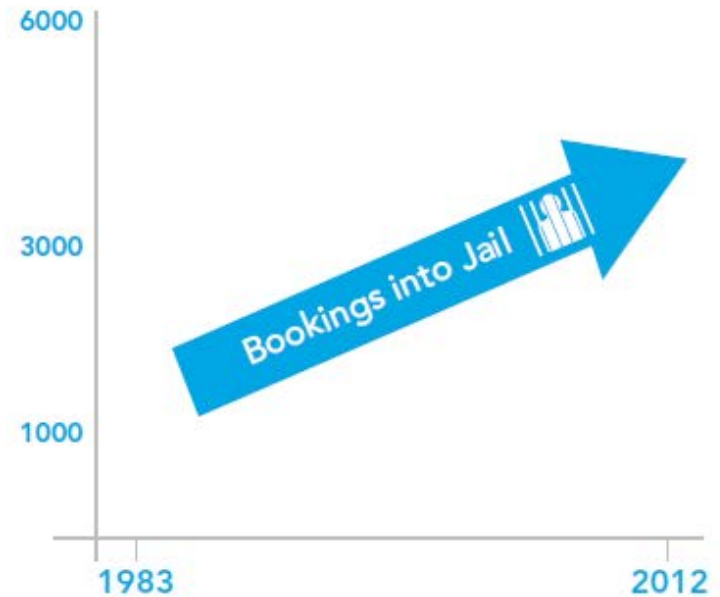
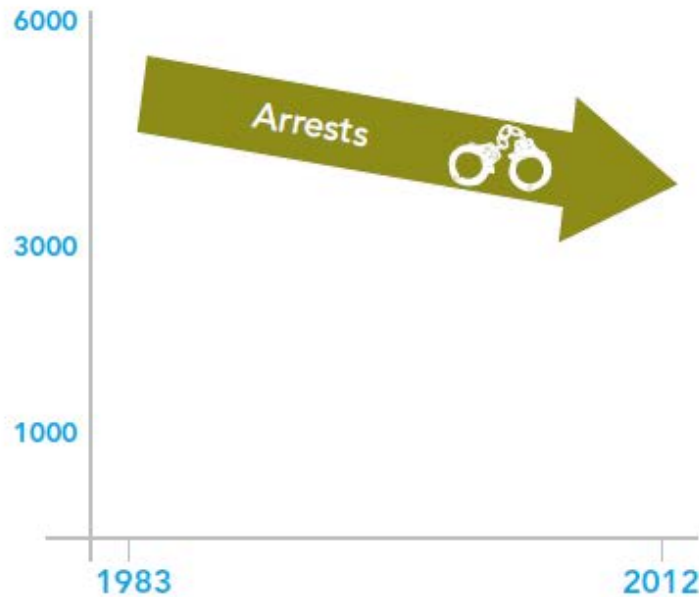
So, **unconvicted** individuals accounted for **77% of the increase** in total jail populations since 1990.

$$\begin{array}{r} 1990 \quad 261,000 \\ 2014 \quad \div 340,000 \\ \hline 77\% \end{array}$$



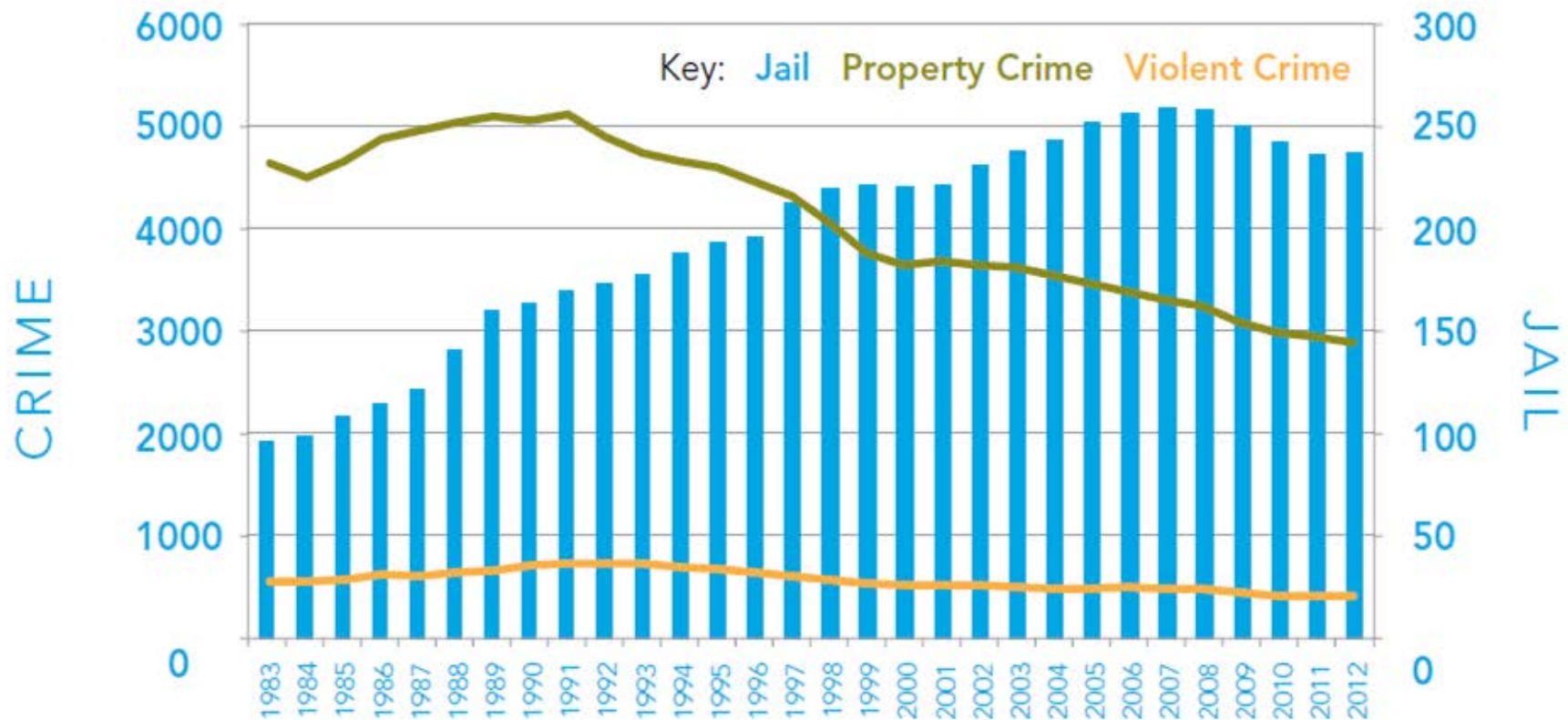
source: Bureau of Justice Statistics.
Jail Inmates At Midyear 2014.

Arrest and Booking Rates Per 100,000



Subramanian, Ram et al. (2015) Incarceration's Front Door: The Misuse of Jails in America. New York, NY: The Vera Institute of Justice.

Crime and Jail Rates per 100,000



Subramanian, Ram et al. (2015) Incarceration's Front Door: The Misuse of Jails in America. New York, NY: The Vera Institute of Justice.

Why does it matter?



Likelihood of jail or prison sentence if detained pretrial



Low risk detained defendants

- 5 X more likely to get jail sentence
- 4 X more likely to get prison sentence

Medium risk detained defendants

- 4 X more likely to get jail sentence
- 3 X more likely to get prison sentence

Length of sentence if detained pretrial

Jail

- Low risk: 4 X longer
- Medium risk: 2 X longer

Prison

- Low risk: 4 X longer
- Medium risk: 3 X longer

Likelihood of new criminal activity – short-term detention

Days in Pretrial Detention	Low Risk	Medium Risk
2 to 3 days	39%	12%
4 to 7 days	50%	20%
8 to 14 days	56%	28%

Likelihood of recidivism if detained pretrial



Assessed Pretrial Risk Level	Increased Likelihood to Recidivate Within 12 Months	Increased Likelihood to Recidivate Within 24 Months
Lower	27%	28%
Medium	32%	30%
Higher	33%	28%

Actuarial risk assessment

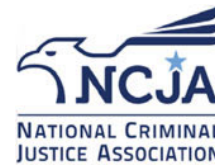
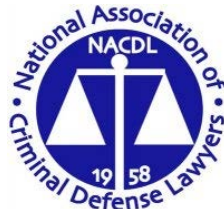
- What it is
 - Objective criteria
 - Research informed
 - Used for decades in commerce/criminal justice
- What it isn't
 - Person-specific
 - A replacement for judicial discretion



What is pretrial risk assessment?

- Tool that gives judges information about a defendant's risk of:
 - (1) failing to appear, and
 - (2) engaging in new criminal activity during pretrial release
- 1960s Manhattan Bail Project

Support for risk assessment tools



Conference of Chief Justices

“...the Conference of Chief Justices ...
urge(s) that court leaders promote,
collaborate, and accomplish the adoption of
evidence-based assessment of risk in
setting pretrial release decisions....”



International Association of Chiefs of Police



“...the International Association of Chiefs of Police (IACP) calls for law enforcement leaders to advocate in their jurisdictions, regions, and states for: the use of a validated, empirically based risk assessment tool in making pretrial release and detention decisions....”



States requiring use of pretrial risk assessments

- Colorado
- Delaware
- Hawaii
- Kentucky
- New Jersey
- Virginia
- West Virginia

Virginia risk criteria



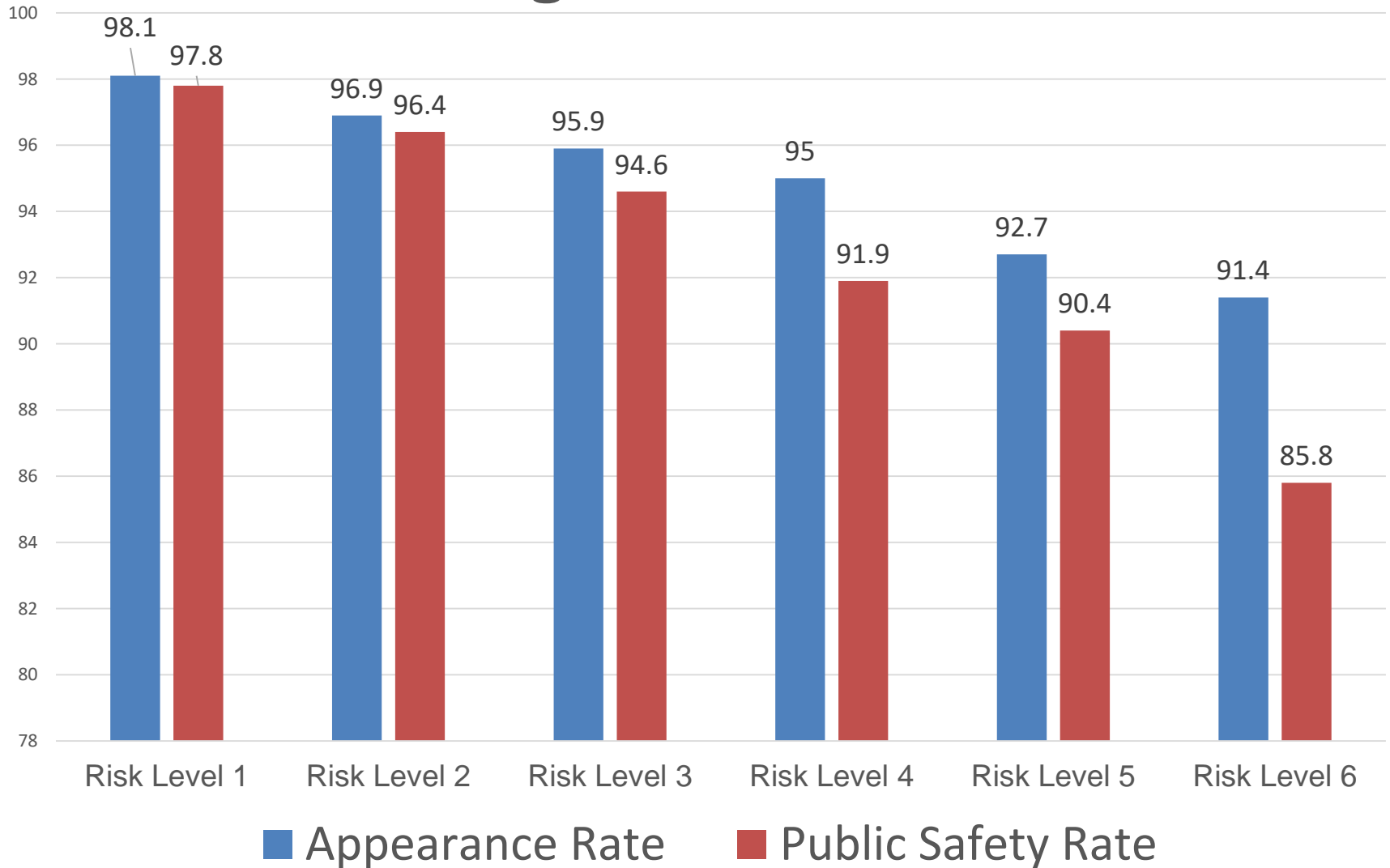
Criteria	Points Assigned
Active community supervision	2
Charge is a felony drug, theft, or fraud	3
Pending charge	2
Criminal history	2
Two or more failure to appear	1
Two or more violent convictions	1
Unemployed at time of arrest	1
History of drug abuse	2
Total possible score	14

Virginia risk scores



Risk Level	Risk Score
1 (lowest)	0 - 2 points
2	3 - 4 points
3	5 - 6 points
4	7 - 8 points
5	5 - 9 points
6 (highest)	11 - 14 points

Virginia Risk Tool



PSA: the future of risk assessment?



- Developed; being refined and validated
- Data from hundreds of thousands of cases; dozens of jurisdictions (state and local)
- Three new features
 1. Defendant-interview is not needed
 2. Only uses administrative data
 3. Has a violence flag
- Will be free
- Integrated with a decision-making framework



What do we know about pretrial risk management?

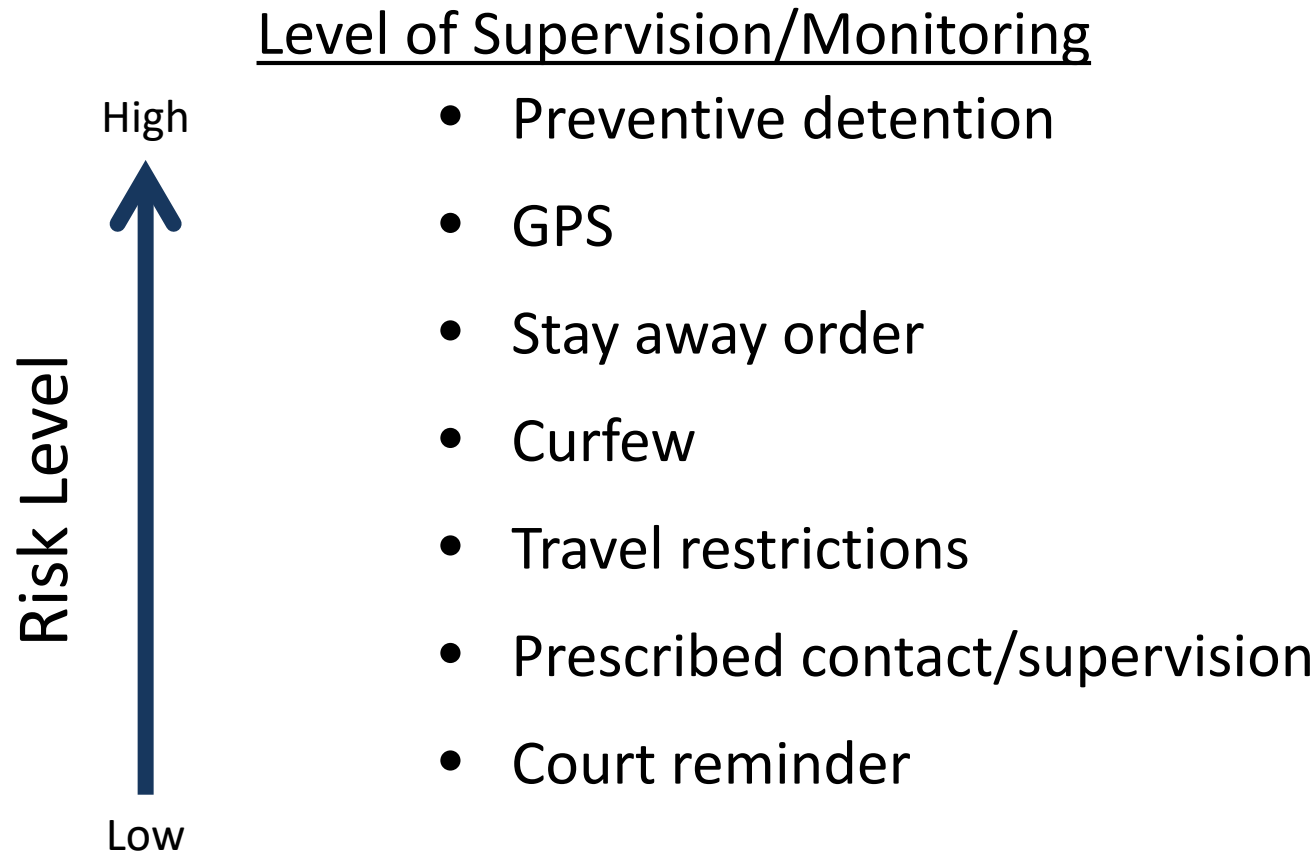
- Lower risk: not good fit for supervision
- Moderate risk: good fit for supervision
- Higher risk: can benefit from supervision

Conference of Chief Justices

“Imposing conditions on a defendant that are appropriate for that individual following a valid pretrial assessment substantially reduces pretrial detention without impairing the judicial process or threatening public safety.”



“Imposing conditions on a defendant that are appropriate for that individual following a valid pretrial assessment...”



Virginia Praxis



Risk Level	Non-Violent Misd.	DUI	Non-Violent Felony	Violent Misd.	Violent Felony
1	ROR	ROR	ROR	ROR	Level II
2	ROR	Monitor	Monitor	Monitor	Level III
3	Monitor	Monitor	Level I	Level I	Per court
4	Level I	Level I	Level II	Level II	Per court
5	Level II	Level II	Level III	Pert court	Per court
6	Per court	Per court	Per court	Per court	Per court

Supervision levels



Supervision Level	Description
ROR	Court date reminder notices
Monitoring	Court date reminder notices, criminal history check before court date
Level I	Court date reminder notices, criminal history check before court date, face-to-face contact once a month, alternative contact once a month, special conditions
Level II	Court date reminder notices, criminal history check before court date, face-to-face contact every other week, alternative contact every other week, special conditions
Level III	Court date reminder notices, criminal history check before court date, face-to-face contact weekly, special conditions

Pretrial outcomes in Kentucky

- Overall Release rate: 74%
- Community safety rate: 90%
- Court appearance rate: 89%



Pretrial outcomes in DC

- 80% released (all non-financially)
- 91% arrest free
(99% no arrests for violent offenses)
- 90% appear





Reforming the
by Lauren Krisai a

Utah State
Reason Foundation
Institute for Public Policy

Moving Beyond Money: A Primer on Bail Reform

OCTOBER 2016

Policy Research Project on
Correctional Oversight
White Paper Series



LYNDON B. JOHNSON
SCHOOL OF PUBLIC AFFAIRS

June 2016

es
process in Texas

s at Austin

s unnecessarily detained before
limited oversight. This practice
income defendants, and costs
al reform in line with national
communities safer.

15

**CRIMINAL JUSTICE
POLICY PROGRAM**
HARVARD LAW SCHOOL



"In O

Benefits of evidence-based pretrial release practices



- Identifies those who can be safely released
- Restrictiveness of any release conditions is designed to match risk levels
- Supervision resources are reserved for those who need them
- Defendants who pose unmanageable risks are held, with due process

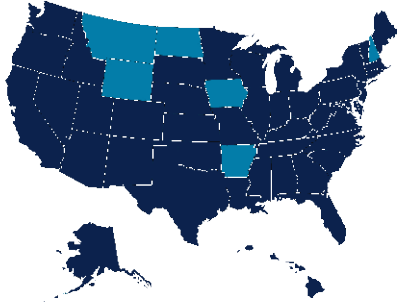
Resources

university.pretrial.org

Where Pretrial Improvements are Happening

Improvements to pretrial justice systems are happening across the United States—at state, county, and local levels. Some jurisdictions active in this work have been leaders in pretrial justice for decades; others are just beginning to see the benefits of adopting evidence-based methods that are safer, fairer, and more effective.

46 out of 50 states are currently pursuing some form of pretrial improvement.



<http://bit.ly/WherePretrial>



The purpose of this document is to present the key features of statutes and court rules that would support each of the desired outcomes for the 3DaysCount campaign: reduced arrests; replacing cash bonds with risk-based decision making; and restricting detention, through due process, only to those with unmanageable risks.

PRETRIAL JUSTICE: HOW MUCH DOES IT COST?

appearance and public safety.

What could you get for \$14 billion?

Shelter & services for all **50,000** homeless veterans and homelessness prevention for the

1.4 million vets at risk

300,000 firefighters



250,000 elementary school teachers

Head Start for **1.8 million** children

Free or reduced lunch for **31 million** children

or

or

or



Contacts



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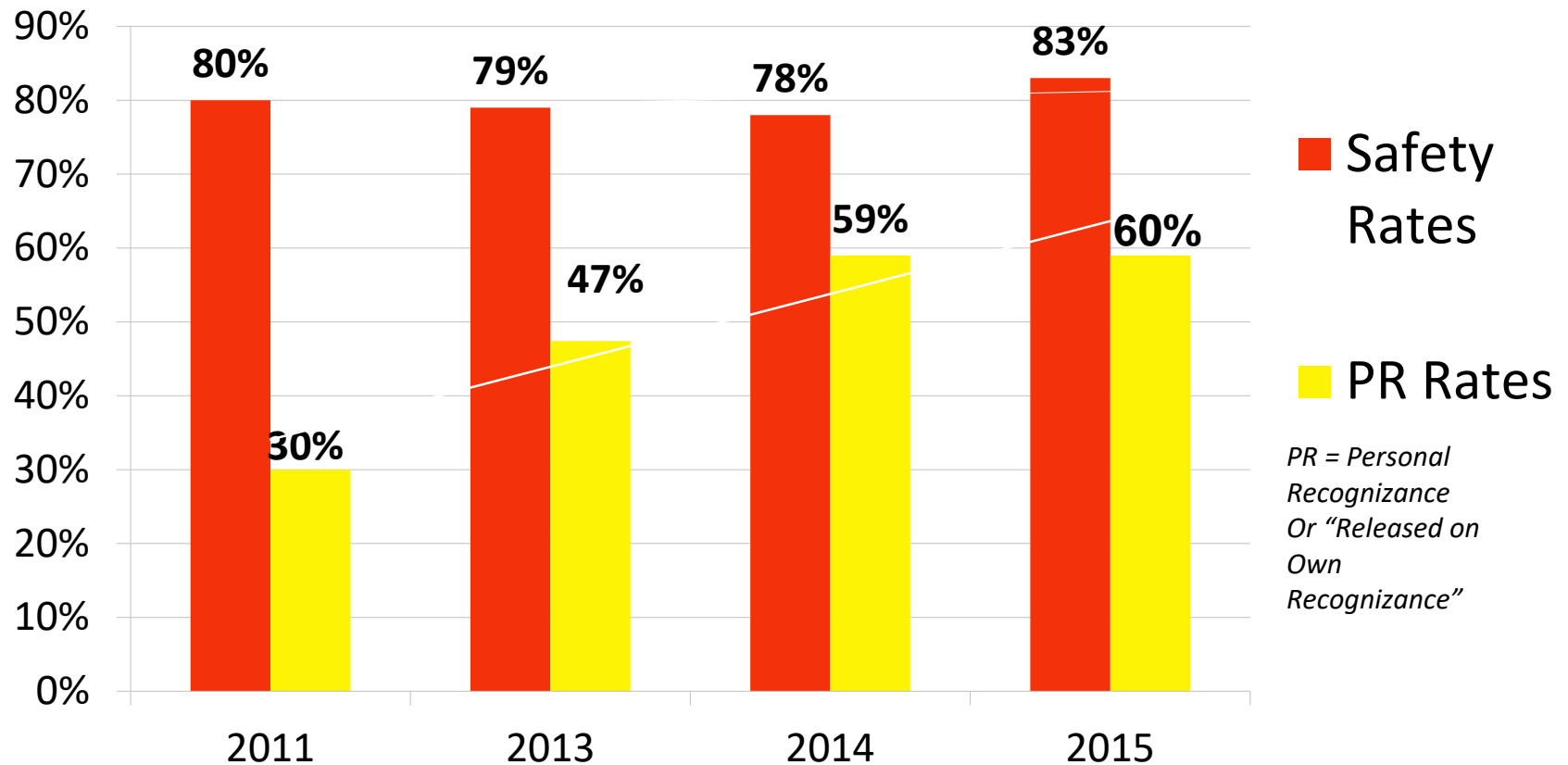


pji@pretrial.org

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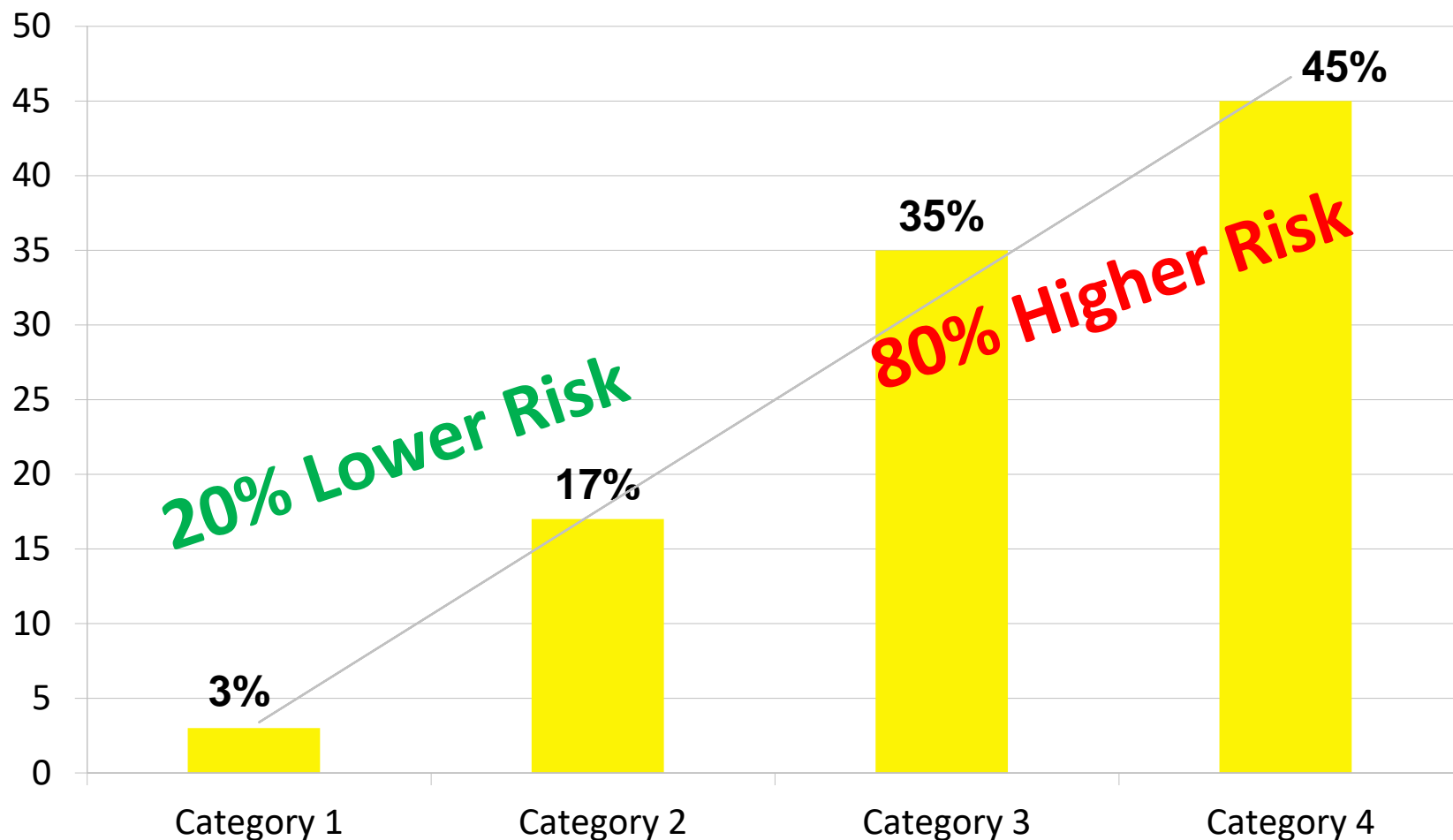
"...without impairing the judicial process or threatening public safety."

Mesa County, CO



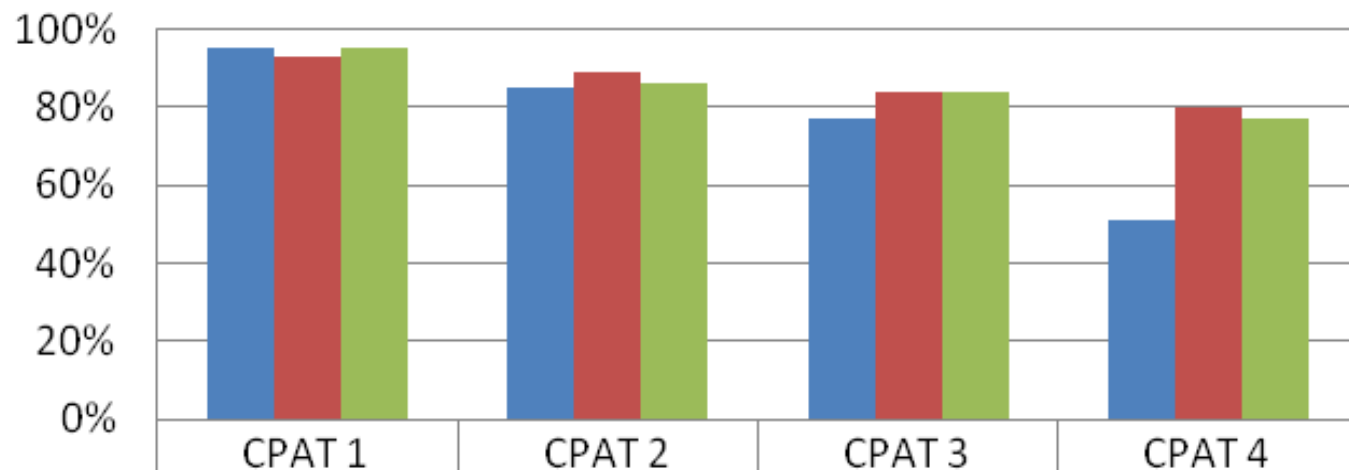
“...substantially reduces pretrial detention...”

Mesa County, CO



Denver outcomes

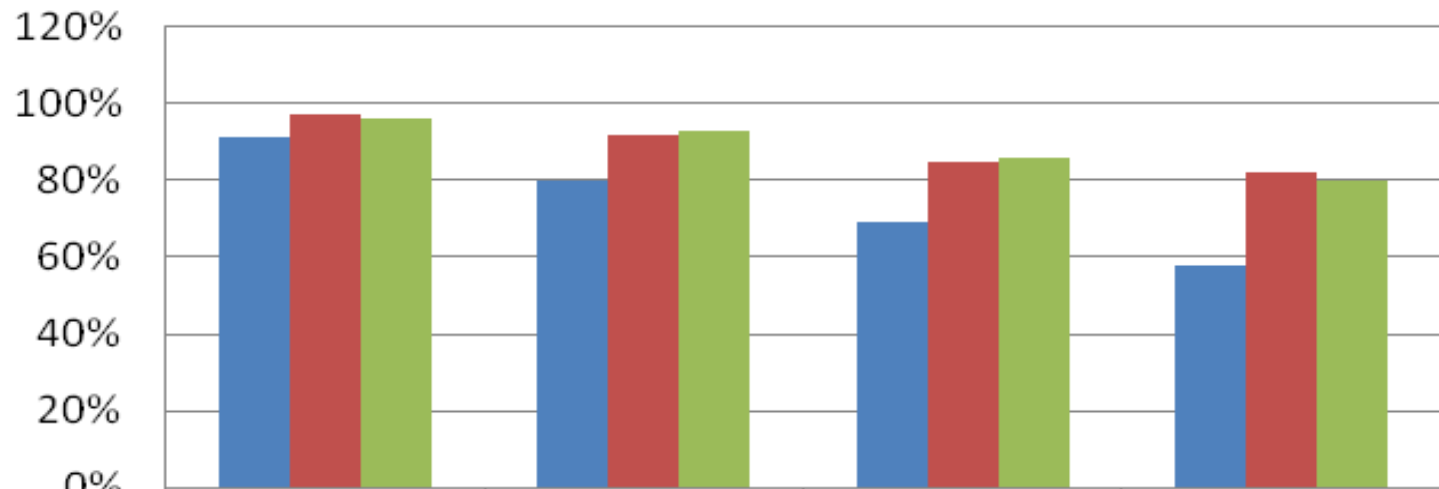
Court Appearance Rates by CPAT Category



■ CPAT Proj	95%	85%	77%	51%
■ 2013 Actual	93%	89%	84%	80%
■ 2014 Actual	95%	86%	84%	77%

Denver outcomes

Public Safety Rates by CPAT Category



	CPAT 1	CPAT 2	CPAT 3	CPAT 4
CPAT Proj	91%	80%	69%	58%
2013 Actual	97%	92%	85%	82%
2014 Actual	96%	93%	86%	80%

Pretrial Outcomes in Lucas County, OH



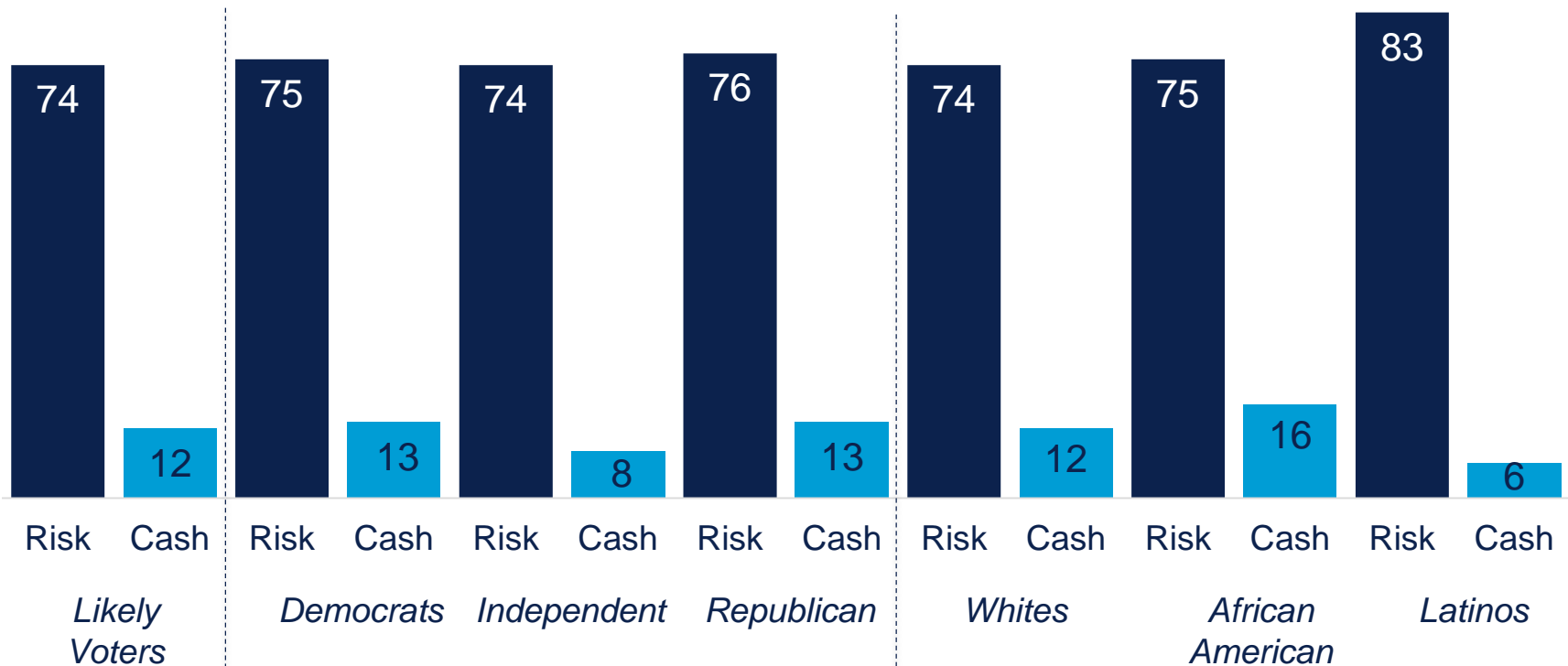
- Implemented risk-based pretrial decision-making:
 - Non-financial release rate doubled
 - No new criminal activity rate up from 80% to 90%
 - Court appearance rate up from 59% to 71%
 - Same release rates across racial groups
 - Almost eliminated jail early-releases



Sample Decision-Making Framework

Pretrial Risk Category	Most Serious Charge					
	Less Serious Misdemeanor	More Serious Misdemeanor	Less Serious or Non-Violent Felony	Driving Under the Influence	Domestic Violence	Serious or Violent Felony
Lower	Recognizance Release with Court Reminder	Recognizance Release with Court Reminder	Recognizance Release with Court Reminder	Recognizance Release with Basic Supervision	Recognizance Release with Basic Supervision	Recognizance Release with Enhanced Supervision (if Released); or Detained
Medium	Recognizance Release with Basic Supervision	Recognizance Release with Basic Supervision	Recognizance Release with Basic Supervision	Recognizance Release with Enhanced Supervision	Recognizance Release with Enhanced Supervision	Recognizance Release with Enhanced Supervision (if Released); or Detained
Higher	Recognizance Release with Basic Supervision	Recognizance Release with Enhanced Supervision	Recognizance Release with Enhanced Supervision	Recognizance Release with Enhanced Supervision (if Released); or Detained	Recognizance Release with Enhanced Supervision (if Released); or Detained	Recognizance Release with Enhanced Supervision (if Released); or Detained

Public opinion: risk assessment vs. cash bail



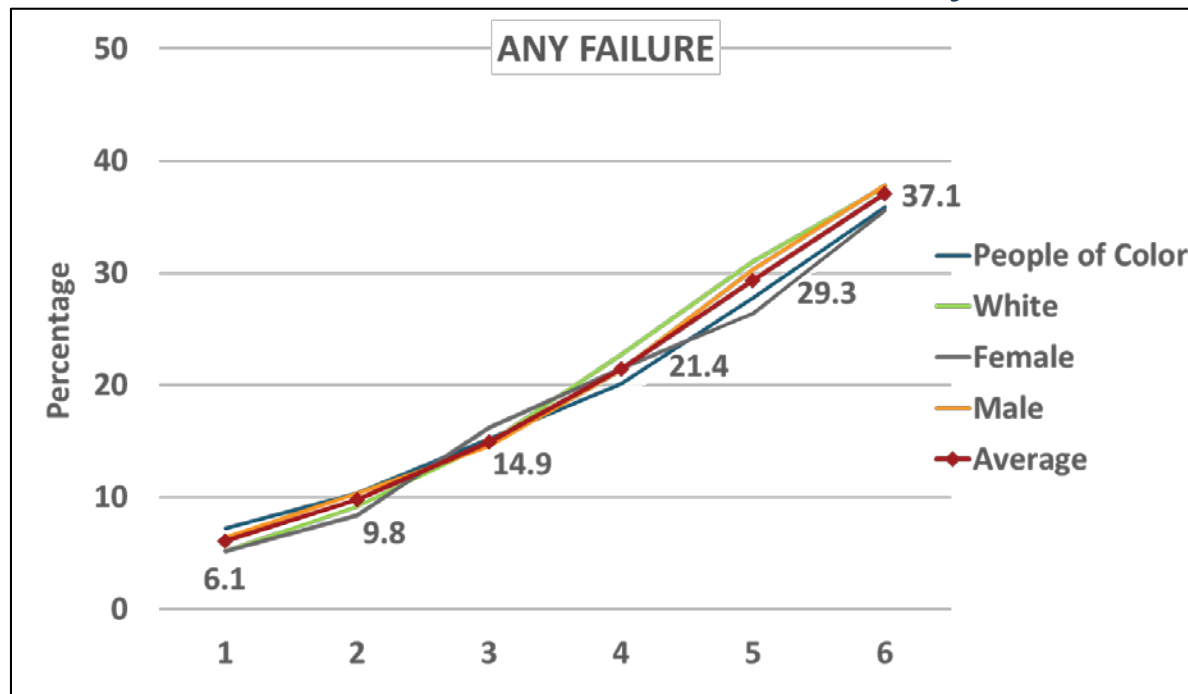
Supervision levels



Supervision Level	Description
No active supervision	Court date reminder notices
Basic supervision	Weekly reporting by telephone, court date reminder notices
Enhanced supervision	Weekly reporting by telephone, monthly in-person reporting to case manager or kiosk, drug/alcohol assessment and placement in monitoring or treatment if indicated, court date reminder notices
Intensive supervision	GPS monitoring, weekly in-person reporting to case manager or kiosk, drug and alcohol assessment and placement in treatment or monitoring if indicated, court date reminders

Are these tools biased?

- A risk assessment instrument may be considered to be free of predictive bias when a given risk score predicts pretrial failure with similar accuracy across groups



- VPRAI-Revised (2016) is free of race and gender predictive bias - it accurately classifies the pretrial risk of Whites and Persons of Color, and of Men and Women

Are these tools biased?

PSA Tool Race

