



IMPACT OF COVID-19 ON PRETRIAL PRACTICES A SUMMARY

Staying Close and Looking Back: An Examination of Desistance in a Maryland Community Corrections Population Project

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Impact of COVID-19 on Pretrial Practices

The coronavirus (COVID-19) pandemic has had a dramatic and unprecedented impact on pretrial practices across the country.¹ The changes to police and court systems have also had significant consequences for pretrial, altering the population and caseloads, available resources, and overall length of time individuals spend in this stage of the justice system. While many courts shut down across the country for a period of time, pretrial services often remained open, quickly having to adapt to the threats of the pandemic while operating virtually.^{1,2}

Due to the highly contagious nature of COVID-19, many police agencies across the country minimized in-person, face-to-face interactions and use of custody to reduce the likelihood of transmission.³ A study by the National Association of Pretrial Services Agencies (NAPSA) surveying 197 jurisdictions from 40 states and Washington D.C. between April 16 and June 1, 2020 found that 65.17 percent increased their use of cite and release,¹ more than 84 percent decreased the number of custodial arrests, and more than half (53%) reduced the overall number of criminal complaint filings. For example, law enforcement in New Mexico was urged to downgrade proactivity and utilize informal resolutions rather than arrests in order to reduce exposure to both law enforcement and jail populations.² In Thurston County, Washington, law enforcement stopped booking certain crimes deemed nonviolent or not a public safety need.² Although the full impact of these changing practices have yet to be formally evaluated, their natural consequences are likely a reduced number of individuals entering the pretrial stage, but of different risk classifications, custody statuses, and charges.

Courts have also been significantly impacted by the pandemic, with many closing even while pretrial services remained open.² Open and reopening court systems have relied heavily on video conferencing.^{1,2} Limiting and suspending in-person court proceedings has had varying consequences for pretrial populations across the country. While the majority of jurisdictions report maintaining risk assessments for release recommendations, pretrial detention and release decisions have changed radically. An overwhelming majority of jurisdictions surveyed by NAPSA (81.46%) increased the release of persons awaiting trial, and 47 percent increased the number of persons released while awaiting arraignment or first appearance. Many jurisdictions also reduced bail amounts (59.88%) and increased the use of ROR releases for non-violent cases (67.98%). The combined impact of changing practices by multiple criminal justice sectors has drastically altered the population and detainment status of individuals entering the pretrial stage. However, due to court closures and suspension of jury trials, almost all (98.28%) of jurisdictions have postponed or delayed court hearings.¹ Many jurisdictions experienced significant case backlogs, with some still reporting a growing pretrial population in jails despite efforts to reduce the number of individuals coming in.^{2,3}

Most pretrial practices and services now operate virtually, relying on video conferences and phone calls for things such as court appearances and check-ins, and using texts or calls for

reminders and reports.^{1,2} The majority of jurisdictions (78.4%) report temporarily suspending in-person office contacts and office check-ins and almost three quarters (72.5%) of jurisdictions have simultaneously increased telephone contacts and check-ins.^{1,2} In some jurisdictions these changing practices may have a positive impact on reporting. For example, New Mexico suggests an increase in reporting and compliance as defendants are less intimidated by contact over the phone than official office reports.² Almost half of jurisdictions postponed or delayed collections of fines and fees. The pandemic's impact on drug and alcohol monitoring and testing varied widely by jurisdiction. About a third of jurisdictions suspended all transdermal or portable testing, 60 percent suspended all in-person testing, and an additional 13 and 16 percent have reduced the use of these practices.¹ For example, in Thurston County, Washington, drug and alcohol monitoring are only requested in rare occasions if there is a reason to suspect that it is necessary.² Revocation practices and policy also shifted due to the pandemic, with almost half of jurisdictions reducing revocations for condition violations. A small percentage of jurisdictions report temporarily suspending revocations for all condition violations, but a third have not changed revocations practices following COVID-19. A similar pattern follows for addressing technical violations.¹ Despite these significant changes, there is little evidence to suggest any negative impact on failure to appear, noncompliance, or criminal activity with virtual reporting and reduced or eliminated drug and alcohol testing and monitoring.²

Adapting to the pandemic has been challenging for many jurisdictions and has differentially impacted some pretrial defendants. Technological difficulties were a major concern, as many jail systems were not equipped for virtual arraignments but also could not transport defendants within the state due to COVID safety.² While many pretrial agencies were able to ensure that their staff have phones or can block their personal phone numbers to communicate with clients, many were unable to provide phones for all the clients who did not have them. Even in areas where virtual arraignments from jail became possible, some jurisdictions report a differing pretrial process and impact for those who are cited and released, and those who are arrested. For example, in Kentucky where courts were closed for 2.5 months, Kentucky pretrial services report difficulty in getting those who were cited and released to come to court due to the significant time delay despite still servicing those who have been arrested.² Providing services has also been more difficult in a virtual environment. Thurston County in Washington reports that only the select clients who still receive in-person services have been able to get referrals to treatment.²

¹ National Association of Pretrial Services Agencies. (2020). *COVID-19 Sparks 'Unprecedented' Pretrial Reforms, Survey Shows*. National Partnership for Pretrial Justice. <http://www.pretrialpartnership.org/news/covid-19-sparks-unprecedented-pretrial-reforms-survey-shows/>

² National Institute of Corrections. (2020). *COVID-19: How are Pretrial Service Agencies Dealing with the Coronavirus?* [Webinar]. Washington, D.C.: Department of Justice.

³ National Commission on COVID-19 and Criminal Justice. (2020). *Recommendations for Response and Future Readiness*. Washington, D.C.: Council on Criminal Justice.