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HOUSE DEMOCRATIC POLICY COMMITTEE

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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

HOUSE DEMOCRATIC POLICY COMMITTEE HEARING

Topic: Pretrial and Bail Procedure Reform

South West Leadership Academy – Philadelphia, PA

April 12, 2017

AGENDA

- 2:00 p.m. Welcome and Opening Remarks
- 2:10 p.m. Panel One:
- Councilman Curtis Jones, Jr., 4th District, City Council of Philadelphia
 - Keir Bradford-Grey, Chief Public Defender, Defender Association of Philadelphia
 - Judge Benjamin Lerner (Ret.), Deputy Managing Director for Criminal Justice, City of Philadelphia
- 2:40 p.m. Panel from County Commissioners of Pennsylvania:
- Maureen Barden, Fellow
 - Kevin Barnhardt, Berks County Commissioner
- 3:10 p.m. Panel from Pennsylvania Pretrial Association:
- Nicole Schnovel, Board President (Berks County)
 - Shannon Danley, Board Treasurer (Dauphin County)
 - Janice Radovick-Dean, Board Director-Past President (Allegheny County)
 - Robin Campbell, Communications Director, Pretrial Justice Institute
- 4:00 p.m. Closing Remarks



TESTIMONY ON PRETRIAL AND BAIL PROCEDURE REFORM
PRESENTED TO THE HOUSE DEMOCRATIC POLICY COMMITTEE
BY
MAUREEN BARDEN
CONSULTANT, CCAP PRETRIAL PILOT PROJECT
APRIL 12, 2017

Good afternoon, members of the House Democratic Policy Committee. I am Maureen Barden, consultant to the pretrial pilot project of the County Commissioners Association of Pennsylvania (CCAP). Thank you for the opportunity to present testimony regarding the important issue of pretrial justice reform in Pennsylvania. As Berks County Commissioner Kevin Barnhardt stated, this is an area of focus and concern for CCAP, particularly as it affects individuals whose behavioral health issues bring them into contact with the criminal justice system. As a consultant to CCAP, I have worked for the past two and a half years to help counties establish pretrial services programs, and offer the following thoughts based on that experience.

First, there is widespread interest among commissioners and other county stakeholders in pretrial reform. In many county jails, more than half the prisoners are in pretrial status and in some it is 60 to 70 percent. County officials are aware that having people sit in jail because they cannot raise small amounts of bail creates disadvantages for defendants, costs counties money, and fails to increase public safety. In August, 2016, CCAP released the report of its Comprehensive Behavioral Health Task Force, outlining ways for counties to increase diversion in appropriate cases. The report was received enthusiastically by commissioners throughout the Commonwealth, and follow-up webinars as well as conference break-out sessions on these topics continue to draw large audiences. A number of counties have also enrolled in nationwide pretrial reform efforts, including the Stepping Up Initiative, which focuses on diversion of individuals with behavioral health issues, and the 3 Days Count initiative, which advocates for pretrial reform more generally. Clearly, counties are looking for alternatives to pretrial detention.

Second, commissioners and judges must work together to improve pretrial justice. Commissioners administer the county jails in which pretrial detainees are held. The courts set bail and supervise local probation departments, where most new pretrial services programs are located. Reform can only occur if these departments work together. Bucks County provides a good example. In 2014, the Bucks County Commissioners and the President Judge agreed to fund a pilot pretrial services program in the Adult Probation and Parole Department in an effort to avoid expanding a community corrections center. The county and the court each paid for one pretrial services officer, and the Probation Department contributed an experienced supervisor's time. To date, 409 people have been placed on pretrial release, more than 70 percent have successfully completed their pretrial supervision, and a substantial number have been sentenced to terms below the recommended sentencing guideline range. Defendants are benefitting from the program in significant ways, including receiving behavioral health treatment while in pretrial status rather than sitting in jail. As a result, the county has not had to fund a costly expansion of its community corrections capacity; in 2016, it made the pilot a permanent program.

Third, new programs need technical assistance and financial support in order to succeed. There is a great deal of research on best practices in pretrial services programs. In order to put these principles into practice, counties need specific, ongoing advice tailored to their individual circumstances. Counties also need funding for support services. It makes no more sense to have people sit in jail because they cannot afford mental health treatment than it does to have them there because they cannot afford bail. The services that are being paid for by CCAP with funds

provided by the Pennsylvania Commission on Crime and Delinquency include behavioral health assessment and treatment, housing vouchers, electronic monitoring, bus tokens, and similar supports. The funds make the difference between detention and release for a significant number of people. As counties realize savings from reduced incarceration, they can absorb these costs themselves.

Finally, small counties as well as large are interested in pretrial services. For example, rural Potter County, population 17,500, recently established a pretrial program which follows best practices and collaborates with other county programs and services. Small counties account for the largest growth in the jail population since the 1970s nationwide (28 percent of the total in 1978 versus 44 percent of the total in 2014 - Vera Institute of Justice, December 2015). This trend is reflected in Pennsylvania jails.

Representative McClinton's House Bill 1092 is a significant step toward pretrial reform in Pennsylvania. The issues it raises are critical to county jails and courts, to defendants, and to Pennsylvania communities. As the legislative process moves forward, there is a need for further investigation of best practices in pretrial justice and continuing discussion with county representatives about how best to achieve pretrial reform throughout the Commonwealth.



TESTIMONY ON PRETRIAL AND BAIL PROCEDURE REFORM
PRESENTED TO THE HOUSE DEMOCRATIC POLICY COMMITTEE
BY
COMMISSIONER KEVIN BARNHARDT
COUNTY COMMISSIONER, BERKS COUNTY
CHAIR, CCAP COMPREHENSIVE BEHAVIORAL HEALTH TASK FORCE
APRIL 12, 2017

Good afternoon. I am Kevin Barnhardt, Berks County Commissioner and the Chairman of the County Commissioners Association of Pennsylvania (CCAP) Comprehensive Behavioral Health Task Force. Previously, I also served as the Chair of CCAP's Courts and Corrections Committee and I am pleased to be here today to offer some comments on behalf of Pennsylvania counties. We appreciate the goals of the legislation (HB 1092) to create and implement county-based pretrial services and programs and to explore options for reform of the bail system in the commonwealth. These are issues of importance to the counties as well, and we look forward to participating in discussions both today and in the future.

The CCAP Platform serves as policy guidance for the Association, and we have several policy positions that are pertinent to the topic being discussed today. One of those goals is directly related to prevention and diversion. The Association supports development of legislation, as well as other related implementation strategies and funding sources, within both the human services and corrections fields to encourage counties and communities to take responsibility for the implementation of prevention, intervention and diversion programs, including family and individual support. Counties also encourage the development of legislation in support of the re-entry efforts developed by the counties and the communities, which are designed to slow the growth in need for expenditures for prisons and juvenile justice placements. In 2016, CCAP embarked on a study of best practices for addressing the needs of our mentally ill and substance abusing inmates. After six months of intensive review and study, the CCAP Comprehensive Behavioral Health Task Force (CBHTF) issued a report that contained a series of recommendations for counties to adopt, areas where counties need the assistance from lawmakers for certain policy changes, and the assistance to help counties identify funding opportunities.

Once the report was finished, the CCAP CBHTF began the process of helping counties implement best practices. Currently, the task force is engaged in education and training sessions through webinars, in-person trainings, and through collaboration with the national "Stepping Up Together" Initiative. We are showcasing the counties that have made gains in population control and achieving our primary goal of using jail only as a means of protecting public safety and not a waypoint for citizens who present difficult challenges to our communities, such as those with mental illness and substance abuse issues.

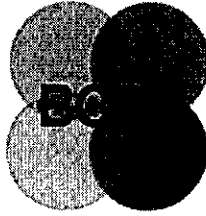
The Association supports joint county and state development of programs promoting statewide investment in prevention, intervention and diversion programs. That is the subject of the legislation you are considering with House Bill 1092. We appreciate the direction and agree with the concept. We are very careful, however, to assure that counties are not mandated to have specific programs or that the standards for those programs are so prescriptive that local resources and philosophies are overshadowed. The Association supports expanded awareness and the use of pretrial programs by counties to ease the financial burden of bail on poor defendants, by making use of non-financial pretrial options where there is a reasonable expectation that public safety will not be threatened. We are hopeful that discussion on this proposal will result in those outcomes.

The Association supports the enactment of policies and procedures at the federal, state and local level to support the diversion of mentally ill and substance abusing offenders, assuring collaboration with counties in defining the approaches. These policies and procedures must consider a county's capacity to provide drug and alcohol treatment and other services to facilitate diversion while assuring public safety, and must include the development of technical assistance and funding supports.

The Association supports changes to appropriate statutes or regulations to extend Medicaid, Medicare or veterans' benefits eligibility, or other sources of health care reimbursements to prisoners and detainees in county jails, as well as an amendment of state policy to allow Medicaid, Medicare or veterans' benefits eligibility to pretrial detainees. Also, the Association supports legislation requiring the Commonwealth to pay the costs for the public defender's office. Inmates with mental illness are shown to serve longer terms, and remain in jail pretrial much longer than other inmates, and often this is a result of a lack of effective public defense.

Maureen Barden, who joins me today, is working with a number of our counties on the development of pretrial programs. She is our expert and the person we turn to for policy advice and assistance to counties.

Again, we appreciate the opportunity for CCAP to offer our perspectives and look forward to working with the committee.



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**Policy Committee Hearing on Pretrial and Bail Procedure Reform
April 12, 2017**

Good afternoon and thank you for giving us the opportunity to weigh in on this very important subject! My name is Nicolle Schnovel. I am the Co-Executive Director of Berks Connections/Pretrial Services, and am currently serving as the President of the Pennsylvania Pretrial Services Association. Prior to our panel discussing the proposed bill, I think it is important to let you know the current state of pretrial services in Pennsylvania. In 2015, the Pennsylvania Pretrial Services Association conducted a survey to gain a better understanding of both the number and types of pretrial services programs that existed across the state. We received responses from 62 of the state's 67 counties and found that at the time, only 37 counties either had a dedicated pretrial services program or offered pretrial services functions. One thing was very evident when reviewing the survey results: while we knew each program shares the mission of promoting pretrial justice, there was no semblance of uniformity in the way in which the programs operate. Differences ranged from where program was housed to the services they provide and the timing of these services.

Of the 37 counties that had pretrial services, 29 programs stated that they interviewed defendants; however the timing of the interviews varied by each county (only 28% interviewed defendants prior to the bail being set). Twenty-six programs provided assessments to the court in order to assist with the release/detain decision; however, 70% of the programs only provided this information after bail has been set and less than half of programs were utilizing a risk assessment instrument to gauge the level of risk the defendant posed. Thirty-six counties stated that they offered pretrial supervision, but they all varied on the levels of supervision that they could accommodate.

These results demonstrate a deep need for a state-wide mandate to provide consistent effective risk assessment and pretrial services in every jurisdiction. While there are published best practices for pretrial services programs, there is currently no mandate or incentive for Pennsylvania counties to adopt them. Since the time this survey was conducted, there has been an increased interest from counties that did not have a pretrial services program to develop one. While the guidance they receive from the Pennsylvania Pretrial Services Association encourages best practices, having legislation that provides a model for pretrial services programs will have a positive impact on ensuring the best practices are adopted.

Thank you for your time!

Testimony of Janice Radovick-Dean for 4/12/17 House Democratic Policy Committee Hearing

In 2007 Allegheny County—where I serve as the 5th Judicial District’s Director of Pretrial Services— instituted a risk based pretrial system using a locally validated pretrial risk assessment tool and non-monetary conditional bail release options. The Pretrial Services department does not recommend any money bail, only Release on Recognizance , non-monetary release conditions that mitigate risk, such as reporting to pretrial in person or by phone, drug or mental health evaluations, drug testing or electronic monitoring and hold without bail. Although we do not recommend money, District Judges can still set money bail conditions at preliminary arraignment. We continue to educate and impart information to the Judges regarding best practices in pretrial and outcomes on our local population.

Sixty-eight percent of all those entering the Allegheny County Jail are for new charges, with approximately half of those defendants being held on probation and parole detainers, federal holds, and other jurisdiction holds. The population being held on a pretrial hold is approximately 34%, well under the national average of 63%. Of the 34% pretrial only population, less than 1% are low on the pretrial risk assessment—which means our pretrial jail population is predominantly comprised of pretrial medium and high risk defendants. The Allegheny County Jail is at approximately 68% capacity.

Across all risk levels, Allegheny County’s overall appearance rate is about 80% and our safety rate is approximately 77%. In regards to the safety rate, we have an overall new violent crime rate of 4%. The lowest risk level defendants have a new violent crime rate of 1%.

In sum, while we are always taking steps to improve our performance, Allegheny County’s experience provides a useful roadmap for how other Pennsylvania counties can move away from the use of money bail by adapting evidence-based best practices based on risk that are safer, fairer, and more equitable.

Contained within this bill are many evidence-based practices that have been shown locally and across the country to avoid unnecessary detention in the criminal justice system while maintaining appearance and safety rates at the pretrial stage. Promoting participating counties to use a validated pretrial risk assessment instrument and sending court reminders are two great examples of this. In a Conference of State Court Administrators Report on Evidence Based Pretrial Release, it was said, “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.” Many studies have examined the effectiveness of Court reminders. The Pretrial Justice Institute and Luminosity produced a paper titled “State of the Science of Pretrial Release Recommendations and Supervision” detailing five jurisdictions and their court reminder systems. Each jurisdiction experienced reduced failure to appear rates when a court reminder system was instituted.

A neutral and unbiased pretrial program, that has its own clear mission and goals, is key to the successful implementation of this criminal justice reform. No matter where the pretrial program is “housed” the information imparted to the court for the setting of bail should not be unduly influenced by either defense or prosecution.

With regards to pretrial detention, we would like to see the legislation be more explicit about time frames and standards for detention hearings, as well as subsequent actions the court would take when an initial detention determination has been made.

ROR bail should be the starting point of bail for all cases and after considering the pretrial risk assessment and the release criteria under Rule 523 of the Pennsylvania Rules of Crim Proc, the minimal release conditions that are necessary to assure appearance and keep the community safe should be imposed.



**Testimony of Robin Campbell,
Communications Director of the Pretrial Justice
Institute**

**Presented at a Public Hearing on Pretrial and Bail Procedure Reform
April 12, 2017**

I want to begin my comments by thanking you for the opportunity to testify today. Whenever individual jurisdictions and states begin moving away from the use of money bail, it is important for them to know they are not alone. Like-minded leaders across the nation are taking similar commonsense steps to adopt proven, risk-based alternatives to money bail that promise greater public safety, more responsible use of public resources, and better outcomes for poor and working class defendants—including people of color who are disproportionately burdened by money bail because of our nation's history of racism and unequal opportunity.

Perhaps the most prominent example of a state moving forward is New Jersey, which earlier this year implemented vast voter-approved changes that have all but eliminated the use of money bail statewide. The preliminary results are, as expected, positive: In just two months the state's jail population dropped by 10 percent, and fewer than 10 percent of arrested people were detained before trial.¹ As expected, the for-profit bail bond industry has sought to frighten the public by highlighting individual cases of people who were released under the new system. But many of these individuals could have purchased their freedom under the previous money bail system—and research shows that roughly half of the most dangerous ones would have.² Today, very dangerous individuals are being effectively detained, with due process—something the previous system did not offer—while lower risk people are going home. In short, the early evidence shows New Jersey is safer, and the justice system is fairer for poor and working class people as a result of adopting risk based decision-making.

Similar legislative reform efforts have been underway in Texas, California, Maryland, and New Mexico. In addition, Connecticut and Illinois, and the territory of Guam, have joined the Pretrial Justice Institute's 3DaysCount™ campaign in support of statewide improvements, and several others states are under consideration. There are also countless county and local initiatives aimed at replacing money bail with risk-based tools that give courts and judges the information

they need to make safer and fairer decisions about who to release before trial. For example, since January 2015 when Lucas County, Ohio, began using the Public Safety Assessment—a risk assessment tool that has been shown to be race and gender neutral—twice as many people have been released without any conditions, the number of people arrested while on pretrial release has been cut in half, and significantly more people are appearing in court.³

Much of the movement toward adopting risk assessment has been spurred by a growing awareness that current money bail practices may violate the U.S. Constitution. Over the past two years, several cities across the nation have stopped requiring defendants to post money bail for their release after lawsuits filed against them alleged that the use of money bail was violating the Equal Protection and Due Process clauses of the Fourteenth Amendment, which guarantee that all people accused of breaking the law will be treated equally by the courts and not be deprived of liberty without due process. Similar lawsuits are pending today in major cities such as Houston, Chicago, and San Francisco.

Pressure to eliminate money bail is also coming from community members. A small but growing network of nonprofit community bail funds is demonstrating that money bail is unnecessary to assure that people appear in court. These funds, which post money bail for low income defendants of all levels of risk, are realizing high rates of court appearance that rival those in District of Columbia, where, as you know, without the use of money bail, last year 95 percent of arrested people were released pretrial⁴, and over five years 88 percent of released people made all scheduled court appearances.⁵ Ninety-five percent of the people bailed out by the Brooklyn Community Bail Fund, in New York City, to choose but one example, have made all required court appearances.⁶

The Pretrial Justice Institute, where I serve as Director of Communications, has been supporting pretrial reform in jurisdictions across the nation for 40 years. We are encouraged by Pennsylvania's consideration of the present legislation. But we are also mindful that some with a vested interest in the status quo will do everything possible to prevent change. We are eager to serve as an independent, unbiased source of information about evidence-based best practices as Pennsylvania moves forward in its deliberations. Thank you.

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¹ Drug Policy Institute

² http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJ-Research-brief_FNL.pdf

³ <http://www.arnoldfoundation.org/new-data-pretrial-risk-assessment-tool-works-reduce-crime-increase-court-appearances/>

⁴ <http://psa.gov/sites/default/files/2016%20Release%20Rates%20for%20DC%20Pretrial%20Defendants.pdf>

⁵ <http://www.psa.gov/?q=node/499>

⁶ Brooklyn Community Bail Fund

Pennsylvania House of Representatives

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<http://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20170&cosponId=22597>[Home](#) / House Co-Sponsorship Memoranda

House Co-Sponsorship Memoranda

House of Representatives Session of 2017 - 2018 Regular Session

MEMORANDUM

Posted: January 30, 2017 02:13 PM
From: [Representative Joanna E. McClinton](#)
To: All House members
Subject: Pennsylvania Pretrial and Bail Procedure Reform

In the near future, I plan to introduce legislation that will reform Pennsylvania's pretrial and bail procedures to provide a fairer, effective and less costly criminal justice system. The bill would encourage and incentivize counties to establish pretrial service programs that utilize standards proven to reduce the monetary, and human cost of corrections.

The U.S. accounts for less than 5 percent of the world's population, and yet houses nearly 25 percent of the world's prisoners -- the majority of which are held in state and local jails. The Pennsylvania Department of Corrections estimates that the Commonwealth's jails have the capacity to house only about 47,000 inmates, yet our current jail population has tipped over 50,000 individuals -- or 10 percent above capacity. This places Pennsylvania in the top ten states with the most overcrowded jails.

More than 60 percent of individuals who are currently held in jail have not been convicted of any crime, but are simply awaiting trial. In some jurisdictions in Pennsylvania, that rate is even higher. In Philadelphia County, 65% of inmates are being held in pretrial detention. Excessive pretrial detention is a significant issue in Pennsylvania -- costing the state hundreds of millions of dollars a year.

Some counties in the Commonwealth have taken the initiative to focus on pretrial service programs locally. For example, Allegheny County has a model pretrial program utilizes risk assessments, diversionary programs and nonmonetary bail options to determine if bail is necessary, and it's working. Their recidivism rate is down and the rate at which people are showing up to court is up, which is not only saving money, but also saving lives.

But Allegheny County is the exception, not the norm. Nearly half of Pennsylvania counties do not have any pretrial service function and programs that are currently operating in the Commonwealth vary in effectiveness from county to county. My legislation would utilize "best practices" and place a priority on pretrial service programs as a way to address pivotal issues within our criminal justice system.

It is time for Pennsylvania to reform its pretrial and bail procedures. Antiquated bail practices result in loss of employment, housing, education, mental health services, and even the loss of custody of children, while providing no proof of keeping the public safe. In fact, research has found that a few days in jail awaiting trial increases the likelihood a defendant will be rearrested during that period by 40 percent.

I believe this is a Constitutional issue, a taxpayer issue, and an issue of fairness for those who have not been convicted of any crime but are simply awaiting trial. I hope you will join me in cosponsoring this legislation.



Introduced as [HB1092](#)

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1092 Session of
2017

INTRODUCED BY McCLINTON, BULLOCK, YOUNGBLOOD, KINSEY, SOLOMON,
V. BROWN, READSHAW, PASHINSKI, MADDEN AND COX, APRIL 7, 2017

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 7, 2017

AN ACT

1 Authorizing eligible counties to establish pretrial service
2 programs; providing for bail and detention prior to trial;
3 and imposing powers and duties on the Pennsylvania Commission
4 on Crime and Delinquency.

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10 Chapter 3. Pretrial Service Programs

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13 Section 303. Pretrial diversion.

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15 Chapter 5. Bail and Detention Prior to Trial

16 Section 501. Monetary bail.

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18 Section 503. Penalties.

19 Section 504. Right to counsel.

1 Chapter 7. Administrative Provisions

2 Section 701. Commission.

3 Section 702. Funding and audits.

4 Section 703. Prohibitions.

5 Section 704. Continued eligibility.

6 Chapter 9. Miscellaneous Provisions

7 Section 901. Training.

8 Section 902. Annual report.

9 Section 903. Effective date.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 CHAPTER 1

13 PRELIMINARY PROVISIONS

14 Section 101. Short title.

15 This act shall be known and may be cited as the Pilot
16 Pretrial Reform Act.

17 Section 102. Legislative intent.

18 The General Assembly finds that:

19 (1) The establishment of a pretrial service program
20 improves public safety, reduces corrections costs and
21 produces more effective outcomes for the betterment of the
22 community.

23 (2) There is a need for neutral, fact-driven entities to
24 provide accurate and timely information to assist courts in
25 making informed decisions regarding bond, competency and
26 treatment options.

27 (3) Many individuals imprisoned in correctional
28 institutions in this Commonwealth are simply awaiting trial
29 and have not been convicted of a crime.

30 (4) Indigent defendants remaining imprisoned due to an

1 inability to fulfill financial bail conditions present an
2 unnecessary financial burden to taxpayers.

3 (5) Excessive bail practices and unnecessary detention
4 also present constitutional concerns to the citizens of this
5 Commonwealth.

6 Section 103. Definitions.

7 The following words and phrases when used in this act shall
8 have the meanings given to them in this section unless the
9 context clearly indicates otherwise:

10 "Commission." The Pennsylvania Commission on Crime and
11 Delinquency.

12 "Correctional institution." As defined in 61 Pa.C.S. § 102
13 (relating to definitions).

14 "Eligible county." A county of the first class, second
15 class, second class A or third class.

16 "Nonprofit program." A not-for-profit human service
17 organization that provides treatment, guidance, counseling,
18 training or rehabilitation services to individuals, families or
19 groups.

20 "Participating county." An eligible county that establishes
21 a pretrial service program.

22 "Program." A pretrial service program established by a
23 participating county under this act.

24 "Released individual." An individual who is charged with a
25 criminal offense and released from custody by a county prior to
26 trial or adjudication.

27 CHAPTER 3

28 PRETRIAL SERVICE PROGRAMS

29 Section 301. Authorization.

30 (a) General rule.--An eligible county may establish and

1 operate a pretrial service program within an appropriate
2 department or system as designated by the county.

3 (b) Purpose.--A program shall be developed, implemented and
4 operated for the following purposes:

5 (1) To protect society and promote efficiency and ensure
6 equity during arraignment and bail determination.

7 (2) To provide evidence-based bail recommendations to
8 judicial officers that assess an offender's risk to public
9 safety and likelihood to appear in court if released pending
10 trial.

11 (3) To provide opportunities for defendants who
12 demonstrate special needs to receive services that enhance
13 their ability to become contributing members of the
14 community.

15 (c) Responsibilities.--A program shall:

16 (1) Conduct preliminary investigation and risk
17 assessment on all defendants arrested on new charges.

18 (2) Present accurate information to a judicial officer
19 related to a defendant's risk of failing to appear in court
20 or potential threats to the safety of the community.

21 (3) Develop and provide appropriate and effective
22 supervision for all individuals released to the program.

23 (4) Develop a procedure for the supervision of released
24 individuals, which may include, but not be limited to,
25 halfway houses, addiction treatment centers and counseling
26 services, sufficient to respond to the risks and problems
27 associated with released defendants.

28 (5) Monitor the compliance of released individuals with
29 the requirements of assigned release conditions and develop
30 relationships with alternative programs such as problem

1 solving programs or mental health support systems.

2 (6) Inform the court of apparent violations of pretrial
3 release conditions or arrests of released individuals pending
4 trial and recommend modification of release conditions.

5 (7) Review the status of detained individuals on an
6 ongoing basis for changes in eligibility for release options.

7 (8) Utilize an accurate information management system to
8 support the use of a risk assessment, release conditions,
9 selection, compliance monitoring, detention review functions
10 and data analysis.

11 (9) Refer conditionally released individuals to sources
12 that may increase the likelihood of compliance with
13 conditions and decrease a likelihood of rearrests, including,
14 but not limited to, employment or housing programs, medical,
15 drug, mental or other health treatment or legal or other
16 needed services.

17 (10) Remind released individuals of their court dates.

18 Section 302. -Risk assessments.

19 (a) Duty to develop.--A participating county shall develop
20 or adopt a validated risk assessment.

21 (b) Purpose.--In all cases where a defendant is in custody
22 and charged with a criminal offense, the program shall conduct
23 an investigation for the following purposes:

24 (1) To assess whether the defendant is low risk,
25 moderate risk or high risk for failing to appear in court or
26 posing potential danger to the community.

27 (2) To collect information which may be crucial to
28 determine a defendant's risk to flee.

29 (3) To collect information that may be crucial to
30 determine a defendant's risk to the safety of the community.

1 (4) To devise a comprehensive report to be reviewed by
2 the court when setting bail.

3 (c) Interview process.--An individual who is arrested in a
4 participating county shall be offered a pretrial interview,
5 unless the validated pretrial risk assessment tool can be
6 completed without an interview. If the individual does not
7 refuse the pretrial interview, the program shall question the
8 individual. Following the interview, the program shall prepare a
9 comprehensive risk assessment report with recommendations on
10 conditions of release, if needed.

11 (d) Information to be provided.--If the validated risk
12 assessment requires an interview, the interviewer shall inform
13 the defendant, prior to the interview and an investigation or
14 collection, that:

15 (1) All risk assessment interviews are voluntary.

16 (2) Penalties may be imposed for providing false
17 information during interviews.

18 (3) Risk assessments are intended solely to assist in
19 determining pretrial release options for defendants.

20 (4) Information discovered and considered in formulating
21 recommendations to the court will be provided to the judicial
22 officer.

23 (5) Information obtained from or concerning the
24 defendant by a pretrial program shall be disclosed only to
25 the defendant, counsel for the defendant, the issuing
26 authority or judge setting bail, the attorney for the
27 Commonwealth and the county's department of probation and
28 parole preparing a presentence report regarding the
29 defendant. The information shall not be disclosed or used
30 except for the purposes relating to the defendant's bail or

1 presentence report about the defendant, or in a prosecution
2 based on the falsity of the information, or for impeachment
3 purposes to the extent permitted by law.

4 (6) Interviewers and other staff members of the program
5 are not exempt from subpoena and there should be no
6 expectation of privacy or privileged information.

7 (e) Investigatory focus.--Program investigations shall focus
8 on assembling reliable and objective information relevant to
9 determining release options. Risk assessment interviews shall
10 exclude questions relating to the events or details of the
11 current charge but may consider:

12 (1) The nature of circumstances of the charge, when
13 relevant to release conditions.

14 (2) Character, physical or mental condition, family
15 ties, employment, financial resources, length of residence in
16 community, community ties, past conduct, history relating to
17 drug or alcohol abuse, criminal history and record concerning
18 appearance at court proceedings.

19 (3) Whether, at the time of the current offense or
20 arrest, the defendant is currently on probation or parole or
21 on other release pending trial.

22 (4) The availability of persons who agree to assist the
23 defendant attending court.

24 (5) Information voluntarily provided by the defendant.

25 (6) Facts justifying a concern that the defendant will
26 fail to attend court or pose a threat to the community.

27 (7) Factors that may demonstrate the defendant's
28 eligibility for conditional release, diversion or alternate
29 adjudication release options.

30 (f) Right of refusal.--Risk assessment interviews shall be

1 voluntary. An individual has a right to refuse questioning
2 during the interview.

3 (g) No unnecessary delay in process.--The program shall make
4 a pretrial release recommendation for all defendants arrested on
5 new charges without unnecessary delay.

6 (h) Assessment report.--The program shall provide an in-
7 depth assessment report to be given to judges as prescribed by
8 statute. The report shall include the risk assessment and
9 additional relevant background information that was considered,
10 including, but not limited to:

- 11 (1) Ability to confirm identity.
- 12 (2) Information provided by the defendant.
- 13 (3) Nature of the charge.
- 14 (4) History of failure to report or appear in court.
- 15 (5) Criminal history.
- 16 (6) Information contained in pretrial supervision
17 records.
- 18 (7) Information provided by references regarding drug
19 use, mental health or additional relevant information.
- 20 (8) Miscellaneous information that was collected,
21 considered and could aid in the determination of the most
22 effective release decision.

23 Section 303. Pretrial diversion.

24 (a) Establishment.--The program may develop, expand or
25 participate in diversionary options that provide alternatives to
26 criminal charge with the intent to effectively avert individuals
27 into programs that produce beneficial results for the individual
28 and the community.

29 (b) Recommendations.--Program interviewers may, through the
30 risk assessment process, make recommendations about efficient

1 release options that may incorporate direct referrals of
2 diversionary suggestions, including, but not limited to:

- 3 (1) Mental health services.
- 4 (2) Drug and alcohol rehabilitation or treatment.
- 5 (3) Accelerated Rehabilitative Disposition.
- 6 (4) Specialty courts.
- 7 (5) Anger management and other counseling.
- 8 (6) Additional human service agencies.

9 (c) Diversionary resources.--A participating county may work
10 with public or nonprofit organizations to develop or enhance
11 diversionary services.

12 (d) Eligibility.--Defendants may be eligible to enroll in a
13 diversionary program based on the recommendation of the
14 assessment report or the judicial officer.

15 Section 304. Judicial review.

16 (a) Risk assessment report.--The court in a participating
17 county shall review the program's risk assessment report and
18 recommendations on the least restrictive conditions of release
19 prior to a pretrial release decision for an eligible defendant.

20 (b) Least restrictive conditions.--

21 (1) When determining a bail decision, the judicial
22 officer shall impose the least restrictive conditions that
23 will reasonably ensure a defendant's attendance at future
24 court proceedings and enhance public safety.

25 (2) In order to determine whether to release a defendant
26 and what conditions, if any, to impose, the bail authority
27 shall consider all available information as that information
28 is relevant to the defendant's appearance or nonappearance at
29 subsequent proceedings, or compliance or noncompliance with
30 the conditions of the bail bond, including information about:

1 (i) The nature of the offense charged and any
2 mitigating or aggravating factors that may bear upon the
3 likelihood of conviction and possible penalty.

4 (ii) The defendant's employment status and history
5 and financial condition.

6 (iii) The nature of the defendant's family
7 relationships.

8 (iv) The length and nature of the defendant's
9 residence in the community and any past residences.

10 (v) The defendant's age, character, reputation,
11 mental condition and whether addicted to alcohol or
12 drugs.

13 (vi) If the defendant has previously been released
14 on bail, whether he or she appeared as required and
15 complied with the bail conditions.

16 (vii) Whether the defendant has a record of flight
17 to avoid arrest or prosecution or of escape or attempted
18 escape.

19 (viii) The defendant's prior criminal record.

20 (ix) Use of false identification.

21 (x) Other factors relevant to whether the defendant
22 will appear as required and comply with the bail
23 conditions.

24 (3) The decision of a defendant not to admit culpability
25 or not to assist in an investigation shall not be a reason to
26 impose additional or more restrictive conditions of bail on
27 the defendant.

28 CHAPTER 5

29 BAIL AND DETENTION PRIOR TO TRIAL

30 Section 501. Monetary bail.

1 (a) General rule.--If bail is set under Pa.R.Crim.P. No. 520
2 (relating to bail before verdict), the defendant shall be
3 eligible for the types of release on bail as specified in this
4 section. The bail authority, after considering the release
5 criteria in Pa.R.Crim.P. No. 523 (relating to release criteria),
6 shall determine the type or combination of types of release on
7 bail reasonably necessary, in the bail authority's discretion,
8 to ensure that the defendant will appear at all subsequent
9 proceedings and comply with the conditions of the bail bond.

10 (b) Condition.--All of the types of release in subsection
11 (c) shall be conditioned upon the defendant's written agreement
12 to appear and to comply with the conditions of the bail bond
13 specified in Pa.R.Crim.P. No. 526(A) (relating to conditions of
14 bail bond).

15 (c) Types.--Types of release on bail are as follows:

16 (1) Release on recognizance. Release shall be
17 conditioned upon the defendant's written agreement to appear
18 when required and to comply with the conditions of the bail
19 bond in Pa.R.Crim.P. No. 526(A).

20 (2) Release on nonmonetary conditions. Release shall be
21 conditioned upon the defendant's agreement to comply with
22 nonmonetary conditions, as specified in Pa.R.Crim.P. No. 527
23 (relating to nonmonetary conditions of release on bail),
24 which the bail authority determines are reasonably necessary
25 to ensure the defendant's appearance and compliance with the
26 conditions of the bail bond.

27 (3) Release on unsecured bail bond. Release shall be
28 conditioned upon the defendant's written agreement to be
29 liable for a fixed sum of money if the defendant fails to
30 appear as required or fails to comply with the conditions of

1 the bail bond. No money or other form of security may be
2 required.

3 (4) Release on nominal bail. Release shall be
4 conditioned upon the defendant's depositing a nominal amount
5 of cash which the bail authority determines is sufficient
6 security for the defendant's release and the agreement of a
7 designated person, organization or bail agency to act as
8 surety for the defendant. A nominal amount may be \$1.

9 (5) Release on a monetary condition. Release shall be
10 conditioned upon the defendant's compliance with a monetary
11 condition imposed under Pa.R.Crim.P. No. 528 (relating to
12 monetary condition of release on bail). The amount of the
13 monetary condition shall not be greater than necessary to
14 reasonably ensure the defendant's appearance and compliance
15 with the conditions of the bail bond.

16 (d) Detention.--

17 (1) When a judicial officer finds no conditions of
18 release are sufficient to accomplish the aims of pretrial
19 release, a defendant may be held without bail.

20 (2) If a defendant is considered high risk and the only
21 reasonable disposition is detention without bail, the court
22 shall require an accelerated trial.

23 (3) If a defendant is detained prior to trial,
24 disposition may not prejudice the defendant at the time of
25 trial or sentencing. In the case of a jury trial, the court
26 shall ensure that the jury is unaware of the defendant's
27 detention.

28 (4) A convicted defendant shall be given credit against
29 both a maximum and minimum term or a determinate sentence for
30 all time spent in custody as a result of criminal charges for

1 which sentence of imprisonment is imposed.

2 (5) A defendant detained pending adjudication shall be
3 confined in a separate part of a facility from convicted
4 persons awaiting sentencing or serving sentences. The
5 restrictions on the defendant may not be more limited than
6 for convicted persons.

7 (6) A defendant detained shall be provided with adequate
8 means to assist in the defendant's own defense. This
9 requirement may include the following:

10 (i) Reasonable telephone rates.

11 (ii) Unmonitored telephone access to the defendant's
12 attorney.

13 (iii) A law library.

14 (iv) A space for unmonitored meetings with the
15 defendant's attorney.

16 Section 502. Nonmonetary bail.

17 (a) Elimination option.--The decision to eliminate monetary
18 bail conditions shall be determined by the president judge of
19 each participating county. The president judge may consider the
20 efficiency of the monetary bail systems operating within the
21 county. If the president judge chooses to preserve a monetary
22 bail system, adjudications shall coincide with least restrictive
23 conditions specified in this section.

24 (b) Development of alternatives.--A participating county
25 shall develop, test, validate and refine nonmonetary conditions
26 for release which shall correspond with the risk assessment
27 implemented by the participating county.

28 (c) Nonmonetary conditions.--The court shall impose the
29 least restrictive of release conditions reasonably necessary to
30 ensure the defendant's appearance in court, to protect the

1 safety of the community or any person and to safeguard the
2 integrity of the judicial process. Options include, but are not
3 limited to:

4 (1) Releasing the defendant to the supervision of the
5 program or requiring the defendant to report on a regular
6 basis.

7 (2) Releasing of the defendant into the custody or care
8 of some other qualified organization or person responsible
9 for supervising the defendant and assisting the defendant in
10 making court appearances. The supervisor shall maintain close
11 contact with the defendant, to assist the defendant in making
12 arrangements to appear in court and, when appropriate,
13 accompany the defendant to court. The supervisor may not be
14 financially responsible for the defendant to forfeit money in
15 the event the defendant fails to appear in court. The
16 supervisor should promptly report a defendant's failure to
17 comply with release conditions.

18 (3) Imposing reasonable restrictions on the activities,
19 movements, associations and residences of the defendant.

20 (4) Prohibiting the defendant from possessing dangerous
21 weapons and ordering the defendant to immediately turn over
22 all firearms and other dangerous weapons in the defendant's
23 possession or control to a program or responsible third party
24 designated by the court and prohibiting the defendant from
25 engaging in certain prescribed activities or using
26 intoxicating liquors or certain drugs.

27 (5) Imposing conditional release of the defendant
28 pending participation in a diversionary or alternative
29 problem solving program.

30 (6) Requiring the defendant to return to custody for

1 specified hours following release for employment, schooling
2 or other limited purposes.

3 (7) Requiring the defendant to be released on electronic
4 monitoring, to be placed under house arrest, to be evaluated
5 for substance abuse, to undergo regular drug testing, to be
6 screened for eligibility for drug court or other drug
7 treatment program, to undergo mental health or physical
8 health screening for treatment, to participate in appropriate
9 treatment or supervision programs or to be subject to other
10 release options or conditions as may be reasonably necessary
11 to ensure attendance in court, prevent risk of crime and
12 protect the community or any person during the pretrial
13 period.

14 (8) Imposing other reasonable restrictions designed to
15 ensure the defendant's appearance, to protect the safety of
16 the community or any person and to prevent intimidation of
17 witnesses or interference with the orderly administration of
18 justice.

19 (d) Notice to victims.--

20 (1) Each participating county shall ensure that victims
21 and witnesses are informed by the appropriate agent whenever
22 the defendant is confined or released or other changes occur
23 in the defendant's status that may be germane to the safety
24 of the community or of any person.

25 (2) Victims and witnesses shall be afforded readily
26 accessible means to inform the court, through the appropriate
27 agent.

28 Section 503. Penalties.

29 A defendant who willfully fails to appear or is arrested for
30 an additional crime during release may be subject to penalties

1 at the discretion of the judicial officer, including:
2 (1) contempt by the court with a detainment sentence of
3 up to five days;
4 (2) cash bail, if permitted by the county;
5 (3) complete revocation of release; or
6 (4) other measures deemed necessary to ensure the
7 defendant's appearance or to ensure the safety of the
8 community.

9 Section 504. Right to counsel.

10 (a) General rule.--An individual who is to be arraigned
11 shall be provided with an option for suitable representation
12 prior to the arraignment or pretrial detention hearing.

13 (b) Access to assessment.--In a participating county,
14 counsel for a defendant shall be provided information enclosed
15 in the assessment report provided by the program prior to
16 arraignment.

17 (c) Appeal.--A defendant not granted least restrictive
18 conditions may immediately appeal the bail determination.

19 CHAPTER 7

20 ADMINISTRATIVE PROVISIONS

21 Section 701. Commission.

22 Subject to the availability of funds, the commission shall
23 make grants available to the courts to assist in the
24 establishment or enhancement of pretrial service or diversion
25 programs in each judicial district within an eligible county. To
26 the extent that funds are available, the commission may:

27 (1) Identify sources of funding for pretrial service or
28 diversion programs and their related services, including the
29 availability of grants.

30 (2) Provide coordination and technical assistance for

1 grant applications.

2 (3) Develop, in conjunction with the Administrative
3 Office of Pennsylvania Courts, model guidelines for the
4 administration of pretrial service or diversion programs and
5 their related services.

6 (4) For pretrial service or diversion programs and
7 related services funded by the commission, establish
8 procedures for monitoring and evaluating the effectiveness of
9 pretrial service or diversion programs and their related
10 services.

11 Section 702. Funding and audits.

12 (a) Eligibility.--Subject to the availability of funding,
13 participating counties with approved plans shall be eligible for
14 direct funding determined by the commission to support the cost
15 of programs.

16 (b) Alternative funding.--The commission may solicit and
17 accept alternative funding, including Federal funds, grants and
18 donations from any source whatsoever to assist with the
19 administration of this act. All money received by the department
20 to improve, enhance and expand programs shall be deposited into
21 a restricted account within the General Fund.

22 (c) Audit.--Annual reports and all financial records shall
23 be subject to annual audit by the Auditor General.

24 Section 703. Prohibitions.

25 (a) General rule.--Recipients may not use funds granted
26 under this chapter to supplant existing funds from the State or
27 local government for the construction, renovation or general
28 operation of a correctional institution.

29 (b) Administrative costs.--Administrative costs connected
30 with the expenditure of funds under this act may not exceed a

1 percentage amount established by the commission.

2 Section 704. Continued eligibility.

3 (a) Evaluation.--In order to remain eligible for continued
4 grant funding, a participating county shall comply with
5 commission standards and regulations and participate in an
6 evaluation to determine program effectiveness. The form of the
7 evaluation shall be determined by the commission.

8 (b) Suspension of funding.--

9 (1) If the commission determines that there are
10 reasonable grounds to believe that a participating county is
11 not complying with its plan, minimum standards or the
12 provisions of this act, the commission shall give 30 days'
13 written notice to the participating county.

14 (2) If the commission finds noncompliance, it shall
15 require the participating county to provide a written
16 agreement as to how and when the specific deficiencies
17 identified will be corrected.

18 (3) If no agreement is submitted to the commission
19 within the time limit or if the deficiencies are not
20 corrected within 45 days after an agreement has been approved
21 by the commission, the commission may suspend part or all of
22 the funding to the participating county until compliance is
23 achieved.

24 CHAPTER 9

25 MISCELLANEOUS PROVISIONS

26 Section 901. Training.

27 The following apply:

28 (1) Training specific to a participating county's
29 established program and risk assessment model shall include
30 the purpose and goals of the program and model, how to read a

1 risk assessment and other information regarding the program
2 deemed necessary by the program.

3 (2) Judges, magisterial district judges, legal
4 counselors, bail bondsmen and all staff crucially involved in
5 the pretrial process shall complete training within six
6 months of the establishment of the participating county's
7 program.

8 (3) Nonessential support staff who may benefit from the
9 informational session may be offered the opportunity to
10 participate in training.

11 Section 902. Annual report.

12 A participating county shall submit an annual report to the
13 General Assembly by January 1 describing the operation and
14 performance of the program, the effectiveness of pretrial
15 conditions, including failure to appear rates and reoffense on
16 release rates, information related to case processing and all
17 information deemed relevant by the participating county.

18 Section 903. Effective date.

19 This act shall take effect in 90 days.

O₄S Initiative

Opportunities for Success

Criminal Justice Reform **Pretrial Services**

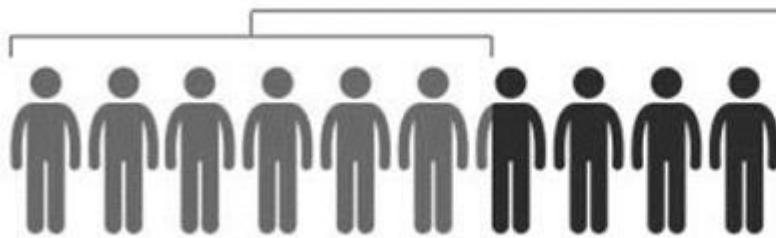
Expanding the use of Pretrial Service Agencies
Increasing Access to Diversion Programs
Improving Right to Defense



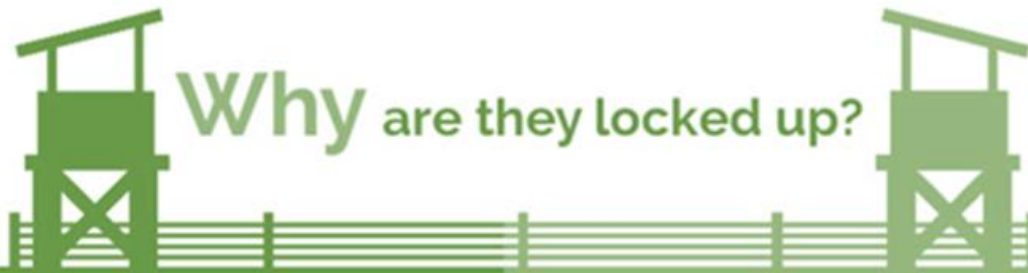
WHAT IS THE PROBLEM?


Pennsylvania has one of the **highest rates** of pretrial incarceration: more than **258** incarcerated individuals **per 100,000 residents**.


15% higher than the national average



In Philadelphia,
6 in 10 inmates
are simply awaiting trial.



 **90%** of defendants who remain in jail pre-trial are there because they have not posted bail.

MONEY Is the primary factor that determines pre-trial detention. 



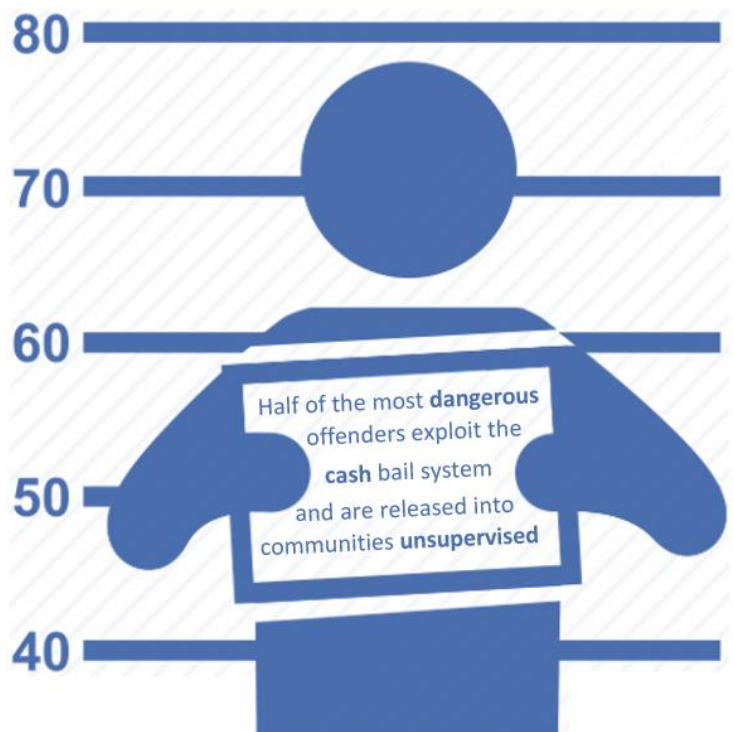
Reliance on a **MONEY** based pre-trial system disadvantages people of color.



The Sixth Amendment does not guarantee defendants a lawyer until after bail is set and a plea is given.



Guilty or not, defendants routinely plead guilty in order to be **released** from jail.



WHAT ARE THE CONSEQUENCES?



Pennsylvania is in the **TOP HALF** for most **overcrowded** jails nationwide.

Current DOC Population (as of 3/31/17)
48,429



SIX in TEN released inmates will be rearrested or re-incarcerated.



Very few local jurisdictions in PA assign defenders to accused people **unable to afford counsel** prior to arraignment.

INMATE HEALTH

25% of PA inmates are treated for serious mental illness

70% of PA inmates are being treated for drug/alcohol addiction.

\$ 2.51 BILLION
2017-2018 CORRECTIONS BUDGET

PA has increased corrections budget **60%** since 2011

PA DOC estimates annual costs of **\$41,000**/inmate

Health care expenses increased over **20%**



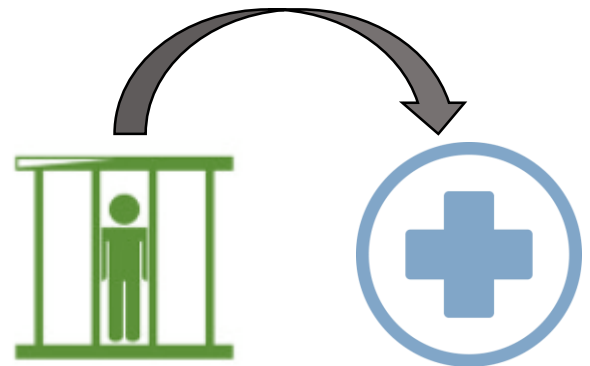
WHAT ARE THE TRENDS?

12 states and the District of Columbia have implemented **comprehensive** pre-trial justice and bail reforms.



Diversion programs

Diversion programs **effectively** place individuals into the care of services more equipped with the resources to **decrease** the likelihood of **rearrest**.



Counsel's **effective advocacy** succeeding in gaining pretrial release for two and half times as many low-risk defendants than those without lawyers.



Pretrial service programs aid in **increasing appearance** rates by monitoring released individuals and calling to remind them of court dates and assisting them in appearing.

WHAT ARE THE RESULTS?

Detention or Supervision?



\$1,588,208
ESTIMATED COST
AVOIDANCE
IN ALLEGHENY COUNTY 2014



Pennsylvania Department of Corrections estimated annual savings of **\$45 million** by decreasing the 1-year recidivism rates by 10%.

WASHINGTON D.C

90% OF RELEASED
DEFENDANTS
REMAIN ARREST-FREE
APPEAR AT ALL COURT DATES



% of released inmates
re-incarcerated (3-years)

73%

Did NOT
participate in
diversion or
treatment.

27%

Completed
treatment

Kentucky



In the first **6 months**
Kentucky saw a 15%
decrease in crime.

\$102.9
MILLION SAVED
IN INCARCERATION COSTS



Seeing the beneficial results of these programs,
Congress introduced legislation in Feb 2016 that would
cut funding to states who continue to hold individuals
simply because they cannot afford their bail.