

PERFORMANCE AUDIT



Office of the
Washington
State Auditor
Pat McCarthy

Reforming Bail Practices in Washington

February 28, 2019

Report Number: 1023411

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Executive Summary

Background (page 5)

The presumption of innocence is a basic tenet of the criminal justice system. State and federal law say that every person charged with a crime should be presumed innocent until proven guilty. Yet in practice, thousands of individuals who have not been convicted are held in jail for days, months or even years, through the conclusion of their trials. The Washington Constitution and court rules presume most defendants should be released before their trials. Judges can impose bail to create a financial incentive for defendants to return to court after release. However, defendants will remain in jail if they cannot afford bail.

To address this issue, many jurisdictions are using pretrial services as an alternative to bail. Pretrial services allow jurisdictions to release defendants from jail in place of bail while offering supports, like court date reminders or periodic check-ins, to ensure defendants come to court. This audit examines the potential impact of expanding pretrial services in Washington.

In 2017, the Washington State Superior Court Judges' Association, the District and Municipal Court Judges' Association, and the Supreme Court's Minority and Justice Commission formed the Pretrial Reform Task Force to gather data and formulate recommendations concerning the expansion of pretrial services statewide. We conducted the audit independently of the task force, but worked with it to gain an understanding of bail and pretrial practices and to ensure efforts were not duplicated.

Can Washington use pretrial services, as an alternative to bail, to better serve qualified defendants while maintaining public safety and controlling costs to taxpayers?

On any given day, about 4,700 people held in Washington jails are candidates for pretrial services. Releasing these defendants and providing them pretrial services can save taxpayers between \$6 million and \$12 million a year. Analyses of two Washington counties also suggest pretrial services can be effective and comparable to bail in maintaining public safety. Pretrial detention can have negative consequences for defendants, including an increased likelihood of reoffense and worse case outcomes. However, jurisdictions should also consider the additional risks to the public that may result from releasing more defendants from jail.

State Auditor's Conclusions

Judges have used traditional money bail for years as a way of creating financial incentives for defendants to appear in court for their trials. When defendants cannot afford to pay bail, they remain in jail until the trial. Keeping them in jail is costly to the taxpayers. Perhaps more importantly, extended jail time before trial can have significant consequences for defendants, as they become more likely to be convicted, more likely to receive a longer sentence, and less likely to gain and maintain future employment.

As this audit demonstrates, pretrial services offer an effective alternative to money bail. Releasing defendants through pretrial services is less costly than holding them in jail before trial. The experience in Washington and other states suggests the likelihood that a defendant will fail to appear for their trial or that they will reoffend pending trial is comparable, if not better, when pretrial services are used instead of bail.

The purpose of this audit was to give stakeholders in the criminal justice system additional information about pretrial services and explore the potential for expanding their use. This audit provides information that can help local jurisdictions assess the risks and opportunities that come with pretrial services. Although we see tremendous opportunity, pretrial release and the conditions imposed on defendants are ultimately a judicial matter. We did not make any specific recommendations to judges regarding how they should use pretrial services. However, the Pretrial Reform Task Force established by the Washington State Superior Court Judges' Association, the District and Municipal Court Judges' Association, and the Supreme Court's Minority and Justice Commission made several recommendations in its [February 2019 report](#) reviewing pretrial services.

Recommendations

The audit does not make any recommendations.

Next steps

Our performance audits of state programs and services are reviewed by the Joint Legislative Audit and Review Committee (JLARC) and/or by other legislative committees whose members wish to consider findings and recommendations on specific topics. Representatives of the Office of the State Auditor will review this audit with JLARC's Initiative 900 Subcommittee in Olympia. The public will have the opportunity to comment at this hearing. Please check the JLARC website for the exact date, time, and location (www.leg.wa.gov/JLARC). The Office conducts periodic follow-up evaluations to assess the status of recommendations and may conduct follow-up audits at its discretion. See **Appendix A**, which addresses the I-900 areas covered in the audit. **Appendix B** contains information about our methodology.

Background

The presumption of innocence is a basic tenet of the American criminal justice system. State and federal law say that every person charged with a crime should be presumed innocent until proven guilty. In practice, thousands of people who have not yet been convicted are held in jail for days, months or even years awaiting trial. While local jails are intended to house defendants considered too dangerous to release, those determined to be flight risks, and those serving a short sentence, a national study found that 75 percent of people in jail are detained for non-violent crimes and 62 percent have yet to be convicted.

The Washington Constitution and court rules presume most defendants should be released before their trials

The Constitution grants the right to release to anyone charged with a crime with only two exceptions: defendants charged with capital offenses where there is substantial evidence of guilt, and defendants charged with crimes punishable by life in prison where they have shown a high propensity for violence that puts others at risk. In addition, court rules presume the release of defendants in noncapital cases without any conditions. However, in cases where defendants are deemed likely to commit a violent crime, intimidate witnesses or otherwise obstruct justice, judges may impose conditions on their release to ensure the safety of the community, such as compliance with a curfew, restraining orders or house arrest. If the court determines that the person is likely to miss hearing dates, the judge may impose conditions to reasonably ensure the defendant appears. The conditions must be the “least restrictive” to ensure the defendant’s compliance. For example, for defendants who are more likely to miss court hearings, judges may require they wear electronic monitoring devices or return to custody during specific hours. In other cases, judges may only choose to restrict a defendant’s out-of-state travel.

Judges can impose bail to create a financial incentive for defendants to return to court after release

Another tool available to judges to ensure defendants return to court is the financial incentive of bail, meaning a defendant must pay money to be released from jail while going through their trial. If the defendant appears at all of their court dates and follow other conditions of release, their bail money is returned. If they miss a court date or violate release conditions, that money is forfeit.

Court rules require judges to consider the defendant's financial condition when setting bail

The process and timing of setting bail may vary slightly in different jurisdictions, but courts in Washington follow broadly similar processes. Following arrest, a person is booked into jail; a judge then has 48 hours to decide whether there is enough evidence to charge them with a crime. Bail is typically set at that time, but it may also be set up to 14 days later when formal charges are read to the defendant.

Judges often have large caseloads, with determinations that must be made within a relatively short period. The judge may only have three to five minutes to determine whether there is sufficient evidence to charge someone with a crime and set conditions for release. If the judge contemplates imposing bail, court rules direct the judge to take the defendant's financial resources into account. However, judges may lack complete information about the defendant and so may not be able to fully consider their financial situation when making bail determinations.

Defendants will remain in jail if they cannot afford bail

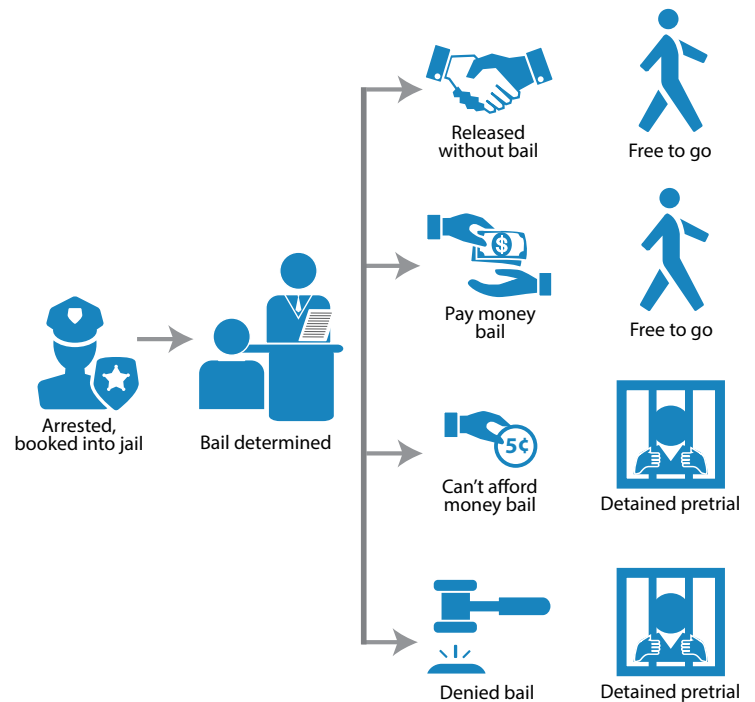
Regardless of the crimes defendants are charged with committing, current bail practices result in those who cannot afford bail remaining in jail until their trials are completed, while defendants who qualify and can afford bail are released. As a consequence, cities and counties hold a disproportionate number of low-income defendants awaiting trial. Some of these defendants may be in jail for minor crimes, such as first-time drug offenses or misdemeanors, and will remain there through the extent of the trial. In some cases, defendants may plead guilty to crimes in order to secure release, even if they are innocent, rather than wait in jail for a court date.

"Bail" as used in this report

In general, bail simply means the temporary release of an accused person awaiting trial. In the United States, judges often impose "money bail," or the requirement to pay money in order to secure release from jail before trial. In this report, we use the term bail to refer to money bail.

In addition, defendants often pay bail through a bail bondsman. This means they pay a bail bondsman a fee that is typically 10 percent to 15 percent of the total bail amount, and the bondsman pays the full amount of bail to the court. If the person appears for all court dates, the bail money is refunded to the bondsman; the defendant, however, is not refunded the fee portion, even if they are found innocent. The loss of fee money can be a significant financial burden for low-income defendants. However, some low-income defendants cannot afford even this small portion of bail and cannot employ the services of a bail bondsman. The various situations are illustrated in Exhibit 1.

Exhibit 1 – Some defendants are held in jail because they cannot afford bail



Source: Auditor created.

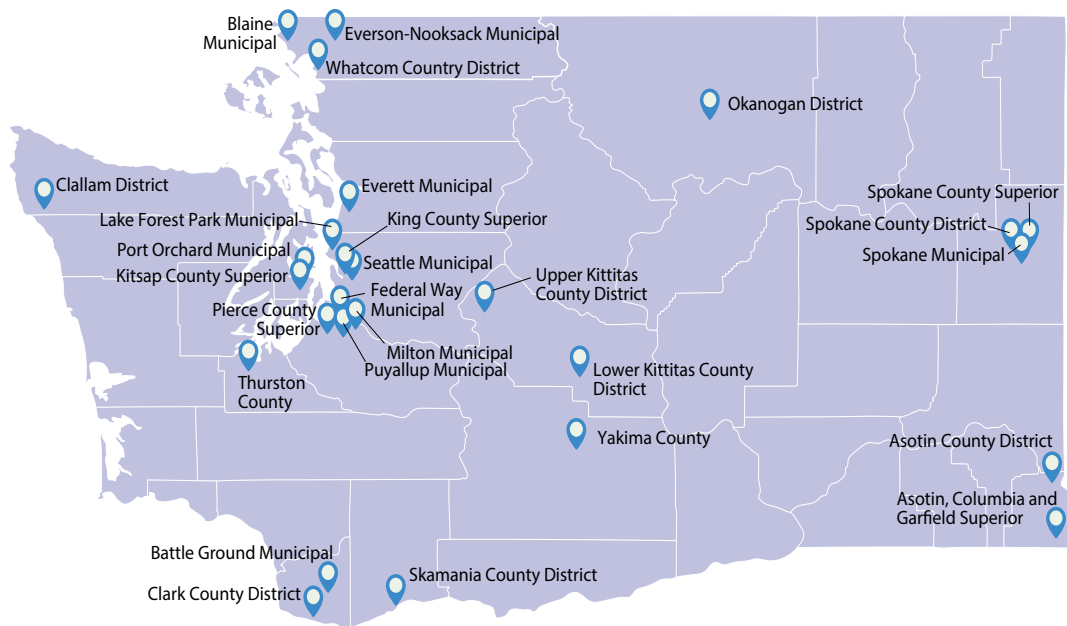
Jurisdictions across the country use pretrial services as an alternative to bail

Pretrial services programs offer judges and defendants alternatives to bail while providing additional supports to help ensure defendants appear at trial and do not reoffend while released. Defendants are released based on their flight and reoffense risk rather than their ability to pay bail. The services offered to a defendant vary depending on the severity of the crime or risk to the community, and can range from court appearance reminders to electronic monitoring. Some jurisdictions also use risk assessment tools or interviews to measure the likelihood a defendant will appear in court or reoffend. These assessments gather important details about defendants, allowing judges to consider relevant factors when determining conditions of release.

Several jurisdictions have successfully implemented pretrial programs and are consequently holding fewer pretrial defendants in jail. For example, New Jersey, which implemented pretrial services statewide, reduced its jail population by 20 percent after one year. In Kentucky, more than 90 percent of defendants remained arrest-free and attended all court hearings, even as its pretrial release rate increased from 50 percent to 66 percent, two years after implementing its pretrial program. In Washington, D.C., 80 percent of defendants are not required to pay bail, and almost 90 percent of released defendants remain arrest-free and appear at all scheduled court hearings.

As shown in the map in **Exhibit 2**, 28 jurisdictions in Washington have also implemented pretrial services. The services offered vary by jurisdiction, and include elements listed in **Exhibit 3**. In general, jurisdictions in Washington are reporting that their pretrial programs are successful. For example, Yakima County uses a risk assessment tool to help decide whether a defendant should be released pretrial, and county officials said around 75 percent of all released defendants appear for scheduled court appearances.

Exhibit 2 – 28 jurisdictions across Washington make use of pretrial services programs



Source: Auditor created using information from a survey by the Pretrial Reform Task Force.

Exhibit 3 – Pretrial services offered by Washington jurisdictions:

- Mental health treatment and evaluations
- Service or treatment referrals
- Court date reminders
- Electronic monitoring
- Home visits by law enforcement or pretrial staff
- Regular office check-ins with pretrial staff

This audit examines the possible effects of expanding pretrial services in Washington

To determine whether pretrial services could be used more extensively in Washington to reduce jail populations and save on costs while maintaining public safety, we determined the proportion of the jail population awaiting trial, potential cost savings associated with increased use of pretrial services, and the effectiveness of pretrial services as alternatives to bail. Specifically, this audit answers the following question:

Can Washington use pretrial services, as an alternative to bail, to better serve qualified defendants while maintaining public safety and controlling costs?

Audit Results

Can Washington use pretrial services, as an alternative to bail, to better serve qualified defendants while maintaining public safety and controlling costs?

Answer in brief

On any given day, about 4,700 people held in Washington jails are candidates for pretrial services. Releasing these defendants and providing them pretrial services can save taxpayers between \$6 million and \$12 million a year. Analyses of two Washington counties also suggest pretrial services can be effective and comparable to bail in maintaining public safety. Pretrial detention can have negative consequences for defendants, including an increased likelihood of reoffense and worse case outcomes. However, jurisdictions should also consider the additional risks to the public that may result from releasing more defendants from jail.

On any given day, about 4,700 people held in Washington jails are candidates for pretrial services

On a typical day, there are about 14,500 people in jail statewide. About 8,000 are serving sentences or are being held on probation or parole violations. The other 6,500 people have not been convicted of a crime and are in jail awaiting trial. Almost three-quarters of those awaiting trial were charged with non-violent crimes while half were charged with only misdemeanors.

However, not all of the defendants awaiting trial would be likely candidates for pretrial services. To identify which people could be released through pretrial services, we used the Public Safety Assessment tool developed by the Laura and John Arnold Foundation to evaluate each person's risk of reoffending, committing a violent crime and failing to appear in court. We removed those assessed as likely to commit a violent crime and those who could be denied bail as set out in the state constitution. We also eliminated those people held in jail for less than three days under the assumption they were either released without bail, had been able to afford

bail, or were not charged with a crime. We categorized defendants into two groups based on their calculated risk levels. The lower-risk group consisted of defendants with a low or medium risk of reoffending and failing to appear in court. The higher-risk group consisted of those with a high risk of reoffending or failing to appear in court. See Appendix B for more information on the Public Safety Assessment and our methodology.

Based on this analysis, we identified about 4,700 defendants awaiting trial (72 percent) who are candidates for pretrial services, shown in **Exhibit 4**. About 2,300 defendants had a lower risk of reoffending and failing to appear in court; the other 2,400 were higher-risk defendants.

Exhibit 4 – About 72 percent of those awaiting trial in jail on a typical day could be released through pretrial services



Source: Auditor created through data analysis.

Releasing more defendants and providing them pretrial services could save taxpayers between \$6 million and \$12 million a year

Releasing defendants and supporting them through pretrial services rather than holding them in jail could save taxpayers money. Based on cost data that local governments submit to our Office, the average cost of operating a jail in Washington is about \$100 per inmate, per day. As described in **Exhibit 5**, those costs fall into three categories: variable costs, step-fixed costs and fixed costs. Unless a large number of inmates are released, the only costs that will be affected are the variable costs which are tied to each individual inmate. Using a 2008 figure for variable costs from the Washington State Institute for Public Policy and adjusting it for inflation, we estimate the average variable cost for Washington jails is \$10.92 per inmate, per day.

Exhibit 5 – Examples of variable, step-fixed and fixed costs

- Variable costs, like food, laundry and medical care, change with each additional person jailed or released.
- Step-fixed costs, like staff salaries and benefits, may change if the jail population is reduced enough to change staffing levels.
- Fixed costs, like facilities and utilities, are not affected even if the jail population is reduced.

On average, pretrial services are less expensive per person, per day than holding defendants in jail. The costs of providing pretrial services for five Washington counties we examined ranges from \$1.80 to \$7.26 per person, per day, depending on the number of participants and services offered. All programs included risk assessments for each participant and check-ins via phone or in person, while the

most expensive program included additional services like bus tickets for defendants to get to court and electronic home monitoring. The average daily cost for pretrial services in these five counties is \$3.59 per person per day. This is about \$7.33 per person per day less than holding a defendant in jail. However, pretrial programs may require additional start-up costs that we did not consider in this analysis.

We projected the average per-inmate savings through pretrial services to the total population of defendants who are candidates for pretrial release. If jurisdictions across the state released all 2,300 lower-risk defendants through pretrial services, savings would total over \$6.1 million annually. If they also released the 2,400 higher-risk defendants through pretrial services, taxpayers would save an additional \$6.4 million annually.

More savings are possible for jurisdictions that could close a wing or that pay others to house inmates

Some jurisdictions might be able to realize more substantial savings by reducing their average daily populations enough to reduce corrections staff. Some jails are divided into wings that are overseen separately by corrections officers. If a jail released enough inmates to close a wing, it could save more money through staff or shift reductions. We found that 11 jurisdictions in Washington might be able to release enough lower-risk defendants to close a wing.

Step-fixed costs (see Exhibit 5) are reduced only after a threshold number of people have been released. The Washington State Institute for Public Policy calculated these step-fixed cost savings, and after adjusting for inflation, we found jurisdictions could save an average of \$68 per defendant, per day by closing a wing. However, jails must consider many variables – such as building design, inmate classification levels and the requirement to separate genders – when assessing the feasibility of closing a wing. We did not calculate total potential cost savings for these jurisdictions, as these considerations were beyond the scope of this audit.

Another consideration is costs borne by jurisdictions that pay other jails to house inmates because they do not operate their own jails or their jails are overcrowded. For example, Yakima County charges other jurisdictions \$85 per inmate, per day. Governments who pay other governments could reduce those costs by reducing the amount of time their defendants were in jail before trial.

Analysis of two Washington counties suggest pretrial services can be comparable to bail in maintaining public safety

Although releasing additional defendants through pretrial services could save taxpayers money, we also wanted to consider how this might affect public safety.

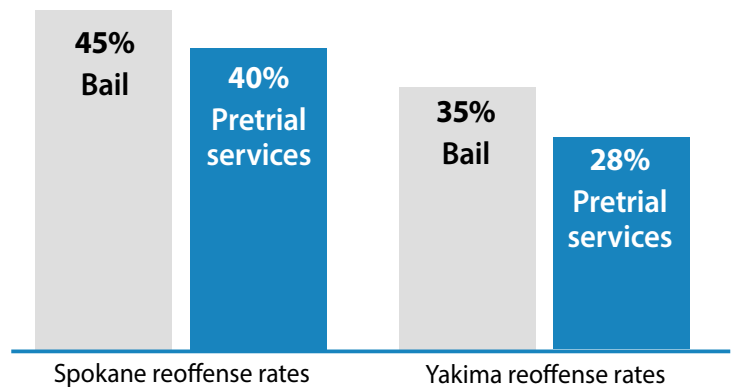
We chose to look at two commonly used outcomes: reoffense rates and failure-to-appear (FTA) rates. Reoffense rates measure how often defendants who are released awaiting trial commit new crimes. FTA rates measure how often these defendants miss at least one court date.

Using court and criminal history records from Spokane and Yakima counties, we compared actual reoffense rates and FTA rates of defendants released through pretrial services to those released on bail before the counties implemented pretrial programs. We chose these counties because both recently initiated programs that offer pretrial services instead of bail, and both had comparable data needed for this analysis. Overall, the audit’s analysis showed reoffense rates and FTA rates for defendants released on pretrial services are lower than rates for defendants released on bail.

The reoffense rates in Spokane and Yakima counties were slightly lower for defendants released through pretrial services compared to those released on bail. This is shown in Exhibit 6. However, the difference in rates within the counties were not substantial, and the difference in Spokane was not statistically significant. A study by the Pretrial Justice Institute, funded by the U.S. Department of Justice, also evaluated Yakima’s pretrial program. After Yakima began using pretrial services, the county released about 38 percent more people than it did when using bail, while the reoffense rate increased just two percentage points.

As shown in Exhibit 7, defendants released through pretrial services in Spokane were much more likely to show up for their court hearings than those released on bail. The FTA rates, respectively, were 38 percent compared to 53 percent, which was a statistically significant difference. Although we could not calculate the FTA rate for Yakima’s entire population of defendants released on bail and pretrial services due to inconsistent and incomplete data, the Pretrial Justice Institute study did compare Yakima’s FTA rates before and after pretrial services. That study found they were similar, with FTA rates of 27 percent before implementation of the program and 28 percent after. While we did not fully explore the reason for the differences in FTA rates and reoffense rates for people released on bail and pretrial services, we found that both counties continued to use bail for defendants who they deemed ineligible for pretrial services. Therefore, some of

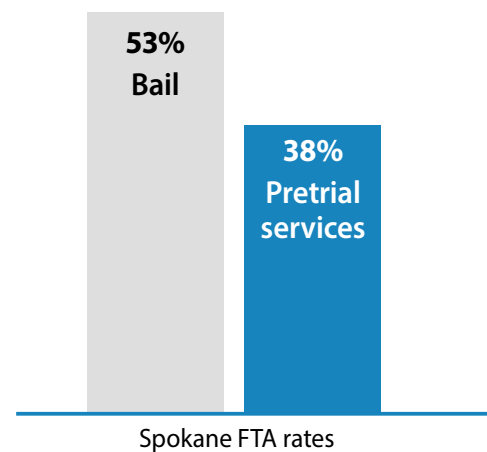
Exhibit 6 – Reoffense rates for bail and pretrial services defendants in Spokane¹ and Yakima² counties



Notes: 1. Spokane defendants released on bail in 2011, defendants released through pretrial services in 2016. 2. Yakima defendants released on bail in 2014, defendants released through pretrial services in 2016.

Source: Auditor created through data analysis.

Exhibit 7 – FTA rates for bail and pretrial services defendants in Spokane* county



*Note: Spokane defendants released on bail in 2011, defendants released through pretrial services in 2016.

Source: Auditor created through data analysis.

these defendants likely would be considered high risk and were included in the bail population analyzed, but not the pretrial population. The presence of these higher-risk defendants in the analysis could partially explain that group's higher FTA and reoffense rates.

Bail may not be necessary to ensure defendants appear in court

The audit's analysis suggests that bail may not be essential to ensure defendants appear in court or remain arrest-free. Other studies support this analysis, noting that court date reminders and pretrial supervision, two common components of pretrial services, were effective at reducing FTA rates and felony reoffense rates. Bail use assumes that the potential financial loss helps compel defendants to come to court and avoid arrest. However, there may be many reasons why defendants do not appear in court or commit crimes. Some may be unintentional and not overcome by financial incentives. Some defendants may simply forget their court date. Others may suffer from mental illness or addiction. In these cases, the financial incentive of bail may be ineffective and unnecessary.

Pretrial detention can have negative consequences for defendants, although there may be some risks to the public in releasing more defendants from jail

Several studies show people who stay in jail before trial often have worse outcomes in their legal cases, even after accounting for factors like criminal history. Multiple studies in different jurisdictions show remaining in jail before trial increases the probability of conviction, guilty pleas and jail sentences, including longer sentences. One study found that pretrial detention decreases the likelihood of future employment. Another study found that people detained pretrial for misdemeanor offenses are more likely to commit future crimes. Lastly, a nationwide study found that people with mental health conditions rarely receive treatment in jails, which could worsen their conditions. See [Appendix C](#) for a list of these studies.

Testimonials from jurisdictions suggest pretrial services can help minimize pretrial detention

Officials from jurisdictions that offer pretrial services believe they are effective. Yakima County Prosecutor Joe Brusica said, "money bail clearly does not work," praising the early success of the county's pretrial program in a 2016 speech to the Washington State Supreme Court. Superior Court Judge Maryann Moreno in Spokane said the county's Office of Pretrial Services has helped fulfill county

goals of reducing both the jail population and the racial and ethnic disparities in case outcomes. Finally, Judge Elizabeth Martin, the Presiding Judge at Pierce County Superior Court, told us that the county’s pretrial program “has been a significant positive development for indigent defendants... as an alternative to a money bail system.”

However, jurisdictions must consider other risks and benefits when using pretrial services

Pretrial services are only available to defendants who have the right to bail. Under current bail practices, these defendants are only released if they can afford it. Pretrial services programs release more defendants, regardless of their ability to pay bail. However, this may also lead to a greater number of defendants who may commit another crime, harm other people and fail to appear at a court hearing. When defendants miss court hearings or avoid prosecution altogether, the criminal justice system incurs additional costs. One study reported that each missed court appearance results in about \$50 to \$80 in variable costs.

Despite an increase in the number of FTAs, jurisdictions would likely still see savings. Using the calculated net savings of releasing defendants through pretrial services and the average FTA rate for Spokane, the audit determined that most jurisdictions would still save money as long as the average length of stay for a defendant exceeds four days. This is significantly less than the statewide median of 26 days for those defendants who are not released pretrial.

State Auditor's Conclusions

Judges have used traditional money bail for years as a way of creating financial incentives for defendants to appear in court for their trials. When defendants cannot afford to pay bail, they remain in jail until the trial. Keeping them in jail is costly to the taxpayers. Perhaps more importantly, extended jail time before trial can have significant consequences for defendants, as they become more likely to be convicted, more likely to receive a longer sentence, and less likely to gain and maintain future employment.

As this audit demonstrates, pretrial services offer an effective alternative to money bail. Releasing defendants through pretrial services is less costly than holding them in jail before trial. The experience in Washington and other states suggests the likelihood that a defendant will fail to appear for their trial or that they will reoffend pending trial is comparable, if not better, when pretrial services are used instead of bail.

The purpose of this audit was to give stakeholders in the criminal justice system additional information about pretrial services and explore the potential for expanding their use. This audit provides information that can help local jurisdictions assess the risks and opportunities that come with pretrial services. Although we see tremendous opportunity, pretrial release and the conditions imposed on defendants are ultimately a judicial matter. We did not make any specific recommendations to judges regarding how they should use pretrial services. However, the Pretrial Reform Task Force established by the Washington State Superior Court Judges' Association, the District and Municipal Court Judges' Association, and the Supreme Court's Minority and Justice Commission made several recommendations in its [February 2019 report](#) reviewing pretrial services.

Recommendations

This audit makes no recommendations.

Agency Response

February 25, 2019

Honorable Pat McCarthy
Washington State Auditor
P.O. Box 40021
Olympia, WA 98504-0021

Dear Auditor McCarthy:

The Executive Committee of Washington's Pretrial Reform Task Force appreciates the opportunity to review and respond to the State Auditor's Office (SAO) performance audit report: "Reforming Bail Practices in Washington." The results of your audit were particularly insightful and helpful.

Your audit used the Public Safety Assessment tool developed by the Laura and John Arnold Foundation to analyze whether any of the 6,500 or so people who have not been convicted of a crime and are in detention awaiting trial could be released through pretrial services. Based on your analysis, you identified 4,700 defendants awaiting trial – which represents 72% of those so held – who would be candidates for pretrial services and release pending trial.

Your report also references the work that the Pretrial Reform Task Force has been doing over the last twenty months, which culminated in the publication of its own report on February 21, 2019. We found that pretrial services, such as court date reminder systems, and the imposition of conditions may be effective in ensuring accused persons return to court for their hearings and meetings. We concluded that data also needs to be more routinely and uniformly collected in Washington courts to ensure a better understanding of pretrial practices and the effectiveness of reform efforts. Finally, we provided a series of considerations to measure performance and ensure quality for those courts who decide to use pretrial risk assessment tools.

The additional information your audit sets forth regarding pretrial services and the potential for expanding their use is extremely helpful as we continue to assess the risks and opportunities that come with pretrial services. Thank you very much for your report.

Sincerely,

Justice Mary I. Yu
Washington State Supreme Court
Minority and Justice Commission

Judge Sean P. O'Donnell
King County Superior Court
Superior Court Judges' Assoc.

Judge Mary Logan
Spokane Municipal Court
District and Municipal
Court Judges' Assoc.

Appendix A: Initiative 900 and Auditing Standards

Initiative 900 requirements

Initiative 900, approved by Washington voters in 2005 and enacted into state law in 2006, authorized the State Auditor’s Office to conduct independent, comprehensive performance audits of state and local governments.

Specifically, the law directs the Auditor’s Office to “review and analyze the economy, efficiency, and effectiveness of the policies, management, fiscal affairs, and operations of state and local governments, agencies, programs, and accounts.” Performance audits are to be conducted according to U.S. Government Accountability Office government auditing standards.

In addition, the law identifies nine elements that are to be considered within the scope of each performance audit. The State Auditor’s Office evaluates the relevance of all nine elements to each audit. The table below indicates which elements are addressed in the audit. Specific issues are discussed in the Results and Recommendations sections of this report.

I-900 element	Addressed in the audit
1. Identify cost savings	Yes. The audit identified cost savings associated with releasing more defendants pretrial and providing them pretrial services.
2. Identify services that can be reduced or eliminated	Yes. The audit identified pretrial services as a potential alternative to bail.
3. Identify programs or services that can be transferred to the private sector	No. The audit reviewed judicial decisions that cannot be made by the private sector.
4. Analyze gaps or overlaps in programs or services and provide recommendations to correct them	No. Although the audit reviewed bail practices and pretrial services, and found they may be similarly effective at providing the results, we did not make recommendations regarding either.
5. Assess feasibility of pooling information technology systems within the department	No. The audit focused on bail practices and pretrial services. It did not review the feasibility of pooling IT systems.
6. Analyze departmental roles and functions, and provide recommendations to change or eliminate them	No. Although the audit analyzed the function of bail and pretrial services, it does not make recommendations to change or eliminate either.

I-900 element**Addressed in the audit**

7. Provide recommendations for statutory or regulatory changes that may be necessary for the department to properly carry out its functions	No. The audit did not make recommendations requiring statutory action. Pretrial services can be implemented in the existing regulatory structure.
8. Analyze departmental performance data, performance measures and self-assessment systems	Yes. The audit analyzed the efficacy of bail and pretrial services in preventing reoffenses and failures to appear in court.
9. Identify relevant best practices	Yes. The audit identified pretrial services as a leading practice and examined the possibility of their expansion.

Compliance with generally accepted government auditing standards

We conducted this performance audit under the authority of state law (RCW 43.09.470), approved as Initiative 900 by Washington voters in 2005, and in accordance with generally accepted government auditing standards as published in Government Auditing Standards (December 2011 revision) issued by the U.S. Government Accountability Office. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The mission of the Office of the Washington State Auditor

To provide citizens with independent and transparent examinations of how state and local governments use public funds, and develop strategies that make government more efficient and effective.

The results of our work are widely distributed through a variety of reports, which are available on our website and through our free, electronic [subscription service](#).

We take our role as partners in accountability seriously. We provide training and technical assistance to governments and have an extensive quality assurance program.

For more information about the State Auditor's Office, visit www.sao.wa.gov.

Appendix B: Scope, Objectives and Methodology

Scope

Auditors collected and reviewed statewide jail, court and criminal history data. We collected jail data from 12 counties directly. For the remaining jails statewide, we gathered jail data from the Washington Association of Sheriffs and Police Chiefs. We interviewed the Office of Financial Management to understand limitations in the jail data. We also gathered statewide data on court hearings from the Administrative Office of the Courts and on criminal history from the Washington State Patrol, and spoke to staff at these agencies about the data. We collected and reviewed data for inmates held in jail during 2016, to increase the likelihood that cases had concluded and we could trace the cases from arrest to disposition.

We also conducted interviews with six county pretrial services programs (Clark, King, Pierce, Spokane, Thurston and Yakima counties) and reviewed 2017 or 2018 program costs for five of them (all but King).

In 2017, the Washington State Superior Court Judges' Association, the District and Municipal Court Judges' Association, and the Supreme Court's Minority and Justice Commission formed the Pretrial Reform Task Force to gather data and formulate recommendations concerning the expansion of pretrial services statewide. The task force includes judges, prosecutors, public defenders, bail business owners, court administrators and researchers. We conducted the audit independently of the task force, but worked with them to gain an understanding of bail and pretrial practices and to ensure efforts were not duplicated.

Objectives

The purpose of this audit was to determine whether pretrial services could be used in Washington to reduce jail populations and save on costs while maintaining public safety. Auditors sought to determine the proportion of the jail population awaiting trial, cost savings associated with increased use of pretrial services and the effectiveness of pretrial services as alternatives to bail. This audit answers the following question:

Can Washington use pretrial services, as an alternative to bail, to better serve qualified defendants while maintaining public safety and controlling costs?

Methodology

Determining the number of defendants awaiting trial in jail

We analyzed jail population data from county jails and the Washington Association of Sheriffs and Police Chiefs for calendar year 2016. Auditors identified all defendants who did not meet any of the following criteria:

- Charged with a Class A felony
- Serving a jail sentence
- In jail for probation or parole violations

They were excluded from consideration because court rules and the state constitution presume the release of all defendants except those charged with crimes that could result in a life sentence or the death penalty, and given that those who have already been sentenced can be detained by state law on probation or parole violations.

We calculated the proportion of defendants awaiting trial (pretrial defendants) compared to the total population of jail inmates for an average day in 2016 by reviewing the jail populations for 25 random days during the calendar year. We considered all inmates who had jail booking dates before all of their associated court disposition dates as pretrial defendants. The proportion of pretrial defendants we found (45 percent) was lower than the proportion reported by individual jails and national organizations, such as the King County Department of Adult and Juvenile Detention (74 percent in 2016) and the Bureau of Justice Statistics (national average of 65 percent in 2016). We calculated the length of time defendants were held in jail pretrial, and reviewed the percentage of defendants booked on misdemeanor offenses versus felony offenses, as well as non-violent offenses versus violent offenses.

We used a risk assessment tool, the Public Safety Assessment, to determine which of these defendants would be candidates for release on pretrial services. The Public Safety Assessment, developed by the Laura and John Arnold Foundation, determines each pretrial defendant's risk of reoffense, failure to appear in court and risk of committing a violent crime. This risk assessment tool is currently used in many jurisdictions across the country, including Yakima County, Washington. As shown in **Figure 1** on page 25, it uses the defendant's age, current charges, criminal history and past court appearance behavior to predict their likelihood of committing a crime (NCA) or violent crime (NVCA) and of failing to appear (FTA) in court upon release. The tool assigns a risk score of one through six.

We correlated this score to levels of low, medium or high risk, for a defendant's likelihood of reoffending or failing to appear in court, shown in **Figure 2**, also on page 25. The tool also assigns a flag to indicate a defendant's risk of committing a violent crime. We reviewed criminal history and court records to find the defendant's age, current charges, prior convictions and missed court hearings to assess each defendant's risk levels using the tool.

We categorized defendants into two groups based on their calculated risk levels. The lower-risk group consisted of defendants with a low or medium risk of reoffending and failing to appear in court. The higher-risk group consisted of those with a high risk of reoffending or failing to appear in court.

We removed those assessed as likely to commit a violent crime and those who could be denied bail according to the state constitution. We also excluded those held in jail for less than three days because we assumed they could afford bail, were not charged with a crime, or were released without bail. We then determined the average number of pretrial defendants who were lower and higher risks on any given day.

Figure 1 – How risk scores are converted to the six-point scales and New Violent Criminal Activity (NVCA) flag

Risk Factor	Weights
Failure to Appear (maximum total weight = 7 points)	
Pending charge at the time of the offense	No = 0; Yes = 1
Prior conviction	No = 0; Yes = 1
Prior failure to appear pretrial in past 2 years	0 = 0; 1 = 2; 2 or more = 4
Prior failure to appear pretrial older than 2 years	No = 0; Yes = 1
New Criminal Activity (maximum total weight = 13 points)	
Age at current arrest	23 or older = 0; 22 or younger = 2
Pending charge at the time of the offense	No = 0; Yes = 3
Prior misdemeanor conviction	No = 0; Yes = 1
Prior felony conviction	No = 0; Yes = 1
Prior violent conviction	0 = 0; 1 or 2 = 1; 3 or more = 2
Prior failure to appear pretrial in past 2 years	0 = 0; 1 = 1; 2 or more = 2
Prior sentence to incarceration	No = 0; Yes = 2
New Violent Criminal Activity (maximum total weight = 7 points)	
Current violent offense	No = 0; Yes = 2
Current violent offense & 20 years old or younger	No = 0; Yes = 1
Pending charge at the time of the offense	No = 0; Yes = 1
Prior conviction	No = 0; Yes = 1
Prior violent conviction	0 = 0; 1 or 2 = 1; 3 or more = 2

Source: Laura and John Arnold Foundation.

Figure 2 – How we categorized defendants' risk levels using the Public Safety Assessment's risk scores

FTA Raw Score	FTA 6 Point Scale	FTA Risk Level	NCA Raw Score	NCA 6 Point Scale	NCA Risk Level	NVCA Raw Score	NVCA Flag
0	1	Low	0	1	Low	0	No
1	2	Low	1	2	Low	1	No
2	3	Medium	2	2	Low	2	No
3	4	Medium	3	3	Medium	3	No
4	4	Medium	4	3	Medium	4	Yes
5	5	High	5	4	Medium	5	Yes
6	5	High	6	4	Medium	6	Yes
7	6	High	7	5	High	7	Yes
			8	5	High		
			9 - 13	6	High		

Notes: FTA = Failure to appear. NCA = New criminal activity. NVCA = New violent criminal activity.

Source: Auditor created using information from the Laura and John Arnold Foundation.

Determining whether pretrial services can save the state money

We calculated the cost per participant, per day of pretrial services from five counties, and compared it to the cost of holding defendants in jail. We focused on variable jail costs that would change in direct proportion to the number of inmates in jail, such as food, clothing and medical supplies, since jail operating costs include many expenditures, like the cost of jail management, which would likely not change with relatively small variations in the average daily population of inmates. The Washington State Institute for Public Policy calculated the average cost for these variable jail expenditures at \$9.47 per inmate, per day using figures from 2008. We used the U.S. Department of Commerce's implicit price deflator to calculate the cost in 2018 dollars. We calculated potential daily cost savings if lower-risk and higher-risk defendants were released by comparing jail costs and pretrial costs per day and multiplying by the number of defendants who could be released through pretrial services each day.

In addition, medium to large jails are sometimes divided into separate wings, called pods, which contain a certain number of beds for inmates. A select number of staff operate these pods independently. If a jail reduced their daily jail population by a particular amount, it would be possible to close an entire pod, reducing the number of staff or shifts needed to operate the jail. We reviewed the potential for jurisdictions to close a pod by using jail population data and Public Safety Assessment scores to determine how many pretrial defendants they have in jail on the average day that could be released through pretrial services.

We determined if a jurisdiction would still save money even if releasing more defendants would lead to more defendants missing court hearings. We calculated the average cost saved by releasing each defendant and found the costs incurred for a missed court date. We found that jurisdictions would save money by releasing additional defendants as long as the average length of stay multiplied by the net savings per person, per day was greater than the cost per failure to appear multiplied by the failure to appear rate of released defendants.

Determining whether pretrial services are effective at maintaining public safety

We compared actual failure-to-appear (FTA) rates and reoffense rates for defendants released through pretrial services to similar defendants released on bail. For the comparison, we used pretrial populations from two counties, Spokane and Yakima. We compared FTA rates and reoffense rates for defendants released through pretrial services in 2016 to defendants released on bail before the counties had implemented their pretrial programs. We reviewed only Superior Court defendants in Spokane as the county's pretrial services program only monitored those defendants during our review period. For Yakima, we only calculated the reoffense rate due to inconsistencies in the methods the county used to identify failures to appear. We reviewed criminal history data from the State Patrol to see if the defendant was arrested after their release and before their trial concluded. We reviewed court data to see if it indicated that the defendant failed to appear at applicable court hearings.

Limitations of the data analyses

Some records in the jail data did not contain enough identifiers to match the data to State Patrol records. In addition, we were not able to obtain court records for every case associated with each defendant. This limited the population we were able to analyze and evaluate using the Public Safety Assessment.

In addition, we were only able to obtain the criminal history and court records of defendants for crimes committed in Washington State and relied on the accuracy and completeness of the state and local databases. Defendants may have been convicted of crimes in other parts of the country, which could increase their risk level as measured by the Public Safety Assessment. This likelihood may be more prevalent in border counties, such as Spokane, which was one of the counties used in our bail and pretrial comparison.

Appendix C: Bibliography

Studies on pretrial services programs outcomes

Associated Press. (2018, February 19). Bail Reform Keeping More Out of Jail – But NJ Needs the Cash. *New Jersey* 101.5. Retrieved from <http://nj1015.com/bail-reform-keeping-more-out-of-jail-but-nj-needs-the-cash/>.

Booker, C. M. Yakima County, Washington Pretrial Justice System Improvements: Pre- and Post-Implementation Analysis. Pretrial Justice Institute. 2017.

Clark, J., Schnacke, T., and Ferrere, S. Upgrading North Carolina's Bail System: A Balanced Approach to Pretrial Justice using Legal and Evidenced-Based Practices. Pretrial Justice Institute. 2016.

Elek, J., Sapia, S., and Keilitz, S. Use of Court Date Reminder Notices to Improve Court Appearance Rates. Pretrial Justice Center for Courts. 2017.

Lowenkamp, C. T. and VanNostrand, M. Exploring the Impact of Supervision on Pretrial Outcomes. Laura and John Arnold Foundation. 2013.

Soloman, F. F. and Ferri, R. F. Reducing Unnecessary Pretrial Detention: CJA's Manhattan Supervised Release Program. New York City Criminal Justice Agency. 2017.

Studies on pretrial detention outcomes

Dobbie, W., Goldin, J., and Yang, C. The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges. *American Economic Review*. 108(2): 201-240. 2018.

Heaton, P., Mayson, S., and Stevenson, M. The Downstream Consequences of Misdemeanor Pretrial Detention. *Stanford Law Review*. 711-794. 2017.

Leslie, E. and Pope, N. G. The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments. *The Journal of Law and Economics*. 529-557. 2017.

Sacks, M. and Ackerman, A. R. Bail and Sentencing: Does Pretrial Detention Lead to Harsher Punishment? *Criminal Justice Policy Review*. 2012.

Stevenson, M. Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes. George Mason University – Antonin Scalia Law School. 2018.

Torrey, E., Zdanowicz, M., Kannard, A., Lamb H. R., Eslinger, D., Bissotti, M., and Fuller, D. Treatment of Persons with Mental Illness in Prisons and Jails: A State Survey. Office of Justice Programs. 2014.

Williams, M. R. The Effect of Pretrial Detention on Imprisonment Decisions. *Criminal Justice Review*. 2003.

Studies on criminal justice costs

Aos, S. and Drake, E. WSIPP's Benefit Cost Tool for States: Examining Policy Options in Sentencing and Corrections. Washington State Institute for Public Policy. 2010.

Tomkins, A., Bornstein, B., Herian, M., Rosenbaum, D., and Neeley, E. An Experiment in the Law: Studying a Technique to Reduce Failure to Appear in Court. *Court Review: The Journal of the American Judges Association*. 395. 2012.



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