INNOCENT

Until Proven Guilty

If you are arrested, you face a decision:

JAIL OR BAIL?

Not everyone can afford to post money bail, and in Santa Clara County, the accused have another option: Pretrial Services.
Inside, find out how Pretrial Services is ensuring fair treatment for the accused.

Santa Clara County • Office of Pretrial Services • Assessment & Supervision for Public Safety
SCC OPS
Since 1974

A Special Advertising Supplement

Justice With Better Outcomes for All:

PRETRIAL SERVICES

Santa Clara County leads the nation in helping defendants before the trial starts

BY THEA MARIE ROOD

It is only recently the idea of over-incarceration has entered our national debate. But most people assume this refers only to incarceration *after* someone has been convicted of a crime. The reality, however, is many Americans are detained for weeks or months *before* their hearing, simply because they cannot afford to post money bail.

There is also research that shows people who are kept in jail before their hearing face significant risks going forward. They are more likely to be found guilty, their sentences are longer and more severe (prison as opposed to probation), and their chances of committing another crime (recidivism rate) increases.

"It's a perfect example of doing something harmful upstream that has effects downstream," says Michael R. Jones, director of implementation for the Pretrial Justice Institute, an advocacy group based in Maryland. "Most states have a 'speedy trial clause,' but that still can be 60 or 90 or 120 days."

In that time, of course, defendants can lose jobs, housing, benefits and their children. While incarcerated, the inability to arrive for work, pay the rent or parent a child can have a devastating and lasting impact on an individual's life.

This is where pretrial services can make a difference by ensuring the equitable treatment of the accused. Defendants are not released based on how much cash they can raise. Instead, they are assessed with a scientifically based statistical model — not unlike insurance actuarial tables — that can accurately predict if they are at low, medium or high risk for failing to appear in court or incurring new charges while awaiting trial. The County of Santa Clara Office of Pretrial Services was established in 1969, and currently it is the only county in the state with an independent department that provides an alternative to pretrial incarceration.

The results have been remarkable.

Around 93 percent of Santa Clara County defendants released through Pretrial Services appear in court and do not violate the conditions of their release or commit a new offense.

Defendants are also not costing counties (and taxpayers) money by taking up space in the overcrowded jail system. According to a 2012 audit, Pretrial Services saved Santa Clara County a whopping $33 million over just six months.

"We're definitely helping to manage the jail population by keeping approximately 1,400 defendants a month from being detained," says Santa Clara County Deputy County Executive Garry Herceg. "But it's also the right thing to do to ensure equitable treatment of the accused."

"[IT'S] THE RIGHT THING TO DO TO ENSURE THE EQUITABLE TREATMENT OF THE ACCUSED."

Garry Herceg
Deputy County Executive, Santa Clara County

Making Justice Work for All of Santa Clara County

A Letter from the Director of Office of Pretrial Services

Using an empirically researched risk assessment tool, the Office of Pretrial Services provides information to the Court on an individual's risk level. The Court then uses this information to make risk-based detention decisions to ensure court appearance and the preservation of public safety.

Pretrial supervision services allows the Court the option of release for low or medium risk individuals during the adjudication phase of their criminal case without the requirement of paying money bail. This grants the individuals the opportunity to continue employment to support their families without incurring the hardships that come with posting money bail.

Pretrial release also assists the county in the ongoing management of the jail population by reducing the jail population which saves the county money in the costs of detaining someone in jail.

I got into this business because I wanted to help people. For me, it was a great feeling when I was able to help someone succeed and assist them in getting their life back on track after an arrest.

Michaelene Reagan
Interim Director, County of Santa Clara Office of Pretrial Services

Giving Everyone the SAME SHOT

Pretrial Services reduces inequities faced by minorities

BY THEA MARIE ROOD

National statistics show African-American and Hispanic defendants are twice as likely to be held in jail awaiting trial than their Caucasian counterparts accused of similar crimes. And the same holds true in Santa Clara County.

"African-Americans make up 3 percent of the county's overall population, but 13 percent of the jail's," says Carl McGrew, Pretrial Services supervisor. "And rates for Latinos are similar."

Being jailed prior to trial can, in fact, spark a downward spiral that is impossible to recover from. Why?

"You always look better when you come in from the outside in a suit as opposed to appearing in jail clothes," says McGrew. "You're also better able to meet with your attorney and fight your case."

Defendants can also maintain their outside life — employment, school attendance, stable family life and housing — which is important for the judge to see. It is also important for them personally, and for their loved ones. "If I'd had to stay in jail, I'd have been there six or eight weeks," says Yesenia Martinez, 34, who successfully used Pretrial Services after an arrest in Santa Clara County. "I would have lost my job, my benefits, but most of all, I wouldn't have been able to see my daughter, who is 6. As it is, I travel to the Bay Area for work — she's in Sacramento — but to be separated that long, she'd have been devastated."

In fact, more than 5 million U.S. children have had at least one parent in jail at some point during their lives, according to the Annie E. Casey Foundation. And inequity exists here, too: African-American kids are seven times more likely than Caucasian children to have an incarcerated parent, and Latino kids are twice as likely. Some studies suggest having a parent incarcerated has lasting lifetime effects on children's mental and physical health, and they may be more likely to end up in the criminal justice system themselves.

Finally, statistics from the Laura and John Arnold Foundation show even short stints in jail significantly raise the risk of future involvement in crime: Low-risk defendants who were detained for as little as two or three days were 40 percent more likely to commit new crimes before trial, and 17 percent more likely to commit a new crime within two years.

"In the last five years, our out-of-custody population has increased 50 percent," says McGrew. "But our rate of new offenses stayed the same. You can't argue with that."

> "I WOULD HAVE LOST MY JOB, MY BENEFITS, BUT MOST OF ALL, I WOULDN'T HAVE BEEN ABLE TO SEE MY DAUGHTER."
>
> Yesenia Martinez
> *Pretrial Services client*

Why posting money bail doesn't work for everyone

A cash-bail system is simple, really: If you have the money, no matter what the charge, you're released. Even if you're a flight risk, even if you're a threat to public safety.

But what if you don't have the money, even if it's a minor charge? You either stay in jail until trial – which could be weeks, months or years – or you seek out a bail bondsman, who requires up to 10 percent of the total bond.

"And that 10 percent is non-refundable," says Carl McGrew, Pretrial Services supervisor for Santa Clara County. "So if your bond is $50,000, you think $5,000 gets you out of jail. But if the district attorney can't prove the case, and you're not going to trial – or you're found innocent – you don't get that money back." For low-income or hard-pressed defendants, this can be devastating financially.

Lastly, bail amounts are tied to the charge and don't take into account a person's economic status – $1,000 may as well be $1 million for some people. Some, including the Pretrial Justice Institute, believe bond schedules based on charge alone should be replaced by an individualized pretrial risk assessment like those done by County of Santa Clara Office of Pretrial Services.

> "WITHOUT THIS SERVICE ... I WOULD HAVE NOT GOTTEN THE HEALTH CARE I NEEDED."
>
> Arthur Aragon
> *Pretrial Services client*

Arthur Aragon says he would have lost his VA benefits and may have seen his health deteriorate if he was incarcerated while awaiting trial.
PHOTO BY JEN VAZQUEZ

Being Charged with a Crime Shouldn't RUIN YOUR LIFE

Pretrial Services reduces negative impacts to the accused

BY THEA MARIE ROOD

Arthur Aragon, 64, served our country with the U.S. Air Force in Vietnam from 1970 to 1974. During that time, he was exposed to Agent Orange, and has dealt with increasingly serious health issues — including lung cancer — in recent years. By all accounts, Aragon's life has not been easy.

However, he contends it would have been worse if the County of Santa Clara Office of Pretrial Services hadn't stepped in after his arrest. "I developed pneumonia before my trial," he says, "and they tell me I was 'dead' in the ambulance on the way to the hospital. If I'd been in custody, it's possible I would have died in my cell and wouldn't be here today."

It's also likely Aragon would have lost his VA benefits. "If you're receiving Medicaid, Social Security — any government assistance or benefits — they're suspended while you're in custody," says Santa Clara County Deputy County Executive Garry Herceg. "You have to reapply, and you know how difficult that is, to go to the government entity office and fill all the paperwork out all over again."

Incarceration can set off a chain reaction of negative outcomes, Herceg says. "Let's say you work at a fast food restaurant," he says, "and you don't show up for a shift because you're in jail. You're probably going to lose that job." It's also possible, Herceg says, you will lose your house or apartment, maybe your car, maybe your spouse or children. And remember: You have yet to be convicted of a crime.

Defendants on own recognizance (OR) or on a supervised release (SR) have specific conditions that must be met. These might include checking in with a Pretrial Services officer, who is able to work with individuals to overcome any barriers to compliance they may face, such as transportation. Aragon found such accommodations helpful given his medical condition.

"They helped me a lot," says Aragon, who was on a supervised release. "At first I reported every week in person, but [my Pretrial Services officer] saw it was hard for me in my wheelchair, so he worked it out for me to call every week instead. They also helped me meet with my public defender and work my case.

"Without this service, I would have certainly been detained, not gotten the health care I needed, and my mobility issues would have been a real problem."

Who supports pretrial services?

Who supports the idea of pretrial release for most defendants? The answer may surprise you, because unlike most issues in America, **it is not controversial.** First, of course, are the social justice groups, who argue detaining low- and medium-risk individuals – simply because they don't have the money to post bail – is inherently unfair. "The U.S. Constitution says the system is not allowed to treat you as though you're guilty," says Michael R. Jones, director of implementation for the Pretrial Justice Institute. "And it's not fair or equitable – who stays in jail. We can demonstrate that. The findings show there are a disproportionate amount of people of color."

But there is also the issue of cost, with national estimates running at $9 billion per year to incarcerate pretrial defendants, the vast majority of whom are low-risk and likely to remain law-abiding and return to court. "So [this issue] also attracts people who support smaller government and fiscal responsibility," says Jones.

HOW PRETRIAL SERVICES WORKS

1 Entry Into Criminal Justice System

At the time of arrest, a judge could approve a defendant to use Pretrial Services, which is free of charge and does not require you to post a money bond. This independent county office is not associated with the jail, the police, the sheriff's department or the court.

2 Your Risk Level Is Assessed

A Pretrial Services officer will interview you in the Jail Unit and record your personal details. You will not discuss the specifics of your alleged crime or sensitive information, including race or socio-economic status. The officer will review your arrest affidavit, criminal history and DMV records.

Pretrial Risk Assessment Instrument

Information is entered in a database and a risk level is assigned to you based on the probability of reoffending, not appearing for your court date or violating the terms of your release.

3 Judge Determines Eligibility

A pretrial report with your risk level is presented to a judge before your pretrial hearing. The judge determines which release program you are eligible for:

LOW RISK | MEDIUM RISK | HIGH RISK

4 Release

Own Recognizance (OR)
low risk

This means you are expected to remain a law-abiding citizen until your trial. You can return to regular life and will not be detained in jail, but you must remain in the state of California, unless you request permission to travel.

Supervised Release (SR)
medium-to-high risk

This means you will have to report at specific intervals, either in person or by phone, to your assigned Pretrial Services officer in the Supervision Unit. You also may not leave Santa Clara County (without judicial permission) and you cannot violate any state or federal laws (this does not include traffic violations). Other conditions may include:

- Drug testing (offered through Pretrial Services' Drug Unit)
- Permitting search and seizure
- Not operating a motor vehicle
- Not possessing weapons
- Residing at a specific address
- Only peaceful contact or no contact at all with the alleged victim
- Electronic monitoring

5 Trial

Assuming charges are not dropped, you report to trial. You have remained a productive member of society while awaiting trial for your crime. This helps you avoid:

- Financial hardship of having to post money bail
- Extended stay in jail
- Negative impacts to job, housing or family lifestyle

Keeping Justice BLIND

Assessment tool gives courts data on which to base decisions

BY THEA MARIE ROOD

We all know justice is blind — it should be administered objectively, regardless of an individual's socio-economic status or alleged crime. County of Santa Clara Office of Pretrial Services upholds this ideal by using statistical data when determining which individuals are eligible for release.

Since 2011, Pretrial Services has used empirically-researched risk assessment tools, and the results have been consistent and favorable. Most defendants — around 93 percent — appear in court, have no new charges and do not violate their release conditions, says Santa Clara County Deputy County Executive Garry Herceg.

> "WE HAVE A SYSTEM THAT CHALLENGES PEOPLE'S BIASES AND BRINGS SCIENCE TO WHAT CAN BE A SUBJECTIVE REVIEW."
>
> **Jessica Frischling**
> *Retired Santa Clara County Commissioner*

This successful tool was created after the county collected data for two years on a range of variables (see sidebar). Eventually, 16 factors were determined to be "the best predictors of risk in our county in our population," Herceg says. Individuals are assessed and placed into a low-, medium- or high-risk category.

Giving Pretrial Services officers, and the judges they present to, an objective profile of each defendant is an important change. "Before, it was much more intuitive — each individual judge made their own interpretation," says Jessica Frischling, retired commissioner of Santa Clara County. "That has now morphed into a data-based system that … gives judges a better level of understanding and a better comfort level." She also suggests it protects judges from their own prejudices — which they may or may not be aware of. "We have a system that challenges people's biases and brings science to what can be a subjective review."

This allows judges to focus on an individual's actual risk, without being clouded by the crime the individual is charged with. Herceg gives this example: "We had a murder defendant, but he was low-risk on our assessment scale, and was released with supervision. He never missed a court date, never did anything wrong. Then we had a gang member, who'd been in prison five times — his assessment came back high and we recommended he shouldn't be released. But he was charged with a low-level felony, so the judge released him with supervision. He missed his first court date, ran and was re-arrested on new charges."

Lastly, the risk assessment helps the county be fiscally responsible. For instance, a person who is charged with a drug offense for the first time doesn't need to check in or be drug tested the way someone with multiple drug offenses does.

"The idea is to focus your resources on defendants who need them," Frischling says.

How is risk assessed?

The Santa Clara County Pretrial Risk Assessment Instrument includes 16 variables that were found to be statistically significant for predicting pretrial behavior.

They include:

- Age
- Marital Status
- Living with Family
- College Degree
- Unemployment
- Mental Health Problems
- Prior Drug Treatment
- Other Charges (Domestic Violence, Property)
- Prior Failure to Appear in Past Three Years
- Two or More Prior Misdemeanors
- Prior Probation or Parole

It assesses three issues: public safety, court appearance and complying with release conditions (such as drug testing or weekly check-ins). Defendants receive a final risk level that is presented to a judge.

MILLIONS SAVED

Keeping People Out of Jail

Interrupting fewer lives with incarceration is better, and less expensive

BY NATASHA VONKAENEL

It is no secret that jails cost money. Providing for a defendant's shelter, food, safety and medical expenses for one day in the Santa Clara County Jail costs the taxpayers $204 per person, according to the most recent 2012 county audit.

The Office of Pretrial Services offers an alternative. By allowing approved defendants to stay out of jail while awaiting their court date, and providing limited supervision and support services, like check-in phone calls, reminders of upcoming court dates and drug testing, it costs the taxpayers $15 per day, per defendant.

Some of those savings aren't actually realized. When a jail is under capacity, entire cells and pods are not shut down and staff are not let go — there is still a base operating cost to keeping the jail open. But even so, an independent audit found that in a six-month period in 2012, the county saved $33 million due to the Office of Pretrial Services.

Those millions aren't the only savings. Without alternatives to jail, Santa Clara County Jail would be overcapacity by roughly 800 people each month. This overcrowding would lead to increases in staffing and operational costs, as well as community backlash.

"There would be a public outcry from families that have folks in custody," says Javier Aguirre, director of Santa Clara County Office of Reentry Services. "The county wouldn't be meeting their mandate to provide appropriate care for their clients." The federal government might even get involved, Aguirre says.

Keeping people invested in their daily lives and out of jail is better for the county — socially and economically. Many defendants' jobs support their families and provide housing for their loved ones. "If they are able to maintain their employment while their case is being adjudicated, that definitely helps those families and the community as a whole."

When clients get out of jail, many rely on government services, like emergency housing vouchers, employment, food and medical assistance, and more. Joseph Coogan, former information systems manager at the Office of Pretrial Services, stresses how this only multiplies the costs of incarceration for taxpayers.

"It can really affect social services," he says. For example, "your children might have been taken into Child Protective Services or the foster care system. This is a horrible situation to be in, particularly if you are wrongly accused," he says. But it also places an additional financial burden on other social services.

Helping people keep their lives intact, while avoiding some of the costs of the criminal justice system, is a better solution for all involved parties.

"It is much better to have them as contributing members of society," Coogan says. "Basically, non-criminals are much cheaper for the government."

IT COSTS **$204 PER DAY** TO KEEP SOMEONE IN SANTA CLARA COUNTY JAIL.

IT COSTS **$15 PER DAY** TO PROVIDE A DEFENDANT WITH PRETRIAL SERVICES.

AN INDEPENDENT AUDIT FOUND THAT IN A SIX-MONTH PERIOD IN 2012,

THE COUNTY SAVED $33 MILLION DUE TO THE OFFICE OF PRETRIAL SERVICES.

Pretrial Services: By the Numbers

In 2015, **3,324** cases were approved by a judge for release to Pretrial Services. The annual budget of the Office of Pretrial Services is **less than $6,000,000.**

If the jail had the space, the total cost to house these individuals is estimated at **$81,439,330.**

But the jail doesn't have the space. Throughout the year, those 3,324 defendants would have easily put the jail in an **overcrowded state.**

County of Santa Clara
Office of Pretrial Services

BETTER OUTCOMES
FOR THE ACCUSED

JAIL ISN'T ALWAYS THE BEST PLACE TO AWAIT TRIAL. The Office of Pretrial Services uses innovative, safe and time-tested alternatives to keep defendants out of cells. On average, defendants wait 120 days before being found guilty or innocent of a crime. For clients of Pretrial Services, that time translates into almost four more months where defendants can:

- Keep their jobs
- Continue to care for their families
- Work toward building a more positive life

HAVE A WARRANT?

Individuals with outstanding felony/misdemeanor arrest warrants are encouraged to contact Pretrial Services for possible release at time of booking. Defendants will set up a time to self-surrender and a judge will review Pretrial Services' report to decide if they should be released. If approved, defendants are released to Pretrial Services a few hours after booking. Don't let a warrant continue to hang over your head, self-surrender today.

YOU CAN CONTACT THE OFFICE OF PRETRIAL SERVICES IN PERSON, ONLINE, BY PHONE OR EMAIL.

2310 N. First St.,
Suite 104
San Jose, CA 95131

408-918-7900
TDD/TDY Phone
408-298-9364

www.sccpretrial.org

Pretrialinfo@pts.sccgov.org

New App Coming Soon!

Produced for County of Santa Clara Office of Pretrial Services
by N&R Publications, www.nrpubs.com