

# Vera Institute of Justice

## Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/blog/justice-in-katrinawake/pretrial-justice>

### Public Facing Advocacy Writing

At the federal level in the Eastern District of Louisiana (EDLA), our Smart on Crime approach includes rethinking pretrial justice.

On the local level, pretrial detainees make up a considerable and costly portion of our jail population. At any given time, nearly a third of all inmates in county and parish jails across the country are defendants awaiting trial. We incarcerate these individuals at a cost of over \$9 billion in taxpayer dollars. In many cases, these are people charged with non-violent, non-felony offenses for whom reasonable and appropriate conditions of release could be set. In many states, these bail determinations are made based solely on subjective considerations, or even worse, on fixed bail schedules, which provide pre-determined bail amounts based solely on current charges without considering risk-based factors or other relevant information. The result is that many of these pretrial defendants remain in jail not because they pose a risk to the community, but simply because they are poor.

At the federal level, the Bail Reform Act of 1984 dictates that courts make pretrial detention decisions based on risk of flight and risk of harm to the community, without consideration of the defendants ability to post bail. What this means is that no federal defendants are detained pretrial because they are unable to pay a financial bond.

Still, we have recognized that even this system can be improved. In 2009, the Administrative Office of the U.S. Courts and the Office of Federal Detention published Pretrial Risk Assessment in the Federal Court, which recommended that the federal pretrial system develop and implement an actuarial risk assessment tool.

In response, the federal Pretrial Services developed the Pretrial Risk Assessment (PTRA), based on the characteristics and pretrial determinations of all federal defendants between fiscal year (FY) 2001 and FY 2007. The assessment is an objective, quantifiable instrument that predicts a defendants risk of failure to appear, new criminal arrests, and technical violations while on pretrial release. It measures risk based on 11 scored items, including felony convictions; prior missed court appearances; the nature and classification of the current charge; defendants level of education; defendants employment status; and defendants citizenship status. Once the score is calculated, a risk category is achieved: low (categories 1 or 2), moderate (category 3), and high (category 4 or 5).

The costs associated with incarcerating low-level defendants are significant. Detaining a defendant in a federal facility costs us an average of \$74.61 per day. In contrast, pretrial supervision costs us an average of \$7.17 per day. Take FY 2014, for example: Nationally, we spent \$85 million to detain approximately 4,500 defendants that fall into categories 1 or 2. In contrast, pretrial release and supervision for more than 13,000 low-level defendants costs only \$24 million. During that same fiscal year, we spent \$512,000 to incarcerate 27 low-level defendants in EDLA, while pretrial release for 117 similarly-situated defendants costs less than half that figure, at \$213,000.

It is important to note that the federal PTRA score is not binding on any party, or in any way. It is merely a tool that the officer may consider when preparing a bail recommendation to the court. It is one additional piece of evidence for the courts consideration. That is, the court has the discretion to consider, or not consider, the PTRA score in making its bail determination.

Nevertheless, release rates in our district show that PTRA is making a difference. In FY 2013, 48.4 percent of defendants were granted pretrial release. In FY 2014, the percentage declined to 42 percent. In FY 2015, which includes the time period since we began utilizing and disclosing PTRA scores, the pretrial release rate rose to 60.7 percent, an 18.7 percent increase over the prior year.

Our efforts in the pretrial arena go hand in hand with our efforts to divert people from prosecution. We are currently utilizing a host of other alternatives to detention, including provisional housing, location monitoring, and sanctions (e.g., community service) rather than outright revocation for certain low-level bond violations. Moreover, the U.S. Probation Office, the Federal Defenders Office, the U.S. District Court, and my office have worked on a collaborative proposal to create a pretrial alternative court, through which military veterans and people with verified substance abuse disorders will receive treatment, therapy, and other resources for a period of 18 to 24 months in lieu of prosecution, sentencing, and prison incarceration.

Our increased use of the PTRA is assisting judges in making evidence-based pretrial release decisions, improving cost effectiveness, and reducing our federal detention population, all while ensuring safety and due process. Given the demands on our current budget, the region and even the entire state of Louisiana would do well to try to follow the federal model.

Our local leaders have demonstrated their commitment to reducing New Orleans's local jail population. Not only do we have the opportunity to divest from over-incarceration but to reinvest in safeguards that will keep our communities safe and well. We, as a city, can make even greater strides by learning from the 30-year history of the federal system, whereby no person can be detained because of an inability to pay a financial bond. This is about public safety and justice for all New Orleanians.

Through the voices of those who fought for reform from elected officials to community organizers, advocates to public health experts the [Justice in Katrina's Wake](#) blog series reflects on local incarceration practices, the movement to foster fairness in the criminal justice system, and efforts to increase safety for all communities.

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