MINNESOTA JUSTICE RESEARCH CENTER

TOWARD SAFETY, LIBERTY, AND EQUITY:

A Community-Centered Framework for Redesigning Minnesota's Pretrial System

This report was authored by Anna Hall, Pretrial Best Practices Project Lead; Dr. Joshua Page, Beverly and Richard Fink Professor of Sociology and Affiliate Professor of Law at the University of Minnesota, and Pretrial Best Practices Project Research Co-Lead; and Anna Simonton, Pretrial Best Practices Research Assistant. We completed and submitted this report to the Minnesota Legislature on February 15, 2025.

This report is only possible because of the community members who came to listening sessions and gave generously of their time, energy, and expertise. We are grateful to the community organizations that partnered with us to host these sessions and to the volunteers who helped organize and facilitate them. Thank you also to MNJRC's inaugural outreach team members Aaron Abram and Donta Stevenson.

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Contact us:
info@mnjrc.org

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Executive Summary

The pretrial system involves those who are arrested for or charged with a crime but are not yet convicted. Since its founding, this nation's pretrial system has been built on a framework of maximizing liberty. State constitutions, including Minnesota's, were written to prevent the bail system abuses that plagued England in the centuries leading up to American independence. Over the years, Minnesota's pretrial system has drifted perilously far from that liberatory vision. The Minnesota constitution guarantees that all people have access to pretrial release. But who gets free pretrial and who stays detained often depends on their access to money. Our research finds that our state's pretrial system is out of step with the values that Minnesotans hold most dear. We conclude that the state must replace our current money-based system with one rooted in community safety, liberty, and equity.

In 2023, the Minnesota Legislature directed the MNJRC to study our state's pretrial system and produce recommendations for its improvement. We embarked on an 18-month research project to develop a proposal for transforming Minnesota's pretrial system. Our team led more than a dozen community engagement sessions, where we spoke with hundreds of Minnesotans; interviewed 42 system actors in Minnesota; conducted site visits to other jurisdictions; spoke with pretrial experts across the country; reviewed the existing research literature regarding pretrial practices; conducted in-depth legal analysis; and analyzed data about Minnesota's pretrial system.

We found that about 56% of people in Minnesota jails are being held pretrial, and that Black and American Indian/Alaskan Native Minnesotans are vastly overrepresented in pretrial populations. We also found that Greater Minnesota counties have the highest rates of pretrial detention. Because those who are detained pretrial suffer worse case outcomes, the current system has two tiers of justice: one for those with money and another for those without. This is consequential: Pretrial detention is deeply detrimental to individuals, families, and communities. Studies show that pretrial detention reduces community safety over the long-term, including by jeopardizing access to housing, employment, and other resources. The system actors and community members we engaged agree that Minnesota's pretrial system is not working as it should.

To develop a pretrial system that maximizes safety, liberty, and equity, Minnesota must commit to comprehensive, system-wide transformation. Our recommendations, therefore, trace a path from the point of first contact with law enforcement, through the bail decision, and finally to pretrial services for defendants released into the community. In particular, we recommend strengthening and expanding cite and release policies, which divert people from jail at the

outset; guaranteeing the right to counsel at bail hearings, which has been shown to reduce pretrial detention; replacing a money-based system with an intentional release/detain system that includes robust procedural safeguards ensuring that the state only detains those people who demonstrate a serious risk of flight or harm to others; and establishing robust pretrial services that support defendants as they navigate the pretrial process, rather than subject them to unnecessary and counterproductive conditions. We also address the needs of victims/survivors with recommendations aimed at increasing their safety and agency during the pretrial process. These include the use of assessments designed to identify and reduce the risk of domestic violence, support for wraparound victim/survivor services, and better notification systems.

The systemic transformation envisioned in this report will require a commitment of significant time and resources. We therefore conclude with recommendations to ensure successful implementation. Foremost among these recommendations is the need for dedicated, good-faith collaboration among state leaders, system actors, and community members. Stakeholder buy-in is essential to building a system that recognizes and addresses the nuances, challenges, and opportunities of the pretrial process.

Minnesotans are calling for pretrial system change. This report offers policymakers and community members the tools to answer that call and to position Minnesota as a leader in data- and values-driven pretrial justice.

Introduction

Pretrial reform[1] is one of the foremost criminal justice issues in the United States today. This is due, in part, to the exponential increase in people held pretrial over the past 50 years. In Minnesota alone, the total jail population increased by over 350% between 1970 and 2015 (Henrichson et al., 2019). This growth is mainly due to a dramatic expansion in the number of people held pretrial. Today, around 56% of people in Minnesota jails are held pretrial.

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Discussions about pretrial reform often focus on monetary bail, also called cash bail. But pretrial justice concerns more than just this issue. It is also about due process, community safety, court appearance, system transparency, and equity. Throughout the country, community members, criminal legal advocates, law enforcement leaders, prosecutors, defense attorneys, judges, and legislators have worked together to address these issues, leading to important changes in policy and practice.

Seeing the need for similar work in Minnesota, in May 2023, the legislature charged the Minnesota Justice Research Center (MNJRC) with three tasks (SF 2909):

1. Review pretrial release practices in Minnesota and community perspectives about those practices;
2. Conduct a robust survey of pretrial release practices in other jurisdictions to identify effective approaches to pretrial release that use identified best practices; and
3. Provide analysis and recommendations describing how practices in other jurisdictions could be adopted and implemented in Minnesota, including but not limited to analysis addressing how changes would impact public safety, treatment of defendants with different financial means, and community perspectives about pretrial release; and
4. Make recommendations for policy changes for consideration by the legislature.

In response to these legislative charges, the Pretrial Best Practices team at the MNJRC spent the last 18 months engaged in rigorous research. This report presents our research findings and offers recommendations for advancing pretrial justice in Minnesota.

Shared Values

Minnesota's pretrial system must be grounded in values shared among Minnesotans. System reform of the magnitude recommended in this report is a significant undertaking. But we can use commonly held values as our North Star, guiding us toward a system that our communities deserve.

In our conversations with system actors and community members, we identified a list of possible values that could inform a pretrial system, and we asked participants to rank those

1) "Pretrial" means the time between arrest or citation and resolution of a criminal case, usually through a plea, trial, or dismissal.

values according to their importance. The values we offered were freedom/liberty, presumption of innocence, accountability, equity, community safety, transparency, dignity, efficiency, and healing. Among system actors, the top three values identified were community safety, freedom/liberty, and equity (in that order). Among community members, top values included presumption of innocence, accountability, and equity.

The most significant takeaway from these conversations, however, is not the values themselves, but the conviction among participants that a *balance* must be struck between these values. Participants underscored that the pretrial process embodies a complex tension among various goals, needs, and perspectives that significantly impacts its effectiveness. **Time and again, community members and system actors grappled with the complexity of creating a pretrial system that could prioritize community safety and liberty; that could be accountable and equitable; and that could treat defendants and victims/survivors with dignity.** Above all else, our team was struck by the care, intentionality, and rigor with which participants approached this difficult balancing work.

Our recommendations therefore are informed by this complexity. Pretrial transformation must navigate a landscape of competing priorities, wherein simplistic solutions may overlook the nuances of real-world scenarios. Creating a just and equitable pretrial system will require careful, sometimes challenging, calculus.

Methodology

Our team employed four types of qualitative research: system actor interviews, community engagement, site visits, and legal analysis. We also conducted quantitative research using data from the Department of Corrections.[2]

System Actor Interviews

We conducted in-depth interviews with 42 system actors, as well as one bail bond agent. We identified participants through existing networks, referrals, and direct outreach. Our goal was to learn from people with diverse positions and perspectives. We spoke to system actors in every judicial district; in most districts, we spoke to at least three people with three distinct roles. The majority of participants were from Greater Minnesota (56%), and a large majority had more than ten years' experience working in the criminal legal system (88%). Interviews were conducted in-person or via Zoom.

2) For further information on our quantitative methods, see Appendix A.

Each interview lasted roughly an hour and focused on system actors' discretion related to pretrial decisions, common practices in their jurisdictions, pretrial release conditions, and resources for defendants and victims/survivors. We also asked about interviewees' perspectives on the goals of the pretrial process, the effectiveness of current bail practices, and changes that could improve Minnesota's pretrial system.

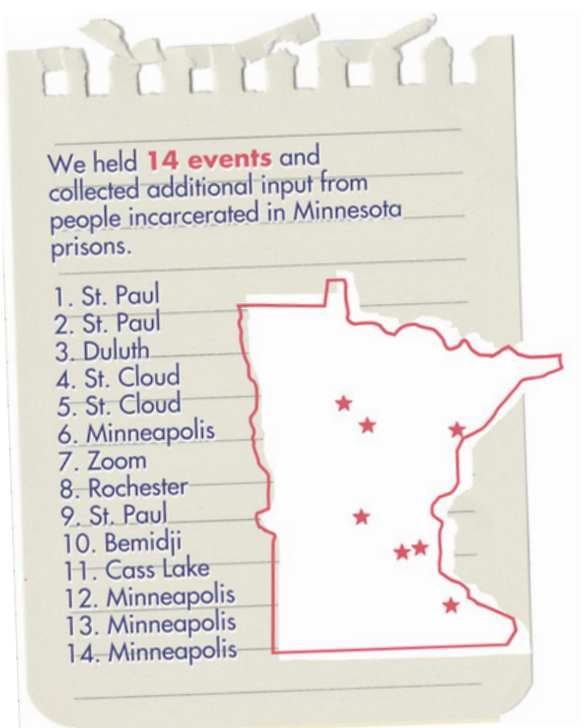
Interviews were recorded and transcribed using a transcription service that assigned each participant a pseudonym to protect their anonymity. Our team then coded the data in multiple stages. First, we used inductive coding, tracking important themes that arose in the data. Then, we developed categories based on those themes, which we used to code each interview.

Community Engagement

We held listening sessions that engaged about 200 community members across Minnesota. We partnered with a range of community-based organizations, including those that serve formerly incarcerated people and directly impacted communities; victims/survivors; and people who have experienced housing insecurity, chemical dependency, and/or mental health issues. Partner organizations promoted the sessions to their constituents, and MN-JRC advertised through social media and phone-banking.[3]

Our community partners

- RS Eden
- We Resolve
- Minnesota Freedom Fund
- Minnesota Alliance on Crime
- The Dream Center
- Recovery Community Network
- Violence Free Minnesota
- Three Rivers Community Action
- ACLU SmartJustice MN
- Next Chapter Ministries
- Ramsey County Attorney's Office
- Hennepin County Attorney's Office
- Regional Native Public Defense
- Plymouth Congregational Church
- The Link



We held 14 events and collected additional input from people incarcerated in Minnesota prisons. Participants were roughly split between men and women, and a majority were white (73%), which is reflective of the state population (76%). Black participants were overrepresented (18%) compared to the state population (7%). We co-organized two events with tribal organizations in Beltrami and Cass Counties to ensure representation from Indigenous communities. About half of all participants in the listening sessions were from Greater Minnesota.

At each event, we opened with a meal and set the context with a presentation about the contours and consequences of bail and the broader pretrial process in Minnesota, as

3) For descriptions of our community partners and their work, see Appendix B.

well as reform efforts in other states. We then placed participants into small groups and volunteer facilitators guided discussion based on a series of prompts, which included questions about experiences with and perceptions of the current pretrial process, the values and goals that should guide a pretrial system, and potential reforms. Volunteer note-takers documented the discussions. At the end of each session, community members came back together as a large group to debrief, share key themes, and learn about next steps and other opportunities for engagement. All volunteers received standardized training from MNJRC staff prior to the listening sessions.[4]

We coded community engagement data using the same process described above. We then analyzed the coded data and produced memos capturing key findings.

Site Visits

Our team conducted site visits to jurisdictions that have implemented pretrial system changes. We observed reforms in settings that are urban and politically progressive, as well as those that are rural and politically conservative. We visited Trenton and Essex Counties in New Jersey; Kings (Brooklyn) and Queens Counties in New York; and Cook and Kane Counties in Illinois. We also observed pretrial services agencies in Cass County, Indiana; Sawyer County, Wisconsin; and Ramsey County and Olmsted County, Minnesota.

On each trip, we met with some or all of the following: judges, court administrators, prosecutors, defense attorneys, jail staff, community advocates, and pretrial services managers and line staff. We also observed pretrial court proceedings and toured pretrial services agencies to observe their operations. We learned about the challenges, opportunities, and outcomes of various models of pretrial system change. Throughout, team members took extensive notes, which they later digitized for review and analysis.

Legal

We conducted in-depth analysis of legal precedent concerning bail and pretrial detention in Minnesota and the United States. For Minnesota, we started by identifying every appellate opinion that cites, discusses, or analyzes the bail clause of the Minnesota Constitution, as well as every appellate opinion that cites, discusses, or analyzes Minnesota Rule of Criminal Procedure 6.02. We identified those cases whose holdings substantively shape pretrial law in Minnesota, and multiple members of our team analyzed those cases, and their progeny, in detail. We then categorized those cases based on the aspect of bail most at issue. Finally, we considered the case law as a whole to determine how each individual case affected and built on the others.

Our review of United States Supreme Court case law was not as extensive. This was due in part to the quantity of opinions concerning bail and pretrial detention, and to the existence of prior extensive analyses of federal case law (see for example Funk, 2019; Hegreness, 2013). We focused our analysis on foundational United States Supreme Court cases concerning bail, such as *Bandy v. United States*, *Stack v. Boyle*, *United States v. Salerno*, and their progeny. We reviewed these cases for pertinent language and reasoning, whether in holding or *dicta*.

Finally, we studied national standards on pretrial release and detention, including those produced by the American Bar Association (American Bar Association [ABA], 2007), the Uniform Law Commission (National Conference of Commissioners on Uniform State Laws, 2020), and the National Institute of Corrections (Pilnik et al., 2017).

4) For further information on our volunteer training, see Appendix C.

Findings: The Need for Pretrial System Transformation

- Historically and legally, the central purpose of bail has been to maximize liberty, and that objective should guide pretrial practice in Minnesota.
- Minnesota law does not allow for pretrial detention based on public safety or flight concerns. Instead, a person's ability to pay bail and/or meet court-ordered conditions determines their release (unless they are released on their own recognizance).
- The state's reliance on monetary bail results in economic and racial disparities, along with far-reaching consequences that negatively affect individuals and communities.
- People held pretrial constitute more than 56% of the state's jail population. Black and American Indian or Alaskan Native Minnesotans are overrepresented in Minnesota jails. Racial disparities are greatest outside the state's major metropolitan areas.
- System actors and community members agree that the current pretrial system is not working as it should and that major reforms are necessary.
- Jurisdictions within and beyond Minnesota have shown that alternative pretrial models are more just, equitable, and effective.

History and law

Today, bail in the United States is often viewed as a device for keeping people detained pretrial. However, a close look at the history of bail reveals that the central purpose of the bail process has always been to restrict the power of the state to deprive people of liberty. The bail process traces its roots back to medieval England, where it emerged to prevent excessive pretrial detention (*State v. Brooks*, 2000).

However, a close look at the history of bail reveals that the central purpose of the bail process has always been to restrict the power of the state to deprive people of liberty.

Early American colonial law took a similar approach to bail, making "continual efforts to restrict the power of the state to lock a person up before trial" (Funk & Mayson, 2024). **Upon independence, state constitutions, including Minnesota's, were written to guarantee that pretrial detention would remain extremely limited.**

In 1951, the United States Supreme Court decided *Stack v. Boyle*, affirming that the right to pretrial release is central to the nation's legal tradition. The Court wrote: "Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning" (*Stack v. Boyle,* 1951). In an oft-cited concurrence, Justice Jackson wrote that if a monetary bail amount were fixed "as an assurance [the defendant] would remain in jail, ...[that would be] contrary to the whole policy and philosophy of bail" (*Stack v. Boyle,* 1951).[5] This notion has been repeated by at least two federal circuit courts,

5) Justice Douglas later cited *Stack* and wrote: "It would be unconstitutional to fix excessive bail to assure that a defendant will not gain his freedom" (*Bandy v. United States,* 1961).

making it clear that setting bail beyond people's ability to pay *in order to detain them* violates federal excessive bail law.

The other formative United States Supreme Court case is *United States v. Salerno*. In it, the Court evaluated the constitutionality of the federal Bail Reform Act of 1984, which radically shifted the way the federal courts approached pretrial release and detention. In particular, the Act allowed—for the first time—pretrial detention (without cash bail) based on predictions of defendants' future dangerousness. The Court held that the Act was constitutional because it created a "carefully limited" and "narrowly tailored" detention scheme (*United States v. Salerno*, 1987).

Minnesota's constitution, unlike federal bail law, guarantees a right to bail. It states: "All persons before conviction shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great" (Minn. Const. art. I, § 7).[6] Because capital offenses no longer exist in Minnesota, the Minnesota Supreme Court has determined that "all crimes are bailable." In other words, bail is "an absolute right in all cases" (*State v. LeDoux*, 2009). **This means that no one in Minnesota can be preventively detained pretrial.**

The pivotal Minnesota case interpreting the state's constitutional bail clause, *State v. Brooks*, details the history of bail in the United States and in Minnesota (*State v. Brooks*, 2000). Based on that historical review, **the Minnesota Supreme Court concluded that, from its founding, Minnesota has guaranteed broad protections for people during the pretrial period—broader even than the federal government, which only has a statutory right to bail.** The Court in *Brooks* affirmed that Minnesota law "limits government power to detain an accused prior to trial. The clause is intended to protect the accused rather than the courts."[7]

Courts in Minnesota must always provide accused persons with an opportunity for pretrial release, whether through release on their own recognizance (with an order to remain law-abiding and return to court) or by meeting certain conditions of release. Monetary bail is, legally and historically, one possible *condition* of pretrial release (Schnacke, 2014). In any case where non-monetary conditions of release are set, the court must also set an alternative monetary bail amount without other conditions (Minn. R. Crim. P. 6.02, subd. 1). Theoretically, this gives the accused person the choice between paying monetary bail with no additional conditions or agreeing to abide by non-monetary conditions of release. However, judges often set two monetary bail amounts: a lower amount with various non-financial conditions, and a higher amount with no other release conditions. In other words, accused people are either released on their own recognizance or, more generally, required to pay some amount of monetary bail. **In practice, this often means that people can only exercise their constitutional right to release if they can pay monetary bail or secure the services of a bail bond company.**

The current system's reliance on money to effectuate release decisions means that poor people are often detained pretrial, while wealthier people are released. Further, Minnesota's pretrial system abdicates responsibility for the difficult decision of when to detain and when to release.

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6) Capital offenses are those punishable by the death penalty.

7) The Minnesota Supreme Court has recognized that pretrial release benefits both the accused person, by relieving them of the burden of imprisonment while they are presumed innocent, and the State, by relieving it of the burden of detaining the accused (*State v. Storkamp*, 2003). Therefore, the bail process serves dual purposes in Minnesota.

Effects of pretrial detention and monetary bail

Extensive research conducted across the United States makes abundantly clear that pretrial detention has detrimental effects on accused people, their families, and their communities. Studies also show that releasing the vast majority of defendants pretrial does not negatively impact court appearance rates or long-term public safety.

Case outcomes

Research from as far back as the 1950s shows that **those who are detained pretrial suffer worse case outcomes** (ABA, 2007; Leslie & Pope, 2017; Lowenkamp et al., 2013; Heaton et al., 2017). Accused individuals who remain in jail before trial tend to get convicted at higher rates, receive longer prison sentences, and fare worse in plea-bargaining processes than similarly situated defendants released pretrial (Campbell et al., 2020; Dobbie et al., 2018; Heaton et al., 2017; Leslie & Pope, 2017; Lowenkamp et al., 2013). Because many people are detained pretrial due to their inability to afford monetary bail, the current system creates two tiers of justice: one for those with money and another for those without.

Financial consequences

Pretrial detention significantly impairs individuals' financial stability in the short and long term due to loss of income, jobs, housing, and public benefits (Baradaran Baughman, 2017).[8] These financial consequences affect an accused person's loved ones and community members (Piehowski et al., 2023). This is in part because the detained individual is rarely the only—or even primary—person responsible for collecting and paying the monetary bail (Page et al., 2019).

The economic consequences of pretrial detention rarely stop when a person is released from jail. For instance, people who are detained pretrial are substantially less likely to be employed in the years following their detention (Dobbie et al., 2018; Pogrebin et al., 2001). Lack of steady employment can lead to further entanglements with the criminal legal system.

Racial inequity

Research consistently finds that Black, Latine, Indigenous, and other people of color are held in pretrial detention at disproportionate rates (Sawyer, 2019). This is true even when researchers control for case type, criminal history, and other factors. In large urban areas, "being Black increases a defendant's odds of being denied bail by 25 percent, and being Latino increases a defendant's odds of being denied bail by 24 percent" (Schlesinger, 2005). Judges impose higher monetary bail amounts for Black defendants than for white defendants, even where charges and criminal histories are similar (Gelbach & Bushway, 2011). And because people of color are more likely to live in poverty, they are less likely to be able to afford monetary bail than their white counterparts (Rabuy & Kopf, 2016). Notably, even in jurisdictions that have enacted pretrial reforms, racial disparities in pretrial detention remain high (Grant, 2021).

Community safety

Pretrial detention can prevent criminal activity in the short-term by incapacitating people accused of crimes (Leslie & Pope, 2017; Dobbie et al., 2018). But pretrial detention increases

8) This sort of research forms the basis of lawsuits being filed across the country alleging that current bail practices violate the Equal Protection Clause of Fourteenth Amendment to the United States Constitution. Many of these lawsuits are succeeding because the government has been unable to prove that money is necessary to achieve a compelling state interest. (*In re Humphrey*, 2021; *ODonnell v. Harris County*, 2018). We expect similar lawsuits will continue to be filed—and continue to succeed.

the likelihood that a person will be charged with a new offense in the future (again, compared to similarly situated defendants) (Leslie & Pope, 2017; Dobbie et al., 2018). Studies find that the longer an individual stays in jail pretrial, the higher the likelihood that they will recidivate within 24 months (Dobbie et al., 2018, p. 227; Heaton, et al., 2017, p. 761; Gupta et al., 2016; Lowenkamp et al., 2013.).

Researchers suggest that these longer-term increases in criminal activity occur because pretrial detention disrupts or severs interpersonal relationships and community ties and results in decreased employment over time (Dobbie et al., 2018; Heaton et al., 2017). Researchers conclude that the net effect of pretrial detention is to jeopardize community safety in the long term (Lowenkamp et al., 2013).

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Harm caused by those on pretrial release is of central concern when crafting a safe and equitable pretrial system. **Fortunately, pretrial crime is rare.** New Jersey, which virtually eliminated its use of monetary bail in 2017, found that "[n]early all defendants released successfully complete their pretrial period without acquiring a new charge, with the rate of rearrest for very serious crimes at less than 1% annually" from 2018–2023 (Grant, 2021). Studies of Washington, D.C., and New York City similarly found that the vast majority of released defendants remained arrest-free during the pretrial period (New York City Criminal Justice Agency, 2021; Pretrial Services Agency for the District of Columbia, 2020a; Pretrial Services Agency for the District of Columbia, 2023).

Of course, the question of community safety is not limited to crime and arrest rates. **The safety of Minnesota communities is also impacted by factors such as access to employment, housing, health care, and other economic resources** (Turner, 2020). Research shows that access to these resources increases community safety and well-being over the short and long term (Governor's Task Force on Housing, 2018; Phelan, 2023). And because pretrial detention reduces access to employment, housing, and health care, pretrial detention decreases public safety.

From 2017 to 2023, 40 people were reported as having died in Minnesota jails

Finally, those who are accused of crimes are not outside the community—they are *of* the community. Their own safety must be considered when assessing the impact of pretrial detention on community safety. While in jail, people suffer sexual victimization, violence, disease, and even death (Carson, 2021). From 2017 to 2023, a reported 40 people died in Minnesota jails.

Failures to appear

Research consistently finds that **the imposition of monetary bail does not increase appearance rates** (Jones, 2013; Monaghan et al., 2020; Ouss & Stevenson, 2023). This research is borne out by evidence from jurisdictions that have reduced or eliminated their reliance on monetary bail. For example, as noted, in 2017, New Jersey drastically reduced its

use of cash bail. Since then, appearance rates have either increased or remained the same as before the change (Grant, 2021). Based on a comprehensive review of the research literature, the organization Advancing Pretrial Policy and Research reports that there is "no evidence" that secured financial conditions improve either court appearance or public safety (Advancing Pretrial Policy & Research [APPR], 2024)

Pretrial data in Minnesota

As discussed in our preliminary report, Minnesota lacks any comprehensive analysis of its pretrial data (Hall et al., 2024). The only recent study of Minnesota's pretrial data was done by the Vera Institute of Justice, and even that analysis is limited (Henrichson, 2019). To fill this significant gap, our team requested all jail booking data from the Minnesota Department of Corrections (DOC) for January 1, 2017 through December 31, 2023. These data are compiled from each reporting jail in Minnesota, including county jails, local police departments, and adult correctional facilities. Our team obtained booking data for 77 Minnesota counties.[9]

Analysis

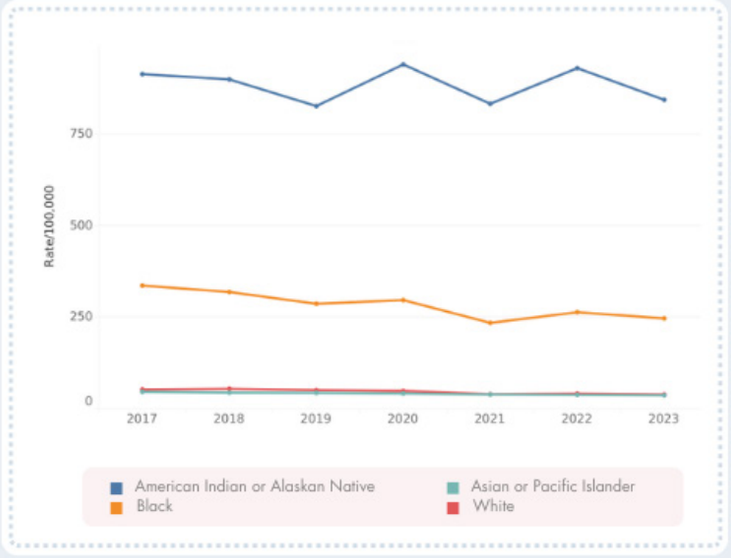
From 2017–2023, an average of 5,571 people were detained in Minnesota jails on any given day. Of those, an average of 2,941 people were held pretrial. In other words, over 56% of the jail population in the state consisted of people held pretrial.

Rates of pretrial detention vary widely across the state. **Greater Minnesota counties have the highest rates of pretrial detention.**

Minnesota's pretrial system shows significant racial disparities. Black and American Indian/Alaskan Native Minnesotans are detained pretrial at vastly higher rates than are white and Asian/Pacific Islander Minnesotans.[10]

Daily Pretrial Jail Population in Minnesota by Race

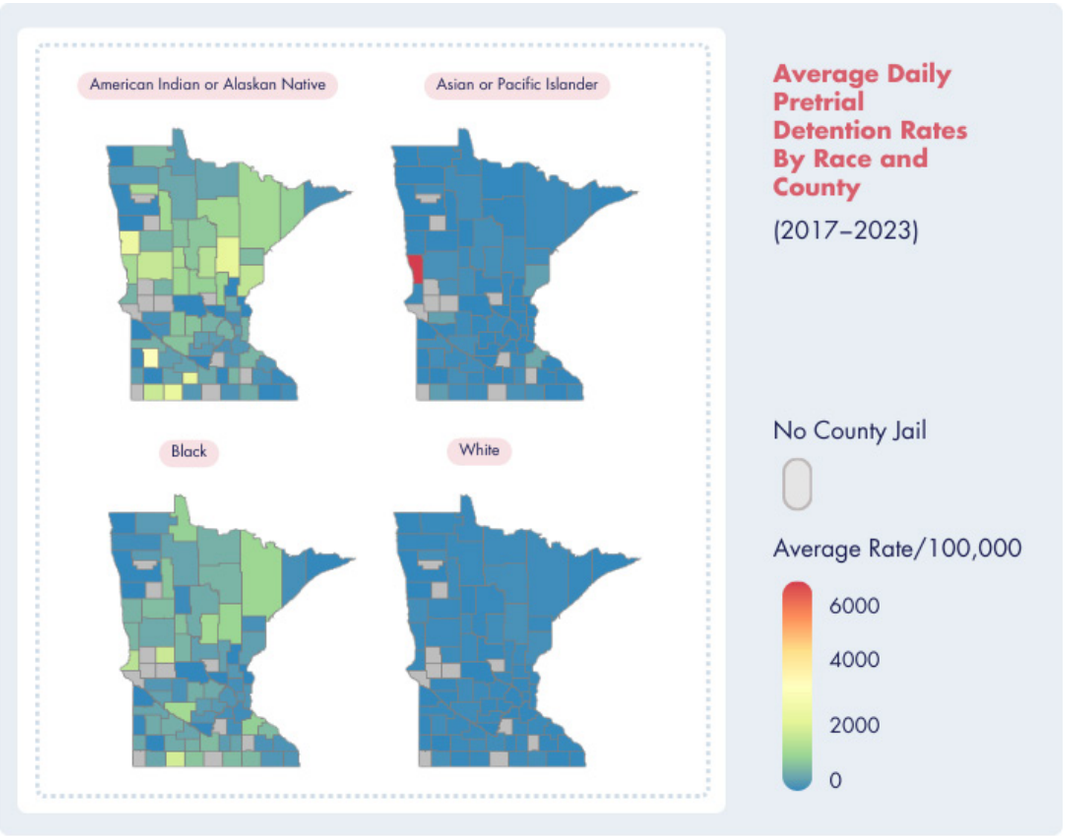
(2017–2023)



9) The DOC did not provide data for Benton, Big Stone, Dodge, Faribault, Grant, Mahnomen, Pope, Red Lake, Rock, and Stevens Counties. Big Stone, Dodge, Grant, Mahnomen, Pope, Rock, Red Lake, and Stevens Counties all contract with other county jails for use of their facilities. No reason was given for the exclusion of data from Benton and Faribault Counties.

10) "American Indian" is the term used in the data provided by the DOC.

These disparities are even more pronounced when gender and race are analyzed together. Male and female American Indian/Alaskan Native Minnesotans are incarcerated pretrial at staggering rates: for men, the rate is over 1,500 people per 100,000 residents. **And while Black people overall are detained pretrial at disproportionate rates compared to white people, Black men are especially overrepresented.**

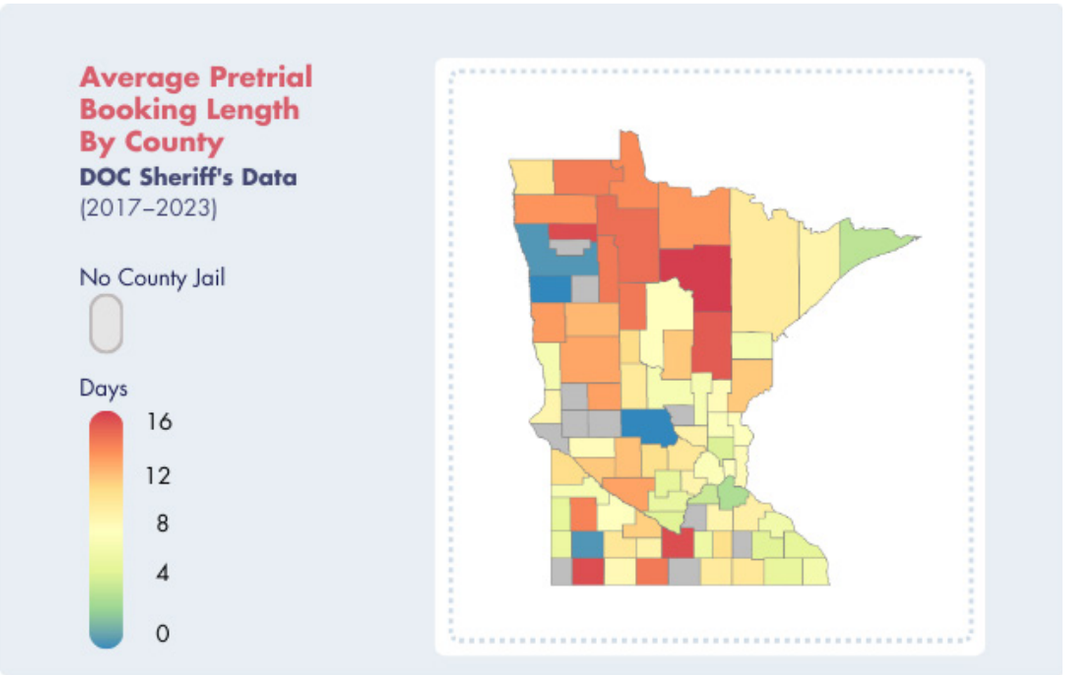


Greater Minnesota counties have the highest rates of pretrial detention for Black and American Indian defendants. Indeed, American Indian/Alaskan Native people are disproportionately incarcerated pretrial throughout northern Minnesota, as well as in several southern counties. Black people are disproportionately incarcerated pretrial in similar places.

People who are held pretrial in Minnesota remain in jail for an average of 8 days. The median number of days is 1 day, relatively low because just over 50% of Minnesota detainees spend 1 day or less in custody (often on misdemeanor charges). For jail stays longer than 1 day, the average length of stay increases to 16 days and the median length of stay to 4 days. **Thus, while about half of the pretrial population spends a day or less behind bars, those who spend more than a day spend, on average, more than a week detained pretrial.**

For jail stays longer than 1 day, the average length of stay increases to 16 days and the median length of stay to 4 days. Thus, while half of the pretrial population is detained for one day or less, the other half is detained for a week or more

The length of time someone spends in jail pretrial varies widely depending on where in Minnesota they are incarcerated. **On average, people spend longer in jail pretrial in Greater Minnesota, particularly in counties that overlap with or border Minnesota's tribal nations.**



Limitations of the data

Our analysis was limited by the quality of the data we were provided, as well as the data we could not obtain.

The jail booking data provided by the Department of Corrections included the charges for which each person was booked. However, the charges were entered using open-ended statute fields as opposed to standardized drop-down boxes.[11] That is, the hundreds of individuals who catalog this data do not have access to standardized fields across cases. Therefore, inconsistencies abound in the data, as when the exact same charges yield slightly different statute entries. Such inconsistencies make it extremely difficult to assign charge level or type to each booking for analysis. Therefore, we were unable to answer questions about pretrial detention rates by offense type or charge level.

Another significant limitation of the data is that Minnesota does not use detainee identification numbers that are unique across counties and facilities. Instead, each county and facility assigns its own identification number to each person booked into its jail. If someone is booked in multiple counties or in varying facilities, especially over a short period, they may have multiple client IDs and analysts will be unable to identify whether the records belong to the same person. That makes it difficult to determine, for example, whether a person is booked in one location but quickly transferred elsewhere. A unique and consistent statewide identification number would make data analysis significantly simpler and allow for analyses that examine bookings at the defendant-level, as opposed to the booking-level. This would greatly increase transparency of the DOC's data.

11) In this type of data, Minnesota Offense Codes (MOCs) are generally used in lieu of statute numbers, due to their easy standardization and ability to be cross-referenced with charge levels and types. Unfortunately, the MOC fields are also not entered in a standardized fashion here and are missing in roughly 54% of all bookings.

A third data limitation stems from the MNJRC being denied access to court system data. As we noted in our preliminary report, the MNJRC was specifically denied access to pre-conviction and race data held by the State Court Administrator's Office (SCAO) (Hall et al., 2024). This state court data is critical for comprehensive analyses of pretrial practices in Minnesota. The courts, not the jails, maintain data on such things as monetary bail amounts, other conditions of release, defendant eligibility for appointed counsel, and bench warrants. Without this information, we were unable to answer questions like: What is the relationship between monetary bail amount and bench warrants for failures to appear? What is the average bail amount for different charge types? What is the relationship between monetary bail amount and time spent in pretrial detention?

It is critical that Minnesota establish a comprehensive pretrial data system if we are to better understand current pretrial practices and evaluate pretrial reform outcomes. Information on the steps necessary to implement such a system can be found in our preliminary report (Hall et al., 2024).[12]

Community and system actor perspectives

No one who participated in our research felt that the current pretrial system is working as it should. There was consensus among system actors and many community members about the purposes of pretrial: to ensure community safety and court appearance. Many in both groups also felt that the pretrial process should serve as an opportunity to address underlying issues—such as poverty, mental health, and substance use—and help defendants and victims/survivors meet their needs. But participants overwhelmingly expressed that the system inadequately serves these purposes and affirmed the need for change.

Community engagement participants overwhelmingly voiced that the pretrial system—and pretrial detention in particular—has detrimental, often life-altering consequences for the accused, their families, and their broader communities. **People who have experienced pretrial detention told stories about losing jobs, housing, cars, savings, pets, student financial aid, public benefits, and more.** One person said his inability to pay rent while in jail led to an eviction and the loss of all of his personal property. "There's nothing that you're not losing," another participant stated. These consequences cause profound destabilization that affects whole families and communities. A participant explained that it "feels like part of the punishment that your family had to bear it too." Indeed, it's often family members who pay bail and suffer the loss of household income while their loved one can't work (Page et al., 2019; Piehowski et al., 2023). Participants spoke about the strain on familial relationships and the impact on children, recalling the pain of being unable to parent while incarcerated, seeing their children struggle in school as a result of the trauma of separation, and even losing custody.

> **"There's nothing that you're not losing"**

Participants frequently described dehumanizing jail conditions and other hardships of pretrial detention. They told stories about being denied basic sanitary supplies such as menstrual products, lacking proper clothing, and losing access to medication. They described their treatment as "subhuman," "like a monster," and "traumatizing." Some participants

12) In addition to the jurisdictions cited in our preliminary report, Virginia is an exemplar of the type of data system we recommend. Virginia's Pretrial Data Project, established in 2018 under the direction of the state's Crime Commission, represents an "unprecedented, collaborative effort among numerous agencies representing all three branches of [Virginia] government" (Virginia Criminal Sentencing Commission, 2022). A similarly collaborative effort will be required in Minnesota.

talked about loved ones who died in jail. One person said that being in jail "costs your freedom, your dignity, your humanity." **Community members also talked about taking plea deals out of desperation to end their detention, forgoing the opportunity to prove their innocence.** "There's no real choice," one participant said. They noted that fighting cases from jail is extremely difficult. Some community members felt that the state intentionally leverages pretrial detention to induce people to plead guilty. This perception undercuts community trust in Minnesota's legal system.

Victims/survivors and domestic violence advocates also expressed dissatisfaction with Minnesota's pretrial system. **Community engagement participants said that victims "are an afterthought," "are largely ignored," and "don't have a voice in the process."** System actors seem to understand this as well. A judge in the Twin Cities metro told us he didn't "have the tools" to prevent harm in domestic violence cases.

Community members expressed that the legal system does not move with an urgency that acknowledges the impact of pretrial detention. But they also recognized the need for a balance between urgency and thorough bail hearings. Community members expressed frustration about the amount of information judges are provided and the amount of time that they spend considering cases before making bail decisions. Most people said their hearings lasted no longer than four or five minutes, some said thirty seconds. **No one, including victim/survivor advocates, said that an informed decision could be made in that amount of time.**

System actors often shared these concerns about Minnesota's pretrial system, and many were troubled by the inequity of monetary bail. A northeastern Minnesota judge described a hypothetical scenario in which two people are arrested for similar conduct: "If you're poor, you have to spend a weekend in jail. And if you're not, you don't, and there's something really wrong with that.... Because of your economic status, you have to suffer." This judge's comments were echoed by defense attorneys, prosecutors, and pretrial services agents. Community members described racial inequities in bail-setting practices in Minnesota, with one person noting that "people with black skin are treated differently than people with white skin." Participants expressed frustration and concern that Black and Indigenous people seem to consistently face higher bail amounts than white people in Minnesota.

Among participants, there were differences of opinion about the effectiveness of non-monetary release conditions. Judges and prosecutors tended to embrace the imposition of a broad range of conditions, including electronic monitoring and drug testing. Community members, defense attorneys, and pretrial services agents raised issues regarding the efficacy, invasiveness, and cost of these and other types of court-ordered conditions. Community members noted that complying with certain pretrial release conditions can be difficult, such as finding transportation to comply with in-person drug testing. "It just turns into another way for people to end up back in custody," said a Twin Cities metro public defender. "So the more you ask of people, are you actually just setting them up for failure, rather than providing a service or a benefit to them or the community?"

Overall, judges and prosecutors expressed deep ambivalence about the current pretrial system. They acknowledged its flaws, but also felt they had to work with the tools at their disposal to try to uphold public safety and ensure court appearance. "Short-term, [pretrial detention] does interrupt cycles of violence in the community," said a Twin Cities metro prosecutor. "On the other hand, we know the impact of that is worse outcomes, more recidivism, more serious cases." Many grappled with the effectiveness of monetary bail as it relates to public safety. Some believed that by having "skin in the game" (that is, debt they would forfeit if they did not appear), defendants would be more likely to remain law abiding and return to court. Others did not feel that cash bail had any relationship to public safety because, if a defendant pays, then they can return to the community regardless of whether they are deemed risky.

Community members we spoke with overwhelmingly favored significant reform or outright elimination of monetary bail.

We found that some judges misuse monetary bail as a way to detain defendants. When a judge feels that a defendant poses a risk to public safety and no conditions of release are sufficient to mitigate that risk, they are at a loss; in Minnesota, it is illegal to detain a defendant without offering a meaningful opportunity for release. A few judges conceded that in these cases they set bail higher than what they believed the defendant could pay, effectively ordering pretrial detention, even though that would violate the law. There seems to be a tacit understanding among system actors about this practice. Defense attorneys suspect that judges do this, and a prosecutor describing this admission from judges stated: "They said the quiet part out loud." Because of practices like this, community members we spoke with overwhelmingly favored significant reform or outright elimination of monetary bail.

Victims/survivors and domestic violence advocates also consistently said that **cash bail places a burden on victims/survivors.** Although some feel safe while their abuser is in jail, we also heard that victims/survivors often want the defendant released pretrial, whether it's out of fear of retaliation, for financial or childcare reasons, or because they want to try to heal the relationship. "I get a lot of calls from victims," said a service provider who participated in a listening session. "They have to pay bail, make rent, but this guy who probably did harm, she needs him around. She has three kids to feed. She doesn't actually feel heard." When victims/survivors are responsible for paying bail, they face many of the negative consequences we identified earlier in this report. The victims/survivors and advocates we spoke with largely supported replacing cash bail with an alternative system that does not carry these burdens.[13]

13) A study of New Jersey's pretrial reform found that virtually eliminating the use of cash bail did not lead to significant changes in rates of homicide against women (Riley et al., 2025).

Conversations with system actors and community members also revealed a lack of consistency in pretrial practices across jurisdictions, something scholars term "justice by geography" (Feld, 1991). **People with similar backgrounds arrested for similar conduct and charged with similar offenses in two different counties can have vastly different experiences.** This includes major differences in bail amounts, release conditions, rules of pretrial supervision, and available resources. A defense attorney practicing in several areas in northern Minnesota said that in one county pretrial detention is uncommon, but in the adjacent county, defendants "just sit [in jail], and that lack of consistency... it results in a disparate treatment period, point blank." Some counties conduct a bail evaluation for every defendant, while others don't have staff capacity to do so. Some counties have programs to offset the cost of electronic alcohol monitoring, but elsewhere defendants must foot the bill. "When I hear the services that judges in the cities have available for pretrial release, I think, 'Oh my god, we don't even have that for our folks who are sentenced,'" said a judge in west central Minnesota. "Good for them, but please understand, we have a different world out here."

The amount and quality of communication and support that victims/survivors receive is also inconsistent across the state. Minnesota law requires police and prosecutors to notify crime victims of their basic rights and case developments, such as dismissals or plea offers (Minn. Stat. 2024, §§ 611A, 611A.03, 611A.0315). The law does not require notifications about bail hearings or pretrial release decisions. County Attorney offices have victim services staff who may offer information and support beyond the baseline requirements, but this is dependent on capacity and expertise. More often, victims/survivors rely on community resources that vary widely from one jurisdiction to the next. Community-based service providers who participated in our listening sessions said they are chronically underfunded and that staffing is a constant challenge. In rural areas, service providers are spread particularly thin; a prosecutor in northeastern Minnesota told us that their region does not have a domestic abuse shelter and that victims/survivors have to travel many miles to access basic services.

Victims/survivors also told us that they need greater agency in their cases. They have a range of experiences and needs that don't all align with a single policy solution, and they often feel ignored when they assert their needs. Many don't even get that far; we repeatedly heard that victims/survivors struggle to navigate the system and that pretrial processes aren't designed to capture their input.

The biggest point of consensus among all community engagement participants was the need for greater access to quality mental health and substance use treatment and solutions to homelessness. "A lot of people don't want to be criminal in their behavior, it's an addiction, it's a mental health issue," said a community member in central Minnesota. "We as a society need to realize that these are lifelong scars for some people." A Twin Cities metro judge called for broader changes to address the underlying factors that drive people into the criminal legal system: "Folks get to us because they struggled before they got to us, whether it's

homelessness, or addiction, or mental health, or trauma they experienced as a child." Pretrial detention often exacerbates these problems. Community members described the impact in terms of depression, suicidality, PTSD, and worsening substance use. One said "It takes years to recover" from the psychological toll of being in jail.

The availability of resources to meet these needs varies widely across the state; system actors in some rural areas said that people have to travel many miles to receive services, and the cost of transportation presents a major barrier. The need for services outpaces availability in urban areas too. Most people we spoke with described these gaps as reaching a crisis level.

Crucially, our conversations with community members and system actors illuminated practices that are already working to improve the pretrial system in Minnesota and generated further ideas for change. **The throughline was a vision for shifting away from a money-based system to one that more accurately accounts for risk and prioritizes pretrial supports.** This vision for system transformation reflects research on pretrial best practices.

Recommendations

- Strengthen and expand cite and release policies.
- Guarantee the right to counsel at bail hearings.
- Create an intentional release/detain system that does not use monetary bail.
- Direct judges to order the least restrictive release conditions necessary to maximize court appearance and safety.
- Establish and fund Pretrial Service Organizations (PSOs) statewide.
- Collaborate with victim/survivor advocates to craft policies that address risk assessments, domestic violence programming, wraparound services, and court notifications.
- Afford ample time between the passage and implementation of any new pretrial law and establish an implementation committee to guide stakeholder collaboration, technology upgrades, training, funding, and monitoring.

Throughout this report, we bear in mind that any worthwhile pretrial system must effectively balance four (sometimes competing) considerations: (1) the constitutional and liberty rights of criminal defendants; (2) community safety; (3) court appearance; and (4) socioeconomic and racial equity in the criminal legal system. Thus, while it may seem safe to conclude that certain practices—like pretrial detention—best serve a particular goal—like community safety—two additional questions must be answered before we can confidently reach that conclusion. First, does one goal unduly outweigh the others? And second, are there practices that achieve that goal equally well or better without compromising the other goals? **In other words, the question is not only whether a particular pretrial system achieves community safety and court appearance, but whether a different system or approach would achieve those goals equally well or better with a lesser impact on the rights of community members and equity within the system.** Our recommendations identify practices that our research shows most effectively achieve an appropriate balance of these four considerations.

Cite and release

For good reasons, courts are the primary focus of pretrial reform. That is where first appearance hearings happen and judicial officers decide whether, and under what conditions, to release people. There is growing recognition, however, that pretrial transformation must include law enforcement practices. **Specifically, police can use their cite and release authority so that people accused of low-level crimes are not booked into jails or subject to bail proceedings.** By issuing a citation (also called a summons) rather than making an arrest, law enforcement can greatly reduce pretrial jailing, thereby maximizing liberty, reducing jail crowding, saving local resources, and avoiding the negative consequences of pretrial detention. Criminologists argue that increasing cite and release can enhance "community-police relations, largely as a function of sparing offenders the hardships associated with an arrest for a minor offense." Additionally, the practice can increase "officer and public safety, primarily by reducing the 'hands-on' requirements of making a custodial arrest" (Scott-Hayward & Fradella, 2019, p. 154).

Most states have laws allowing police to cite and release—rather than arrest and book—in at least some types of cases. The limited empirical research indicates that this practice does not undermine court appearance or community safety (Fradella & Purdon, 2021). **Pretrial experts and national organizations encourage states to systematize and expand cite and release**. For example, the American Bar Association's standards on pretrial release state: "It should be the policy of every law enforcement agency to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law. This policy should be implemented by statutes of statewide applicability" (ABA, 2007, p. 63).

When New Jersey overhauled its pretrial system, it revamped its cite and release policies. The state's Attorney General issued a directive to all county prosecutors and law enforcement agencies instructing that "in any case where the State would not object to the defendant being released 'on personal recognizance'... it might be just as appropriate to charge by means of a complaint-summons, obviating the need for police to transport the defendant to a county jail and detain him or her there for up to 48 hours" (Porrino, 2017, p. 28). To help officers determine whether to release someone, they review a preliminary pretrial safety assessment, which "accounts for the general nature of the present offense (e.g., whether it involves violence), and certain electronically-stored criminal case and court history data that documents the defendant's previous involvement, if any, in the adult criminal justice system" (Porrino, 2017, p. 27).[14] Along with the pretrial safety assessment, officers consider information such as whether the person has violated a domestic violence order for protection.

New Jersey's cite and release policy has produced promising results. In 2014, prior to the reform overhaul, 54% of defendants were issued complaint-summonses. In 2017, the figure increased to 71%—so, just under 30% of accused people were booked on summons-warrants and subject to bail proceedings. Through their use of cite and release, law enforcement officers contributed to the roughly 27% decline in New Jersey's jail population between 2015 and 2023. Two important things help explain New Jersey's success with cite and release. First, the state's Attorney General has authority to direct local police and prosecutors across the state to enact policy changes, such as expanding cite and release (New Jersey Office of the Attorney General, n.d.). The AG in Minnesota does not have the same authority. Second, state and local leaders systematically trained officers on how to implement the AG's directive. Angelo Onofri, Mercer County Prosecutor and President of New Jersey's Prosecutors' Association, noted, for example: "My office trained all 1,100 law enforcement officers

14) Officers use technology called "Live Scan" that generates the PSA from a fingerprint.

in Mercer County to issue a [complaint-summons] unless factors were present to [justify an arrest]" (APPR, n.d.).

Minnesota currently authorizes police on the street and sheriffs in jails to use cite and release in certain circumstances. Rule 6 of the Minnesota Rules of Criminal Procedure mandates citations for misdemeanor and petty misdemeanor offenses unless law enforcement believes that the accused person is a substantial risk to flee, obstruct justice, or threaten public safety (Minn. R. Crim. P. 6.01, subd. 1(a)). Elements of Rule 6 are partially reflected in Minnesota Statutes Section 629.72, which provides guidance for cite and release in cases involving domestic violence, harassment, and related offenses (Minn. Stat. Sec. 629.72 (2023)). Still, although Rule 6 permits discretionary citations for more serious offenses, **the lack of comprehensive statutory guidelines for cite and release can produce inefficiencies and inequities.**

Codifying Rule 6 and associated guidelines into statute would establish clear, enforceable standards for cite and release practices, ensuring equitable application across Minnesota. Such statutory codification is essential for providing all stakeholders—law enforcement, courts, and communities—with consistent standards, reinforcing the state's commitment to fairness and uniformity. Legislation should expand the classes of offenses, including certain gross misdemeanors and felonies, for which law enforcement "shall" use cite and release, making the practice mandatory unless there is strong evidence that the accused will flee, obstruct justice, or harm themselves or others (Scott-Hayward & Fradella, 2019, p. 166). Moreover, legislation should mandate and provide resources for comprehensive law enforcement training on cite and release policies.

Right to counsel

A person's first appearance in court is "a substantive proceeding that will significantly impact both the person's liberty and the course of the case" (Alsdorf & Shames, 2022). **Therefore, it is critical that all persons have meaningful access to counsel at their first appearance.** It is so critical, in fact, that the United States Supreme Court has held that "the right to counsel guaranteed by the Sixth Amendment applies at the first appearance before a judicial officer" (*Rothgery v. Gillespie County*, 2008). The Court reasoned that "by the time a defendant is brought before a judicial officer, is informed of a formally lodged accusation, and has restrictions imposed on his liberty in aid of the prosecution, the State's relationship with the defendant has become solidly adversarial" (*Rothgery v. Gillespie County*, 2008). Having counsel at first appearance protects the accused from self-incrimination and guarantees due process.

Studies have shown that having defense counsel present at first appearances has a significant impact on the outcome of those hearings. One study of defendants accused of nonviolent crimes in a large urban area found that people with representation at a first appearance were more than twice as likely to be released on their own recognizance, more than four times as likely to have their bail reduced, and "almost twice as likely... to be released on the same day they were arrested" (Colbert et al., 2002). Studies in Michigan and upstate New York echo these findings

Having counsel at first appearance protects the accused from self-incrimination and guarantees due process.

(National Legal Aid & Defender Association, 2020). National standards likewise urge jurisdictions to require effective counsel at first appearance before a judicial officer (National Association of Pretrial Service Agencies [NAPSA], 2020, p. 41).

The presence of counsel at first appearance does not only benefit the defendant—it benefits the system. An attorney is typically much better equipped than a defendant to provide the court with the information needed to make an informed decision. When judges can consider all of the relevant circumstances at the first appearance, they can make more informed decisions.

In Minnesota, judges at the first appearance are required to notify defendants of the right to counsel *and* appoint the public defender if the defendant cannot afford counsel (Minn. R. Crim. P. 5.04, subd. 1). The rules, however, do not require that counsel be present at the first appearance. Here, whether an attorney is present at the first appearance depends on the resources of the county in which the crime is charged. For example, in Hennepin and Ramsey counties, public defenders are present at every first appearance hearing, and they usually meet with defendants prior to being appointed. Public defenders in these counties can do so because those counties have substantially more staff and because the courthouses are centrally located and easy to access. In more rural counties with fewer resources, defendants often make their first appearance without an attorney present. Although the court may appoint counsel at the first appearance, it is much less likely that an attorney will be in the courtroom ready to advise and represent immediately.

Intentional release/detain system

To bring Minnesota in line with evidence-based practices and constitutional guarantees, we recommend instituting what Timothy Schnacke calls an **"intentional release/detain system"** (Schnacke, 2021). Such a system honors English and American historical notions of a release decision that is purposeful, immediately effectuated, and not dependent on a person's access to wealth. In an intentional release/detain system, decisions to release or detain would be reasoned, justified, and constitutionally sound. As discussed below, the intentional release/detain system is supported by the history of bail, law, national standards, and social science research.

What is an intentional release/detain system?

Implementing an intentional release/detain system requires **(1) replacing money-based detention with a more deliberate detention process that includes adequate due process elements that do not exist in Minnesota's current bail system and (2) rewording the state's legal requirements for intentional detention.** Those legal requirements are typically found in the state constitutional bail provision, but components may also be found in statute and court rules. Until 2017, states had little guidance regarding how to craft good intentional release/detain systems. Fortunately, there are now evidence-based, legally sound models that states can use. Indeed, nearly a dozen national groups with varying political orientations agree on the basic elements of a model detention provision that balances the government's interests in public safety and court appearance with the liberty interest of the accused.

The main elements of this intentional detention provision are: (1) a limited, charge-based detention eligibility net; (2) a further limiting process; and (3) a secondary net and process (also known as bail revocation).

Element #1: Detention eligibility net

The first component—a detention eligibility net—is a set of criminal charges that make a person eligible for pretrial detention (National Conference of Commissioners on Uniform State Laws, 2020, definition of "covered offense"). For example, Minnesota might enact a law that makes someone eligible for pretrial detention if they are charged with murder, assault in the first degree, or domestic assault. A person charged with any other offense would fall outside of the detention eligibility net and would be released (with or without conditions) during the pretrial period.

A net may consist of individual charges (i.e., "murder in the first degree"), groups of charges (i.e., "felonies"), or even charges plus preconditions (i.e., "felonies where the minimum sentence is 20 years in prison"). **In any case, the net should be charge based and limited.** It cannot simply make all charges eligible for detention. This is likely required by constitutional due process fair notice guarantees. **Due process requires that laws be clear enough that an ordinary person will understand what conduct is prohibited and what the consequences of engaging in that conduct might be.** In other words, to help people know what can be done to stay out of jail, the law must spell out what can lead to jail, and the best way to do that in pretrial is through a charge-based net. An unlimited detention eligibility net (meaning one that makes every person arrested eligible for pretrial detention) would not provide the definiteness required by Minnesota and United States Constitutions and would substitute judicial judgment for legislative judgment.[15] The United States Supreme Court wrote, in a different context, "[I]f the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, [it would] substitute the judicial for the legislative department" *(Sessions v. Dimaya*, 2018).

Most states have had, or currently have, a detention eligibility net incorporated into their constitution. The Minnesota Constitution states: "All persons before conviction shall be bailable by sufficient sureties, *except for capital offenses...*" (Minn. Const. art. I, § 7, emphasis added). This clause originally meant that people charged with capital cases were not automatically eligible for release. In other words, they fell within the detention eligibility net. Now, because Minnesota no longer has capital punishment, there is no detention eligibility net. No one can be ordered detained pretrial in Minnesota.

Overall, the only guidance provided by courts on how to design an intentional detention provision is found in *United States v. Salerno*. In that case, the Court upheld the federal Bail Reform Act as constitutional because it created a detention scheme that was "carefully limited" and "narrowly tailored."

An essential part of crafting a "carefully limited" net is explaining why certain types of cases (and not others) are eligible for detention. To do that, it is necessary to clearly articulate the purposes of pretrial detention. In Minnesota, the courts have said that the only two acceptable reasons for pretrial detention are public safety and court appearance. Therefore, it must be shown that charges within the net are chosen because persons facing those charges are more likely than others to flee or commit offenses while on pretrial release.

For example, some research shows that people previously convicted of felony offenses are more likely to engage in pretrial misconduct (committing criminal offenses or failing to appear for court) than those with misdemeanor convictions or no prior convictions (Cohen

15) At least one state supreme court has held a portion of its pretrial detention statute unconstitutional for violating due process fair notice requirements because that statute failed to adequately specify the offenses eligible for detention (*Scione v. Commonwealth*, 2019).

& Hicks, 2023). There is also evidence that those charged with violent offenses are more likely than those charged with nonviolent offenses to be rearrested pretrial for violent crimes (Baradaran & McIntyre, 2012, p. 528). It is important to note, however, that "more likely" does not mean "likely overall." Indeed, the majority of those charged with or convicted of violent felony offenses are successful during the pretrial period (Cohen & Hicks, 2023).[16] **Still, this research offers some support for a detention eligibility net that includes violent felony offenses—that is, those offenses that either seriously threaten bodily harm or result in actual physical harm.[17]**

Minnesota will likely need to narrow the net beyond "violent felonies" to achieve a "carefully limited" detention scheme. Illinois' Pretrial Fairness Act creates a charge-based detention eligibility net that lists specific charges, such as first-degree murder, predatory criminal sexual assault of a child, criminal sexual assault, armed robbery, burglary where there is use of force against another person, stalking or aggravated stalking, and domestic battery or aggravated domestic battery (725 Ill. Comp. Stat. 5/110 (2025)). We recommend that level of specificity be used in creating Minnesota's detention eligibility net.

Ultimately, any political decisions on the question of what charges should fall within the net must take into account the Supreme Court declaration that: "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception" (*United States v. Salerno*, 1987).

In sum, creating an intentional release/detain system starts with identifying which charges will make a person eligible for pretrial detention. The law likely requires a limited, charge-based net that must be legislatively justified, but there is considerable leeway in how to achieve that. Charges that fall within the detention eligibility net do not automatically make a person detainable. They simply make a person *eligible* for detention. The next step is to institute processes that will help judges decide whether any individual person should, in fact, be detained.

Element #2: Further limiting processes

The decision to preventively detain a person during the pretrial period has far-reaching consequences. **It should therefore only be made after careful consideration and with the benefit of substantive due process safeguards.** To determine what kind of safeguards should be instituted in Minnesota, we can again look to *Salerno* for guidance, as well as to the intentional release/detain systems we observed in New Jersey and Illinois.

The *Salerno* Court upheld the Bail Reform Act because it included robust procedural safeguards, including: (1) a prompt, "full-blown adversary hearing" with counsel and the ability to introduce evidence and witnesses; (2) a requirement that the judge only detain after finding by clear and convincing evidence that the defendant "presents an identified and articulable threat" and that no condition or combination of conditions suffice to provide reasonable assurance of public safety or court appearance; (3) a requirement that the judge make written findings for detention; (4) robust Speedy Trial rights; and (5) the ability to make an immediate and expedited appeal (*United States v. Salerno*, 1987).

It might be possible for an intentional release/detain system to pass constitutional muster

16) This evidence indicates only limited support for making violent felonies detention-eligible. We make no recommendation on the use of prior convictions in pretrial release and detention decisions. Indeed, we heard repeatedly from community members that their old convictions unduly influenced bail decisions in their cases.
17) While the research can provide at least some empirical justification for a net based on violence, Minnesota would need additional justification for including any nonviolent crime in the detention eligibility net.

without including all of the procedural safeguards approved in *Salerno*. **But to achieve the necessary "careful delineation of the circumstances under which detention will be permitted," best practice for Minnesota would be to include all these components in constructing an intentional release/detain system** (*United States v. Salerno*, 1987). This conclusion is supported by the American Bar Association's Standards for Pretrial Release, which include all of *Salerno*'s procedural protections (ABA, 2007).

Of these protections, the requirement that a judge make a finding of risk concerning someone who falls within the detention eligibility net is arguably the most important. The bulk of the "narrowing" required by *Salerno* will come from a careful articulation of the risk needed to detain someone within the net.[18]

If the finding of risk is poorly articulated, intentional detention becomes the default, negating the rule that detention should be carefully limited. We see this problem with the federal finding of risk found in the Bail Reform Act (The Bail Reform Act of 1984, "no conditions or combination of conditions"). This finding is inadequate. First, the emphasis on conditions is flawed. From a practical perspective, it assumes that a jurisdiction will have the resources available to impose the many release conditions available at the federal level. Second, from a research perspective, a conditions-based approach depends on the idea that traditional conditions of release are effective. However, as discussed later, the research shows that common release conditions do not improve pretrial outcomes. Third, the federal finding of risk is too general, focusing on the risk associated with mere court appearance rather than flight, and with public safety rather than the risk of committing a serious or violent crime. These flaws are not theoretical. After adopting this finding of risk, the federal pretrial detention rate increased from 30% to over 70% (Rowland, 2018).

An example of a clear, precise articulation of a finding of risk is:

> Clear and convincing evidence that the accused poses an extremely or substantially high risk to willfully flee to avoid prosecution or to commit a serious or violent crime against a reasonably identifiable person or persons and that no condition or conditions suffice to adequately mitigate that high risk.

This risk articulation carefully delineates the circumstances where detention is appropriate by (1) focusing on flight, rather than simple nonappearance, which, as we explain below, often happens for personal and logistical reasons rather than an intention to avoid prosecution; (2) requiring a specific and provable risk to a particular person or people, instead of a vague and difficult-to-prove general public safety risk; and (3) mandating a finding of *high* risk, rather than simply any amount of risk. The other limiting elements from *Salerno*, like written findings by the judicial officer, should be included alongside this robust finding of risk.

The intentional release/detain systems in New Jersey and Illinois include the procedural safeguards delineated in *Salerno*. In 2017, New Jersey passed the Criminal Justice Reform Act (CJRA), which shifted the state from a system that relies on monetary bail to an inten-

18) The requirement that judges make a finding of risk in order to detain someone pretrial has existed since the founding of this country. This type of finding was first articulated as "proof evident, presumption great," meaning that a judge who found the proof of guilt clear could conclude that the accused was risky to flee (or, later, to commit another crime). This type of finding is found in many state constitutional bail provisions, including Minnesota's. The federal Bail Reform Act articulated the finding as "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community" (1984). Regardless of the phrasing, this requirement of a finding of future risk has always been a part of the American system of bail.

tional release/detain system.[19] The CJRA established a right to counsel at a promptly held detention hearing, where a defendant may present evidence, cross-examine witnesses, and testify. Judges in New Jersey are required to find detention necessary by clear and convincing evidence and to produce written findings to that effect (N.J. Rev. Stat. § 2A:162-19, 2023). The New Jersey Rules of Court also require that, prior to the detention hearing, the prosecution disclose any discovery on which they plan to rely in their detention argument (N.J. Ct. R. 3:4-2, 2024). The detention hearings we observed in New Jersey lasted a minimum of twenty minutes and involved detailed factual and legal arguments. Judges in New Jersey also put substantial findings on the record regarding their release/detention decisions.[20]

Minnesota must institute its own limiting processes to guide release decisions and restrict detention to only those cases that present an unmanageable risk of flight or of serious or violent pretrial crime.

Illinois' Pretrial Fairness Act likewise includes requirements of a prompt detention hearing with defense counsel present, a clear and convincing evidence standard, discovery disclosure prior to the detention hearing, written judicial findings, and the right to appeal (725 Ill. Comp. Stat. 5/110, 2025). As in New Jersey, detention hearings we observed in Illinois were substantially more robust than Minnesota's bail hearings.[21]

Minnesota must institute its own limiting processes to guide release decisions and restrict detention to only those cases that present an unmanageable risk of flight or of serious or violent pretrial crime. *Salerno*, the ABA Standards, and the laws of Illinois and New Jersey, as well as the dozen or so models that provide consensus detention language offer blueprints that Minnesota should use in constructing its limiting processes.

Element #3: Secondary net and limiting process

Finally, an intentional release/detain system will require a secondary detention eligibility net. This is also known as bail revocation. The secondary net would come into play should a released defendant willfully fail to appear in court or commit a criminal offense during the pretrial period. However, like the primary net and limiting process, the secondary net and process can be crafted in ways that provide far more transparency and fairness than typical revocation provisions found in American law and that give the State the ability to deal with perceived instances of pretrial failure.

An ideal secondary net and process might be crafted to apply the same exacting standards (e.g., clear and convincing evidence) as the primary process. But it might also be crafted to allow judges the ability to detain more easily. This would happen by crafting a larger net and less stringent finding of risk while still including the same due process protections. As with the primary detention eligibility net, inclusion in the secondary net would not mean that a person is automatically detainable. Instead, it would mean that the person is *eligible* for revocation of release. Then, as with the primary net, courts would need to engage in further analysis (through limiting processes) to determine the appropriateness of release revocation.

19) New Jersey law still permits the use of monetary bail, but it is virtually never imposed by judges.
20) Although the CJRA has faced legal challenges, the constitutionality of the Act was upheld (*Holland v. Rosen*, 2018). The United States Supreme Court declined to hear the case.
21) The Pretrial Fairness Act also faced a legal challenge soon after its passage, but the Illinois Supreme Court upheld the constitutionality of the Act (Rowe v. Raoul, 2023).

Balancing

All three components of an intentional release/detain system—primary detention eligibility net, limiting processes, and secondary detention eligibility net and processes—must work in tandem to achieve a "carefully limited" pretrial detention scheme. For example, Minnesota might decide to use a slightly broader primary detention eligibility net (making more people eligible for detention), but then it must institute a more robust limiting process.

The guiding theme of a pretrial detention scheme is one of limits. All Minnesotans start with the right to liberty and freedom and therefore a presumption toward release. Each restriction of liberty must be justified and considered in context so that the entire release/detain provision is "carefully limited." An intentional release/detain system, if crafted carefully and with the requirements of *Stack*, *Salerno*, and *Brooks* in mind, would comport with our state's long tradition of guaranteeing a broad right to freedom prior to trial.

All Minnesotans start with the right to liberty and freedom and therefore a presumption toward release. Each restriction of liberty must be justified and considered in context so that the entire release/detain provision is "carefully limited."

How do we get it?

In Minnesota, district courts cannot deny bail to defendants in criminal cases. Instead, they only have discretion "in fixing the amount of bail" (*State v. Pett*, 1958). In other words, if a person is not released on personal recognizance, they have an "absolute right" to have bail set (*State v. LeDoux*, 2009). Judges may also order non-financial conditions of release, but are not required to do so. Moreover, the "sufficient sureties" language in the Minnesota Constitution guarantees "a broad array of options and forms of security to satisfy the monetary bail amount deemed necessary by the court to assure appearance" (*State v. Brooks*, 2000). Accordingly, district courts are prohibited from requiring payment of bail in full, in cash. Instead, defendants should be able to obtain release by multiple methods, whether that be cash, bond, or agreeing to non-monetary conditions.[22]

Minnesota's constitution currently guarantees rights that would be at odds with an intentional release/detain system. And these rights cannot be altered simply through statutory change. **If Minnesota enacted statutory changes that negated the meaning of the constitution's bail clause, that statute would likely face insurmountable legal challenges. Implementing an intentional release/detain system, therefore, requires changing the constitution.** Notably, other states have come to the same conclusion. In the past ten years, both New Mexico and New Jersey have amended their constitutions to allow for preventive detention under certain circumstances (N.M. Const. art. 2, § 13; N.J. Const. art. 1, § 11).

Changing the state constitution could prove beneficial for several reasons. Drafters could clean up words and phrases in the constitution that tend to cause confusion. Other states, for example, have eliminated the word "bail" and replaced it with the word "release." Likewise, drafters could eliminate the phrase "sufficient sureties" or make it clear that a release condition cannot lead to intentional detention. The drafting process would allow for a much-needed reset in bail jurisprudence that might not be attained without tackling the constitutional issue.

22) Minnesota Rule of Criminal Procedure 6.02 requires that defendants who have a conditional bail set must also always have an unconditional, monetary bail set (*State v. Martin*, 2008). The Minnesota Supreme Court has held this comports with *Brooks* and is therefore constitutional.

Least restrictive conditions

If a judge decides that conditions of release are necessary in a criminal case, the judge should order the "least restrictive" conditions necessary to maximize appearance and safety (NAPSA, 2020; ABA, 2007). This recommendation is consistent with Minnesota Rules of Criminal Procedure, written such that "conditions of release must proceed from the least restrictive to the ultimate imposition of cash bail depending on the circumstances in each case" (Minn. R. Crim. P. 6 cmt.).

In our community engagement sessions, participants expressed frustration about "one-size-fits-all" pretrial processes. **Community members specifically desire that conditions be set according to each individual's needs and circumstances.** These sentiments are consistent with national pretrial standards and reform models (NAPSA, 2020; National Institute of Corrections [NIC], 2022). The APPR blueprint for pretrial change argues, for example: "Judicial officers should avoid blanket conditions and should instead look at the person before them and decide whether conditions of release are necessary and, if so, what those conditions are. In addition, they must ensure that conditions offer essential assistance without undermining positive factors (e.g., job, school, family obligations)" (Alsdorf & Shames, 2022, p. 14). To encourage individualized condition-setting, courts should eliminate "check-boxed" condition forms and require judicial officers to write out release orders (NIC, 2022, p. 10).

There is a growing recognition that "over-conditioning" is often counterproductive and wasteful. Research indicates that pretrial supervision improves pretrial outcomes for people deemed moderate- or high-risk but actually reduces pretrial success among those classified as low- to moderate-risk (NIC, 2022, pp. 1-2). Drawing on leading pretrial research, New Jersey's Joint Committee on Criminal Justice states that over-conditioning "may actually increase the likelihood of certain pretrial misconduct by 'low-risk' defendants" (2014, p. 63). These findings make sense; onerous conditions disrupt people's lives, including by making it hard to find and keep employment. Some of the most common and most restrictive release conditions lack empirical grounding and therefore should be used cautiously or not at all (NIC, 2022, pp. 1-2). The use of drug testing, for example, "has been shown to be ineffective at reducing failure-to-appear rates or pretrial rearrest rates in a number of randomized control trials," Megan Stevenson and Sandra Mayson, law professors and pretrial justice experts, explain (2017, p. 45). "Unfortunately, these results have been ignored, and drug testing continues to be a mainstay condition of pretrial release." These experts conclude that drug testing is not "worth the costs or intrusions."

The use of drug testing, for example, "has been shown to be ineffective at reducing failure-to-appear rates or pretrial rearrest rates in a number of randomized control trials"

Evidence supporting widespread use of electronic surveillance is also lacking (NIC, 2022). A study by the non-profit research firm MDRC finds "that pretrial release with electronic monitoring is no more effective than pretrial release without electronic monitoring in promoting compliance with the universal pretrial release conditions of making all court appearances and avoiding new arrests in the pretrial period" (Anderson Golub et al., 2023). Additionally, Stevenson and Mayson argue, "EM is a significant burden on a person's liberty. It places strain on family relationships, makes it difficult to find employment, and can lead to shame and stigma.... EM is also costly to the state. Purchasing the equipment, monitoring indivi-

duals, and responding to violations entails considerable expenses" (2017, p. 46). Based on the available evidence, we recommend that courts not use EM as a release condition. If they do use it, they should only do so when the sole alternative is detention.

Taken together, the research strongly suggests that courts avoid placing conditions on the vast majority of defendants (except for baseline requirements, such as appearing for court and not committing crimes). When courts decide that people pose "moderate" or "high" risks to flee or commit crimes, they can assign them to pretrial services organizations—ideally, with no or few other mandatory conditions. We discuss this further in the next section.

Finally, all court-ordered release conditions should be paid for by the government, not the accused. Requiring defendants to pay for supervision, drug and alcohol testing, electronic monitoring, and other conditions is highly restrictive—especially in jurisdictions where non-payment is a supervision violation that can lead to pretrial detention (Alsdorf & Shames, 2022, p. 15). Charging defendants for conditions drains individuals of much-needed resources, producing the same negative consequences that result from paying financial bail.[23]

Pretrial support services

We repeatedly heard from community members about the need for more and better pretrial support services that address underlying issues that may have brought someone into the criminal legal system in the first place and help people navigate the pretrial process. Research, national pretrial standards, and expert opinion echo these community calls for improving and expanding pretrial supports. **We recommend that Minnesota establish pretrial services organizations (hereafter, PSOs) to provide robust support to accused people during the pretrial process.**

Structure and purpose

PSOs are essential components of an evidence-based pretrial system. They **maximize liberty** by collecting and providing information so judges and other authorities can make informed, consistent, and timely pretrial decisions. PSOs **maximize appearance** by helping people navigate the pretrial process; they remind people of court dates, translate "court speak," and provide a range of resources that address everyday challenges that contribute to non-appearance. PSOs **maximize safety** by monitoring compliance with court-ordered release conditions and facilitating access to government- and community-based programs and services so people charged with crimes can tackle underlying issues that may lead to criminal behavior. Quality PSOs, well-integrated into courts and communities, make the pretrial process more effective and efficient and help counties reduce jail populations. **For these reasons, the American Bar Association insists that "[e]very jurisdiction should establish a pretrial agency or program"** (2007, p. 5).

Nationwide, the vast majority of PSOs operate as units within probation departments or local courts, with varying levels of autonomy. However, significant shifts are occurring within the pretrial services field. There is a small but growing number of non-profit PSOs in states such as California, Maine, Minnesota, New York, and Wisconsin. Advocates, experts, and

23) Scholarship on "legal financial obligations" (LFOs) demonstrates that court fines and fees (and the debts they produce) lead to a variety of material, psychological, and medical problems for individuals and their families (Boches et al., 2022; Harris & Smith, 2022; Harris, 2016; Pattillo et al., 2022). Low-income individuals often have to choose between paying LFO debt or essentials such as rent or medicine (Harris, 2016). Additionally, LFO can keep people "ensnared in the criminal justice system for years" (Doyle et al., 2019, p. 24).

practitioners are also re-envisioning the goals and operations of pretrial services. The Center for Effective Pretrial Policy explains:

> In the past, these services were primarily focused on monitoring and enforcing compliance with court-ordered release conditions. Today, many agencies are moving away from this model and toward providing assistance and support. This change is the result of the field's evolving understanding of pretrial legal principles and research, a recognition that pretrial supervision is not the same as probation (and legally cannot be used as punishment), and an urgency to achieve more fairness, consistency, and economic and racial equity (Alsdorf & Shames, 2022, p. 15; see also NAPSA, 2020, p. 73).

We saw this change first-hand during our site visits to small, rural, politically conservative counties (Cass County, Indiana, and Sawyer County, Wisconsin) and large, urban, politically liberal counties (Kings and Bronx counties, New York). Evidence also exists in Minnesota—most notably in the Dodge and Olmsted County Pretrial Release Program. The Vera Institute of Justice reports that jurisdictions with PSOs that "rely on supportive pretrial services" are effective, producing "high appearance rates and low arrest rates, especially for violent offenses" (Vera Institute of Justice, n.d., p. 1).

The pretrial services hub and spoke model

We recommend what the Vera Institute of Justice calls a "hub and spoke" model of pretrial services. In this framework, PSOs serve as the "hub," with court-based staff who interview and accept people into the pretrial services program at their first court appearance, when a judge has made participation a condition of release. People in a PSO program are typically required to meet with a case manager at certain intervals, depending on the outcome of a risk or needs assessment. The model works best when this is the only form of compliance that PSOs are required to report to the court. Case managers then make voluntary referrals to "spoke" organizations that are community-based and independent of the legal system. This enables accused people to access needed resources, such as chemical dependency treatment, without the court's direct involvement. As the "hub" of this model, PSOs provide three essential functions.

Function #1: Collect and supply information to the court

Before first appearance hearings, PSOs research arrested individuals' criminal histories, conduct risk and needs assessments, and compile other information that courts request. Based on these assessments, some PSOs make recommendations about release conditions that support a person's ability to appear for court and remain law-abiding. Following the American Bar Association, National Association of Pretrial Service Agencies, and National Institute of Corrections, we strongly suggest that all PSOs make such recommendations

to guide judges' deliberations regarding the imposition of pretrial conditions (ABA, 2007; NAPSA, 2020; NIC, 2022).

We also recommend that PSOs have "delegated release authority," which permits them to release people charged with certain offenses who are likely to appear for court and avoid committing new crimes. Providing PSOs with this authority can help reduce jail crowding, save money, decrease first-appearance dockets, and avoid the negative consequences of pretrial detention.

In Minnesota, at least two counties grant PSOs this authority. Hennepin County authorizes the Department of Community Corrections and Rehabilitation's Adult Pre-Adjudication Services Division to release defendants who score in the low or medium range on a bail evaluation and are charged with offenses that do not require judicial review, such as low-level theft and drug possession. Ramsey County allows pre-charge release of people accused of minor offenses and deemed "low risk." Those released in this manner receive support from a community-based organization paid by the county.

When a person is detained pretrial, PSOs should continue gathering information to facilitate "sequential bail review." Specifically, they should "review the status of detained defendants on an ongoing basis for any changes in eligibility for release options and facilitate their release as soon as feasible and appropriate" (ABA, 2007, p. 6). As APPR's Roadmap for Pretrial Advancement explains, "[t]here are many reasons why the court might want to later modify the initial detention decision." For example, the "circumstances for the person may have changed such that they can be safely released; and/or the person may be detained for a period longer than the sentence would allow for the underlying offense" (Alsdorf & Shames, 2022, p. 17). The small, independent PSO in Cass County, Indiana, is a model for other agencies:

> [Cass County Court and Pretrial Services (CCCPS)] analyzes the jail population and cross references data with Odyssey [court case management system] to provide current information to stakeholders on the offenders' risk level, bond, pretrial/incarceration status, offense type, holds, etc. Information is shared with Community Corrections, Probation, and the Advisory Board on a monthly basis. CCCPS also uses this analysis as its "look-back"/sequential review process to identify reasons the Court may change its initial release decision.... *In the event that Pretrial Services identifies a defendant that meets the above outlined criteria, the presiding Court is notified and a hearing is requested* (CCCPS, 2024, pp. 26-27, emphasis added).

By taking responsibility for "sequential bail review," PSOs help free up jail space and promote justice.

Function #2: Court navigation

One of the central duties of support-centered PSOs is helping people make their court appointments by addressing their needs and drawing on their strengths. Research consistently shows that "most people—approximately 80 percent—will return to court and remain law-abiding when released to the community. In most cases, they do this even if

released solely on the promise to appear" (Alsdorf & Shames, 2022, p. 14).[24] Further, as a 2023 report by the Prison Policy Initiative notes: "Even when people miss court, most return within a year" (Nam-Sonenstein, 2023). These points suggest that most people want to deal with their cases and are not trying to abscond, and that PSOs can concentrate resources on those who face the most significant barriers to making their court dates—e.g., people struggling with mental illness, chemical dependency, physical disabilities, or homelessness.

Research demonstrates that people tend to miss court for rather "mundane" reasons, such as lack of transportation, work conflicts, childcare duties, or difficulty keeping track of their court dates (Bernal, 2017; Corey & Lo, 2019; County of Santa Clara Bail and Release Work Group, 2016).[25] In a study of court absences in Lake County, Illinois, researchers concluded: "People are trying to get to court. Individuals described navigating multiple obligations, competing demands, and barriers too challenging to overcome. Some individuals described the need to prioritize basic needs, like food and shelter, over their court obligations" (Magnuson et al., 2023, p. 10).

It is now widely understood that providing court reminders is an effective and inexpensive means of promoting appearance. Stevenson and Mayson explain: "The available research shows that phone-call reminders can increase appearance rates by as much as 42%, and mail reminders can increase appearance rates by as much as 33%" (2017, p. 33). It is critical that PSOs provide reminders to all accused people—not just those on pretrial supervision. When police cite and release a person, officers should provide their contact information to the PSO, which can then follow up with court reminders (Virani et al., 2020). For those who are arrested, PSOs should enroll them in the reminder system during the interview that occurs before the first appearance, unless they affirmatively choose to opt out. Defendants who are assigned to PSOs should have a "designated agency contact" who provides personalized reminders and helps "resolve issues that would affect the defendant's ability to make scheduled court appearances or provide support in meeting other conditions imposed by the court" (NIC, 2022, p. 8; NAPSA, 2020, p. 73).

Defendants who have stable lives and basic resources typically do not require much help showing up for court; reminders are often enough. We heard repeatedly from PSO staff, judges, and lawyers, however, that people who struggle with poverty and other challenges like mental illness and chemical dependency require extra attention and resources. PSOs we studied use a variety of techniques to maximize appearance with hard-to-reach populations. During intake, they solicit information about people (e.g., friends and family members) who can relay messages to defendants and places where they frequent and can receive in-person visits, like shelters, warming centers, and churches. Some PSOs, including the two nonprofits we visited in New York City, provide phones to indigent participants.[26] Along with helping staff remain in contact with participants, providing phones also eases the minds of judges reluctant to release defendants who do not have a contact number. In this way, pro-

24) Additionally, few defendants have the means to "flee" to another state or country. "Successful flight from the jurisdiction suggests access to networks and resources that are not part of the equation for the vast majority of nonappealing defendants" (Gouldin, 2018, p. 710).

25) Court processes are often complex and confusing, even for people with advanced education. To facilitate court appearance, jurisdictions should make their forms and websites straightforward, jargon-free, and easy to navigate (Stevenson & Mason, 2017, p. 4).

26) Between November 2023 and November 2024, Brooklyn Justice Initiatives' Pretrial Supervised Release Program (BJI) distributed about 2,900 phones to approximately 2,400 participants. Partnering with AT&T, BJI paid $461,130 in phone and service costs (Correspondence with BJI, December 6, 2024). The New York City Criminal Justice Agency (NYCJA) pretrial program in Queens provides about 2,000 phones per year (Correspondence with NYCJA, December 12, 2024).

viding phones can help maximize release.

Brooklyn Justice Initiatives' Pretrial Supervised Release Program (BJI) and other support-centered PSOs address other obstacles to getting to court, such as by providing transportation assistance in the form of passes for public transit, shuttle services, or free or discounted trips with taxis or ride-share companies. They also help people access the childcare services made available in some courthouses.

Peer specialists are "credible messengers" who meet with people in the community and help them access resources they need for appearing in court.

A growing number of PSOs hire "peer specialists" to help defendants navigate the pretrial process. The organizations we visited in Cass County, Indiana; Sawyer County, Wisconsin; New York City; and Rochester, Minnesota all employ and enthusiastically tout the value of peer specialists. NYCJA describes these staff members as "certified practitioners who have successfully overcome obstacles such as mental health diagnoses, addiction, involvement with the criminal justice system, abuse, homelessness, and much more" (New York City Criminal Justice Agency, n.d.). Peer specialists are "credible messengers" who meet with people in the community and help them access resources they need for appearing in court.

Certified "peer recovery specialists" who work with pretrial services in Olmsted and Dodge counties in Minnesota meet with clients in local shelters, warming centers, and on the street. Because of their own experiences, they can often locate people who lack stable residences and, more importantly, understand and relate to the challenges that come with poverty, homelessness, addiction, and system involvement. Community engagement participants in St. Cloud, Minnesota, attested to the impact peer specialists made in their lives, indicating that this model of support is already succeeding in some parts of the state. **We strongly recommend that PSOs in Minnesota work with community-based partners to recruit, certify, and hire peer specialists to provide navigation and other types of support throughout the pretrial process.** Counties should also collaborate with participatory defense organizations, such as We Resolve in Ramsey County, Minnesota, which include members with direct experiences with the criminal legal system and help accused people and their loved ones navigate the pretrial process.

Function #3: Promote compliance with release conditions and report progress to court

In the traditional model of pretrial services, PSOs often operate like law enforcement, keeping tabs on defendants, facilitating drug tests, and sanctioning violations. **Today, support-centered PSOs focus more on promoting compliance with court orders so people don't violate their conditions in the first place—and if they do, the PSOs help them get back into good standing.** As discussed previously, we strongly encourage courts to use least restrictive, individualized release conditions. PSOs should have discretion to tailor services to meet defendants' needs and promote pretrial objectives.

There are relatively simple, commonsense methods that PSOs can (and often do) use to facilitate compliance with release conditions. For example, when courts order in-person check-ins with a supervising agent, PSOs can schedule those meetings right before or after court hearings. In this way, PSOs reduce participants' standalone appointments and commutes.

And though mandatory meetings alone don't improve pretrial outcomes, they can be useful to remind people of upcoming court dates, make plans for attending court, build rapport, and discuss personal challenges and potential resources.

PSOs should provide the option of remote check-ins via videoconferencing, a practice that became common during the early years of the COVID-19 pandemic. Requiring people to meet in-person at a PSO office creates similar logistical problems that people face in making court dates and can feel intimidating, limiting the ability of PSO staff to establish rapport with clients (Virani et al., 2020, p. 19). Some PSOs find ways to facilitate videoconferencing even for people who lack stable housing and/or the necessary technology. For example, the pretrial services unit that serves Olmsted and Dodge counties collaborates with a local homeless shelter that facilitates remote meetings for residents.

As we saw during our site visits to NYCJA and BJI, PSOs can take additional steps to encourage people to attend in-person check-ins and make the meetings productive. Each organization has a storefront office (in addition to an office in the Queens and Brooklyn courthouses, respectively) where they meet with participants. The offices feel like community centers: they have security staff (but no metal detectors) and stocks of necessities—toiletries, clothes, food, Narcan, and fentanyl tests—that they give out. NYCJA coordinates with community-based groups and individuals to provide activities and services at the storefront, such as free haircuts and N/A and A/A meetings. BJI has "on site partners" that offer various types of assistance, such as job-training and help signing up for public benefits. The organization collaborates with Fountain House, a NYC-based mental health non-profit, to provide a "coffee corner" at BJI's storefront, part of BJI's effort to cultivate a welcoming, lively environment.

Of course, even when PSOs take extensive measures to promote compliance, some participants violate their release conditions. **As part of their duties to the court, PSOs are required to keep track of such incidents and, in certain circumstances, report them to the court.** PSOs and courts should formulate clear policies detailing the "'infractions' that an agency can address in-house... and defendant conduct that reaches the level of 'violation' that require court action.... Both parties also should define 'success' or when a specific supervision or the level of supervision may be reduced or eliminated" (NAPSA, 2020, p. 74). Guided by research on non-compliance, PSOs should not assume that participants willfully flout release conditions. Instead, PSOs can help participants address barriers so participants fulfill court requirements—with an understanding that the PSO will have to report non-compliance to the court should the situation continue.

PSOs can help participants address barriers so participants fulfill court requirements—with an understanding that the PSO will have to report non-compliance to the court should the situation continue.

Finally, PSOs are responsible for facilitating "the return to court of defendants who miss scheduled court dates" (NAPSA, 2020, p. 72). They do so by locating the accused (often by coordinating with attorneys and people in defendants' social networks), offering assistance for getting to court, and working with court staff to prevent the issuance of warrants so people can show up without fear.

Spokes: Community connections and voluntary services

As described so far, PSOs operate as hubs embedded in the local legal systems they serve. **To maximize effectiveness, however, they must stretch beyond those systems to connect with social service and community-based organizations**—the "spokes" that provide critical services and resources to accused people, helping to maximize appearance and safety and divert people from system-involvement over the long run. To be clear, "spoke" organizations are not PSOs; they accept referrals from PSOs and provide voluntary services to defendants. It is here that the re-envisioning of pretrial services is clearest. As the Bail Project notes, "The pretrial system can either be a profound disruption or a positive intervention point for connecting people with supportive services such as housing assistance, job training, and substance abuse treatment" (2020). **We strongly recommend against using the pretrial process to compel people into programs.** "In the context of pretrial release," Timothy Schnacke rightly states, "long-term behavioral change is technically not the goal, and treatment programs, even ordered benevolently... to help any particular defendant to begin a process of reform, would exceed the lawful purposes of pretrial release" (n.d., p. 47). This distinction should guide PSOs in their efforts to provide supportive services to accused people.

PSOs can only serve this supportive role if they have strong connections to social service and community-based programs. Ideally, PSOs should have dedicated staff who are responsible for building and maintaining these ties and helping participants access the resources that organizational partners provide. NYCJA's Queens Supervised Release Program, for example, has a clinical care coordinator and a housing specialist. In 2024, NYCJA made over 5,000 referrals to direct service providers.[27] Smaller PSOs with fewer resources likely cannot dedicate staff for these purposes; they often struggle just to meet their "hub" obligations. Therefore, we heartily suggest that Minnesota provide PSOs with funding for staffing needs.

PSOs should assess participant needs and strengths during or shortly after the intake process and explore options for addressing them. **PSOs should not mandate referrals to community-based services, but instead present them as a voluntary option.[28]** Moreover, the PSO should not report people's treatment or other needs to the court unless the court orders them to conduct an assessment and report the results.

What happens after this initial process is critical. The most promising PSOs we studied help participants obtain supportive services. Often working with dedicated partner organizations, their staff finds space in programs, gets people on waiting lists, and locates resources. They call the insurance companies and public benefits offices. And once an arrangement is set up, staff often escort participants to the treatment center, homeless shelter, or workforce development office. Peer specialists are often central to this process. They offer encouragement, share personal experiences, provide transportation, and, later, follow up with participants.

Funding and oversight

We recommend that all jurisdictions in Minnesota offer supportive, needs-based pretrial services. PSOs in the state should be "independent, stand-alone entities" that are data-driven and professional (NIC, 2017, p. 13; NAPSA, 2020). Ideally, they should opera-

27) Correspondence with NYCJA, December 20, 2024.

28) In New York, judges can legally require defendants to participate in programs during the pretrial period. When they do, the PSO is required to identify appropriate services and report on compliance. When courts do not mandate program participation, the PSO still offers voluntary supportive services.

te outside of the courts and probation departments, so they can focus exclusively on meeting the specific objectives of pretrial. If this isn't possible, PSOs should have their own mission statements, identity, and physical space within parent agencies (Schnacke, n.d., pp. 73-75).[29] Additionally, PSOs should "hire professionals who are specially trained in supportive case management and counseling and are [well-positioned] to determine what specific support and supervision a person needs" (NACDL, 2020, p. 1).

In order to establish PSOs statewide, the government must provide ongoing, dedicated funding. Minnesota does not currently require jurisdictions to have pretrial services to conduct risk assessments or perform other critical duties. Nor does it adequately fund such services where they do exist. **Today, approximately 18 of Minnesota's 87 counties have pretrial service programs.** In our interviews with system actors, we learned that in some jurisdictions, probation agents do double duty monitoring pretrial defendants who are placed on supervision, an approach that generally is not services-oriented and strains staff capacity. In some counties, other system actors take it upon themselves to try to connect defendants with resources, even though it's not part of their job description. And in some places, the concept is completely unfamiliar; in Northern Minnesota, one County Attorney had never heard the term "pretrial services." Without dedicated state funding, localities with PSOs must cobble together resources from a variety of sources (state, county, and grant funding) and struggle to survive on shoestring budgets.[30]

We recommend that Minnesota automatically allocate annual funding to localities. Counties should not have to compete for the funding, because funding stability is critical for planning and continuity of operations. Localities should receive state funding on the condition that they adhere to standards and follow best practices as delineated in statute and directives. An existing state agency, such as the State Court Administrator's Office, would be charged with distributing funds, reviewing PSO budgets, and evaluating compliance with state guidelines. The state should provide minimum funding to all jurisdictions, so that small jurisdictions can meet the pretrial services requirement and offer competitive salaries and benefits that are necessary for recruiting and retaining high-quality, dedicated staff.

The state should also consider funding direct service providers who work with pretrial populations—a lesson we learned from New Jersey and Illinois. In New Jersey, the government only allocates money for pretrial staff and operations. As such, PSOs have trouble connecting people on their caseloads with chemical dependency, mental illness, and other services. In Illinois, legislators have begun to address pretrial service needs by passing, in 2024, the "Pretrial Success Act," which provides grants to health and human service agencies and community-based organizations (Preston & Gore, 2024). Recipients of this funding must accept referrals from PSOs and help clients navigate the pretrial process, along with providing direct services. This funding is especially critical for rural counties that lack service providers.[31] But even in large urban counties, service providers often have limited capacity and need additional funding to meet the needs of people on pretrial release.[32]

29) The PSO for Olmsted and Dodge counties, operating within a probation department, is a good example.
30) Correspondence with Travis Fisher, President of the Minnesota Association of Pretrial Services Agencies, November 20, 2024.
31) Correspondence with Rebecca Levin, Vice President for Policy at Treatment Alternatives for Safe Communities, September 17, 2024.
32) We developed additional recommendations based on our discussions with pretrial administrators in several states. First, legislation should include mechanisms for increasing the pool of money that the state allocates to counties to keep up with inflation and respond to unforeseen developments such as pandemics, spikes in crime, or legal changes that expand pretrial caseloads. Second, the agency responsible for distributing pretrial

Victim/survivor reforms

Changes to Minnesota's pretrial system must take into account the experiences of victims/survivors. In this report, we've specifically focused on victims/survivors of domestic violence (DV) and intimate partner violence (IPV) because the pretrial period is especially consequential in these cases. Victims/survivors are most at-risk immediately following their abuser's arrest and release from jail, when the threat of retaliation is high. Nationwide, early dismissal of DV/IPV cases is common, so the pretrial period is sometimes the only interaction that victims/survivors and the accused will have with the criminal legal system, making it a critical opportunity for intervention (Naraharisetti et al., 2022). Furthermore, Minnesota has recently seen an alarming spike in DV cases: In 2023, there were 40 domestic violence homicides in the state—the most in 30 years—and nearly 53,000 victims/survivors received domestic violence services (Ingraham, 2024). It is critical that any changes to Minnesota's pretrial system incorporate supports for victims/survivors during the pretrial period.

Any pretrial policy changes pertaining to victims/survivors should be developed in collaboration with victim/survivor advocacy groups and come with funding and thorough training for relevant stakeholders; as one community engagement participant noted, "All points in the system need more education around domestic violence and sexual assault." Illinois is illustrative of one form of collaboration; the Illinois Pretrial Fairness Act created a Domestic Violence Pretrial Practices Working Group tasked with reporting on current practices and developing detailed recommendations (Coalition to End Money Bond, n.d.).

"All points in the system need more education around domestic violence and sexual assault."

DV-specific risk assessments

DV-specific risk assessments should be considered for use in pretrial release and detention decisions. There are a wide variety of risk assessment tools designed to identify and reduce the risk of DV and IPV. The tools available serve various purposes; some are designed for law enforcement while others are meant to be used by victim/survivor advocates; some measure the likelihood of recidivism while others gauge lethality risk. Domestic Violence Resource for Increasing Safety and Connection (DV RISC), a project supported by the U.S. Department of Justice's Office on Violence Against Women, is an extensive resource for comparing tools and receiving technical support on implementation (DVRISC, n.d.).

DV risk assessments are used by police and advocacy organizations in some Minnesota counties when responding to reports of DV incidents and working to connect victims/survivors with emergency shelters and support services. But while these practices are crucial for the immediate safety of victims/survivors, they don't necessarily influence pretrial release decisions. MNPAT-R is the bail evaluation tool most Minnesota counties use to assign pretrial defendants a risk score, which aims to predict how likely they are to appear at future hearings and not commit a new offense if released. While the MNPAT-R form includes space to note whether an additional lethality assessment was conducted, it does not require this assessment or factor it into the overall risk score. This means that Minnesota judges may lack DV risk assessment information at a defendant's first appearance. By contrast, some pla-

funding should have the flexibility to redirect funds under specific circumstances (to be laid out in policy). For example, when a county reports that it does not need its full allocation, the agency should be able to shift that money to counties with greater pretrial responsibilities and financial needs.

ces—including Connecticut and Denver—incorporate DV risk assessments into bail evaluations (Banks et al., 2023). **Violence Free Minnesota recommends examining current bail assessments for their ability to identify risk to specific victims in instances where charges have a connection to domestic abuse.**

DV-specific PSO programming and wraparound services for victim/survivors

Defendants charged with DV-related offenses should have access to high-quality domestic violence intervention programs through pretrial services. PSOs should develop programming in collaboration with victim/survivor advocacy groups to ensure it is evidence-based. For example, advocates we spoke with critiqued the use of generalized "anger management" classes and called for programs that address domestic violence specifically. APPR offers further recommendations for cross-agency collaboration and points to the Duluth Model as a successful example (D'Aiutolo et al., 2023; Duane & Vasquez-Noriega, 2018; Domestic Abuse Intervention Programs: Home of the Duluth Model (n.d.)).

Many DV defendants are themselves victims/survivors of abuse and should also have access to voluntary therapeutic services designed for those who have been harmed. In our community engagement sessions and system actor interviews, **participants also called for restorative justice and diversion programs for DV defendants to "change this system so that everyone is whole," as one participant put it.**

Pretrial system changes should bolster wraparound services for victims/survivors. There are many organizations that offer vital services for victims/survivors throughout Minnesota: Violence Free Minnesota represents a coalition of nearly 90 member programs "working to end relationship abuse" across the state (Violence Free Minnesota, n.d.). Service providers told us that funding is one of their biggest challenges. They also said that their work needs to be more integrated with the criminal legal process—to facilitate information-sharing and coordinating services—so that advocates can support victims at every stage of the legal process. Transforming the pretrial system offers an opportunity to address these issues by directing funding toward a wraparound services model (Virani et. al, 2020). Advocates named a wide range of needs they would address if they had more resources to implement such a wraparound model, including housing, employment, and culturally competent programs.

Notification systems

Notification systems should provide victims/survivors with clear, consistent communication for the duration of a case. Under Illinois' Pretrial Fairness Act, crime victims have the right to be notified of all court proceedings, including release decisions, plea agreements, and sentencing (SAFE-T Act, 2021). Minnesota should implement similar statutory provisions.

Implementation

Pretrial system transformation will succeed only if it is implemented properly. Based on our site visits to New Jersey and Illinois, our extensive conversations with system actors in those jurisdictions, and our knowledge of implementation challenges in various other jurisdictions, we strongly recommend that policymakers consider the following points before moving forward with reforms.

Collaboration

The experts we spoke with in New Jersey and Illinois strongly emphasized that all stakeholders must be involved in the planning and implementation of pretrial system change. This includes members of the judiciary, public defenders, prosecutors, law enforcement, legislators, Governor's office staff, pretrial services representatives, court staff and administrators, people who have been subject to the pretrial system (i.e., former defendants and their family members), researchers, domestic violence advocates, and system transformation advocates.[33] Collaboration ensures that pretrial change will be informed by the needs and interests of all stakeholders. That, in turn, helps ensure that the changes can result in genuine, balanced improvements to the pretrial system. Front-end collaboration further raises the odds that stakeholders will support and defend policy changes.

The experts we spoke with in New Jersey and Illinois strongly emphasized that all stakeholders must be involved in the planning and implementation of pretrial system change.

To achieve robust collaboration, the Chief Justices of the Illinois and New Jersey Supreme Courts established stakeholder committees to conduct research, produce recommendations for system-wide change to pretrial practices (Illinois Supreme Court Commission on Pretrial Practices, 2020), and grapple with the details of implementation (Illinois Courts, n.d.). Here, the MNJRC has carried out the research and recommendation tasks at the behest of the Minnesota Legislature. **But we strongly recommend that Minnesota establish an implementation committee or work group for such critical tasks as developing decision-making frameworks and model court orders, providing technical assistance to counties and judicial districts, and communicating with the public regarding policy changes.[34]**

This implementation committee could be established by an array of government officials. In New Jersey, leadership within the judiciary played a central role in crafting and executing the new pretrial law. We recommend that the Minnesota judiciary play a similar role, because many of our recommendations will ultimately be carried out by judges in courtrooms across the state. In Illinois, implementation committees were also formed in some individual counties, such as Cook County, where the majority of the state's criminal cases are filed. Minnesota counties might consider developing similar committees, so long as their work does not conflict with any statewide bodies.

33) While members of the public should have the opportunity to comment in writing or at public meetings regarding proposed pretrial changes, we do not recommend they be part of any formal stakeholder collaborations.

34) The Illinois Supreme Court Pretrial Implementation Task Force website describes the types of resources an implementation committee should provide (Illinois Courts, n.d.).

This collaborative approach must involve extensive implementation committee outreach. **We recommend that members conduct in-person visits to communities around the state to speak with local law enforcement, judicial officials, and court staff in order to understand the ideas and concerns of local officials, because those officials are responsible for enacting pretrial change.** The implementation committee should also do outreach to community members throughout Minnesota. In New Jersey, leaders in the judiciary, law enforcement, and advocacy groups held community meetings at churches and other community gathering spaces. These meetings gave community members an opportunity to learn about pretrial changes, ask questions, and provide feedback.

Technology

Updated technological and data systems will be required to properly implement pretrial system transformation. For example, in order for judges to adequately consider all relevant case information at a first appearance, that information will need to be entered into a records system by law enforcement and prosecutors and transmitted quickly and easily to the court. To accomplish that, executive and judicial data systems will need to be compatible. That type of integration is necessary to implement the data infrastructure we recommended in our preliminary report.

When considering technology upgrades that are necessary and appropriate for system change, **we encourage lawmakers and judicial officials to focus on those that will lessen the administrative burdens on law enforcement, law clerks, and court administrative staff.** While pretrial system change requires adaptability on the part of all system stakeholders, it is essential that technology makes frontline workers' lives easier.

Training

Extensive training of law enforcement, prosecutors, defense attorneys, and judges will be required to implement pretrial system transformation.

In Illinois and New Jersey, law enforcement received particularly robust training on citation and release policies and practices. In Illinois, county prosecutors provided that training. In New Jersey, the Attorney General's office led the efforts. Law enforcement training occurred both before the law's passage and after its implementation. Consistency and continuity in training is particularly important because of high turnover rates in law enforcement.

Extensive training of law enforcement, prosecutors, defense attorneys, and judges will be required to implement pretrial system transformation.

Attorneys practicing in criminal courts should likewise receive training on any new pretrial policies. Prosecutors, for example, should be trained on which charges make a person detention-eligible. The implementation committee should develop guidelines for determining when a prosecutor should seek detention for a detention-eligible person. Although we do not recommend mandating particular criteria across the state, as needs and priorities vary across jurisdictions, we do suggest that minimum standards be developed and implemented throughout Minnesota. Our team heard repeatedly from community members that justice varies by geography in our state—a perception that damages community members' trust in the legal system. Criminal defense attorneys should also receive training, especially about

any additional substantive rights created by the law. **As with law enforcement, training of attorneys should be ongoing, especially as new case law emerges.**

We also recommend that every member of the judiciary involved in pretrial decisions receive extensive training. Shifting to an intentional release/detain approach would require operational and cultural changes. Members of the judiciary should be trained on the history of bail and pretrial release, the law regarding pretrial detention, data supporting an intentional release/detain system, and the ethical implications of switching from a monetary bail system to an intentional release/detain system. We suggest this training be provided by Judicial Branch leadership, alongside pretrial experts from organizations like Advancing Pretrial Policy and Research.

Finally, to support all stakeholders in understanding the mechanics of a new pretrial law, **we recommend regular practice prior to official implementation.** In both New Jersey and Illinois, leadership conducted walkthroughs of detention hearings and worked with local stakeholders to understand core differences between the old and new pretrial systems.[35] Modeling how the process should work allowed leaders and practitioners in both states to identify problem points and develop strategies for overcoming challenges prior to the implementation of their respective laws.

We recommend that some portion of these trainings be conducted jointly by members of law enforcement, the judiciary, prosecutors' offices, and public defender offices. Members of the implementation committee would likely lead these efforts. In New Jersey, this collaborative training approach allowed state leadership to present a unified message about the efficacy and strength of the pretrial changes.

Funding

Pretrial system change is resource-intensive and requires dedicated funding. Leaders in New Jersey and Illinois underscored this point. We recommend that Minnesota lawmakers provide robust funding for pretrial services, the development and maintenance of data infrastructure, stakeholder training, operational changes, and community outreach.

Timing

Proper implementation will be both time- and resource-intensive. **We recommend that any new pretrial law include ample time between passage and implementation.** In New Jersey, for example, the CJRA was passed in late 2014, but did not go into effect until early 2017. This ensured that all stakeholders were fully educated and trained on the new law before it went into effect. Similarly, Illinois passed the Pretrial Fairness Act in early 2021, and the law went into effect in fall of 2023.[36] Stakeholders in both states emphasized the importance of delayed implementation for both training and culture change reasons.

Monitoring

Pretrial system transformation will need to be carefully monitored in the months and years following implementation. This can happen most effectively if Minnesota implements the kind of data infrastructure we recommended in our preliminary report (Hall et al., 2024). Consistent monitoring of rates of pretrial criminal activity, for example, will be essential to unders-

35) In Illinois, several counties were selected as pilot counties. The pilot counties were then able to train stakeholders across the state.

36) The Pretrial Fairness Act was originally intended to go into effect January 1, 2023, but litigation caused an eight-month delay.

tand the impact of the law on community safety. Tracking rates of detention in all counties would ensure consistency across the state. And monitoring rates of failures to appear would help PSOs tailor their services for the communities they serve. In short, consistent monitoring will help maintain and reinforce the integrity of pretrial system change.

Conclusion

The Minnesota Legislature is to be commended for engaging our organization—and, by extension, a wide range of community and legal system stakeholders—to carry out this review of the current landscape of pretrial policies, practices, and impacts throughout the United States and, crucially, within Minnesota. As the legislature considers our recommendations and moves to implement policy changes that maximize safety, liberty, and equity, the MN-JRC offers its enthusiastic support and assistance. In conducting this research, we have deepened our knowledge of pretrial best practices by observing the everyday processes of detention, bail, and release, by engaging with reforms-in-action, and by talking with those charged with crafting, implementing, and assessing new systems. But most consequentially, we have learned from the communities most directly affected by pretrial processes.

It is our sincere hope that policymakers will harness the energy we experienced during our engagement sessions and draw on the expertise of those who know first-hand what our research confirmed: the current pretrial system does little to enhance public safety or advance equity but causes injustice and harm in ways that radiate beyond the individual. Let no one involved in crafting Minnesota's new path forward forget or overlook such a wealth of community knowledge.

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Appendices

Appendix A: Quantitative Methods

To better understand the pretrial process in Minnesota, we obtained jail booking data from the Minnesota Department of Corrections. These data are compiled from each reporting jail in Minnesota—including county jails, local police departments, and adult correctional facilities—and represent a population of booking-charges.[37] Our team obtained booking data for 77 Minnesota counties.[38] Specifically, we obtained two extracts—2017–2021 and 2022–2023—each consisting of five flat files containing various information on each booking-charge, including charge information, booking length, detention start and end reasons, facility information, and other fields. We merged the five files within each extract to create two files, and then we combined those two files to create a harmonized booking-charge dataset from the years 2017–2023 in Minnesota. Various cleaning and data validation tasks were then performed, including harmonization of county and facility spellings.[39]

From this total population booking-charge dataset, we filtered out a pretrial booking-only dataset on which we performed many of our analyses of the pretrial population. We constructed this dataset by filtering in just the booking-charges with the following detention hold reasons: "Bench Warrant", "Pending Charge/Investigation", "Pending Court Disposition", "Pending Trial". We also constructed various panel datasets (e.g., client ID-day panel) as well as various aggregations of the panel data (e.g., daily sums of client-IDs stratified by defendant characteristics) to create the visualizations included in this report.

Finally, to construct rates of total jail populations and pretrial populations, we accessed population denominators from the Census Bureau's Application Programming Interface (API) and used the 2017-2022 American Community Survey 5-year estimates using the R package 'tidycensus' (Walker & Herman, 2024). These population denominators were then merged onto the respective jail population datasets to construct rates of bookings per 100,000. For subpopulation analyses, we scraped population-specific denominators (e.g., Black population) and did the same by county for the spatial visualizations.

37) In other words, rather than each line of data consisting of one jail booking, each line of data consists of one charge within a jail booking. Each booking may have more than one associated charge. Thus, here we use the term "booking-charge."

38) The DOC did not provide data for Benton, Big Stone, Dodge, Faribault, Grant, Mahnomen, Pope, Red Lake, Rock, and Stevens counties. Big Stone, Dodge, Grant, Mahnomen, Pope, Rock, Red Lake, and Stevens counties all contract with other county jails for use of their facilities. No reason was given for the exclusion of data from Benton and Faribault counties.

39) We removed all juvenile booking-charges on the basis of a juvenile case indicator, as all defendant and case information is redacted (i.e., missing) for these cases, making our analyses representative of just the adult jail population in Minnesota for these years.

Appendix B: Community Engagement Partners

Organization/Group Name	Organization Descriptions
ACLU Campaign for Smart Justice	An unprecedented, multi-year effort to reduce the U.S. jail and prison population by 50% and to combat racial disparities in the criminal justice system. The ACLU of Minnesota is part of a coordinated effort in all 50 states to advance reforms to usher in a new era of justice in America.
Hennepin County Attorney's Office	Legal office that sets policies and priorities for prosecuting criminal cases, oversees child protection and child support cases, and provides legal advice and representation to county government in Hennepin County.
The Link	Supports youth and families experiencing homelessness, young people who are survivors of sex trafficking, and youth who are involved in the juvenile justice system. They offer a continuum of innovative, youth-driven programs to meet youth's basic needs while empowering them with the resources and relationships to pursue their goals and thrive.
Minnesota Alliance on Crime	A membership coalition of more than 90 crime victim service organizations in Minnesota, including prosecution-based victim/witness programs, community programs, law enforcement agencies, civil legal organizations, and also individuals committed to supporting crime victims. MAC supports membership through training, technical assistance, resources, public policy and legislative initiatives, and networking opportunities.
Minnesota Freedom Fund	A community bail fund that pays cash bail and immigration bonds for people who can't afford it, supports clients after their release, educates community about the harms of and alternatives to the cash bail system, and advocates for an end to cash bail in Minnesota.

Next Chapter Reentry Project	Their mission is to build lasting relationships with people impacted by the cycle of incarceration, restoring them to God, family, and community through holistic Gospel transformation. NCRP has three residential houses for men, one residential and one non-residential home for women, a children's ministry, and a family home for those impacted by the vicious cycle of crime.
OIF Dream Center	A licensed board and lodging with special services. Their mission is to support men, eighteen years and older, as they confront personal challenges, achieve wholeness, and reintegrate successfully into society. As a faith-based organization, they are dedicated to addressing critical needs within our community by offering both housing and comprehensive support services.
Plymouth Congregational Church of Minneapolis	A progressive faith community grounded in the Christian tradition. Located at the southern edge of downtown Minneapolis, Plymouth Congregational Church offers worship services and spiritual learning opportunities for all ages that are relevant to the world in which we live.
Ramsey County Attorney's Office	Legal office that sets policies and priorities for prosecuting criminal cases, oversees child protection and child support cases, and provides legal advice and representation to county government in Ramsey County.
Recovery Community Network	A grassroots Recovery Community Organization that helps those affected by substance use disorder. RCN has an extensive military veterans program and does significant work with people who have been justice-impacted.
Regional Native Public Defense	A Native-led non-profit law firm headquartered in Cass Lake, Minnesota. It provides innovative criminal defense representation to members of federally recognized tribes living in and around the Leech Lake and White Earth reservations.
RS EDEN	Delivers effective, comprehensive services across the Twin Cities metro, including substance use disorder treatment and residential programs for individuals exiting incarceration; affordable, low-barrier housing; and delivery or services to residents in permanent, supportive housing, Service models and housing programs promote dignity, recovery, employment, mental health, wellness, and the capacity to give back to the community.

Sanctuary Covenant	A multiethnic, multigenerational community of Christ-followers in North Minneapolis.
Three Rivers Community Action	A nonprofit human service organization created by local citizens and incorporated in 1966. Three Rivers' mission is "to work with community members and partners to address basic human needs of people in our service area, thereby improving the quality of life of the individual, family and community." Three Rivers advocates for program participants at the local, state and federal levels. The agency has developed a comprehensive networking system with various human service agencies in order to best serve program participants. Three Rivers is an agent of change within the community, paving the way for understanding and acceptance.
We Resolve	A nonprofit community organization that stands with and supports loved ones, their families, and communities as they go through the criminal legal process. Their goal is to tip the scales of justice towards community healing and away from a harsh discriminatory punishment system. Seeking to educate loved ones and community members about this process and empower them to be strong participants in their own defense and advocate for real change in the criminal legal system.
Violence Free Minnesota	Founded in 1978, Violence Free is a statewide coalition of over 90 member programs working together to end relationship abuse, create safety, and achieve social justice for all. They represent victims and survivors of relationship abuse and member programs; challenge systems and institutions; promote social change; and support, educate, and connect member programs.

Appendix C: Volunteer Training

The MNJRC recruited volunteers using a job posting that specified applicants must commit to conducting rigorous, balanced research; attend mandatory training provided by MNJRC; and volunteer for at least two listening sessions. Twenty-five people with various backgrounds and topical expertise completed training and served as volunteers at community listening sessions.

Volunteer training took place over Zoom, lasted two hours, and covered two primary volunteer roles: facilitation and data collection. During the training, MNJRC staff described the project, established shared meaning and context, reviewed best practices in facilitation and notetaking, and engaged volunteers in an activity to reflect on how their identities shape their positionality as researchers. Each volunteer had access to a data collection and facilitation guide created by the MNJRC. The guide included a project description, a listening session agenda, instructions on facilitation and data collection, planning checklists, and resources for learning more about the pretrial system. Additionally, data collectors were provided with a note-taking template. The contents of the toolkit and template were evidence-based and grounded in group work theory. Contact MNJRC for a copy of the toolkit.

At each session, MNJRC staff and volunteers collected attendance and demographic data through a sign-in form. During the sessions, participants were placed in small groups that typically included a facilitator and a data collector. In a few instances, one volunteer or staff member served in both roles. Facilitators guided group discussion to ensure participants engaged productively and responded to specific prompts. Data collectors typed detailed notes that focused on capturing what participants said as well as interpreting emotions and group dynamics. Facilitators had the option of taking additional notes on flip charts, and participants were invited to write ideas on Post-It notes. After each session, written content was digitized and combined with typed notes. The full corpus of data, around 230 pages of notes, was combined and cleaned for analysis following the completion of all 14 sessions.