

Community corrections / residential probation

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I understand that we are talking about how we can safely spend less on corrections. When we speak about corrections we are generally referring to State level prisoners. However, we need to be mindful that our criminal justice system is made up of more than just State prisoners. The fact of the matter is that corrections is not just costly to the State but to the counties as well. Therefore I would like to spend my time talking about the jail population, specifically the pretrial population within the jail and how dealing with this population more effectively can lead to substantial cost savings for the entire system.

Since 1990 jail populations have grown significantly despite the fact that reported crime rates have decreased. This increase in jail populations has come at a great cost to the counties. Overall there has been a 500% increase in jail spending since 1982.

So who's in the jail?

Those in this room may know the truth, but contrary to public perception the jails are not filled with harden criminals, they are not filled with convicted murders, rapists and child molesters. The Bureau of Justice Statistics reports that nearly 2/3 of the jail populations nationally are pretrial defendants. What's more only 35% of those have been charged with a violent offense. This means that there is 65% of that population that could have been safely released into the community.

So how did we end up with so many pretrial defendants in our jails?

When the court orders a financial condition of bail that the defendant is unable to post they must remain in jail thereby driving up the population. The county is also then forced to absorb the costs associated with housing that pretrial defendant. Nationally 5 out of 6 felony defendants are unable to post their financial bonds.

There are other detrimental and costly effects of not releasing pretrial defendants. The longer a defendant spends in pretrial detention the more likely the sentence will be severe regardless of criminal history or offense. Our own Michigan data taken from Jail population Information System (JPIS) reports shows this to be true. In 2008 felony defendants that are sentenced after admission to jail, meaning they did not gain release status and were in custody at the time of sentence, received sentences that were more than twice the sentences received by those who were sentenced prior to admission in the jail. These sentences were 95 and 46 days respectively, data from 2007 and 2006 show the same trend.

So how did we get here?

I think that we have become complacent finical conditions of bond; I think that we have become clouded on the true meaning of bail. We have forgotten that pretrial release is a fundamental right of every pretrial defendant. Both the National District Attorney Association (NDAA) and the American Bar Association (ABA) have standards that call for the presumption of release at the initial appearance. However for those of you who spend time in the courtroom you know this is not how it usually works. Rather than starting from the stance that the defendant should be released and the court finding compelling reason why he or she should be detained, usually we have to argue why the defendant should be released or why he or she is a good candidate for personal bond. I would like to share with you a quote written by Chief Justice William Rehnquist from his opinion of *United States v. Salerno* in 1987... "In our society, liberty is the norm, and detention prior to trial or without trail is the carefully limited exception." Listening to that quote and now knowing that the nation's jails are 2/3 filled with pretrial defendants, you have to be asking yourself "Where did we lose our way?"

So what can we do?

Now more than ever we need to focus on the pretrial population. We need associations such as the State Bar to get involved. We need to explore the passage of comprehensive pretrial legislation; we need to invest in pretrial programs, pretrial assessment and pretrial supervision. By safely

releasing appropriate defendants at the earliest possible time substantial cost savings can be realized across the entire criminal justice system.

Thank you.

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Information contained with this document was taken from *Jail Population Management: Elected County Officials' Guide to Pretrial Services*, September 2009. Written by Cherise Fanno Burdeen of the Pretrial Justice Institute. It can be found at www.pretrial.org.