

## Chapter 10. Criminal Justice System Personnel Intersection

The federal government has a legitimate role in ensuring the criminal justice system achieves multiple objectives, including promoting fair outcomes; enforcing the rule of law; improving the efficiency and effectiveness of the system; and increasing transparency, accountability, and oversight across all components of the criminal justice system. While Congress, the U.S. Department of Justice (DOJ), and the U.S. Administrative Office of the Courts (USAO) are responsible for achieving these objectives for the federal criminal justice system, the federal government also plays an important role in supporting and influencing the administration of justice across the thousands of independent government agencies that comprise the criminal justice system at the state, county, municipal, and tribal levels.

The commission examined how the missions of law enforcement personnel, judges, prosecutors, defense attorneys, and correctional authorities intersect so that the system of criminal justice can enhance its ability to prevent and control crime and serve the victims of crime.

The federal government influences the state, local, and tribal criminal justice ecosystem in variety of ways. Several of these were determined to be particularly important to the commission.

- The federal government is responsible for making certain that citizens' rights are not violated by criminal justice system personnel at any level.
- Federal legislation on criminal justice issues can bring a degree of consistency to a patchwork of state criminal justice codes.
- Federal grant funding plays a role in shaping criminal justice practices at the state and local level.
- The federal government also establishes and develops national policies and initiatives that help standardize and unify the administration of justice while also respecting the independence of state, county, municipal, and tribal governments.
- In the era of evidence-based practice and policy development, the federal government also helps to promote uniform tracking of key justice outcomes and to support robust evaluation of program success. Federal support remains fundamental in assisting state, local, and tribal agencies achieve efficiency, effectiveness, and accountability in operations.
- For some types of crimes, including those involving interstate commerce or transportation of illegal goods or services, federal statutes establish a "federal nexus" that allows, but does not require, prosecution in federal court.<sup>1</sup>

The commission identified issues at the intersection of criminal justice components, which include promising programs and practices that should be supported and further developed, programs that will increase efficiency through better interactions, and persistent challenges. Because these topics are all interrelated, for this chapter, they are arranged in sequential order based on the criminal justice component most responsible for or affected by the program or practice.

### 10.1 Law Enforcement

#### Background

The major roles for law enforcement agencies include selectively enforcing the law, protecting the public, arresting suspected law violators, and preventing crime. Performing these roles requires that law

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<sup>1</sup> Newton, Phyllis J., Candace M. Johnson, and Timothy M. Mulcahy. "Investigation and Prosecution of Homicide Cases in the US: The Process for Federal Involvement." Page 6  
<https://www.ncjrs.gov/pdffiles1/nij/grants/214753.pdf>.

enforcement interact with all components of the criminal justice system. While officers interact with representatives of all components of the criminal justice system, they collaborate most often and most closely with prosecutors in the early stages of the criminal justice process. When they arrest individuals for criminal and traffic offenses, police will share information including initial charges with prosecutors who then decide whether to prosecute. Prosecutors must assess both the quality of that information and the conduct of police to make sure they meet constitutional standards, including reasonable suspicion and probable cause.

## Current State of the Issue

The commission focused their attention on the following three focus areas for law enforcement personnel and their operations: provide training and support for law enforcement officers and investigators on Fourth, Fifth, and Sixth Amendment issues; promoting the ability of law enforcement to discretionally issue summonses; and enhance crime awareness, data-sharing, and analytic capabilities through real-time crime centers (RTCCs).

### Training and Support on Fourth, Fifth, and Sixth Amendments

The Fourth, Fifth, and Sixth Amendments to the U.S. Constitution are central to the criminal justice process, especially related to law enforcement operations. There is profound misunderstanding and confusion among the public, media, and law enforcement regarding the stopping, questioning, searching, and temporary detention of a possible criminal suspect. This misunderstanding has led some members of the public to believe that “stop, question, and frisk” is illegal or unconstitutional, which it is not. It has also led to some trepidation among law enforcement who do not fully understand what is legally permissible. While many of these activities are handled on a daily basis, there are always unique circumstances that are beyond capacity for law enforcement officers and investigators to routinely address as they encounter them.

#### **10.1.1 The Department of Justice should develop and consistently update a comprehensive, standardized, and immersive online training program for law enforcement on stops, questioning, searches, and seizures.**

Law enforcement training academies require recruits to take training for stops, questioning, searches, and seizures, and officers may receive updated in-service training based on changes in departmental policies, new laws, or new legal precedents.<sup>2</sup> For clearer and more actionable training, the DOJ should develop a standardized online program. This training should be taught from the perspective of the law enforcement officer, stressing how to apply the appropriate laws using scenario-based training. This type of training involves using role play to depict a real-life situations in the field and allows for officer to comment on various critical decision points. Scenario-based simulation can provide an effective learning environment allowing officer to go through realistic experiences, review their actions, and learn from them.

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“Scenario-based training is fully immersive, utilizing real and artificially constructed environments (e.g., schools, communities, and housing complexes), props, sounds, and lighting to create realistic environments that require various behavioral strategies. Professional actors or experienced police instructors are used to

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<sup>2</sup> Mitchell, Douglas R., and Gregory J. Connor. Stop and Frisk: Legal Perspectives, Strategic Thinking, and Tactical Procedures. Routledge, 2017. <https://www.routledge.com/Stop-and-Frisk-Legal-Perspectives-Strategic-Thinking-and-Tactical-Procedures/Mitchell-Connor/p/book/9781138302969>.

role-play various types of encounters ranging from violent offenders to domestic disputes and individuals in psychological crisis.”<sup>3</sup>

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The Huntsville, Alabama, police department has adopted a [cutting-edge immersive simulator](#) for training on both routine and difficult situations. Captain Dewayne McCarver, the department’s director of training, explains, “This simulator is designed to integrate all the different aspects of our training into real simulations. The company actually hired real actors to create those scenarios because the realism of those scenarios is really important. If you don’t feel like it’s real life, it doesn’t have the same impact.”<sup>4</sup> This particular training scenario uses 300-degree surround screens, recording in high definition resolution, to provide realistic experiences for a variety of events, ranging from routine traffic stops to encounters with armed suspect.

**10.1.2 Local prosecutor’s offices, where practical, should develop resources for 24/7 access by law enforcement officers to prosecutors who can provide real-time assistance to address issues relating to search and seizure and serving warrants.**

Even the best and most actionable training on stops, questioning, searches, and seizures will not prepare patrol officers, investigators, and supervisors with the knowledge to address every encounter in the field. Sometimes, an officer will need access to real-time information when making urgent time sensitive decisions on whether it is legally and constitutionally permissible to execute a search, seizure, warrant, or arrest. Often, these pressing situations occur outside of normal business hours. While some prosecutors’ offices assign prosecutors to be on-call for these circumstances, most do not.<sup>5</sup> This is particularly true in smaller and rural jurisdictions.

**[CROSS REFERENCE RURAL AND TRIBAL]**

On-call prosecutor services, especially during evenings, weekends, and holidays, would offer guidance and reassurance for officers to perform their duties. On-call prosecutors can help confirm that police actions are meaningful, lawful, and constitutional while also decreasing the likelihood that the police actions will be deemed unlawful or challenged later in the criminal justice process. Providing on-call prosecutor’s services will also provide much needed and timely general assistance for investigators that are addressing complex cases.

Not all prosecutor offices have the resources to provide 24/7 on-call prosecutor services. Under those circumstances, prosecutors’ offices from neighboring jurisdiction should consider forming regional partnerships. State prosecutor or district attorney associations may help coordinate the development of regional on-call services, as these associations exist in most states.

**Discretionary Issuance of Summonses**

Law enforcement officers have considerable discretion when deciding whether to make an arrest if a person has committed a misdemeanor or other low-level offense. However, in many jurisdictions, law enforcement amounts to an “either/or” scenario; the officer either has to arrest the person or let the person go free.

Historically, the authority to issue a summons has been limited to judges. In a growing number of states, a law enforcement officer can now use their discretion when issuing a summons in lieu of arrest. The summons

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<sup>3</sup> Di Nota, Paula Maria, and Juha-Matti Huhta. "Complex motor learning and police training: applied, cognitive, and clinical perspectives." *Frontiers in psychology* 10 (2019): 1797. Page 10  
<https://www.frontiersin.org/articles/10.3389/fpsyg.2019.01797/full>.

<sup>4</sup> HPD using top-notch, immersive training simulator, WAFF NEWS, August 8, 2019,  
<https://www.waff.com/2019/08/09/hpd-using-top-notch-immersive-training-simulator/>

<sup>5</sup> Gershowitz, Adam M. "Justice on the Line: Prosecutorial Screening Before Arrest." *University of Illinois Law Review* (2019): 833. <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2965&context=facpubs>.

orders the subject to appear in court at a certain date or upon subsequent notice. This process is similar to issuing a traffic summons, but it applies to low-level offenses, typically misdemeanors. Local laws or police policy generally do not allow an officer to issue a summons to a person suspected of serious offenses.

The officer, the police agency, the suspect, and the criminal justice system all benefit when an officer can issue a summons in lieu of arrest. A law enforcement officer is allowed to choose a course of action other than doing nothing or making an arrest. In addition, the officer can prioritize more urgent matters rather than spending their time arresting and transporting a suspect of low-level crime who is likely to appear in court on their own volition. The issuance of a summons also helps to contain crowding issues in jails.

The suspect benefits because they avoid the inconvenience of arrest and possible detention while also maintaining their work and home life. These suspects require less processing time and costs associated with arresting, transporting, and booking, which benefits law enforcement, other criminal justice agencies, and the community. This, in turn, relieves potential burdens on the court, reducing processing and pretrial detention.

When properly implemented, an officer's ability to issue a discretionary summons for misdemeanors and low-level offenses does not weaken the police or the criminal justice system. The officer maintains the option of arresting the person suspected of committing a misdemeanor. Moreover, the ability to avoid weakening the protective police posture of any jurisdiction to make an arrest of a subject for a low-level offense is in the best interests of the rule of law. The choice between enforcing all laws and weakening policing posture should not be binary.

**10.1.3 States should consider revising their statutes to permit the use of discretionary summonses by law enforcement officers if they do not already permit it.**

In time of natural or man-made emergencies, including the COVID-19 pandemic, a law enforcement officer should have the ability to issue a discretionary summons to a suspect who committed a low-level crime, especially when law enforcement and other criminal justice resources are strained and need to be directed to more urgent needs. Crowding in county jails triggers both civil rights and health concerns for both inmates and jail personnel.

[Indiana Code 35-33-4-1](#), for example, permits "the law enforcement officer to use discretion whether to arrest or issue the accused a summons. In lieu of arresting a person who has allegedly committed a misdemeanor (other than a traffic misdemeanor) in his presence, a law enforcement officer may issue a summons and promise to appear. The summons must set forth substantially the nature of the offense and direct the person to appear before a court at a stated place and time."<sup>6</sup>

In Virginia, officers are allowed to exercise discretion in issuing a summons. However, [Virginia Code § 46.2-940](#) requires an officer to make an arrest when the person is believed to have committed a felony. In addition, an officer should make an arrest for a misdemeanor if the officer believes the suspect is "likely to disregard a summons or refuses to give a written promise to appear under the provisions."<sup>7</sup>

In response to the COVID-19 pandemic, individual law enforcement agencies across the country changed their practices by taking steps to limit arrests, either by taking fuller advantage of current laws regarding discretionary summons or by new edicts. Law enforcement agencies in Nevada County, California, increased the frequency of officers issuing summonses. The Chicago Police Department directed officers that certain low-level and non-violent crimes can be handled via citation and misdemeanor summons. Law enforcement officers in Tucson, Arizona, were ordered to use cite and release as frequently as possible and only serve misdemeanor warrants that were necessary for public safety reasons (e.g., domestic abuse).

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<sup>6</sup> Indiana Code Title 35. Criminal Law and Procedure § 35-33-1-4

<sup>7</sup> Code of Virginia, § 46.2-940

## Real-Time Crime Centers

### **[CROSS REFERENCE CRIME REDUCTION]**

A real-time crime center (RTCC) is a centralized location where dedicated personnel are housed and equipped with a range of technology tools, access to data, and analytic capabilities in order to police more efficiently and effectively in real time. In the past 15 years, RTCCs have grown in number and evolved in sophistication as they incorporate new technologies and analytic tools that provide a broad range of assistance to law enforcement agencies, which include surveilling public spaces via video-feed, identifying suspicious behavior in real time, and identifying and disrupting criminal networks. Since the New York City Police Department launched its [RTCC in 2005](#), a growing number of agencies have adopted or adapted their model.<sup>8</sup>

Commonly, the technology in RTCCs includes video screens that display feeds from surveillance cameras throughout the jurisdiction, gunfire detection systems, and automated license plate readers (ALPR) technology. Video surveillance and continual monitoring are core features of virtually all RTCCs. The [Broward County, Florida, sheriff's office RTCC](#) has video feeds from throughout the county, which includes nearly 10,000 cameras in place in 260 public schools and administrative buildings.<sup>9</sup>

In more recent years, RTCCs are starting to appear in smaller cities. An article in the *San Diego Union Tribune* featured the opening of an RTCC in Harford, Connecticut, and mentioned other smaller jurisdictions that had established RTCCs at that time, including Wilmington, Delaware; Springfield, Massachusetts; Bridgeport, Connecticut; Modesto, California; and Wilmington, North Carolina.<sup>10</sup>

Chief Bill Partridge of the Oxford, Alabama, police department spoke about the [East Metro Area Crime Center \(EMACC\)](#), a regional RTCC launched in May of 2019, as part of his testimony at a commission hearing.<sup>11</sup> Chief Partridge shared details about the RTCC, including the fact that EMACC provides data access and analytic services for 28 federal, state, and local public safety agencies in the northeast portion of Alabama, relying on state-of-the-art technology to provide real-time intelligence.

While much of the attention paid to RTCCs focuses on data and advanced analytical tools, trained crime and intelligence analysts add important human intelligence to get the most out of analytic tools. Analysts use their skills to leverage core technologies, including geographic information system technology for mapping crime and assessing hot spots, software to perform link analysis or social network analysis, and statistical algorithms for assessing offender dangerousness and likelihood to offend based on past criminal history.

As technology has advanced, RTCCs have become more proficient in leveraging unstructured data for intelligence and analysis purposes, including the use of advanced digital media tools. Some RTCCs use sophisticated artificial intelligence solutions that automatically detect patterns of suspicious activity on video feeds, freeing the analyst from having to watch a wall full of video screens.

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<sup>8</sup> "'Real Time' Crime Centers: The Future of Crime Fighting?", *The Crime Report*, May 29, 2019. <https://thecrimereport.org/2019/05/29/real-time-crime-centers-the-future-of-crime-fighting/>

<sup>9</sup> Broward County Sheriff's Office Real Time Crime Center webpage, <https://www.sheriff.org/RTCC/Pages/RTCC.aspx>

<sup>10</sup> "Smaller cities across US opening high-tech crime centers" *San Diego Tribune*, May 23, 2016 <https://www.sandiegouniontribune.com/sdut-smaller-cities-across-us-opening-high-tech-crime-2016may23-story.html>

<sup>11</sup> President's Commission on Law Enforcement and the Administration of Justice: Crime Reduction – Domestic Violence and Sexual Assault, Technology Issues Encountered by Law Enforcement, Leveraging Technology to Reduce Crime (April 16, 2020) (Chief Bill Partridge, Oxford Police Department, Alabama). <https://www.justice.gov/ag/page/file/1270031/download>

**10.1.4 The Department of Justice should provide funding for the expansion and refinement of real-time crime centers throughout the country.**

As documented in an evaluation by the Rand Corporation, adding RTCCs helps law enforcement agencies improve their awareness of their communities, improve their decision making, and help them carry out more effective and more efficient operations that lead to crime reduction.<sup>12</sup> DOJ funding will help accelerate the spread of RTCCs and increase the ability of local and state law enforcement agencies to leverage their analytic and data sharing benefits. It can also help make sure that current RTCCs are sustainable and able to evolve as new technologies and data analysis approaches evolve.

**10.1.5 The National Institute of Justice should provide funding to develop technology tools that provide real-time crime centers with the ability to identify and disseminate crime intelligence, analyze crime patterns, and develop strategies for reducing crime.**

These technology tools should include the development of hardware, analytics software, and intelligence platforms. Since established under the Justice System Improvement Act of 1979, the National Institute of Justice (NIJ) has helped ensure that law enforcement agencies have access to the latest technologies and promoted development of standards for such technologies. NIJ also administers grant programs to help bring new equipment to market by funding research and development of innovative technologies. NIJ should consider coordinating with the Bureau of Justice Assistance (BJA) to provide direct support for local and regional efforts to build and improve local and regional RTCCs and support their procurement of equipment that meets minimal standards, when applicable. Standards for criminal justice and intelligence data and intelligence systems may be set by authorities such as the Criminal Justice Information Services (CJIS) Division of the FBI, and the National Institute of Standards and Technology Law Enforcement Information Technology.

## 10.2 Prosecutors and Defense

### Background

Under the adversarial criminal justice system, a prosecutor's primary responsibility is understood as charging and formally prosecuting a suspect. However, that only describes part of the prosecutor's role. More broadly, according to the American Bar Association (ABA) standards,

The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.<sup>13</sup>

In many ways, the role of the criminal defense lawyer is the opposite. Their formal role is to investigate the case on behalf of the defendant, provide guidance to the defendant on how to plead, and, if necessary, represent the defendant at trial. Like prosecutors, they also have a broader role. According to ABA standards,

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<sup>12</sup> Hollywood, John S., Kenneth N. McKay, Dulani Woods, and Denis Agniel. "Real-Time Crime Centers in Chicago: Evaluation of the Chicago Police Department's Strategic Decision Support Centers." (2019). [https://www.rand.org/pubs/research\\_reports/RR3242.html](https://www.rand.org/pubs/research_reports/RR3242.html)

<sup>13</sup> American Bar Association. "Criminal Justice Standards for the Prosecution Function: Fourth Edition." (2017). [https://www.americanbar.org/groups/criminal\\_justice/standards/ProsecutionFunctionFourthEdition/](https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/)

this includes, “a duty to be open to possible negotiated dispositions of the matter, including the possible benefits and disadvantages of cooperating with the prosecution”<sup>14</sup>

While these formal roles depict how opposing counsel are perceived to operate, prosecutors, and defense attorneys often find themselves in situations where they will cooperate rather than act as strict adversaries. Common examples of situations requiring some level of cooperation involve plea bargaining (i.e., the most predominant manner of resolving criminal cases in both federal and state courts) and deciding when to process defendants through treatment courts rather than traditional criminal courts.

### Current State of the Issue

The commission focuses on three concerns that arise around the activities of prosecutors and defense counsel and that affect or involve all criminal justice agencies. These include the need for increased transparency in the plea bargaining process; the use of adoptive case mechanisms to deal with serious, violent, and habitual offenders; and the need for adjustments to felony theft thresholds.

### Plea Bargaining Process

The Fifth and Sixth Amendments guarantee the rights of criminal defendants, including the rights to due process, a public trial without unnecessary delay, a lawyer, an impartial jury, know the nature of the charges and evidence against them, and confront adverse witnesses. These ideals are seldom represented in real life, as more than 90 percent of all criminal cases in both federal and state courts are resolved through plea bargains.<sup>15</sup> Plea bargaining is often viewed as a secret deal arranged between a prosecutor and defense attorney.<sup>16</sup>

Plea bargaining has often been described as a necessary evil.<sup>17</sup> In many criminal court jurisdictions, dockets are crowded and prosecutors, defense counsel, and judges all feel pressured to quickly move cases through the system. In addition, the outcome of a trial is always in question, whereas the plea bargain provides both the prosecutor and defense some control over the result and a measure of certainty.

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#### Criticisms of Plea Bargaining

- May result in innocent people pleading guilty instead of taking their chances with a trial
- Diminishes respect for the law, particularly when the charges pled to are not clearly related to the crimes for which defendants are charged
- Victims are often not notified of the plea, nor are they provided an adequate opportunity to be heard
- Potentially leads to decreasing perceptions of legitimacy of the legal process

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<sup>14</sup> American Bar Association. "Criminal Justice Standards for the Defense Function." (2017).

[https://www.americanbar.org/groups/criminal\\_justice/standards/DefenseFunctionFourthEdition/](https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/)

<sup>15</sup> Juneja, Aditi. "A Holistic Framework to Aid Responsible Plea-Bargaining by Prosecutors." *New York University Journal of Law & Liberty* 11 (2017): 600. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2991160](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2991160)

<sup>16</sup> Johnson, Thea. "Public perceptions of plea bargaining." *American Journal of Criminal Law*. 46 (2019): 133. [https://heinonline.org/HOL/Page?handle=hein.journals/ajcl46&div=8&g\\_sent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/ajcl46&div=8&g_sent=1&casa_token=&collection=journals)

<sup>17</sup> McDonough, Nancy. "Plea bargaining: a necessary evil." *University of Arkansas Little Rock Law Journal* 2 (1979): 381. <https://lawrepository.ualr.edu/cgi/viewcontent.cgi?article=1398&context=lawreview>

### Benefits of Plea Bargaining

- A lesser charge, a more lenient sanction, or a sense of certainty for the defendant
- A certainty of conviction and lower costs for the prosecution and state
- Speeds up the processes of the justice system and frees up investigatory and prosecutorial resources for more serious offenders.
- Give victims of crime of a guaranteed result in conviction

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Most criminal justice practitioners and scholars acknowledge that plea bargaining is vital to the efficient operations of the criminal justice system; without it, the justice system would grind to a halt.<sup>18</sup> However, the lack of transparency and accountability with the practice of plea bargaining are problems in many jurisdictions. When defendants are charged with crimes of far lesser seriousness than indicated by the arrests and are soon out on the street again, law enforcement officers may conclude that their efforts at securing a lawful arrest do not matter, they may become demoralized, and they may lose the incentive to make arrests.<sup>19</sup>

Some scholars have argued that law enforcement officers will not be as motivated to conduct thorough and careful investigations if they believe the original charges will be bargained down.<sup>20</sup> In the most serious cases, learning that a prosecutor settled a case for some fraction of what the defendant could have received at trial is troubling to the officers who have invested time and effort in investigations, arrests, and booking of habitual, violent, and serious offenders.

To address some of these concerns, the federal government and several states have established rules or enacted legislation intended to introduce a level of openness, transparency, and accountability in plea bargains. Federal Rules of Criminal Procedure Rule 11 requires that “the court must address the defendant personally in open court” and stipulates procedural requirements, including a determination that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).<sup>21</sup> In Illinois, the State Supreme Court rules on waivers and pleas specify numerous conditions that are intended to increase the openness of the plea process, including specifying the conditions in which a judge may participate in plea negotiation, exercise oversight, and approve of the plea bargain.<sup>22</sup> Utah Code 77-13-4 on felonies entered in open court requires, “All pleas in felony cases shall be entered by the defendant in open court and the proceedings recorded.”<sup>23</sup>

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<sup>18</sup> Wright, Douglass B. "Plea Bargaining--A Necessary Tool." *Connecticut Law Review*. 16 (1983): 1015.

[https://heinonline.org/HOL/Page?handle=hein.journals/conlr16&div=53&g\\_sent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/conlr16&div=53&g_sent=1&casa_token=&collection=journals)

<sup>19</sup> Abel, Jonathan. "Cops and pleas: Police officers' influence on plea bargaining." *Yale Law Journal* 126 (2016): 1730. <https://www.yalelawjournal.org/essay/cops-and-pleas-police-officers-influence-on-plea-bargaining>

<sup>20</sup> Palermo, George B., Maxine Aldridge White, Lew A. Wasserman, and William Hanrahan. "Plea Bargaining: Injustice for all?." *International journal of offender therapy and comparative criminology* 42, no. 2 (1998): 111-123.

<sup>21</sup> Federal Rules of Criminal Procedure - Rule 11. Pleas. [https://www.law.cornell.edu/rules/frcrmp/rule\\_11](https://www.law.cornell.edu/rules/frcrmp/rule_11)

<sup>22</sup> Illinois Supreme Court Rules Article IV Rule 401 (3) (b).

[http://www.illinoiscourts.gov/SupremeCourt/Rules/Art\\_IV/ArtIV.htm](http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_IV/ArtIV.htm)

<sup>23</sup> UT Code § 77-13-4 (2018). <https://law.justia.com/citations.html>

**10.2.1 States should establish laws or criminal procedures that increase transparency, accountability, and openness of the plea negotiation processes. Negotiated pleas, and the basis for those pleas, should be established on the record.**

Despite the prevalence and necessity of plea bargaining, the secrecy and the steep reduction in charges and sanctions often associated with plea bargaining have raised grave concerns among law enforcement officers who investigate and arrest serious and violent offender who released on far lesser charges. The secrecy and fast-dealing often associated with the plea bargaining process as it is practiced in some jurisdictions undermines the legitimacy of the law in the eyes of the general public, victims, defendants, and witnesses, including law enforcement officers.<sup>24</sup> Taking steps to increase transparency, accountability, and openness can infuse some checks and balances back into the equation. Putting key elements of plea bargaining on the record not only increases levels of transparency, accountability, and openness, it also allows attorneys to review these elements.<sup>25 26</sup>

**10.2.2 States should promptly notify the involved law enforcement officers the result of any plea bargaining for a serious crime or felony.**

When law enforcement officers arrest suspects, particularly for violent crimes and serious felonies, they are understandably frustrated when they learn that the offender is released on probation or after serving a short sentence for a far lesser charge as a result of plea bargaining. Providing notification before the final resolution of the plea gives officers fair notice and provides them with an opportunity for input. These notifications underscore transparency, accountability, and openness in the criminal justice process.

[The state of Maine Title 17-A, chapter 9, 11, 12 or 13](#) stipulates, “Whenever practicable, before submitting a negotiated plea to the court, the attorney for the State shall make a good faith effort to inform the relevant law enforcement officers of the details of the plea agreement reached in any prosecution where the defendant was originally charged with murder, a Class A, B or C crime [as well as certain classes of gun crimes].”<sup>27</sup>

**10.2.3 States should extend their victim’s bill of rights to provide crime victims with a reasonable opportunity to be heard and with reasonable notification of the plea bargaining results.**

**[CROSS REFERENCE VICTIM SERVICES AND JUVENILE JUSTICE]**

Victims’ bills of rights exist under federal law and in all states.<sup>28</sup> However, the explicit extension of these rights under plea bargaining are not universal. States should make certain that all victims are provided the opportunity to be notified of the results of plea bargaining.

In the [Texas Code Of Criminal Procedure Chapter 56](#), victims have the right to “be informed, when requested, by a peace officer about the defendant’s right to bail and criminal investigation procedures, and from the prosecutor’s office about general procedures in the criminal justice system, including plea agreements,

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<sup>24</sup> Gregory M. Gilchrist, Plea Bargains, Convictions and Legitimacy, 48 AM. Criminal Law Review. 143 (2011). <https://journals.sagepub.com/doi/10.1177/0306624X9804200203?icid=int.sj-full-text.similar-articles.2>

<sup>25</sup> Mallord, Joel. "Putting plea bargaining on the record." University of Pennsylvania Law Review 162, no. 3 (2014): 683-718.

[https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=4582&context=penn\\_law\\_review](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=4582&context=penn_law_review)

<sup>26</sup> Underwood, Robert C. "Let's Put Plea Discussions-and Agreements-on Record." Loyola University Chicago Law Journal 1 (1970): 1. <https://pdfs.semanticscholar.org/7e52/1097fefdc0500bebcd2fec6584549b8f14a3.pdf>

<sup>27</sup> Maine Revised Statutes Title 15. Court Procedure--Criminal § 812. Negotiated Pleas

<https://codes.findlaw.com/me/title-15-court-procedure-criminal/me-rev-st-tit-15-sect-812.html> MAINE

<sup>28</sup> Crime Victims' Bill Of Rights. <https://law.jrank.org/pages/12009/Crime-Victims-Victims-bill-rights.html>

restitution, appeals, and parole.”<sup>29</sup> Beyond requiring victim notification, the state of [Arizona code 13-4423](#), requires reasonable efforts be made “to confer with the victim and inform the victim that the victim has the right to be present and, if present, to be heard.”<sup>30</sup>

### Serious Violent and Habitual Offenders

Some crimes violate both state and federal law, empowering either or both governments to bring criminal charges. Once a federal nexus is established for a local crime, the state’s attorney and the U.S. attorney representing the office with jurisdiction of that locality can discuss the optimal prosecution strategies. These partnerships are sometimes called adoptive case mechanisms.

As a practical matter, the decision on where to prosecute boils down to whether the case would best be prosecuted in federal or state court. Often, a deciding factor is the severity of sentencing in the respective courts. Other factors may include the resources available in respective courts or policies of the local state attorney’s office. For serious crime—particularly gang crimes, gun crime, crimes associated with criminal drug or human trafficking, or crimes involving habitual violent offenders—the attorneys must consider public safety and maximum sanctions.

Sentences are typically longer in the federal system than those set for state courts case are most often pursued through federal courts to maximize the sanction. Securing conviction in federal court also provides the opportunity to incarcerate an offender far from his home residence, which may remove the possibility that those involved in gangs or criminal enterprises continue contact with criminal associates.

Numerous DOJ-supported strategies have integrated ways to encourage U.S. attorneys and local attorneys to collaborate and exercise adoptive case mechanism, including the Bureau of Alcohol Tobacco, Firearms and Explosives’ (ATF) [Crime Gun Intelligence Centers](#) (CGIC), [Project Guardian](#), and [Project Safe Neighborhoods](#) (PSN).<sup>31 32 33</sup> The [Prosecutor-to-Prosecutor Program](#) (P3), which DOJ has identified as a best practice under the PSN, is an example that institutionalizes the practice in one jurisdiction.<sup>34</sup> The U.S. attorney for the Northern District of Alabama, Jay E. Town, instituted P3 as standard practice in all state attorneys’ offices operating in the U.S. Attorney District for Northern Alabama.

#### **10.2.4 U.S. attorneys’ offices should engage in systemic communications with state prosecutors about any and all serious and threatening criminal activities eligible for prosecution in either the state or federal jurisdiction.**

Offenses that involve the most serious threat to a community—particularly those that involve gang crimes, gun crime, drug or human trafficking crimes, and habitual violent offenders—deserve the fullest attention of local, state, and federal law enforcement and prosecutors. By keeping abreast of ongoing investigations being conducted by federal and local law enforcement, U.S. attorneys’ offices and local prosecutors’ offices can provide input into the investigation process to ensure procedures and evidence-gathering practices receive priority attention and will support optimal prosecution strategies.

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<sup>29</sup> Texan Code of Criminal Procedure Chapter 56 <https://statutes.capitol.texas.gov/Docs/CR/htm/CR.56.htm>

<sup>30</sup> Arizona 13-4423. Plea negotiation proceedings <https://www.azleg.gov/ars/13/04423.htm>

<sup>31</sup> ATF website: Fact Sheet - Crime Gun Intelligence Centers (CGIC) <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-crime-gun-intelligence-centers-cgic>

<sup>32</sup> DOJ website: Project Guardian. <https://www.justice.gov/projectguardian>

<sup>33</sup> DOJ website: Project Safe Neighborhoods. <https://www.justice.gov/psn>

<sup>34</sup> U.S. DOJ Press Release: U.S. Attorney Presents Program to Streamline Decision on State or Federal Prosecution, January 18, 2018. <https://www.justice.gov/usao-ndal/pr/us-attorney-presents-program-streamline-decision-state-or-federal-prosecution>

**10.2.5 State prosecutors should collaborate fully with U.S. attorneys' offices to develop systemic processes that identify and determine cases that have a potential to be prosecuted in the federal court system. These cases should be charged in the jurisdiction where the greatest amount of sanction is possible.**

State prosecutors should be attentive for cases with a possible nexus to federal law and reach out to USAOs to discuss the possibility of federal prosecutions whenever possible. When moving forward with prosecutions, state prosecutors should assess whether state or federal prosecution will result in the severest sentence. To provide for optimal coordination, state prosecutors should adopt strategies of vertical prosecution, where the same prosecutor stays with the case from the investigative stages through to final prosecution, rather than horizontal prosecution, where different prosecutors are assigned to lead each stage. USAOs follow vertical prosecution strategies. Mirroring that structure in the local prosecutor's office will enhance partnerships and continuity throughout the prosecution process.

**Criminal Statutory Reforms**

Felony threshold refers to the classification of crime that differentiates felonies and misdemeanors. Every state classifies crimes of theft as either misdemeanors or felonies based on the monetary value of the item(s) stolen. These thresholds often appear arbitrary when compared across states. According to a report by the [Pew Charitable Trust](#), felony theft thresholds in 2018 ranged from a low of \$200 in Massachusetts to a high of \$2,550 in Texas and Wisconsin. The report noted that several states have not updated their felony thresholds since 2000 or earlier.

Felony threshold concerns defendants, prosecutors, the courts, and correctional personnel. From the perspective of the defendant, a misdemeanor conviction will result in a fine, probation, and possible jail term of no more than one year. In contrast, a felony conviction has potentially much steeper sanctions, including one or more year in prison. Depending on the state, being convicted of a felony as opposed to misdemeanor can have wide-ranging and long-term consequences, including limiting job opportunities and prohibiting access to public housing. In some states, being convicted of a felony may mean the offender loses voting privileges.

For prosecutors, statutes with outdated felony theft thresholds present the dilemma of either applying the rule of law or exercising discretion and pursuing lesser charges for minor theft offenses that are felonies on the books. An outdated felony theft threshold (or those that are too low) can have an impact throughout the criminal justice system.

Given the volume of property crime cases, an upward adjustment of the felony theft threshold can significantly affect case processing. Keeping the felony theft threshold low strains prosecutorial, judicial, and correctional resources. Overall, principles of equity, consistent with the Eighth Amendment (i.e., the punishment must be reasonable and proportionate to the amount of harm done), suggests that states update their felony thresholds on a regular basis to adjust for inflation and the market price of goods. Doing so ensures that the punishment fits the crime.

**10.2.6 States should review and update their felony property crime statutes on a regular basis to ensure that the felony threshold is adjusted for inflation and the Consumer Price Index.**

Many states do not regularly update felony threshold level for property crimes on a routine basis, which results in an unintendedly large pool of defendants who are subject to felony charges. Undertaking efforts to ensure the felony thresholds are up to date can enhance inherent notions of fairness, improve perceptions of these laws as being legitimate, and allow for more efficient use of scarce resources. Failing to adjust felony thresholds may contribute to jail or prison overcrowding. Maintaining felony thresholds that are adjusted for inflation and the Consumer Price Index ensures that theft classes and sanctions are commensurate with the real value of the property stolen.

In 2016 the state of Alaska, through Senate Bill 91, set precedent by being the first in the nation to require that the threshold value for felony theft be adjusted every five years to account for inflation.<sup>35</sup> More recently, [Florida updated its felony theft threshold for the first time in more than 30 years by raising the threshold from \\$300 to \\$750](#).<sup>36</sup> The Virginia Department of Criminal Justice Services report, *2015 Blueprints for Change: Criminal Justice Policy Issues in Virginia: Virginia Felony Larceny Threshold 35 Years Later*, is an in-depth assessment of the commonwealths plans to adjust its felony threshold.<sup>37</sup> The thorough assessment of that report projected increases in jails and prison population if the commonwealth did not adjust its felony threshold.

## 10.3 Courts

### Background

Under the adversarial federal and criminal justice system, the formal function of a judge presiding over a criminal court is to adjudicate legal disputes between the prosecution and defense and to carry out the administration of justice in accordance with the rule of law in a fair and impartial manner. However, the formal role of the court does not adequately represent the broader real-world responsibilities that judges undertake.

In drug courts, the judge largely leads the drug court team rather than acting as a neutral arbiter presiding over the prosecution and defense. Based on guidance provided by [The Drug Court Judicial Benchbook](#) published by National Drug Court Institute (NDCI), the role of the judge in drug courts involves taking a leadership role to generate interest and develop support for the program among drug court teams.<sup>38</sup> Besides the judge, the team consists of prosecutors, defense attorneys, and treatment providers acting collaboratively in the best interest of the defendant. In addition, the judge has direct and personal contact with the defendant and understands the effect substance use has on the lives of offenders, their families, the court system, and the community at large.

### Current State of the Issue

The commission identifies four issues centered on courts that have impacts across the entire criminal justice system. These topics include expanding and refining the use of treatment courts; providing optimal indigent defense; promoting the system-wide use of risk and needs assessment tools; and increasing the use videoconferencing for court proceedings.

### Treatment Courts

Treatment courts refer to a general class of courts that stress the use of treatment as an option to criminal courts. The first treatment court in the United States was a drug court in Miami-Dade County, Florida, in

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<sup>35</sup> Alaska Statutes 31st Legislature, Sec. 11.46.982, Adjustment for inflation increasing the value of property or services as an element of an offense. <https://codes.findlaw.com/ak/title-11-criminal-law/ak-st-sect-11-46-982.html>

<sup>36</sup> Stealing stuff worth less than \$750 still a crime in Florida, but soon won't be a felony, Miami Herald, July 1, 2019, <https://www.miamiherald.com/news/politics-government/state-politics/article232139572.html>

<sup>37</sup> Virginia Department of Criminal Justice Services., 2015 Blueprints for Change: Criminal Justice Policy Issues in Virginia 2, 6–7 (2015). <https://www.dcjs.virginia.gov/about-dcjs/blueprints-change-criminal-justice-policy-issues-virginia>

<sup>38</sup> Marlowe, Douglas B., and William G. Meyer, Eds. The Drug Court Judicial Benchbook. Alexandria, VA: National Drug Court Institute, 2011T.

[https://www.ndci.org/sites/default/files/nadcp/14146\\_NDCI\\_Benchbook\\_v6.pdf](https://www.ndci.org/sites/default/files/nadcp/14146_NDCI_Benchbook_v6.pdf)

1989, largely as a response to a growing crack cocaine problem and dissatisfaction with the way traditional criminal justice courts dealt with addicted offenders.<sup>39</sup>

The drug court model took root and expanded across the country in the early 1990s. The growth of drug courts at that time was attributed to increases in prison populations, treatment shortages, and growing support for treatment.<sup>40</sup> There are now more than 3,000 drug courts across the country, and they span all 50 states. About half of those are adult drug courts and half are juvenile drug courts.<sup>41</sup>

The popularity and success of drug courts spurred the development of other treatment courts, also referred to as specialty courts or problem-solving courts. The types of treatment courts vary by location, but the most common types include drug courts, veterans' courts, mental health courts, and homelessness courts. Drug treatment courts guide defendants who are identified with substance use disorders away from jail and into treatment with a goal to reduce drug dependence, reduce offending, and improve the quality of life for offenders and their families.<sup>42</sup>

The eligibility criteria used to screen clients are a key feature of drug courts. Eligibility criteria for entering a drug court program are determined by certain characteristics including offense type, criminal history, and substance use history. Typically, drug court programs do not allow violent offenders to participate. In some jurisdictions, residency in the jurisdiction in which the charge took place is a requirement for participation. Early drug courts were designed to serve first-time offenders.<sup>43</sup> Over the years, they have evolved to target more serious and high-risk offenders to make more efficient use of drug court resources.

As drug courts have progressed, screening tools have been developed to determine eligibility and appropriateness for participation. Screening is often split into two steps: criminal justice screening and clinical screening. A criminal justice screening is used to assess if the person is eligible for drug court based on the presenting offense type and criminal history. A clinical screening is used to determine if the client has a substance use disorder and whether it can be addressed by treatment programs made available through the court. Clinical screening is also used to determine if clients may have a co-occurring mental health problem.<sup>44</sup>

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<sup>39</sup> Mitchell, Ojmarrh. "Drug and other specialty courts." *Oxford handbook of crime and criminal justice* (2011): 843-871. <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780195395082.001.0001/oxfordhb-9780195395082-e-27>

<sup>40</sup> Listwan, Shelley Johnson, and Edward J. Latessa. "The Kootenai and Ada county drug courts: Outcome evaluation findings." Kent, OH: Kent State University, Department of Justice Studies. Retrieved on 10, no. 16 (2003): 2008. [https://www.uc.edu/content/dam/uc/ccjr/docs/reports/project\\_reports/Final\\_report\\_Ada\\_and\\_Kootenai\\_Co.pdf](https://www.uc.edu/content/dam/uc/ccjr/docs/reports/project_reports/Final_report_Ada_and_Kootenai_Co.pdf)

<sup>41</sup> U.S. Department of Justice Office of Justice Programs; Drug Courts Background. OJP Bulletin, Drug Courts, January 2020 <https://www.ncjrs.gov/pdffiles1/nij/238527.pdf>

<sup>42</sup> Wood, Emily F., Monica K. Miller, and Tatyana Kaplan. "Specialty courts: time for a thorough assessment." *Miss. CL Rev.* 36 (2017): 332. <https://www.google.com/search?q=Specialty%20courts%3A%20time%20for%20a%20thorough%20assessment&cad=h>

<sup>43</sup> Terry III, W. Clinton, Ed. *The early drug courts: Case studies in judicial innovation*. Vol. 7. Sage Publications, 1999. *The early drug courts: Case studies in judicial innovation*. Vol. 7.

<sup>44</sup> Peters, Roger H., and Elizabeth Peyton. Guideline for drug courts on screening and assessment. The Authors, 1998. <https://www.ncjrs.gov/pdffiles1/bja/171143.pdf>

An increasing understanding and awareness of what make drug courts successful eventually began to emerge, due in part to funding provided by BJA and the work of the [National Association of Drug Court Professionals](#) (NADCP) and the [National Drug Court Institute](#) (NDCI).<sup>45 46</sup>

**[BEGIN TEXT BOX]**

10 key components of drug courts

1. Drug courts integrate alcohol and other drug treatment services with justice system case processing.
2. Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
3. Eligible participants are identified early and promptly placed in the drug court program.
4. Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
5. Abstinence is monitored by frequent alcohol and other drug testing.
6. A coordinated strategy governs drug court responses to participants' compliance.
7. Ongoing judicial interaction with each drug court participant is essential.
8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
9. Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
10. Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances the program effectiveness.

**[END TEXT BOX]**

Training is critical for any new treatment court. Once established, on-going training is vital for program growth, to be focused and responsive to research and clinical findings, and to address any emerging drug problems (e.g., the opioid epidemic).

Research-based trainings structured on adult learning theory are an essential component for the drug court model. These trainings disseminate crucial information but also help to inform and improve practices. A study of approximately 70 drug courts found that programs were nearly 2.5 times more cost-effective and over 50 percent more effective at reducing crime when all team members received formal pre-implementation training.<sup>47</sup> In contrast, drug courts that did not receive such training had no appreciable impact on crime levels.<sup>48</sup> Other studies similarly found that significantly greater adherence to the 10 key components of drug courts was associated with better program outcomes when staff participated in training. Adherence to the 10

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<sup>45</sup> National Association of Drug Court Professionals web page. <https://www.nadcp.org/>

<sup>46</sup> Marlowe, D. B., & Meyer, W. G. (Eds.). (2011). The drug court judicial benchbook. Alexandria, VA: National Drug Court Institute. <https://ndcrc.org/wp-content/uploads/2017/06/Drug-Court-Judicial-Benchbook.pdf>

<sup>47</sup> Carey, S.M., Mackin, J.R. and Finigan, M.W., 2012. What works? The ten key components of drug court: Research-based best practices. *Drug Court Review*, 8(1), pp.6-42. <https://npcresearch.com/publication/what-works-the-ten-key-components-of-drug-court-research-based-best-practices-3/>

<sup>48</sup> Mackin, Juliette R., Shannon M. Carey, Michael W. Finigan, L. M. Lucas, S. E. Strong, and M. S. Waller. "Harford County District Court Adult Drug Court, Outcome and Cost Evaluation." Portland, OR: NPC Research (2008). [https://www.mdcourts.gov/sites/default/files/import/opsc/dtc/pdfs/evaluationsreports/npc\\_research\\_harford\\_county\\_outcome\\_cost\\_eval04-10-2008.pdf](https://www.mdcourts.gov/sites/default/files/import/opsc/dtc/pdfs/evaluationsreports/npc_research_harford_county_outcome_cost_eval04-10-2008.pdf)

key components was also associated with increased staff job satisfaction and enhanced coordination between the criminal justice, social service, and substance use disorder treatment systems.<sup>49 50 51</sup>

Treatment court judges should receive specific training given their pivotal role as leaders of treatment court teams and their unique position of taking a more collaborative and proactive approach to their clients' outcomes. At present, both the number of judges who preside over treatment courts and the number who have received training are unknown. Some treatment court judges may not be aware of specific training options that are available.

**[BEGIN TEXT BOX]**

For more than two decades, NDCI has provided a week-long comprehensive training for judges. The curriculum was developed in collaboration with the National Center for State Courts and the National Judicial College. The in-person, week long curriculum delivers the most sophisticated and up-to-date scientific information and skills related to judicial service in the treatment courts. Topics covered include<sup>52</sup>

- the role of the drug court judge
- treatment court leadership
- what works in treatment courts
- treatment court teams and staffing
- key components of drug courts
- addiction and psychopharmacology
- effective treatment methods
- managing co-occurring disorders
- equity and inclusion
- information management
- drug detection
- admissions, targeting, eligibility, and discharge of clients
- sanctions and incentives
- ethics and confidentiality
- constitutional and legal issues
- understanding post-traumatic stress disorder and traumatic brain injury
- relapse
- motivational interviewing
- sustaining your drug court

**[END TEXT BOX]**

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<sup>49</sup> Shaffer, Deborah Koetzle. "Reconsidering drug court effectiveness: A meta-analytic review." PhD Dissertation. University of Cincinnati, 2006. [https://etd.ohiolink.edu/pg\\_10?::NO:10:P10\\_ETD\\_SUBID:81071](https://etd.ohiolink.edu/pg_10?::NO:10:P10_ETD_SUBID:81071)

<sup>50</sup> Kobus, Kara. "Examining the impact of drug court participation for moderate and high risk offenders." (2009). 2010. <https://www.semanticscholar.org/paper/Examining-the-impact-of-drug-court-participation-Kobus/cec2ead23d9f1fc64db81e71ea501d089c7edbb8>

<sup>51</sup> Van Wormer, Jacqueline, and Faith E. Lutze. "Managing and sustaining your juvenile drug court." *Juvenile and Family Court Journal* 61, no. 2 (2010): 45-53. [https://www.ncjfcj.org/wp-content/uploads/2012/02/managingandsustainingjdc\\_0.pdf](https://www.ncjfcj.org/wp-content/uploads/2012/02/managingandsustainingjdc_0.pdf).

<sup>52</sup> Carolyn Hardin, MPA, Chief of Training and Research, email Communication with Criminal Justice System Personnel Intersection Federal Program Manager, John Markovic, April 21, 2020

Drug court certification is standard in a number of individual states, including [Illinois](#), [Massachusetts](#), [New Mexico](#), and [Utah](#).<sup>53 54 55 56</sup> The [Illinois Supreme Court, the Administrative Office of Illinois Courts](#) provided the following edict regarding its requirements for certification:

In order for a court to secure PSC [problem-solving court] certification, the court shall demonstrate compliance with the PSC Standards and a commitment to adopting evidence-based practices. Each new and existing adult PSC shall complete and submit an application for certification through the AOIC [Administrative Office of Illinois Courts]. The PSC certification process entails a review of the application detailing the court's policies, procedures, operations and on-site review.<sup>57</sup>

The underlying problems addressed across the different treatment courts are often co-occurring.<sup>58 59 60</sup>  
<sup>61</sup> A veteran arrested for an eligible offense may have a substance use disorder, experience mental health issues, and be homeless. Assuming there are multiple treatment court options in the jurisdiction, the defendant should be processed through the treatment court that best suits their needs. According to the NADCP,<sup>62</sup>

While primarily concerned with criminal activity and AOD [alcohol or drug] use, the drug court team also needs to consider co-occurring problems such as mental illness, primary medical problems, HIV and sexually-transmitted diseases, homelessness; basic educational deficits, unemployment and poor job preparation; spouse and family troubles—especially domestic

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<sup>53</sup> Tardy, Michael J. "Problem-Solving Courts Certification Process and Application" Supreme Court of Illinois: Administrative Office of the Illinois Courts, Revised - November 2019.

[https://courts.illinois.gov/Probation/Problem-Solving\\_Courts/PSC\\_Certification.pdf](https://courts.illinois.gov/Probation/Problem-Solving_Courts/PSC_Certification.pdf)

<sup>54</sup> Adult Drug Court Manual 2015 A Guide to Starting and Operating Adult Drug Courts in Massachusetts.

<https://www.macoe.org/sites/macoe.org/files/files/Adult%20Drug%20Court%20Manual.pdf>

<sup>55</sup> Website: New Mexico Drug Court Certification. <https://pscourts.nmcourts.gov/nm-drug-court-certification.aspx>

<sup>56</sup> Utah Judicial Council Adult Drug Court Certification Checklist Revised, Adopted December 16, 2019

[https://www.utcourts.gov/psc/docs/Utah\\_Adult\\_Drug\\_Court\\_Certification\\_Checklist.pdf](https://www.utcourts.gov/psc/docs/Utah_Adult_Drug_Court_Certification_Checklist.pdf)

<sup>57</sup> Tardy, Michael J. "Problem-Solving Courts Certification Process and Application" Supreme Court of Illinois: Administrative Office of the Illinois Courts, Revised - November 2019. Page 1

[https://courts.illinois.gov/Probation/Problem-Solving\\_Courts/PSC\\_Certification.pdf](https://courts.illinois.gov/Probation/Problem-Solving_Courts/PSC_Certification.pdf)

<sup>58</sup> Goldstein, Gerald, James F. Luther, Gretchen L. Haas, Adam J. Gordon, and Cathleen Appelt. "Comorbidity between psychiatric and general medical disorders in homeless veterans." *Psychiatric Quarterly* 80, no. 4 (2009): 199. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2953565/>

<sup>59</sup> LePage, J. P., L. D. Bradshaw, D. J. Cipher, A. M. Crawford, and D. Hoosyar. "The effects of homelessness on veterans' health care service use: An evaluation of independence from comorbidities." *Public Health* 128, no. 11 (2014): 985-992. <https://pubmed.ncbi.nlm.nih.gov/25443100/>

<sup>60</sup> Topolovec-Vranic, Jane, Andree Schuler, Agnes Gozdzik, Julian Somers, Paul-Émile Bourque, C. James Frankish, Jalila Jbilou, Sarah Pakzad, Luis Ivan Palma Lazgare, and Stephen W. Hwang. "The high burden of traumatic brain injury and comorbidities amongst homeless adults with mental illness." *Journal of psychiatric research* 87 (2017): 53-60. <https://pubmed.ncbi.nlm.nih.gov/28006664/>

<sup>61</sup> Broner, Nahama, Randy Borum, and Kristen Gawley. "Criminal Justice Diversion of Individuals with Co-Occurring." *Serving Mentally Ill Offenders: Challenges & Opportunities for Mental Health Professionals* (2002): 83. <https://www.rti.org/publication/criminal-justice-diversion-individuals-co-occurring-mental-illness-and-substance-use>.

<sup>62</sup> National Association of Drug Court Professionals. Drug Court Standards Committee, and United States. Drug Courts Program Office. Defining drug courts: The key components. US Department of Justice, Office of Justice Programs, Drug Courts Program Office, 1997. Page 7. <https://www.ncjrs.gov/pdffiles1/bja/205621.pdf>

violence—and the long-term effects of childhood physical and sexual abuse. If not addressed, these factors will impair an individual’s success in treatment and will compromise compliance with program requirements. Co-occurring factors should be considered in treatment planning.

**[BEGIN TEXT BOX]**

Based on several meta-analyses across multiple sites, NIJ’s Crimesolutions.gov rates adult drug courts as a promising practice.<sup>63</sup> Compared to those who were referred to traditional court, drug court participants were less likely to report using drugs, less likely to recidivate, and less likely to test positive for drugs.

A number of researchers have attempted to identify program factors or characteristics of participants that add to the success of the program. Overall, drug courts tend to work best for people at the higher end of risk and the higher end of need.<sup>64 65</sup>

According to the criminal justice concept of the risk principle, intensive interventions such as drug court are believed to be best suited for offenders who are high risk and have more severe criminal propensities or drug use histories but may be ineffective or contraindicated for offenders who are low risk. The rationale is that offenders who are low risk are less likely to be on a fixed antisocial trajectory and are more likely to “adjust course” readily following a run-in with the law. Therefore, intensive treatment and supervision may offer little incremental benefit for these [low risk] individuals at a substantial cost. Offenders who are high risk, on the other hand, are likely to require intensive interventions to alter their entrenched negative behavioral patterns.<sup>66</sup>

In general, participants who completed more treatment hearings were more successful than those who completed fewer,<sup>67 68</sup> and drug court programs delivered at the appropriate level of intensity were found to be more effective than those that were not.<sup>69 70</sup>

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<sup>63</sup> CrimeSolution.gov – Practice Profile: Adult Drug Courts

<https://www.crimesolutions.gov/PracticeDetails.aspx?ID=7>

<sup>64</sup> Koetzle, Deborah, Shelley Johnson Listwan, Wendy P. Guastaferro, and Kara Kobus. "Treating high-risk offenders in the community: The potential of drug courts." *International journal of offender therapy and comparative criminology* 59, no. 5 (2015): 449-465.

<https://journals.sagepub.com/doi/full/10.1177/0306624x13515635>

<sup>65</sup> Marlowe, Douglas B., David S. Festinger, Patricia A. Lee, Karen L. Dugosh, and Kathleen M. Benasutti.

"Matching judicial supervision to clients’ risk status in drug court." *Crime & Delinquency* 52, no. 1 (2006): 52-76.

<sup>66</sup> Kirven, Mary Beth. "The Use of Evidence-Based Practices in Wisconsin Adult Drug Courts: An Overview."

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2174271/>

<sup>67</sup> Goldkamp, John S., Michael D. White, and Jennifer B. Robinson. "Do drug courts work? Getting inside the drug court black box." *Journal of drug issues* 31, no. 1 (2001): 27-72.

<https://journals.sagepub.com/doi/pdf/10.1177/002204260103100104>

<sup>68</sup> Mitchell, Ojmarrh, David B. Wilson, Amy Eggers, and Doris L. MacKenzie. "Assessing the effectiveness of drug courts on recidivism: A meta-analytic review of traditional and non-traditional drug courts." *Journal of Criminal Justice* 40, no. 1 (2012): 60-71. <https://www.sciencedirect.com/science/article/pii/S0047235211001255>

<sup>69</sup> Ibid.

<sup>70</sup> Lutze, F. E., & Van Wormer, J. G. (2007). The nexus between drug and alcohol treatment program integrity and drug court effectiveness: Policy recommendations for pursuing success. *Criminal Justice Policy Review*, 18(3), 226-245. <https://journals.sagepub.com/doi/10.1177/0887403406302327>

John Roman, Ph.D., and colleagues found that the most crucial element that halts drug use and crime is the clients' attitudes towards judges.<sup>71</sup> Judges who are directly involved with clients and knowledgeable about addiction processes and issues are critical elements that contribute to drug court success.<sup>72</sup> This research underscores the judge's role in treatment courts and validates both the need for specific training for treatment court judges and the development of a voluntary certification program for treatment court judges.

**[END TEXT BOX]**

**10.3.1 The Bureau of Justice Assistance should continue to fund drug courts and other types of treatment courts.**

BJA has been providing funding for drug courts since 1995. In November 2017, the [President's Commission on Combating Drug Addiction and the Opioid Crisis](#) called for a comprehensive federal assault on opioids, and it allocated millions of dollars in new funding to enhance the drug treatment and rehabilitative services of adult drug courts and other treatment courts<sup>73</sup>

Between 2017 and 2020 (using projected funding data for 2020), BJA has provided approximately \$347,000,000 to support treatment courts, with approximately \$275,000,000 in funding for drug courts and \$72,000,000 for veterans courts. About 85 percent of these funds have gone to states and localities to establish or refine their treatment courts. The remaining money has gone to organizations like the National Association of Drug Court Professionals (NADCP) and the Center for Court Innovation to support the development of treatment court standards and other forms of training and technical assistance.

**10.3.2 The Department of Justice should provide funding to research the best practices for training treatment court judges, which can then be used to develop new training protocols.**

Unlike in traditional courtrooms, drug court judges interact directly with the client and work intensely with prosecutors, the defense, and service providers as leaders of treatment court teams. The role of the judge, and particularly the client's attitude toward the judge, is one of the most critical factors that influences drug court outcomes.<sup>74</sup>

Training for judges on drug courts and other treatment courts is not always required, treatment court judges often do not actively pursue it. Funding could help identify gaps in training available for judges, identify marketing strategies, and provide training and technical assistance funds to train treatment court judges.

**10.3.3 The Department of Justice should examine the feasibility to establish voluntary certification programs for treatment court judges. If found feasible, the Department of Justice should support the development of judicial certification standards.**

Developing a certification procedure or track that treatment court judges could pursue on a voluntary basis stresses the importance of treatment courts and elevates the role of the treatment court judges to that of tradition criminal court judges.

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<sup>71</sup> Roman, John K., Jennifer Yahner, and Janine Zweig. "How do drug courts work?." *Journal of Experimental Criminology* (2020): 1-25. <https://link.springer.com/article/10.1007/s11292-020-09421-2>.

<sup>72</sup> Belenko, Steven. "The role of drug courts in promoting desistance and recovery: a merging of therapy and accountability." *Addiction Research & Theory* 27, no. 1 (2019): 3-15. <https://www.tandfonline.com/doi/abs/10.1080/16066359.2018.1524882?journalCode=iaart20>.

<sup>73</sup> The President's Commission on Combating Drug Addiction and the Opioid Crisis, Final report, November 2017, 16 [https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Final\\_Report\\_Draft\\_11-1-2017.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Final_Report_Draft_11-1-2017.pdf).

<sup>74</sup> Roman, John K., Jennifer Yahner, and Janine Zweig. "How do drug courts work?." *Journal of Experimental Criminology* (2020): 1-25. <https://link.springer.com/article/10.1007/s11292-020-09421-2>.

**10.3.4 The Department of Justice should provide funding to evaluate the effectiveness of all types of treatment courts, including drug, mental health, veterans', and homelessness courts.**

The majority of research has focused on drug courts, rather than mental health, veterans', and homelessness courts. According to the [Evidence-based Professionals Society](#), drug courts are often successful in accomplishing most their goals. Graduates have lower rates of recidivism and substance use. Additionally, treatment is more cost effective than incarceration, and communities generally support having them.

Far less research has been conducted on other types of treatment courts. More research would help identify the impacts of these courts, determine what elements of their treatment programs contribute to their success, and develop best practices and evidence-based standards.

**10.3.5 The Department of Justice should support the development of treatment court models or protocols for populations with co-occurring problems (e.g., substance use disorders, mental health disorders, and homelessness).**

Defendants who appear at a treatment court often experience multiple types of problems. While the treatment court standards and guidance promoted by the NADCP address this reality, additional protocols, best practices, and research addressing co-occurring disorders would greatly benefit the treatment court community, its practitioners, and the clients they serve.

**10.3.6 States and localities that use treatment courts should ensure that treatment resources are available and are reflective of the needs of program participants. States and localities should also monitor and hold the service providers accountable for tracking treatment outcomes.**

The effectiveness of treatment courts relies on having an adequate number of treatment spots that are continually monitored for quality of services. NADCP stipulates specific standards to be adhered to for evidence-based treatments and for verifying the credentials of treatment providers.<sup>75</sup>

**Evidence-based treatments:** Treatment providers administer behavioral or cognitive-behavioral treatments that are documented in manuals and have been demonstrated to improve outcomes for addicted persons involved in the criminal justice system. Treatment providers are proficient at delivering the interventions and are supervised regularly to ensure continuous fidelity to the treatment models.

**Provider training and credentials:** Treatment providers are licensed or certified to deliver substance use disorder treatment, have substantial experience working with criminal justice populations and are supervised regularly to ensure continuous fidelity to evidence-based practices.

**10.3.7 Local criminal justice agencies should provide alternatives to treatment courts for persons who have issues that are not severe enough to meet eligibility criteria for treatment courts. These alternatives should be delivered as pre-trial diversionary services.**

Not all individuals coming to the attention of the criminal justice system are eligible or suitable for entry into drug courts or other types of treatment courts. Given the general success of the treatment court model, local criminal justice agencies should partner with each other to provide diversionary services that incorporate the 10 key components of treatment courts and other core operating principles to the extent possible.

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<sup>75</sup> National Association of Drug Court Professionals. "Adult drug court best practice standards." (2013). Page 39 <https://www.nadcp.org/wp-content/uploads/2018/12/Adult-Drug-Court-Best-Practice-Standards-Volume-I-Text-Revision-December-2018-1.pdf>

## Indigent Defense

The Sixth Amendment establishes the right to counsel in federal criminal prosecution. Through a series of landmark decisions by the U.S. Supreme Court, notably *Gideon v. Wainwright*, the right to counsel has been extended to all criminal prosecutions that carry a sentence of imprisonment.<sup>76</sup>

Under the federal system, there are three basic forms of indigent defense: public defender organizations, community defender organizations, and panel attorneys. Federal public defender organizations are federal entities whose staff are federal employees. Community defender organizations are nonprofit defense counsel organizations incorporated under state laws. Under the Criminal Justice Act (CJA), 18 U.S.C. § 3006A (2015), they operate in federal districts through federal grants.<sup>77</sup> Panel attorneys are private attorneys paid at an hourly rate to serve as indigent defense for federal defendants.<sup>78</sup>

Under state and local courts, three general forms of indigent defense parallel the operations at the federal level: public defender programs, assigned counsel, and contract attorneys. Public defender programs are public defenders that are organized and paid by the state. Assigned counsel (i.e., court-appointed attorneys) are private attorneys who may work for a set fee per case or at an hourly rate. Contract attorneys provide indigent defense through contracts with one or more private attorneys or law firms that operate for-profit.<sup>79</sup>

A 2016 report by BJS found that approximately 66 percent of felony federal defendants and 82 percent of felony defendants in large state courts were represented by indigent defense.<sup>80</sup> Indigent defense systems have been widely criticized, with a common theme being that public defenders are overworked and underpaid.<sup>81</sup> Critics have described the failings of indigent defense as a denial of justice to the poor and unnecessarily costly as a result of increased jail times, retrials, and resulting lawsuits.<sup>82</sup>

Few studies demonstrate the superior efficiency of any particular indigent defense program type. Generally, research suggests that assigned counsel are less prepared, less communicative, and more isolated, particularly when paid low or flat fees; less experienced and worse performing when paid below market rates; and less likely to go to trial when paid more for pleas.<sup>83</sup> Conversely, public defender programs are often associated with lower caseloads, more investigators, more client contact, more training, and faster case

<sup>76</sup> Other landmark decisions include *Argersinger v. Hamlin*, in which the Supreme Court extended *Gideon* to include lesser offenses that carried a possible sentence of incarceration, and *In re Gault*, which extended the right to counsel to include all juveniles involved in delinquency proceedings that face possible incarceration.

<sup>77</sup> 18 U.S. Code § 3006A. Adequate representation of defendants.

<https://www.law.cornell.edu/uscode/text/18/3006A>.

<sup>78</sup> Guide to Judiciary Policy, Vol. 7: Defender Services, Part A: Guidelines for Administering the CJA and Related Statutes, Chapter 2: Appointment and Payment of Counsel, § 210: Representation under the CJA, Section 210.20.20(a) (2) (rev. June 2015), available at <http://www.uscourts.gov/rulespolicies/judiciary-policies/cja-guidelines/chapter-2-ss-210-representation-under-cja>.

<sup>79</sup> Strong, Suzanne M. "State-Administered Indigent Defense Systems, 2013." US Department of Justice, Bureau of Justice Statistics, NCJ 250249 (2016) <https://www.bjs.gov/content/pub/pdf/saids13.pdf>.

<sup>80</sup> Harlow, Caroline Wolf. *Defense counsel in criminal cases*. US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2000. <https://www.bjs.gov/content/pub/pdf/dccc.pdf>.

<sup>81</sup> Fabelo, Tony. "What Policy-Makers Need to Know to Improve Indigent Defense Systems." New York University Review of Law & Social Change. 29 (2004): 135. <https://www.ncjrs.gov/pdffiles1/bja/190725.pdf>

<sup>82</sup> Scott-Hayward, Christine S., and Henry F. Fradella. *Punishing poverty: How bail and pretrial detention fuel inequalities in the criminal justice system*. University of California Press, 2019. <https://www.ucpress.edu/book/9780520298316/punishing-poverty>.

<sup>83</sup> See for instance, Van Brunt, Alexa. "Poor people rely on public defenders who are too overworked to defend them." The Guardian (2015). <https://www.theguardian.com/commentisfree/2015/jun/17/poor-rely-public-defenders-too-overworked>.

assignment.<sup>84</sup> Other benefits of public defender programs compared to other forms of indigent defense include better justice system coordination, better supervision of attorneys, and better client satisfaction.

Tony Fabelo suggests,

A significant problem facing policymakers is the lack of comprehensive research to guide public defense policy and reform. Advocates for improving public defense services debate issues regarding the best way to deliver quality public defense services, with a strong bias in favor of enhancing public defender offices. As expected, advocates favor spending more money rather than less on these services. For policymakers, however, a basic obstacle to promoting reform is the lack of systematic research to guide policy development.<sup>85</sup>

Given the lack of research and the challenges many states and localities face while attempting to improve their indigent defense services, the commission believes that additional research is needed on a national level and that states and localities should be supported in their assessments on what works.

Many states allow localities within a state (e.g., counties) to determine the type of indigent defense they deliver.<sup>86</sup> Travis County, Texas, considered revising its delivery of indigent defense while the commission was researching this topic. Its current form of indigent defense is a hybrid program that uses an assigned council approach for most felony cases, but maintains public defenders to deliver indigent defense for misdemeanors involving persons with mental health issues and juveniles. At the request of the county, the Texas Indigent Defense Commission conducted an assessment and suggested that the county transition a full public defender program.

**10.3.8 The Department of Justice should provide funding to examine the cost, efficiency, and effectiveness of various forms of indigent defense. This research should determine the relative costs and benefits of different approaches and determine whether these factors vary by contextual factors at the local level, such as population density or volumes of criminal caseload.**

Research should be conducted to fully understand the types of indigent defense services, policy, and practice. The best delivery methods of indigent defense may vary in rural and urban jurisdictions or depending on the volumes and types of criminal cases. Because the demands and needs for indigent defense vary greatly, research should be conducted to identify factors that affect the cost, efficiency, and effectiveness of indigent defense delivery at the local level.

**10.3.9 The Department of Justice should provide funding to states and localities to determine if public defender programs are more effective and more viable than other indigent defense delivery options.**

Following the example of the Travis County, Texas, study, states and localities may benefit from assessing their current methods of delivering indigent defense. These studies may point to revisions that can improve delivery of services to indigent defendants and identify the cost–benefit implications of proposed changes. Funding should be allocated to states or localities that partner with independent and qualified researchers from universities or research associations to evaluate and compare different methods to deliver indigent defense.

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<sup>84</sup> Fabelo, Tony. "What Policy-Makers Need to Know to Improve Indigent Defense Systems." New York University Review of Law & Social Change. 29 (2004): 135. <https://www.ncjrs.gov/pdffiles1/bja/190725.pdf>

<sup>85</sup> Fabelo, Tony. "What Policy-Makers Need to Know to Improve Indigent Defense Systems." New York University Review of Law & Social Change. 29 (2004): 135 Page 3. <https://www.ncjrs.gov/pdffiles1/bja/190725.pdf>

<sup>86</sup> Strong, Suzanne M. "State-Administered Indigent Defense Systems, 2013." US Department of Justice, Bureau of Justice Statistics, NCJ 250249 (2016). <https://www.bjs.gov/content/pub/pdf/saids13.pdf>.

## Risk and Needs Assessment Instruments

The U.S. criminal justice system uses a variety of instruments to assess the risk of adverse outcomes at different stage of the process. Risk assessments and needs tools are used in bond, pretrial diversion, and sentencing decisions; during prison intake and classification; and to determine conditions and levels of supervision for probation and parole. Risk assessment and needs assessments consist of two components. The risk assessment portion determines the offenders' likelihood to offend and results in the determination of risk level or score. The needs assessment portion is used to identify the offender's criminogenic needs, which if addresses, could reduce the risk of recidivism.<sup>87</sup>

The use of these tools is somewhat controversial, as assessment tools may have a significant impact on the fundamental ideas of liberty, such as pretrial release decisions and sentencing. Cynthia Mamalian, of the Pretrial Justice Institute, characterized the significance of risk assessment tools during pretrial release stating that "[T]he presumption of innocence provides the rationale for pretrial release with the least restrictive conditions. The challenge is balancing the presumption of innocence and individual liberty of defendants with community safety, the protection of witnesses and victims, and ensuring the defendant's return to court."<sup>88</sup>

Federal and state criminal justice agencies are adopting and developing risk assessment and needs tools at an increasing rate.<sup>89</sup> In some cases, use of risk assessment tools are mandatory. For instance, the First Step Act requires the attorney general to develop a risk and needs assessment system for the Bureau of Prisons to assess the recidivism risk and criminogenic needs of all federal prisoners; then, those prisoners are placed in recidivism-reducing programs and productive activities that address their needs and reduce this risk.

To date, no single tool has emerged as the most reliable or valid at any phase of the criminal justice system. In 2016, more than 60 recidivism risk assessment instruments (RAIs) were in use in various parts of the United States.<sup>90</sup> Most of the RAI instruments being used are specific to the state or municipality in which they are deployed.

A meta-analysis found that the use of RAI is generally effective; however, no single instrument was shown to be more effective than the others.<sup>91</sup> The effectiveness of these instruments is often dependent on the type of recidivism being assessed (e.g., whether offenders would violate the conditions of their parole or probation or whether offenders would commit new crimes). The researchers concluded, "Instead of identifying one instrument that produced the 'best' or 'most accurate' risk assessments, our findings suggest that predictive validity may vary as a function of offender characteristics, settings, and recidivism outcomes."

Through funding provided to the Urban Institute, BJA has developed and maintained a [Public Safety Risk Assessment Clearinghouse](#) (PSARC), which provides evidence-based information about how to use risk assessment and needs instruments effectively and properly.

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<sup>87</sup> Casey, Pamela M., Jennifer K. Elek, Roger K. Warren, F. Cheesman, M. Kleiman, and Brian Ostrom. "Offender risk & needs assessment instruments: A primer for courts." (2014): 208-22. <https://nicic.gov/offender-risk-needs-assessment-instruments-primer-courts>

<sup>88</sup> Mamalian, Cynthia A. "State of the science of pretrial risk assessment." (2011). [https://bjaojp.gov/sites/g/files/xyckuh186/files/Publications/PJI\\_PretrialRiskAssessment.pdf](https://bjaojp.gov/sites/g/files/xyckuh186/files/Publications/PJI_PretrialRiskAssessment.pdf).

<sup>89</sup> Stevenson, Megan. "Assessing risk assessment in action." *Minnesota. Law Review* 103 (2018): 303. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3016088](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3016088).

<sup>90</sup> Sarah L. Desmarais, Kiersten L. Johnson, Jay P. Singh. Performance of Recidivism Risk Assessment Instruments in U.S. Correctional Settings. Psychological Services, 2016; DOI: 10.1037/ser0000075 <https://pubmed.ncbi.nlm.nih.gov/27267819/>

<sup>91</sup> Sarah L. Desmarais, Kiersten L. Johnson, Jay P. Singh. Performance of Recidivism Risk Assessment Instruments in U.S. Correctional Settings. Psychological Services, 2016; DOI: 10.1037/ser0000075 <https://pubmed.ncbi.nlm.nih.gov/27267819/>

**10.3.10 The Department of Justice should provide funding to state and local jurisdictions that will allow them to continue to assess and develop risk and needs assessment instruments best suited for use in the state or local criminal justice system.**

The number of state and local jurisdictions that have begun to use risk and needs assessment instruments has grown rapidly in recent years, which shows that criminal agencies are adopting evidence-based practices. However, the necessary research regarding the use of risk and needs assessments has not kept pace with the rapid growth of these instruments. Research is necessary to inform state and local jurisdictions on the vast number of these instruments and how and when they are used. This research would help make better connections and distinctions between how different jurisdictions adopt and implement these instruments.

**10.3.11 State and local criminal justice agencies should validate risk and needs assessment instruments through rigorous research processes. In addition, state and local criminal justice agencies should review these instruments to assure the criteria used to establish risk are constitutionally permissible.**

Validation refers to the process of determining how well a tool performs at predicting risk. The performance of any particular risk assessment is referred to as predictive utility. As individual states or localities move to develop or adopt particular risk assessment tools, they must ensure that the instruments are valid.

**10.3.12 The Bureau of Justice Assistance should provide funding and technical assistance to state and local criminal justice agencies for the procurement, use, development, and validation of evidence-based risk assessment tools.**

Many challenges go along with adopting risk assessment tools. The criminal justice agency must make sure that they are valid, appropriate for the setting and population served, and constitutional. Many state and local criminal justice agencies do not have the personnel and resources to meet these goals on their own. The Urban Institute's [Risk Assessment Clearing House](#), funded by BJA, provides a solid foundation for agencies to explore these issues. More direct technical assistance will help ensure that state and local criminal justice agencies implement risk and needs assessment tools in an evidence-based and constitutional manner. This technical assistance could be provided by universities or research organizations that have a demonstrated experience in developing and validating risk assessment tools that are designed for specific criminal justice decision points and localities.

**Videoconferencing for Criminal Justice Proceedings**

The COVID-19 pandemic hastened the adoption of videoconferencing in federal, state, and local courts. Questions about whether a jurisdiction should adopt videoconferencing were replaced by questions about how a jurisdiction can best leverage videoconferencing and do it quickly. As stay-at-home and social distancing orders became common across the spread of the novel coronavirus, adoption of videoconferencing in courts escalated.

On March 19, 2020, [Ohio Supreme Court Chief Justice Maureen O'Connor announced plans to release \\$4,000,000](#) in emergency grant funding across the state to allow for courts to purchase videoconferencing technology for arraignments and other needs.<sup>92</sup> On March 30, 2020, the U.S. Courts website declared the Judiciary Authorizes Video/Audio Access During COVID-19 Pandemic, thereby approving the use of video and teleconferencing for certain criminal proceedings.<sup>93</sup>

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<sup>92</sup> Ohio Supreme Court to release \$4M in emergency grants amid coronavirus pandemic, Dayton Business Journal, Mar 19, 2020. <https://www.bizjournals.com/columbus/news/2020/03/19/ohio-supreme-court-to-release-4m-in-emergency.html>

<sup>93</sup> Website: Judiciary Authorizes Video/Audio Access During COVID-19 Pandemic, March 31, 2020. <https://www.uscourts.gov/news/2020/03/31/judiciary-authorizes-videoaudio-access-during-covid-19-pandemic>

On behalf of the National Institute of Justice, RTI International and the RAND Corporation convened a panel of subject matter experts for a Court Appearances through Telepresence Advisory Workshop in November 2018. This workshop was designed to explore the benefits, burdens, and innovative solutions of teleconferencing in court. The final report from this workshop, identified numerous advantages of videoconferencing in criminal proceedings, including increased safety for court personnel, reductions in costs, and enhanced court efficiency.<sup>94</sup> More specifically, subject matter experts revealed that teleconferencing reduced the need to secure and transport defendants to court and reduced time spent in jail awaiting a hearing. Subject matter experts thought that teleconferencing could increase access to expert witnesses and witnesses to the court who may have either feared for their safety if they were instead required to appear in person or testify without the trauma of being physically present with the offender. Workshop participants also believed that videoconferences could facilitate the use of language interpretation services, allowing non-English speakers and individuals with disabilities to access the criminal justice system more easily.

Some disadvantages of videoconferencing in criminal court include concerns that the judgment and behavior of criminal justice personnel who appear in court remotely might be different than at an in-person proceeding. In addition, defendants and witnesses who are not physically present might not fully appreciate the gravity of the proceedings, thereby increasing the risk that they engage in impulsive behavior or that they become disengaged from the legal process. Teleconferencing could also adversely affect the attorney–client relationship by hindering their ability to carry out private communications.

**10.3.13 Criminal justice agencies should develop the capacity to engage in videoconferencing for selected court proceedings, including arraignments. Criminal justice agencies should purchase video technology and update the infrastructure necessary to support virtual courtrooms.**

The concept of a conducting courtroom proceedings by videoconferencing has existed since at least 1998. The growth of virtual court proceedings, however, has proceeded gradually, particularly compared to the rapid adoption of the virtual meeting technologies by the general public and the business community. The recent crisis has accelerated the adoption of this technology demonstrating how developing local capacities to effectively carry out videoconferencing and advancing virtual courts would be useful in the event of local natural disaster such as flood.

**10.3.14 State and local jurisdictions should amend laws or administrative rules that prohibit or limit videoconferencing.**

Historically, both federal and state laws and court precedents have placed some restrictions on the use of teleconferencing or videoconferencing in court proceedings; however, that has changed due to the COVID-19 pandemic. Even before the pandemic, a growing number of states were adopting and developing rules and policies favoring videoconference appearances. These rules had originally been written to promote uniform practices and procedures relating to videoconferencing. The original motivations for such policies included improving access to courts and reducing costs.

**10.3.15 The Department of Justice should sponsor an after-action panel made up of a statistically diverse cross-section of jurisdictions to discuss the innovations, challenges, and best practices in the adoption and use of videoconferencing that stemmed from the COVID-19 pandemic.**

Much can be learned from the rapid adoption and expanded use of teleconferencing and videoconferencing that have occurred over the last 20 years and accelerated in response to the COVID-19 pandemic. At a minimum, the DOJ should convene a panel or a series of panels to identify lessons learned, promising practices, challenges, and practical needs that were discovered in the wake of the COVID-19 pandemic. This

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<sup>94</sup> Gourdet, Camille, Amanda R. Witwer, Lynn Langton, Duren Banks, Michael G. Planty, Dulani Woods, and Brian A. Jackson. "Court Appearances in Criminal Proceedings through Telepresence." [https://www.rand.org/pubs/research\\_reports/RR3222.html](https://www.rand.org/pubs/research_reports/RR3222.html).

cross-sectional panel should include representation from urban, rural, and tribal experiences and perspectives, as well as the federal court system.

**10.3.16 The Department of Justice should publish proceedings from the after-action panel on the use of teleconferencing in courts to share lessons learned and emerging standards with the jurisdictions across the country.**

The discussions and feedback resulting from the after-action report should be memorialized in a report. Topics addressed in that report should include general recommendations for video technology capacity building, strategies for clearing legal hurdles, and guidelines about the types of hearings that are suitable for videoconferencing. This document should identify areas of further research and eventually lead to the development of standards and best practices for use of videoconference testimony.

## 10.4 Detention and Corrections

### Background

For the purposes of this chapter, “corrections” refers to all agencies in the criminal justice system that deal with individuals who have been convicted of a crime. The correctional system ensures that an offender's sentence is carried out, whether that time is served in jail, in prison, on probation, or in court-ordered community service under the supervision of the state. Detention refers to the use of jails as pretrial detention where defendants are held without bail or are being detained because they cannot post bail to secure their release before trial. Well beyond their custodial role, both correctional and detention staff work closely with other criminal justice agencies to provide treatment and services to clients.

### Current State of the Issue

Generally, a person convicted of a crime is detained to protect the public against their actions (incapacitation) and to deter future offending. Another rationale for detention of convicted offender is retribution, the belief that confinement and the deprivation of liberty is a punishment that fits the gravity of the offense committed. Not all of these justifications of punishment hold when offender is detained during the pre-trial period, since the individual has not at that point been convicted. The primary justification for pre-trial detention is to make sure that a criminal defendant appears in court. However, the federal government and the majority of states allow judges to preventively detain defendants for public safety considerations.<sup>95</sup> Preventive detention may be based on the dangerousness of a defendant to victims, witnesses, or the general public. It may also be based on the defendant's general likelihood to engage in criminal behavior while on release.

The commission identifies two issues centered on detention and corrections that have an impact across the wider criminal justice system: addressing the current bail reform movement and the adverse impact of contraband cell phones in prison.

### Bail Reform

Bail refers to pre-trial restrictions that are imposed on a person charged to ensure that they comply with the judicial process. In the United States, bail commonly implies a bail bond most commonly in the form of money or property that the suspect deposits to the court to ensure the defendant appears in court. Under

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<sup>95</sup> Mangual, Rafael A. "Reforming New York's Bail Reform: A Public Safety-Minded Proposal." (2020). <https://www.manhattan-institute.org/reforming-new-yorks-bail-reform>.

this system, the defendant that posts bail is released. The defendant will forfeit that bail if they fail to appear in court or, in some cases, if the defendant violates the conditions of release.

Nationally, more than 60 percent of persons held in jail are pretrial detainees.<sup>96</sup> The concept of excessive bail is rooted in the Eighth Amendment. Many bail reform advocates have criticized the use of cash bail as inherently discriminatory against the poor.<sup>97 98</sup> Bail has also been described by bail reform advocates as inherently discriminatory against people of color.<sup>99 100</sup>

A growing number of states, including California, Illinois, New Jersey, and New York, have taken steps to eliminate cash bail for most misdemeanors and a subset of nonviolent felonies.<sup>101 102</sup>

Other criticisms of the cash bail, particularly when applied to misdemeanor and low-level crimes, is that it results in defendants losing their jobs and being unable to care for their children or family members.<sup>103</sup> Research shows that holding people in jail who do not pose a risk for flight or who do not pose significant threat to the public exacerbates jail overcrowding and thereby contributes to unsafe conditions.<sup>104</sup> The criminogenic effects of spending time in detention also has been cited as an argument against holding pretrial detainees in jail for misdemeanor offenses.<sup>105</sup> Another argument for curtailing cash bail is that it saves money since fewer individuals will be detained in jail.<sup>106</sup>

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<sup>96</sup> Todd Minton & Zhen Zeng, Bureau of Justice Statistics, Jail Inmates at Midyear 2014 1-3, 8 (2015), available at <http://www.bjs.gov/content/pub/pdf/jim14.pdf>.

<sup>97</sup> Safiedine, Salma S., and K. Jeannie Chung. "The price for justice: The economic barriers that contribute to an unfair and unjust criminal justice system." *Criminal Justice* 32 (2017): 40.

<https://search.proquest.com/openview/024d8a72f85ddd1c39d09cf8bb87a052/1/advanced>

<sup>98</sup> Sardar, Muhammad B. "Give Me Liberty or Give Me Alternatives: Ending Cash Bail and Its Impact on Pretrial Incarceration." *Brooklyn Law Review* 84 (2018): 1421. <https://brooklynworks.brooklaw.edu/blr/vol84/iss4/9/>.

<sup>99</sup> Assefa, Lydette S. "Assessing dangerousness amidst racial stereotypes: an analysis of the role of racial bias in bond decisions and ideas for reform." *Journal Criminal Law & Criminology* 108 (2018): 653.

<https://scholarlycommons.law.northwestern.edu/jclc/vol108/iss4/1/>

<sup>100</sup> Heaton, Paul, "The Expansive Reach of Pretrial Detention" (2020). Faculty Scholarship at Penn Law. 2142. [https://scholarship.law.upenn.edu/faculty\\_scholarship/2142](https://scholarship.law.upenn.edu/faculty_scholarship/2142)

<sup>101</sup> Cuomo, in Bid to Help Poor, Proposes Ending Cash Bail for Minor Crimes, New York Times, January 2, 2018. <https://www.nytimes.com/2018/01/02/nyregion/cuomo-ending-cash-bail-state-of-the-state.html>.

<sup>102</sup> 128 Rights Groups Urge New York Legislature to Implement Pretrial Reforms: Reforms Bring Fairness and Transparency to NY Criminal Legal System, Human Rights Watch Letter to Governor Cuomo, November 7, 2019. <https://www.hrw.org/news/2019/11/07/128-rights-groups-urge-new-york-legislature-implement-pretrial-reforms>

<sup>103</sup> Dobbie, Will, Jacob Goldin, and Crystal S. Yang. "The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges." *American Economic Review* 108, no. 2 (2018): 201-40. <https://pubs.aeaweb.org/doi/pdf/10.1257/aer.20161503>

<sup>104</sup> Smith, Rachel. "Condemned to Repeat History-Why the Last Movement for Bail Reform Failed, and How This One Can Succeed." *Georgetown Journal on Poverty Law & Policy*, 25 (2017): 451.

<https://www.law.georgetown.edu/poverty-journal/wp-content/uploads/sites/25/2019/02/25-3-Condemned-to-Repeat-History.pdf>.

<sup>105</sup> Heaton, Paul, Sandra Mayson, and Megan Stevenson. "The downstream consequences of misdemeanor pretrial detention." *Stanford Law Review* 69 (2017): 711. <https://www.stanfordlawreview.org/print/article/the-downstream-consequences-of-misdemeanor-pretrial-detention/>

<sup>106</sup> Bail Reform is an Opportunity for Savings in New York, Vera Institute of Justice, March 2020.

<https://www.vera.org/downloads/publications/bail-reform-is-an-opportunity-for-savings-new-york.pdf>

A number of sound arguments have been made against the bail reform movement. Many argue that removing judicial discretion and eliminating the practice of preventive detention will lead to increased crime rates.<sup>107</sup> Others believe that removing or curtailing judicial discretion and eliminating preventive detention will place offenders back on the streets, endangering the community, leaving victims vulnerable, and allowing offenders to recidivate.

Although data have yet to be analyzed, concerns about the effect of bail reform on crime rates have been raised in the media. After the New York State bail reform took effect on January 1, 2020, crime in New York City spiked for the first two months of the year. York State is now revisiting its progressive bail as a result of these crime spikes.<sup>108 109 110</sup>

Addressing the challenges of bail reform may ultimately be one of degree and compromise. One solution to assist in the determination of the need for pretrial detention of a given defendant is to adopt and validate risk assessment instruments to support bail decisions. As mentioned, assessments can be used to determine the likelihood that a defendant will show up for court or commit another crime if released. If validated bail risk assessment tools are effectively implemented, they can objectively bring the level of danger and likelihood to offend factors back into the bail decision. These tools can also provide the judicial officer with a meaningful review of the risk of flight or clear and present dangers posed by a given defendant.

The State of New Jersey effectively eliminated cash bail. In place of using money to determine who is released or detained, it relies on a risk assessment instrument called the public safety assessment (PSA) tool that considers nine factors from an individual's criminal history to predict their likelihood of returning to court for future hearings and remaining crime-free while on pretrial release.<sup>111</sup>

In the context of bail reform, where a greater number of defendants will be released without cash bail, criminal justice agencies must carefully consider violations of bail, realistic sanctions for such behaviors, the use of revocation, and other sanctions that may be effective. With more defendant's being released, there will be more opportunities for persons to reoffend. In addition, the likelihood of forfeiting bail increases when no surety is provided by the defendant. Because of these factors, judges and prosecutors should be allowed to amend release decisions, conditions, or enforce revocation.

One option for providing meaningful accountability for defendants released pre-trial absent cash bail is the use of sanctions that are "swift, certain, and fair" (SCF), following the tenets underlying Project Hope probation.<sup>112</sup> Like probation, pretrial release, is a form of community supervision. Recognizing every form of community supervision must have sanctions for violation, an article in *Federal Probation* makes the argument

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<sup>107</sup> Cassell, Paul G., and Richard Fowles. "Does Bail Reform Increase Crime? An Empirical Assessment of the Public Safety Implications of Bail Reform in Cook County, Illinois." An Empirical Assessment of the Public Safety Implications of Bail Reform in Cook County, Illinois (February 19, 2020). University of Utah College of Law Research Paper 349 (2020). [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3541091](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3541091)

<sup>108</sup> [Spike in Crime Inflames Debate over Bail Law in New York](#), New York Times, February 4, 2020

<sup>109</sup> New York Tried to Get Rid of Bail. Then the Backlash Came, Politico, April 23, 2020. <https://www.nytimes.com/2020/02/04/nyregion/crime-stats-nyc-bail-reform.html>.

<sup>110</sup> New Bail Laws Leading to Release of Dangerous Criminals, Some Prosecutors Say, Wall Street Journal, February 2, 2020 <https://www.wsj.com/articles/bail-reform-needs-reform-growing-group-of-opponents-claim-11581348077>

<sup>111</sup> Anderson, Chloe, Cindy Redcross, Erin Valentine, and Luke Miratrix. "Evaluation of Pretrial Justice System Reforms That Use the Public Safety Assessment Effects of New Jersey's Criminal Justice Reform." MDRC Center for Criminal Justice Research, November 2019. Page 2 [https://www.mdrc.org/sites/default/files/PSA\\_New\\_Jersey\\_Report\\_%231.pdf](https://www.mdrc.org/sites/default/files/PSA_New_Jersey_Report_%231.pdf)

<sup>112</sup> Kleiman, Mark AR. "Swift-certain-fair: What do we know now, and what do we need to know?" *Criminology & Public Policy* 15 (2016): 1185. <https://onlinelibrary.wiley.com/doi/abs/10.1111/1745-9133.12258>

that “[s]wift-certain-fair (SCF) sanctioning improves on conventional practice in enforcing the conditions of community corrections both by substituting swiftness and certainty for severity and by increasing the predictability, and thus the perceived fairness, of the process from the offender’s viewpoint.”<sup>113</sup> The principles of SCF that have showed promise in probation programs should be adopted for pretrial release.

**10.4.1 The Department of Justice should define the minimum constitutional standards for cash bail systems based on U.S. Supreme Court and federal circuit court precedent. This definition should specify the due process and equal protection requirements.**

Nearly every jurisdiction in the United States relies upon money bail as a condition of pretrial release. Currently, the forms of issuing bail vary by state, locality, and judicial preference. A current climate of bail reform has created additional confusion regarding the proper role of bail, and specifically the use of cash bail.

DOJ guidance on minimal constitutional standards would allow states, localities, and their elected officials to better maintain a lawful system of bail and avoid costly, frivolous lawsuits. This guidance would also help address the primary concern of public safety in ensuring that habitual repeat offenders and dangerous individuals are not released.

**10.4.2 Any jurisdiction that eliminates its system of cash bail should first establish an alternative protocol for robust pre-trial processes that fully addresses public safety concerns and potential flight risks.**

When making decisions regarding bail, the pretrial process completed by prosecutors and the court should address three primary functions: collection and analysis of defendant information for use in determining risk, recommendations to the court concerning conditions of release, and plans to supervise defendants who are released from custody during the pretrial phase. Eliminating cash bail without these mechanisms in place disregards the import roles of incentives and accountability that help make certain that the suspect appears in court while also deterring additional offending and violations of pre-trial conditions.

**10.4.3 Courts and prosecutors in local jurisdictions should adopt validated pre-trial risk assessment and needs tools. These tools should determine realistic conditions of release and reflect the seriousness of the offense charges.**

Bail risk assessments tools have been developed to predict the likelihood of a defendant appearing for court or committing additional offenses while on release. When properly validated and implemented, these tools can result in bail decisions that ensure due process protections reflect evidence-based practices while minimizing the likelihood that defendants will fail to appear. These actions will reserve the fundamental rights of defendants while serving the interests of fairness and public safety.

**10.4.5 Judges, prosecutors, and pre-trial release officers should ensure that meaningful and effective sanctions for violations of pre-trial release are defined and deployed when no-cash bail laws or policies are implemented.**

Eliminating cash bail removes a major incentive for defendants to appear in court, comply with conditions of release, and refrain from criminal offenses while on release. This is particularly true of habitual offenders with extensive criminal histories. Absent this incentive, a defendant who has violated bail should still be subject to a variety of sanctions, including revocation of release and orders of detention and prosecution for contempt of court. Enforcing meaningful and commensurate sanctions for violation of no-cash bail can help make sure that defendants appear in court, comply with conditions, and do not engage in criminal offenses while on release. Allowing offenders to violate no-cash bail with impunity undermines respect for the law and is detrimental to public safety. Establishing clear standards promotes respect for law and public safety.

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<sup>113</sup> Kleiman, Mark AR, Beau Kilmer, and Daniel T. Fisher. "Theory and evidence on the swift-certain-fair approach to enforcing conditions of community supervision." *Federal Probation* 78 (2014): 71. [https://www.uscourts.gov/sites/default/files/78\\_2\\_8\\_0.pdf](https://www.uscourts.gov/sites/default/files/78_2_8_0.pdf)

**10.4.6 The National Institute of Justice should provide funding to research the nature and length of time of defendants who are held in jails to accurately determine the seriousness of their charge and how much of a danger they pose to the community.**

Advocates of bail reform often assert that the majority of offenders being held in jail on cash bonds are being held for low-level offenses, and that many of them are first-time arrestees; however, no systematic study has been conducted about the seriousness of charges and past criminal histories of those who are being held in jail on cash bond. Determining the true nature of pretrial jail detainee populations can help the criminal justice system more accurately determine the severity of the problem at the local level. Such research can also help determine the extent to which it is a systematic nationwide problem or isolated to certain jurisdictions. The study should collect data that considers overall population, calls for service, class of criminal activity and racial, gender, and socio-economic status of the jail population. To maintain objectivity, this research funding should be made available to local jail jurisdictions that commit to working in partnership with an independent research organization.

**10.4.7 The National Institute of Justice should provide funding to determine how often new offenses are committed by offenders who are out on bail. This research should include an assessment of the types and severity of criminal conduct, unlawful contacts with victims or witnesses, and how much of a danger the offender poses to the community.**

In the current climate of bail reform, more offenders are likely to be released than would have been in years past. This situation carries the potential to release defendants who have a high risk of re-offending. Additional research would allow local jurisdictions to assess the potential tradeoffs of bail reform and make any necessary legal and policy adjustments. As with the previous recommendation, this research funding should be made available to local jail jurisdictions that commit to working in partnership with an independent research organization.

**Contraband Cell Phone Use in Prison**

Cell phones are considered contraband in federal and state prisons. It is illegal for an inmate to possess a cell phone or use cell phone signals. According to Commissioner Frederick Dunn of the Alabama Department of Corrections, 10,988 contraband cell phones were confiscated in Alabama's prisons between 2017 and 2019.<sup>114</sup> Contraband cell phones are being introduced and smuggled into prison by a variety of means, including being brought in by corrupt staff, smuggled in by visitors, dropped in prison yards, and thrown over fences.

There are many dangerous and adverse consequences of contraband cell phones in state prisons. These include inmates using phones to commit fraud schemes on businesses and individuals; drug trafficking and other criminal enterprises; organizing retribution on prison staff, government officials, victims, or other inmates; and instigating and coordinating inmate disturbances. Cell phones play a central role in contributing to staff corruption, both in terms of staff participation in contraband smuggling and by directly enabling communications and fund transfers between inmates and corrupt staff.

Most egregiously, contraband cell phones have been used to carry out completed and attempted homicides, both within and outside prison systems. In his testimony before the commission, Bryan Stirling relayed the story of Captain Robert Johnson who, after having confiscated a cell phone at Lee Correctional, was "targeted and shot in his house five or six times point blank because he was doing his job at Lee Correctional to find contraband cell phones."<sup>115</sup> Director Sterling commented, "It was such a sophisticated plot to kill him that

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<sup>114</sup> Memorandum from Alabama Department of Corrections, January 17, 2020. (Markovic has copy)

<sup>115</sup> President's Commission on Law Enforcement and the Administration of Justice: Crime Reduction – Domestic Violence and Sexual Assault, Technology Issues Encountered by Law Enforcement, Leveraging

they used a .38, so there would be no shell casings left. What folks need to know on this call and in public is that inmates are physically taken out of society by going to prison; however, they are virtually out there amongst us still committing crimes.”<sup>116</sup> Captain Johnson survived the shooting. Chief Todd Craig’s testimony presented another example that detailed how an 11-year veteran and investigator with the Bureau of Prisons in Puerto Rico was killed on his way home from work after nine inmates conspired and used contraband cell phones to orchestrate his murder.<sup>117</sup>

Federal prisons have implemented a series of technologies and interdiction strategies to address the problem of contraband cell phones, including whole-body imaging devices, sophisticated walk-through metal detectors, thermal fencing, K-9 units, and fixed sensor and handheld radio frequency detection that can identify cell phone signals.

Both Commissioner Stirling and Chief Craig noted that many of these interdiction strategies have had a limited impact. Cell phones are valued contraband in prisons, and inmates are reluctant to give them up, often putting corrections officers at risk when cell phone devices are seized.

Several technical solutions that are designed to disable contraband cell phone in prison and jails show promise, including managed access systems (MAS) and micro-jamming solutions. MAS allows calls from approved phone numbers, but blocks calls from unapproved numbers. Micro-jamming disrupts phone signals within a precise area.

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#### **Federal Trade Commission Action on Contraband Cell Phones**

While micro-jamming represents a viable technology solution, only federal prison facilities permit its use. The prohibition against state prison use of micro-jamming stems from the Federal Communications Act of 1934, which states, “No person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this Act or operated by the United States Government.”<sup>118</sup>

In February 2018, the Federal Communications Commission convened a diverse group of stakeholders, including state corrections officials, solutions providers, public safety experts, representatives from the wireless industry, and the Federal Bureau of Prisons, to address how best to leverage technological solutions to combat contraband devices in correctional facilities.

After four meetings, the *Contraband Phone Task Force Status Report* was released on April 26, 2019. The report addressed the mission of the task force and progress made to date, and stated, “We note that this report reflects the beginning of the Task Force’s initiative, not its conclusion.” Both MAS and cell phone jamming were addressed in the report, but no conclusions were made regarding the technical viability or legal status of cell phone jamming.

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Technology to Reduce Crime (April 15, 2020) (Bryan Stirling, Director of the South Carolina Department of Corrections). <https://www.justice.gov/ag/page/file/1270036/download>

<sup>116</sup> Ibid (same as above)

<sup>117</sup> President’s Commission on Law Enforcement and the Administration of Justice: Crime Reduction – Domestic Violence and Sexual Assault, Technology Issues Encountered by Law Enforcement, Leveraging Technology to Reduce Crime (April 15, 2020) ( Todd Craig, Chief of the Office of Security Technology for the Federal Bureau of Prisons). <https://www.justice.gov/ag/page/file/1270036/download>

<sup>118</sup> 47 U.S. Code § 333. Willful or malicious interference, June 19, 1934, Chapter 652, Title III, § 333, as added Pub. L. 101–396, § 9, Sept. 28, 1990, 104 Stat. 850.

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### **Positive Cell Phone Jamming Tests in Federal and State Prisons**

With the assistance of a grant from the National Institute of Justice, the Cumberland Federal Correction Institute (FCI) in Maryland conducted a pilot test of cell phone jamming. A Department of Justice press release dated June, 15, 2018, reported that, “Data from the test show that the micro-jammer’s signal disrupted commercial wireless signals inside the prison cell, which meant that if cellphones were operating inside the cell, they would have been rendered inoperable. At 20 ft. and 100 ft. outside the cell, however, the micro-jammer signals did not disrupt the commercial wireless signals.”<sup>119</sup>

In collaboration with the Federal Bureau of Prisons, the Broad River Correctional Institution in Columbia, South Carolina, tested cell phone jammer technology. Bryan Stirling, the Director of the South Carolina Department of Corrections, stated, “We did observe cell signals inside the housing unit were blocked, text messages, data connections, everything, but calls outside the one-foot perimeter of the exterior of the inmate housing unit could be made. So these are promising test results.”<sup>120</sup>

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#### **10.4.8 The Department of Justice should determine the feasibility of enacting federal legislation or an executive order that would allow state prison systems to use cell phone jamming equipment in their facilities.**

Current regulations under the Federal Communications Act of 1934 have been interpreted as prohibiting state prisons from deploying cell phone jamming equipment in their facilities, but the legal interpretation is open to question. The legal basis for allowing cell phone jamming in federal prisons but not in state prisons remains unanswered. Any determination of feasibility should involve the DOJ’s Office of Legal Policy (OLP) and Office of Legal Counsel (OJC).

#### **10.4.9 The Department of Justice should fund appropriate data collection and research efforts to better clarify how contraband cell phones are being brought to prison, what types of sanctions are being deployed, what are the impacts that contraband cell phone usage has on prison security and public safety.**

Many states have provided accounts of how cell phones are smuggled into prison, the sanctions the states use, and the effects cell phones have on the safety of the institution, inmates, staff, and the public at large. This data, while valuable and informative, is largely anecdotal. The scope of the problem is difficult to quantify, in part because confiscation data are only able to tell a partial story.<sup>121</sup>

Funding a thorough, standardized, and nationally representative collection of data around these issues would help inform policy and guide realistic and effective interventions. This funding should also support training and technical assistance to prison and jail staff to help them better understand, document, and respond to the adverse effects of contraband cell phones in their institutions.

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<sup>119</sup> “Justice News.” *Justice News*, July 15, 2018. <https://www.justice.gov/opa/pr/prison-test-shows-micro-jamming-may-counter-criminal-threat-contraband-cell-phones>.

<sup>120</sup> President’s Commission on Law Enforcement and the Administration of Justice: Crime Reduction – Domestic Violence and Sexual Assault, Technology Issues Encountered by Law Enforcement, Leveraging Technology to Reduce Crime (April 15, 2020) (Bryan Stirling, Director of the South Carolina Department of Corrections). <https://www.justice.gov/ag/page/file/1270036/download>

<sup>121</sup> Grommon, Eric, Jeremy Carter, and Charles Scheer. “Quantifying the Size of the Contraband Cell Phone Problem: Insights from a Large Rural State Penitentiary.” *The Prison Journal* 98, no. 5 (2018): 630-648.

## 10.5 Overarching Issues

### Background

Collaboration involves criminal justice components working together toward a common purpose through sharing a vision, preparing a plan, and implementing the plan to achieve coordinated and common outcomes.<sup>122</sup> Cross-agency collaboration may take many forms, including human collaboration through criminal justice coordination councils or through data-sharing efforts centered on information technology integration. Many of these efforts are underway that affect and rely on all components of the criminal justice system, including law enforcement, prosecution, defense, courts, and corrections agencies and personnel.

### Current State of the Issue

Justice information sharing initiatives are common across the thousands of law enforcement, prosecutorial, defense, court, and correctional agencies that comprise the criminal justice system. Data-sharing initiatives streamline processes for individual agencies and promote more efficient processing and operation within any local criminal justice jurisdictions.

The commission identifies three overarching issues that will enhance communication and information sharing across the criminal justice system. The topics include the encouraging the formation of criminal justice coordinating councils (CJCCs); enhancing the effective sharing and management of digital media evidence from body-worn cameras and other sources of digital evidence; and promoting ongoing efforts to achieve true criminal justice data integration.

### Criminal Justice Coordinating Councils

In many jurisdictions, criminal justice agencies operate in silos. Under such a system, the criminal justice system agencies are independent agencies that work in parallel to one another. Under such an operation, effective communication and collaboration is difficult to initiate and maintain. One method of addressing these organizational silos is through the creation of a CJCC, which supports collaborative and strategic planning and information sharing among elected official and public safety executive on a regular basis.

According to the National Network of Criminal Justice Coordinating Councils (NNCJCC), CJCCs emerged in the 1970s as a means to create systemic responses to specific public safety problems facing local jurisdictions. NNCJCC calls a CJCC, “a body of elected and senior justice system leaders that convene on a regular basis to coordinate systemic responses to justice problems.”<sup>123</sup> CJCCs can differ widely in membership and structure.

CJCCs often use a data-guided and structured planning processes to identify, analyze, and either solve or manage issues that have a system-wide impact. Issues addressed by CJCCs are far-ranging and diverse. CJCCs focus on criminal justice intersection issues that are designed to coordinate the delivery of services among criminal justice agencies and maximize the effective deployment of criminal justice resources. Particular projects or priorities CJCCs have addressed include dealing with resource reductions, improving case processing inefficiencies, improving case outcomes, and developing strategies for challenging client populations (e.g., those with substance use disorders, mental illness disorders, and persons who are homeless).

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<sup>122</sup> Borakove, M. Elaine, Robin Wosje, Franklin Cruz, Aimee Wickman, Tim Dibble, and Carolyn Harbus. "From Silo to Co-System: What Makes a Criminal Justice System Operate Like a System?." (2015). Page 3 [http://www.safetyandjusticechallenge.org/wp-content/uploads/2015/07/From-Silo-to-System-30-APR-2015\\_FINAL.pdf](http://www.safetyandjusticechallenge.org/wp-content/uploads/2015/07/From-Silo-to-System-30-APR-2015_FINAL.pdf)

<sup>123</sup> Website: National Network of Criminal Justice Coordinating Councils <https://www.jmijustice.org/network-coordination/national-network-criminal-justice-coordinating-councils/>

It is unknown how many CJCCs exist across the country. Any CJCC that does exist will have its own unique structure, will focus on different projects and challenges, and may operate with different levels of formality. Common elements of CJCCs include a commitment to improve the local criminal justice system, maintaining regular committed membership, and meeting on a regular basis.

NCJCC promotes the development of CJCCs and supports both general and network membership. The higher-level network membership is criteria-based to ensure that those CJCCs that receive significant support are defined in their mission, are committed to these missions, and have devoted personnel and other resources to maintain them. Currently, NNCJCC supports 30 network member councils that represent a diverse cross-section of the country.

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Criteria to obtain a network membership

- Authorizing legislation or local rules that created the CJCC
- Local or state funding for the CJCC
- By-laws and membership guidelines
- Diverse representation from the justice sector and other community-based and government agencies that intersect with the justice system
- No lapse in membership among key justice system agencies
- Evidence of data-driven, coordinated policy and program development
- Dedicated staff person to manage the CJCC's work
- System-wide focus

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## Salt Lake County Criminal Justice Advisor Council<sup>124</sup>

**Mission:** The Salt Lake County Criminal Justice Advisory Council (CJAC) works with the criminal justice system to reduce crime and promote public safety by identifying ways to

- lower repeat offender rates and close the "revolving door" to our jails
- improve outcomes for jailed individuals struggling with mental illness and substance abuse

**Priorities and Initiatives**

- **Criminal Record Expungement:** To help individuals clear their criminal records allowing them to access better employment, housing, and educational opportunities.
- **Operation Diversion:** A program to address the immediate public health and safety concerns in the Rio Grande Area; to provide robust risk and needs assessment and treatment for those experiencing mental health or substance use issues, as well as accountability for serious offenders who prey on vulnerable populations; to use data on outcomes to help inform long-term planning consistent with

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<sup>124</sup> Derived from webpage on Salt Lake County Criminal Justice Advisory Council <https://slco.org/cjac/>

the statewide Justice Reinvestment Initiative's (JRI) goal of achieving evidence-based criminal justice reform

- **Integrated Justice Information System:** A program with the goals of improving information-sharing and continuity of care among criminal and social justice partners and provide decision-makers access to cross-system data analysis.

**Criminal and Social Justice System Analysis:** A program to provide stakeholders an opportunity to use real data to inform policy discussions and decisions by tracking system performance

**Membership:**

- West Valley Justice Court
- Individual with Lived Experience in the Criminal Justice System
- Murray City Police Department, LEADS Chair
- Utah House of Representatives
- South Salt Lake Municipal Police Chief
- Municipal Mayor Representative, Millcreek City
- Salt Lake County Council
- State Justice Court Administrator
- Salt Lake City Justice Court
- Salt Lake County Human Services Director
- Utah State Senate
- Criminal Justice Services Director
- Salt Lake County Sheriff's Office
- Salt Lake County Council
- Salt Lake City Police Department
- Utah State Department of Corrections, Executive Director
- Utah Juvenile Defender Attorneys, Executive Director
- Third District Court Administrator Office Representative
- Third District Court Presiding Judge
- Salt Lake Legal Defenders Association Executive Director
- Salt Lake City Municipal Prosecutor
- Salt Lake County District Attorney
- Salt Lake County Behavioral Health Services Director

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CJCCs can coordinated and improve the operation of local law enforcement. Most CJCCs compile reports, typically on an annual basis. The recent report by the District of Columbia's CJCC illustrates the scope and reach of the CJCC in the nation's capital:

CJCC provides a forum for effective collaboration and problem-solving among the District's criminal and juvenile justice system agencies including, but not limited to, combating violent crime, juvenile justice, substance abuse and mental health, and reentry. CJCC operates and maintains the Justice Information System (JUSTIS) to enable local and federal criminal justice agencies in the District to share information efficiently and in a timely manner. CJCC also conducts research and analysis to inform agencies about the level of activity at each stage of the District's criminal justice system, monitors and evaluates the impact of collaborative solutions, and identifies promising practices in criminal and juvenile justice.<sup>125</sup>

#### **10.5.1 The Department of Justice should provide funding to regional, county, and municipal governments to develop local criminal justice coordinating councils.**

CCJCs can provide an effective means of coordination among criminal justice agencies, elected officials, and other public safety agencies operating in local communities and regions. When carefully planned, implemented, staffed, and funded, CCJCs can be a solution to the criminal justice agency silos that continue to exist in many jurisdictions.

#### **Digital Media Evidence Management and Integration**

##### **[CROSS REFERENCE TECHNOLOGY]**

Law enforcement agencies are awash with data, including that generated from the traditional information management technologies computer aided dispatch (CAD) and records management system (RMS) that nearly all law enforcement agencies use. As previously discussed, a wide array of information is shared, and it affects decision making and influences other downstream criminal justice agencies in different ways. An arrest report may form the basis of a prosecutor's decision on whether to file charges and what charges are to be filed. That same arrest report made discoverable by the defense attorney may be material for legal consideration in court.

As law enforcement agencies have long been burdened with more traditional data, they now find themselves flooded with digital media evidence (DME). The generation of DME data has been growing exponentially. This data includes digital footage from body-worn cameras (BWC), dashboard cameras, surveillance cameras, cell phones confiscated by law enforcement, and residential doorbell cameras that are capable of being shared with local law enforcement agencies. These digital media technologies, among others, are creating a volume of DME that is becoming increasingly challenging for law enforcement to effectively manage, share, and leverage for evidentiary value.<sup>126</sup>

The vast amounts of DME generated by these tools are measured in terabytes and have often been described as a tsunami of data.<sup>127</sup> In addition to the data, law enforcement need the mechanisms and the metadata to track, manage, and retrieve digital media clips for public records requests, internal investigations, and sharing with prosecutors. These digital video clips must also be retained and processed according to chain-of-custody rules.

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<sup>125</sup> Document title, Criminal Justice Coordinating Council, retrieved from

[https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/fj\\_cjcc\\_chapter\\_2020j.pdf](https://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/fj_cjcc_chapter_2020j.pdf)

<sup>126</sup> Goodison, Sean E., Robert C. Davis, and Brian A. Jackson. "Digital evidence and the US criminal justice system. Identifying Technology and Other Needs to More Effectively Acquire and Utilize Digital Evidence. Priority Criminal Justice Needs Initiative." Rand Corporation (2015).

<https://www.ncjrs.gov/pdffiles1/nij/grants/248770.pdf>

<sup>127</sup> Body Worn Camera Data Storage: The Gorilla in the Room, Government Technology Magazine, 9/9/2015. Body Worn Camera Data Storage: The Gorilla in the Room. <https://www.govtech.com/dc/articles/Body-Worn-Camera-Data-Storage-The-Gorilla-in-the-Room.html>

This DME issue is not just for the law enforcement; it has cascading effects and demands on all criminal justice agencies.

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**Key Challenges of Digital Media Evidence Integration**

- DME is generated across multiple agencies and systems.
- Video formats are often incompatible.
- Systems must manage multiple media, websites, processes, and vendors.
- Redacting videos is labor intensive and expensive.
- Systems are not designed to handle large volume of data.
- Network bandwidth in criminal justice agencies is often insufficient.
- Courtrooms are not properly equipped for DME, yet videos are increasingly becoming available, relevant, and expected in court.

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Without a system to manage digital data, which often comes from different devices with different media formats, law enforcement investigators often have to access several different systems to obtain information relevant to investigations. The mere process of reviewing video from BWCs and determining what is relevant has become a time-consuming job.<sup>128</sup>

DME integration varies widely across law enforcement agencies, as does the ability to seamlessly share DME footage with prosecutors. While many larger agencies have the benefit of having a chief information officer within the organization or embedded with city government, many do not. Smaller and rural law enforcement agencies often have to fend for themselves and learn as they go, operating in a sink-or-swim environment.

**[CROSS REFERENCE RURAL AND TRIBAL]**

Through BJA's Body Worn Camera Policy and Implantation Program (BWCPIP) grant program, a number of innovations and promising practices have been identified among grantees. The Montgomery County, Maryland, police department has developed an impressive approach to integrating BWC data with data from other agencies throughout the county.<sup>129</sup> This is largely an agency driven to integrate DME from a wide variety of resources, including but not limited to dashboard cameras, BWCs, video in public schools, and video from buses and public transportation centers. They have developed an in-house system that links and provides for the managed access and retrieval of DME.

The Montgomery County DME efforts allow the department to share data with county prosecutors. The system was guided by a number of business needs, including allowing investigators to focus on investigations rather than how to manage video, not placing overly burdensome demands on discovery staff, continuing to allow defense access to digital evidence through single eDiscovery portal, and preserving the chain of custody of DME.

The Colorado Springs, Colorado, police department has developed a similar method to share and integrate digital video from across multiple law enforcement agencies in the region and share that data with the

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<sup>128</sup> Hamann, Kristine. "Police Body-Worn Cameras: The Prosecutors' Perspective." *Criminal Justice* 33, no. 2 (2018): 17-21. <https://pceinc.org/police-body-worn-cameras-the-prosecutors-perspective/>

<sup>129</sup> Digital Evidence Integration Webinar, Bureau of Justice Assistance National Training and Technical Assistance Center, Jan 14, 2019. <https://bjatta.bja.ojp.gov/media/event/digital-evidence-integration-webinar>

county prosecutor.<sup>130</sup> The department's efforts are designed to integrate DME from multiple sources and in multiple formats, including BWCs, crime scene photography, agency surveillance camera, interview room video, and various sources of audio files.

Both of these departments describe their efforts as works in progress that continue to evolve.

Although some agencies are building their own DME integration solutions, like Montgomery County and Colorado Springs, others are relying on commercially offered solutions. DME integration solutions and services have been developed by several of the major BWC vendors. These systems are designed to integrate data not only from BWCs, but also from other DME sources (e.g., dashboard cameras and fixed surveillance cameras operated by law enforcement agencies). In some instances, the DME integration offerings of BWC vendors are proprietary. These systems may also be expensive, essentially priced out of reach for smaller and rural law enforcement agencies. A number of third-parties have also begun to offer DME solutions. The systems are still relatively new to the market and may not be fully developed.

A bottleneck has arisen as BWCs and other DME-generating devices have expanded, as it is often challenging for a law enforcement agency's DME repository to share data with the local prosecutor's office.<sup>131</sup> Again, there is a great deal of variability across the United States. On the low end of technological sophistication, some prosecutor's offices require law enforcement agencies to copy DME to DVDs because that is the manner in which they are accustomed. On the higher end, a growing number of prosecutors are able to sign onto cloud-based DME management systems to view files from a portal on their computer, much like the system developed in Montgomery County.

There are two basic ways that law enforcement agencies turn over its DME with prosecutors:

1. **Physical transfer** via discs, flash drives, SD cards, portable hard drives, or by providing a link to files or including them in an e-mail attachment. These methods are inefficient, time consuming, and create challenges with respect to maintaining the evidentiary chain-of-custody for digital media evidence.
2. **Cloud transfer** through use of a government-approved secure cloud provider. Cloud solutions provide remote viewing for prosecutors that does not require physically moving the video-evidence files. Increasingly, cloud-based solutions are being adopted with chain-of-custody management built into the process. In addition, functionality built into cloud solutions can allow for online redaction and audit trails. Multiple versions of the data can be maintained and managed, including the original version of the digital footage captured by police and the redacted version that might be shared in court. Some cloud systems allow sharing access to DME with criminal defense attorneys for discovery purposes, often through the prosecutors' office.

#### **10.5.2 The Department of Justice should identify and research successful strategies that enable law enforcement agencies to seamlessly integrate digital medial evidence from multiple platforms and vendors.**

DME from BWCs and other audio and video devices are becoming increasingly common in law enforcement agencies across the country. It is critical for all criminal justice agencies to develop the capacities to manage, share, and effectively leverage DME to support law enforcement investigations, prosecutorial investigations and charge decisions, defense discovery, and court proceeding. The DOJ should support criminal justice agencies in the field by providing funding to develop and enhance local efforts to manage DME. DOJ can

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<sup>130</sup> Digital Evidence Integration Webinar, Bureau of Justice Assistance National Training and Technical Assistance Center, Jan 14, 2019. <https://bjatta.bja.ojp.gov/media/event/digital-evidence-integration-webinar>

<sup>131</sup> *Video Evidence: A Primer for Prosecutors*, Global Justice Information Sharing Initiative, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, November, 2016. <https://it.ojp.gov/GIST/1194/Video-Evidence--A-Primer-for-Prosecutors>

support development in this area by funding training and technical assistance to be provided by qualified organizations.

**10.5.3 The Department of Justice should fund efforts to increase the number of prosecutors that can access digital media evidence from local law enforcement by accessing cloud-based storage systems.**

DME held in repositories by law enforcement with prosecutors is now most efficiently shared through cloud-based DME storage systems that allow online access through managed portals located in the prosecutors' offices. The alternative method of physical transfer of DME is less efficient, generally more costly in the long run, and does not afford the same assurances with respect to chain-of-custody control and effective management of DME. Another advantage of DME-cloud based storage systems is that they afford the capability of establishing managed portals with defense attorneys, enabling the process known as eDiscovery.

**Comprehensive Criminal Justice Data Integration**

The size and complexity of criminal justice systems in the United States poses a number of challenges for sharing and integrating criminal justice data. Based on the latest data available from BJA, approximately 18,000 state, local, and tribal law enforcement agencies operate across the country.<sup>132</sup> BJS data collections also reveal there are over 2,300 prosecutors' offices.<sup>133</sup> In addition to these, thousands of courts process criminal cases and thousands of jails detain defendant held for trial or as offenders sentenced to serve time in detention for misdemeanor convictions. There are approximately 1,800 state prisons whose agencies operate with significant levels of decentralization and with different levels of technical sophistication and support.<sup>134</sup> While it is safe to say that most of these criminal justice agencies realize the benefits of integrating disparate information systems to improve the effectiveness and efficiency of services, the challenges are daunting.

Through initiatives of the DOJ and the Department of Homeland Security (DHS), criminal justice agencies from state, local, and tribal jurisdictions have received considerable support in the form of standards, guidance, and direct funding for both developing information sharing standards and creating processes for integrating data. These efforts continue to be a work in progress as the aspiration of developing truly comprehensive criminal justice data integration continues to evolve.<sup>135</sup>

The National Information Exchange Model (NIEM) has emerged as a data exchange standard for developing criminal justice data architecture. NIEM formally launched in 2005 through a partnership between DOJ and DHS. NIEM is a common data-change vocabulary that enables efficient information exchange across diverse public and private organizations.

[Justice - NIEM](#) is designed to develop, disseminate, and support enterprise-wide information exchange standards and processes that can enable jurisdictions to effectively share critical information in emergency situations, as well as support the day-to-day operations of criminal justice and public safety agencies nationwide. When NIEM standards are followed by individual criminal justice agencies when developing their information systems and data integration efforts, considerable time and money can be saved through the use of the NIEM's consistent, reusable data terms and definitions and repeatable processes.

**[CROSS REFERENCE RURAL AND TRIBAL AND DATA AND REPORTING]**

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<sup>132</sup> Reaves, Brian A. "Census of state and local law enforcement agencies, 2008 (NCJ 233982)." *Retrieved from Bureau of Justice Statistics* (2011). <http://www.bjs.gov/content/pub/pdf/cslllea08.pdf>

<sup>133</sup> Perry, S., and D. Banks. "Prosecutors in state courts—2007 statistical tables (NCJ 234211)." *Retrieved from Bureau of Justice Statistics website: http://www.bjs.gov/content/pub/pdf/psc07st.Pdf* (2011).

<sup>134</sup> Stephan, James, and J. Karberg. "Census of state and federal correctional facilities, 2005. Bureau of Justice Statistics." NCJ 222182 (2008). <https://www.bjs.gov/content/pub/pdf/cslllea08.pdf>

<sup>135</sup> National Institute of Justice (NIJ). "Creating a Framework for Criminal Justice Information Sharing." (2018)

The BJS, through the [National Criminal History Improvement Program](#) (NCHIP), has developed a grant program that aims to improve the nation’s safety and security by enhancing the quality, completeness, and accessibility of criminal history record information (a.k.a., rap sheets) and by ensuring the nationwide implementation of criminal justice and non-criminal justice background check systems.

The FBI’s [National Incident-Based Reporting System](#) (NIBRS) is an incident-based reporting system used by law enforcement agencies across the country for collecting and reporting data on crimes. Federal, state, local, and tribal agencies generate NIBRS data from their records management systems, and data are reported in a standardized format to the FBI. The NIBRS system has been available as a reporting mechanism since 1998. NIBRS was created to improve the quantity and quality of crime data collected by law enforcement and to capture detailed information for single crime events, in contrast to the Uniform Crime Report (UCR) system. The UCR Summary Reporting System (SRS) is more limited, as it only provides summary counts of crime by type. The FBI has announced that it will fully transition from the UCR-SRS system to the NIBRS system by January 1, 2021.

The FBI has worked closely with state and local law enforcement agencies to develop and support NIBRS, and BJS and has invested considerable support to state and local agencies through its [National Crime Statistics Exchange initiative \(NCS-X\)](#) program.

**[BEGIN TEXT BOX]**

National Incident-Based Reporting System

When used to its full potential, NIBRS identifies precisely when and where crime takes place, what form it takes, and the characteristics of its victims and perpetrators. Armed with such information, law enforcement can better define the resources it needs to fight crime and use those resources in an efficient and effective manner. When compared to the Summary Reporting System (SRS), currently being phased out, NIBRS:<sup>136</sup>

- **Provides greater specificity in reporting offenses.** Not only does NIBRS look at all of the offenses within an incident, it also looks at many more offenses than the traditional SRS does. NIBRS collects data for 52 offenses, plus 10 additional offenses for which only arrests are reported. SRS counts limited data for 10 offenses and 20 additional crimes for which only arrests are reported.
- **Collects more detailed information**, including incident date and time, whether reported offenses were attempted or completed, expanded victim types, relationships of victims to offenders and offenses, demographic details, location data, property descriptions, drug types and quantities, the offender’s suspected use of drugs or alcohol, the involvement of gang activity, and whether a computer was used in the commission of the crime.
- **Helps give context to specific crime problems** such as drug or narcotics and sex offenses, in addition to modern crime issues like animal cruelty, identity theft, and computer hacking.
- **Provides greater analytic flexibility.** Through NIBRS, data users can see many more facets of crime—including the relationships and connections among these facets—than SRS provides.

**[END TEXT BOX]**

While criminal justice agencies across the country have made real and steady progress in data integration on their own and by leveraging federal resources, there is still a long road ahead. Impediments to criminal justice integration include the reality that some agencies only share data on a need-to-know basis rather than

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<sup>136</sup>National Incident-Based Reporting System (NIBRS):NIBRS is Superior to SRS:  
<https://www.fbi.gov/services/cjis/ucr/nibrs>

adopting a need-to-share organizational culture.<sup>137 138</sup> Many agencies lack the funding and technical expertise to fully support data integration efforts or fully understand and implement NIEM and CJIS standards when purchasing records management and other information systems.

Private sector vendors of RMS and CAD systems for police, probation, court, and correction case management systems are often motivated to keep their own proprietary systems to both maintain the business of the client agency and prevent them from migration to other vendors. Not all are equally committed to standards of open architecture, and they may not always be compliant with NIEM or CJIS standards for data security and encryption for cloud-based storage.

Prosecutor and court case management systems generally do not interface with CAD and RMS. Fundamentally, prosecutor and court CMS's are used to track workflow as opposed to track suspects, offenders, and events associated with police RMS and CAD. Although all criminal justice agencies can benefit from criminal justice data integration, integrating data from a prosecution case management systems is less advanced than that for corrections and law enforcement agencies. Prosecutor case management systems that link to law enforcement data systems are virtually nonexistent.

Providing interfaces between law enforcement records management systems and prosecutor management systems would greatly advantage the efficiency and effectiveness of the systems. It could also allow prosecutors to leverage crucial functionality embedded in law enforcement RMS systems, such as the ability to automatically flag frequent, serious, or other high-target offenders for enhanced prosecution. They would also help improve the efficiency of data processing and quality. For example, such linkages would cut down on the need for prosecutors' staff to re-enter data already collected by police.

While criminal justice agencies have made considerable advances to share and integrate data, progress between and among prosecutors, the defense, and the court has been far more limited. Horizontal integration among neighboring prosecutor offices is uncommon, which results in situations where personnel in one court's jurisdiction may not be aware of pending charges or warrants for a defendant in a neighboring jurisdiction. The defense has not generally been considered or accommodated while developing criminal justice data integration, and it could benefit greatly from processes such as eDiscovery.

**[BEGIN TEXT BOX]**

Examples of ongoing attempts to achieve integrated criminal justice record systems

- The state of Indiana has moved toward a [statewide CAD/RMS](#) but has not been completely successful in gaining statewide participation (horizontal and vertical integration).<sup>139</sup>
- The [Open Justice Broker Consortium](#) (OJBC) has supported ongoing effort to create integrated justice information system. OJBC is a non-profit membership organization of government agencies and jurisdictions that are dedicated to improving justice information sharing through the reuse of low-cost, standards-based integration software.<sup>140</sup>

**[END TEXT BOX]**

**10.5.4 The Office of Justice Programs should continue to provide funding to criminal justice data integration efforts with direct grant funding to state, local, and tribal law criminal justice agencies.**

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<sup>137</sup> Budinger, Zoe Baird, and Jeffrey H. Smith. "Ten years after 9/11: a status report on information sharing." Statements before the Senate Committee on Homeland Security and Governmental Affairs (2011).

<sup>138</sup> Carter, David L. *Law enforcement intelligence: A guide for state, local, and tribal law enforcement agencies*. Washington, DC: US Department of Justice, Office of Community Oriented Policing Services, 2004.

<sup>139</sup> Indiana Statewide CAD/RMS Project. <https://www.in.gov/ipsc/2715.htm>

<sup>140</sup> Open Justice Broker Consortium. <https://www.ojbc.org/>

The United States criminal justice system is made up of independent government agencies that rely on one another to achieve the common goal of delivering efficient and effective justice. The Office of Justice Programs, the grant making component of the DOJ, has supported a variety of grant programs and collaborative initiatives that have improved criminal justice data standards and have supported improved data integration at national, state, and local jurisdiction levels.

Providing funding for these initiatives to municipal, county, state, and tribal law criminal justice agencies will enable them to continue to make steady progress in improving criminal justice data standards and integration.