

PRETRIAL JUSTICE:

Transforming Research Into Policy & Practice

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Pretrial Team

Supporting:

- Decarceration
- Protecting individuals' constitutional rights
- Advancing community safety
- Racial justice



Agenda

- The Harms of Pretrial Detention
- The Initial Collateral Consequences of Pretrial Detention, CJA
- Bail Reforms: A National Glance
- Pretrial Services Programs
- The Public Safety Assessment, RTI
- Prosecutors: The Next Generation

SECTION 1

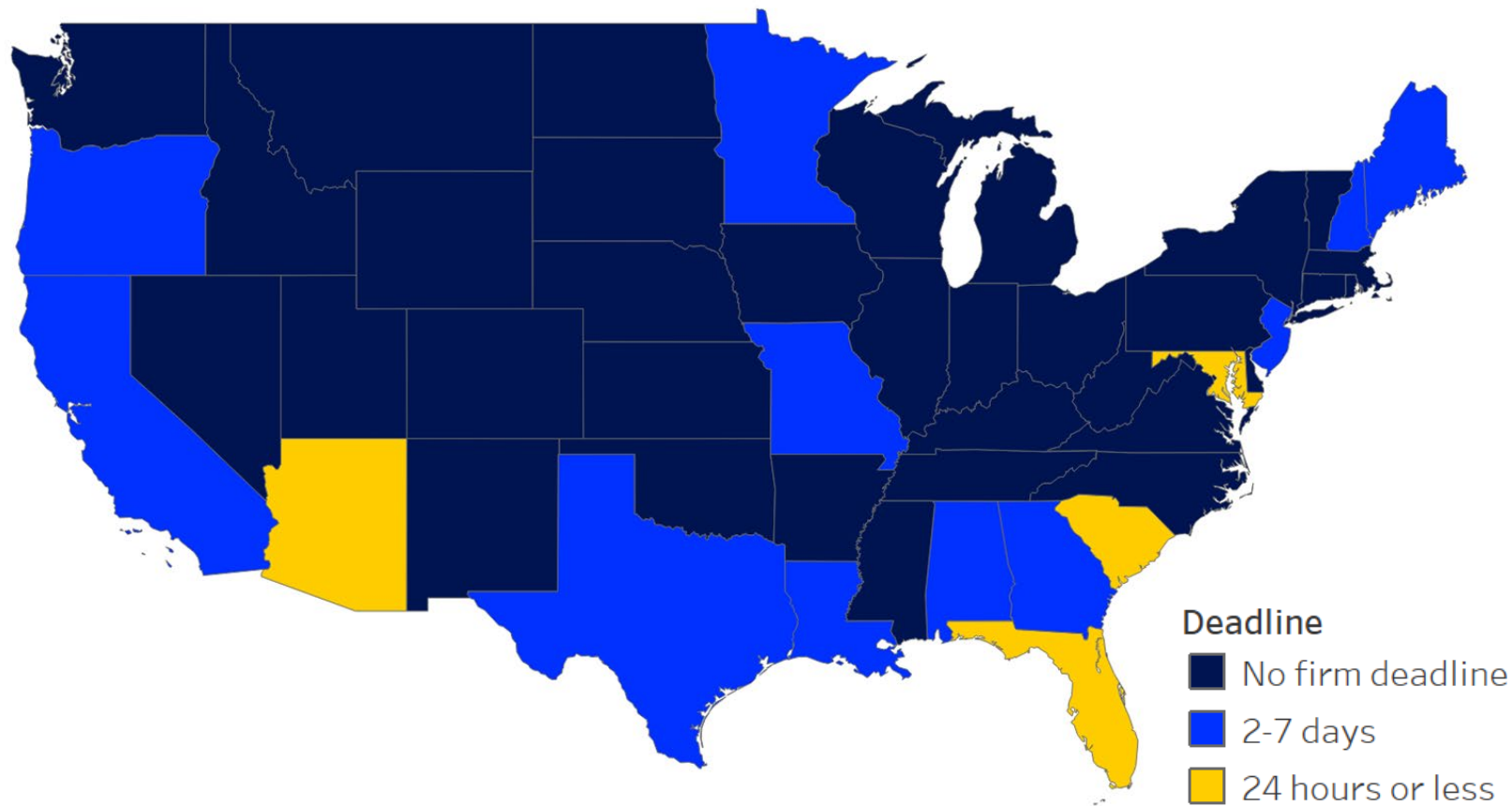
The Harms of Pretrial Detention

There are more “costs” to pretrial detention than meets the eye

- Pretrial detention is associated with a higher likelihood of arrest for a new crime before case disposition.
- Pretrial detention—for any amount of time (not just for three days or longer)—is not consistently associated with the likelihood of failing to appear
- Even those that were rearrested or failed to appear on pretrial released were still less likely to receive a sentence to incarceration and received a shorter sentence relative to those that were detained pretrial.



First appearances are not scheduled quickly



An individual that is **presumed innocent** may be sitting in jail for weeks, or even months waiting for a hearing.

Money bail can have negative implications for an individual, yet no tangible benefit

- In Philadelphia and Pittsburgh, assignment of money bail can lead to a 12% **increase in the likelihood of conviction** and a 6-9% yearly **increase in recidivism**.
- The Philadelphia DA policy of eliminating cash bail led to a 23% increase in numbers of eligible people released with no monetary conditions **without impacting court appearance rates**.



Pretrial detention can lead to future criminal justice involvement

- In New York City, pretrial detention **increased the probability of felony conviction** by 13%.
- In Philadelphia County and Miami-Dade County, research found that pretrial detention changed the probability of **someone being found guilty** by 14%.



Pretrial detention has lasting consequences

In Harris County, individuals detained on misdemeanors had negative case outcomes when compared to individuals who were released.

Plea



25% more likely
plead guilty

Sentencing



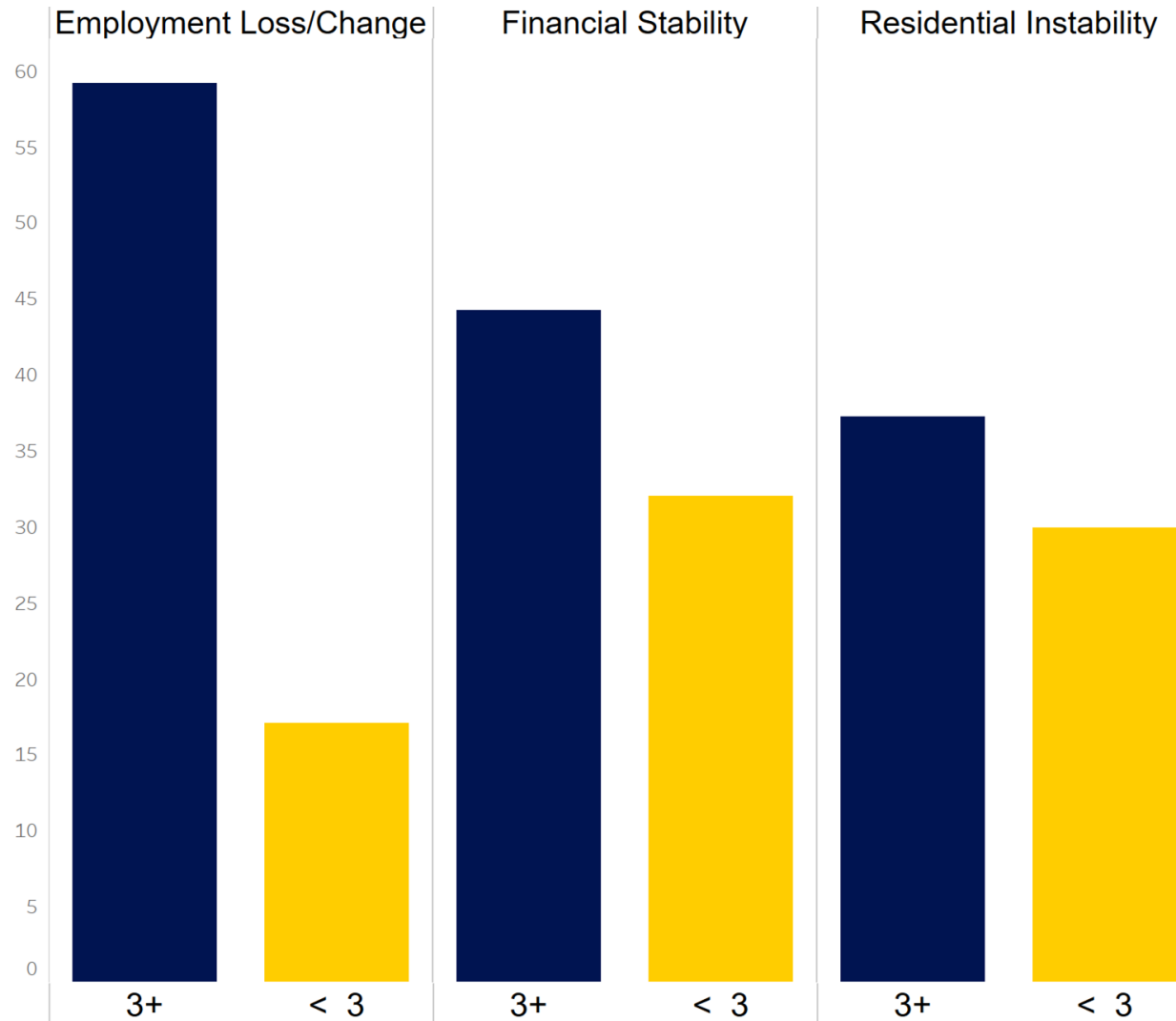
43% more likely
to be sentenced
to jail

Detention



Spent more than
twice as long on
average in jails





In Johnson County (KS), detention less than three days had substantial impacts on individuals.

Pretrial detention is a **threat to stabilizing factors** for justice-involved individuals: employment, personal relationships, housing



The Initial Collateral Consequences of Pretrial Detention

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New York City Criminal Justice Agency (CJA)

- CJA grew out of the Manhattan Bail Project, conducted by the Vera Institute of Justice in the 1960s, which showed that individuals with strong community ties could return for future court dates if released pretrial
- Interview nearly every individual arrested and held for arraignment in NYC to make a release recommendation
- Operate a Supervised Release program in Queens
- Maintain a robust Research Department that provides data and analysis to city stakeholders and the public
- Notify individuals of upcoming court dates by mail and phone

Study Background & Design

- **Phone interviews with 1,529 individuals** arrested in NYC
- July 2019-March 2021
- Collateral consequences of pretrial detention: Employment, residential stability, and family relationships
- On average, **respondents were interviewed about 15 days after release**
- New York State's 2020 bail reforms reduced the number of individuals detained pretrial
- All detained participants were held because they could not make bail

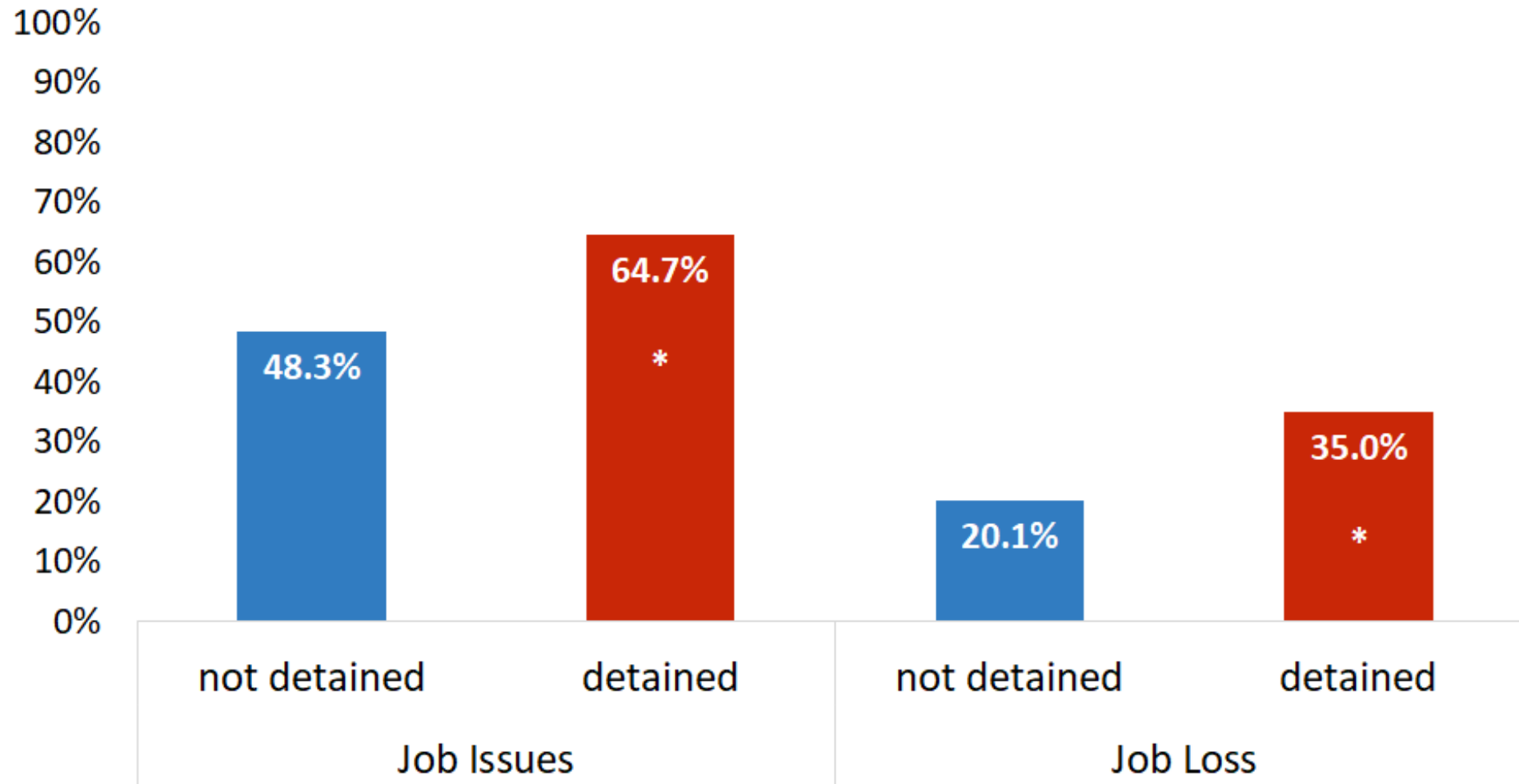
Literature Review

- Pretrial detention associated with increased likelihood of pleading guilty (Heaton, Mayson, & Stevenson, 2017), being convicted (Leslie & Pope, 2017), and being given a carceral sentence (Phillips, 2008)
- But less research has explored consequences that extend beyond the criminal legal realm
- Pretrial detention can negatively affect future employment prospects (Dobbie, Goldin, & Yang, 2018)
- Even short periods of pretrial detention can cause intense stress and psychological harm and may lead to job loss or eviction (Baughman, 2017)

Justice Involvement & Employment Stability

- Half of individuals who were employed at the time of arrest ($n=1,031$) reported resulting issues at their job (e.g., fewer hours, lower income, demotion)
- Twenty percent of respondents who still held the same job ($n=775$) reported that their work conditions had gotten worse
- Over one in five participants employed at the time of arrest ($n=1,031$) were no longer employed when interviewed ($n=219$)
- **Participants who were detained pretrial were 74% more likely to become unemployed than non-detained participants**

Figure 1: Likelihood of Having Job Issues and Becoming Unemployed by Detention Status



* $p < .05$; ** $p < .01$

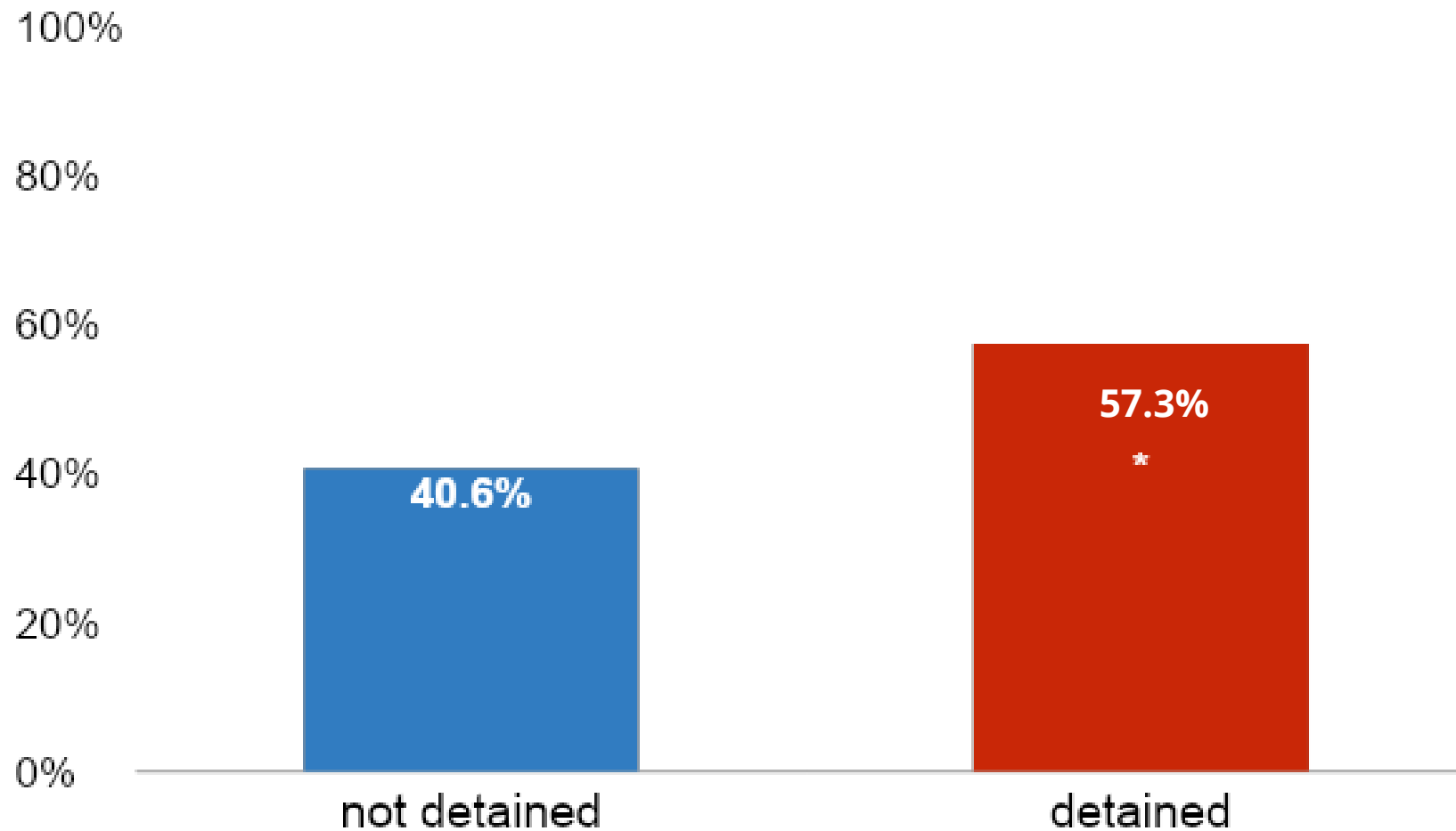
Justice Involvement & Residential Stability

- **Almost 13% of participants experienced homelessness at some point between 12 months prior to their arrest and the survey interview ($n=197$)**
- Participants who were not detained had a 2.3% likelihood of losing their home whereas those who were held pretrial had almost a 12% likelihood of becoming homeless (Figure 2)
- **Pretrial detention is associated with a 420% increased likelihood of becoming homeless.** This relationship is statistically significant ($p < .05$)

Justice Involvement & Family Relationships

- **Almost half of participants were married or in a romantic relationship when they were arrested but only 38% had a spouse or partner at the time of the survey**
- About 22% of participants reported that they missed at least one important family event due to their justice involvement
- Detained participants were 41% more likely to report that their justice involvement had a negative impact on their ability to provide for their children (Figure 2)

Figure 2: Likelihood of Justice Involvement Impacting Parents' Ability to Care for Children



* $p < .05$; ** $p < .01$

Implications for Pretrial Practice

- Even short periods of pretrial detention can have negative (and potentially criminogenic) collateral consequences
- Negative effects persisted even after bail reform
- Arrest alone can have negative consequences
- Reentry supports? Connections to resources?

The Collateral Consequences of Pretrial Detention

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Bail Reforms: A National Glance

Bail reforms may increase pretrial release and may decrease conviction

- In Mecklenburg County (NC), policy changes called for less use of financial bail and a higher rate of defendants being released on a written promise or unsecured bond.
- Following the policy change, **fewer cases resulted in guilty pleas and convictions** than would have been the case in the absence of the reforms.



New Jersey bail reform was a success

- From 2015 to 2020, the non-sentenced pretrial jail population **dropped by 36%**.
- The drop in the rate of pretrial detention **did not change the crime rates**.
- In 2020, court appearance **rates exceeded 90%**.
- Between 2018-2021, judges detained those charged with weapon charges at more than twice the rate of other defendants.



In Harris County, misdemeanor case outcomes have improved

- The number of filed misdemeanor cases fell from approximately 61,000 per year in 2015 to 46,000 in 2020.
- In 2015, 20% of the misdemeanor cases were **detained during the pretrial period for longer than a week** – this has now declined to 7% in 2021. Majority are still detained 2 days or less.
- The re-arrest rate for misdemeanor cases has remained relatively stable between 2015 and 2020.



In 2021, Illinois passed the Pretrial Fairness Act, making it the first state to eliminate money bail

The PFA:

- Limits eligibility for pretrial detention
- Regulates use of pretrial assessment tools
- Authorizes release by law enforcement
- Reduces penalties for violations of pretrial release conditions
- Requires reconsideration of detention and release conditions

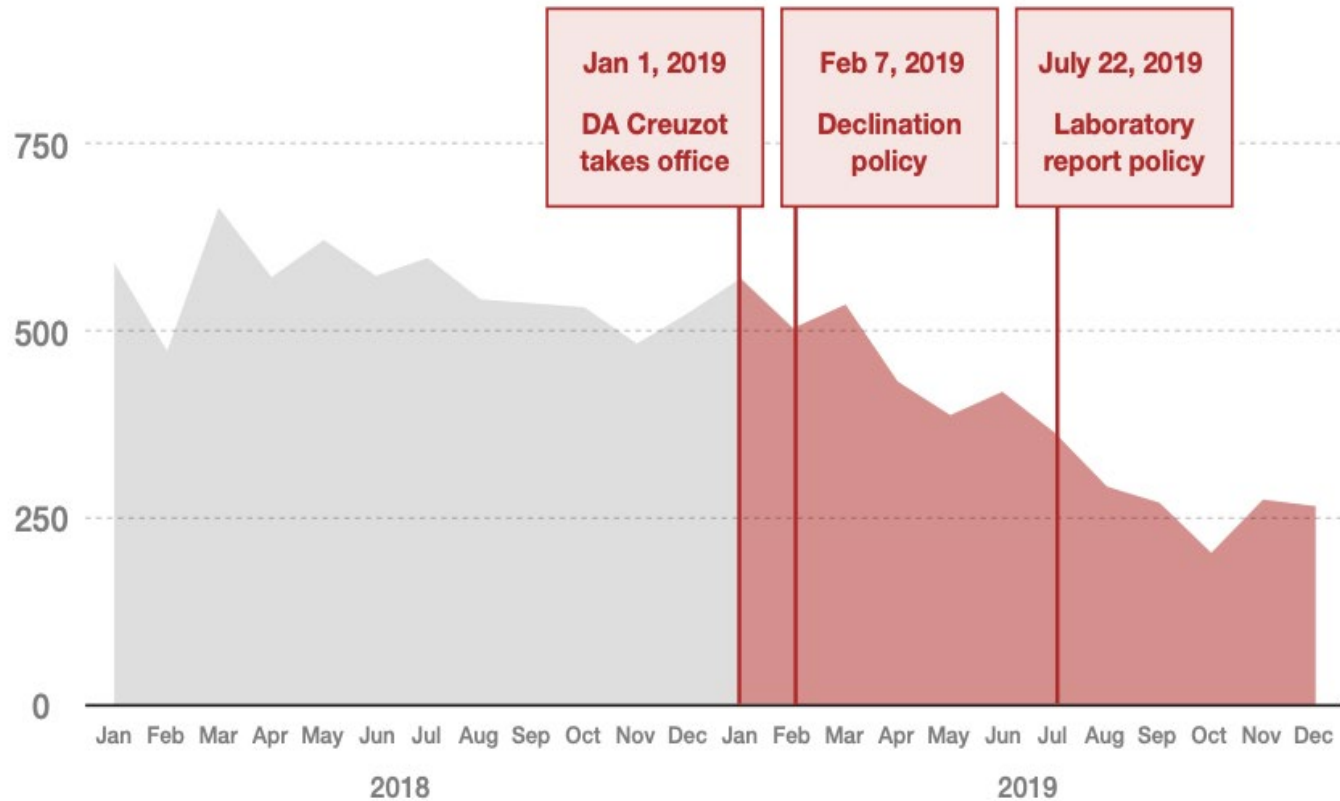


In Cook County, bail reform led to more savings and more release

- In 2017, the Chief Judge of the Circuit Court of Cook County issued General Order 18.8A to reform bail practices in Cook County.
- Led to **saving \$31.4 million in bail** costs in six months.
- **\$27.7 million** of these dollars were saved by communities of color
- **11.7% decrease** in daily confinement between 2017-2021.
- 500 more individuals released pretrial after reforms.
- **No differences** in the rates of new criminal activity between the pre- and post-bail reform periods.



Marijuana arrests declined after DA Creuzot announced his policies



Monthly arrests for misdemeanor marijuana possession, Dallas County, 2018–2019

559

2018 monthly average
(Before Creuzot)

377

2019 monthly average
(Creuzot in office)

Non-prosecution of low-level drug offenses has had positive results on arrests...but has not decreased racial disparities



In 2019, Black people were still overrepresented in Dallas County marijuana referrals

Black people as a percentage of

County
Population

23%

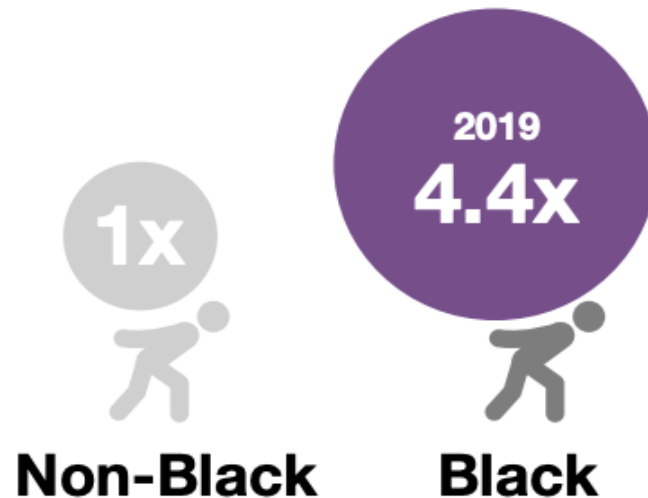


2019 Referrals

56%



Black people were **4.4 times more likely** than non-Black people to be referred for marijuana prosecution



Prosecutorial
decisions alone
cannot
remedy
disparate law
enforcement
practices



New York's bail reforms have so far shown that more release *does not* lead to more rearrests

- In 2021, a study in New York found **fewer than 1%** of the 45,000-50,000 people out during the pretrial period were arrested for nonviolent or violent felonies each month.
- Pretrial rearrests have remained consistent over time and **have not increased** with bail reform.
- In New York, the share of released people awaiting trial who are rearrested remained roughly the same before and after implementing bail reforms.



Pretrial monitoring should be a condition only for those less likely to succeed pretrial

- In New York City, the Supervised Release program **decreased conviction rates and increased case dismissal rates**.
- In federal court, those who were assessed as being statistically most likely to succeed pretrial were actually 1%–2% **less likely to succeed** if they received pretrial monitoring.
- Pretrial monitoring had the most benefit for those who were assessed as being statistically less likely to succeed pretrial.



Court Notification



Court reminders work!

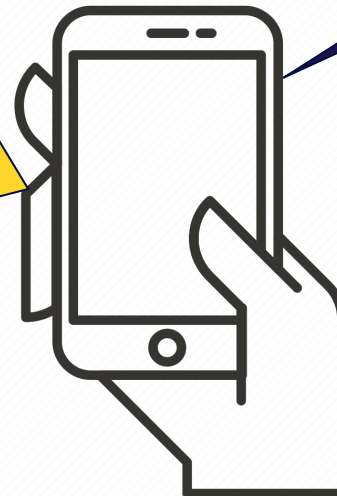
They are a simple, effective solution to improve court appearance.

Messages containing information on consequences and plan-making sets reduced failures to appear by **26%**. For plan-making messages only, failures to appear were significantly reduced by **16%**

Mark the date on your calendar and set the alarm on your phone

What time should you leave to get there by 9:30 a.m.?

Remember, you have court tomorrow at 9:30 AM. Tickets could be dismissed or end in a fine (60 days to pay). Missing court can lead to your arrest



Pretrial Location Monitoring

The use of electronic monitoring is outpacing research

- The number of accused and convicted people in the United States who are monitored with ankle bracelets and other electronic tracking devices **rose nearly 140% over 10 years**, according to a survey conducted in December 2015.
- Yet, there is **insufficient research** on EM in the pretrial setting and existing research provides **mixed evidence** on EM effectiveness in reducing recidivism.
 - There are studies that indicate EM has improved outcomes for individuals convicted of sex crimes and with treatment



There are many costs associated with electronic monitoring

- EM costs **1/6** the cost of imprisonment and reduces jail and prison populations by allowing people who would otherwise be incarcerated to remain in their community.
- Still, it is **3 times** more expensive than traditional supervision and it could cost individuals between **\$300-\$500** monthly.
- EM costs include installation fees, a daily charge for equipment use, and the cost of equipment that is damaged or not returned.
- Individuals on EM during the pretrial period are **more likely to be revoked** for technical violations compared to people on traditional supervision.



Individuals on EM encounter many complicated rules and charging requirements.

“I will charge the tracking device once daily continuously for 2 hours a day. I will **NOT sleep** while charging. I understand that I may be required to charge at other times if instructed by Sentinel or the Kansas DOC. If a **Low Battery Alert is received it may result in a violation** of my terms of release and my return to jail/prison.”

When traveling to an authorized location I will use the most direct route possible. There will be no additional stops made along the way. Any **deviation from my schedule and travel routes is a violation.**”



Pretrial Drug Testing

There is no clear association between drug testing and improved pretrial outcomes

- In Mecklenburg County (NC) and Lucas County (OH), drug testing **was not correlated** with lower rates of court appearance or higher rates of new arrest.
- In federal courts, individuals assigned a lower risk level who were not subject to drug testing were **more successful** than the ones who did have the condition.



Costs of drug testing do not seem to outweigh benefits

- In Maricopa County (AZ), **drug testing costs \$1 million** including almost \$40,000 in staff time.
- In Washington D.C., individuals who were assigned drug testing were **no less likely** to have a NCA or FTA than those who were randomly assigned to drug treatment or release without conditions.



Participation in ATI programs leads to positive outcomes

- At the federal level, alternatives to incarceration offer pretrial services across the country.
- Individuals who successfully completed programs had better outcomes than matched counterparts – including increases in employment, fewer positive drug tests, case outcomes, and lower probability of re-arrest.



Public Safety Assessment (PSA)



The PSA helps with making informed decisions

- Researchers used 1.5 million cases drawn from more than 300 U.S. jurisdictions to determine the best predictors across jurisdictions of new criminal activity, failure to appear, and new violent criminal activity.
- The PSA provides an additional resource that **informs rather than replaces** judicial discretion.
- The PSA has been implemented and validated across the country.



The PSA risk scales are fair to good predictors of FTA, NCA, and NVCA

AUC-ROC Values from other PSA Validations

Jurisdiction	DATA	FTA	NCA	NVCA
Harris County, TX	County	0.6	0.66	0.55
McLean County, IL	County	0.7	0.67	0.61
Lucas County, OH	Regional	0.62	0.63	0.68
Kentucky	State	0.65	0.65	0.66
Los Angeles	State	0.73	0.72	0.67
San Francisco	State	0.63	0.62	0.66



RTI Pretrial Research: Data to Inform Practice

May 5th, 2022



Data to Inform Practice



Pamela K. Lattimore



Emily Burtch



Megan Comfort



Debbie Dawes



Matthew DeMichele



Anna Godwin



Alex Harding



Stephanie Hawkins



Rainer Hilscher



Magda Kucharski-Schwartz



Brandy Lawrence



Jenn Rineer



Jim Trudeau



Stephen Tueller

What we've learned

- Pretrial assessments are valid
- Pretrial assessments lack (serious) bias
- Some jails detain low risk individuals
- COVID and decreased jail populations

Pretrial Outcome Rates

Site	Race	FTA (%)	NCA (%)	NVCA (%)
1	Non-White	16.8	25.2	7.5
	White	14.2	20.4	4.6
2	Non-White	26.3	22.3	7.2
	White	25.6	22.5	6.6
3	Non-White	14.1	39.6	6.9
	White	14.3	37.7	4.7

PSA Factors

PSA FACTOR	Failure To Appear FFA	New Criminal Arrest NCA	New Violent Criminal Arrest NVCA
1. Age at current arrest		✓	
2. Current violent offense			✓
2A. Current violent offense and 20 years old or younger			✓
3. Pending charge at the time of the arrest	✓	✓	✓
4. Prior misdemeanor conviction		✓	
5. Prior felony conviction		✓	
5A. Prior conviction (misdemeanor or felony)	✓		✓
6. Prior violent conviction		✓	✓
7. Prior failure to appear in the past 2 years	✓	✓	
8. Prior failure to appear older than 2 years	✓		
9. Prior sentence to incarceration		✓	

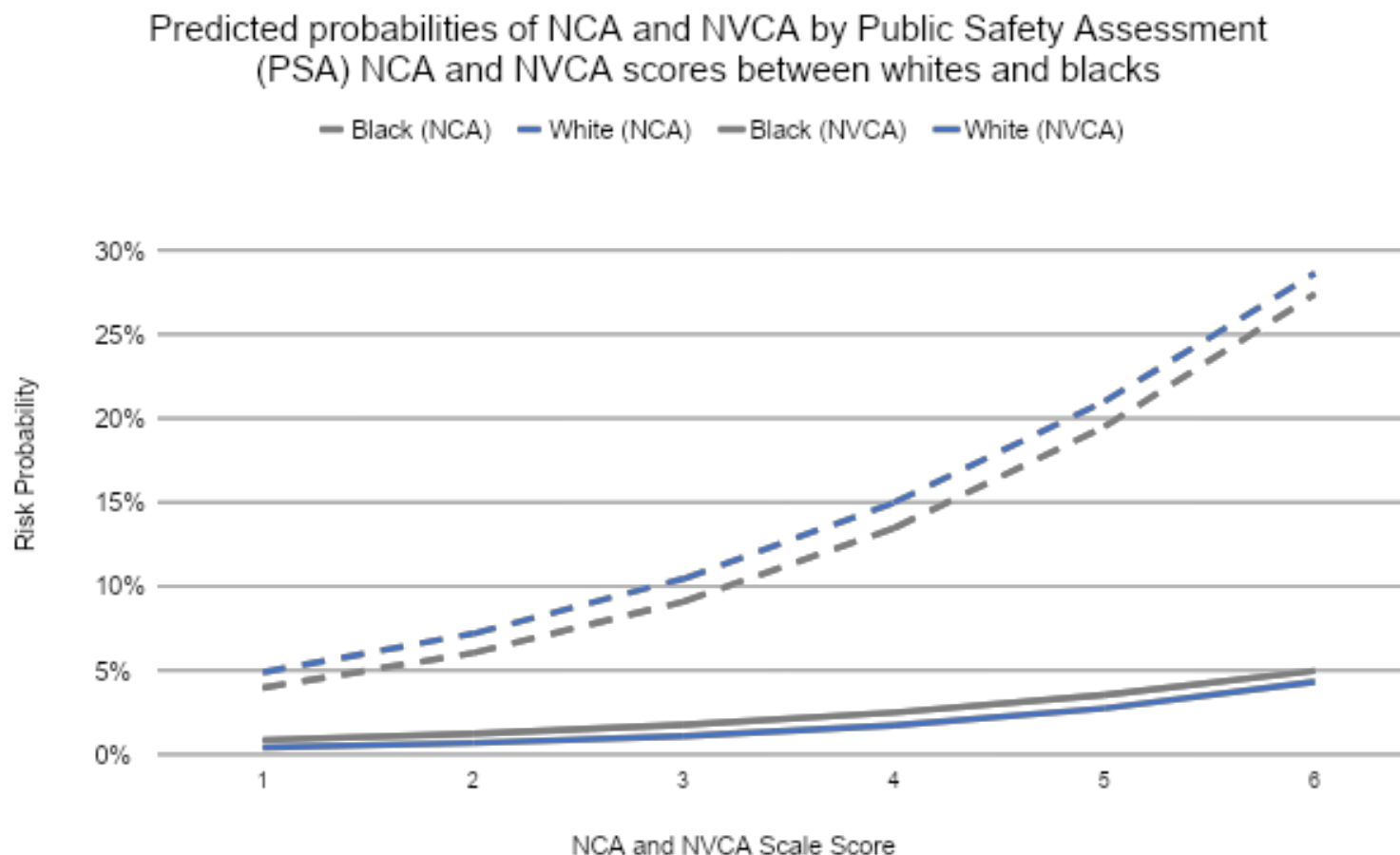
PSA Validation

Site	Race	FTA AUC	NCA AUC	NVCA AUC
1	Non-White	0.62	0.65	0.64
	White	0.66	0.68	0.66
2	Non-White	0.59	0.62	0.63
	White	0.60	0.61	0.67
3	Non-White	0.63	0.66	0.65
	White	0.65	0.67	0.66

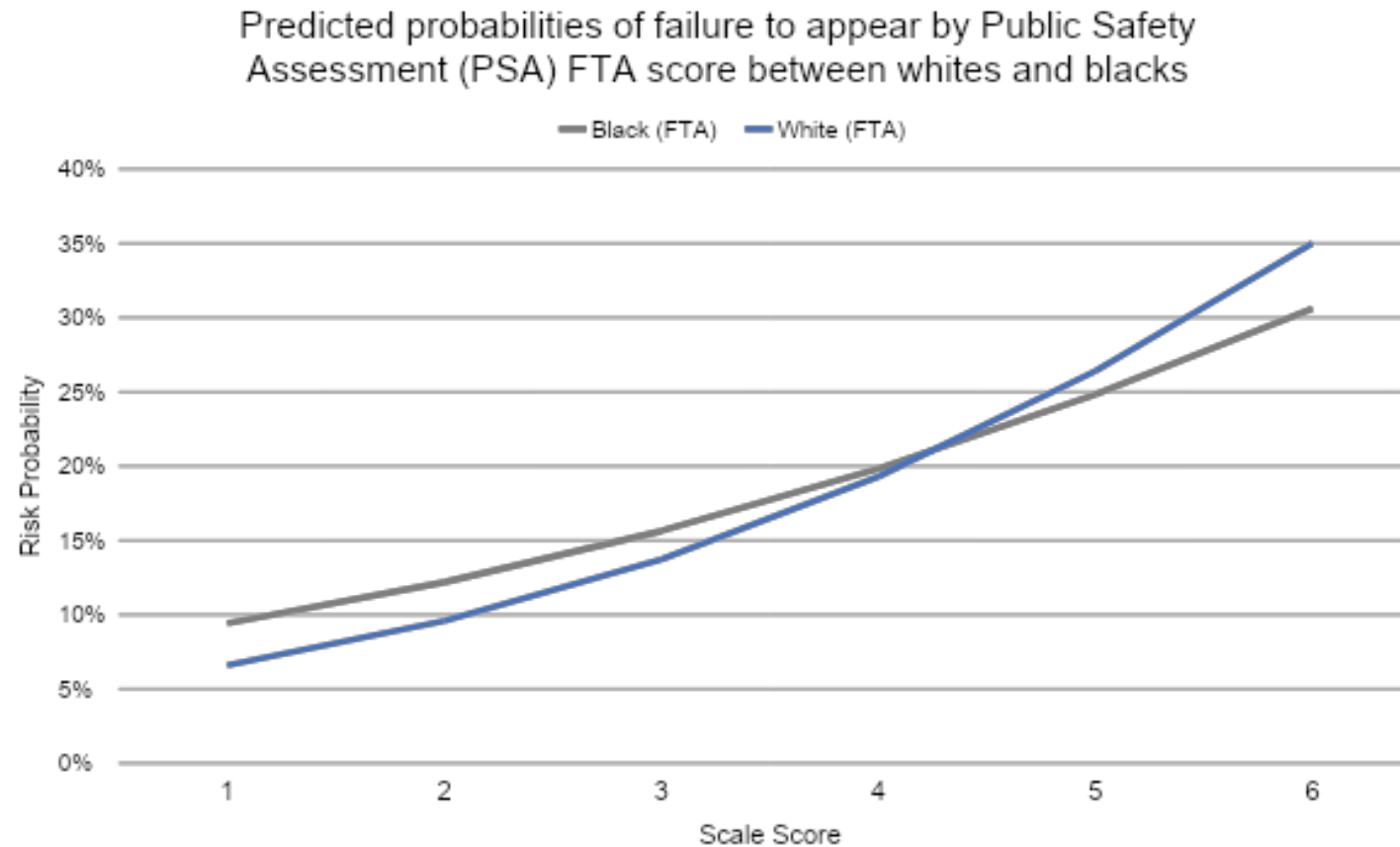
Little Evidence of Bias

- We are finding equal probabilities of outcomes by scores in many sites

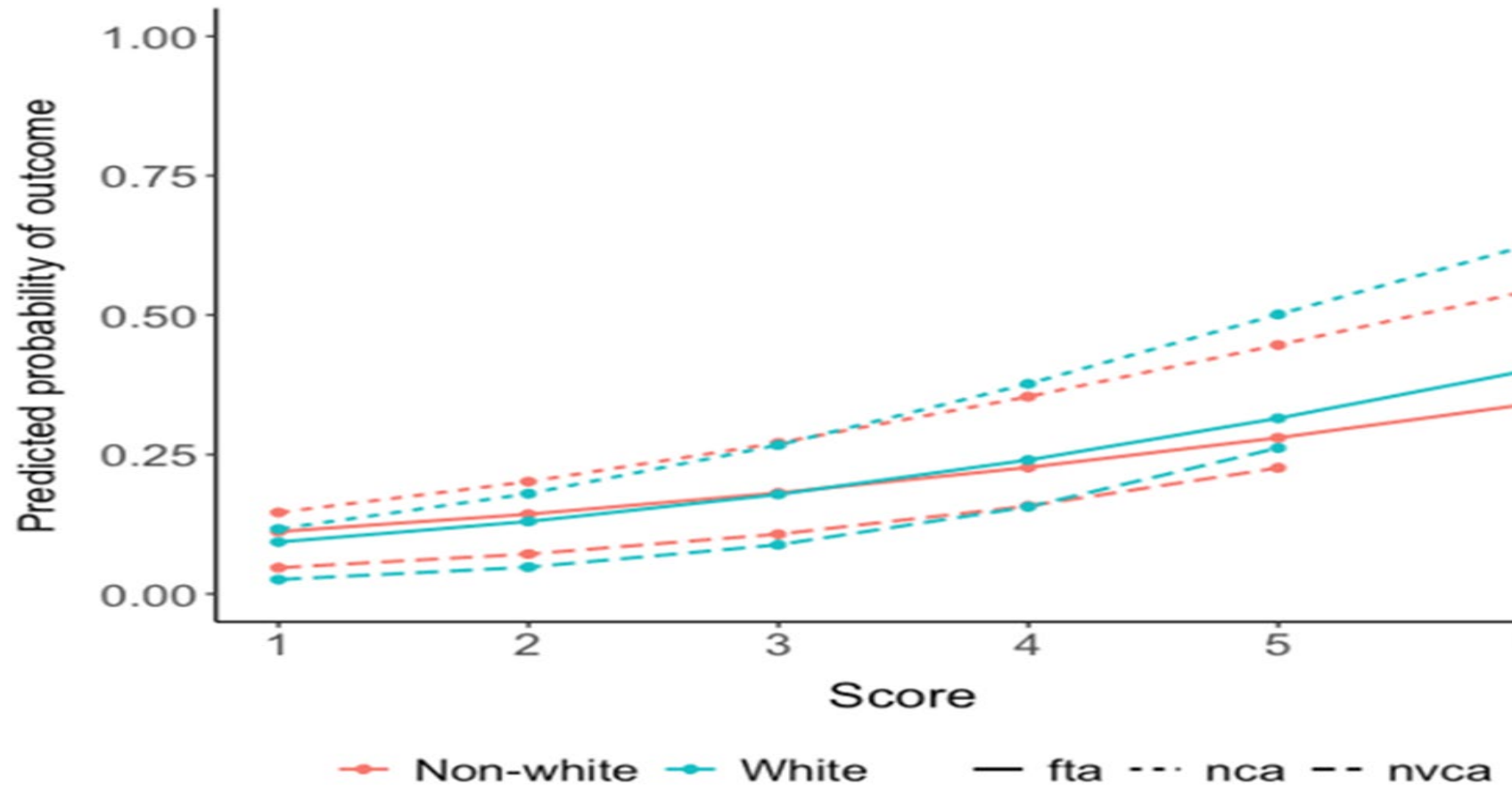
NCA and NVCA Predictive Bias by Race



FTA Predictive Bias by Race



Pretrial Outcome Probabilities by Race and Score



Who's in Jail?

- We found jails hold a lot of lower risk individuals

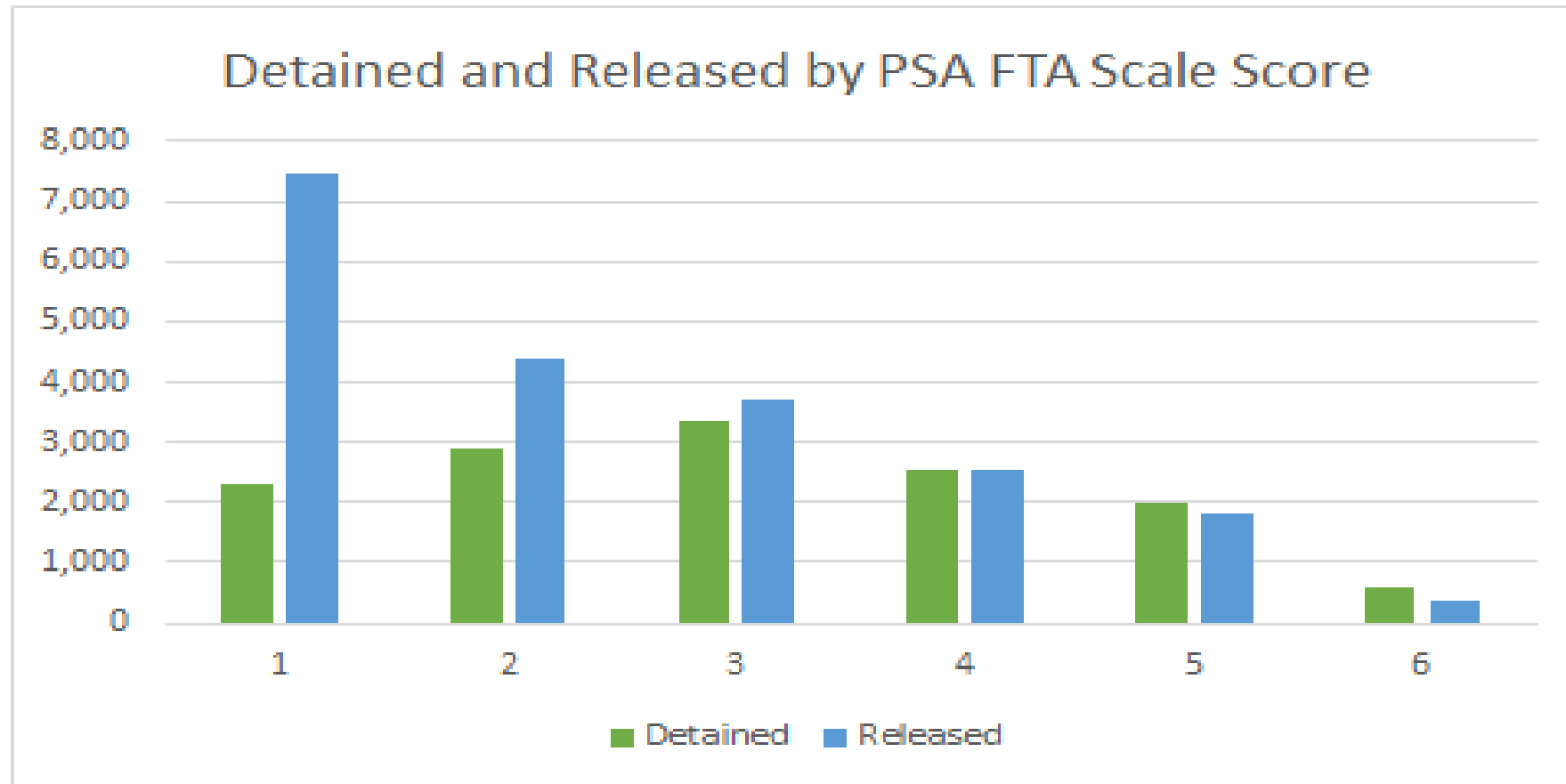
PSA Scores by Detain Release/Status

- Detained individuals have higher average PSA scores
- The differences are small to moderate

Average PSA Score (scores range from 1-6)

	1		2		3		4	
	Detained	Released	Detained	Released	Detained	Released	Detained	Released
FTA	3.06	2.41	3.87	3.13	3.95	3.48	2.60	2.41
NCA	3.30	2.47	3.84	2.99	3.90	3.33	3.27	2.90
NVCA	2.28	1.87	2.44	1.85	2.34	1.96	1.88	1.90

Detained Low-Risk Individuals



Realities of COVID

- Stakeholders adapted to challenges from COVID

2020 Site Visit Findings: Impact of COVID-19

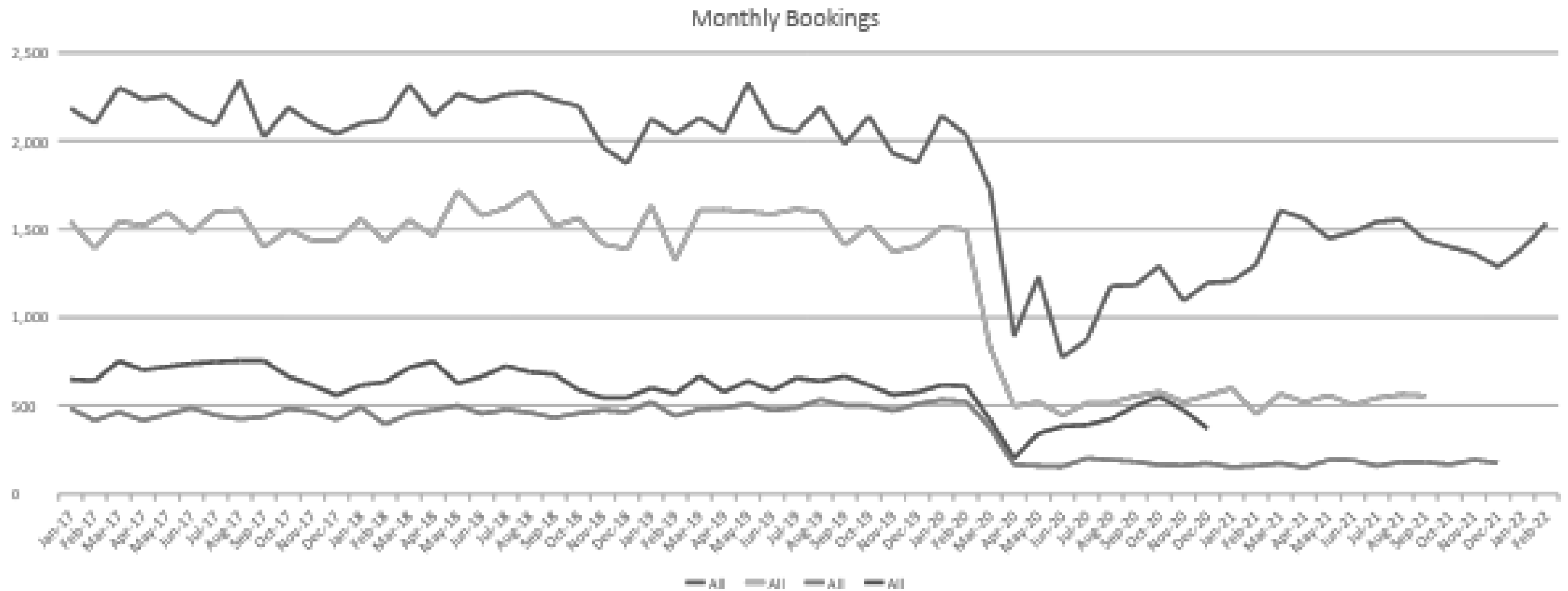
Some stakeholders saw the pandemic as an opportunity to rethink how their criminal legal system works

Sites experienced significant challenges implementing new approaches due to suddenness and urgency of COVID-19

The urgent need to disrupt “business as usual” highlighted the role of discretion in arrest, pretrial detention, and court appearances

Stakeholders want data to inform the sustainability of practices implemented during the pandemic

Jail Booking Trends





2. Changes in Pretrial Practices Since the Pandemic Began

Survey respondents were asked to what extent the use of certain pretrial practices changed after the emergence of COVID-19 in their County. Responses are summarized below:



Practices Used **MORE OFTEN** Since the Pandemic Began

- Video conferencing for court hearings (all 6 sites)
- Release on recognizance (ROR) for non-violent crimes (all 6 sites)
- Release with non-financial conditions (all 6 sites)
- Video conferencing for pretrial supervision check-ins (3 of 6 sites)
- Other virtual methods of pretrial supervision check-ins (5 of 6 sites)
- Cite & Release (3 of 6 sites)



Practices Used **LESS OFTEN** Since the Pandemic Began

- Custodial arrests (3 of 6 sites)

Conclusion

- Pretrial assessments are valid
- Pretrial assessments lack (serious) bias
- Some jails detain low risk individuals
- COVID and decreased jail populations

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