



## INNOCENT UNTIL PROVEN GUILTY? BAIL PRACTICES IN SAN MATEO COUNTY

[Issue](#) | [Summary](#) | [Background and Discussion](#) | [Findings](#) | [Recommendations](#)  
[Requests for Responses](#) | [Methodology](#) | [Bibliography](#) | [Appendixes](#) | [Responses](#)

### ISSUE

What is the role of bail practices in ensuring the safety of the residents of San Mateo County as well as in protecting the rights of pretrial defendants? Are tools now available that could help to improve outcomes for both residents and defendants? Can costs to taxpayers be reduced?

### SUMMARY

There are several problems resulting from the bail system in the United States:<sup>1</sup>

- Despite the presumption of innocence, a substantial number of unsentenced defendants are held in jail because they cannot afford bail.
- Dangerous criminals are sometimes released on bail.
- The cost to incarcerate unsentenced defendants is considerable.

Across the United States, counties are evaluating their bail practices and deploying technological tools for use in their pretrial justice systems to better address the inconsistencies in cash bail policies. These tools include:

- Evidence-based risk assessment<sup>2</sup>
- Electronic monitoring

In San Mateo County in FY 2014-2015, an average of 600 inmates awaited trial in the County Jail. Over half of these inmates were eligible for bail but remained in jail because they could not afford bail. Housing these inmates costs on average \$206 per day, or approximately \$75,000 per year. The County's annual cost to house 600 unconvicted inmates was approximately \$45 million.

After investigating current bail practices in San Mateo County, the Grand Jury concludes that evidence-based risk-assessment tools and electronic monitoring have the potential of "enhancing public safety, promoting better defendant court appearance, and better adhering to the legal principles of the presumption of innocence and due process."<sup>3</sup> Accordingly, the Grand Jury recommends that the County's Probation Department take steps to explore the potential utilization of these tools.

---

<sup>1</sup> Citizens for Criminal Justice, "The Problems with the U.S. Bail System."  
<http://www.citizensforcriminaljustice.net/problems-u-s-bail-system/>

<sup>2</sup> An evidence-based pretrial assessment tool is used to determine the likelihood a defendant will fail to appear for court and/or commit a crime while on bail. Unlike a simple background check on an individual defendant, these tools draw from the actual behavior of hundreds of thousands of pretrial defendants.

<sup>3</sup> Michael R. Jones, "Assessment of the San Mateo County Pretrial Services Program within the Context of the Local Administration of Bail found in San Mateo County Manager's Reports to the Board of Supervisors, September 8, 2011" (San Mateo CA.: Pretrial Justice Institute, July 2011). bos\_agenda0913\_11\_cmorpt.pdf

## BACKGROUND AND DISCUSSION

“Innocent until proven guilty” are four words that form the foundation of the American criminal justice system. In practice, the presumption of innocence does govern criminal procedure—once the trial begins. What happens before the trial, and more particularly, whether an individual is incarcerated prior to trial, depends on the accused person’s criminal background, the severity of the alleged crime, and his or her ability to afford bail.

According to Sonya Tafoya, at the Public Policy Institute of California:

As California confronts new jail population pressures, reform of the bail system and implementation of bail alternatives have become increasingly attractive. These reforms hold the promise of easing jail overcrowding, lowering county jail costs, providing low-risk indigent or poor arrestees a nonfinancial means of securing pretrial release, and making bail schedules more equitable across counties without unduly compromising public safety.<sup>4</sup>

The goals of the modern bail system are:<sup>5</sup>

1. Making sure the defendant shows up for hearings and trial
2. Ensuring that the public is protected from defendants committing any crimes prior to trial
3. Observing constitutional rights to reasonable bail and due process that apply to those arrested but not yet convicted, and
4. Controlling jail costs, which is the largest expense in many county budgets

### Impact of Detention on Unsentenced Defendants

Pretrial, or unsentenced, defendants<sup>6</sup> are people who have been accused of a crime and remain in jail prior to their trial “either because of a failure to post bail or due to denial of release under a pretrial detention statute.”<sup>7</sup>

---

<sup>4</sup> Sonya Tafoya, "Assessing the Impact of Bail on California’s Jail Population" (San Francisco, CA: Public Policy Institute of California, June 2013). [http://www.ppic.org/content/pubs/report/R\\_613STR.pdf](http://www.ppic.org/content/pubs/report/R_613STR.pdf)

<sup>5</sup> Marc Levin, "Pre-Trial Justice 101: Key Points for Policymakers" (Texas Public Policy Foundation, 2016). <http://rightoncrime.com/2015/03/levin-new-report-on-pretrial-justice/>

<sup>6</sup> In this report the term *unsentenced* rather than *pretrial* is used because the County and the State use it in their jail statistics. The two terms are not completely identical. The term *unsentenced* includes individuals who have been convicted at trial and are awaiting sentencing as well as those awaiting trial. The term *pretrial* excludes those awaiting sentencing.

<sup>7</sup> USLegal, "Pre Trial Detention Law & Legal Definition," USLegal, Inc. <http://definitions.uslegal.com/p/pre-trial-detention/>

Unsentenced defendants may suffer in many ways.<sup>8</sup> They may lose income; many lose jobs and/or housing; and, their families are impacted financially and socially.<sup>9</sup> Unsentenced defendants in jail are more likely to take plea deals than those who have been released on their own recognizance or made bail.<sup>10</sup> Finally, studies show that people who are in jail before their trial and who go to trial are more likely to be convicted and receive longer sentences.<sup>11</sup>

The concern about the disproportionate impact of bail on the poor is not a new one. In 1964 at the first National Symposium on Pretrial Justice, Attorney General Robert Kennedy said:

Every year in this country, thousands of persons are kept in jail for weeks and even months following arrest. They are not yet proven guilty. They may be no more likely to flee than you or I. But, nonetheless, most of them must stay in jail because, to be blunt, they cannot afford to pay for their freedom . . . [the] problem, simply stated is: the rich man and the poor man do not receive equal justice in our courts. And in no area is this more evident than in the matter of bail.<sup>12</sup>

### Impact of Bailed Defendants on Community Safety

The California Penal Code requires that “the public safety shall be the primary consideration,”<sup>13</sup> in setting bail. In California, within a two-year period, suspects who had been released on bail committed more than 20,000 crimes, including robberies, murders, and rapes.<sup>14</sup> “The most common crimes that were committed were criminal damages and assault on police officers. That number of crimes equates to well over 30 individual offenses each day. . . . One quarter of all crimes that were committed in 2007 were committed by individuals who were out on bail.”<sup>15</sup>

### Cost of Incarcerating Unsentenced Defendants

Taxpayers are also burdened. The U.S. Bureau of Justice Statistics estimated that at mid-year 2014, there were 745,000 inmates in county and local jails across the United States. Sixty-two percent of them were unconvicted.<sup>16</sup> The Bureau notes, “Since 2000, 95% of the growth in the

---

<sup>8</sup> Nick Pinto, "The Bail Trap," *New York Times Magazine*, August 13, 2015. <http://nyti.ms/1IJKXjS>

<sup>9</sup> Shima Baradaran Baughman, "Costs of Pretrial Detention," *Boston University Law Review* (2017, Forthcoming). [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2757251](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2757251)

<sup>10</sup> Mary E. Buser, "How Rikers Drove My Innocent Patient to Plead Guilty," *Politico Magazine*, October 6, 2015. <http://www.politico.com/magazine/story/2015/10/rikers-island-plea-bargains-213223>

<sup>11</sup> Timothy R. Schnacke, "Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform" (2014). <http://nicic.gov/Library/files/028360.pdf>

<sup>12</sup> Robert F. Kennedy, "Testimony by Attorney General Robert F. Kennedy on Bail Legislation," *Subcommittee on Constitutional Rights and Improvements in Judicial Machinery of the Senate Judiciary Committee*, U.S. Senate (Washington DC: Department of Justice Library, August 4, 1964).

<https://www.justice.gov/sites/default/files/ag/legacy/2011/01/20/08-04-1964.pdf>

<sup>13</sup> California Penal Code §1270, cl. (a)

<sup>14</sup> Remedy Bail Bonds, 2012. <http://remedybail.com/blog/crimes-committed-while-on-bail>

<http://remedybail.com/blog/crimes-committed-while-on-bail>

<sup>15</sup> *Ibid.*

<sup>16</sup> Todd D. Minton and Zhen Zeng, "Jail Inmates at Midyear 2014" (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, June 2015).

<http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5299>

overall jail inmate population (123,500) was due to the increase in the unconvicted population (117,700 inmates).<sup>17</sup> The cost to the country of detaining unconvicted individuals in county jails exceeds \$9 billion annually.<sup>18</sup>

In FY 2014-2015, San Mateo County spent \$64.6 million to run the Men's and Women's Jails. This came to approximately \$75,000 per year per inmate (see Appendix E: Cost Analysis of San Mateo County Jails). It cost about \$45 million to keep 600 unsentenced inmates in jail.

Changes in crime rates, state legislation and mandates, shifting demographics, and changes to pretrial strategies create a need for the County to accurately estimate the financial impact of increases or decreases in the County jail populations. The County currently is not able to provide such estimates. Please see Appendix D: Vera Institute Justice System Marginal Cost Methodology and Appendix E: Cost Analysis of San Mateo County Jails for more detailed information.

### Pretrial Detention in California

In her annual State of the Judiciary Address to the State Legislature in March 2016, California Supreme Court Chief Justice Tani G. Cantil-Sakauye said:<sup>19</sup>

I also want to talk about bail. I think it's time for us to really ask the question whether or not bail effectively serves its purpose, or does it in fact penalize the poor. Bail—does it really ensure public safety? Does it in fact assure people's appearance in court, or would a more effective risk-assessment tool be as effective for some cases?

Statistics released by the U.S. Department of Justice indicate that the situation in California is in many ways worse than the nation as a whole.<sup>20</sup> California incarcerates unsentenced people at a higher percentage rate than the rest of the country (59% vs. 32%).<sup>21</sup> The State's high rates of pretrial detention have not been associated with lower rates of failure to appear or lower levels of felony rearrests. In fact, the majority of people in jail are unsentenced.<sup>22</sup> And, despite incarcerating more unsentenced individuals, California has a greater problem with getting people to appear in Court (see Figure 1).

---

<sup>17</sup> Schnacke, "Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform."

<sup>18</sup> Ibid.

<sup>19</sup> Chief Justice Tani G. Cantil-Sakauye, "State of the Judiciary Address to a Joint Session of the California Legislature" (March 8, 2016). <http://www.courts.ca.gov/34477.htm>

<sup>20</sup> Sonya Tafoya, "Pretrial Detention and Jail Capacity in California" (San Francisco, CA: Public Policy Institute of California, July 2015). [http://www.ppic.org/content/pubs/report/R\\_715STR.pdf](http://www.ppic.org/content/pubs/report/R_715STR.pdf)

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.



**Figure 1. California has had a higher rate of failure to appear and higher rearrests for non-violent felonies<sup>23</sup>**

	Multiple Failures to Appear %	% Rearrested in Pretrial Period			
		Any Felony	Drug Felony	Property Felony	Violent Felony
California	6.6	12.4	5.7	3.9	1.4
Rest of US	2.9	10.1	3.7	3.3	1.9

*Source:* U.S. Department of Justice, Bureau of Justice Statistics. State Court Processing Statistics, 1990-2009: Felony Defendants in Large Urban Counties.

### **Pretrial Detention in San Mateo County**

The population of the San Mateo County jails has varied considerably over the years (see Figure 2). From December 2007 to June 2008, the percentage of unsentenced inmates rose from 50% to 65%, reaching a high point of 72% in June 2011.<sup>24</sup> In the second quarter of 2014, there was a spike in the unsentenced jail population after which it started declining again.<sup>25</sup>

In 2013, the percentage of unsentenced inmates among 58 California counties ranged from 33% to 89%, with a median of 65%.<sup>26</sup> San Mateo County's rate of 62% was 35<sup>th</sup> in rank within the State and below the California average of 66%.<sup>27</sup> The County's percentage of unsentenced inmates was neither unreasonably high nor low compared to other California counties.

An unsentenced inmate in the San Mateo County Jail is not eligible for bail if he or she has:<sup>28</sup>

- Been denied bail by the court. This most often occurs when the suspect poses a serious threat to public safety (such as a murder charge).
- A detainer<sup>29</sup> from another law enforcement entity.
- A probation or parole hold.

<sup>23</sup> Ibid.

<sup>24</sup> BSCC, "Jail Population Dashboard: Quarterly Trends 2005 to 2014" (Sacramento, CA: State of California, Board of State and Community Corrections, 2015). [https://www.cubbyusercontent.com/pl/Metrics%20Website/\\_89f5db8e38d0484e84330d20e2bdf5a6#Metrics%20Website/Metrics%20Data%202015](https://www.cubbyusercontent.com/pl/Metrics%20Website/_89f5db8e38d0484e84330d20e2bdf5a6#Metrics%20Website/Metrics%20Data%202015)

<sup>25</sup> Ibid.

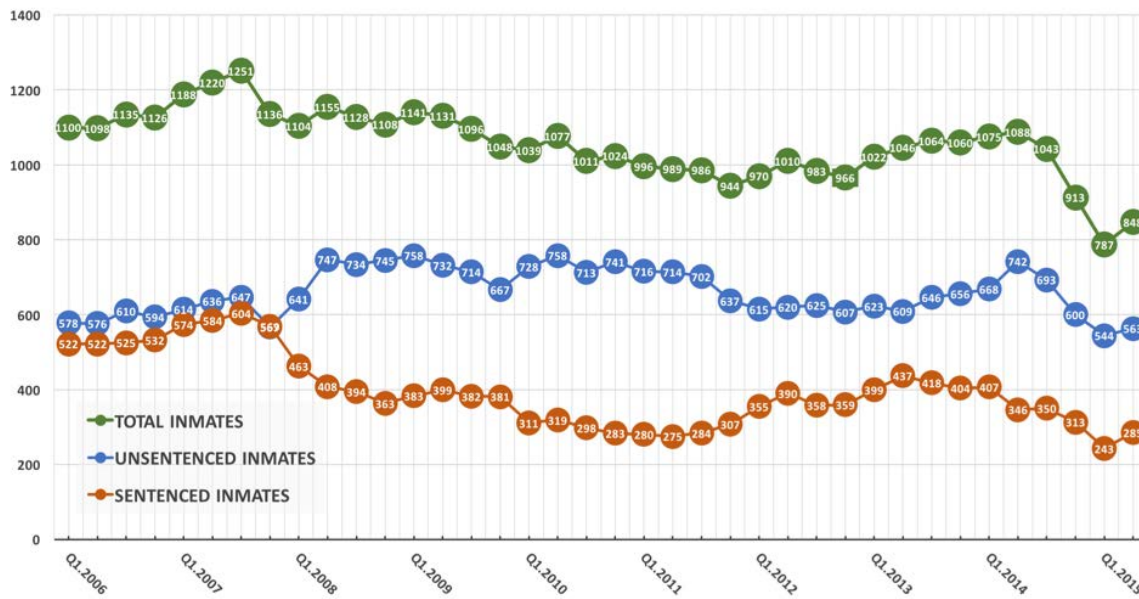
<sup>26</sup> CJCJ, "Sentencing Practices in California by County, Calendar Year 2013" (San Francisco, CA: Center on Juvenile and Criminal Justice, 2014). <http://casi.cjcj.org/data/2013-juvenile.xlsx>

<sup>27</sup> Ibid.

<sup>28</sup> Representatives of the Corrections Division, San Mateo County Sheriff's Office: interview by the Grand Jury.

<sup>29</sup> In this context, a detainer is a request by a court or law enforcement agency to keep a person in custody pending resolution of another case.

**Figure 2. San Mateo County Jail Population 2006-2015**



Source: State of California, Board of State and Community Corrections (BSCC); see BSCC entries in Bibliography.<sup>30</sup>

The Corrections Division of the San Mateo County Sheriff’s Office provided the Grand Jury detailed data about the County Jail population on four typical days during 2015 (see Appendix C: San Mateo County Corrections Department Data). Close to 59% of unsentenced inmates were eligible for bail. A small number of inmates choose to remain in jail for non-financial reasons, e.g., to accumulate time served so they can get out of jail more quickly after their plea agreement or conviction. The actual percentage of inmates who do this is unavailable, but estimates based on anecdotal evidence would put the percentage at no more than 5%. Using 5% as an estimate of those who chose to remain in jail for non-financial reasons, about 56% (59% X 95%) of all the unsentenced inmates remained in jail because they could not afford bail.

The Grand Jury interviewed senior police officers, district attorneys, defense attorneys, and a bail agent. All of them agreed with the Justice Policy Institute’s statement: “The ability to pay money bail is neither an indicator of a defendant’s guilt nor an indicator of risk in release.”<sup>31</sup> The 336

<sup>30</sup> BSCC, "Jail Profile Survey Third Quarter Calendar Year 2014 Survey Results" (Sacramento, CA: State of California, Board of State and Community Corrections, 2014). [http://www.bscc.ca.gov/downloads/2014\\_3rd\\_Qtr\\_JPS\\_Full\\_Report.pdf](http://www.bscc.ca.gov/downloads/2014_3rd_Qtr_JPS_Full_Report.pdf). "Jail Profile Survey First Quarter Calendar Year 2015 Survey Results" (Sacramento, CA: State of California, Board of State And Community Corrections, 2015). <http://www.bscc.ca.gov/downloads/2Q15%20JPS%20Full%20Report%202.8.16.pdf>. "Jail Profile Survey Fourth Quarter Calendar Year 2014 Survey Results" (Sacramento, CA: State of California, Board of State and Community Corrections, 2015). [http://www.bscc.ca.gov/downloads/2014\\_4th\\_Qtr\\_JPS\\_Full\\_Report.pdf](http://www.bscc.ca.gov/downloads/2014_4th_Qtr_JPS_Full_Report.pdf). "Jail Profile Survey Second Quarter Calendar Year 2015 Survey Results" (Sacramento, CA: State Of California, Board of State And Community Corrections, 2015). [http://www.bscc.ca.gov/downloads/2015\\_1st\\_Qtr\\_JPS\\_Full\\_Report.pdf](http://www.bscc.ca.gov/downloads/2015_1st_Qtr_JPS_Full_Report.pdf). "Jail Population Dashboard: Quarterly Trends 2005 to 2014."

<sup>31</sup> Justice Policy Institute, "Bail Fail: Why the U.S. Should End the Practice of Using Money for Bail" (Washington, D.C.: Justice Policy Institute, 2012). [www.justicepolicy.org/uploads/justicepolicy/documents/bailfail.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/bailfail.pdf)

defendants who remained in jail in FY 2014-2015 because they could not afford bail posed no greater, but no lesser, danger to the community than those released on bail.

### Pretrial Process in San Mateo County

In San Mateo County, if you are arrested for a misdemeanor crime such as certain low-level drug or property offenses, the arresting officer will generally issue you a citation and will release you on a notice to appear with a future court date. This is called “cite and release.”<sup>32</sup>

If you are arrested for a more serious crime, you will be brought to central booking for the San Mateo County Jail. A specially trained intake officer will ask you a few questions about your background, place of work, and criminal background if any. Based on established criteria for misdemeanor crimes, you may be eligible for release on your own recognizance (ROR), agreeing to show up at your arraignment (typically 30 days out). If you are not released, you will be given the opportunity to post bail. The dollar amount of bail is fixed by a Bail Schedule established by the Presiding Judge of the San Mateo County Superior Court, following guidelines established by the State.<sup>33</sup> If you post bail, you will be immediately released from custody unless there is some other type of hold that prevents you from being released. If you are not released from custody, you will remain in jail until your arraignment, which will be held within 48 to 72 hours from the time of your arrest.<sup>34</sup>

During the time between your initial arrest and your arraignment, the San Mateo County Probation Department’s Pretrial Services will conduct a background check and make a recommendation to the Court to release you on supervised OR,<sup>35</sup> adjust your bail, or keep you in custody.<sup>36</sup> According to interviews with senior Probation Department staff, these recommendations are typically followed only 30% of the time.<sup>37</sup> At your arraignment, the Court will make the final decision.

Whether at your initial arrest or after the arraignment, you have three options of how to post bail. The first is to post full amount of the bail. The second is to post a property bond.<sup>38</sup> The third is to enter into a contract with a bail agent who would typically charge you 10% of the bail amount. With the first option, you will get back all the money you paid when your case is resolved. With the second option, your property will cease to be subject to forfeiture when your case is decided.

---

<sup>32</sup> There are specific instances, however, outlined in the California Penal Code where you would not be eligible for a “cite and release” (PC §853.6).

<sup>33</sup> Superior Court County of San Mateo, "Felony Bail Schedule Effective July 1, 2015 Pursuant to Section 1269b of the Penal Code, and California Rule of Court, Rule 4.102," ed. County of San Mateo Superior Court (San Mateo, CA: Superior Court, County of San Mateo, 2015).

[www.sanmateocourt.org/documents/criminal/felony\\_bail\\_schedule.pdf](http://www.sanmateocourt.org/documents/criminal/felony_bail_schedule.pdf)

<sup>34</sup> The time between arrest and arraignment is typically 30 days if you have been released from custody or 48 to 72 hours if you remain in jail.

<sup>35</sup> Pretrial Officers actively supervise Pretrial defendants granted conditional/supervised OR (“own recognizance”) release.

<sup>36</sup> County of San Mateo Probation Department, "Pretrial Services," County of San Mateo. <http://probation.smcgov.org/pretrial-services>

<sup>37</sup> Representatives of the San Mateo County Probation Department: interviews by the Grand Jury.

<sup>38</sup> A property bond allows a defendant to pledge the equity in his or her real property in lieu of cash.

With the third option, the money you paid the Bail Agent will not be returned regardless of the disposition of your case. If you cannot post bail, you will go to the county jail where you will remain until the conclusion of your case or you find the money to post bail.

As a result, if you have sufficient funds, posting the full amount of bail may be an insignificant issue. If you can afford some of the cost, you will need to come up with 10% of the bail amount. After arraignment, if you cannot afford even 10% of the cost of bail, you will go to jail to await the disposition of your case.

## Pretrial Tools

Counties across the country are deploying innovative tools to achieve a better balance among the four objectives underlying the bail process: maximizing release, assuring court appearance, ensuring public safety, and minimizing taxpayer expense. These include the use of evidence-based risk-assessment tools and electronic monitoring.

## Evidence-Based Risk-Assessment Tools

An evidence-based pretrial risk-assessment tool is used to determine the likelihood a defendant will fail to appear for court and/or commit a crime while on bail. Unlike a simple background check on an individual defendant, these tools draw from the actual behavior of hundreds of thousands of pretrial defendants.<sup>39</sup> In addition, these tools are continually validated through an “empirical review to show that [the] tool actually works to achieve its intended goal with a designated population. . . . It is important to ‘validate’ risk assessments because tools that were designed for one population may not necessarily work as intended for a different population.”<sup>40</sup>

Californians for Safety and Justice, a local nonprofit organization, partnered with the Crime and Justice Institute to survey California’s 58 counties about local pretrial practices.<sup>41</sup> Forty-two counties (72%) report that they use a pretrial risk-assessment tool. Five counties (9%) provide information, recommendations, court reminders, and/or supervision but do not use a risk-assessment tool.

## Risk Assessment in San Mateo County

San Mateo County does not currently use an evidence-based risk-assessment tool. At the present time, before a defendant is arraigned,

[San Mateo County’s] Pretrial Services staff investigate, verify, and evaluate background information for criminally accused defendants. This includes verifying residence, employment, and family ties. This also includes evaluating criminal history, obtaining references, and researching pending cases and the

---

<sup>39</sup> Pretrial Justice Institute, "Risk Assessment Evidence-based Pretrial Decision-making" (Pretrial Justice Institute, 2016). <http://www.pretrial.org/download/risk-assessment/Risk%20Assessment.pdf>

<sup>40</sup> Crime and Justice Institute and Californians for Safety and Justice, "Pretrial Progress: A Survey of Pretrial Practices and Services in California" (Crime and Justice Institute and Californians for Safety and Justice, August 2015). <http://www.crj.org/cji/entry/pretrial-progress-a-survey-of-pretrial-practices-and-services-in-california>

<sup>41</sup> Ibid.

client's performance in prior cases. Probation/parole officer's comments about how likely the defendant is to obey court-ordered conditions and keep court appearance dates are also included. Pre-Trial Services prepares written release and non-release recommendations which the Court considers in its decision to either release, adjust bail, or keep defendants in-custody while awaiting trial.<sup>42</sup>

According to interviews with senior Probation Department staff, these recommendations are typically followed only 30% of the time.

In 2011, San Mateo County's Criminal Justice Work Group commissioned the Pretrial Justice Institute<sup>43</sup> to evaluate the County's Pretrial Services Department. One of the Institute's findings was that the recommendations to the court based on background checks were of limited value because there was no evidence that background checks could accurately predict the likelihood that a person would appear in court or commit a crime while on bail.<sup>44</sup>

The Pretrial Justice Institute recommended the adoption of an evidence-based risk-assessment tool to augment simple background checks. A pretrial risk-assessment instrument is an empirically derived tool vital to an evidence-based pretrial process. These tools typically provide a summary of the characteristics of an individual, and then calculate a score showing his or her likelihood to fail to appear in court or be rearrested prior to the completion of the current case.<sup>45</sup> Pretrial Services has not implemented such a tool in San Mateo County and continues to follow the approach used in 2011.

In preparation for realignment in 2012, the San Mateo Community Corrections Partnership (CCP)<sup>46</sup> recommended the use of evidence-based practices for post-trial issues such as probation, early release, and parole.<sup>47</sup> This recommendation is an endorsement of the concepts behind the models of evidence-based risk assessment. For a detailed discussion of various risk-assessment tools see Appendix A: Pretrial Risk-Assessment Tools and Appendix B: Pretrial Justice Center for the Courts—Pretrial Risk Assessment.

---

<sup>42</sup> County of San Mateo Probation Department. "Pretrial Services." County of San Mateo. <http://probation.smcgov.org/pretrial-services>

<sup>43</sup> The Pretrial Justice Institute's core purpose is to advance safe, fair, and effective juvenile and adult pretrial justice practices and policies. <http://nicic.gov/library/028316>

<sup>44</sup> Jones, "Assessment of the San Mateo County Pretrial Services Program within the Context of the Local Administration of Bail found in San Mateo County Manager's Reports to the Board of Supervisors, September 8, 2011."

<sup>45</sup> Pretrial Justice Institute, "Risk Assessment Evidence-based Pretrial Decision-making."

<sup>46</sup> See Appendix F: Current Members of the San Mateo County Community Corrections Partnership (CCP), as of May 12, 2016.

<sup>47</sup> Anne Campbell et al., "San Mateo County Public Safety Realignment Local Implementation Plan" (San Mateo County, CA: San Mateo Community Corrections Partnership (CCP), 2012). [http://www.bscc.ca.gov/downloads/San\\_Mateo\\_County\\_2011-2012.pdf](http://www.bscc.ca.gov/downloads/San_Mateo_County_2011-2012.pdf)

## Electronic Monitoring

There are a variety of electronic monitoring (EM) technologies and processes for EM deployment and monitoring. In San Mateo County, EM programs are managed by the Probation Department.<sup>48</sup> EM is mandated by the State for certain high-risk sex offenders on probation. Other than this mandated use, EM is not frequently used in San Mateo County. One of the reasons for this is that the EM system now in use is considered unreliable.<sup>49</sup> A new EM system is currently being deployed with the expectation it will be more reliable and generally more sophisticated and, therefore, will allow for greater use of EM.<sup>50</sup>

EM has been shown to be an effective tool as a part of a broader Pretrial Services plan. According to the National Institute of Justice:

EM reduces the likelihood of failure under community supervision. The reduction in the risk of failure is about 31%, relative to offenders not placed on EM. GPS has more of an effect on reducing failure than RF technology.<sup>51</sup> There is a 6% improvement rate in the reduction of supervision failures for offenders placed on GPS supervision relative to offenders placed on RF supervision.<sup>52</sup>

EM can also be used to reduce risk to the community for defendants released on bail. There are EM devices that can detect a person's alcohol level.<sup>53</sup> Use of such a device for people accused of drunk driving could act as a deterrent to a repeat offense. EM devices with Global Positioning Systems (GPS) detect with great accuracy a defendant's location. Determining the location of someone accused of domestic violence who is out on bail could help prevent further violence against the victim.<sup>54</sup> A victim could carry a tracking device that would set off an alarm when the defendant starts to move closer to the victim's location. This alarm would alert the victim as well as the police who could intervene to prevent a new act of violence.

Using EM to release low-risk defendants has significant cost-savings potential for the County. The Riverside County, California, Corrections Department reports: "it costs \$7 per day for a regular unit or \$12 per day for a cellular unit."<sup>55</sup> There is an additional cost of \$98 per week per

---

<sup>48</sup> Representatives of the San Mateo County Probation Department: interview by the Grand Jury.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> RF stands for Radio Frequency. There is a base station in the person's home, and the EM device will set off an alarm if the person goes beyond a specified distance.

<sup>52</sup> William Bales et al., "A quantitative and Qualitative Assessment of Electronic Monitoring" (Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 2010).

[http://www.jrsa.org/events/conference/presentations-10/Bill\\_Bales\\_2.pdf](http://www.jrsa.org/events/conference/presentations-10/Bill_Bales_2.pdf)

<sup>53</sup> Jim Hook, "New Gadgets Give Offenders on Electronic Monitoring Nowhere to Hide" (Harrisburg, PA: WITF, July 6, 2015). <http://www.witf.org/news/2015/07/new-gadgets-give-offenders-on-electronic-monitoring-nowhere-to-hide.php>

<sup>54</sup> Ibid.

<sup>55</sup> Riverside County Corrections Department, "Full Time Supervised Electronic Confinement Program (SECP)" (Riverside, CA: Sheriff's Department of Riverside County, 2016).

<http://www.riversidesheriff.org/corrections/release-work-electronic.asp>

person for monitoring.<sup>56</sup> This works out to be \$21 to \$26 per day, which compares to a cost of about \$206 per day to incarcerate someone in San Mateo County (see Appendix E: Cost Analysis of San Mateo County Jails).

These estimates do not take into account staff costs associated with monitoring and deploying an EM system. The total cost would also depend on the type of equipment selected, the way monitoring and officer response are conducted, and the rate of adoption of EM.

## FINDINGS

- F1. In FY 2014-2015, San Mateo County spent \$64.6 million, or about \$75,000 per inmate, to run the Men's and Women's Jails. About 67% of inmates were unsentenced, and 53% of these unsentenced inmates were eligible for bail but remained in jail because they could not afford bail. The incarceration of unsentenced inmates was a considerable cost to County taxpayers.
- F2. Jail is highly disruptive to inmates and their families.
- F3. Incarcerating people solely because they cannot afford bail is inconsistent with the fundamental principle of "innocent until proven guilty."
- F4. Pretrial tools such as evidence-based risk-assessment tools and electronic monitoring have been deployed by counties in California and have the potential to reduce jail populations, mitigate community risk, improve court appearance, and save taxpayers money.
- F5. According to interviews with senior Probation Department staff, the department's Pretrial Services recommendations are typically followed only 30% of the time.
- F6. The County's budgeting and reporting systems make it difficult to estimate what changes in inmate population will cost.

## RECOMMENDATIONS

- R1. The San Mateo County Board of Supervisors should direct the Probation Department Pretrial Services to evaluate and recommend various alternatives to pretrial incarceration, including but not limited to evidence-based risk-assessment tools and electronic monitoring.
  - The Probation Department should present its evaluation and recommendations to the Board of Supervisors by June 30, 2017.
  - As part of the evaluation and recommendation process, the Probation Department should receive input from members of the San Mateo County Community Corrections Partnership (CCP), as well as from criminal trial judges.
- R2. The Controller's Office should provide an annual analysis beginning in FY 2016-2017 of the total costs to run the County's jails including estimates of how costs will vary with changes in the jail population. The first annual report should be completed and presented at a public meeting to the Board of Supervisors by September 1, 2017.

---

<sup>56</sup> Ibid.

## REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses as follows:

From the following governing bodies and elected officials:

- R1—Board of Supervisors
- R2—San Mateo County Controller

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

## METHODOLOGY

### Documents

- Jail Expense data provided by the San Mateo County Controller
- See Bibliography for additional documents referenced

### Site Tours

- The Grand Jury toured all of the County's jail facilities including the Maple Street Correctional Center.

### Interviews

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

- The Grand Jury interviewed senior staff of the Corrections Department, the Probation Department, the District Attorney's Office, the Private Defender Program, the Controller's Office, and the Corrections Department Financial Services.
- The Grand Jury interviewed an executive of a local bail bond agency.



## BIBLIOGRAPHY

Angwin, Julia, Jeff Larson, Surya Mattu, and Lauren Kirchner. "How We Analyzed the COMPAS Recidivism Algorithm" (May 23, 2016). <https://www.propublica.org/article/how-we-analyzed-the-compas-recidivism-algorithm>

Angwin, Julia, Jeff Larson, Surya Mattu, and Lauren Kirchner. "Machine Bias: There's Software Used across the Country to Predict Future Criminals. And It's Biased against Blacks" (May 23, 2016). <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>

Bales, William, Karen Mann, Thomas Blomberg, Gerry Gaes, Kelle Barrick, Karla Dhungana, and Brian McManus. "A Quantitative and Qualitative Assessment of Electronic Monitoring." Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 2010. [http://www.jrsa.org/events/conference/presentations-10/Bill\\_Bales\\_2.pdf](http://www.jrsa.org/events/conference/presentations-10/Bill_Bales_2.pdf)

Bash, Homa. "Zeljka Sekulic: Murdered Nurse Suffered from Long History of Domestic Violence: Ex-husband Charged with Aggravated Murder." TV Broadcast. (Cleveland, OH: Scripps TV Station Group, WEWS/newsnet5.com: December 15, 2015). <http://www.newsnet5.com/news/local-news/oh-stark/zeljka-sekulic-murdered-nurse-suffered-from-long-history-of-domestic-violence>

Baughman, Shima Baradaran. "Costs of Pretrial Detention." *Boston University Law Review*, 2017, Forthcoming. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2757251](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2757251)

Bechtel, Kristin, John Clark, Michael R. Jones, and David J. Levin. "Dispelling the Myths: What Policy Makers Need to Know about Pretrial Research." Gaithersburg, MD: Pretrial Justice Institute, 2012. [http://www.pretrial.org/download/pji-reports/Dispelling the Myths \(November 2012\).pdf](http://www.pretrial.org/download/pji-reports/Dispelling%20the%20Myths%20(November%202012).pdf)

BSCC. "Jail Population Dashboard: Quarterly Trends 2005 to 2014." Sacramento, CA: State Of California, Board of State And Community Corrections, 2015. [https://www.cubbyusercontent.com/pl/Metrics Website/\\_89f5db8e38d0484e84330d20e2bdf5a6 - Metrics% 20Website/Metrics% 20Data% 202015](https://www.cubbyusercontent.com/pl/Metrics%20Website/_89f5db8e38d0484e84330d20e2bdf5a6-Metrics%20Website/Metrics%20Data%202015)

BSCC. "Jail Profile Survey First Quarter Calendar Year 2015 Survey Results." Sacramento, CA: State Of California, Board of State And Community Corrections, 2015. [http://www.bscc.ca.gov/downloads/2Q15 JPS Full Report 2.8.16.pdf](http://www.bscc.ca.gov/downloads/2Q15_JPS_Full_Report_2.8.16.pdf)

BSCC. "Jail Profile Survey Fourth Quarter Calendar Year 2014 Survey Results." Sacramento, CA: State Of California, Board of State And Community Corrections, 2015. [http://www.bscc.ca.gov/downloads/2014\\_4th\\_Qtr\\_JPS\\_Full\\_Report.pdf](http://www.bscc.ca.gov/downloads/2014_4th_Qtr_JPS_Full_Report.pdf)

BSCC. "Jail Profile Survey Second Quarter Calendar Year 2015 Survey Results." Sacramento, CA: State Of California, Board of State And Community Corrections, 2015. [http://www.bscc.ca.gov/downloads/2015\\_1st\\_Qtr\\_JPS\\_Full\\_Report.pdf](http://www.bscc.ca.gov/downloads/2015_1st_Qtr_JPS_Full_Report.pdf)

BSCC. "Jail Profile Survey Third Quarter Calendar Year 2014 Survey Results." Sacramento, CA: State Of California, Board of State And Community Corrections, 2014. [http://www.bscc.ca.gov/downloads/2014\\_3rd\\_Qtr\\_JPS\\_Full\\_Report.pdf](http://www.bscc.ca.gov/downloads/2014_3rd_Qtr_JPS_Full_Report.pdf)

Buser, Mary E. "How Rikers Drove My Innocent Patient to Plead Guilty." *Politico Magazine*, Washington, DC: Politico LLC, October 6, 2015. <http://www.politico.com/magazine/story/2015/10/rikers-island-plea-bargains-213223>

California Department of Justice—Criminal Justice Statistics Center. "Monthly Arrest and Citation Register (MACR) Data Files; CJSC published tables (July 2015). California Dept. of Finance, Race/Ethnic Population with Age and Sex Detail, 1990-1999, 2000-2020 Monthly Arrest and Citation Register (MACR) Data Files; CJSC published tables (July 2015). California Dept. of Finance, Race/Ethnic Population with Age and Sex Detail, 1990-1999, 2000-2020." 2015. <http://www.kidsdata.org/>

Campbell, Anne, John Digiacinto, Stuart Forrest, Jean Fraser, Beth Freeman, Beverly Johnson, John Joy, et al. "San Mateo County Public Safety Realignment Local Implementation Plan." San Mateo County, CA: San Mateo Community Corrections Partnership (CCP), 2012. [http://www.bscc.ca.gov/downloads/San\\_Mateo\\_County\\_2011-2012.pdf](http://www.bscc.ca.gov/downloads/San_Mateo_County_2011-2012.pdf)

Cantil-Sakauye, Chief Justice Tani G. "State of the Judiciary Address to a Joint Session of the California Legislature." March 8, 2016. <http://www.courts.ca.gov/34477.htm>

CJCJ. "Sentencing Practices in California by County, Calendar Year 2013." San Francisco, CA: Center on Juvenile and Criminal Justice (CJCJ), 2014. <http://casi.cjcj.org/data/2013-juvenile.xlsx>

CJI and CSJ. "Pretrial Progress: A Survey of Pretrial Practices and Services in California." Crime & Justice Institute (CJI) and Californians for Safety and Justice (CSJ), August 2015. <http://www.crj.org/cji/entry/pretrial-progress-a-survey-of-pretrial-practices-and-services-in-california>

Cole, George, Christopher Smith, and Christina DeJong. *The American System of Criminal Justice*. 13th ed.: Cengage Learning, 2014.

County of San Mateo Probation Department. "Pretrial Services." County of San Mateo, <http://probation.smcgov.org/pretrial-services>

Demographic Research Unit. "Report E-1 Population Estimates for Cities, Counties, and the State. January 1, 2014 and 2015." Edited by California Department of Finance. Sacramento, CA, 2015. <http://www.dof.ca.gov/research/demographic/reports/estimates/e-1/view.php>

Egelko, Bob. "State's Chief Justice Says Bail System May Unfairly Penalize Poor." *San Francisco Chronicle (SFGate.com)*, March 8, 2016. <http://www.sfgate.com/news/article/State-s-chief-justice-says-bail-system-may-6878356.php>

Erez, Edna, Peter R. Ibarra, and Norman A. Lurie. "Electronic Monitoring of Domestic Violence Cases—A Study of Two Bilateral Programs." *Federal Probation* 68, no. 1 (June 2004).  
<http://www.uscourts.gov/file/3376/download>

Erez, Edna, Peter R. Ibarra, William D. Bales, and Oren M. Gur. "GPS Monitoring Technologies and Domestic Violence: An Evaluation Study." June 2012.  
<https://www.ncjrs.gov/pdffiles1/nij/grants/238910.pdf>

Giraldo, Fernando, Chief Probation Officer. "Pretrial Pilot Program Progress Report to the Santa Cruz Board of Supervisors." Santa Cruz, CA: Santa Cruz County Probation Department, August 3, 2015. [http://sccounty01.co.santa-cruz.ca.us/BDS/Govstream2/Bdsvdata/non\\_legacy\\_2.0/agendas/2015/20150818-666/PDF/020.pdf](http://sccounty01.co.santa-cruz.ca.us/BDS/Govstream2/Bdsvdata/non_legacy_2.0/agendas/2015/20150818-666/PDF/020.pdf)

Harcourt, Bernard E. "Risk as a Proxy for Race: The Dangers of Risk Assessment." *Federal Sentencing Register* 27, no. 4 (April 1, 2015): 237-43. 10.1525/fsr.2015.27.4.237.  
<http://fsr.ucpress.edu/content/ucpfsr/27/4/237.full.pdf>

Harris, Kamala D. "Criminal Justice Statistics Center Statistics: Arrests." Edited by State of California Department of Justice. Sacramento, CA, 2015.  
[https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/stats/arrest\\_data\\_2005-2014.zip](https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/stats/arrest_data_2005-2014.zip)

Henrichson, Christian, and Sarah Galgano. "A Guide to Calculating Justice-System Marginal Costs." New York: Vera Institute of Justice, 2013.  
<http://www.vera.org/sites/default/files/resources/downloads/marginal-costs-guide-fact-sheet.pdf>

Hickey, Megan. "Stark County Judge Defends His Bond Decision for Alleged Canton Nursing Home Killer." TV Broadcast. (Cleveland, OH: Scripps TV Station Group, WEWS/newsnet5.com, December 10, 2015) <http://www.newsnet5.com/news/local-news/oh-stark/stark-county-judge-defends-his-bond-decision-for-alleged-canton-nursing-home-killer>

Holder, Eric. "Attorney General Eric Holder Speaks at the National Symposium on Pretrial Justice." Washington, DC: United States Department of Justice, June 1, 2011.  
<https://www.justice.gov/opa/speech/attorney-general-eric-holder-speaks-national-symposium-pretrial-justice>

Hook, Jim. "New Gadgets Give Offenders on Electronic Monitoring Nowhere to Hide." Harrisburg, PA: WITF, July 6, 2015. <http://www.witf.org/news/2015/07/new-gadgets-give-offenders-on-electronic-monitoring-nowhere-to-hide.php>

Jones, Michael R. "Assessment of the San Mateo County Pretrial Services Program within the Context of the Local Administration of Bail Found in San Mateo County Manager's Reports to the Board of Supervisors, September 8, 2011." San Mateo, CA.: Pretrial Justice Institute, July 2011.  
[bos\\_agenda0913\\_11\\_cmorpt.pdf](http://www.pji.org/bos_agenda0913_11_cmorpt.pdf)

Justice Policy Institute. "Bail Fail: Why the U.S. Should End the Practice of Using Money for Bail." Washington, D.C.: Justice Policy Institute, 2012.  
<http://www.justicepolicy.org/uploads/justicepolicy/documents/bailfail.pdf>

Kennedy, Robert F. "Testimony by Attorney General Robert F. Kennedy on Bail Legislation." In *Subcommittee on Constitutional Rights and Improvements in Judicial Machinery of the Senate Judiciary Committee*. Washington D.C.: Department of Justice Library, August 4, 1964.  
<https://www.justice.gov/sites/default/files/ag/legacy/2011/01/20/08-04-1964.pdf>

Levin, Marc. "Pre-Trial Justice 101: Key Points for Policymakers." Texas Public Policy Foundation, 2016. <http://rightoncrime.com/2015/03/levin-new-report-on-pretrial-justice/>

Lewis, Sukey. "Contra Costa Pretrial Program Offers Relief for Some Who Can't Pay Bail." San Francisco, CA: KQED News, June 3, 2016. [http://ww2.kqed.org/news/2016/05/12/contra-costa-pretrial-program-offers-relief-for-those-who-cant-afford-bail?\\_ga=1.102969856.1615444579.1465462608](http://ww2.kqed.org/news/2016/05/12/contra-costa-pretrial-program-offers-relief-for-those-who-cant-afford-bail?_ga=1.102969856.1615444579.1465462608)

Lewis, Sukey. KQED: Bay Area County Helps Offenders with Alternative to Paid Bail. Podcast Audio. *The California Report*, June 3, 2016.  
<http://audio.californiareport.org/archive/R201606031630/b>.

LJAF. "Developing a National Model for Pretrial Risk Assessment: Research Summary." Houston, TX: Laura and John Arnold Foundation, November 2013.  
[http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-research-summary\\_PSA-Court\\_4\\_1.pdf](http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-research-summary_PSA-Court_4_1.pdf)

Lowenkamp, Christopher T., Marie VanNostrand, and Alexander Holsinger. "The Hidden Costs of Pretrial Detention." Houston, TX: Laura and John Arnold Foundation, November 2013.  
<http://www.pretrial.org/download/research/The Hidden Costs of Pretrial Detention - LJAF 2013.pdf>

Males, Mike, and Daniel Macallair. "Jail Needs Assessment for San Mateo County: A Preliminary Analysis." San Francisco, CA: Center on Juvenile and Criminal Justice (CJCJ), 2011.  
[http://www.cjcj.org/uploads/cjcj/documents/San\\_Mateo\\_County\\_Sentencing\\_Practices\\_and\\_Trends.pdf](http://www.cjcj.org/uploads/cjcj/documents/San_Mateo_County_Sentencing_Practices_and_Trends.pdf)

MGT of America, Inc. "San Mateo County, California, Daily Jail Rate Calculations for the California Department of Corrections Based on Fiscal Year 2014/2016 for Use in Fiscal Year 2015/2016." Sacramento, CA: MGT of America, Inc., 2016.

Miller, Michael E. "An Ohio Man Allegedly Tried to Kill His Ex-wife. When He Got Out on Bail, Police Say He Finished His Crime." *The Washington Post*, December 10, 2015.  
<https://www.washingtonpost.com/news/morning-mix/wp/2015/12/10/an-ohio-man-allegedly-tried-to-kill-his-ex-wife-when-he-got-out-on-bail-police-say-he-finished-his-crime/>

Minton, Todd D., and Zhen Zeng. "Jail Inmates at Midyear 2014." Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, June 2015. <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5299>

National Institute of Justice. "Electronic Monitoring Reduces Recidivism." Edited by Office of Justice Programs U.S. Department of Justice, National Institute of Justice. Washington, DC, September 2011. <https://www.ncjrs.gov/pdffiles1/nij/234460.pdf>

Office of the Attorney General. "Fact Sheet on White House and Justice Department Convening—A Cycle of Incarceration: Prison, Debt, and Bail Practices." News Release, December 3, 2015. <https://www.justice.gov/opa/pr/fact-sheet-white-house-and-justice-department-convening-cycle-incarceration-prison-debt-and>

Open Society Foundations. "Strengthening Pretrial Justice: A Guide to the Effective Use of Indicators." New York: Open Society Foundations, 2015. <https://www.opensocietyfoundations.org/sites/default/files/indicators-pretrial-eng-20160205.pdf>

Pennington, Kenneth. "Innocent until Proven Guilty: The Origins of a Legal Maxim." *The Jurist* 63 (2003): 106-124. <http://scholarship.law.edu/cgi/viewcontent.cgi?article=1169&context=scholar>

Pierce-Danford, Kristy, and Meghan Guevara. "Creating an Effective Pretrial Program: A Toolkit for Practitioners." Oakland, CA: Californians for Safety and Justice, June 2013. <http://www.pretrial.org/download/advocacy/Creating-an-Effective-Pretrial-Program-CJI-2013.pdf>

Pinto, Nick. "The Bail Trap." *New York Times Magazine*, August 13, 2015. <http://nyti.ms/1IJKXjS>

Pretrial Justice Institute. "Risk Assessment Evidence-Based Pretrial Decision-Making." Pretrial Justice Institute, 2016. [http://www.pretrial.org/download/risk-assessment/Risk Assessment.pdf](http://www.pretrial.org/download/risk-assessment/Risk%20Assessment.pdf)

Remedy Bail Bonds. "Crimes Committed While on Bail." California: Remedy Bail Bonds, 2012. <http://remedybail.com/blog/crimes-committed-while-on-bail>

Riverside County Corrections Department. "Full Time Supervised Electronic Confinement Program (SECP)." Riverside, CA: Sheriff's Department of Riverside County, 2016. <http://www.riversidesheriff.org/corrections/release-work-electronic.asp>

San Mateo County Sheriff's Office. "San Mateo County Jails."

Santa Cruz Probation Department. "Public Safety Realignment Santa Cruz County Implementation: A Report from the Santa Cruz County Probation Department 2011-2013." Santa Cruz, CA: Santa Cruz Probation Department, 2014. [http://www.co.santa-cruz.ca.us/portals/0/County/prb/pdfs/rpts/%5CProbRep\\_109\\_final\\_web\\_pg.pdf](http://www.co.santa-cruz.ca.us/portals/0/County/prb/pdfs/rpts/%5CProbRep_109_final_web_pg.pdf)

Schnacke, Timothy R. "Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform." (2014) <http://nicic.gov/Library/files/028360.pdf>

Superior Court, County of San Mateo. "Felony Bail Schedule Effective July 1, 2015 Pursuant to Section 1269b of the Penal Code, and California Rule of Court, Rule 4.102." Edited by County of San Mateo Superior Court. San Mateo, CA: Superior Court, County of San Mateo, 2015. [http://www.sanmateocourt.org/documents/criminal/felony\\_bail\\_schedule.pdf](http://www.sanmateocourt.org/documents/criminal/felony_bail_schedule.pdf)

Tafoya, Sonya. "Assessing the Impact of Bail on California's Jail Population." San Francisco, CA: Public Policy Institute of California, June 2013. [http://www.ppic.org/content/pubs/report/R\\_613STR.pdf](http://www.ppic.org/content/pubs/report/R_613STR.pdf)

Tafoya, Sonya. "Pretrial Detention and Jail Capacity in California." San Francisco, CA: Public Policy Institute of California, July 2015. [http://www.ppic.org/content/pubs/report/R\\_715STR.pdf](http://www.ppic.org/content/pubs/report/R_715STR.pdf)

U.S. Census Bureau. "County Characteristics Datasets: Annual County Resident Population Estimates by Age, Sex, Race, and Hispanic Origin: April 1, 2010 to July 1, 2014." Edited by U.S. Census Bureau. Washington, D.C., 2015. <http://www.census.gov/popest/data/counties/asrh/2014/CC-EST2014-ALLDATA.html>

USLegal. "Pre Trial Detention Law & Legal Definition." USLegal, Inc., <http://definitions.uslegal.com/p/pre-trial-detention/>

Weiser, Benjamin. "Rich Defendants' Request to Judges: Lock Me Up in a Gilded Cage." *New York Times*, June 1, 2016. [http://www.nytimes.com/2016/06/02/nyregion/rich-defendants-request-to-judges-lock-me-up-in-a-gilded-cage.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=second-column-region&region=top-news&WT.nav=top-news&\\_r=1](http://www.nytimes.com/2016/06/02/nyregion/rich-defendants-request-to-judges-lock-me-up-in-a-gilded-cage.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=second-column-region&region=top-news&WT.nav=top-news&_r=1)

Williams, Richard. "Bail or Jail." National Conference of State Legislatures. <http://www.ncsl.org/research/civil-and-criminal-justice/bail-or-jail.aspx>.

Wiseman, Samuel R. "Pretrial Detention and the Right to Be Monitored." *The Yale Law Journal* 123, no. 5 (2014): 1118-625. <http://www.yalelawjournal.org/essay/pretrial-detention-and-the-right-to-be-monitored-c-not-worth-the-cost-the-ineffectiveness-of-money-bail>

## APPENDIX A PRETRIAL RISK-ASSESSMENT TOOLS

In preparation for realignment in 2012, the San Mateo Community Corrections Partnership (CCP) defined evidence-based practice (EBP) in community corrections:<sup>57</sup>

Evidence-Based Practice (EBP) is the use of current research and data to guide policy and practice decisions, such that outcomes for stakeholders are improved. In community corrections, stakeholders include offenders, victims, survivors, and communities. This diagnostic approach, originally used in the health care and social science fields, focuses on the use of empirically tried-and-tested practices with data to show effectiveness rather than through anecdote or professional experience alone.<sup>58</sup>

CCP also pointed out:

Senate Bill 678, the legislation that created the Community Correction Partnership, also created a new statutory emphasis on the use of EBPs within community corrections. The Public Safety Realignment Act repeats this emphasis, explicitly requiring by law the use of EBP. The Act calls on counties to provide “evidenced-based correctional sanctions and programming other than jail incarceration alone or traditional routine probation supervision.”<sup>59</sup>

While these recommendations and laws deal with post-trial issues such as probation, early release, and parole, they nonetheless represent an endorsement of the concepts behind EBP, which may make their application to pretrial matters easier.

The Laura and John Arnold Foundation (LJAF) conducted a research study analyzing 746,525 cases from over 300 jurisdictions in the United States.<sup>60</sup> The research “identified nine factors that were the most predictive— across jurisdictions— for new crime, new violence, and failure to appear.”<sup>61</sup> From this research they developed a risk-assessment tool called Public Safety Assessment-Court (PSA-Court).<sup>62</sup> PSA-Court was tested against 190,000 cases to determine its accuracy and reliability:<sup>63</sup>

The Public Safety Assessment-Court (PSA -Court), [is] a tool that reliably predicts the risk a given defendant will reoffend, commit violent acts, or fail to come back to court with just nine readily available data points. What this means is that there are no time-consuming interviews, no extra staff, and very minimal expense. And it can be applied to every defendant in every case.<sup>64</sup>

---

<sup>57</sup> Community Corrections refers to post-conviction or post-trial offenders.

<sup>58</sup> Campbell et al., "San Mateo County Public Safety Realignment Local Implementation Plan."

<sup>59</sup> Ibid.

<sup>60</sup> Laura and John Arnold Foundation, "Developing a National Model for Pretrial Risk Assessment: Research Summary," p. 3.

<sup>61</sup> Ibid., pp. 3-4.

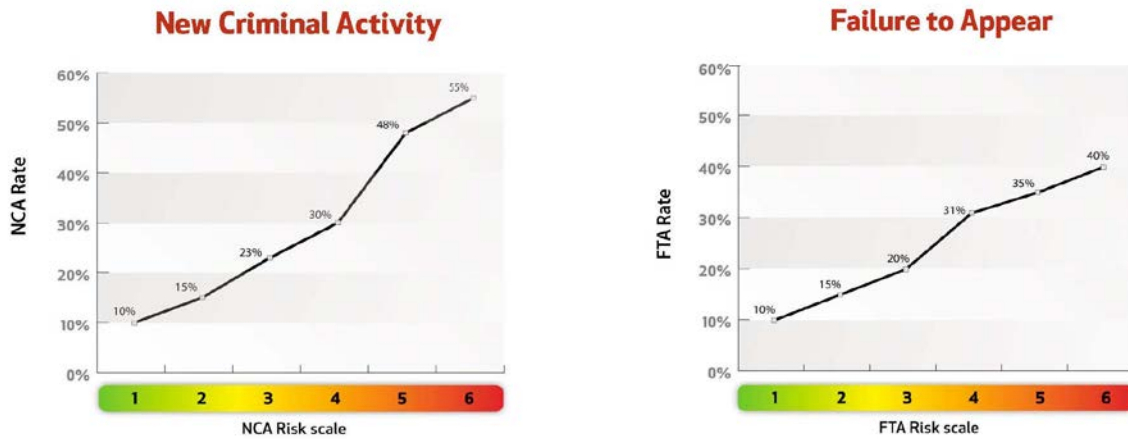
<sup>62</sup> Ibid., p. 4.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

Figure 3, left, shows how, as an individual’s score on the New Criminal Activity (NCA) scale of PSA-Court increases the risk of that person committing a new crime if released rises accordingly. Similarly, Figure 3, right, illustrates that the risk of that person failing to appear in Court rises as a defendant’s score on the Failure to Appear (FTA) scale increases as well.

**Figure 3. PSA-Court Assesses Risk Level**



Source: Laura and John Arnold Foundation<sup>65</sup>

Starting in July 2014, the Santa Cruz County Probation Department began a pilot project evaluating PSA-Court. In an August 2015 memorandum to the Santa Cruz County Board of Supervisors, Fernando Giraldo, Santa Cruz County Chief Probation Officer, provided an evaluation of the project.

The analysis results look good in terms of how well the PSA-Court is classifying Santa Cruz County defendants—the rate of either new criminal activity or failing to appear increases incrementally as defendants move higher on the NCA and failure to appear (FTA) scales. This is exactly how the assessment tool is supposed to work.

Use of the PSA-Court has allowed Pretrial Services to complete significantly more assessments on pretrial defendants. By expanding the criteria to all defendants eligible for pretrial release and use of the non-interview based PSA-Court, we are averaging completion of 219 pretrial assessments monthly, an almost five-fold increase. The number of reports completed monthly has dipped somewhat with the implementation of Prop 47, as such defendants are being released by the Sheriff's Office on Promises to Appear at the time of booking.<sup>66</sup>

<sup>65</sup> Ibid.

<sup>66</sup> Fernando Giraldo, "Pretrial Pilot Program Progress Report to the Santa Cruz Board of Supervisors."



As of July 2015, at least 16 California counties were using Evidence-Based Risk-Assessment Tools:

**Table 1. California Counties Using Evidence-Based Risk-Assessment Tools**

County	Risk Assessment Instrument
Alameda	Ohio Risk Assessment System-Pretrial Assessment Tool (ORAS-PAT)
Contra Costa	Virginia Pretrial Risk Assessment Instrument (VPRAI)
Fresno	VPRAI
Humboldt	ORAS-PAT
Kern	VPRAI
Los Angeles	Wisconsin Modified
Marin	ORAS-PAT
Monterey	ORAS-PAT
Napa	ORAS-PAT
Sacramento	VPRAI
San Francisco	Public Safety Assessment- Court (PSA-Court)
Santa Clara	County-Specific Tool
Santa Cruz	Public Safety Assessment- Court (PSA-Court)
Sonoma	Sonoma Pretrial Risk-Assessment Tool (SPRAT)
Ventura	ORAS-PAT
Yolo	ORAS-PAT

Source: Sonya Tafoya, "Pretrial Detention and Jail Capacity in California."

### Bias in Risk-Assessment Tools

The use of evidence-based risk-assessment tools is not without controversy. ProPublica, an independent, nonprofit news organization, recently published an article entitled "Machine Bias: There's software used across the country to predict future criminals. And it's biased against blacks."<sup>67</sup> Staff at ProPublica analyzed the use of COMPAS, a widely used risk-analysis tool in Broward County, Florida.<sup>68</sup> As the article's title suggests, it found that COMPAS discriminates against blacks in Broward County in a very distinct way.

**Table 2. Prediction Fails Differently for Black Defendants in Broward County, FL<sup>69</sup>**

	White	African American
Labeled Higher Risk, But Didn't Re-Offend	23.5%	44.9%
Labeled Lower Risk, Yet Did Re-Offend	47.7%	28.0%

Source: ProPublica Analysis of data from Broward County, FL.

<sup>67</sup> Angwin et al., "Machine Bias: There's Software Used across the Country to Predict Future Criminals. And It's Biased against Blacks."

<sup>68</sup> Angwin et al., "How We Analyzed the COMPAS Recidivism Algorithm."

<sup>69</sup> Angwin et al., "Machine Bias: There's Software Used across the Country to Predict Future Criminals. And It's Biased against Blacks."

ProPublica concluded:

Our analysis of Northpointe’s tool, called COMPAS (which stands for Correctional Offender Management Profiling for Alternative Sanctions), found that black defendants were far more likely than white defendants to be incorrectly judged to be at a higher risk of recidivism, while white defendants were more likely than black defendants to be incorrectly flagged as low risk.<sup>70</sup>

ProPublica also said it controlled for prior criminal record. However, there are researchers who assert that bias in risk assessment is due to the fact that these tools use prior criminal activity as a variable.<sup>71</sup> Because of the racial imbalance in our prison and jail systems, “risk today has collapsed into prior criminal history, and prior criminal history has become a proxy for race.”<sup>72</sup>

---

<sup>70</sup> Angwin et al., "How We Analyzed the COMPAS Recidivism Algorithm."

<sup>71</sup> Harcourt, "Risk as a Proxy for Race: The Dangers of Risk Assessment."

<sup>72</sup> Ibid.

## APPENDIX B PRETRIAL JUSTICE CENTER FOR COURTS: PRETRIAL RISK ASSESSMENT

The screenshot shows the website for the Pretrial Justice Center for Courts (PJCC), a project of the National Center for State Courts (NCSC). The page is titled "Pretrial Risk Assessment" and features a navigation menu with links for HOME, TOPICS, REFORM ACTIVITIES, NEWS & EVENTS, and ASSISTANCE. The main content area is divided into two sections: "Assessment Instruments" and "Service Providers".

**Assessment Instruments**

Information and resources are provided below for jurisdictions seeking to implement a pretrial risk assessment tool. In no particular order, this section provides information on existing tools and identifies some of the primary providers of pretrial risk assessment tools, development research, and/or implementation support through research, training, software solutions, and/or technical assistance.

- ▣ [COMPAS](#)
- ▣ [ORAS](#)
- ▣ [PTRA](#)
- ▣ [PSA-COURT](#)

**Service Providers**

In addition, several states have developed their own pretrial risk assessment tools and protocols for implementation. (For more information about specific tools developed and/or validated for use in each state, refer to the [State Information](#) page on this site.) In some cases, states found expertise in-house or at a local university create a pretrial risk assessment for statewide use. More commonly, however, states contracted with external organizations for the expertise to develop and validate a tool and associated protocols. Two primary organizations offer expertise for pretrial risk assessment tool development.

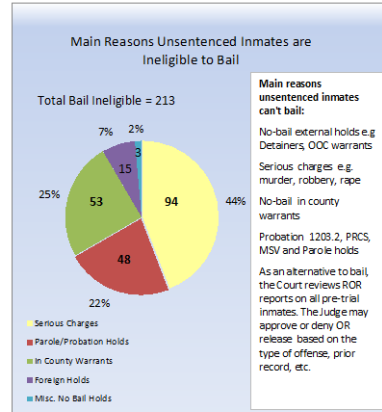
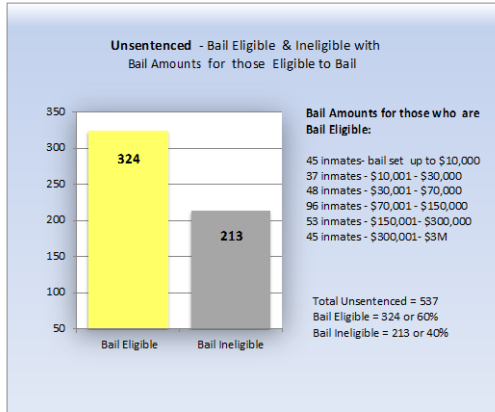
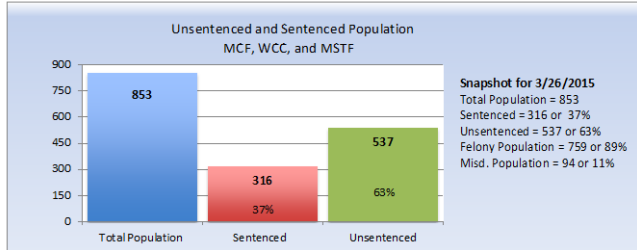
- ▣ [Luminosity, Inc.](#) helped to create the Virginia Pretrial Risk Assessment Instrument (VPRAI) in 2009 and have advised on the development of other pretrial risk assessment tools. Luminosity, Inc. researchers are also currently working to develop a non-proprietary, universal state-level pretrial risk assessment tool with funding from the Arnold Foundation. The tool is expected to be released in October 2013.
- ▣ [The JFA Institute](#) is a non-profit research organization. Researchers at the institute have helped states develop evidence-based criminal justice policies and practices and have been involved in the development or advised on the development of pretrial risk assessment tools in several states.
- ▣ The [Pretrial Justice Institute](#), with advisory support from Marie VanNostrand of Luminosity, Inc. and researchers affiliated with the JFA Institute, recently directed an effort to develop a statewide pretrial risk assessment tool in Colorado. They offer a range of other pretrial technical assistance and training services and post a wealth of other information about effective pretrial programs on their website., with advisory support from Marie VanNostrand of Luminosity, Inc. and researchers affiliated with the JFA Institute, recently directed an effort to develop a statewide pretrial risk assessment tool in Colorado. They offer a range of other pretrial technical assistance and training services and post a wealth of other information about effective pretrial programs on their website.

Source: <http://www.ncsc.org/sitecore/content/Microsites/PJCC/Home/Tools/Pretrial-Risk-Assessment.aspx>

# APPENDIX C SAN MATEO COUNTY CORRECTIONS DEPARTMENT DATA



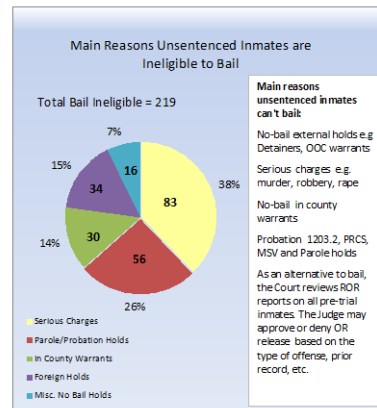
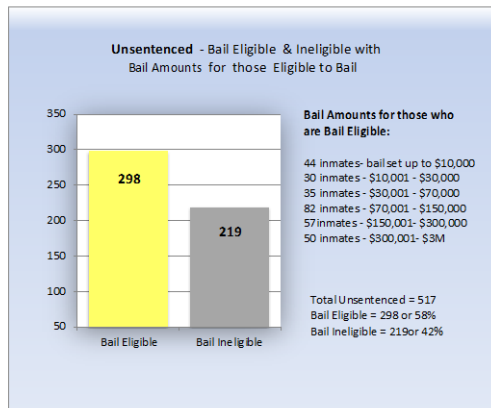
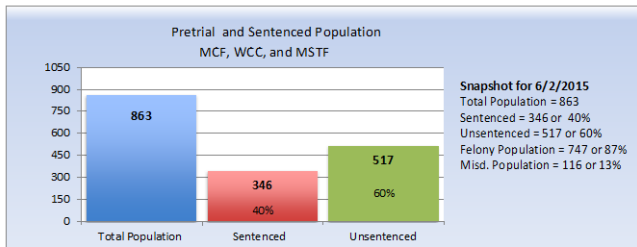
**CORRECTIONS DIVISION**  
 GREG MUNKS SHERIFF  
 TOM GALLAGHER ASSISTANT SHERIFF  
 MARK ROBBINS CAPTAIN



report prepared by K.Irwin 4/2015



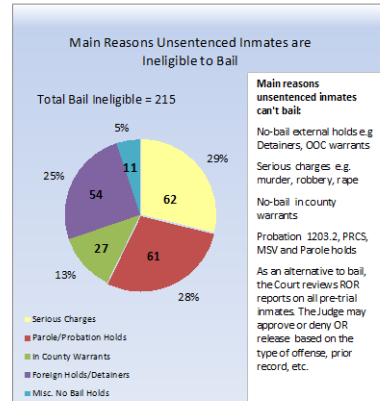
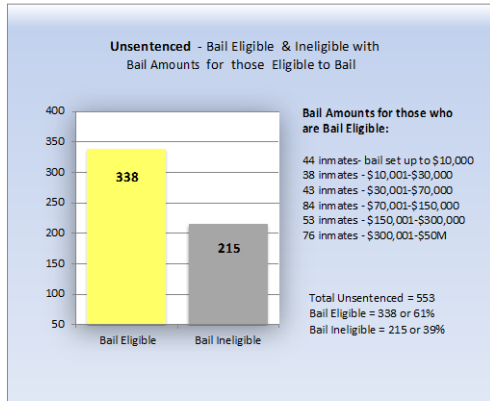
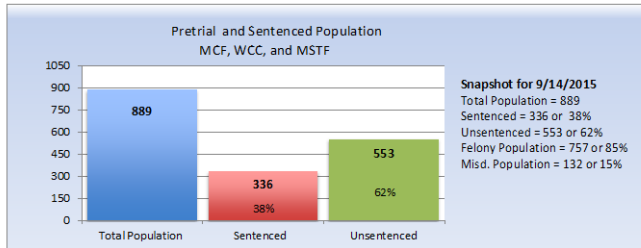
**CORRECTIONS DIVISION**  
 GREG MUNKS SHERIFF  
 TOM GALLAGHER ASSISTANT SHERIFF  
 MARK ROBBINS CAPTAIN



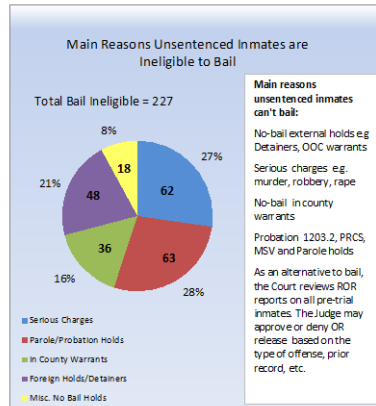
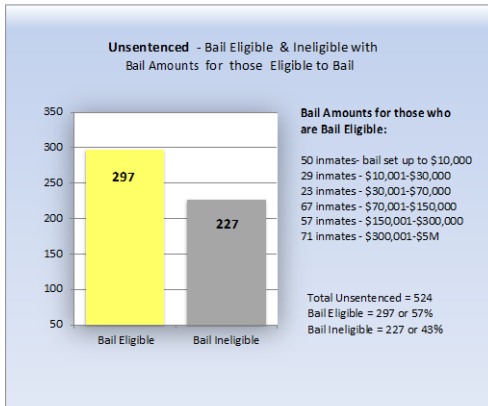
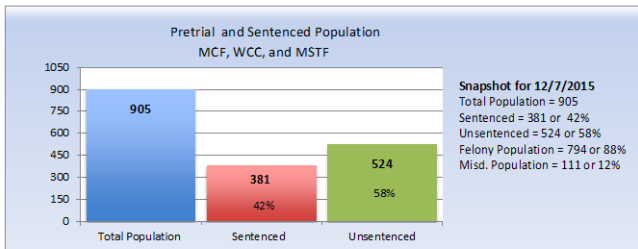
report prepared by K.Irwin 7/2015



**CORRECTIONS DIVISION**  
**GREG MUNKS SHERIFF**  
**TOM GALLAGHER ASSISTANT SHERIFF**  
**MARK ROBBINS CAPTAIN**



**CORRECTIONS DIVISION**  
**GREG MUNKS SHERIFF**  
**TOM GALLAGHER ASSISTANT SHERIFF**  
**MARK ROBBINS CAPTAIN**



report prepared by K. Irvine 12/2015

# A Guide to Calculating Justice-System Marginal Costs

MAY 2013

Fact Sheet

## Glossary

**MARGINAL COST:** The amount of change in total cost when a unit of output changes

**AVERAGE COST:** The total cost of all output divided by total output

**VARIABLE COST:** The cost that changes directly in proportion to output; also called *short-run marginal cost*

**FIXED COST:** The cost that remains constant, even when the output changes

**STEP-FIXED COST:** The cost that remains constant for a certain range of output and changes when output exceeds or falls below a certain threshold

**SHORT-RUN MARGINAL COST:** The cost affected as soon as the output changes; also called *variable cost*

**LONG-RUN MARGINAL COST:** Short-run marginal costs, plus the step-fixed costs that change in the long run as adjustments are made to staffing levels in response to larger changes in output

Justice policies and programs generate taxpayer benefits and costs. If you want an accurate picture of those costs and benefits, you need to understand marginal costs. In cost-benefit analysis (CBA), “marginal” does not mean small or insignificant. It means at the margin of an existing level of operations and describes the cost or benefit that will be realized because of changes in output or workload.

### TYPES OF GOVERNMENT COSTS

The costs of a government agency—or a private firm, for that matter—are said to be variable, fixed, or step-fixed. Identifying these costs is the first step in calculating marginal costs. **Variable costs** are those directly related to workload and change immediately as workload increases or decreases. Examples include overtime, supplies, and fuel. **Fixed costs**—such as rent, utilities, and central administration—remain fixed over a given period and are not usually affected even if the workload changes. **Step-fixed costs** remain constant for a certain range of workload, but change if the workload exceeds or falls below that range. The most common types of step-fixed costs are staff salaries and benefits, which increase when, for example, a prison population or probation caseload exceeds a certain threshold and more staff is needed.

### MARGINAL COSTS IN THE JUSTICE SYSTEM

The **marginal cost** is the amount of change in total cost when a unit of output changes. In the context of the criminal justice system, it is how much the total operating costs of an agency change when workload (such as arrests, court filings, or jail intakes) changes because of a policy or program.

It is critical to use marginal costs in CBA calculations. One fundamental error an analyst can make is to use average costs rather than marginal costs—a mistake that usually results in overestimating the costs related to a policy change.<sup>1</sup> This is because the **average cost** includes fixed costs—such as administration and other overhead costs—that policy changes may not affect.

The difference between average and marginal costs is often considerable. In Massachusetts, for example, the average annual per-inmate cost of incarceration is \$46,000, whereas the marginal cost is \$9,000.<sup>2</sup> The average cost includes costs for administration, utilities, and other expenses that will not change when the prison population decreases slightly. A small change in the population affects

Read the complete guide at [www.vera.org/marginalcosts](http://www.vera.org/marginalcosts)



COST-BENEFIT ANALYSIS UNIT

**For More Information**

The Vera Institute of Justice is an independent nonprofit organization that combines research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety.

The Cost-Benefit Knowledge Bank for Criminal Justice (CBKB) is a project of Vera's Cost-Benefit Analysis Unit and is funded by the U.S. Department of Justice's Bureau of Justice Assistance. CBKB helps to broaden the knowledge base of practitioners and policymakers about criminal justice cost-benefit analysis, deepen the knowledge and practice in this area, and support practitioners in building their capacity to promote, use, and interpret cost-benefit analysis in criminal justice settings.

For more information, please visit the CBKB website at [cbkb.org](http://cbkb.org) or contact Tina Chiu at 212-376-3038 or [tchiu@vera.org](mailto:tchiu@vera.org).

itoring, Apprehending, Registering, and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Vera Institute of Justice  
233 Broadway, 12th Floor  
New York, NY 10279  
Tel: (212) 334-1300  
Fax: (212) 941-9407

Washington DC Office  
1100 First St. NE, Suite 950  
Washington, DC 20002  
Tel: (202) 465-8900  
Fax: (202) 408-1972

New Orleans Office  
546 Carondelet St.  
New Orleans, LA 70130  
Tel: (504) 593-0937  
Fax: (212) 941-9407

Los Angeles Office  
707 Wilshire Blvd., Suite 3850  
Los Angeles, CA 90017  
Tel: (213) 223-2442  
Fax: (213) 955-9250



## APPENDIX E COST ANALYSIS OF SAN MATEO COUNTY JAILS

The County Jails receive revenue from a number of sources including the State and Federal Government. In FY 2014-2015 the jails received \$15.9 million in revenue. Subtracting the revenue from the costs, the net cost to San Mateo County taxpayers was \$48.6 million, which was over \$56,000 per inmate. This net cost is called Net County Cost (NCC).

Table 3 shows the County costs to run the jails in FY 2014-2015. The data was provided to the Grand Jury in three sections. The first section included costs for the Maguire Men's Correctional Facility (MCF), the second for the Women's Correctional Center (WCC), and the third for expenses shared between the Men's and Women's facilities.

**Table 3. FY 2014-2015 San Mateo County Jails Revenue and Expense**

	Revenue	Expense	Net County Cost*
Maguire Men's Correctional Facility (MCF)	\$10,519,965	\$44,021,763	\$33,501,798
Women's Correctional Center (WCC)	\$1,495,833	\$6,211,466	\$4,715,633
Shared by MCF and WCC	\$3,935,298	\$14,331,355	\$10,396,057
Consolidated: MCF + WCC + Shared	\$15,951,096	\$64,564,584	\$48,613,487
Per Inmate	\$18,548	\$75,075	\$56,527
Per Inmate per Day	\$51	\$206 <sup>†</sup>	\$155

*Source:* Accounting data provided by the San Mateo County Controller's Office

\*Net County Cost = Expense minus Revenue

†In a report on jail rate calculations for San Mateo County Jails, the per inmate per day cost for the Men's Correctional Facility was \$200.43 and for the Women's Correction Facility it was \$253.29.<sup>73</sup>

The Grand Jury cannot accurately project cost savings to the County from reducing the number of unsentenced inmates housed in the County jail system because calculating marginal cost savings is a complex accounting process.

### Fixed Costs

To get an estimate what it would cost if the jail population increased by 100, the \$75,000 cost per inmate/per year could simply be multiplied by 100, giving an additional cost of \$7,500,000. Following this method would, however, result in an overestimate of the costs.

The reason for this is that some costs are fixed; they do not change with changes in inmate population. For example, the personnel cost (salaries, bonuses, benefits) for the most senior

<sup>73</sup> MGT of America Inc., "San Mateo County, California Daily Jail Rate Calculations for the California Department of Corrections Based on Fiscal Year 2014/2016 for Use in Fiscal Year 2015/2016."



corrections officers would stay the same. There will only be one division captain regardless of the size of the jail population. Another example of a fixed cost that does not change with the jail population would be the interest on the bonds used to build the Maguire Jail.

To get a realistic estimate of what it would cost if the jail population increased by 100, these fixed costs would need to be subtracted.

### Variable Costs

There are costs that would increase if the jail population increased by 100. Food costs is a good example. The cost to feed all the inmates will rise and fall with changes in the jail population. Some other examples would be medical expenses, overtime if there are not enough guards to fill normal shifts, and clothing for the new inmates.

### Step-Fixed Costs

Some costs do not go up right away; they will rise in steps. For example, if a guard could supervise 5-10 inmates at any given time, then if there were 15 guards, they would be able to supervise 75 to 150 inmates.<sup>74</sup> Once the number of inmates started to get close to 150 inmates, the jail would likely need to hire a new guard. These kinds of costs are called step-fixed because they remain the same for a while as the population rises, which makes them fixed costs for a while, but then periodically increase or step up. So they are called step-fixed costs.

Net County Cost or total cost per inmate are useful for comparing one county to another, but they are not as useful for estimating how costs increase or decrease as the jail population changes.

Variable cost per inmate is a good way to estimate cost changes for small changes in the jail population because those costs, such as food and clothing, vary directly with the number of inmates.

The sum of variable costs and step-fixed costs per inmate would be a good estimator for large increases or decreases in jail population where the step up in expenses come into play.

The terms *variable*, *fixed*, and *step-fixed* were developed by the Vera Institute for use in the methodology they developed to estimate costs when jail populations change.<sup>75</sup> Table 4 shows some of their examples of expenses in the various categories.

---

<sup>74</sup> These numbers were selected to keep the math simple. The Grand Jury does not know what the actual ratios are for the San Mateo County Jails.

<sup>75</sup> Henrichson and Galgano, "A Guide to Calculating Justice-System Marginal Costs."

**Table 4. Vera Institute Jail Expense Categories**

<b>VARIABLE</b>	<b>FIXED</b>	<b>STEP-FIXED</b>
<ul style="list-style-type: none"> <li>• Overtime</li> <li>• Supplies</li> <li>• Contracted services</li> <li>• Client subsidies</li> <li>• Travel</li> <li>• Fuel</li> <li>• Food</li> </ul>	<ul style="list-style-type: none"> <li>• Rent</li> <li>• Utilities</li> <li>• Central administration (human resource, fiscal, legal, etc.)</li> <li>• Debt service</li> <li>• Equipment</li> </ul>	<ul style="list-style-type: none"> <li>• Staff salaries</li> <li>• Fringe benefits, such as health care and pension contributions</li> <li>• Possibly some fixed costs when staffing levels change by a large amount</li> </ul>

*Source:* Henrichson and Galgano, "A Guide to Calculating Justice-System Marginal Costs."

**San Mateo County Jail Illustration**

The Grand Jury took the accounting data provided by the San Mateo County Controller’s Office and placed them into the Vera categories (see Table 4). These results should be viewed as an illustration of how the Vera methodology might be applied to San Mateo County jail expenses. A more reliable result requires study and analysis by County finance and corrections experts.

**Table 5. FY 2014-2015 San Mateo County Jail Expenses by Vera Category**

Expense Type	Fixed	Step-Fixed	Variable	Total Expenses
Shared	\$11,588,018	\$2,740,135	\$3,202	\$14,331,355
Maguire	\$3,166,219	\$36,154,230	\$4,701,313	\$44,021,763
Women's	\$371,340	\$5,350,090	\$490,037	\$6,211,466
Total Expenses	\$15,125,577	\$44,244,455	\$5,194,552	\$64,564,584
Total/Inmate	\$17,588	\$51,447	\$6,040	\$75,075
Total/Inmate/Day	\$48	\$141	\$17	\$206
Percent of Total	23%	69%	8%	100%

*Source:* Grand Jury Analysis.

Using these allocations as an illustration, the cost to San Mateo County taxpayers to keep 336 bail-eligible, unsentenced individuals in jail would be \$25.2 million before Revenue and \$18.2 million after Revenue. The maximum savings would be calculated as 336 inmates times \$57,487 (step-fixed + variable expenses) equals about \$19.3 million.

APPENDIX F CURRENT MEMBERS OF THE SAN MATEO COUNTY COMMUNITY CORRECTIONS PARTNERSHIP (CCP), AS OF MAY 12, 2016

John T Keene,\* Chair, Chief Probation Officer, San Mateo County  
Adrienne Tissier, Member, San Mateo County Board of Supervisors  
Steve Wagstaffe,\* San Mateo County District Attorney  
Becky Arredondo, Victims' Representative, San Mateo County District Attorney's Office  
Louise Rogers, Chief, San Mateo County Health System  
Iliana Rodriguez,\* Director, San Mateo County Human Services Agency  
Stephen Kaplan, Director, Behavioral Health and Recovery Services  
Jennifer Valencia, Employment Services, Human Services Agency  
Rodina Catalano,\* Court Executive Officer, San Mateo County Superior Court  
John Digiacinto,\* Chief Defender, Private Defender's Program  
Susan Manheimer,\* Chief, City of San Mateo Police Department  
Karen Francone, Service League of San Mateo County  
Greg Munks,\* San Mateo County Sheriff  
Anne Campbell, Superintendent of Schools, County Office of Education

\*Executive Committee Members

Issued: July 11, 2016

APPROVED BY  
BOARD OF SUPERVISORS

OCT 04 2016

CLERK OF BOARD  
BY *Julianne P.* DEPUTY



COUNTY OF SAN MATEO  
Inter-Departmental Correspondence  
County Manager's Office



Date: August 31, 2016  
Board Meeting Date: October 4, 2016  
Special Notice / Hearing: None  
Vote Required: Majority

To: Honorable Board of Supervisors

From: John L. Maltbie, County Manager

Subject: Board of Supervisors' Response to the 2015-2016 Civil Grand Jury Report, "Innocent Until Proven Guilty? Bail Practices in San Mateo County"

**RECOMMENDATION:**

Approve the Board of Supervisors' response to the 2015-2016 Grand Jury Report, "Innocent Until Proven Guilty? Bail Practices in San Mateo County."

**BACKGROUND:**

On July 11, 2016, the 2015-2016 San Mateo County Civil Grand Jury issued a report titled "Innocent Until Proven Guilty? Bail Practices in San Mateo County." Pursuant to the California Penal Code, the Board of Supervisors is required to submit comments on the findings and recommendations pertaining to the matters over which it has some decision making authority within 90 days of the issuance of the report. Therefore, the Board's response to the report is due to the Presiding Judge of the Civil Grand Jury, the Honorable Joseph C. Scott, no later than October 11, 2016.

**DISCUSSION:**

The Grand Jury made six findings and two recommendations in its report. Each finding and recommendation, along with County staff's recommended response, is set forth below:

**FINDINGS**

**Finding 1:**

In FY 2014-2015, San Mateo County spent \$64.6 million, or about \$75,000 per inmate, to run the Men's and Women's Jails. About 67% of inmates were unsentenced, and 53% of these unsentenced inmates were eligible for bail but remained in jail because they could not afford bail. The incarceration of unsentenced inmates was a considerable cost to County taxpayers.

**Response:**

Partially Disagree. The County does not collect data on why inmates do not post bail. If convicted, the pretrial time in custody is credited towards inmates' sentences.

**Finding 2:**

Jail is highly disruptive to inmates and their families.

**Response:**

Agree; as is crime to victims and their families.

**Finding 3:**

Incarcerating people solely because they cannot afford bail is inconsistent with the fundamental principle of "innocent until proven guilty."

**Response:**

Partially disagree. Pursuant to state law that is controlled by federal and state constitutional principles, bail is determined by the trial Court on a graduated basis; generally, the more serious the crime, the higher the bail, unless the crime is so severe and the risks to public safety and/or flight are so great that bail is not granted.

The County notes that the incarceration of individuals charged with a crime is directly related to public safety. Bail is set by the Superior Court (an agency separate and apart from the County) based on the seriousness of the crime and is used as a method to ensure an individual's appearance in court. State law already mandates those charged with misdemeanor crimes be released on their promise to appear, without being required to post bail, subject to certain exceptions. The passage of Proposition 47 changed a number of non-violent crimes previously classified as felonies to misdemeanors (Proposition 47 offenses include crimes such as possession of heroin). Individuals arrested on Proposition 47 offenses are therefore now eligible for pre-trial release without being required to post bail.

Eighty-six percent of the individuals currently incarcerated in San Mateo County are in custody for felony offenses.

**Finding 4:**

Pretrial tools such as evidence-based risk-assessment tools and electronic monitoring have been deployed by counties in California and have the potential to reduce jail populations, mitigate community risk, improve court appearance, and save taxpayers money.

**Response:**

Agree.



**Finding 5:**

According to interviews with senior Probation Department staff, the department's Pretrial Services recommendations are typically followed only 30% of the time.

**Response:**

Agree.

**Finding 6:**

The County's budgeting and reporting systems make it difficult to estimate what changes in inmate population will cost.

**Response:**

Wholly disagree. These calculations have little bearing on the County's budgeting and reporting systems. The County is fully aware of how much it costs to operate the two main jails, the juvenile hall, and the Boys Camp. If one were to provide an exact figure on how much the population of any of those facilities were to decrease, the County could provide a reasonably good estimate of what the cost savings would be. The issue is more about determining how much the inmate populations would actually decrease with the expanded use of risk assessment tools, electronic monitoring (EM), release on own recognizance (OR), and other pre-trial release programs. For adult inmates in particular, the Court has historically granted EM and OR far less than what the Sheriff's risk assessment data would indicate.

Similarly, while the jail population does have an impact on the costs of operating a correctional facility, there are other factors that must be considered. The greatest costs associated with the operation of the correctional facility are personnel costs. There are State standards and safety standards that must still be met that require staffing levels to be maintained.

The annual cost of incarceration per inmate is \$75,000 and includes all operational costs of the facility, including housing, medical/mental health treatment, and programming. Therefore the release of an inmate does not translate to a savings of \$75,000 annually.

## RECOMMENDATIONS

**Recommendation 1:**

The San Mateo County Board of Supervisors should direct the Probation Department Pretrial Services to evaluate and recommend various alternatives to pretrial incarceration, including but not limited to evidence-based risk-assessment tools and electronic monitoring.

- The Probation Department should present its evaluation and recommendations to the Board of Supervisors by June 30, 2017.

- As part of the evaluation and recommendation process, the Probation Department should receive input from members of the San Mateo County Community Corrections Partnership (CCP), as well as from criminal trial judges.

**Response:**

The recommendation has not been implemented, but will be implemented in the future. The Probation Department is currently working with the Arnold Foundation to implement a Public Safety Assessment (PSA) pretrial tool. This foundation is currently collaborating with approximately 20 jurisdictions across the country, including the Santa Cruz County Probation Department, to implement the PSA. Although there are a number of pretrial risk assessment tools available, the Probation Department feels that since the PSA is being utilized in a Bay Area county, with a similar population as San Mateo County, it will be the best suited tool to be implemented for San Mateo County. Unfortunately, there is no definite timeline for when the Probation Department will be included in the Arnold Foundation PSA implementation. The Probation Department is currently in the pre-selection stage on the Arnold Foundation's waitlist. Should the timetable for implementation hasten, the Probation Department is prepared to shift direction towards a different tool. Probation staff will continue to monitor and update the Board if there are any updates.

The Probation Department will also explore options of implementing electronic monitoring for the pretrial population. However, further analysis should be done on the type of electronic monitoring to be implemented. There are various types and degree of electronic monitoring equipment and supervision and a deeper look into what equipment and use is a better fit for the pretrial population is necessary.

It is important to note that in order to fully implement a risk assessment tool as well as electronic monitoring for the Probation Department's Pretrial Services Unit, there has to be discussions about rebuilding the unit to meet these new programs. The Probation Department will need to evaluate the funding and fiscal support needed to make these recommendations possible.

While the Community Corrections Partnership primarily addresses issues related to the supervision of felony probationers, we intend to consult with our partners, particularly the Courts and Sheriff's Office, along with other departments and community partners during the evaluation and recommendation process. The Probation Department can present its progress and any evaluation findings regarding the above mentioned matters to the Board of Supervisors by June 30, 2017.

Acceptance of the report contributes to the Shared Vision 2025 outcome of a Collaborative Community by ensuring that all Grand Jury findings and recommendations are thoroughly reviewed by the appropriate County departments and that, when appropriate, process improvements are made to improve the quality and efficiency of services provided to the public and other agencies.

**FISCAL IMPACT:**

There is no Net County Cost associated with accepting this report.





**COUNTY OF SAN MATEO**  
**OFFICE OF THE CONTROLLER**

Juan Raigoza  
Controller

Shirley Tourel  
Assistant Controller

555 County Center, 4th Floor  
Redwood City, CA 94063  
650-363-4777  
<http://controller.smcgov.org>

September 8, 2016

The Honorable Joseph C. Scott  
Judge of the Superior Court  
c/o Charlene Kresevich  
Hall of Justice  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655

Dear Judge Scott:

Re: Grand Jury Report – “Innocent Until Proven Guilty? Bail Practices in San Mateo County”

On July 11, 2016, the Grand Jury issued the “Innocent Until Proven Guilty? Bail Practices in San Mateo County” report that included a recommendation to the County Controller. This letter provides the Controller’s Office response to the Grand Jury’s recommendation.

**Recommendation**

The Controller’s Office should provide an annual analysis beginning in FY 2016-17 of the total costs to run the County’s jails including estimates of how costs will vary with changes in the jail population. The first annual report should be completed and presented at a public meeting to the Board of Supervisors by September 1, 2017.

**Controller’s Office Response**

Agreed. The Grand Jury Report requests that the Controller’s Office provide cost analysis reports to the Board of Supervisors (Board). Upon the Board’s request, the Controller’s Office will request the assistance of the County Manager’s Office and the Sheriff’s Office to prepare and provide the recommended report.

Please let me know if you have any questions. Thank you.

Sincerely,

Juan Raigoza  
Controller

cc: San Mateo County Board of Supervisors  
John Maltbie, County Manager  
Carlos Bolanos, Sheriff  
Rodina M. Catalano, Court Executive Officer  
Charlene Kresevich, Court Administrative Assistant