CRIMINAL JUSTICE REFORM IN NEW JERSEY

A Case Study in the Elements Involved in Instituting Major Changes in a Statewide Court System
OUR TIME TOGETHER TODAY...

We are looking to give you

- Some background on bail reform around the Country;
- A quick primer on the structure of the New Jersey Court System;
- A review of the elements needed to effect a major change in a statewide system;
- An understanding of the key role of an evidence-based approach in effecting change in a system; and
- An understanding of the methods and importance of communicating change in a system, especially in a system comprised of multiple independent partners.
Some points from Tim Murray’s presentation at the last mid-year conference (available on the NACM website video archive, Keynote Address: Pretrial Justice Reforms: A National Perspective)

- The view by many that crime has a price, bond is payment, compliance is financially rewarded, bonds are effective, and judicial intuition works well
- Bail sends a message ("we got this"), incapacitates, draws a line in the sand
- There is a greater likelihood of re-offense for low risk defendants jailed prior to disposition of their case vs. those not jailed
- A seemingly minor bail decision ends up having profound effects on the provision of justice, often the time sentenced matches the time served…
- The use of risk based decision making has long been established in insurance, health, defense, and other fields, so it should be palatable to the public.
WHY BAIL REFORM?

The negative effects of pre-trial detention

- Loss of employment
- Loss of custody of children
- Loss of housing
- Effects on family members who have to take on responsibilities of the defendant
- Some have died (“The Bail Trap,” New York Times 8/16/15)
- Pressure to plea just to get out
WHY BAIL REFORM?

It hits a core value of the court system – Fairness
- It does not appear fair that low risk defendants who have little resources are likely to stay in jail pre-disposition, when high risk defendants who do have adequate resources are allowed out of jail simply because they can afford it.

It makes fiscal sense
- 77% of the increase in the jail population around the country since 1990 is from unconvicted defendants.
- In 2010 $9 Billion was spent on pre-trial defendants (ABA 2011)

It is working
- After significant reform in D.C., they found that of the 80% of defendants released without bail, 88% make all court appearances and 88% are not rearrested prior to disposition of the case
BAIL REFORM NATIONAL MOMENTUM

The Federal Government has had a pre-trial agency since 1982. In 2003 it was estimated that more then 300 jurisdictions had PTS programs (Clarke and Henry).

A poll found that 70% of Americans prefer using risk assessment over monetary bail.

In February of 2012 the Conference of Chief Justices and the Conference of State Court Administrators formed a National Taskforce on Fines, Fees, and Bail Practices.

According to a brief put out by the Pretrial Justice Center for Courts, as of December 2015, more than 20 sites have adopted or in the process of implementing the Public Safety Assessment tool including: the States of Arizona and Kentucky (NJ will be the third); and local jurisdictions in California, Florida, Illinois, North Carolina, Ohio, Pennsylvania, Washington, and Wisconsin. New Mexico is looking for a change to their constitution to move toward risk based release.

The US and the Philippines are the only countries that permit widespread use of commercial bail bonds. (2012-2013 Policy Paper Evidence-Based Pretrial Release, Conference of State Court Administrators)
SO THAT IS THE “WHY”

Any questions, thoughts??
THE NEW JERSEY COURT SYSTEM — JUST THE BASICS

Unified Court System
21 Counties organized into 15 Vicinages
Over 500 municipalities
Criminal, Family, Civil, Probation Divisions

Municipal Judges/Courts are answerable to the Assignment Judge, a Municipal Presiding Judge, and a Municipal Division Manager
THE ELEMENTS NEEDED TO EFFECT A MAJOR CHANGE IN A STATEWIDE SYSTEM

Vision
An Evidence-Based Approach
The Identification and Implementation of Scientifically Valid Processes
The Retooling of Procedures and Personnel
Quality Control
Effective and Efficient Integration of Information Technology
An Effective Communication Strategy
So how do you get folks excited, motivated, focused...

The vision you propose must be worthy, it must appeal to our sense of justice, of why we went into this field

Connection to larger movement...

Needs to rest on principals

- Innocent until proven guilty
- Right to a speedy trial
- Movement to a philosophy of least restrictive mode of monitoring
CREATING THE VISION

2013 report – New Jersey Jail Population Analysis, by Marie VanNostrand, PhD (provided by Luminosity in partnership with the Drug Policy Alliance)

Supreme Court Committee of System Partners (est. June 2013) provided 27 recommendations March 2014
- Defendants be released on objective measures of risk, and monitored by PTS
- Bail largely eliminated
- State Constitution should be altered to allow for preventive detention

New Speedy Trial Rules
New Law 8/11/14
Change to the New Jersey Constitution
THE VISION THEN IS TO HAVE A COURT SYSTEM THAT BETTER REFLECTS OUR BELIEF IN FAIRNESS AND JUSTICE

A strong vision is probably always desirable, but when you are dealing with system partners you don’t control, it is an absolute necessity

The perception of the public is important.

Questions/Comments?
AN EVIDENCED-BASED APPROACH

You need data to show that you have the problem – Data is what you will need to convince the stakeholders that change is required.

Convincing stakeholders that action is needed can be difficult, but once on board, you need to take care that the next steps are measured.

You don’t want to waste your efforts and the opportunity for change that you have created, with poorly targeted or ineffective programs.
AN EVIDENCED-BASED APPROACH

The Jail Population Analysis detailed the current situation

- Total Jail population on any given day 15,000
- 73% of total population is pretrial MC or SC
- 38.5% of the population were held only because they couldn’t post their bail amount
- 12% of the county jail population throughout the state consisted of individuals who could not post $2,500 or less bail
- Indicated inmates had been in custody on average 314 days
- Backlog
  - 41% of municipal cases were in backlog status
  - 53% of pre-ind cases were in backlog status
  - 45% of post-ind cases were in backlog status
Focusing on only valid considerations, risk of FTA, risk of re-offense, and risk of violence

The risk assessment instrument is required to be objective, standardized and developed based on an analysis of empirical data and risk factors relevant to the risk of failure to appear and danger to the community. N.J.S.A. 2A:162-25(c1)

The Arnold Foundation’s risk assessment instrument (1.5M cases from 300 different jurisdictions) was then retrospectively validated by Dr. VanNostrand using New Jersey data

- Found to be race and gender neutral
- Two factors – rearrest and FTA, with a violence indicator
- Molded into a Decision Making Framework that provides suggested conditions of release for judges

A Response Grid will be created for infractions of conditions
ONCE SCIENTIFICALLY VALID PROCESSES ARE IDENTIFIED THE WORK OF THE MANAGERS BEGINS

We need to figure out how to effectively harness the instruments and processes that have been proven effective.

This is where knowledge of the system, the tools readily available, and the nimbleness of the system have to be brought to bear.
THE RETOOLING OF PROCEDURES AND PERSONNEL

The retooling and creation of procedures
- Front loading identification
- 48 hours to make a decision on release
- Weekend video/telephonic hearings with Jd, attorneys, and court staff
- Central Judicial Processing / Centralized First Appearances
- Preventative detention motions and hearings
- Overhaul of Court Rules for Criminal and Municipal Courts
THE RETOOLING OF PROCEDURES AND PERSONNEL

The repurposing of personnel
  • Not as much as first thought

Gradual transition away from tradition bail

PTS roles still forming
  • Minimum amount monitoring necessary
  • Monitoring not supervising
  • Some field work, drug testing, GPS, but limited

Creation of monitoring procedures and policies
TIRED YET? EXHAUSTION IS NOT AN OPTION 😊

Project management skills paramount

Must keep everyone focused on the vision to ensure momentum is not lost
QUALITY CONTROL

Certainly there is a vision, but there is a law that must be followed…

Have to ensure the new law’s provisions are covered

Need to ensure the intent of the law is fulfilled
  - “This is not going to be probation”

Need to ensure a consistent approach is used throughout the State
EFFECTIVE AND EFFICIENT INTEGRATION OF INFORMATION TECHNOLOGY

Creation of the Pretrial Services system

- Livescan, NCIC, CCIS, P/G, FACTS, ACS, Risk Assessment, eCourts
- There are a couple of potentially difficult aspects to this (including out-of-state records)

In KY PTS staff provides analysis of records to supplement the risk scores, however in NJ there is an expectation of a much greater reliance on the technology
AN EFFECTIVE COMMUNICATION STRATEGY

Need to emphasize why we are doing this

Selling evidence based practices to a skeptical audiences such as law enforcement and Judge’s, who feel the ultimate responsibility for release decisions

Need to advocate for some increased resources from system partners.

When to bring in other stakeholders

- Hit some items on a one by one basis (e.g., CJP done separate)
- Hit on what is positive for the partners

Annual report to the Legislature, Press Releases, Internal web page, training video vignettes, live presentations (each county, Bar Association, Judicial and Staff Colleges, and community groups), broadcast emails, FAQ brochure, Newsletters, Op-eds, Criminal Justice Reform Toolkit
CHALLENGES ALONG THE WAY

Educating ourselves about PTS
- Site visits (DC, Philadelphia, KY, AZ)

Structuring the initiative staff
- “Big Bail”
- “Little Bail”
- Central Office Staff
- Committees
  - HR
  - Monitoring
  - Ad hoc
Where in the current structure of the Judiciary do you place this unit, Criminal or Probation?

Pilot
- Unsure on how much staff time will be needed
- Unsure on how many cases will need preventative detention hearings and how long they will take

The Law allows for a lot of conditions vs. what research says is effective
CHALLENGES ALONG THE WAY

Buy-in
- Getting judges to buy in and accept a system that reduces their discretion
- Getting the public to buy in and accept a new system that will be releasing a lot more defendants, possible pressure from this on prosecutors
- Getting partner agencies to step up in a timely manner
  - As of June 17th still waiting on guidelines for law enforcement to follow from the AG
- Need to remind others this is a legislative initiative not a judiciary initiative
CHALLENGES ALONG THE WAY

Bail is not dead yet…

- The legislature wrote the bill 😊 (i.e., bail on summons FTA cases)
- “Old” bails on current cases charged prior to 1/1/17
- Bail industry will be greatly effected

Everyone (on a warrant) will now have to go to Jail for processing and that can take up to 48 hours on weekends. This will effect those 13,000 individuals a year (AOC estimate) who used to pay bail prior to hitting the Jail. Offset by less warrants, but still some will see a day or two of jail who wouldn’t have otherwise.
CHALLENGES ALONG THE WAY

Large reliance on Information Technology
- Use of Livescan and then computer algorithm matching to records
- Running of risk assessment
- Leveraging eCourts to create the new PTS system
- Weekend videoconference for Release determinations and some First Appearances

Weekend shifts
- IT needs
- Partner agencies staffing concerns
- PTS staff, judges, IT staff

Limited funding
- Fees were increased (effective 11/17/2014), but not necessarily enough $22M vs. the $35M estimated by the Judiciary
CHALLENGES ALONG THE WAY

Courthouses were already full..

- Traffic flow
- 24/7 nature
- Drug testing and other facility dependent items...
- Staff space
PROJECT STATUS

Some rule changes already in effect
Centralized First Appearances Statewide
“Pilots”
Hirings
1/1/17 implementation

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