



IDENTIFYING AND ADDRESSING PRETRIAL NEEDS

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Executive Summary

Through the investigation of four critical questions, this fact sheet summarizes the existing research regarding the needs of people going through the pretrial process, including their commonly identified needs, how their needs differ across subgroups, and the role of the pretrial system in addressing these needs. In addition, this fact sheet identifies salient gaps in knowledge and outlines new directions for the pretrial field.

Below are some key takeaways from the fact sheet:

- Currently, there is no standard definition of the pretrial population across jurisdictions, and limited statistics available regarding the demographic make-up and distinct needs of this group.
- Based on the statistics that are available, people impacted by the pretrial system experience significantly higher rates of health, social, and economic issues than the general population. These include, but are not limited to, mental health, trauma and victimization, substance use, and homelessness.
- There are promising pretrial initiatives across the country that aim to identify and address unmet needs, such as pre-arraignment screenings and assessments, court helplines, and referrals to supportive services.
- More research is needed in the pretrial field to identify and address needs, as well as to understand how treating these needs may impact pretrial outcomes.

Further research and understanding on pretrial needs may help strengthen existing interventions, improve pretrial outcomes, reduce unnecessary pretrial detention, and support community well-being.

Why Language Matters: The Use of Person-Centered Language

Throughout this fact sheet, the authors strive to use person-centered language. Person-centered language refers to wording that focuses on the person’s humanity, rather than labeling them by their situation, condition, or diagnosis. Person-centered language is increasingly used in the mental health and substance use fields but has been slower to gain traction in the criminal legal system. Person-centered language helps to avoid the conscious or unconscious marginalization and dehumanization of people through language. Reliance on non-person-centered language, particularly for people involved in the legal system, can produce and reinforce stigma. This can contribute to exclusion from social and economic resources and services, which is likely to impact a person’s health and wellbeing.¹ Words such as “criminal”, “defendant”, and “arrestee” fail to acknowledge an individual’s personhood and reinforce existing stereotypes about people impacted by the legal system.

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1. How is the pretrial population defined, and what is the general make-up of people going through the pretrial system?

Pretrial Population Definition

The pretrial population refers to people who are awaiting trial. This is a broad category, and one that often differs by jurisdiction.¹ Typically, this includes people who are:

- Released on their own recognizance (ROR)
- Released with nonmonetary conditions (e.g., supervision, electronic monitoring, travel restrictions, etc.)
- Released with monetary conditions, also referred to as cash bail
- Detained with a “hold” on their release through probation, parole, or U.S. Immigration and Customs Enforcement (ICE)
- Held with monetary conditions
- Remanded

National Pretrial Statistics

There are limited national statistics available regarding people impacted by the pretrial system. According to the Bureau of Justice Statistics’ (BJS) [2019 report](#), there are several major hurdles to producing pretrial data on a national level.ⁱⁱ First, because multiple agencies are involved in the arrest-to-arraignment process, it is challenging to identify the appropriate data source for the pretrial case processing information. Second, jurisdictions regularly lack the resources and information technology capacity to collect and produce summary data. Finally, even among agencies that can consistently collect this information, they often use differing case management systems, which cannot connect with one another or produce results that are not comparable across jurisdictions.

BJS recently announced the new [National Pretrial Reporting Program \(NPRP\)](#), a project which will expand on past data collection and include a sample of the 200 largest counties, with a focus on pretrial release and detention. Data collection in the 75 largest counties is set to start in early 2022. BJS previously funded NPRP, which collected pretrial release national data on people charged with felonies in the largest 75 counties, and the program was later expanded through the State Court Processing Statistics series to collect additional case processing information. However, due to concerns of cost and representativeness, the initiative was halted in 2009.

The national pretrial data that are available are not representative of the entire population. Rather, they center almost exclusively on specific subsets of the pretrial population, such as people who are detained and/or charged with felonies. These data typically focus on shifts in jail volume,² as well as the considerable racial and ethnic disparities in pretrial jail admissions and release rates.³ For example, the pretrial jail population has almost quadrupled in size since 1980ⁱⁱⁱ, and Black people are disproportionately incarcerated in local jails.^{iv}

¹ According to the Bureau of Justice Statistics’ 2019 report, there is no consistent way to define the pretrial population across jurisdictions, making comparisons from one county to another nearly impossible.^{xi}

² Research shows that there was a dramatic spike in the detained pretrial population between 1970 and 2015, in part due to the increased use of monetary bail.^{xii} However, the jail incarceration rate decreased 13% from 2008-2019.^{xiii} In 2020, the national jail population decreased for the first half of the year due to COVID-19, but began increasing again in the second half.^{xiii}

³ There are significant racial and ethnic disparities in the detained pretrial population, with Black and Hispanic people accounting for a disproportionate share of those held pretrial^{xiv} and of the entire population incarcerated in local jails.^{xiv} Even though there was a dramatic decrease in the jail population in the first half of 2020, one study found release rates were not uniform across groups. Release rates of Black men declined 4% during the pandemic, while release rates among all other race and gender subgroups increased an average of 2%.^{xvi}

In contrast to national data, there are statistics available regarding the pretrial population in New York State due to the passage of the 2019 bail legislation. Beginning in July 2021, the new law requires the Division of Criminal Justice Services (DCJS) and the Office of Court Administration (OCA) to routinely release information to the public on various aspects related to the pretrial phase of each case, including demographic information and release decisions, among other case-related data.

New York State Pretrial Statistics

According to the first publicly available report, from January to December of 2020:

Gender⁴



Race



Ethnicity⁵



Age



Nationally and across jurisdictions, there is still much to learn regarding the general make-up of the pretrial population, including basic demographic information and distinct needs. Particularly with the increased use of pretrial supervision, as certain states move away from their reliance on monetary bail, understanding the basic characteristics of the different subsets of the pretrial population, as well as the similarities and differences between them, will be essential to tailoring equitable data-driven interventions.

⁴ While sex assigned at birth is a medical term to classify people as female, male or intersex, gender identity refers to a person's internal sense of self, which can be the same or different than their sex. There are many terms, particularly used by people in the LGBTQ+ community, to describe where a person falls along the gender spectrum, such as gender-nonconforming, transgender, non-binary, man, woman, etc.^{xvii}

⁵ There is no single definition of Hispanic; rather, the definition has shifted over the years and remains a self-identified category in most surveys including the census. The term Hispanic can refer to people of any race, ancestry, or origin. Additionally, the term Latinx is considered in some settings to be an inclusive alternative to Hispanic.^{xviii}

⁶ From 2018-2019, the number of people on pretrial supervision increased by 10%. Substance use treatment and testing increased 1% from 2018-2019 and was ordered for 42% of people supervised, while substance use testing alone (without treatment) was ordered for 13% of people supervised, which was a 1% decrease from 2018.^{xix}

2. What are the dynamic needs of people going through the pretrial process?

Given the challenges regarding national pretrial data collection and reporting, little information is available on pretrial needs. Of the data that are available, they come primarily from studies on people who are in jails, which includes people detained post-conviction, in addition to those detained pretrial. Most reports do not distinguish between the two populations; however, it is estimated that roughly 65% of people jailed are pretrial.^v Research on needs also often rely on combined jail and prison reports, which represent distinct populations and include both people detained pretrial and post-conviction.

Despite its skewed representation, the research that is available suggests a complex range of needs, with people in the pretrial system experiencing significantly higher rates of health, social, and economic issues than the general population. Among those detained in jail and prison, women identify and report more needs than men.^{vi} The relationship between individual needs, and the relationship between unmet needs, recidivism, and court appearance rates, are overlapping and multi-faceted; while some unmet needs are not typically correlated with pretrial outcomes (e.g., mental health), addressing them can contribute to the success of interventions for related needs, which have been found to reduce recidivism, promote court appearance, and support community well-being.^{vii} The following are identified needs in the literature:

Static vs. Dynamic Risk Factors

Static risk factors are the features of a person's history that are used to predict recidivism but cannot be changed and are not amenable to deliberate intervention, such as prior offenses.

Conversely, **dynamic risk factors** are potentially changeable factors, such as substance misuse, unemployment, and negative peer associations.ⁱ



Mental Health



There is significant research documenting the mental health needs of the jail population. For example, **in 2005, the Bureau of Justice Statistics reported that 64% of people held in jails had a mental health problem.**^{viii 7} While percentages of people in jails and prisons with serious mental illness differ considerably across jurisdictions, one study found that approximately 1 in 5 people held in jails had a serious mental illness; the study's authors note this estimate is likely to be conservative.^{ix 8}

Co-Occurring Disorder



There is a high prevalence of comorbidity between substance use disorders and other mental illnesses.⁹ In the criminal legal context, one study indicates that a quarter (24.4%) of people held in prison and jails have both a substance use disorder and a co-occurring mental health problem.^x Research has found that women who are incarcerated in jails and prisons are significantly more likely to have co-occurring substance use and mental health disorders (40.5% vs. 22.9%) than men.^{xi}

Substance Use



One study indicates that people held in prison and jails are 7 times likelier than people in the general population to have a substance use disorder.^{xii} Using national data, the Prison Policy Institute found that in 2017 over half (52%) of people arrested multiple times reported a substance use disorder in the past year. In contrast, 36% of people arrested once and 7% of people not arrested reported a substance use disorder in the past year. When comparing the rates of substance use by gender, one study found that women who are incarcerated are slightly more likely to have a substance use disorder than men who are incarcerated in jails and prisons (66.1% vs. 64.3%).^{xiii 10}

Trauma, Victimization, and Abuse



Lifetime exposure to trauma is substantial among people impacted by the criminal legal system.^{xiv} In fact, reported rates of traumatic experiences are so high, particularly among those with serious mental illness, that the Substance Abuse and Mental Health Services Association (SAMHSA) considers trauma to be an almost universal experience.^{xv} Although trauma and post-traumatic stress disorder prevalence rates vary by study and sample, research indicates that the rates of victimization and trauma among women impacted by the criminal legal system are higher than those of men.^{11 12}

⁷ A recent national study found that nearly all jails (95.7%) surveyed reported having some people with serious mental illness.ⁱⁱ

⁸ New York City's Riker's Island Jail, the Los Angeles County Jail, and Chicago's Cook County Jail each hold more people with mental illness than any remaining psychiatric hospital in the United States.ⁱⁱⁱ

⁹ The complexity of this relationship makes it difficult to determine cause and effect; the association is considered to be bidirectional in that they may develop independently of one another, or one may cause or exacerbate the other.ⁱⁱⁱ

¹⁰ A study investigating the needs of people jailed at Riker's Island found that, among individuals who are frequently incarcerated, 83.5% reported crack or cocaine use, 36.6% report heroin or opiate use, and 22.1% reported alcohol use requiring alcohol withdrawal treatment.^{iv}

¹¹ One study of men in jail and prison found that 33% of them met the lifetime diagnostic criteria for PTSD and 21% met current criteria.^{lv} Another study that addressed the prevalence of PTSD among incarcerated women found that 68% of incarcerated women had current or lifetime PTSD, 48% had PTSD, and 20% met the criteria at some other point in their lifetimes.^{lvi} Additionally, 87% reported one or more past traumatic event and 40% reported childhood sexual abuse. In a separate study of women who were incarcerated, 99% reported experiencing at least one traumatic event in their lives.^{lvii}

¹² Prior to incarceration, women are 7 times more likely to have experienced sexual abuse and 4 times more likely to have experienced physical abuse compared to men.^{lviii}

Education

One national survey of people arrested and jailed found that in 2017, 66% of people with multiple arrests had no more than a high school education, compared to 51% of those who were arrested once and 33% of people who had no arrests in the past year.^{xvi}



Healthcare

A 2017 national report found that people arrested and jailed over 3 times were more likely to be uninsured (27%) compared to those with no arrests in the past year (8%) and were only slightly more likely to be uninsured than people arrested just once (23%).^{xvii}



Homelessness

People experiencing homelessness and housing insecurity report histories of arrest and incarceration more often than the general public.^{xviii} A 2008 national study found that recent homelessness was 7.5 to 11.3 times more common among people in jail than in the general population.^{xix} One report documented that more than 25% of people experiencing homelessness reported being arrested for activities that were a direct result of their homelessness.^{xx} A systematic review found that 63%–90% of individuals experiencing homelessness with severe mental illness had been arrested at least once, 28%–80% had been convicted of a crime, and 48%–67% had been incarcerated.^{xxi 13}



Poverty/Indigence

Many people in the pretrial population experience poverty and indigence. In a national survey of people in jail in 2002, 59% reported a monthly income of less than \$1,000 and 19% reported no income.^{xxii} A more recent national survey found that in 2017 nearly half (49%) of people with multiple arrests in the past year had individual incomes below \$10,000 per year, while 36% of people arrested only once and 21% of people who had no arrests had incomes below \$10,000.^{xxiii 14}



Employment

Employment is also an unmet need for people in the pretrial population. In 2002, approximately 29% of people held in jail reported they were unemployed at the time of their arrest.^{xxiv} A more recent report found that in 2017 people with multiple arrests were 4 times more likely to be unemployed (15%) than those with no arrests in the year prior (4%).^{xxv}



Youth-Specific Needs

Young people involved in the criminal legal system experience a wide array of needs. For example, one meta-analysis examining datasets from juvenile justice probation, detention, and corrections programs found that as many as 70% of young people involved in the criminal legal system have a diagnosable mental health problem.^{xxvi} Another study reported that children who had been abused or neglected were more likely to be arrested as youth (27% versus 17%), adults (42% versus 33%), and for a violent crime (18% versus 14%).^{xxvii}



¹³ While it is challenging to compare rates of criminal legal contact among the general homeless population, given that most studies on homeless populations do not typically exclude individuals with mental illnesses, one review analyzed data from two studies for homeless participants with and without severe mental illnesses and found there were similar rates of involvement with the system.

¹⁴ One study found that across all race and gender groups, indigence was a significant predictor of court appearance. The authors suggest this may be due to challenges associated with accessing necessary transportation to appear in court.^{ix}

Needs of People Released Pretrial

Very few statistics are available on the pretrial population needs outside of jail and prison reports. One unique study investigated the needs of a more wide-ranging sample of the pretrial population and examined whether these needs were related to pretrial outcomes.^{xxviii} Citing the lack of existing research on pretrial needs and the emerging research on women's unique pathways to crime, the study investigated these needs within a gender-responsive framework.¹⁵ The authors discovered that substance misuse, mental health¹⁶, and homelessness were strongly correlated with court appearance. This is significant because **once a need is found to be predictive, there is a strong basis for intervention.**^{xxix} Additionally, the report examined needs by gender and found that they were substantially different.¹⁷

Another study, currently undergoing analysis, examined the needs of people released pretrial. [The Wellness Project](#), launched by CJA during the COVID-19 pandemic, provided voluntary referrals to supports and services for people released pretrial in New York City. Preliminary results from the project indicate that referrals for food and employment were the most frequently identified need.

Needs of People Under Supervision

There is still much to learn about the needs of people on pretrial supervision, particularly as pretrial supervision practices differ dramatically nationwide. An evaluation of New York City's pretrial supervision providers found that, compared to other jurisdictions, the City's programs focused strongly on case management, counseling, and referrals to basic services.^{xxx} ¹⁸ Furthermore, the evaluation identified that over 25% of people enrolled in pretrial supervision were referred to services, with employment and vocational programs¹⁹ as the most common referral. Other referrals included substance use treatment, mental health services, educational programs, and housing programs/shelters.²⁰

The Center for Court Innovation (CCI), a pretrial service provider in New York City, developed and validated a risk and needs assessment, [the Criminal Court Assessment Tool \(C-CAT\)](#), utilized for their pretrial supervision population. The report found that supervised clientele had high rates of impulsivity²¹, criminal thinking, legal cynicism, and mental health problems²² and trauma.²³ Participants also identified numerous needs: substance misuse (52%), unemployment (48%), education deficits²⁴ (36%), and housing (12%).

Additional research is needed to understand how addressing both logistical (e.g., transportation, employment obligation, childcare, etc.) and hidden barriers (e.g., anticipatory anxiety/fears, mistrust of court system, etc.) may prevent people from attending court and impact court attendance rates. Greater insight into both the concrete and hidden needs would likely advance the field's understanding of how to improve pretrial outcomes and support people impacted by the criminal legal system.

¹⁵ The study compared "Gender Neutral Needs" (criminal history, employment status, educational need, and substance misuse) and "Gender Responsive Needs" (abuse, trauma, mental health, and homelessness, as well as an additional "strength": family support) across men, women, and the entire sample.

¹⁶ The correlation between mental health and court appearance for men and women (and court appearance, new arrest, and both for women) counters existing research, where mental health is not considered a strong correlate.^{ix} While the authors note this could be because of differing methodology and definitions of mental health, it may also be because most of the previous research has focused on the male population or samples that were not disaggregated by gender.^{ix}

¹⁷ The report concluded that gender-responsive needs tended to be more predictive for women than for men. In many instances, these needs were as strong or stronger than static criminal history variables. However, for men, while none of the gender-responsive factors improved the prediction of arrests, there were modest correlations between substance misuse and all outcomes. Additionally, gender-responsive variables were correlated with men's court appearance; the correlations were especially strong for the homelessness scale.

¹⁸ The referrals to services were voluntary and were not mandated as part of their release requirements.

¹⁹ Roughly 41% reported they were engaged full time in employment, school, training, or caretaking at the time of their arrests.

²⁰ About 1 in 10 people on pretrial supervision reported living in unstable housing, such as in shelters or transitional living residences, or living on the streets.

²¹ More than half of the respondents agreed or strongly agreed that they have "trouble resisting cravings" (57%) and "often act without thinking" (52%).

²² More than a third of the sample had received a mental health or psychiatric diagnosis, 25% had been hospitalized in the past for mental health reasons, and 19% were in mental health treatment at the time of the interview.

²³ Nearly one in five respondents (18%) reported a suicide attempt. Additionally, 22% screened positive for PTSD. About one-third (34%) of people reported having witnessed a shooting in their lifetime, 23% reported a history of physical abuse, and 15% reported a history of sexual abuse.

²⁴ In this study, 27% of people reported a history of special education or services, 19% reported that they were diagnosed with a learning disability, and more than half (51%) reported that they were suspended or expelled from school at some point.

3. What are the best practices for identifying and addressing the needs of the pretrial population?

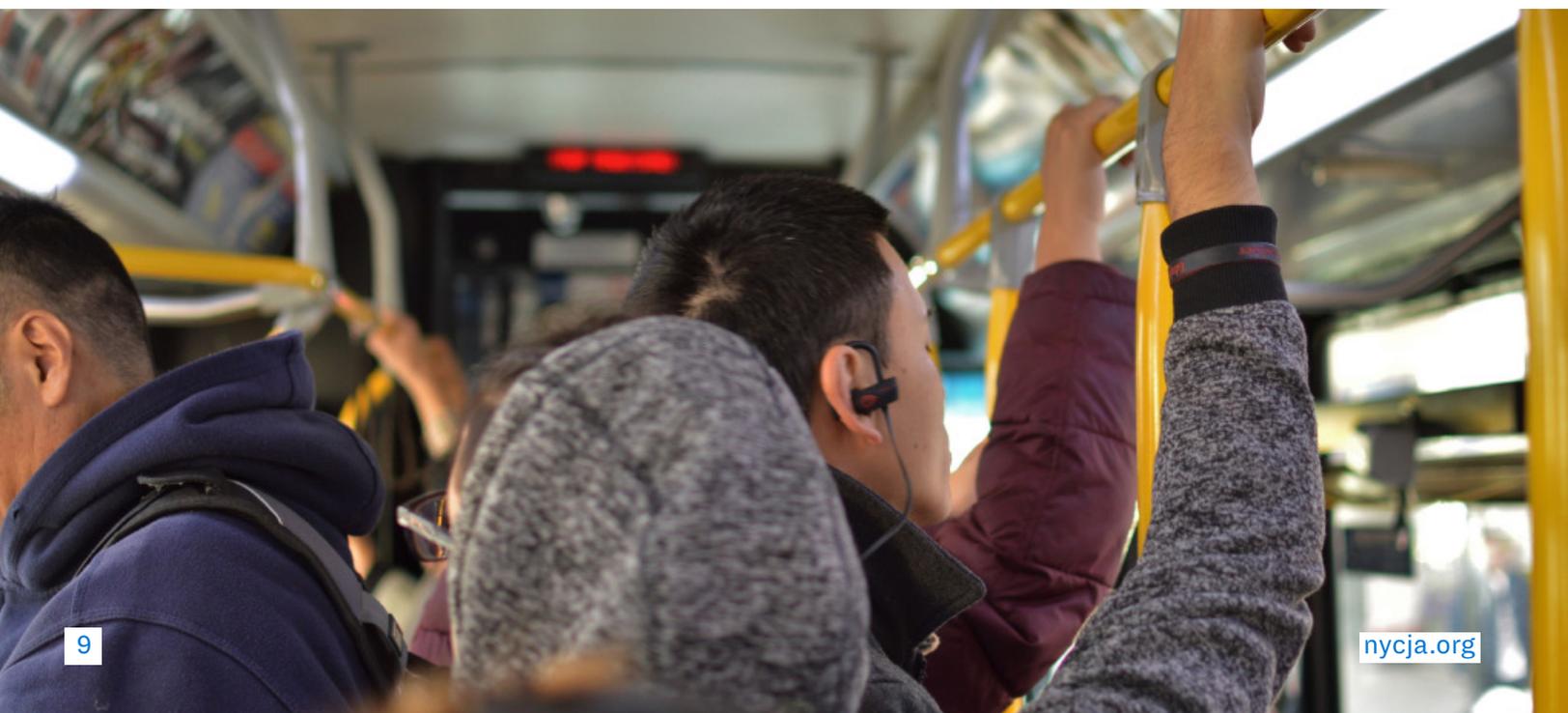
From arrest to disposition, there are various opportunities where pretrial staff can assess needs and intervene accordingly. This includes pre-arraignment screenings or assessments (e.g., [New York City's Enhanced Pre-Arraignment Screening Unit \(EPASU\)](#) or post-arraignment). Below are several best practices, separated by people who are ROR'd, released under supervision, and detained on bail or remand.

Identifying and Addressing the Needs of People who have been ROR'd

People who are ROR'd are not typically offered additional supports beyond notification to assist them in returning to court. However, some jurisdictions provide voluntary assistance, which can take several forms. In some cases, this is through a [court helpline](#), where staff are available to answer questions related to their court date, courthouse location, attorney information, or local service referrals. Another form of voluntary support is sometimes provided by [social workers who partner with public defense attorneys](#) and are available to discuss needs and possible referrals with their clients. Finally, some organizations, like [The Liberty Fund](#) in New York City, have staff members present in court to meet with recently arraigned people to discuss potential needs and/or barriers to returning to court.

Promising Practice in New York City

Prior to COVID-19, CJA piloted a short-term voluntary initiative called the [Court Appearance Support Project](#), where CJA's pretrial staff offered a post-arraignment meeting with people who were just released on their own recognizance to discuss any barriers that might prevent them from returning to court (e.g., transportation, childcare, etc.) and identify possible solutions. As part of the pilot, CJA staff provided personal planning calls to participants two weeks and one week prior to their court date. Preliminary findings indicated that 87% of people who participated in the post-arraignment meeting agreed to a planning call. Moreover, **the intervention was associated with a 32% reduction in missed court appearance among those who participated.**



Identifying and Addressing the Needs of People Released Under Supervision

People who are released under supervision are required to meet with program staff on a regular basis where they are typically provided with court reminders, case management services, and referrals to voluntary supports (e.g., housing, mental health, employment, etc.). Supervision staff often rely on clinical assessments and screening tools to determine voluntary service needs.

In addition, jurisdictions frequently employ decision-matrices to determine supervision level based on the person's charge information and risk score.^{xxxix} However, **these assessments do not identify people's needs, which when addressed may contribute to their success under supervision.** There are existing risk and needs assessments, but most are comprehensive and require clinical expertise to administer and interpret, which make them a challenge to use in high-volume court settings. To address this gap, CCI implements the [C-CAT](#).^{xxxix} Grounded in the Risk-Needs-Responsivity model, the C-CAT includes static and dynamic factors found to improve accurate classification of risk and that can be targeted for interventions to reduce future involvement in the criminal legal system.

The absence of using empirically based assessments can lead to inappropriate placement or **overburdening individuals with unnecessary treatment and excessive sanctions that can result in negative pretrial outcomes** (e.g., missed court appearance). As pretrial supervision, mandated programming, and conditional release are restrictions on pretrial liberty, they should only be enacted when they are proven to be necessary to prevent flight (or secure community safety, depending on state statute). Additionally, program staff must reassess risk and needs over time, as the specific factors that contribute to pretrial outcomes may change. For example, a client's substance use may change over the course of their engagement with the program.

In addition to risk and need assessments like the C-CAT, jurisdictions with sufficient resources often rely on screening tools for specific needs, such as the [Modified Mini Screen](#), [CRAFT](#), and [Patient Health Questionnaire \(PHQ-9\)](#), which identify co-occurring disorders, adolescent substance use, and depression respectively. When program staff identify client needs through screening and assessment, they make referrals to local service providers and use techniques, such as [motivational interviewing](#), to support clients in fulfilling their goals. In certain instances, judges will request program staff to administer an assessment for a specific need and provide a recommendation regarding treatment.

Identifying and Addressing the Needs of People who are Detained on Bail or Remand

Research indicates that people who are incarcerated pretrial have a wide array of social, economic, and health needs that impact their pretrial outcomes. While this is of serious concern, addressing these needs is typically outside the responsibility and capability of pretrial services agencies. This often falls under the purview of jail staff. However, **there are unique ways that pretrial staff can support people who are detained and bridge the gap.** For example, CJA's [Bail Expediting \(BEX\) Program](#) supports people who have bail set by contacting their potential sureties and accelerating the release process.

²⁵ The Risk-Needs-Responsivity (RNR) model is the primary theoretical framework to assess and rehabilitate individuals involved in the criminal legal system. The risk principle explains that a person's chances of recidivism can be reduced if the level of treatment provided is proportional to their risk of re-offending. While "risk" determines how much treatment is required, "needs" determines what areas to target. This includes "criminogenic needs", the needs associated with recidivism, as well as non-criminogenic needs (e.g., mental health and homelessness), which are not typically associated with recidivism, but interfere with rehabilitation and must be stabilized prior to the implementation of other interventions. The third prong of the RNR model, "responsivity", offers guidance on how to provide treatment. There are two main components of the responsivity principle: 1) general responsivity, which states that effective interventions tend to be based on cognitive, behavioral, and social learning theories, and 2) specific responsivity, which suggests adapting interventions to the biological, social, and psychological characteristics of the individual.

²⁶ Static risk factors are the features of a person's history that are used to predict recidivism but cannot be changed and are not amenable to deliberate intervention, such as prior offenses. Conversely, dynamic risk factors are potentially changeable factors, such as substance misuse, unemployment, and negative peer associations.^{lxiii}

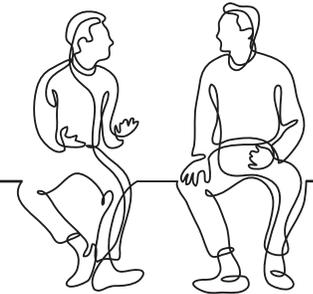
Identifying and Addressing Needs through General Stakeholder Training

Given the prevalence of trauma and mental illness among people involved in the criminal legal system, there have been growing calls for criminal legal stakeholders, such as judges, court personnel, and treatment providers, to receive training.

The following are trainings that are offered to support stakeholders:

Mental Health:

There has been a concerted effort in the last 20 years to address the overrepresentation of people with serious mental illness in the criminal legal system.^{xxxiii} Driven in part by legislative mandates, these interventions have included diversion programs, treatment courts, and mental health training for police and correction officers.^{xxxiv}



Trauma:

The concept of trauma-informed care, or a trauma-informed system, was initially developed in [2001](#) and later advanced by the Substance Abuse and Mental Health Services Administration (SAMHSA). This approach requires all staff – across an institution — to have a basic understanding of trauma and its impact, as well as to respond with evidence-based best practices and resist further revictimization of both clients and staff.

SAMHSA's Trauma Approach

SAMHSA provides guidance for implementing a trauma-informed approach across 10 different domains:

1. Governance and leadership
2. Policy
3. Physical environment
4. Engagement and involvement
5. Cross sector collaboration
6. Screening, assessment, and treatment services
7. Training and workforce development
8. Progress monitoring and quality assurance
9. Financing
10. Evaluation

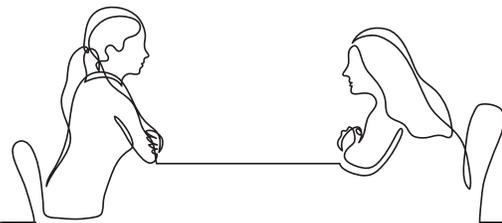
SAMHSA has outlined six key principles of a trauma approach:

1. Considerations of safety
2. Trustworthiness and transparency
3. Peer support
4. Collaboration and mutuality
5. Empowerment, voice and choice
6. Cultural, historical, and gender issues

Developing a trauma-informed approach may require systematic change at multiple levels.

Gender Responsivity and LGBTQ+:

Women represent a growing proportion of the population impacted by the criminal legal system; despite this, criminal legal policies and practices have historically been created with men in mind.^{xxxv} Moreover, LGBTQ+ people are over-surveilled, over-criminalized, and overrepresented in the pretrial population, and come with their own set of distinct needs.²⁸ To address this, advocates have pushed for a gender-responsive and trauma-informed approach that factors in the discrete experiences and needs of women and LGBTQ+ people; there are multiple evidence-based programs for [women](#) and additional trainings for legal stakeholders on working with [LGBTQ+ communities](#) that have been tailored to fill this gap.²⁹



Youth:

Over the past couple decades, psychology and neuroscience research has shed light on how the development of the brain has serious implications for adolescent behavior.³⁰ In fact, **the Supreme Court has used social science on developmental immaturity to determine that adolescences who commit criminal offenses are less culpable and more likely to reform than their adult counterparts.**^{xxxvi} Given young people's unique stage of development, there is a great need for specialized training for judges, lawyers, and other system actors.³¹

²⁷ Recent research has raised concerns related to disparate impacts across gender and racial and ethnic groups. While validation studies have begun to examine the predictive accuracy by gender and race, due to small sample sizes, this study was unable to analyze the predictive validity by race and gender.

²⁸ The 2011-2012 National Inmate Survey found that LGB people are incarcerated at a rate over three times that of the total adult population. This disparity is primarily determined by queer women.^{lxiii}

²⁹ In a 5-year, 14-site study on women and violence, researchers found that services were more effective when they were gender-specific, including trauma survivors in the planning process, and relying on integrative care (e.g., treating mental health, substance use, and trauma together vs. as isolated issues).^{lxiv}

³⁰ The frontal areas of the brain, responsible for executive functioning skills like decision-making, judgement, and regulating inhibition, do not finish developing until a person is around twenty-five years old. Furthermore, during adolescence people experience increased impulsivity and intensified reactions to emotional stimuli.^{lxv} As a youth develops, their decision-making capacity typically improves, reducing the likelihood they will engage in risk-taking behavior. Studies show that the prevalence of criminal offending behavior tends to peak in the teenage years and begins waning in the early twenties.^{lxvi}

³¹ Research has established the importance of developmentally appropriate and trauma-informed interventions for criminally involved youth.^{lxvii}

4. What are additional unanswered questions or future directions for the pretrial field?

There are many gaps in knowledge about people in the pretrial population and their distinct needs. Much of the extant literature that is available centers on people who are detained or incarcerated, as their data (e.g., health records, interviews, etc.) are collected and maintained by the jail or prison personnel. Upon reviewing the literature, the following are several spaces where greater insight is needed:

1. To better understand the pretrial population and improve pretrial outcomes, the field will benefit from a standard definition of the pretrial population. Currently, some jurisdictions include traffic cases in their pretrial population, while others only refer to people detained and awaiting trial. A uniform definition might enable researchers to better aggregate findings, accurately compare available statistics across jurisdictions, and allow for improved systemization.^{xxxvii} A national pretrial entity, like the new National Pretrial Reporting Program, may be best suited to propose a universal definition.
2. The pretrial field lacks national demographic data regarding people going through the pretrial process, particularly those who have been released and those mandated to supervision. This limits the field greatly; without these statistics, it is challenging to identify the differences and similarities across groups. Additional demographic data would likely support research that may help further the development of interventions to improve pretrial outcomes and improve racial, ethnic, and gender disparities.
3. More research is needed to identify the respective needs of the different subsets that make up the pretrial population. While research shows that people impacted by the criminal legal system have more needs than those in the general population, including higher rates of trauma, victimization, poverty, mental health and substance use disorders, there is a paucity of studies that explore how needs compare across subtypes, the frequency and severity of these needs, as well as how these needs are related to pretrial outcomes.
4. Once needs are identified, there remains the issue of how best to respond, which party is best suited to respond, or whether it is the responsibility of the pretrial system to respond at all. There is little research on when it is appropriate to mandate conditions to meet a need or if needs are better met under voluntary conditions or through community providers. However, in circumstances where intervention is appropriate, additional research is required to better understand the least restrictive interventions or strategies that successfully meet the needs of the individual.
5. Perhaps the most significant question that remains is how treating the needs of people in the pretrial population affects pretrial outcomes (e.g., court appearance), as well as other long-term impacts. Pretrial agencies typically assess risk through evaluating static factors, such as criminal history or current charge information. However, this practice does not consider a person's needs, which may be relevant to pretrial outcomes. Because pretrial assessments are designed to inform (not replace) judicial decision-making and discretion, identifying individual needs helps to put the results into an appropriate framework. Dynamic risk and needs assessments, which identify the likelihood that a person with certain characteristics may return to court and/or recidivate, as well as to identify and notify practitioners of that person's needs, may be a future direction for the pretrial field.^{xxxviii} **Research indicates that when dynamic factors (e.g., substance use) are identified and addressed, participants are more likely to succeed pretrial.** Additional research is needed to learn more about these findings, and to explore understudied needs, such as transportation, childcare, food assistance, and housing.

The future of the pretrial field hinges on both the quality and rigor of its research.^{xxxix} It is critical for researchers to investigate these unanswered questions to better support people going through the pretrial process, increase court appearance, reduce unnecessary pretrial detention, and support community well-being.

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