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NAPSA 2019!

Rebooting Pretrial Services in San Diego County

Presented at [NAPSA 2019](#)

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[San Diego County Pretrial Services](#) has seen it all. From its original multi-agency oversight to present-day operation under the Sheriff's Department, PTS has overcome significant hurdles; including a time in recent years when lack of funding eliminated it altogether – compromising community safety and individual wellbeing across the county. Fortunately, the San Diego Sheriff's Department has experience implementing Evidence-Based Assessment programs for booking and release and were confident that those programs could be expanded to pretrial services. In 2016, they established their new Pretrial Unit and began working with the DA, PD, and Superior Court to implement *Pretrial 2.0* countywide.

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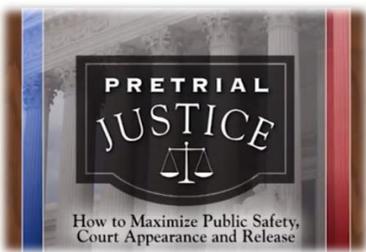
Rebooting PTS

San Diego County

How Did We Get Here?

A little background...

- History of PTS in San Diego County
- Creation of the Sheriff's PTS unit
- General demographics of jail population
 - 5,700 average daily population
 - Daily average unsentenced 50%



California Legislation

Pretrial reform is often driven or accompanied by legislative changes. In California, this manifested in [Senate Bill 10](#), [Senate Bill 36](#), and a major [Appellate Court decision](#) upholding the need to consider a defendant's ability to pay when setting money bail.

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How Did We Get Here?

Some legislation...

- All persons arrested must be assessed
- Courts must have PTS; misd. crimes to be released
- Enacted Oct. 1, 2019; on hold by Judicial Council

SB-10 [Link to SB-10](#)
Pretrial release/detention = pretrial services

- Due process & equal protection
- Ability to pay
- Nonmonetary alternatives
- Evidence that nonmonetary conditions are insufficient

Humphrey
Pretrial detention & inability to post cash bail
[Link to Opinion](#)

SB-36 [Link to SB-36](#)
Pretrial release = risk assessment tool (pending)

- Assessment tools must be validated by scientifically accepted methods
- Accurate/reliable assessment of risk of FTA + risk to public safety if released
- Minimize disparate impact due to race, ethnicity, gender, age, economic circumstance, and behavior or developmental disability

In a nutshell, [SB-10](#) authorizes a change to California's pretrial release system from a money-based system to a risk-based release and detention system.

SB 10 assumes that a person will be released on his or her own recognizance or supervised own recognizance with the least restrictive nonmonetary condition or combination of conditions that will reasonably assure public safety and the defendant's return to court.

[SB-36](#) adds the requirement that each pretrial services agency that uses a pretrial risk

assessment tool must regularly validate the tool and make specified information regarding the tool publicly available. This includes:

- Any pretrial risk assessment tool used by a pretrial services agency must be validated by January 1, 2021 and on a regular basis thereafter, but at least once every three years.
- Pretrial services agencies must collect specified data regarding any risk assessment tool that it uses.
- Pretrial services agencies must make specified information regarding its pretrial risk assessment tool publicly available.
- Pretrial services agencies must publish a report on its internet website with specified aggregate data. The report must be published by July 1, 2021, and yearly thereafter.
- The Judicial Council must maintain a list of pretrial service agencies that have satisfied the validation requirement and complied with transparency requirements.

In re: [Humphrey](#), the Court of Appeal held that the petitioner was entitled to a new bail hearing at which the trial court inquires into and determines his ability to pay, considers nonmonetary alternatives to money bail, and, if it determines that the petitioner is unable to afford the amount of bail the court finds

necessary, follows the procedures and makes the findings necessary for a valid order of detention. In this case, the prosecutor presented no evidence that non-monetary conditions of release could not sufficiently protect the victim or public safety. Furthermore, while the trial court found the petitioner was suitable for release on bail, the trial court's order, by setting bail in an amount it was impossible for petitioner to pay, effectively constituted a sub rosa detention order lacking the due process protections constitutionally required to attend such an order.

Collaborating with Stakeholders

Without question, a top consideration when organizing the pretrial services unit was – and continues to be – making sure that the right people are at the table when discussing and setting policy, determining agency procedures, and implementing pretrial practice. Since no public safety agency can effectively operate in a vacuum, engaging stakeholders in change efforts goes a long way toward eliminating barriers while increasing opportunities for success. In San Diego County, that includes the Sheriff, District Attorney, Superior Court, Probation, and Public Defender.

San Diego PTS found that working with and educating all stakeholders together was much more effective than tackling each agency separately.

This cross-agency collaboration was also instrumental in helping to define the data elements to be collected; each agency came to the table with the data needed for their practice and decision-making and every element was thoroughly vetted, including how it would be collected and used. Other discussions centered around selection of an assessment tool to assist with pretrial release decisions. Rather than making this decision based on tools already in use or with which the Sheriff's Department was familiar, this decision was opened up to all stakeholders and we set about studying all the options brought forth. After much investigation of available tools, all stakeholders decided that the best route was to work with an [industry-leading supplier of risk and needs assessment instruments](#) to develop a tool specific to the needs and requirements of California pretrial services (see The CAPA, below).

While collaborating with stakeholders is central to moving pretrial reform efforts forward, isn't all sunshine and roses and we collectively learned a few valuable lessons along the way:

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How Did We Get Here?

Stakeholder collaboration...

- Know who to have at the table
- Tackle cross-agency education
- Identify the most important data for all
- Which assessment tool to use?
- Lessons learned...








1. Involve key stakeholders at every stage and don't forget to involve line staff from these agencies, too – their perspectives are key as they will be doing much of the actual work.
2. Don't expect big changes all at once; sometimes incremental change works best. If your stakeholders aren't comfortable leaping directly to where you are driving, take fewer steps at first or move a bit slower. Pushing everyone forward at your pace may not be in your long-term best interest and slowing down a bit may actually work for you by giving all stakeholders time to see that smaller changes are working. At the end of the day, success breeds confidence, so collect those small 'wins'.
3. Prioritize collaboration and hard work over how much money is available to fund your effort. If you need assistance with training or technical aspects, look to organizations like the [NIC](#), where help is typically available to agencies that are serious about reform. You will definitely need to invest a lot of time in building your pretrial practice, but desire, determination, and hard work will get you further than a pile of money.

The CAPA

San Diego County PTS selected an assessment instrument developed by [equivant/Northpointe](#) and began the work to ensure that it meets all requirements set out in SB-10 and SB-36. This new pretrial assessment tool is called the California Pretrial Assessment, or CAPA.

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California Pretrial Assessment (CAPA)

CAPA is based on the COMPAS PRRS-II

OLD WAY

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NEW WAY

- *employment status* removed
- *residence length* removed
- *age* excluded from candidate variables
- *drug history* restricted to information in case file and rap sheet
- “*top charge is a felony property or fraud*” replaces “top charge is felony” because SDCSO pretrial target population consists mostly of felony defendants
- **summative point scoring** is utilized, making item importance and scoring procedure more intuitive, transparent, and simple

We are committed to ensuring that bias is not reflected in the CAPA through offender demographic or other ‘race proxy’ factors and have adjusted it accordingly. Other critical requirements center around transparency; with the CAPA, every line item, scoring, and weighting, as well as details on how each line item is scored, are publicly available.

As shown in the following slide/table, the CAPA contains seven risk factors with corresponding response categories that determine the ‘score’ for each factor.

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California Pretrial Assessment (CAPA)

	CAPA Item	Response categories	Possible points
1	Number of pending charges or holds	0, 1+	0, 2
2	Top charge is a felony property or fraud offense	No, Yes	0, 2
3	Number of times sentenced to jail 30 days or more	0-2, 3+	0, 1
4	Number of times failed to appear for scheduled court hearing (previous 2 years) *	0, 1, 2+	0, 1, 2
5	Any previous convictions, either misdemeanor or felony *	No, Yes	0, 1
6	History of drug abuse (restricted to information in the case file and rap sheet)	No, Yes	0, 2
7	On probation or parole at time of current offense	No, Yes	0, 1

Data Gathering for Validation

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California Pretrial Assessment (CAPA)

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Gathering the data

- Power analysis required 5,000 assessments for *released* persons
- Assessment dates: October 2018 - December 2018
- Initial data set contained ≈8,000 cases
 - 75% misdemeanor
 - 25% felony

	Felony	Misdemeanor
CASE CLOSED	0.21	0.35
DETAINED	0.30	0.05
RELEASED	0.49	0.60
Total	2,506	5,328

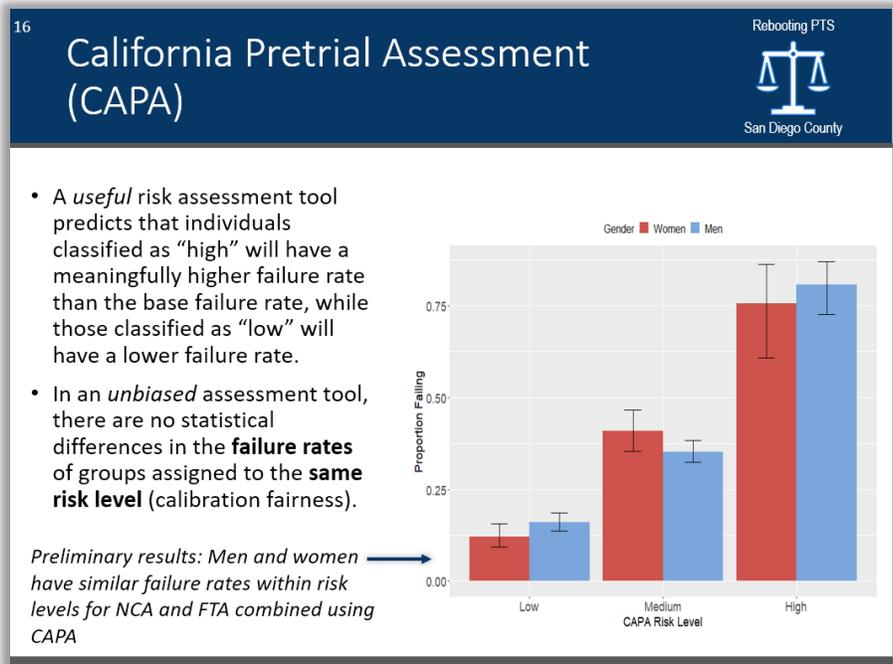
Proper validation of an assessment tool requires that *enough of the right data* is gathered to produce meaningful results. This means that data sources must be accurate and reliable; steps may have to be taken to clean the data, ensuring its quality for validation. In San Diego County, the data sources used for validation included the systems: DA, JURIS, and JIMS.

A few issues were encountered and needed to be considered in our tests:

- Each data source has unique information and information in common with other sources; some common information is not consistent across sources.
- It is necessary to obtain offense dates for all arrests made after the assessment. This is because post-release arrests for offenses committed prior to the index offense cannot be considered New Arrests (NA) with respect to the pretrial release. Offense dates have not been obtained for some of the pretrial release cases.
- A disposition that occurs after the assessment indicates a successful study outcome only if it is for the index offense. Otherwise, the outcome of a disposition determines whether the defendant stays in the study or is removed by the competing event. A competing event is any event other than the pre-defined failure events (in this case, FTA and NA) that prevents successful study completion.

Utility of Risk Assessments

- A *useful* assessment tool predicts that individuals classified as “high” will have a meaningfully higher failure rate than the overall failure rate, while those classified as “low” will have a meaningfully lower failure rate.
- In an *unbiased* assessment tool, there are no statistical differences in the **failure rates** of groups assigned to the **same risk level** (calibration fairness).



Preliminary analysis suggests that CAPA meets these requirements in the San Diego population. The analysis will be finalized upon obtaining all intact data, including dispositions.

Assessment Instrument Validation: a function of the population at a given time and location

Reliability: consistency of measurements that have been made under similar circumstances

- Reliability is required for validity

Validity: how well a scale measures what it is intended to measure in a particular setting, for a particular purpose. Validate the use of the instrument, not the instrument itself.

- **Content validity:** how well questions or behaviors chosen for measurement represent what you intend to measure
 - includes all questions that theoretically measure the intended concept
 - excludes questions that theoretically measure something besides the intended concept
 - determined by content experts
 - should rely on a definition of the concept one intends to measure
- **Predictive validity:** a measure's ability to predict scores or performance on specified outcomes (criterion validity)
 - determined by strength of relationship between measurement and criterion
- **Construct validity:** the degree to which observed relationships among measures agree with predicted relationships among concepts
 - determined by:
 - **Convergent validity:** correlation between measures designed to measure the same concept
 - **Discriminant (divergent) validity:** no correlation between measures designed to measure different concepts

Internal Validity:

- cross-validate in subsamples of development data
- validate in development agency at different time
- least stringent test of validity

External Validity:

- validate similar population in different location
- possibly a different case mix
- tests transportability and resiliency of risk scale
- most stringent test of validity

References:

- Bloom, Martin, Joel Fischer, and John G. Orme. *Evaluating practice: Guidelines for the accountable professional 2nd edition*. Allyn & Bacon, Boston, 1994.
- Nunnally, J., and I. Bernstein. *Psychometric Theory 3rd edition*. MacGraw-Hill, New York, 1994.
- Northpointe Inc., Practitioner's Guide to COMPAS Core (Northpointe Inc., 2017).

Validation of the CAPA in meeting these criteria is underway. We are happy to share progress and outcomes; please see contact information on page 1 and feel free to reach out.

NAPSA Workshop Q&A

The following questions were asked and answered at the 2019 NAPSA workshop and are included here as reference for organizations that are planning or implementing their pretrial services strategy. For additional information, please contact our panel experts (see page 1 for contact information).

Q: You mentioned having 8,000 cases [for validation/testing]; what is that in correlation to? How did you arrive at that number?

A: [Christine Brown-Taylor] We started by asking equivalent for their recommendation and they suggested having at least 5,000 cases for validation. We knew that data inconsistencies or missing data could reduce the final dataset [cases that cannot be validated due to data] so we decided to increase our source dataset to 8,000 cases to accommodate this and to ensure that the data was as robust as possible. Even though increasing the dataset was the right thing to do for validation and predictive accuracy of the tool, it was also a huge commitment for our staff because we manually assessed all people booked in the jail, even though a lot of them are misdemeanor cases that are typically booked and released. So, there are tradeoffs and it's important to plan for and balance them [robust dataset + resources available to conduct and record interviews that make up that dataset].

Q: You mentioned using a research scientist [for validation/testing]; did SDPTS purchase those services?

A: [Christine Brown-Taylor] equivalent's research scientists are performing the validation and providing the validation study. Once we are closer to completion, we'll bring all of our stakeholders together to review and discuss the questions and outcomes and whether any aspect needs to be finetuned for our population. Because the assessment tool is point-additive and not algorithmic [per SB36] there's no 'secret formula' to adjust.

Q: Sounds like San Diego is using the CAPA.

A: [Christine Brown-Taylor] Yes, the CAPA is the pretrial assessment tool we're validating. If you're familiar with assessment tools, you know that a lot of them are very similar and some contain almost exactly the same questions. I'm not making the pitch for equivalent here, but they have a variety of different tools in there [the Northpointe Suite].

Q: Does the CAPA require a face-to-face interview?

A: [Christine Brown-Taylor] No, the CAPA does not require a face-to-face interview.

Q: In terms of San Diego County, would you happen to know the average case length from initial arraignment to sentencing?

A: [Christine Brown-Taylor] The average is less than 2 months, keeping in mind that a lot of our misdemeanors are not in a pretrial status because they get dismissed at arraignment.

Q: Of the total number released in the program, how many of them were released at the jail prior to arraignment?

A: [Christine Brown-Taylor] Those are all release *after* arraignment; the day of arraignment. So, we're using the tool, providing the information to the judges, and at arraignment they [judges] are making the decision at that point.

Q: So, you don't have the ability to release somebody prior to arraignment?

A: [Christine Brown-Taylor] Not at this point.

Q: What is the concurrence rate?

A: [Christine Brown-Taylor] It's been around 30-35%. We had one month when it was 43% or 46%.

Q: Can you define concurrence in more detail? Is the concurrence with just release or detention or something more detailed?

A: [Christine Brown-Taylor] We base the concurrence rate on our counselors recommending the person be released on OR or SOR. If we do not recommend release, then it is rare that the judge would say that they want to release that person. It's only the ones that we're *recommending* be released. That's the concurrence rate we are talking about.

Q: If the judge does not release a defendant, is there an appeal process?

A: [Christine Brown-Taylor] Generally, there isn't, keeping in mind that the judge has reviewed a lot of information in addition to the PTS recommendation before arriving at their decision. The public defender can make their case for release in court but it's rare that the judge will change their mind.

Q: Who are your pretrial counselors? Are they probation employees or court employees?

A: [Christine Brown-Taylor] They are correctional counselors employed by the Sheriff's Office. Most of them have a Social Work, Psychology, or Human Behavior background.