Speaker 1:

Welcome to the NCJA podcast. This podcast series explorers promising practices, provides guidance on strategic planning and discusses how the Byrne Justice Assistance Grant Program or Byrne JAG contributes to improving justice systems across the country. We hope you enjoy it.

Simone Greene:

Hello and welcome to the NCJA podcast. My name is Simone Greene and I'm a program manager at NCJA. Today, we will be discussing pretrial justice programs. Joining me, we have a very special guest, Spike Bradford. Spike, can you introduce yourself, specifically your background as it relates to pretrial justice?

Spike Bradford:

Absolutely. Thank you, Simone. And it's lovely to be talking to you today. I also am a program manager with NCJA in the Byrne JAG training and technical assistance team. My focus is on policy and practice, and one of my areas of expertise is pretrial justice. I work for several years at the Pretrial Justice Institute doing research on and advocating for common sense approaches to addressing many of the challenges posed by current pretrial practices and policies.

Simone Greene:

Well, it sounds like you're just the right person to teach us about pretrial justice. So let's start by defining what you mean when you say pretrial. What's the scope of that period in the justice process and why is it so important?

Spike Bradford:

Sure. That's a great place to start because pretrial can mean different things to different people. The definition I use is the period between an individual's initial contact with law enforcement and when they have their case resolved, either by trial or a plea bargain or a dismissal of the charges. I say that pre-trial is like the early childhood education of the justice system. What happens during that period has an outsized impact on everything that happens afterwards. This is true for justice systems and for individuals accused of crime and their families and communities. I could spend an entire podcast episode describing the ways that most pretrial justice systems do not meet constitutional and statutory standards in how this is really instrumental. And a lot of the challenges are justice systems face and damaging to people accused of crime, actually increasing their likelihood to commit crime. But for the sake of brevity, I have distilled that part to just a few bullet points.

The two purposes of what happens during pretrial are court appearance and public safety. There should be a presumption of pretrial release with detention only used when a clearly articulated reason can be made that the two purposes can only be achieved through detention. However, on any given day, almost half a million people, legally presumed innocent are detained mostly because they are unable to pay money bail. The data show a close correlation between the increased use of money bail in recent decades, particularly secured money bail through the for-profit bail bonding industry and a commensurate increase in pretrial detention and data indicate that detention accounts for almost all net jail growth in the last 25 years.

When people are released, but have a lot of conditions ordered like drug testing and check-ins and electronic monitoring, they are actually more likely to miss court and more likely to commit crime than those who aren't given unnecessary conditions. People who are detained are more likely to be convicted and to receive harsher punishment than people who are released and more likely to commit crime even years into the future and people of color experience each of these negative outcomes, more than white people with similar backgrounds, all of those points are supported by data and research. That's just a quick overview, which is why pretrial is really a critical period where evidence based programming can produce really good outcomes.

Simone Greene:

Thank you. That really does sound like a very critical and dynamic part of the process. Can you tell us some of the programs or initiatives that address the issues you mentioned in particular programs that might potentially be funded with Byrne JAG dollars?

Spike Bradford:

Yes. There are plenty of pretrial programs that can be funded through Byrne JAG since it's so flexible, but I will just mention four program types and I'll mention them in the order they appear in the pretrial process. When I think about the pretrial stage, I think of it like sequential intercept mapping, which I know you're familiar with Simone, where you look at each contact point or decision point and assess the challenges and opportunities that point presents. With pretrial, it's not just sequential, it's cumulative. Deeper engagement at each stage builds depending on the actions taken. So the first area programming concerns an individual's initial contact with law enforcement. This is an important moment because it's where law enforcement officers can within certain limits exercise their professional judgment and discretion in ways that will impact the future of a criminal case. And also very importantly, how deep into the justice system an individual will go.

The kinds of programs we're talking about include many of the law enforcement led diversion programs that are getting a lot of attention recently, like diversion for people with substance use or behavioral health disorders, or for people experiencing homelessness. These programs recognize that addressing underlying conditions that may have led to justice system involvement is often a greater priority than pursuing a low level criminal case. And they emphasize a public health approach to these issues, but they also benefit pretrial justice systems greatly by reducing the sort of snowball effect that happens once you book people into custody. There is an expression that the best reentry approach is a no entry approach and these kinds of programs get to the heart of that. When there's no compelling reason to put someone in the cruiser, book them into jail and then detain them. Diversion programs enable jurisdictions to handle these cases differently.

The costs associated with law enforcement led diversion can include supporting salary to positions that manage and coordinate agreements and relationships with service providers and oversee data collection and tracking, and also training for officers. States and localities can provide financial support directly to community based organizations that provide these services as well. The top model of this is the LEAD program, which stands for law enforcement assisted diversion. It started in Seattle in 2011, and there are now dozens of LEAD sites across the country. And they've developed a lot of standards and methods, and that can be attractive to jurisdictions interested in diversion programs, but that don't want to start from scratch. Another similar approach is the use of citations or summons in lieu of arrest. These are often limited by statutes. So officers can only issue citations for specific offenses or types of offenses, but within that officers have a fair amount of discretion.

Often the use of citations comes down to local level policies, or even down to individual chiefs who tell their officers when and when not to issue citations. Increasing the use of citations can save agencies a lot of money by reducing the time officers spent transporting and booking individuals into jail and reducing the costs associated with keeping them in detention, but operating a citation release program is not without costs. Like diversion programs, they require someone to manage the program and the training and data, and depending on the citation, or if it's a summons that individual will be required to come to court and you will need a system to follow up on that. I'll talk about that shortly, but there are costs to citation release, most of which fit within Byrne JAG.

Simone Greene:

Thank you. And I'm glad you mentioned the cost related to diversion programs and citation release. It's a great reminder that as you mentioned, pretrial justice can be cumulative rather than sequential. And it's important to really put thought into your solutions because it's not a one size fits all approach. Can you tell me more about where else Byrne JAG funding can have an impact?

Spike Bradford:

Sure. The next area where Byrne JAG funding can be useful in pretrial justice is in defense. We know that it's important that people who are charged with crimes have a strong legal representation at trial. That's a bedrock tenant of our system, but only about 1% of criminal cases actually go to trial. So it's equally important that representation begins much earlier than the courtroom. Defense really should be present closer to the initial stages, especially during the initial appearance hearing before a court officer, when liberty is at stake.

Simone Greene:

So what about the initial appearance hearing?

Spike Bradford:

Of course, legal best practices and standards published by the American Bar Association and defense and prosecution professional associations state that if a person is arrested and booked into jail and is not released or diverted during that process, they should have an initial appearance before a magistrate or court officer, as soon as possible, preferably within a day and ideally defense should be present. This is the first time the court will make a decision about an individual's liberty and they really should have legal counsel. From a programming perspective, most counsel at first appearance or CAFA programs are focused on increasing funding to defender's offices to support positions dedicated to first appearance work specifically.

And these programs are successful at increasing rates of release without conditions, reducing money bail amounts if ordered, reducing the length of detention throughout each case and lowering the number of hearings in court proceedings. This translates into more fairness for individuals and tremendous cost savings for justice systems and all of these things can be achieved without impacting public safety. A good resource for information on this is the National Legal Aid and Defenders Association or NLADA. And I should stress that the need for a first appearance hearing as soon as possible after arrest with competent defense present is agreed upon by prosecution, defense and judicial groups, but current practice doesn't often meet those aspirational goals.

Simone Greene:

Improved access to defenders really can be great for reaching all sorts of communities, including underserved and under resource communities and it can really be beneficial in enhancing equity.

Spike Bradford:

Absolutely, these programs can definitely result in greater equity of access. The next area to consider is at the decision point to release or detain someone after arrest and before their case progresses. This moment in the process is so critical and there are many ways to approach it, but I'll just keep my comments to pretrial services agencies. There has been a growing recognition that historically release and detention decisions have been made quickly using limited information and centered around money bail as a condition of release. And that these practices have led to a lot of unnecessary strain on justice systems and to negative collateral consequences for accused people.

Pretrial services agencies play a vital role in ensuring that these decisions are informed by timely and relevant information. And when I say relevant, I mean, relevant to the case and relevant to the accused individual. A huge number of release decisions are guided by bond schedules that assign a dollar amount for money bail based solely on the criminal charge, not the individual or their circumstances. Pretrial services agencies can be operated within court systems or by community based organizations. They can cover anything from producing pretrial reports for the courts that provide a summary of things like individual criminal record, employment status and community ties. And they might include the results of a pretrial risk assessment, which is an empirical tool used to predict the likelihood that a person will return to court and remain arrest free, if released.

Simone Greene:

Risk assessments are somewhat controversial, aren't they?

Spike Bradford:

Yes, somewhat. They were created to reduce bias in decision making by using thousands, sometimes hundreds of thousands of past case records to create a score that essentially says people who are similar to an accused individual and certain key factors returned to court and didn't get arrested at a certain rate and then that is used to be predictive. And very importantly, it's used to inform, not dictate the court's decision to release or detain. The biggest issues with risk assessments have been, first, there is some fear about using a formula or an algorithm to influence decisions. And second, the historical criminal justice data used to create the algorithms is a reflection of decades of justice practices, including the disparities in law enforcement, arrest and conviction that the data show exists. So for example, the data show that people of color are arrested and convicted more for drug offenses than white people, even though they are no more likely to engage in drug crime, that might put them in a higher risk category on a pretrial risk assessment tool.

Proponents say that the more the tools are used and improved, the better able they are to correct for historical bias. Some people have chosen to outright reject the use of risk assessment tools, but many jurisdictions continue to use them or are considering using them, but that's just part of what pretrial services agencies might do. They may also be involved in reminding people to come to court or monitoring compliance of specific release conditions like drug testing or check-ins or movement restrictions for example. One of the several ways Byrne JAG can be used here again is through funding personnel that staff these agencies or improving technology to track cases. Standing up a new pretrial services agency is a pretty big financial lift, but definitely funding can support components of it from staffing, data systems training and other support services that increase court attendance. These agencies have professionalized a lot in the last few decades and the National Association of Pretrial Services Agencies or NAPSA is a great place to look for ideas, research and guidance.

Simone Greene:

It seems like pretrial services agencies offer a lot of services and have many tools at their disposal. So you've discussed three important areas of pretrial justice programming. What's the fourth?

Spike Bradford:

The fourth area is really often part of the third, the pretrial services agencies, but it can have such a bang for the buck that I wanted to give it its own category. And that is court date reminder systems. Many jurisdictions have found that by simply reminding people of their upcoming court dates much like we all get reminded about upcoming dental or doctor's visits or even bills coming due, they can significantly increase court appearance rates. The advancing pretrial policy and research initiative put out a research summary on reminder programs recently, and the numbers are pretty impressive. Essentially, any kind of reminder system, whether it's by text or live calling can increase appearance rates by at least 14% and as much as 36%, but improving court appearance isn't just about ensuring that people show up to be held accountable for alleged crimes. If you miss a court date, someone has to reschedule that, they have to contact you so you know about it.

Sometimes the court will issue an arrest warrant, which has to be processed and delivered, and it can be disruptive to the daily court docket. So getting people to come to scheduled court dates is in everyone's interest. And one of the best parts is that these programs are inexpensive. They have some initial startup and technology costs, but once they're running costs are pretty low. In New York city for example, city that has some of the nation's highest criminal justice operating costs. It was estimated that sending three reminder messages to all summons recipients for a year would cost about $7,500. That's a pretty good investment. The pandemic has been a period of sort of forced piloting for technology focused programs like these and the research shows they work. So we may see them continue and they are very much in line with the Byrne JAG program.

Simone Greene:

Well, you shared so much great information about pretrial justice. It really sounds like there's a lot of effective programming in the pretrial area that can benefit states and localities and improved fairness and equity, and even potentially reduce crime and recidivism, which is really the goal of all of our work here. Is there anything else you would like to add about what we've discussed today?

Spike Bradford:

Thanks, Simone. Yeah, I just want to say that, for me at least, thinking about these issues, the keyword is unnecessary. We know that our justice systems are overburdened and that can lead to outcomes that are less than desirable, even counterproductive, but we shouldn't just attempt to reduce arrests or detention or convictions or incarceration. What a lot of the pretrial initiatives I discussed can do is reduce unnecessary arrests, detention, convictions, and incarceration, and they can reduce unnecessary costs to systems, unnecessary risk to law enforcement and other justice practitioners and reduce unnecessary negative consequences to justice involved people.

Simone Greene:

All right, unnecessary that's a great word to leave us with and thank you so much Spike for joining me today. It was wonderful learning more about pretrial justice. Take care.

Spike Bradford:

Thank you, Simone.