

May 2013

# Front-end Justice Reform

Cheaper, Safer, Fairer

# County Jails: The Numbers

- 2,914 counties either own and operate a jail or participate in a regional corrections authority.

– NACo County Intelligence Connection Database, 2012.

A bronze statue of Lady Justice, blindfolded and holding a scale, is positioned on the left side of the slide. The background is a dark red gradient.

# County Jails: The Numbers

Between June 2010 and June 2011, local jails admitted nearly 11.8 million individuals or over 226,000 individuals per week.

In 2011, the weekly turnover rate for inmates at local jails was 62.2 percent.

At midyear 2011, 60.6 percent of jail inmates being held nationwide were held in an unconvicted, pretrial status.

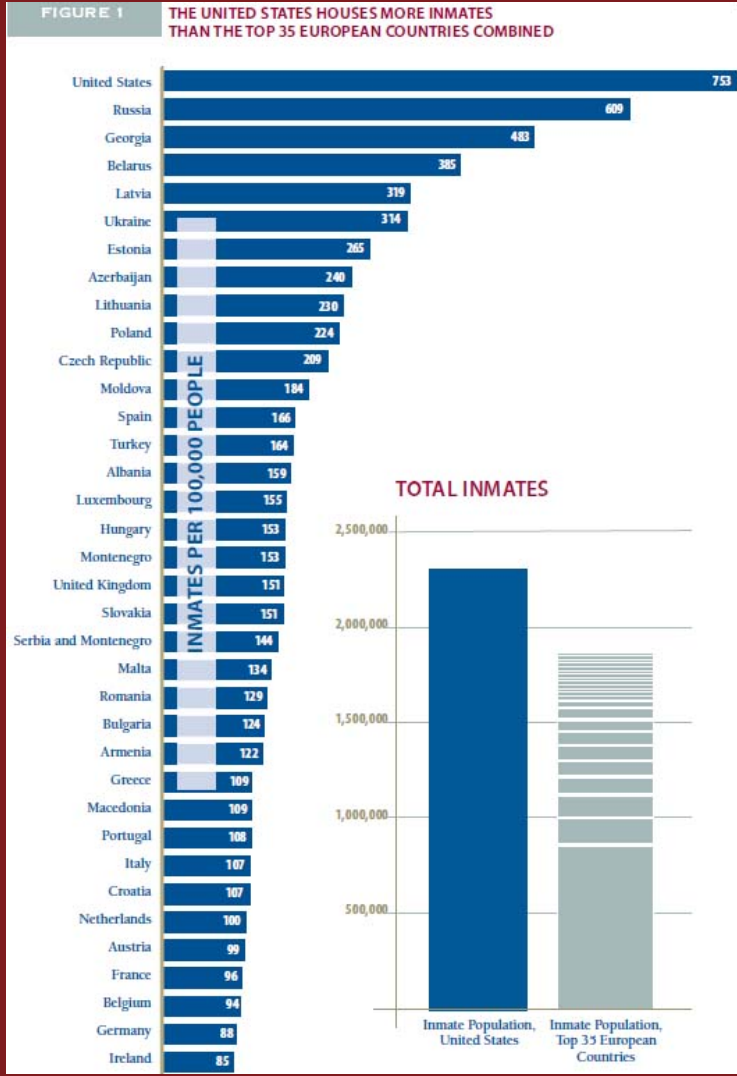
In 2010-2011, 95 percent of those booked into local jails were not subsequently sent to prison.

Data from the Bureau of Justice Statistics' *Jail Inmates at Midyear* series, 1996-2011.



The United States and the Philippines are the only countries in the world that maintain a for-profit bail industry.

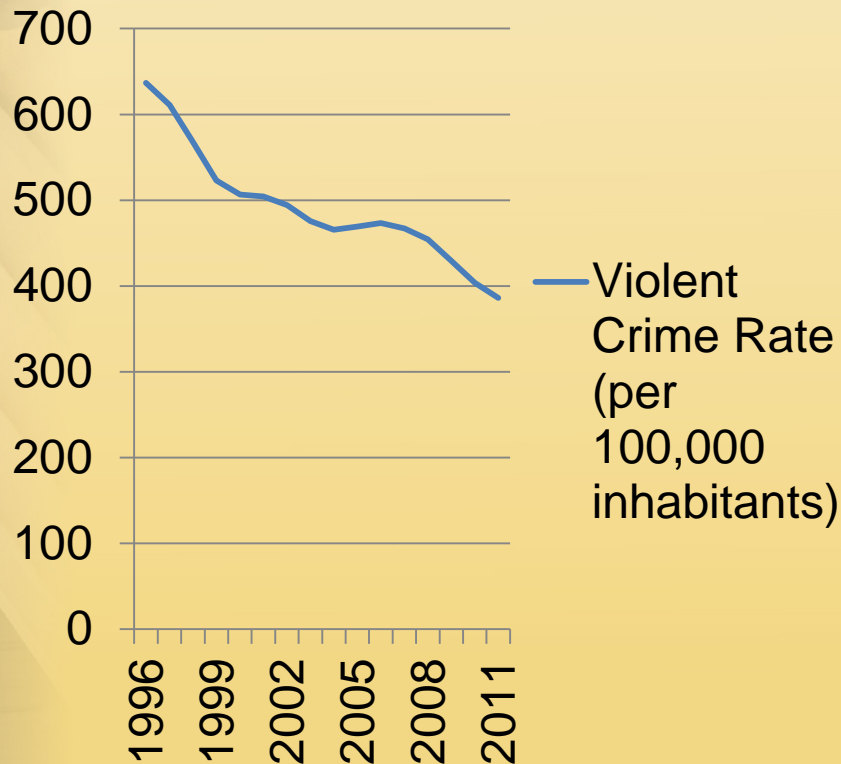
The United States also has the world's largest rate of incarceration.



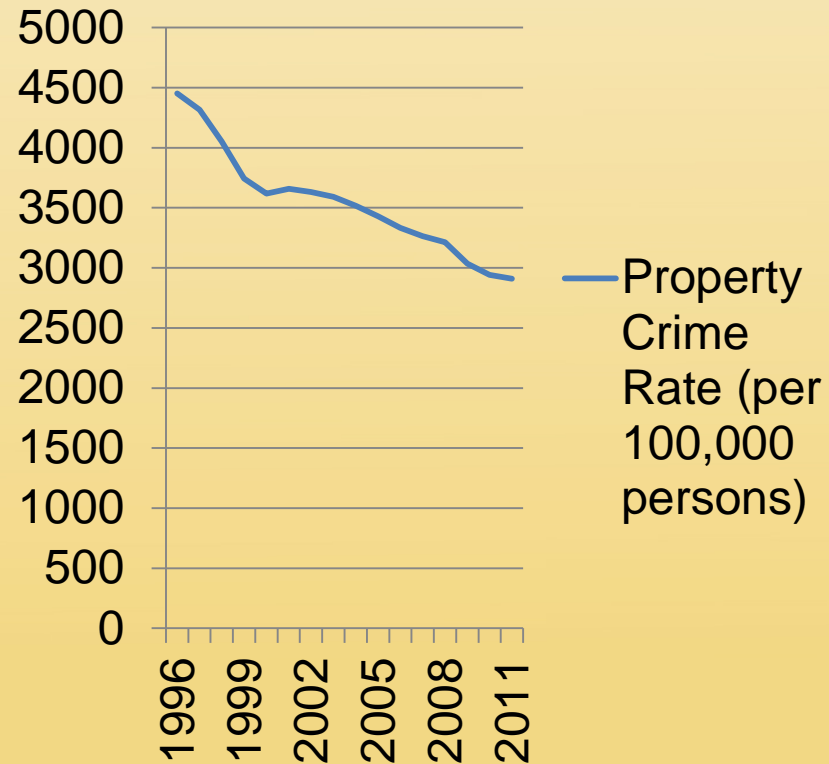
Graph Source: Rampell, C. (2010, Sept. 29). Jail and Jobs. *New York Times* (New York, NY).

# Chart: Violent and Property Crime Rates in the United States, 1996-2011

## Violent Crime Rate (per 100,000 inhabitants)

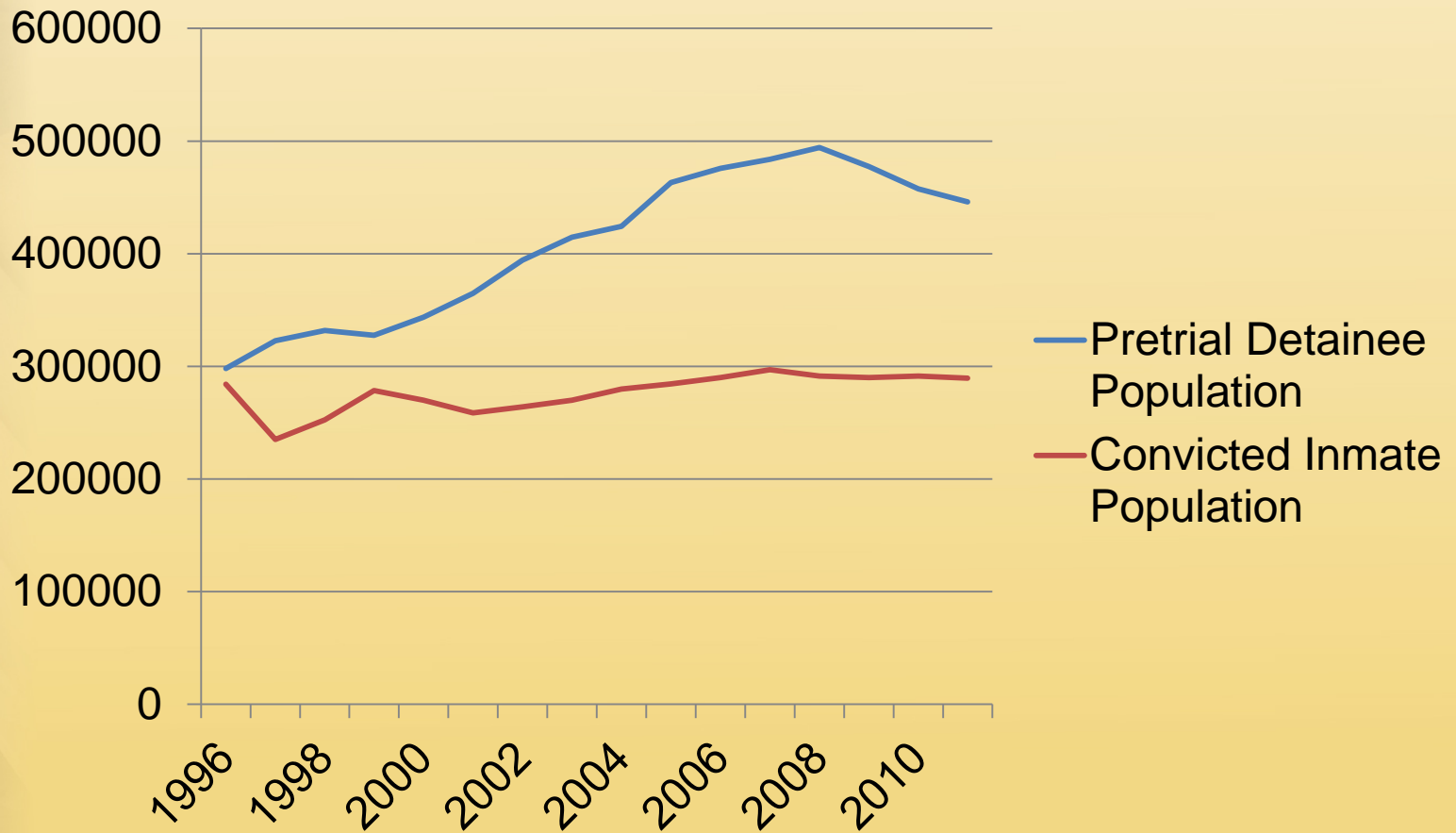


## Property Crime Rate (per 100,000 persons)



Data for both charts from the Federal Bureau of Investigation's *Uniform Crime Reports* series, 1996-2011.

# Chart: Pretrial vs. Sentenced Jail Populations, 1996-2011



Data from the Bureau of Justice Statistics' Jail Inmates at Midyear series, 1996-2011.

NATIONAL ASSOCIATION OF COUNTIES



- “The overwhelming majority of people in our nation’s jails are not a threat to society. Most are detained for minor offenses and simply did not have the money to get out of jail.”
  - Shima Baradaran, Associate Professor, Brigham Young University Law School

# What does this mean for counties?

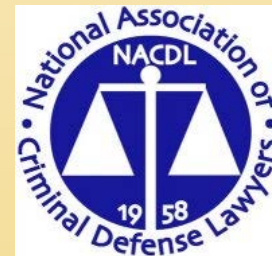
- While incarcerated, pretrial inmates face:
  - A higher risk of becoming unemployed;
  - Increased odds of becoming delinquent on child support and other recurring payments; and
  - A greater likelihood of recidivating upon eventual release.
- Instead of adding to a county's tax base, the pretrial detention of defendants in county jails costs taxpayers a total of \$9 billion annually.
  - American Bar Association Criminal Justice Section. Frequently Asked Questions about Pretrial Release Decision Making. Retrieved March 11, 2013, from [www.nacdl.org/WorkArea/DownloadAsset.aspx?id=25187](http://www.nacdl.org/WorkArea/DownloadAsset.aspx?id=25187).



# What is a Pretrial Program?

- Comprehensive pretrial services programs rely upon a validated, evidence-based screening tool to ***evaluate*** and ***assess individuals' risk*** factors upon arrest and/or booking in an effort to objectively and impartially guide appropriate ***release decisions*** and ***supervision conditions*** to assure a defendant's return to court and ensure public safety.

# Call for Pretrial Reform Since 2010





# NACo's American County Platform, 2011-2012

## Pretrial Release –

Counties should establish written policies that ensure:

- The interview and assessment of all arrestees booked into county jails;
- The investigation of information provided in order to provide a report to the judiciary for use during the pretrial release or detention decision; and
- The use of release methods that are in compliance with state bail statutes which call for the least restrictive conditions during the pretrial stage that can protect the community and assure the appearance of the arrestee at all court events. These include release on recognizance, non-financial supervised release, and preventive detention.

# Why does it matter?

- Cheaper
- Safer
- Fairer



# Cheaper

- In 2009, local governments spent over \$130 billion in direct expenditures on their justice systems, over \$27.5 billion of which was a direct expenditure on corrections system.

– Bureau of Justice Statistics' *Justice Expenditure and Employment Extracts, 2009 – Preliminary*.

- This represents 50.5% of the total direct expenditures by local, state, and federal governments on the justice system and 33.3% of the total direct expenditures on corrections.

– Bureau of Justice Statistics' *Justice Expenditure and Employment Extracts, 2009 – Preliminary*.

- Of 161 pretrial programs that responded to a 2009 Pretrial Justice Institute (PJI) Survey, half reported operating with a budget of \$500,000 or less.

– *2009 Survey of Pretrial Services Programs* (Washington, D .C .: Pretrial Justice Institute), 2010.

# Cheaper

- Camden County, N.J.
  - With an average daily population of 1,807, by June 2009 when the county began its jail crowding reduction initiative, the Camden County Correctional Facility (CCCF) was operating at 142% capacity.
  - A Jail Population Reduction (JPR) Committee was formed to identify and implement strategies to reduce jail crowding while maintaining public safety.
    - The JPR Committee developed a Jail Population Analysis Wizard, engaged a Jail Population Manager to analyze data trends, and implemented a Pretrial Services Program.

*Responsible Jail Population Reduction: Camden County, New Jersey (Luminosity Solutions, 2011).*

# Cheaper

- Camden County, N.J.
  - In its first year, this responsibly reduced the average daily population at CCCF by 21%, resulting in cost avoidance of over \$9 million annually by eliminating the needs to house inmates at other facilities and a cost savings of over \$600,000 annually by reducing contracted expenditures on food and healthcare. It also reduced the average length of stay by 7 days (38.4 days to 31.4 days).

*Responsible Jail Population Reduction: Camden County, New Jersey (Luminosity Solutions, 2011).*

# Cheaper

- By the end of 2013, Milwaukee County, Wis., expects to safely release and/or supervise 15% more pretrial detainees in the community rather than in jail – a move which is expected to generate over \$1,000,000 in savings.
  - *Evidence-Based Decision Making Initiative System Scorecard: Four Commitments We Make to Criminal Justice in Milwaukee* (Milwaukee, WI: Milwaukee County Community Justice Council).
- From FY08 to FY11, the Pretrial Release Program in Okaloosa County, Fla., saved taxpayers over \$27 million in cost avoidance due to no new jail building or additional staff as a result of a decreased jail population.
  - *Pretrial Release: A Tremendous Success in Okaloosa County, Florida: Fact Sheet* (March 2011).



A bronze statue of Lady Justice, blindfolded and holding a scale, symbolizing justice and impartiality. The statue is positioned on the left side of the slide, partially obscured by the red background.

# Safer

- Currently, the majority of bail decisions rely upon little information aside from current charges and previous criminal history.
- By incorporating evidence-based, validated risk factors into the decision-making process, judges can benefit from an objective, research-based analysis of a defendant's potential flight risk and danger to the community.



# Safer

- Of the 80% of defendants in Washington, D.C. released on a non-financial bond, 97% go through the pretrial period without any new arrests on a felony charge, 91% without arrest on a new misdemeanor charge, and 88% of defendants make all court appearances.
  - The D.C. Pretrial Services Agency: Lessons Learned From Five Decades of Innovation and Growth (Washington, DC: Pretrial Justice Institute, 2010).
- Of defendants under pretrial supervision in Santa Cruz County, Calif., 92% were not re-arrested for new offenses during the pretrial period.
  - Bail Fail: Why the U.S. Should End the Practice of Using Money for Bail (Washington, DC: Justice Policy Institute, 2012).
- Kentucky Pretrial Services supervises 74% of all defendants. Of this population, 93% go through the pretrial period without a new arrest, and 92% made all their court appearances.
  - James Austin, Roger Ocker, and Avi Bhati, Kentucky Pretrial Risk Assessment Validation (Washington, D.C.: The JFA Institute and the Pretrial Justice Institute, 2010).

# Fairer

- Defendants who are detained in jail while awaiting trial are more likely to:
  - Plead guilty to the charges brought against them
  - Be convicted on one or more charges
  - Be sentenced to prison
  - Receive longer prison sentences than defendants who are released during the pretrial period
- Even when controlling for factors including current charge, prior criminal history, and ties to the community, these findings hold true.

John S. Goldkamp. *Two Classes of the Accused: A Study of Bail and Detention in American Justice* (Cambridge, Massachusetts, 1979).

# Fairer

- “If they have you in jail, the power has shifted to the prosecutorial arm of the system, and they can force you to make a plea. If you are out of jail, the power dynamic is completely different. Our research shows that when bail is posted, at least half the cases are going to be dismissed outright and most will result in no jail time at all. This is why prosecutors fight so desperately for bail.”

– Robin Steinberg, Bronx Defenders

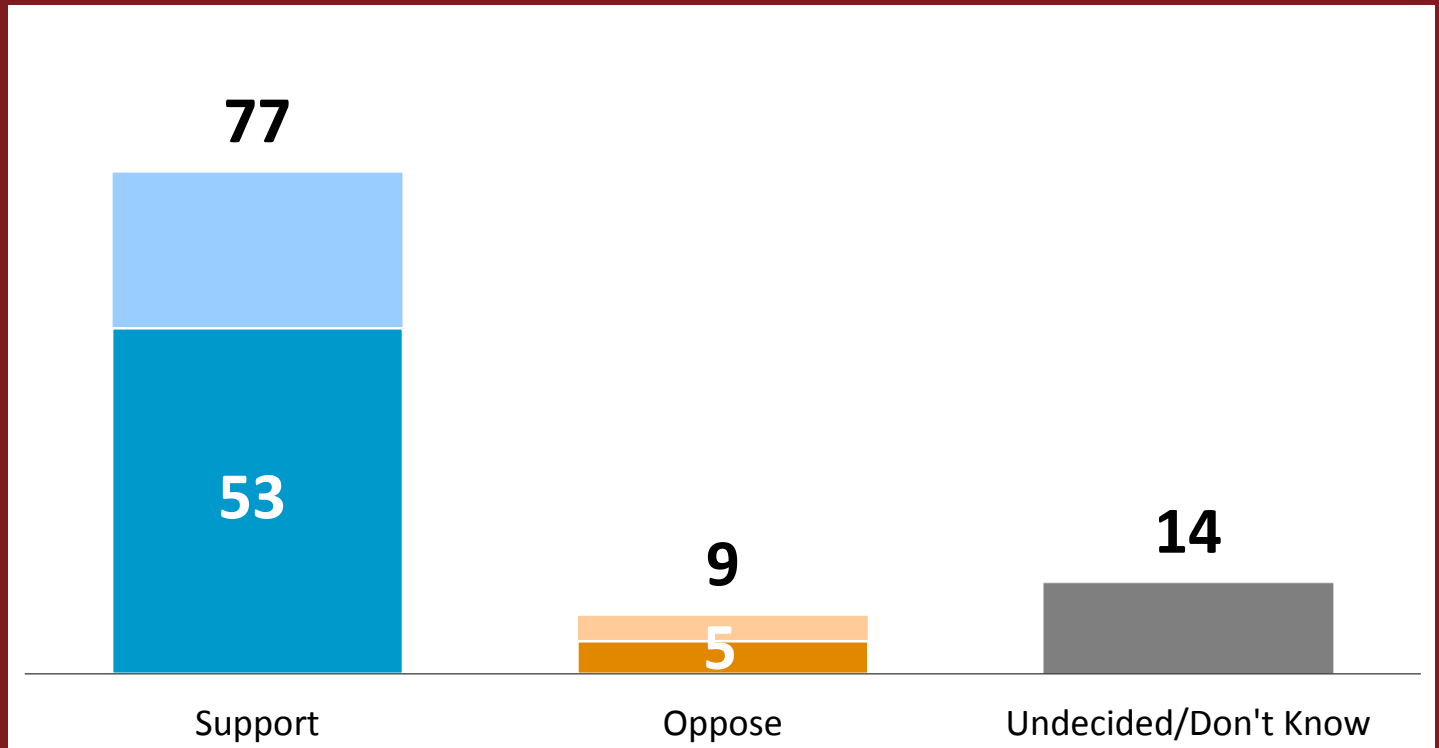
# Fairer

- “What has been demonstrated here is that usually only one factor determines whether a defendant stays out of jail before he comes to trial. That factor is not guilt or innocence. It is not the nature of the crime. It is not the character of the defendant. That factor is, simply, money.”
  - Attorney General Robert F. Kennedy, Symposium on Pretrial Reform, 1964
- “Today – after decades of study, analysis, and cooperation – there is no doubt that...current pretrial release and diversion programs are not only more effective, but more just.”
  - Attorney General Eric Holder, National Symposium on Pretrial Justice, 2011



# What do people think?

# Support for Reform

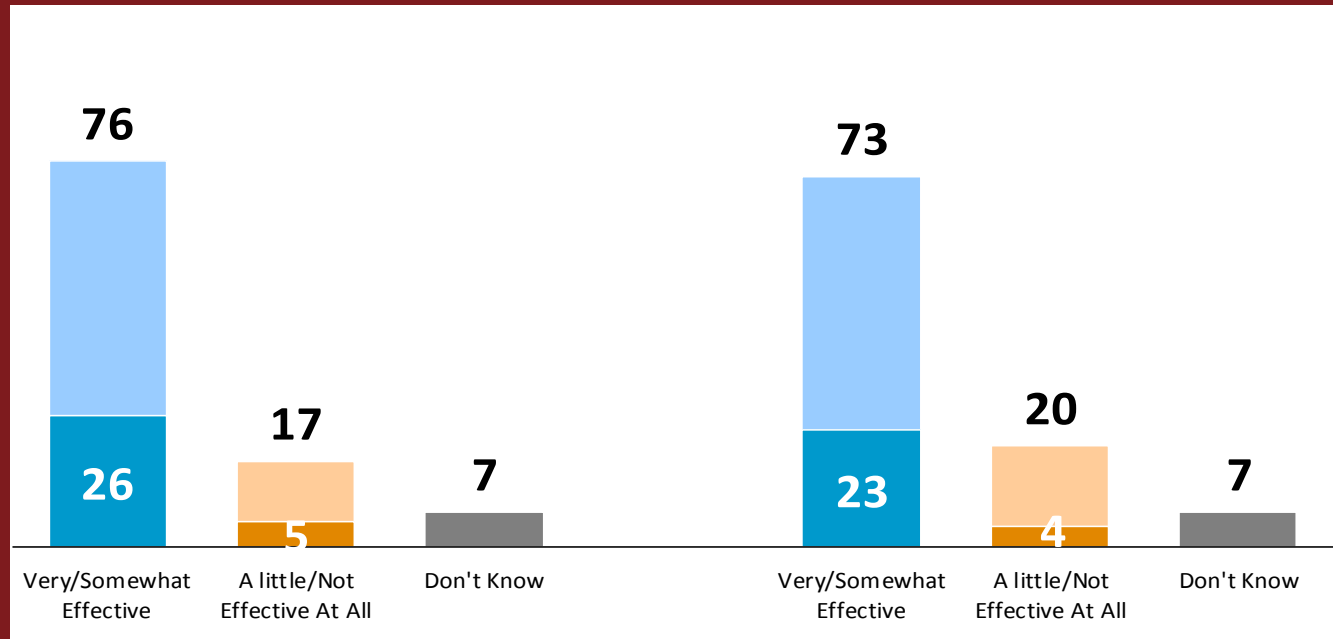


Some have proposed using risk-based screening tools instead of cash bail bonds to determine whether defendants should be released from jail before trial. This risk assessment would take into account such factors as the nature of the offense in question, the suspects criminal history, as well as their employment, residency, drug use history and mental health. Under this system, high-risk defendants would be held in jail until trial, and low-risk defendants would be released with conditions and be monitored and supervised. Would you support or oppose this proposal, or are you undecided?

Results, polling questions, and findings all from Lake Research Partners. Analysis of Findings from Focus Group Research and a Survey of 815 Likely 2012 General Election Voters Nationwide, October 4, 2012.

# Risk Assessment Effectiveness

Over 75% of polled likely voters, spread across various demographics, believe that risk assessment would protect community safety effectively. Nearly as many also say they believe it would be effective at preventing flight.



And how effective do you think risk assessment would be when it comes to protecting community safety? Do you think it would be very effective, somewhat effective, a little effective, or not effective at all?

And how effective do you think risk assessment would be when it comes to preventing flight and ensuring appearance at trial? Do you think it would be very effective, somewhat effective, a little effective, or not effective at all?





# There is overwhelming public support for risk assessment — even in the face of withering criticism.

- “At the outset, more than three-quarters of voters support using risk-based screening tools instead of cash bail bonds to determine whether defendants should be released from jail before trial, with high-risk defendants held in jail until trial and low-risk defendants released under monitoring and supervision. Majorities support this reform strongly. Moreover, support barely budes when we simulate an engaged debate over this issue, even allowing the opposition the standard histrionics and falsehoods that typically animate their arguments.”

– Results from Lake Research Partners. *Analysis of Findings from Focus Group Research and a Survey of 815 Likely 2012 General Election Voters Nationwide*, October 4, 2012.

# To Learn More...

- NACo's Criminal Justice Webpage:
  - <http://www.naco.org/justice>
- Pretrial Justice Institute:
  - <http://pretrial.org>
- The Attorney General's Pretrial Justice Working Group:
  - <http://pretrial.org/symposium.html>