

2020 Wisconsin Pretrial Survey

Summary of Results



November 2020

**Wisconsin Supreme Court
Office of Court Operations**



Survey Background and Administration

In order to gain perspective on how Wisconsin counties view pretrial programs and services¹, which counties currently offer pretrial programming, and what types of pretrial-focused training would be most useful, the Office of Court Operations prepared a survey for local Criminal Justice Coordinating Council Leaders. It was distributed by the Pretrial Program Manager and shared with District Court Administrators. The survey was open between September 9 and October 28, 2020. Responses were received from 46 counties, resulting in a 64% overall response rate. Respondents included circuit court judges, Criminal Justice Collaborating Council (CJCC) directors, district attorneys, Criminal Justice Services directors and managers, judicial assistants, pretrial case workers, and social workers.

Survey questions focused on pretrial procedures, assessments, barriers to implementation of pretrial services, and desired pretrial-focused training opportunities. Many questions included an answer choice of “other” for an opportunity to provide comments. At the end of the survey, respondents were invited to provide general comments.

In addition to answering questions regarding the prevalence of pretrial services in the state, survey results may also help identify potential grant opportunities to help support future program development and expansion.

*“Our notions of equality, freedom, and the rule of law demand that we embrace risk, and embracing risk requires us to err on the side of release when considering the right to bail, and on ‘reasonable assurance,’ rather than complete assurance, when limiting pretrial freedom.” Schnacke, T. (2014). *Fundamentals of Bail – A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*. National Institute of Corrections. <https://s3.amazonaws.com/static.nicic.gov/Library/028360.pdf>*

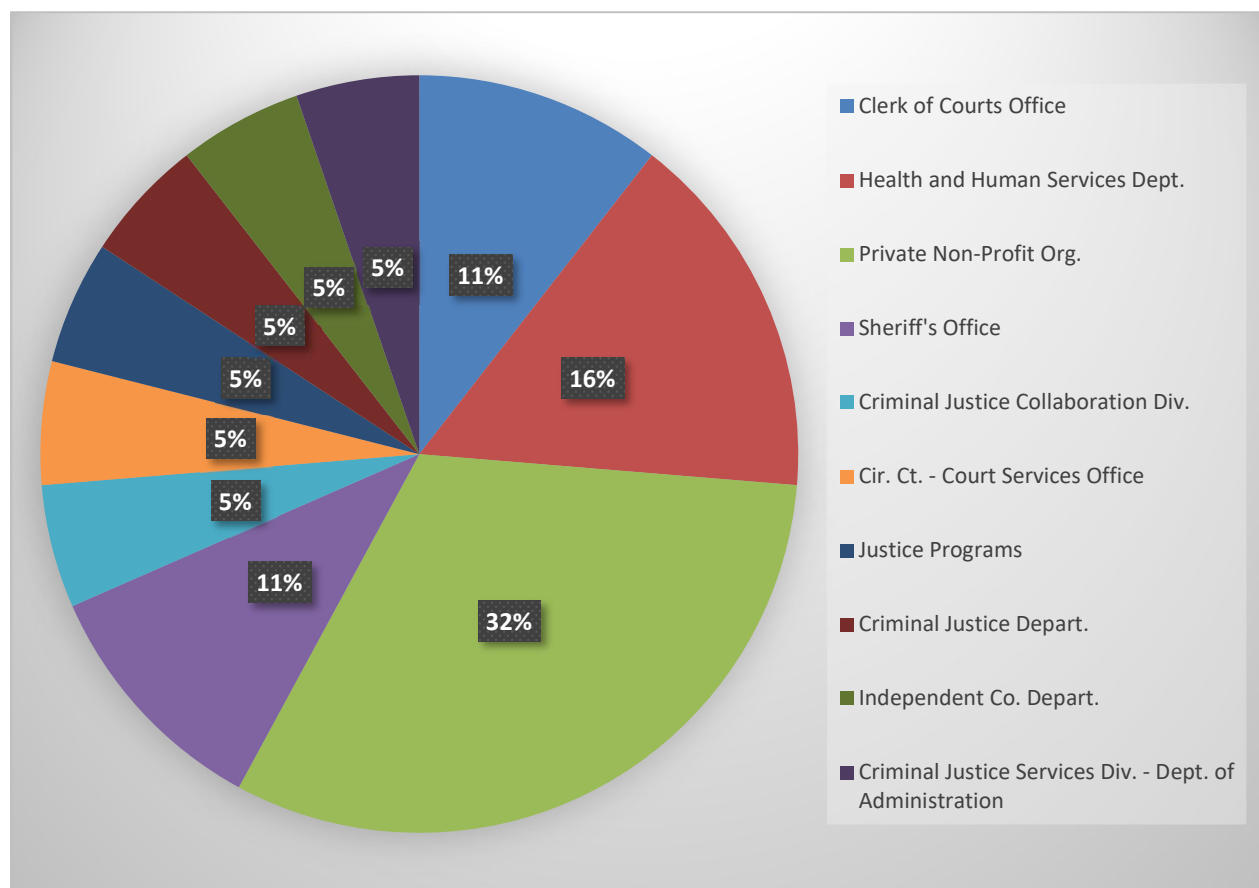
¹ Pretrial is the period from initial arrest through case disposition. Case disposition is the final outcome of a case (e.g. conviction, deferred prosecution, acquittal, dismissal, not guilty due to mental disease or defect). Bail is a process of release.

Pretrial Services

Wisconsin has a presumption of pretrial release codified in Section (2) of the Wisconsin Constitution, “[a]ll persons, before conviction, shall be eligible for release under reasonable conditions designed to assure their appearance in court, protect members of the community from serious bodily harm or prevent the intimidation of witnesses. Monetary conditions of release may be imposed at or after the initial appearance only upon a finding that there is a reasonable basis to believe that the conditions are necessary to assure appearance in court.”

Of the 46 responses, 19 counties offer pretrial services and 27 counties do not. One respondent noted that it is their practice to use cash bond sparingly and in moderate amounts except for the most serious matters since they do not have a pretrial program.

Pretrial Services are Housed within Different Programs Depending upon County

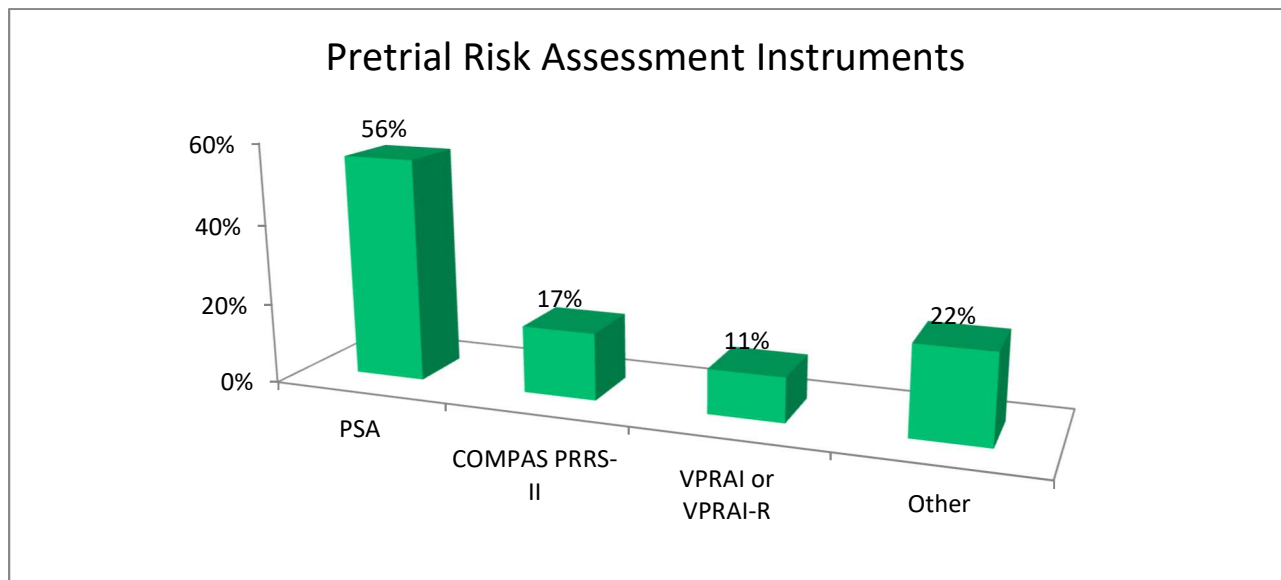


Pretrial Services, when offered, are provided through departments, agencies, non-profit organizations, sheriff's offices, Clerk of Courts Offices, and other county programs. Pretrial services vary depending upon the county and resources. Nineteen counties identified where their pretrial services were housed. Some counties use in-house staff to complete pretrial

actuarial risk assessment tools and contract with non-profit organizations for pretrial monitoring. Other counties conduct pretrial risk assessments and provide pretrial monitoring in-house.

Counties that Utilize Pretrial Risk Assessment Instruments

Eighteen Wisconsin counties reported utilizing a pretrial risk assessment instrument. Counties may use more than one tool. Actuarial pretrial risk assessments use research-based factors to predict pretrial success² or failure. Risk assessment tools do not replace judicial discretion. Rather, they provide more information to judges to help them make pretrial decisions.



The **Public Safety Assessment (PSA)**³ is in use by ten counties. Additional counties expressed interest in implementing the PSA. The PSA applies nine factors to assess the likelihood of pretrial success, including: age at current arrest, current violent offense, pending charge at the time of arrest, prior misdemeanor conviction, prior felony conviction, prior violent conviction, prior failure to appear in the past two years, prior failure to appear older than two years, and prior sentence to incarceration.

Three counties utilize the **Correctional Offender Management Profiling for Alternative Sanctions Pretrial Release Risk Scale (COMPAS PRRS-II)**⁴. The COMPAS PRRS-II applies eight risk factors, including: felony top charge, pending case, prior failure to appear, prior arrest on bail, prior jail sentence, drug abuse history, employment status, and length of residence.

² Pretrial success occurs when a released defendant appears in court and does not engage in new criminal activity during pretrial period. Pretrial failure occurs if a released defendant fails to return to court, is charged with new criminal activity during the pretrial period, or is unnecessarily detained and experiences negative collateral consequences as a result.

³ <https://advancingpretrial.org/psa/about/>

⁴ <https://www.equivant.com/wp-content/uploads/Practitioners-Guide-to-COMPAS-Core-040419.pdf>

Two counties utilize the **Virginia Pretrial Risk Assessment Instrument (VPRAI)** or the **Revised Virginia Pretrial Risk Assessment Instrument (VPRAI-R)**⁵. The VPRAI calculates a defendant's level of risk based on eight risk factors, including: charge type, pending charge, criminal history, two or more failures to appear, two or more violent convictions, length at current residence less than one year, employment/primary caregiver, and history of drug abuse. An additional county uses their locally developed pretrial risk assessment tool the WalPRAT, which appears to have been inspired by the VPRAI.

Two counties utilize the Milwaukee County Pretrial Risk Assessment Instrument-Revised (MCPRAI-R). The MCPRAI-R uses six risk factors that were found to be predictive of pretrial failure, including: number of cases filed, prior failure to appear in court, arrested while out on bond, employed or primary caregiver, amount of time at residence, and the score on a substance-abuse screener.

One county reported utilizing the Level of Service Inventory-Revised (LSI-R), an assessment tool developed to help predict parole outcome, success in correctional halfway houses, institutional misconduct, and recidivism. The LSI-R was not developed as a pretrial risk assessment instrument.

The JFA Institute in *The Value of Pretrial Risk Assessment Instruments: Don't Throw the Baby Out with the Bathwater*⁶ discusses the science underlying the three most commonly used pretrial risk assessment instruments, the PSA, the COMPAS PRRS-II, and the VPRAI. The report notes that “[p]retrial risk assessments are narrowly designed to assess the risk level of detained people to fail pretrial supervision when released from pretrial detention.”

Local Validation of Pretrial Risk Assessment Instruments

Two counties have locally validated their pretrial risk assessment instrument. Five counties do not know if their risk assessment tool has been locally validated. Eleven counties reported that their risk assessment instrument has not been locally validated. Through local validation it can be learned if a pretrial risk assessment's predictive accuracy is maintained on local populations. Effective pretrial practices maximize public safety, maximize court appearances, and maximize pretrial release.⁷ Using a pretrial risk assessment tool that has low predictive accuracy impairs an agency's ability to maximize public safety, court appearance, and pretrial release.

⁵ <https://www.dcs.virginia.gov/sites/dcs.virginia.gov/files/publications/corrections/virginia-pretrial-risk-assessment-instrument-vprai.pdf>

⁶ <http://www.jfa-associates.com/publications/NewReleases/TheValueofPretrialRiskAssessmentInstruments.pdf>

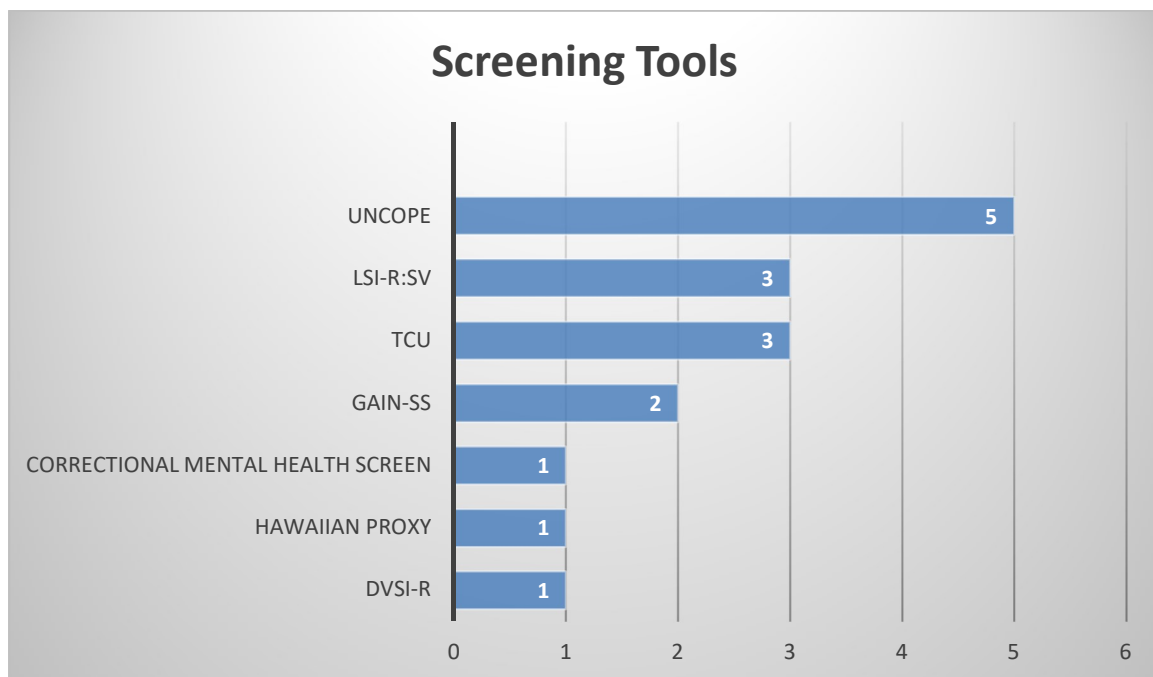
⁷ National Association of Pretrial Services Agencies. 2020. *Standards on Pretrial Release: Revised 2020*.

<https://drive.google.com/file/d/1edS2bltwfNROieGeu1A6gKluTfzqop92/view>

Screening Tools Other Than Pretrial Risk Assessments

Seven counties (37% of counties with pretrial services) use screening tools other than pretrial risk assessment instruments. Eleven counties (58% of counties with pretrial services) reported they do not use additional screening tools.

A county may use more than one screening tool. Screening tools include the Correctional Mental Health Screen, the Hawaiian Proxy, the Revised Domestic Violence Screening Instrument (DVSI-R), the Global Appraisal of Individual Needs-Short Screener (GAIN-SS), Level of Service Inventory-Revised: Screening Version (LSI-R:SV), the Texas Christian University Drug Screen (TCU), and UNCOPE screening for alcohol or drug abuse problem.



Universal Screening by Pretrial Services

Universal screenings occur when all individuals are assessed for their pretrial risk and need level prior to their first court appearance. Screening includes any combination of a pretrial interview, application of a validated risk assessment instrument or measurement against other established criteria for release recommendation or program placement. Of the nineteen counties that responded to the question about universal screenings, thirteen counties conduct universal screenings of all in-custody defendants and six counties do not.

Defendants Who Are Not Being Screened by Pretrial Services

Six counties identified types of in-custody defendants who are not undergoing universal screening. A county may have identified more than one type of defendant who is not being screened.

Defendants Not Being Screened Include:

- Defendants currently on parole or probation (4 counties)
- Juvenile defendants charged as adults (3 counties)
- Minor misdemeanors (3 counties)
- Outstanding warrants and/or detainers from other jurisdictions (3 counties)
- All misdemeanors (2 counties)
- All felonies (1 county)
- Specific charges (1 county)
- Outstanding warrants within same jurisdiction (1 county)
- Other – (1 county) This county noted that defendants are screened once bond has been set and a judge orders the person to be assessed. This county is in the process of developing policies for implementing in-custody assessments.

Counties Perform Universal Screening of Out-of-Custody Defendants

Four counties perform universal screenings on out-of-custody defendants. Fourteen counties do not perform universal screenings on out-of-custody defendants. One county was unsure as to whether universal screening is being conducted with out-of-custody defendants. The remaining counties did not respond to this question.

Sequential Bail Review

Sequential bail⁸ reviews occur when pretrial services agencies review the status of detained defendants on an ongoing basis to determine if there are any changes in eligibility for release options or other circumstances that might enable the conditional release of defendants. The pretrial services agency should take such actions as may be necessary to provide the court with needed information and to facilitate the release for defendants under appropriate conditions. Of the 46 responding counties, nine counties systematically re-review bail for defendants

⁸ Sequential bail review is identified as an element of a high functioning pretrial services agency. See *A Framework for Pretrial Justice Essential Elements of an Effective Pretrial System and Agency* developed by the National Institute of Corrections at <https://s3.amazonaws.com/static.nicic.gov/Library/032831.pdf>. See also the National Association of Pretrial Services Agencies' *Standards on Pretrial Release: Revised 2020* <https://drive.google.com/file/d/1edS2bltwfNROieGeu1A6gKluTfzqop92/view>.

remaining in custody after the initial bond is set; 26 counties do not; 10 counties are unsure; and one county declined to answer the question.

One small county noted that although it does not have a formal systematic review of cash bonds, it informally keep tabs on those unable to post cash in an effort to ensure they are able to contact counsel, and to address whether continued cash bond is warranted on a case-by-case basis.

Pretrial Services Reports

Fourteen counties generate pretrial services reports for court prior to a defendant's first court appearance. Five counties do not.

Recommendations for Conditions of Bail in Pretrial Services Reports

Eight of the fourteen counties (57%) that generate pretrial services reports include recommendations for conditions of bail. The remaining six counties (43%) do not include recommendations for conditions of bail in the pretrial services reports.

Recommendations for Supervision Level in Pretrial Services Reports

Twelve of the fourteen counties (86%) that generate pretrial services reports include supervision level recommendations. The remaining two counties (14%) do not include supervision level recommendations.

Pretrial Services Reports Storage Location

Eleven of the fourteen counties (79%) that generate pretrial services reports include those reports to the court record. Of the three remaining counties, one county (7%) keeps the pretrial services report in a file separate from the court record; one county (7%) does not add the pretrial services report at the time of the bond hearing; and one respondent (7%) did not know if the pretrial services report was added to the court record.

There is a county that conducts pretrial screenings once bond has been set and the judge orders defendants to be assessed. That pretrial agency generates a report containing a recommendation for a specific level of supervision after a defendant's first appearance. The report is included in the court record.

Pretrial Case Management

Pretrial case management varies greatly in Wisconsin counties. Of the nineteen responding counties providing pretrial services, case management systems include:

- Northpointe Pretrial (Equivant) – 5 counties
- AutoMon – 3 counties
- Avatar – 3 counties
- Excel spreadsheet – 1 county
- CaseWorx – 1 county
- OneSolution – 1 county
- Hard copy in file – 1 county
- Journal Technologies (JTI) – 1 county
- The Clinical Manager – 1 county
- None – 1 county
- Unknown – 1 county

Assessments of Defendants for Other Criminal Justice Programs (e.g. diversion programs or first offender programs)

Thirteen of the nineteen counties with pretrial services (68%) conduct an early assessment of defendants for referrals to other criminal justice programs such as diversion programs or first offender programs. The remaining six counties (32%) do not complete an early assessment.

Pretrial Monitoring Fees

Twelve of the nineteen counties with pretrial services (63%) provide pretrial monitoring to defendants for free. Six of the remaining counties (32%) require defendants to pay for monitoring. One county only requires pretrial defendants to pay for monitoring that may be more convenient for the individual, such as Soberlink⁹ in lieu of daily reporting.

Ability-to-Pay Assessment Conducted Prior to Pretrial Monitoring

The six counties that require defendants to pay for pretrial monitoring do not do an ability-to-pay assessments prior to requiring defendants to pay for pretrial monitoring.

Interest in Pretrial Services Planning in Counties without Pretrial Services

Twenty-one counties answered the question about their county's current level of pretrial services planning or interest. Seventeen of twenty-one respondents (81%) indicated that their county was not planning on creating a pretrial services agency. The remaining four counties (19%) are considering forming a pretrial services agency.

⁹ <https://www.soberlink.com/>

Primary Reasons Why Pretrial Services are Not Currently Offered

The same twenty-one counties responded to the question about why pretrial services are not currently offered. Counties may have identified multiple reasons in answering this survey question.

Primary Reasons Why Pretrial Services are Not Currently Offered Include:

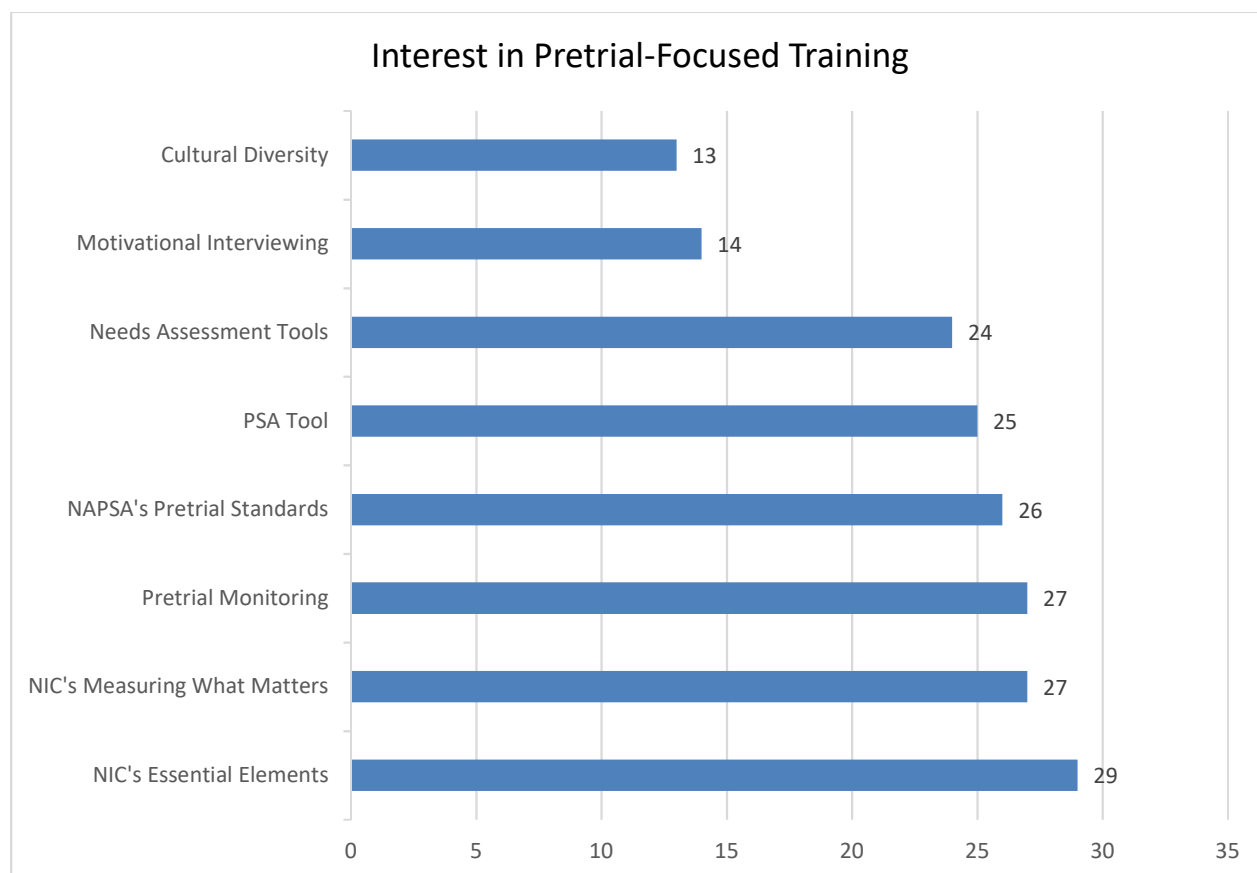
- Lack of funding (12 counties)
- Lack of staff (12 counties)
- Lack of interest of stakeholders (7 counties)
- Lack of a partner organization (3 counties)
- Exploring interest in establishing a program (3 counties)
- Not enough participants to justify establishing a program (2 counties)
- Lack of data to support the creation of a program (1 county)
- Have not discussed this much (1 county)
- Drug treatment during pretrial is county's main interest (1 county)

One respondent reported that there is county interest in pretrial services, but the topic has not yet been placed on the county's planning agenda. Another county has instituted some services for pretrial defendants, but no formal program has been developed. That county is considering forming a pretrial services agency and would like information to coordinate pretrial services with referrals to treatment court.

One county noted that, informally, services are offered through different offices. Individuals with military service, upon arrest, are forwarded to Veterans Services Office. Counseling is provided through the jail and they make arrangements with other officers where additional services may be needed.

Pretrial-Focused Training

Thirty-eight counties identified the types of pretrial-focused training in which they were interested in being offered. Counties may have indicated multiple areas of interest. One county is interested in training to help start a pretrial services agency. Another county stated that they have received numerous training opportunities through their involvement in the Evidence-Based Decision Making (EBDM) Pretrial Pilot Program.



One county that indicated an interest in cultural diversity training also cited the importance of examining pretrial policies to ensure that they are addressing implicit bias. This county is also monitoring pretrial outcomes among minority populations to identify services that may improve participant success.

Additional Comments in the Survey

One county noted that they currently have a Day Report Center, staffed with deputies. They explained that without a meaningful pretrial risk assessment tool, it is difficult for them to develop a pretrial program. Their county has dedicated significant funding to their programs, but there is a need for additional support in order to implement additional pretrial reforms. Another concern raised was the need for pretrial-focused training for the assistant district attorneys and public defenders, as there is much turnover in those offices. They believe that attorneys would

benefit from training on how to argue meaningful bond conditions which would ultimately provide public protection. That county looks forward to having access to the Public Safety Assessment (PSA) and Wisconsin implementation guides and materials that are being generated from the EBDM Pretrial Pilot Program counties.

One county is in the process of planning their System Mapping exercise. Once that is completed, they will reevaluate whether to continue to complete the remaining steps of the Evidence-Based Decision Making (EBDM) initiative. The information collected includes pretrial data which may support that county in creating a pretrial services program.

A county with pretrial services organized under the umbrella of the courts is interested in comparing their pretrial services program to programs organized differently.

One county participating in the EBDM Pretrial Pilot Program initiative stated that, “[s]ince beginning pretrial, we have heard nothing but good things from all stakeholders regarding pretrial services. We have been able to assist people in the front end with referral for services etc. Unfortunately, we will need continued funding to support this into the future.”

Conclusion and Next Steps

This survey demonstrates that pretrial services vary throughout Wisconsin and that there is a growing interest in expanding pretrial risk assessment tools and/or services in jurisdictions where they are not currently in place. While the survey helps explain how pretrial services are provided in many counties, it lacks information about how 26 counties approach pretrial. Pretrial-focused training opportunities and implementation guides and materials generated from the EBDM Pretrial Pilot Program will be made available in the next year.