



## **ASSESSMENT OF PRETRIAL SERVICES IN PHILADELPHIA**

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PRETRIAL JUSTICE

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Pennsylvania Supreme Court Justice Seamus McCaffrey requested technical assistance from the Pretrial Justice Institute (PJI) to conduct an assessment of the pretrial release decision making process in the City of Philadelphia and of the operations of the First Judicial District's PreTrial Services Division.

The technical assistance team was made up of PJI staff John Clark and Stuart Cameron, and PJI consultant Daniel Peterca – who is employed as the Pretrial Services Manager for the Cuyahoga County, Ohio Court of Common Pleas. The team visited Philadelphia on December 1 and 2, 2010. During the visit, the team toured the booking area at the Police Administration Building, observed a session of Preliminary Arraignment at the Criminal Justice Center, and met with several criminal justice system officials. (See Appendix A for a list of persons interviewed.)

This report presents the findings from that visit.

## **Background**

The technical assistance request followed the release of two recent publications that focused attention on problems within the Philadelphia bail system.

The first was an article appearing in the *Philadelphia Inquirer* that noted that about a third of defendants from 2007 and 2008 failed to appear in court for at least one hearing. The newspaper found that as of November 2009 there were about 47,000 bench warrants outstanding for defendants who had failed to appear and had been fugitives for at least one year. The newspaper also found that the city is owed about \$1 billion in bail forfeitures from defendants who missed court dates. In addition, the article noted that the problem with failures to appear go back many years. The article included a 1999 quote from then District Attorney Lynne Abraham calling the failure to appear problem in Philadelphia “a train wreck which imperils our financial stability and guts the justice system.”<sup>1</sup>

The second publication followed a few months later. The Pew Charitable Trusts released a report on the crowded conditions of the Philadelphia prison system.<sup>2</sup> The report noted that the prison population rose 45 percent between 1999 and 2008. Furthermore, the report found that this increase was driven largely by the percentage of prison bed days used by the pretrial population. That percentage rose from 44 percent of all beds used in 1999 to 59 percent in 2008. As a result of these increases, the prison's budget has doubled in the past decade. The report also stated that the magistrates have been making it more difficult for defendants to be released pretrial. According to the report, the percentage of defendants released without having to post cash bail has fallen in recent years, and, when cash bail is set, the amount of bail

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<sup>1</sup> Dylan Purcell, Craig R. McCoy and Nancy Phillips, “Violent Criminals Flout Broken Bail System: Tens of Thousands of Philadelphia Fugitives Are on the Streets, Abetted by the City's Deeply Flawed Program,” *The Philadelphia Inquirer*, December 15, 2009.

<sup>2</sup> County jails throughout Pennsylvania are referred to as prisons, but they are distinct from the state prison system, which are operated by the Pennsylvania Department of Corrections.

defendants are required to pay has gone up substantially. Finally, the report noted that the magistrates have been departing from the pretrial release guidelines more than half the time. The guidelines are an empirically-derived tool that have been in place since 1982 to help magistrates make pretrial release decisions and assure consistency in decision making. Magistrates departed from the guidelines less than a quarter of the time when the guidelines were introduced in the 1980s.<sup>3</sup>

The findings from these two publications are not new. In 2006, Temple University Professor John Goldkamp and his colleagues released a study that looked at pretrial release decision making in Philadelphia. The study was commissioned to analyze the growth in the prison population, and specifically the growth in the composition of the population comprised of pretrial detainees. The study found that the percentage of the population held on bail rose from 40 percent in 1995 to 56 percent in 2005. It also found that 36 percent of defendants failed to appear for at least one court appearance, and that 10 percent of defendants remained fugitives after one year. Moreover, 62 percent of defendants coming into the system in the study had a prior history of failure to appear. Also, as Table 1 shows, the study found that the magistrates (then called commissioners) were departing from the pretrial release guidelines in significant numbers of cases, mostly when the guidelines were calling for supervision, and were making much greater use of cash bail than suggested in the guidelines.<sup>4</sup>

**Table 1**  
**Pretrial Release Guideline Agreement From 2006 Goldkamp Study**

Type of Bail	Guideline Suggestion	Magistrate's Decision
ROR	35%	31%
Type I supervision	18%	7%
Type II supervision	15%	6%
Cash bail	32%	56%

While the problems with the pretrial release decision making process in Philadelphia are not new, the cumulative effects make the situation worse each year.

### **The Ideal Process**

Before examining the pretrial release decision making process in Philadelphia it is important to consider how national standards describe the ideal process. According to the American Bar Association Standards on Pretrial Release, “[t]he purposes of the pretrial release decision include providing due process to those accused of crime,

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<sup>3</sup> Claire Shubik-Richards, *Philadelphia's Crowded and Costly Jails: The Search for Safe Solutions*, The Pew Charitable Trusts, Philadelphia, PA.

<sup>4</sup> John S. Goldkamp, E. Rely Vilcica, Doris Weiland, and Wang Ke, *Confinement and the Justice Process in Philadelphia: Its Features and Implications for Planning*, Crime and Justice Research Center, November, 2006.

maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference.”<sup>5</sup>

The key elements of the pretrial release decision making process include:

- The defendant should appear before a judicial officer for pretrial release determination within 24 hours of arrest;<sup>6</sup>
- The judicial officer should set the least restrictive conditions that will reasonably assure the defendant’s appearance in court and the protection of the public, victims, and witnesses;<sup>7</sup>
- There should be available a wide array of programs or options to promote pretrial release on conditions that reasonably assure appearance and community safety; and that are tailored to meet the risks posed by individual defendants;<sup>8</sup>
- There should be a presumption for release on recognizance, which can be overcome only if there is “a substantial risk of non-appearance;”<sup>9</sup>
- When release on recognizance cannot reasonably assure court appearance and community safety, “constitutionally permissible non-financial conditions should be set;”<sup>10</sup>
- Financial conditions should only be used when no other conditions will reasonably assure appearance, and, when set, should be at the lowest amount necessary to assure appearance and with regard to the defendant’s ability to post bond;<sup>11</sup>
- Financial conditions should not be employed to respond to concerns for public safety;<sup>12</sup>
- Detention without bond should be ordered when no condition or combination of conditions can reasonably assure public, victim or witness safety, the integrity of the judicial process, or court appearance;<sup>13</sup>

The ABA Standards make clear that this framework of presumption of release on recognizance and the selective use of detention without bail “is inextricably tied to explicit recognition of the need to supervise safely large numbers of defendants in the community pending adjudication of their cases. To be effective, these policies require sufficient informational and supervisory resources.”<sup>14</sup>

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<sup>5</sup> American Bar Association, ABA Criminal Justice Standards on Pretrial Release: Third Edition, 2002, Standard 10-1.1.

<sup>6</sup> Standard 10-4.1.

<sup>7</sup> Standard 10-1.2.

<sup>8</sup> Standard 10-1.2.

<sup>9</sup> Standard 10-5.1.

<sup>10</sup> Standard 10-1.4 (b).

<sup>11</sup> Standard 10-1.4 (c).

<sup>12</sup> Standard 10-1.4 (d).

<sup>13</sup> Standard 10-1.6.

<sup>14</sup> Standard 10-1.9

To provide these informational and supervisory resources, the Standards state that all jurisdictions should establish Pretrial Services programs.<sup>15</sup> These programs should conduct an interview and investigation of each defendant prior to each defendant's initial appearance in court, and present a report to the judicial officer presiding at the initial appearance. The information gathered for and presented in that report "should be demonstrably related to the purposes of the pretrial release decision and should include factors shown to be related to risk of flight or of threat to the safety of any person or the community and to selection of appropriate release conditions,..."<sup>16</sup>

The pretrial services program should also:

- Develop "appropriate and effective" supervision for defendants released with conditions;
- Monitor compliance with release conditions;
- Promptly inform the court of all apparent violations of release conditions;
- Review the status of detained defendants on a regular basis for any changes in release eligibility;
- Develop and operate an accurate information management system to support prompt information collection, risk assessment, release condition compliance monitoring, and detention review functions; and
- Remind defendants of their upcoming court dates.<sup>17</sup>

According to the Standards, a defendant who violates the conditions of release "should be subject to a warrant for arrest, modification of release conditions, revocation of release, or an order of detention, or prosecution on available charges."<sup>18</sup> Furthermore, "willful failure to appear in court without just cause after pretrial release should be made a criminal offense."<sup>19</sup>

## **Experiences of Other Jurisdictions**

These are very ambitious standards, particularly those that relate to achieving the purposes of the pretrial release decision through the limited use of financial conditions of release. While many jurisdictions across the country are able to implement many of these Standards, most still retain a large reliance on financial conditions of release.

One jurisdiction that has pulled away from a reliance on financial release to embody the spirit of the ABA Standards is Washington, D.C. Currently, about 80 percent of defendants receive a non-financial release. Of these, 88 percent make all of their court appearances and 88 percent have no rearrests for new charges while their initial charges are pending.<sup>20</sup>

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<sup>15</sup> Standard 10-1.10.

<sup>16</sup> Standard 10-4.2 (g).

<sup>17</sup> Standard 10-1.10.

<sup>18</sup> Standard 10-5.6.

<sup>19</sup> Standard 10-5.5.

<sup>20</sup> Pretrial Justice Institute, *The D.C. Pretrial Services Agency: Lessons Learned From Five Decades of Innovation and Growth*, 2010.

Another jurisdiction that has produced successful outcomes is the Commonwealth of Kentucky, where a statewide pretrial services program operates. The pretrial release decision making process in Kentucky resembles Philadelphia in one important aspect – both systems use cash bail as the financial bail option. Commercial bail bonding agents are not permitted to write bonds in Kentucky. A 2010 study of pretrial release decision making in Kentucky found that 74 percent of defendants are released pending trial, and 92 percent make all court appearances and 93 percent have no rearrests during the pretrial period.<sup>21</sup>

Within Pennsylvania, Allegheny County recently revamped its pretrial services program to incorporate the latest in best practices and to validate its risk assessment procedures,<sup>22</sup> which has reduced that system’s reliance on cash bail. The Allegheny County prison warden recently attributed the decline in Allegheny County’s jail population to the work of the revamped pretrial services program.<sup>23</sup>

To be sure, each jurisdiction is unique in the challenges they face. Thus, the same outcomes should not be expected from every jurisdiction. But the experiences of these and other jurisdictions show that it is possible to combine high pretrial release rates with low pretrial failure rates in a way that embodies the ideal process as set forth by the American Bar Association Standards.<sup>24</sup>

## **The Pretrial Release Decision Making Process in Philadelphia**

The pretrial release process in Philadelphia is a 24 hour a day, seven day a week operation. Magistrates, assistant district attorneys, assistant public defenders, PreTrial Services interviewers, and preliminary arraignment courtroom staff are on duty around the clock to begin processing the 50,000 to 60,000 criminal arrests that occur in Philadelphia each year.

Persons arrested in Philadelphia are first brought to the nearest police station, where an arrest report is prepared in the Preliminary Arraignment Reporting System (PARS). They are then brought to one of seven police districts throughout the city to await their initial appearance in court. They are first fingerprinted to verify their identity. Once identity has been established, they are photographed and their criminal histories are run. Information is entered into PARS as this booking process continues.

Once this booking process is complete, defendants are moved to a holding cell, and PARS lists the defendants as ready to be interviewed by the PreTrial Services Division. PreTrial Services interviewers continually check PARS so that they can begin

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<sup>21</sup> James Austin, Roger Ocker, and Avi Bhati, *Kentucky Pretrial Risk Assessment Validation*, JFA Institute.

<sup>22</sup> Pretrial Justice Institute, *The Transformation of Pretrial Services in Allegheny County, Pennsylvania: Development of Best Practices and Validation of Risk Assessment*, 2007.

<sup>23</sup> Len Barcoucky, “Jail Populations Dropping in County and Nation,” *Pittsburgh Post-Gazette*, 12/5/10.

<sup>24</sup> The National Association of Pretrial Services Agencies also has pretrial release standards that describe the ideal process in much the same way.

the interviews as soon as defendants become available. The interviews take place via video link, with the PreTrial Services interviewer stationed at 1401 Arch Street.

The interviews solicit information on the following:

- demographics (sex, race, date of birth, place of birth, primary language, marital status, children)
- residence (current address, telephone, cell phone and e-mail address, who lives with, how long, able to return if released)
- employment (name, address and telephone number of employer, type of work, wages, length of employment, last date worked, how supported if unemployed)
- physical/mental disorder (nature of disorder, where last treated, medication, when medication last used, when medication next due)
- drug or alcohol abuse (primary, secondary and tertiary substances, is use current or past, length of use, when last used, amount used, method of use, ever been treated).

During Calendar Year 2009, the PreTrial Services Division interviewed 96 percent of all persons appearing in preliminary arraignment court – over 50,000 defendants. For those defendants not interviewed, the reasons included: language problems (1.7%), police declined to move the defendant for the interview due to security concerns (1.3%), and medical (0.5%).

Interview information is entered directly into PARS. Once the interview is completed, PreTrial Services staff begin efforts to verify the information by calling references provided by the defendant.

While the pretrial interview is occurring, an assistant district attorney is reviewing the arrest charges and making a determination as to which charges, if any, to file. Once the charges are determined, that information is entered into PARS. PreTrial Services takes a final look at the information to make sure that it is complete, and then commands PARS to assemble the information and automatically calculate the presumptive release under the Pretrial Release Guidelines.

Under an agreement to facilitate the processing of new arrestees, defendants must appear before a magistrate within 20 hours of the arrest. Currently, according to system officials, preliminary arraignment is occurring within 16 to 17 hours of arrest. Within that window, PreTrial Services has 2 ½ to 3 ½ hours to complete its interview, investigation and report preparation and submission for each defendant. PreTrial Services is currently averaging 1 hour and 48 minutes from the point when PARS indicates that the defendant is ready to be interviewed to the submission of the report to the magistrate.

At the preliminary arraignment, the magistrate, assistant district attorney, and assistant public defender are in the courtroom and the defendant appears on video from the police district. The magistrate and prosecutor have access to all the information from PARS, while the defense attorney has selected information – not including prior



failures to appear, and the police report, which identifies victims and witnesses. The magistrate reads the charges and the circumstances leading to the arrest, and reviews the PreTrial Services report, including the release suggested by the pretrial release guidelines.

### **Philadelphia's Pretrial Release Guidelines**

The pretrial release guidelines were originally introduced in 1982 and most recently revised in 1995. They are a two-dimensional grid that incorporate actuarial-based risks of non-appearance in court and danger to the community on the one dimension and charge seriousness on the other to arrive at a presumptive pretrial release decision. The risk dimension was developed from an empirical analysis of the factors associated with the probability of pretrial misconduct (i.e., either failure to appear in court or danger to the community) and validated on a sample of Philadelphia defendants. The charge severity dimension was based on an empirical analysis of judicial pretrial release decision making by charge level.

When these guidelines were established, they were the first use of a guidelines approach to pretrial release decision, and one of the first examples of introducing evidence-based practices into pretrial release decision making. In fact, the research that they were based upon employed the best available methodology – an experimental design employing random assignment of cases into control and experimental groups.

One of the chief aims of the Philadelphia guidelines study was to enhance the equity of pretrial release decisions – that similar pretrial release decisions would be made for similarly situated defendants. The study found that the decisions of the judges in the experimental group – those who used the guidelines – were substantially more consistent than the decisions of the judges in the control group, who do not have access to the guidelines. Furthermore, this consistency was achieved without any increases in failure to appear, rearrest or pretrial detention rates.<sup>25</sup>

The Philadelphia pretrial release guidelines served as a model that was replicated, with Federal funding, in several jurisdictions around the country.

The options available to the magistrate at preliminary arraignment under the guidelines include:

- Release on recognizance – the defendant is released on his or her promise to appear in court.
- Sign on Bond – the defendant is released without having to post any money, but is liable for the bail amount if the defendant fails to appear in court.
- Supervision Type I – the defendant is instructed to report to the PreTrial Services Division in four days for an orientation for the supervision and

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<sup>25</sup> John S. Goldkamp and Michael R. Gottfredson, *Policy Guidelines for Bail: An Experiment in Court Reform*. Temple University Press, Philadelphia, 1985.

monitoring program, which will include calling the program at least once a week.

- Supervision Type II – the defendant is instructed to report to the PreTrial Services Division in four days for an orientation for the supervision and monitoring program, which will include calling the program twice a week.
- Cash bail – the defendant is required to post 10 percent of the amount set by the magistrate to be released, and is liable for forfeiting both the deposit and the balance if the defendant fails to appear in court.
- Hold Without Bond.

The assistant district attorney and assistant public defender are free to be heard on the issue of the pretrial release. Magistrates have the discretion to depart from the presumptive release finding, but must record their reasons for doing so. The decisions of the magistrates are immediately appealable by either the prosecutor or defense to a municipal court judge.

Since 1997, defendants can also be referred to the drug treatment court at this hearing. Prior to the preliminary arraignment, prosecutors review the cases of persons charged with felony drug offenses that do not involve mandatory sentences and identify approximately 120 defendants a month for referrals to the drug court. Charges are ultimately dismissed for those who graduate from the program.

At the preliminary arraignment, the magistrate also announces the defendant's next scheduled court date. The defendant electronically signs and receives a subpoena listing the date, time and location of that appearance. Defendants released on Type I or Type II Supervision are also directed to call PreTrial Services within 24 hours of release, and to report to PreTrial Services in four days for orientation for their supervision.

During Calendar Year 2009, 8,069 defendants were ordered to report to PreTrial Services for orientation for Type I or II supervision and monitoring. According to PreTrial Services data, 3,545 (44%) attended the orientation and 4,495 (56%) did not.

When defendants fail to report for the orientation, PreTrial Services staff send a letter warning the defendant to appear or face possible arrest, but take no further action. The court itself requested that it not be notified of the failure to report. The reason expressed by several officials for the lack of a system response was that due to chronic crowding at the prison, the courts lacked the capacity to enforce this condition through revocation of release, thus no sanctions are pursued.

A defendant who does report for orientation views a video in which a former president judge of Municipal Court describes the conditions of release, including the requirement to make all court appearances. The video stresses the importance of court appearances and the consequences for failure to appear. Also during the orientation, the defendant is assigned to the PreTrial Services Officer who will be responsible for supervising the defendant. That officer will instruct the defendant on using the

automated telephone check-in system. Defendants in Supervision Type I typically have to check in by telephone once a week, and those in Type II twice a week.

During Calendar Year 2009, there was an average daily Type I and Type II supervision caseload of 5,096 defendants in active (3,185) or violation (1,911) status. For defendants who are not in compliance with release conditions, PreTrial Services sends out warning letters, but, as is the case with defendants who fail to report for orientation, there is no violation notice sent to the court and no sanction applied for defendants under Type I or Type II supervision who are in violation of the conditions of their release. The reason for this, according to several officials, is that the system has been lacking the prison space needed to revoke release as a sanction for non-compliance.

Aside from ROR, Type I and II Supervision, Cash Bail, drug court referrals, and holds without bond, two other options are available to judges at later hearings, but not to magistrates at preliminary arraignment. Since these options are not available to the initial decision makers, they are referred to as “back end releases.”

The first of these is Intensive Direct Supervision. Under this type of release, the defendant must report to the PreTrial Services Division two times a week by telephone and three times a week in person, plus the defendant can be ordered to undergo urinalysis or be referred to drug, alcohol or other services. The second is Electronic Monitoring/House Arrest. Defendants under this type of supervision must remain at home except for pre-approved absences, such as for work. During Calendar Year 2009, there was an average daily caseload of about 300 defendants under Electronic Monitoring House Arrest<sup>26</sup> and approximately 300 under Intensive Direct Supervision Program.

Regardless of the type of release, the PreTrial Services Division provides court date reminders to released defendants through an automated telephone system. Defendants receive an automated message about the court date two days in advance of the scheduled hearing. If the defendant misses the scheduled hearing and a bench warrant is issued, the system calls the defendant and provides information on how to voluntarily surrender on the bench warrant. PreTrial Services is currently looking into ways to update this automated telephone system to incorporate options for texting and tweeting.

Bench warrant surrenders are handled by the PreTrial Services Division’s Warrant Unit. Defendants with outstanding warrants can report to a “Surrender Room,” where Warrant Unit staff arrange to take them before the court to resolve the warrants.

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<sup>26</sup> The Electronic Monitoring Unit of the PreTrial Services Division actually has a caseload of about 900, but about 600 of them are post-trial cases. The Unit uses an active system so that any violation results in an immediate alert. The Unit has also begun testing Global Position System (GPS) monitoring and Transdermal Alcohol Detection (TAD).

During 2009, the unit processed 17,381 criminal bench warrant surrenders. The unit also executed 3,443 criminal bench warrants through arrests.<sup>27</sup>

## Findings and Discussion

There are many aspects of the pretrial release decision-making process in Philadelphia that comport with the American Bar Association Standards.

- Defendants are brought to their preliminary arraignment well within the 24-hour period specified in the Standards.
- All defendants (with a few exceptions where extraordinary circumstances exist) are interviewed by PreTrial Services with a report submitted to the court before the preliminary arraignment.
- The report includes information pertinent to the release decision.
- An empirically-derived tool is used to assist the magistrates in making pretrial release decisions.
- The lowest risk defendants, as identified by the pretrial release guidelines, are, for the most part, released by the least restrictive means possible – on their own recognizance.
- The pretrial release guidelines are designed to narrow the circumstances in which financial bail would be used.
- The information system (PARS) is an effective tool for the efficient tracking of defendants from arrest through preliminary arraignment.
- Defendants on pretrial release do receive telephone calls reminding them of their court dates.

There are some key areas, however, where the process in Philadelphia falls short of the Standards – and with serious consequences. The first relates to the options that are available. As noted earlier, the Standards recognize that achieving the purposes of the pretrial release decision by maximizing release while minimizing failure requires the capacity to supervise “large numbers” of defendants in the community.<sup>28</sup> A common theme heard from many key system officials interviewed for this report was that there are not sufficient pretrial release options available. It was noted that the PreTrial Services Division used to have many more supervision options available, but they were cut years ago.

To be effective, pretrial release conditions need to be individualized to the particular risks posed by each defendant. Individualizing conditions requires a range of available options, which can be grouped into the following four categories:

- *Contact* conditions require defendants to report by telephone or in person regularly to Pretrial Services or other entity.

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<sup>27</sup> The unit is responsible for all criminal bench, probation violation, traffic and domestic relations warrants. In 2009, the unit also executed 2,507 probation violation warrants through arrest, in addition to 350 who had both a criminal bench and probation violation warrant, plus 1,947 traffic court and 779 domestic relations warrants.

<sup>28</sup> Standard 10-1.9.

- *Status quo* conditions require that the defendants maintain their residence, school, or employment status.
- *Restrictive* conditions limit defendants' associations or movements. These include conditions to remain in the jurisdiction, avoid contact with the complainant, curfews, and stay away orders from certain areas, such as those where drug sales are common.
- *Problem-oriented* conditions address specific defendant problems that affect future court appearance or rearrest. Release is conditioned on a defendant enrolling in substance abuse monitoring or treatment, vocational or educational training, counseling, or social services program.

For the vast majority of defendants who are ordered into supervision in Philadelphia, the only option that is available is the contact condition – report to PreTrial Services by telephone, with the only variation being to call once or twice a week. The only other supervision options, Intensive Direct Supervision and Electronic Monitoring/House Arrest, are limited in the numbers and are not available to the magistrate at the preliminary arraignment.

A second area where practices in Philadelphia do not meet the Standards concerns the use of financial bail. The Standards call for a limited use of financial bail – to be used when no other conditions can reasonably assure appearance. There is, however, a heavy reliance on cash bail in Philadelphia – set in well over half of all cases. This reliance on cash bail has implications for the prison population, even when the bail amount is low. For example, a snapshot done by the prison on April 8, 2008 found 500 inmates (or about five percent of the total) who were incarcerated with just one charge and with a bail of \$5,000 or less, meaning they could be released by posting a maximum of \$510.<sup>29</sup> In addition, an analysis of felony cases from Philadelphia from 2004 found that defendants who were released on a cash bail spent an average of 16.1 days in custody before obtaining that release.<sup>30</sup> Thus, these defendants were ultimately released during the pretrial period, but not before consuming an average of 16 jail bed days each, in turn driving up the pretrial population in the prison.

A third departure from Standards is the lack of response to most instances of non-compliance with pretrial release conditions. Presumably, when the magistrate orders Type I or Type II supervision instead of releasing the defendant on recognizance, it is because the magistrate believes that the supervision is needed to improve the chances of the defendant coming back to court or staying out of trouble while on pretrial release. When defendants fail to comply with the supervision, however, and there is no response, the court is in effect acknowledging that it is left to hope for the best from the higher risk defendants. Moreover, by taking no action on supervision violations, the

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<sup>29</sup> Philadelphia Prison System Strategic Plan FY 09-13, April 24, 2008

<sup>30</sup> John Clark, “The Impact of Money Bail on Jail Bed Usage,” *American Jails*, July/August 2010.

court may be suggesting to defendants that court orders, including the orders to appear in court and to be law abiding, will not be enforced.

A rational choice theory would hold that defendants would fail to appear in court at a high rate if they perceived that there was little or no cost associated with doing so. It appears that there has been no real cost for failure to appear in Philadelphia for much of the past 25 years. As early as 1986, the federal court intervened in a prison crowding suit and placed limits on the population of the prisons. This resulted in widespread use of emergency releases. During the height of the emergency releases, failure to appear rates exceeded 80 percent.<sup>31</sup> The population cap also affected the court's ability to respond to instances of non-compliance with pretrial release conditions.

Given this history it is possible to see how the chain of events may have unfolded to create the current situation of rising pretrial detention rates and chronically high failure to appear rates. Because of the extraordinarily high failure to appear rates associated with emergency releases, more defendants coming into the system on new charges have a history of failure to appear on their records. This raises their risks – under the pretrial release guidelines and in the minds of the magistrates – for failing to appear on the new charge, so more cash bails are set. This leads to higher pretrial detention rates, which more causes crowding in the prison. In an attempt to keep the prison population under control and the number of emergency releases to a minimum, decisions are made to stop sanctioning non-compliance with pretrial release conditions. Since compliance with release conditions can no longer be enforced, the number of supervised release options dwindle. With the population pressures and the system's resulting silence on non-compliance, defendants bet that there will be little cost to miss court. Between that and the fact that the supervised release options designed to reasonably assure appearance have been cut, failure to appear rates rise further. As even more defendants coming through the system on new charges have a prior history of failures to appear, magistrates turn to even greater use of cash bail to assure appearance. This drives up the pretrial population, which adds to prison crowding. And the cycle just repeats itself over and over, and the situation grows worse.

This may be a simplistic explanation for the current problems with the pretrial release decision-making process in Philadelphia, but it is difficult to imagine how the failure to appear problem is not connected to the chronic prison crowding problem. The challenge facing the system now is to break this cycle.

## **Recent Developments**

At least three developments have taken place in the past year that has created an historic opportunity to break this cycle. The first was the passage of a state law that requires that inmates sentenced to serve two or more years be moved out of county systems and into state facilities. This lowered the Philadelphia prison population by

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<sup>31</sup> John S. Goldkamp and E. Rely Vilcica, "Judicial Discretion and the Unfinished Agenda of American Bail Reform: Lessons From Philadelphia's Evidence-Based Judicial Strategy." *Studies in Law, Politics, and Society*, Volume 47, 142.

about 2,000 inmates a day in the past year. As a result, the emergency releases have essentially stopped.

A second development is a new procedure implemented by the new District Attorney. In the past, inexperienced attorneys were assigned to make the charging decisions before the preliminary arraignment. Since charge seriousness is a major factor in determining the presumptive release under the pretrial release guidelines, it is important that the charges that are filed be fully supported by the evidence presented at arrest. With inexperienced attorneys making charging decisions, many of the filed charges were above that which could be supported, leading to inaccurately high charge seriousness scores on the guidelines. The new District Attorney has assigned experienced and highly skilled attorneys to the charging decisions, with the result that more supportable charges are being filed and thus more accurate assessments being incorporated into the charge seriousness dimension of the pretrial release guideline calculations.

A third development, also initiated by the District Attorney, was to purge about 20,000 old warrants, which reduced the number of outstanding warrants by 40 percent. The purged warrants involved cases where the defendant could no longer be prosecuted because complaining witnesses are unavailable or other evidence has deteriorated.

These developments have given the system some of the space it needs to begin to seriously address the problems with the pretrial release decision making process.

## **Recommendations**

Three features of the Philadelphia pretrial release decision making process stand out: (1) there is a large reliance on cash bail; (2) as a result of the reliance on cash bail, a large number of defendants are detained for at least part of the pretrial period, contributing to crowding problems in the prison; and (3) a large number of defendants who are released fail to appear in court. It is our conclusion that the following set of circumstances have led to these outcomes: the current risk assessment procedures are outdated; there are insufficient pretrial release options to allow for matching individual defendant risks to appropriate release conditions; there is no response to violations of most of the release conditions that do exist; and there is limited response to failure to appear. The following recommendations are designed to address these circumstances.

- (1) The court should begin immediately to plan for a validation study of the pretrial release guidelines.**

Most of the persons interviewed for this report stated that the pretrial release guidelines need to be updated because they do not include many newer charges on the charge seriousness dimension. While this is true, and such an update is needed, it is also time to validate the risk factors of the actuarial dimension of the guidelines.

In recent years, as the call for evidence-based practices in pretrial release decision making have grown, more and more jurisdictions have been conducting validation studies of their pretrial risk assessment instruments.<sup>32</sup> As noted earlier, Philadelphia was one of the pioneers in the country in the risk assessment validation that was conducted at the time that the pretrial release guidelines were established. But that was many years ago and it is time to see if the risk factors incorporated in the current guidelines are still valid.

**(2) The court should begin immediately planning for the expansion of pretrial release options to provide a range of options that are tailored to the individual risks posed by defendants.**

The First Judicial District's Court and PreTrial Services Division have a rich history of providing national models of services and tools (e.g., the use of video for PreTrial Services interviews and preliminary arraignments, the pretrial release guidelines) and creative responses (e.g., the Warrant Unit and bench warrant surrender activities). As is the case with many pretrial services programs, the challenges of the national recession, competition over local funding and decreasing operational resources have negatively impacted the PreTrial Services Division in Philadelphia. The division's administration, as well as court, district attorney and defense leadership interviewed for this report, all recognize that the pretrial program of today has less resources and fewer responses to provide meaningful and effective pretrial release options to the system than were available and relied on a decade ago.

The lack of viable supervision alternatives, including those with program resources of residential and outpatient substance abuse, mental health treatment and homelessness responses leads to unnecessary pretrial detention as defendants who could be safely released with appropriate conditions are instead held on cash bails that they cannot post. In addition, when there are no options between reporting into PreTrial Services by telephone and electronic monitoring, defendants who do not need the intensity of electronic monitoring supervision are nonetheless ordered into it. Aside from being an inefficient use of limited resources, research has shown that defendants who are over supervised are more prone to failure than defendants who receive the appropriate supervision.<sup>33</sup>

It is important that the expanded options be available to the magistrates at preliminary arraignment. There currently may be a good rationale for keeping Intensive Direct Supervision and Electronic Monitoring as "back end releases." Once new validated guidelines and expanded supervision options are in place, however, these more intensive supervision options should be part of the menu of options available at preliminary arraignment.

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<sup>32</sup> There are a number of individuals and organizations that have experience in conducting pretrial risk assessment validation studies. Most jurisdictions select a researcher by issuing a Request for Proposal.

<sup>33</sup> Marie VanNostrand and Gena Keebler, "Pretrial Risk Assessment in the Federal Court," Office of the Federal Detention Trustee, U.S. Department of Justice, 2009.



The supervision options for defendants with serious mental illness appear to be especially lacking. A 2008 snapshot of the jail population found that half the inmates classified by the prison as “Seriously Mentally Ill” were being held on non-violent, non-sex crimes.<sup>34</sup> Defense attorneys estimated that there are 1500 severely mentally ill inmates in the prison now. To better identify defendants with mental health issues, the PreTrial Services Division should screen defendants during its interviews using the Brief Mental Health Screen.<sup>35</sup> In addition, PreTrial Services should work with local criminal justice decision makers, City Hall, community representatives, and Behavioral Health administrators to strategize and identify responses and resources to allow access to treatment programming for appropriate defendants as part of an expanded PreTrial Services supervision alternatives. This could include the implementation of a day reporting center, which could be a useful option for defendants, mentally ill or otherwise, who are homeless.

- (3) The court, in conjunction with the Criminal Justice Advisory Board, should develop and implement a clear policy outlining meaningful, swift and certain responses to violations of pretrial release conditions and to failure to appear in court.**

A range of responses should be available for defendants who fail to comply with conditions of their release. Minor violations should be handled administratively by the PreTrial Services Division by admonishing defendants to comply and increasing the restrictiveness of the release conditions. The court should provide PreTrial Services with parameters for exercising this response. More serious or repeat violations should be reported to the court, and violation hearings scheduled. Options available to the court should include warnings, increasing the restrictiveness of the release, revoking the release, or ordering prosecution for contempt of court – as warranted on a case-by-case basis.<sup>36</sup>

There should also be a range of options available to deal with defendants who fail to appear in court. One option that has been used frequently in Philadelphia is to allow defendants to surrender on bench warrants. The Warrant Unit of PreTrial Services operates a “Surrender Room” that processes the cases of defendants who want to resolve their warrants. As noted earlier, the unit processed 17,000 bench warrant surrenders in 2009. In the vast majority of these cases, the court date was reset and the defendant released. There have been discussions underway within the court to expand the hours of operation of the Surrender Room to increase the number of surrenders, and we encourage officials to do so.

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<sup>34</sup> Philadelphia Prison System Strategic Plan FY 09-13, April 24, 2008.

<sup>35</sup> This screening instrument was developed by the National GAINS Center for the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services. It can be accessed at <http://gainscenter.samhsa.gov/html/resources/MHscreen.asp>.

<sup>36</sup> Some jurisdictions concerned about the impact of violation responses on the local prison population have looked to more creative options. For example, defendants who have violated a release condition or missed a court appearance might be ordered, as a condition of their release, to report to the court for three consecutive days and sit in the jury box all day long.

While there are significant benefits to encouraging defendants with warrants to surrender – including, most importantly, warrant unit officer safety – doing so does come at a cost. Many defendants may conclude that they can come to court at their convenience, not when ordered to do so. To address this, there must be other responses to failure to appear. These should include: increasing the restrictiveness of the release; revocation of the release; and prosecuting the defendant for a violation of Title 18, § 5124, which makes failure to appear a third degree felony when the underlying charge is a felony and a third degree misdemeanor when the underlying charge is a misdemeanor. Defendants are advised of this in the subpoena they are issued telling them when they must report to court, but the District Attorneys Office has not been charging defendants under this provision. Threatening defendants that they will be charged with a crime for failing to appear and then never following through on that threat undermines the credibility of the system. And it reinforces the belief among defendants that nothing will happen to them if they fail to appear.

None of these options is ideal for every situation in addressing failure to comply with release conditions and failure to appear in court. But the range of options must be available to assure that there is an appropriate and meaningful response to every instance of failure.

**(4) *Once the policies regarding responses to violation of release conditions and failure to appear in court are established, the court, in conjunction with other key stakeholders, should deliver a strong, clear and repetitive message to defendants at each of several key points in the pretrial processing that the court has taken a new posture on failure to appear in court and failure to comply with release conditions, and that there will be immediate consequences for such failures.***

Those points are:

- At the conclusion of the PreTrial interview, delivered by the PreTrial Services Officer.
- At the conclusion of preliminary arraignment, delivered by the magistrate.
- As part of the discharge process from the police district or prison, delivered by the president judge in a video (similar to the video that defendants watch as part of orientation to PreTrial Services supervision).
- During every contact that PreTrial Services has with a defendant, including: at interviews for eligibility for public defender representation, at orientation for the supervision program, as part of the message delivered when defendants report in by telephone or receive their telephone court date reminders, and any other supervision contact.
- After every court appearance when presented the subpoena for the next court date, delivered by the judge.

In each of these interactions, staff must acknowledge that while little has been done to address failures in the past, a new day has dawned in the Philadelphia court

system and now failure to appear in court and failure to comply with release conditions will be dealt with swiftness and with certainty.

In addition, key stakeholders should use all available means of communication, including through the media, to deliver this message.

Finally, defense attorneys, whether public defenders or the private bar, should be encouraged to deliver the same message to their clients.

The reduction of the prison population by 2,000 inmates in the past year provides the opportunity to enable the implementation of these new policies by making revocation of release a possible sanction.

**(5) *In its warrant execution decisions, the Warrant Unit of the PreTrial Services Division should give top priority to warrants issued from the time that these new policies take effect.***

The warrant unit has the difficult task of selecting from among tens of thousands of bench warrants to pursue either through arrests or surrenders. No matter how efficient its operations are or ever could be, without the infusion of massive resources it is not practical to expect the unit to catch up with old warrants until the number of new warrants being issued is sufficiently reduced. Thus, the strategy the unit should take is, once the new policies are implemented, to make new warrants the top priority, and only move on to warrants issued before the policies took effect after the overwhelming majority of the new warrants have been addressed through arrest or surrender. Exceptions to this may be appropriate for older warrants on cases involving violence or witness intimidation.

As a way to reduce the number of old warrants before making new warrants the top priority, the court should consider another round of the Fugitive Safe Surrender program. The court held this program in 2010 with excellent results.

**(6) *The PreTrial Services Division should avail itself to currently available program and staff development opportunities.***

There are currently a variety of opportunities available for both pretrial program and pretrial staff development. These include the following:

- Each year, the National Association of Pretrial Services Agencies (NAPSA) holds a national conference for pretrial services practitioners. The conference is an excellent chance for pretrial practitioners to gather and engage in a vibrant exchange of ideas that they take back home to improve their services within their own jurisdictions. In years past, the PreTrial Services Division was an active participant at NAPSA conferences. Because of funding issues, the PreTrial Services Division in Philadelphia is currently one of only a few pretrial programs

in the United States that serves a large urban jurisdiction that is regularly absent from these gatherings.

- NAPSA has created an on-line certification exam that tests practitioners' knowledge of the professional standards and best practices for pretrial release, historical foundations of bail, and relevant case law. Staff of the PreTrial Services Division should use this certification as a means of gaining a broader knowledge of the legal and historical underpinnings of the pretrial services field.
- The Pennsylvania Association of Pretrial Services also holds an annual conference – for all pretrial services programs within Pennsylvania. The conference is usually held in State College. The PreTrial Services Division is regularly absent from these meetings as well.
- The National Institute of Corrections offers a 40-hour training course for pretrial program administrators designed to enhance the effectiveness of these administrators in maintaining and capitalizing on existing resources. The next available date for this training, which is held in Aurora, Colorado, is August 14 to 18, 2011.<sup>37</sup> Administrators from the PreTrial Services Division should attend.

PreTrial Services Division administrators should also seek to visit pretrial services programs from other jurisdictions. The programs in Washington, D.C. and Allegheny County are not that far away. Despite the many differences that exist among the District of Columbia, Allegheny County, and Philadelphia, there are many common challenges. Such visits would provide different perspectives for looking at such challenges as have been presented in this report: validating risk assessment procedures; obtaining system support for the validated instrument; and designing pretrial release conditions that can meet individualized risks, and making those conditions work; responding to instances of non-compliance and failure to appear in court.

While these opportunities come with a cost, the investment of a little time and a few thousand dollars a year could pay rich dividends in more creative and effective approaches to long standing problems. It is also a way to keep staff morale high and at their highest level of productivity. High functioning pretrial services programs go these lengths to assure that leadership and staff of the program have the necessary exposure to current best practices. With so much information to be learned from colleagues around the country, the court cannot afford to have the staff of the PreTrial Services Division be isolated.

**(7) The court and District Attorneys Office should put in place the necessary procedures to document the impact of whatever changes are made to the pretrial release decision making process.**

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<sup>37</sup> Registration information can be obtained at <http://www.nationalinstituteofcorrections.gov/Training/11C3002>. The National Institute of Corrections pays the travel costs associated with this training.

Without data showing what seems to be working in improving the pretrial release decision making process and what does not it will not be possible to continue to refine the process to achieve the best possible outcomes. To assess the impact changes, it is first important to have data from the period right before the program started, to serve as a baseline. It is important that data be available for the following:

- pretrial release rate/by type of release (i.e., ROR, non-financial conditions, ten percent deposit bail, full cash bail, commercial surety bail)
- time to pretrial release/by type of release
- rearrest rate
- breakdown of type of rearrests when they occur
- number of rearrests
- failure to appear rate.

There are two ways to calculate failure to appear rates. One is an appearance-based measure. This involves counting all scheduled court appearances and then tallying how many of those appearances were not made. The second is a defendant-based measure, which shows the number of defendants who are on pretrial release who missed at least one court appearance.

The appearance-based measure is the one that is used currently by the Philadelphia court system. During the preparation of this report, PJI asked the court for data on the FTA rate. The court produced data showing an FTA of 6.1 percent – far lower than the FTA rates of about one-third found by Goldkamp and by the *Inquirer* in their separate analyses, rates which were calculated using a defendant-based measure. Upon further investigation, it became apparent that the 6.1 percent rate also included all defendants who were incarcerated at the time of their scheduled appearance, thus having no opportunity to fail to appear. As a result, the 6.1 percent figure is not a valid measure of the extent of failure to appear in Philadelphia.

The court should begin using a defendant-based measure to calculate FTA, and count only those defendants who have been released while their cases are pending. This is the way that most jurisdictions calculate FTA.

**(8) Magistrates, judges, prosecutors, defense attorneys and PreTrial Services staff should receive thorough briefings on all the changes to the pretrial release decision making process resulting from this report, throughout the change process.**

For any change to be successful, those who must implement the change need to be aware of and consulted about proposed changes. It is important that those who use the pretrial release guidelines have a good working knowledge of its components. The court should ensure that the researchers conducting the validation study of the pretrial release guidelines conduct periodic briefings with the key stakeholders during the validation project and present the findings in an in-person meeting.

## **Conclusion**

Implementing these steps will come with significant costs. There will be costs associated with the validation of the pretrial release guidelines and with bolstering the supervision capacity of the PreTrial Services Division. There will be more court hearings held – to address the violations of release conditions. There will be more criminal cases filed – charging defendants under § 5124. Most old bench warrants will be neglected for a time and remain outstanding. And the prison population will most likely rise as those who violate pretrial release conditions or fail to appear in court are held.

Over time – and it may take years – the system should begin to work again as it was designed, and as it currently works in many other jurisdictions. A very large majority of defendants will be released pending adjudication, will appear in court, and will stay out of trouble while their cases are pending.

## Appendix A

### Parties Interviewed

Honorable D. Webster Keogh, Administrative Judge, Criminal Division  
Honorable Marsha H. Neifield, President Judge, Municipal Court  
Honorable Sheila Woods-Skipper, Supervising Judge, Criminal Trial Division  
David C. Lawrence, Court Administrator, First Judicial District of Pennsylvania  
Joseph A. Lanzalotti, Deputy Court Administrator, Criminal Trial Division  
Kathleen M Rapone, Deputy Court Administrator, Philadelphia Municipal Court  
P. Karen Blackburn, Problem Solving Courts Coordinator, Supreme Court of Pennsylvania  
David V. Preski, Director, PreTrial Services Division  
Tom Press, Commanding Officer, Warrant Unit, PreTrial Services Division  
Patricia Farrell, Electronic Monitoring Coordinator, PreTrial Services Division  
Joan Barron-Fauser, Department Head, Arraignment Operations and Cashier Functions, PreTrial Services Division  
Denise Lancaster, Supervisor, Supervision Unit, PreTrial Services Division  
Carlene Flowers, Supervisor, Supervision Unit, PreTrial Services Division  
Lt. Gabriel Keown, Commanding Officer, Records and Identification, Philadelphia Police Department  
Magistrate Frank Rebstock, Municipal Court  
Ed McCann, Deputy District Attorney, Philadelphia District Attorneys Office  
Sarah Hart, Chief Performance Officer, Philadelphia District Attorneys Office  
Lauren Baraldi, Chief of PreTrial, Philadelphia District Attorneys Office  
Kirsteen Heine, Philadelphia District Attorneys Office  
Byron C. Cotter, Director, Alternate Sentencing Unit, Defender Association of Philadelphia  
Charles A. Cunningham, First Assistant Defender, Defender Association of Philadelphia  
Stuart Schuman, Chief Defender, Municipal Court  
Ron Greenblatt, Private Attorney

**Appendix B**  
**Relevant Excerpts from the**  
**American Bar Association**  
**Standards on Pretrial Release**

**AMERICAN BAR ASSOCIATION PRETRIAL RELEASE STANDARD 10-1.10.**

**The role of the pretrial services agency**

Every jurisdiction should establish a pretrial services agency or program to collect and present the necessary information, present risk assessments, and, consistent with court policy, make release recommendations required by the judicial officer in making release decisions, including the defendant's eligibility for diversion, treatment, or other alternative adjudication programs, such as drug or other treatment courts. Pretrial services should also monitor, supervise and assist defendants released prior to trial, and to review the status and release eligibility of detained defendants for the court on an ongoing basis.

The pretrial services agency should:

- (a) conduct pre-first appearance inquiries;
- (b) present accurate information to the judicial officer relating to the risks defendants may pose of failing to appear in court or of threatening the safety of the community or any other person and, consistent with court policy, develop release recommendations responding to risk;
- (c) develop and provide appropriate and effective supervision for all persons released pending adjudication who are assigned supervision as a condition of release;
- (d) develop clear policy for operating or contracting for the operation of appropriate facilities for the custody, care or supervision of persons released and manage a range of release options, including but not limited to, residential half-way houses, addict and alcoholic treatment centers, and counseling services, sufficient to respond to the risks and problems associated with released defendants in coordination with existing court, corrections and community resources;
- (e) monitor the compliance of released defendants with the requirements of assigned release conditions and develop relationships with alternative programs such as drug and domestic violence courts or mental health support systems;
- (f) promptly inform the court of all apparent violations of pretrial release conditions or arrests of persons released pending trial, including those directly supervised by pretrial services as well as those released under other forms of conditional release, and recommend appropriate modifications of release conditions according to approved court policy. The pretrial services agency should avoid supervising defendants who are government informants, when activities of these defendants may place them in conflict with conditions of release or compromise the safety and integrity of the pretrial services professional;
- (g) supervise and coordinate the services of other agencies, individuals or organizations that serve as custodians for released defendants, and advise the court as to their



appropriateness, availability, reliability and capacity according to approved court policy relating to pretrial release conditions;

(h) review the status of detained defendants on an ongoing basis for any changes in eligibility for release options and facilitate their release as soon as feasible and appropriate;

(i) develop and operate an accurate information management system to support prompt identification, information collection and presentation, risk assessment, release conditions selection, compliance monitoring and detention review functions essential to an effective pretrial services agency;

(j) assist persons released prior to trial in securing any necessary employment, medical, drug, mental or other health treatment, legal or other needed social services that would increase the chances of successful compliance with conditions of pretrial release;

(k) remind persons released before trial of their court dates and assist them in attending court; and

(l) have the means to assist persons who cannot communicate in written or spoken English.

#### **ABA Pretrial Release Standard 10-4.2**

##### **Investigation prior to first appearance: development of background information to support release or detention determination**

(a) In all cases in which the defendant is in custody and charged with a criminal offense, an investigation to provide information relating to pretrial release should be conducted by pretrial services or the judicial officer prior to or contemporaneous with a defendant's first appearance.

(b) Pretrial services should advise the defendant that:

(i) the pretrial services interview is voluntary;

(ii) the pretrial services interview is intended solely to assist in determining an appropriate pretrial release option for the defendant;

(iii) any responsive information provided by the defendant during the pretrial services interview will not be used in the current or a substantially-related case either to adjudicate guilt or to arrive at a sentencing decision;

(iv) the voluntary information provided by the defendant during the pretrial services interview may be used in prosecution for perjury or for purposes of impeachment.

(c) Release may not be denied solely because the defendant has refused the pretrial services interview.

(d) The pretrial services interview should include advising the defendant that penalties may be imposed for providing false information.

(e) The pretrial services interview of the defendant should carefully exclude questions relating to the events or the details of the current charge.

(f) The pretrial services investigation should include factors related to assessing the defendant's risk of flight or of threat to the safety of the community or any person, or to the integrity of the judicial process. Information relating to these factors and the defendant's suitability for release under conditions should be gathered systematically and considered by the judicial officer in making the pretrial release decision at first appearance and at subsequent stages when pretrial release is considered.

(g) The pretrial services investigation should focus on assembling reliable and objective information relevant to determining pretrial release and should be organized according to an explicit, objective and consistent policy for evaluating risk and identifying appropriate release options. The information gathered in the first appearance investigation should be demonstrably related to the purpose of the pretrial release decision and should include factors shown to be related to the risk of flight or of threat to the safety of any person or the community and to selection of appropriate release conditions, and may include such factors as:

(i) the nature and circumstances of the charge when relevant to determining release conditions, consistent with subsection (e) above;

(ii) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;

(iii) whether at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of a sentence for an offense;

(iv) the availability of persons who agree to assist the defendant in attending court at the proper time and other information relevant to successful supervision in the community;

(v) any facts justifying a concern that a defendant will fail to attend court or pose a threat to the safety of any person or the community; or

(vi) factors that may make the defendant eligible and an appropriate subject for conditional release and supervision options, including participation in medical, drug, mental health or other treatment, diversion or alternative adjudication release options.

(h) The presentation of the pretrial services information to the judicial officer should link assessments of risk of flight and of public safety threat during pretrial release to appropriate release options designed to respond to the specific risk and supervision needs identified. The identification of release options by pretrial services for the consideration of the judicial officer should be based on detailed agency guidelines developed in consultation with the judiciary to assist in pretrial release decisions. Suggested release options should be supported by objective, consistently applied criteria contained in the guidelines. The results of the pretrial services investigation and recommendations of release options should be promptly transmitted to relevant first-appearance participants before the hearing, including information relevant to

alternative release options, conditional release treatment and supervision programs, or eligibility for pretrial detention, so that appropriate actions may be taken in a timely fashion.

**APPENDIX C  
RELEVANT EXCERPTS FROM THE  
NATIONAL ASSOCIATION OF  
PRETRIAL SERVICES AGENCIES PRETRIAL RELEASE STANDARDS**

**Standard 3.1 Purposes of pretrial services agencies and programs**

Pretrial services agencies and programs perform functions that are critical to the effective operation of local criminal justice systems by assisting the court in making prompt, fair, and effective release/detention decisions, and by monitoring and supervising released defendants to minimize risks of nonappearance at court proceedings and risks to the safety of the community and to individual persons. In doing so, the agency or program also contributes to the fair and efficient use of detention facilities. In pursuit of these purposes, the agency or program collects and presents information needed for the court's release/detention decision prior to first appearance, makes assessments of the risks posed by the defendant, develops strategies that can be used for supervision of released defendants, makes recommendations to the court concerning release options and/or conditions in individual cases, and provides monitoring and supervision of released defendants in accordance with conditions set by the court. When defendants are held in detention after first appearance, the agency or program periodically reviews their status to determine possible eligibility for conditional release and provides relevant information to the court. When released defendants fail to comply with conditions set by the court, the pretrial services agency or program takes prompt action to respond, including notifying the court of the nature of the noncompliance.

**Standard 3.2 Essential functions to be performed in connection with the defendant's first court appearance**

Prior to the first appearance in court of persons who have been arrested and charged with a crime, the pretrial services agency or program should:

- (a) collect, verify, and document information about the defendant's background and current circumstances that are pertinent to the court's decision concerning release or detention of the defendant;
- (b) present written, accurate information to the judicial officer relating to the risk a defendant may pose of failing to appear in court or of threatening the safety of the community or any other person, and recommend conditions that could be imposed to respond to the risk;
- (c) identify members of special populations that may be in need of additional screening and specialized services;
- (d) provide staff representatives in court to answer questions concerning the pretrial services investigation report, to explain conditions of release and sanctions for non-compliance to the defendant, and to facilitate the speedy release of defendants whose release has been ordered by the court; and
- (e) develop supervision strategies that respond appropriately to the risks and needs posed by released defendants.

**Standard 3.3 Interview of the defendant prior to first appearance**

(a) In all cases in which a defendant is in custody and charged with a criminal offense, an investigation about the defendant's background and current circumstances should be conducted by the pretrial services agency or program prior to a defendant's first appearance in order to provide information relevant to decisions concerning pretrial release that will be made by the judicial officer presiding at the first appearance.

(b) The representative of the pretrial services agency or program who conducts the interview of the defendant should inform the defendant of his or her name and affiliation with the agency or program, and should advise the defendant:

(i) that the interview is voluntary;

(ii) that the pretrial services interview is intended to assist in determining an appropriate pretrial release decision for the defendant, and

(iii) of any other purposes for which the information may be used.

(c) The pretrial services interview should seek to develop information about the defendant's background and current living and employment situation, including the identity of persons who could verify information provided by the defendant. It should focus on questions relevant to the judicial officer's decision concerning release or detention as set forth in Standards 2.3, 2.8 and 3.4. The interview should not include questions relating to the details of the current charge or the arrest.

(d) Following the interview of the defendant, the pretrial services agency or program should seek to verify essential information provided by the defendant.

### **Standard 3.4 Presentation of information and recommendations to the judicial officer concerning the release/detention decision**

(a) The pretrial services agency or program should assemble reliable and objective information relevant to the court's determination concerning pretrial release or detention, drawing on information obtained through its investigation. It should prepare a written report that organizes the information, presents an assessment of risks posed by the defendant and recommends ways of responding to the risks through use of appropriate conditions of release. The assessment and recommendations should be based on an explicit, objective, and consistent policy for evaluating risks and identifying appropriate release options. The information gathered in the pretrial services investigation should be demonstrably related to the purposes of the pretrial release decision and should include factors shown to be related to the risk of nonappearance or of threat to the safety of any person or the community and to selection of appropriate release conditions. The report may include information on factors such as:

(i) the defendant's age, physical and mental condition, family ties, employment status and history, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;

(ii) whether at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of a sentence for an offense;

(iii) availability of persons who could verify information and who agree to assist the defendant in attending court at the proper time;

(iv) other information relevant to successful supervision in the community;

(v) facts justifying a concern that the defendant will violate the law if released without restrictions;

(vi) the nature and circumstances of the offense when relevant to determining release conditions; and

(vii) whether there are specific factors that may make the defendant an appropriate subject for conditional release and supervision options, including participation in available medical, drug, mental health or other treatment, diversion or alternative adjudication release options.

(b) The presentation of the pretrial services information and the recommendations made to the judicial officer should link assessments of risk of flight and of public safety to appropriate release options designed to respond to the specific risk and supervision needs identified. The identification of release options and the recommendations made by pretrial services for the consideration of the judicial officer should be based on detailed agency or program policies developed in consultation with the judiciary. Suggested release options or conditions should be supported by objective, consistently applied criteria set forth in these policies, and should be the least restrictive conditions necessary to assure the defendant's appearance for scheduled court events and protect the safety of the community and individual persons. The results of the pretrial services investigation, including information relevant to alternative release options, conditional release treatment and supervision programs, or eligibility for pretrial detention, should be presented to relevant first appearance participants before the hearing so that appropriate actions may be taken in a timely fashion.

### **Standard 3.5 Monitoring and supervision of released defendants**

(a) Pretrial services agencies or programs should establish appropriate policies and procedures to enable the effective supervision of defendants who are released prior to trial under conditions set by the court. The agency or program should:

(i) monitor the compliance of released defendants with assigned release conditions;

(ii) promptly inform the court of facts concerning compliance or noncompliance that may warrant modification of release conditions and of any arrest of a person released pending trial;

(iii) recommend modifications of release conditions, consistent with court policy, when appropriate;

(iv) maintain a record of the defendant's compliance with conditions of release;

(v) assist defendants released prior to trial in securing employment and in obtaining any necessary medical services, drug or mental health treatment, legal

services, or other social services that would increase the chances of successful compliance with conditions of pretrial release;

(vi) notify released defendants of their court dates and when necessary assist them in attending court; and

(vii) facilitate the return to court of defendants who fail to appear for their scheduled court date.

(b) In cases in which the court's release order has authorized the pretrial services agency or program to modify conditions initially set by the judicial officer pursuant to Standard 2.6, the agency or program may modify conditions within the range set by the court order and in accordance with the jurisdiction's laws and rules governing the exercise of judicial authority. The court, the prosecutor, and the defendant's attorney should be notified promptly of any such modifications and of the reason(s) for them. The pretrial services agency or program should keep a record of any such modifications.

(c) The pretrial services agency or program should coordinate the services of other agencies, organizations, or individuals that serve as third party custodians for released defendants, and advise the court as to their appropriateness, availability, reliability, and capacity according to approved court policy relating to pretrial release conditions.

(d) The pretrial services agency or program should assist other jurisdictions by providing courtesy supervision for released defendants who reside in its jurisdiction.

### **Standard 3.6 Responsibility for ongoing review of the status of detained defendants**

The pretrial services agency or program should 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 the defendants. The program or agency should take such actions as may be necessary to provide the court with needed information and to facilitate the release of defendants under appropriate conditions.

### **Standard 3.7 Organization and management of the pretrial services agency or program**

(a) The pretrial services agency or program should have a governance structure that provides for appropriate guidance and oversight of the agency's staff in the development of operational policies and procedures and for effective internal administration of the agency or program. The governance structure should enable effective interaction of the program with the court and with other criminal justice agencies, and with representatives of the community served by the program. To enable the performance of its functions in a neutral fashion, the agency should be structured to ensure substantial independence in the performance of its core functions.

(b) The pretrial services agency or program should develop and implement appropriate policies and procedures for the recruitment and selection of staff, and for the compensation, management, training, and career advancement of staff members.

(c) The pretrial services program should have policies and procedures that enable it to function as an effective institution in its jurisdiction's criminal justice system. In particular, the program or agency should:

- (i) establish goals for effectively assisting in pretrial release decision-making and supervision of defendants on pretrial release in the jurisdiction and for the operations of the pretrial services agency or program;
- (ii) develop and regularly update strategic plans designed to enable accomplishment of the goals that are established;
- (iii) develop and regularly update written policies and procedures describing the performance of key functions;
- (iv) develop and maintain financial management systems that enable the program to account for all receipts and expenditures, prepare and monitor its operating budget, and provide the financial information needed to support its operations and requests for funding to support future operations;
- (v) develop and operate an accurate management information system to support the prompt identification of defendants, and the information collection and presentation, risk assessment, identification of appropriate release conditions, compliance monitoring, and detention review functions essential to an effective pretrial release agency or program;
- (vi) establish procedures for regularly measuring the performance of the jurisdiction and of the pretrial services agency or program in relation to the goals that have been set;
- (vii) have the means to assist persons with disabilities and persons who have difficulty communicating in written or spoken English;
- (viii) meet regularly with community representatives to ensure that program practices meet the needs of the community served; and
- (ix) develop, in collaboration with the court, other justice system entities, and community groups, appropriate policies for the delivery and management of services needed to respond to the risks posed by released defendants, including strategies for use of substance abuse treatment programs, health and mental health services, employment services, other social services, and half-way houses.