

# NEW ORLEANS PRETRIAL SERVICES

An Assessment of the New Orleans Pretrial Services Program

National Institute of Corrections Technical Assistance No. 13C1066

Authored by:

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## DISCLAIMER

RE: NIC Technical Assistance No. 13C1066

This technical assistance activity was funded by the Community Corrections Division of the National Institute of Corrections (NIC). NIC is a Federal agency established to provide assistance to strengthen state and local correctional agencies by creating more effective, humane, safe and just correctional services.

The resource person who provided the on-site technical assistance did so through a cooperative agreement, at the request of the New Orleans City Council, and through the coordination of NIC. The direct onsite assistance and the subsequent report are intended to assist the Mayor's Office, the Council, and the New Orleans Pretrial Services Program address issues outlined in the original request and in efforts to enhance the effectiveness of the pretrial agency.

The contents of this document reflect the views of Tara Boh Klute and Lori Eville. The content does not necessarily reflect the official views or policies of the National Institute of Corrections.



## SCOPE OF REPORT

This report summarizes the primary findings and recommendations from the assessment of the New Orleans Pretrial Services Program. The Office of the Mayor and New Orleans City Council requested technical assistance to help them evaluate and improve the operation and effectiveness of the pretrial program so as to meet the needs of their stakeholders, and effectively use their limited resources.

The goal of this technical assistance was to assess the New Orleans Pretrial Services program and provide policymakers with information on opportunities to assure current pretrial policies and practices with those that are legal and research-based and cost-effective, including recommendations for initial action steps. The narrow timeframe in which the assistance was performed and this report was written, along with funding constraints, do not permit an exhaustive assessment and report that would describe detailed steps toward systemic, programmatic, and operational opportunities for improvement. Instead, the focus of the technical assistance is on policies and programmatic practices that, if changed, would enable local decision-makers to begin to improve the pretrial services program's usefulness to the local justice system.

# INTRODUCTION

Policymakers concerned about criminal justice systems are increasingly recognizing the importance of an established system that has its value in making legal and evidence based decisions related to the release and detention of persons arrested in their community.

The actions taken in the initial stages of any criminal case have an impact on the outcome of an individual person and as well as the quality and effectiveness of the jurisdiction's criminal justice processes and potentially long term harm due to the collateral consequences of unnecessary detention. It is essential that the development and evaluation of a jurisdiction's pretrial services program must involve considerations of individual liberty, enhancing public safety and court appearance as well as the overall integrity of the judicial process.

A great deal of experience has been gained in the administration of pretrial services and some aspects of pretrial decision-making have changed significantly. In particular, research shows that the use of a validated pretrial risk assessment with factors identified as predictive of future failure to appear and pretrial rearrest can help guide the pretrial release and detention decision. The need for timely and reliable information to assist judicial officers in making sound and objective decisions is clear, and pretrial services agencies are recognized as critically important stakeholders in this process. New issues have emerged, in the ways that jurisdictions handle cases involving female defendants, substance abusing defendants, mentally ill persons charged with relatively minor offenses, and juveniles charged in adult courts.

## METHOD

The project team consisted of two nationally-recognized pretrial services experts – Lori Eville, a criminal justice consultant and former Corrections Program Specialist with NIC and Tara Boh Klute, General Manager of Pretrial Services for the Commonwealth of Kentucky. (See Appendix A for full bios). The project team reviewed relevant documents and background information provided by New Orleans Pretrial Services. Pretrial Service operational functions were evaluated against the National Association of Pretrial Service Agencies (NAPSA) Standards. The project team was on-site September 5 through September 7, 2013, meeting individually and in small groups with the major stakeholders involved in the pretrial stage, observing the pretrial program’s risk report preparation and the court’s initial appearance hearing, and meeting with representatives from the Mayor’s Office, City Council, and New Orleans Pretrial Services to discuss primary findings and recommendations. (See Appendix B for a list of participants). Ms. Eville returned to New Orleans on October 18, 2013 to present the preliminary findings and recommendations to the City Council.

### *NAPSA Standard 3.1 Purpose of Pretrial Services*

*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 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 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.*

## FINDINGS AND RECOMMENDATIONS

Findings and recommendations are grouped into several topics, most of which represent our findings with suggested improvements to the pretrial program and the criminal justice system. These findings and recommendations are based on the information obtained during the site visit, including stakeholder meetings and operational observations, data on detention and release rates for defendants receiving a pretrial risk assessment, Federal and State constitutions, Louisiana statutes, New Orleans Pretrial Services program policies and procedures, national pretrial standards from the American Bar Association (ABA) and NAPSA, recent empirical research from the social sciences/criminal justice field, and the project team's experience working as practitioners and consultants in the pretrial field.

# ASSESSMENT OF PRETRIAL SERVICES' POLICIES, PROCEDURES AND STAFFING

## ***Standard 3.2 Essential functions to be performed in connection with the 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.*

## **Findings:**

The Vera Institute of Justice currently administers the New Orleans Pretrial Services program. Implemented in April 2012, the program consists of a director, a middle-level supervisor, a supervision specialist, five staff members, and a half-time administrative assistant. The director and one staff member work at the main office while the supervisor and remaining five staff members work primarily in the jail intake processing center. The program is staffed seven days a week, with 17 hours of coverage on weekdays and 10 hours of coverage on weekends. The core services of the program are:

- Conduct a pre-initial appearance interview, investigation and risk assessment of newly arrested defendants
- Preparation of an extensive criminal history report and a pretrial report that is presented to the Magistrate at first appearance
- Indigence screening
- Court date notification for released defendants
- Supervision of defendants as ordered by the court

The New Orleans Pretrial Services program has developed extensive, clearly defined interview, investigation and verification policies and procedures that are consistent with National Standards. Based on observations and meetings with the staff, the project team recognized that program staff are knowledgeable about the policies and procedures and are very passionate and committed about their work and pretrial justice.

Pretrial Services currently complete assessments on all persons booked with a state misdemeanor or felony offense, excluding those charged with a capital crime. The program collects data on all bookings and assessments completed.

## **Recommendations:**

Under the Louisiana Statutes, there are a substantial number of offenses that are not eligible for release on recognizance (ROR). Louisiana law hinders eligibility for recognizance release solely based on the current charge. Resources can be utilized more efficiently by assessing those eligible for release first, then following up after initial appearance on defendants not eligible for ROR. The staff prioritizes screening and assessment for those defendants that are scheduled for their initial appearance. ABA Pretrial Release Standards 10-1.10, 10-4.2 and 10-5.1 encourage that all defendants be assessed and stress that pretrial detention should be the exception rather than the norm.

### **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 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 directly 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.*

### **Findings: Defendant Interview**

The interview and investigation procedures require the collection of information that is time extensive and not specifically relevant to the assessment of risk. This information is utilized by the court to assist with the release decision and indigency determination for eligibility of defense representation. Indigency determination is a critical function of the defendant's pretrial period. The program prepares a very extensive criminal history that requires staff to utilize multiple databases to confirm disposition information. The criminal history report prepared by the program is viewed as reliable and valuable to assisting the court in making their pretrial release or detention decision.

### **Recommendations:**

We recognize that the selection of the interview questions and protocol were created by the pretrial working group and not solely by the pretrial program. The program should consider modifying the flow of the interview and limiting the information collected so that resources can be used more efficiently. Collecting the criminal history information is critical for accurate completion of the risk assessment. Given the current systematic challenges to obtaining the information, pretrial staff spends a substantial amount of time preparing the criminal history report. By limiting the personal information obtained from defendants, staff can allow more time for the criminal history analysis and potentially interview and assess more defendants.

### **Findings: Verification Procedures**



The program's verification practices and procedures are consistent with current standards as well as directives from the local court and state legislation. The program staff completes the defendant interview professionally and with respect to the individual defendant's confidentiality and rights against self-incrimination. Current standards indicate that verification of defendant interview information is the norm and provides valuable information to the courts. The New Orleans judiciary places a high value on the verification process and the program has included a range of risk assessment scores to include a higher risk score for non-verified defendant information if it were to prove to be inaccurate.

The current verification process is time consuming and is contributing to staffing demands and length of detention time and is likely to not have an impact on a defendant's pretrial success if released from custody.

## **Recommendations:**

The program should consider modifying the current verification process. The process of contacting references provided by the defendant has traditionally been an important feature supported by ABA and NAPSA Standards on Pretrial Release; however, while no empirical data has yet been published, other jurisdictions, including Kentucky Pretrial Services and Pretrial Services for the District of Columbia, are finding that reducing or modifying the verification processes can help strike a balance between work efficiency and services rendered to the court without compromising public safety.

### ***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.*

## **Findings: Review of pretrial jail population**

There is no current mechanism to continually review the in-custody population and identify defendants who can be safely released pending trial. However, in October 2013, the program will begin a pilot called the "seven-day review." Persons who have a risk score of six or less and a bond amount of \$10,000 or less and who remained in jail seven days after first appearance are identified for a second bond review. This program is being piloted in one magistrate section with the cooperation of the DA's office, the magistrate court, and the Orleans Public Defenders.

Data provided by the New Orleans Pretrial Services program showed that of the 3,664 defendants assessed by pretrial services between July 2012 and May 2013, 29% were released at first appearance on recognizance, a third party signature bond, or a low cash bond of less than \$2,500. Of these defendants, 95% appeared in court as ordered and 96% were not charged with a new criminal offense while on pretrial release in the community. Although the release rates are low compared to pretrial data across the nation, it should be recognized that the success rates of those defendants released are very high.

The project team also reviewed a snap shot of jail detention data provided by the City Council and analyzed by the New Orleans office of the Vera Institute of Justice. According to the report, on July 24, 2013, there were 1,021 defendants held in jail on state misdemeanors or felonies. The New Orleans Pretrial Services program had risk assessment scores on 582 of these defendants, with 253 defendants (43%) assessed in the lower risk range (score of six

or less). This data highlights an area of opportunity for improvement in release and detention decision-making. Specifically, an additional review of low risk defendants charged with non-violent crimes to determine if he or she can be released while awaiting trial is indicated. Additional highlights of the report showed:

- There were 87 defendants with a risk score of 0-3, of which 63 were charged with a non-violent crime
- There were 166 defendants with a risk score between 4-6, of which 89 were charged with a non-violent crime
- More than half of these pretrial defendants had been in custody pending trial more than 50 days.

## Recommendations:

Program staff should have access to the main jail so that follow-up can be made with defendants who were not released at initial appearance. Procedures should be developed so that pretrial is aware of who is in custody and can access those defendants as needed. Additionally, it would be beneficial if Pretrial Services created a report of defendants detained in jail unable to make bail that could be provided to the Public Defender's office and the District Attorney's office on a regular basis.

The implementation of the seven-day review is a critical process for the ongoing evaluation of the detained pretrial population. It will address the large gap in time from the initial appearance and the arraignment during which the defendant does not have a scheduled bail review. Currently the period of time the average defendant awaits arraignment is 40 days.

It is further recommended that the criteria be expanded for those defendants unable to make bail after first appearance to have a second review prior to arraignment.

## Standard 3.5 Monitoring and supervision of released defendants

*(a) Pretrial services agencies and 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 dates. . . (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.*

## Findings: Defendant supervision

Although the supervision program is new and continuing to develop program capacity, it is functioning within the standards. Defendants can be assigned to pretrial supervision by either the magistrate or district court judge. The pretrial program uses results of the Ohio Risk Assessment with the release conditions outlined by the court to develop the defendant's supervision plan.

At the time of this review, 15 defendants were under pretrial program supervision. It is clear that the magistrate and district court judges' preference is the defendants' continued detention and not making a release with the condition of pretrial supervision. The jail data strongly suggest that defendants that are low and low moderate risk spend an average of 40 days in custody without utilizing pretrial supervision.

## **Recommendations:**

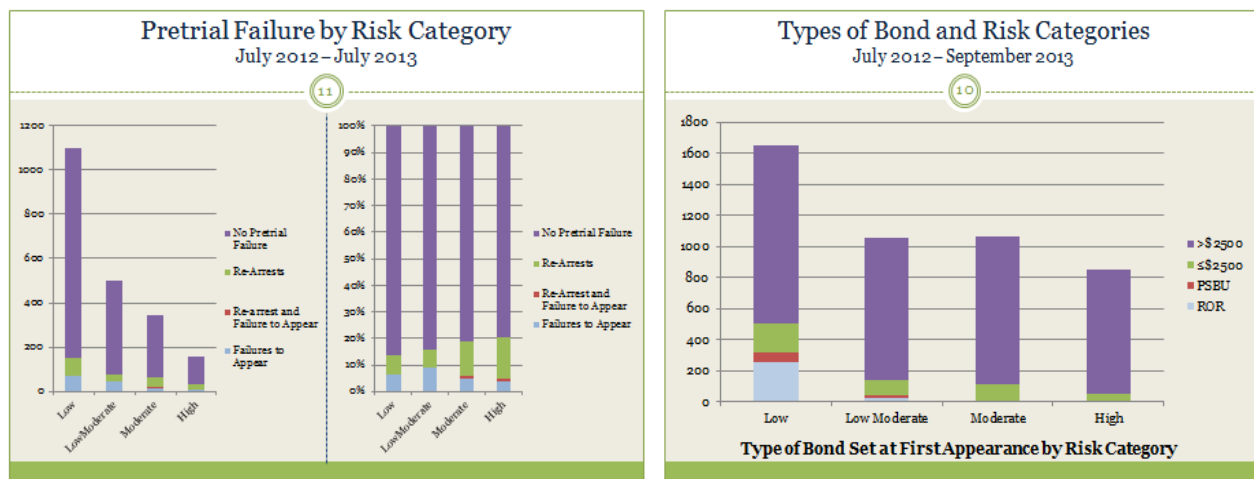
Legal and evidence-based practices in pretrial services must be consistent with the rights afforded to defendants awaiting trial and utilize methods proven by research to reduce unnecessary detention and support pretrial outcomes. Defendant supervision should be limited to moderate to high risk defendants; however, the current program policy targets referrals to defendants who score in the low-moderate risk range. It is recommended that the criteria for supervision be expanded to include defendants who score moderate risk. This could be accomplished by developing differential levels of supervision (frequency of contact) based on risk. When developing supervision strategies, the least restrictive conditions should apply that are consistent with the mission and goals of pretrial release (public safety and return to court during the pretrial period). It should also be noted that the Ohio Risk Assessment is designed to identify recidivism risk/criminogenic needs of post-conviction offenders. There is no research to support its use with a pretrial defendant population or to assess pretrial misconduct. This practice could inadvertently lead to over supervision and conditions that will not contribute to public safety.

## OBSERVATION, ASSESSMENT AND UTILIZATION OF THE RISK ASSESSMENT TOOL

Pretrial risk assessments provide objective, impartial information to the court regarding release or detention recommendations. Actuarial pretrial risk assessments predict the probability of risk to the community by measuring defendant criminal activity while on pretrial release and risk of failure to appear in court. The purpose and intent of pretrial risk assessment does not extend to the period exceeding case disposition, nor should the assessment be used to determine financial bail amounts.

### Findings: Statistical validity of the current tool

The risk assessment currently in use by the program has not been statistically validated. The current tool was created by the New Orleans Pretrial Working Group after a thorough review of risk assessments used in other jurisdictions. Although most of the factors have been found by previous research of other risk assessments as predictive of failure to appear and pretrial re-arrest, there are charge related factors that research has shown not to be predictive and, may be artificially increasing defendant risk scores.



The slide titled “Pretrial by Risk Category” illustrates how the risk assessment tool is performing on predicting the probability of pretrial release risk. Of those defendants released from custody on pretrial status have shown to be statistically more successful, meaning no failure to appear in court or re-arrest while in the community, than not. It shows evidence and should give confidence that the majority of those released pending trial will fulfill their pretrial obligations through the adjudication of their case.

In contrast, the second slide titled “Type of Bond Set at First Appearance by Risk Category” shows a high number of low and low-moderate risk defendants that have a money bond greater than \$2500.00. This means that a defendant must secure a financial bond before they can secure their pretrial release. It also shows that only a small number of low risk defendants are being released on their own recognizance. It is these set of factors that are contributing to high pretrial detention rates that do not help ensure public safety, but in fact contribute to the misuse of scarce jail resources on low risk defendants that can be released safely pretrial.

### Recommendations:

The current risk assessment uses factors predictive of flight and pretrial re-arrest, but also subjective factors that the judiciary requested for inclusion. With the implementation of any risk assessment, there must be a planned

validation of the predictive quality of the factors of the tool. It is not uncommon for there to be mild differences in factors and weighting of the factors across jurisdictional populations. When it is determined that there is a sufficient number of completed assessments with dispositions, the criminal justice system should move forward with the validation of its risk assessment and make adjustments based on the outcome of the validation study.

## **Findings: Utilization of the pretrial report**

The pretrial report includes information obtained from the defendant as well as charging and court information, an extensive criminal history analysis, and the pretrial risk assessment score. At the request of the Magistrate judge, staff hand writes specific information from the report onto a document referred to as the “mag list,” thereby creating redundant work for the pretrial staff. This abbreviated information is given to the magistrate judge in chambers prior to the defendant’s first appearance.

The system’s priority has been placed on utilizing the pretrial report findings at the first appearance, with little use in the other sections of the criminal district court.

## **Recommendations:**

The program should consider reviewing the contents and utilization of the pretrial report with the working group. The director should communicate with all of the judges to determine what information is the most important to include on the report. At minimum, the risk assessment score and, if appropriate to the case, the recommendation for pretrial supervision should be included. Information that can easily be obtained from other sources does not need to be on the report. This creates a duplication of work across various agencies. It is further recommended that the program explore the feasibility of making modifications to the case management system so that various types of reports can be generated and prepared based on the individual needs of the judges and the purpose for which the report is used.

## **Findings: Criminal District Court participation**

Pretrial Services is not involved at the Criminal District Court level. Although the District Court is represented on the Pretrial Working Group and played a role in the initial development of the pretrial program, the judiciary is not currently utilizing the program or the pretrial report in the release or detention decision-making. Furthermore, there appears to be a lack of confidence in the supervision program by some members of the judiciary.

## **Recommendations:**

The Criminal District Court judges and pretrial program director should establish routine communication, including agreement among both that the pretrial report is made a part of the court file so it will be available to the judge at all District Court arraignments, bail hearings and any other proceeding in which bail is reviewed. A factor complicating the use of the report findings at the arraignment is the working group’s decision to not make the pretrial report part of the defendant file. This decision does not allow for a significant amount of defendant information to be considered at the arraignment hearing. The pretrial program has sought different ways to make the pretrial report and information available to the District Court judge at the defendant’s arraignment. The most efficient way for this to be accomplished is for the pretrial report to become a part of the court record and defendant file.

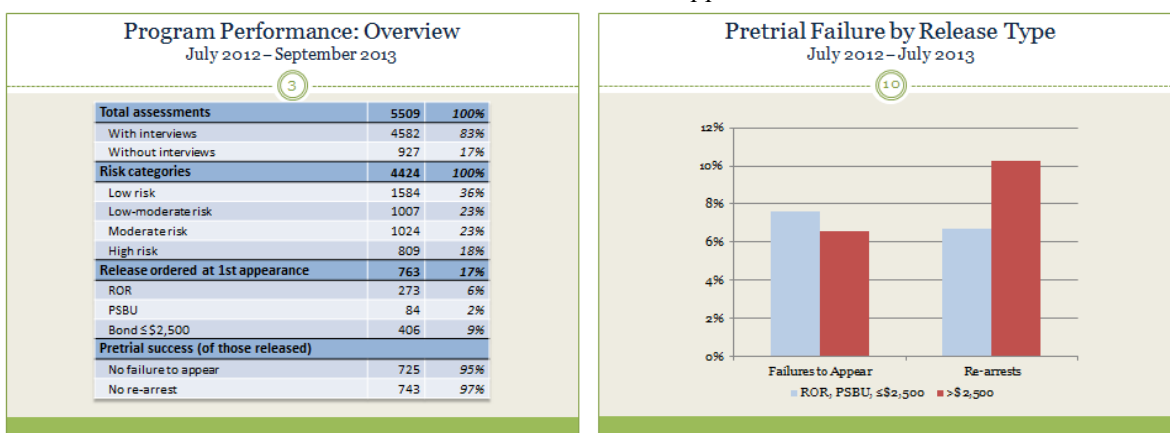
The current structure of the criminal justice system is not conducive to expedited pretrial release. According to representatives from the Public Defender's office and the office of the District Attorney the average time between first appearance and District Court arraignment is estimated to be 40 days or more.

## Findings: Performance and Outcome measures

The pretrial program has developed well defined performance and outcome measures for the purpose of evaluating the internal effectiveness of the program. They report the data related to pretrial services outcomes routinely to all criminal justice stakeholders.

The following slides show data related to the performance measures:

- Pretrial Failure by release type
- Number of Assessments Completed by risk type
- Number of Pretrial Defendants Released at First Appearance



## Recommendations:

Performance and outcome measures should be reviewed and modified to match the program mission and goals and to evaluate the overall effectiveness of the program. Currently, the data collected is only for those defendants assessed by Pretrial Services. In order to better evaluate and measure the impact and effectiveness of the program, the director should utilize data from the jail case management system to determine what percentage of arrestees are interviewed by Pretrial Services and track outcomes by all release types such as jail expedited release and financial release. Currently there is no mechanism to evaluate the pretrial outcomes of defendants that are not released on their own recognizance on to pretrial supervision. The criminal justice system and community does not have a way to compare outcomes on different release types.

# CRIMINAL JUSTICE SYSTEM AND PRETRIAL DECISION MAKING

## **Standard 1.1 Purposes of the pretrial release decision**

*The purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, minimizing the unnecessary use of secure detention, and protecting victims, witnesses and the community from threat, danger or interference. The judge or judicial officer decides whether to release a defendant on personal recognizance or unsecured appearance bond, release a defendant on a condition or combination of conditions, temporarily detain a defendant, or detain a defendant according to procedures outlined in these Standards. The law favors the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support. These Standards limit the circumstances under which pretrial detention may be authorized and provide procedural safeguards to govern pretrial detention proceedings.*

## **Findings:**

The current judiciary practice is the presumption of defendant detention and not the constitutionally mandated right to release. This culture must be addressed if New Orleans wants to make any progress in decreasing the number of low and low- moderate risk defendants that are detained simply because of their inability to secure money for their release. The practice of over reliance on financial bail can also lead to high risk defendants being released into the community because they have the ability to secure money for their release.

As a main step to reducing inappropriate use of corrections resources, the Orleans Parish criminal justice system must reinforce the nonfinancial pretrial release of low and moderate risk defendants by encouraging greater use of nonfinancial alternatives to release and providing greater oversight of detentions based solely on a defendant's inability to pay. Authorities should state publicly and statewide how pretrial services enhances the system's mission and vision.

## **Additional recommendations for the city's criminal justice partners include:**

1. Review the functions of the Pretrial Working Group and evaluate the feasibility of expanding the scope of the group to include a review of all criminal justice system functions, particularly those associated with court process related to the pretrial period, length of pretrial detention, and data management. Opportunities for improvement and implementation of solutions must be addressed through strategic planning and coordination among key stakeholders.
2. Develop criminal justice stakeholder performance outcomes and a criminal justice scorecard that support pretrial justice, improve court appearance, public safety, and reflect the values of harm reduction for the citizens of Orleans Parish.
3. Improve data quality, fidelity and management throughout the system with an emphasis on system integration, information sharing and strategic planning.

4. Promote stronger defense advocacy at initial appearance and subsequent bail review hearings through individualized representation at First Appearance, quicker assignment of counsel for detained defendants, and systematic bond review.



## CONCLUSION

The New Orleans Pretrial Services program supports the integrity of the pretrial period by providing objective defendant risk assessment information including an extensive criminal history analysis and screening for indigence to magistrates and commissioners at first appearance. Furthermore, the pretrial program is currently the only agency providing court notification to released pretrial defendants as well as data on pretrial release outcomes. During the first year of operations, the program has developed a foundation of policies, procedures and practices that are aligned with national standards and best practices. The program appears to be viewed by prosecutors and the defense bar as a valuable and trusted service and resource, however, judicial confidence needs to be addressed. The project team found that the information the pretrial services produces is accurate and objective and could enhance the effectiveness of release and detention decision making and reduce the unnecessary detention of low-risk pretrial defendants. Although the Pretrial Services program functions in accordance with national standards, the culture of bail setting practices and the laws under which they operate are not conducive to expedited pretrial release. Efforts should be taken by all criminal justice stakeholders to open the lines of communication with the judiciary and engage the bench in discussions on pretrial justice issues, at both the local and state level. Through collaboration with stakeholders and education on the fundamental purpose of pretrial services within the criminal justice system, progress can be made.

Overall, the project team found the state of the program quite solid, especially given the complexity of today's modern court system and the inherent obstacles of implementing a new, paradigm shift in how the criminal justice system releases and detains individuals charged and jailed but not yet convicted of a crime. To fully take advantage of the return on investment that a pretrial services program can offer, all key stakeholders, from city policy-makers, to law enforcement, to the Sheriff and corrections staff, and finally, the judiciary, must be devoted to the success of the program. Should a crucial faction not have the devotion required of seeing the program's success, efforts to have a thriving pretrial release system will continue to struggle. While the role and affairs of New Orleans politics and judicial buy-in goes well beyond the scope of this report, to that end, our final recommendation is for the community leaders and the pretrial justice practitioners to unify in their beliefs of the vision and mission of the New Orleans Pretrial Services program. When that is accomplished, New Orleans Pretrial Services, who already have the building blocks to create an outstanding program, will be able to fully offer viable solutions to exigent problems and deliver Pretrial Justice to the citizens they serve.

## REFERENCES AND RESOURCES

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- VanNostrand, M., Rose, K. J., & Weibrecht, K. (2011). *State of the Science of Pretrial Release Recommendations and Supervision*. Washington, D.C.: Pretrial Justice Institute.

## APPENDIX A: CONSULTANTS

*Tara Boh Klute* is the Chief Operating Officer for the Kentucky Court of Justice, Administrative Office of the Courts, Division of Pretrial Services. She has been with Pretrial Services since 1995. Kentucky Pretrial Services is a statewide program which consists of 57 Judicial Districts and over 280 employees and provides investigation, supervision and diversion services. Tara has extensive experience in developing the program mission, goals, and objectives, pretrial risk assessment and data management. She authored the policies and procedures for her agency and developed the training module for new and existing staff as well as inter-disciplinary training with the Department of Public Advocacy and the Circuit and District Judicial Colleges. She also led the design and implementation of the pretrial case management system, Pretrial Release Information Management (PRIM), designed the pretrial monthly reports, program quality assurance protocols and developed performance and outcome measures. Tara holds a BA in Sociology and a BS in Police Administration from Eastern Kentucky University. She attended graduate school at the University of Kentucky. Tara has been a member of the National Association of Pretrial Services Agencies (NAPSA) since 1996 and currently serves on the NAPSA Diversion Committee and the National Institute of Corrections (NIC) Pretrial Network Group. She was awarded the NAPSA Member of the Year award in 2009. Tara has presented, co-presented and served as a facilitator at dozens of state and national conferences.

*Lori Eville* is a Criminal Justice and Pretrial Services expert with more than 15 years of public service experience in the justice systems at the Federal, State and County levels, including leadership positions administering, planning and instructing pretrial, probation and parole evaluations and operations. She has supervised specialists and managers in criminal justice and social services to use knowledge of laws, organizational structure, mission, functions and interrelationships among criminal justice entities to reach pretrial, probation, parole and court services program and criminal justice performance outcomes. While working with the National Institute of Corrections, she lead strategic change throughout local criminal justice systems nationwide as the Evidence-Based Decision Making (EBDM) Initiative Manager, to reduce pretrial misconduct and post-conviction re-offense rates by increasing the capacity of stakeholders to make collaborative and evidence based decisions within their jurisdictions. She has developed and trained over 100 Pretrial Executives at NIC's "Orientation for New Pretrial Executives". Additionally, she has trained extensively on the topics of Pretrial, Probation and Parole evidence based practices to criminal justice stakeholders, including judges, prosecutors, defense, sheriff, police chiefs, probation chiefs, county commissioners and elected officials.

### **Professional Publications:**

*Measuring What Matters: Outcome and Performance Measures for the Pretrial Field.* National Institute of Corrections Publication, 08/2011;

*Assessing Local Pretrial Justice Functions* National Institute of Corrections Publication, 04/2011;

*Applying the Framework to Local Evidence Based Decision Making, Corrections Today,* 06/2010

## APPENDIX B: ON-SITE MEETINGS

On-site meetings September 5-6, 2013 Honorable Camille Buras, Chief Judge, Section H Honorable Gerard J. Hansen, Magistrate Judge

Jee Park, Special Litigation Counsel, Public Defender's Office

Nathan Fennell, Client Services Coordinator, Public Defender's Office

Graymond Martin, First Assistant District Attorney, Orleans Parish District Attorney's Office

Magistrate Commissioner Jonathan Friedman

Councilmember Susan Guidry

Sam Joel, Director of Research, Mayor's Office

Andy Kopplin, First Deputy Mayor and Chief Administrative Officer, Mayor's Office

Elizabeth Simpson, former Director, New Orleans Pretrial Services

Elaina Camacho, Operations Supervisor, New Orleans Pretrial Services

Kaleenia Burras, Pretrial Specialist, New Orleans Pretrial Services

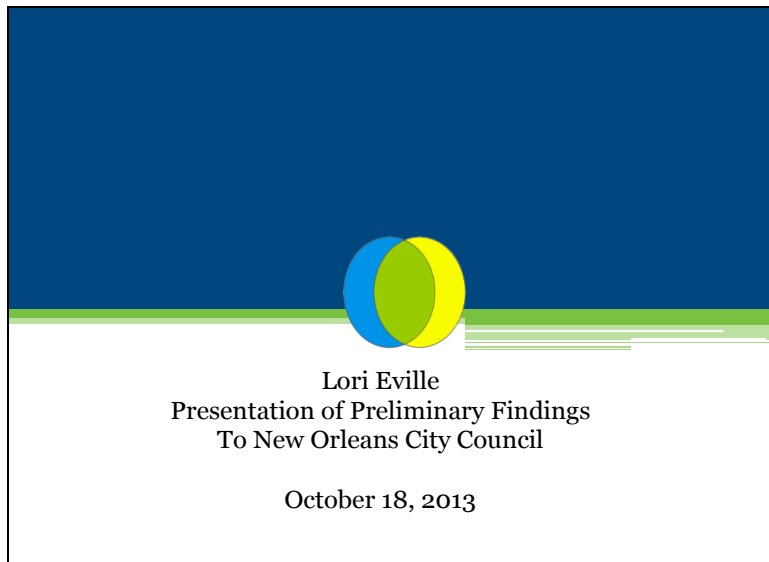
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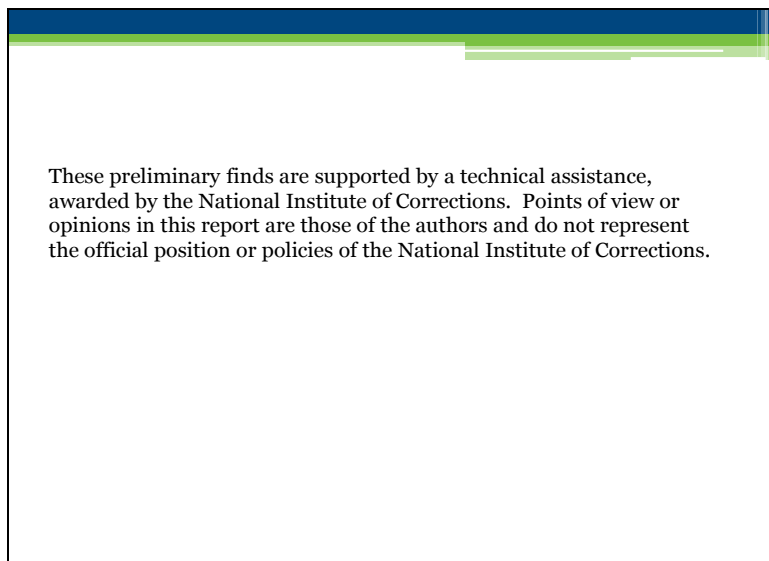
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## APPENDIX C: PRESENTATION OF PRELIMINARY FINDINGS

Slide 1



Slide 2



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## Technical Assistance: Scope of Work

**The overall goal of this technical assistance was twofold:**

Complete an assessment of the New Orleans Pretrial Services and provide policymakers with information and highlight opportunities to more closely align current pretrial policies and practices with those that are legal and research-based and cost-effective;

And to evaluate current policies, programmatic and systemic practices that, if changed, would enable local decision-makers to maximize the pretrial services program's usefulness and pretrial justice within the local criminal justice system.

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In developing these findings and recommendations, the consultant team relied on:

- September 5-6, 2013 site visit that included interviews with representatives from offices of the, sheriff, pretrial services, defense, prosecution and the judiciary
- Observation of bail setting at first appearance.
- Data on detention and release rates for defendants receiving pretrial risk assessments
- New Orleans Parish and the State of Louisiana statutes related to pretrial decision making
- New Orleans Pretrial Services program policies and procedures
- New Orleans program materials including, interview form, risk assessment instrument, court report.
- Nationally-recognized pretrial program services and procedures as comparison for the local pretrial services program.
- National standards for pretrial programming, other qualitative best practices in the field

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## Purpose of Pretrial Service Agencies

Pretrial services agencies assist courts in making prompt, fair, and effective release/detention decisions, and by monitoring and supervising released defendants to minimize the risks of nonappearance at court proceedings and risks to the safety of the community.....

NAPSA Standard 3.1, 2004

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According to the American Bar Association, the purpose of the “pretrial release decision” are “providing due process for those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threats, danger, or interference.”

American Bar Association Standards on Pretrial Release, Third Edition, 2002, Standard 10-1.1

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## Criminal Justice System: Definition

Criminal justice system refers to the collective institutions and actions through which an accused person passes until the accusations have been disposed of or the assessed punishment concluded.


These distinct agencies operate together under the rule of law and are the principal means of maintaining the rule of law within society.

Slide 8

## Adjudication

### *The Pretrial Period*

- Charges
- First Court Appearance
- Arraignment
- Case process
  - Bail review hearing
  - Status review hearing
  - Dismissal
  - Plea
  - Trial



### Bail

- Release on recognizance
- Third party release
- Release with conditions
- Financial conditions/bond
- Preventative detention

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## Evidence Based Pretrial Practice

### *Legal and Evidence-Based Practices:*

- Must be consistent with the rights afforded to defendants awaiting trial
- Methods proven by research to reduce unnecessary detention

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## Pretrial Risk Assessment

### What it does...

- Provides impartial information to the courts regarding release or detention decisions
- Predicts the probability of risk to community (re-arrest)
- Predicts the probability of failure to appear for court (FTA)

### What it does not do...

- Assess for money bail amounts
- Predict the risk to the community beyond the pretrial period

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## Role of the Pretrial Officer

- Complete background investigation
- Complete risk assessment tool
- Make release and detention recommendations to the court
- Monitor conditions of release
- Report to the court



Slide 12

## Pretrial Risk Assessments

### In Public Domain:

- Virginia Pretrial Risk Assessment Instrument (VPRAI)
- Ohio Risk Assessment System (ORAS) Pretrial Assessment Tool

### Multi-Jurisdictional Risk Assessments:

- District of Columbia
- Indiana
- Florida
- Colorado
- Kentucky
- Federal Pretrial

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## Pretrial: Risk Factors

- Current charge: Felony or Misdemeanor
- Prior failures to Appear in court
- Criminal History
- Employment
- Length at residence
- Pending charge
- Substance abuse

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## Purpose of Supervision

- Reasonably assure appearance in court through disposition of case
- Reasonably assure the safety of the community ( no re-arrest)

## Supervision Placement Decisions

- Risk based
- Consistent w/LEBP
- Provide supervision recommendations to include differential supervision
- Placement and supervision conditions determined by court

## Supervision Strategies

### **Evidence Based Strategies:**

- Court Notification
- Electronic Monitoring (Limited)
- Release on Own Recognizance (ROR)
- Low risk defendants can achieve the same pretrial outcomes with no intervention or supervision

### **Promising Practices:**

- Matching risk level to supervision level

### **Non-Evidence Based Strategies:**

- Money as a condition of release

## Legal Status

- Charged but ***Not Convicted***
- Defendant *not* Offender
- Presumption of Innocence
- The right to not self-incriminate
  - *Pretrial Officers can not speak to defendant about pretrial charge.*
- The right to non-excessive bail
- The right to due process
- The right to a speedy and fair trial

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## Bail

**Bail** is the contract or set of conditions that a defendant must meet to secure pretrial release. A magistrate, judge, or their delegated authority determine the set of conditions of pretrial release.

**Purpose of Bail** is to provide reasonable assurance of court appearance and community safety. There is the presumption of release on recognizance for defendants charged with non-capital crimes unless the Court determined that such release would not assure *court appearance*.

**Bond** is the indebtedness to another person or institution to secure their pretrial release.

**Pretrial Detention** occurs when a defendant is unable to secure the conditions of their bail or when the court issues a preventative detention order.

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## Bail Reform Act 1966

- In 1966, [Congress](#) enacted the Bail Reform Act of 1966, which gives non-capital defendants a statutory right, to be released, pending trial, on his personal recognizance or on personal bond, unless the judicial officer determines that such incentives will not adequately assure his appearance at trial; in that case, the judge must select an alternative from a list of conditions, such as restrictions on travel.
- Individuals charged with a capital crime, or who have been convicted and are awaiting sentencing or appeal, are to be released unless the judicial officer has reason to believe that no conditions will reasonably assure that the person will not flee or pose a danger.
- In non-capital cases, the Act does not permit a judge to consider a suspect's danger to the community, only in capital cases or after conviction is the judge authorized to do so.

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## Bail Reform Act of 1984

- The Bail Reform Act of 1984, replaced the Bail Reform Act of 1964. The 1964 act did not allow judges in non-capital cases to consider the danger a defendant posed to the community.
- Allowed for detention where necessary for the safety of the community.
- The detention hearing must be held promptly, preferably at the time of the defendant's first appearance in court.
- If bail is denied, the court must issue a written order with findings of fact and a statement of the reasons for the detention.

## U.S. v. Salerno

The case ***United States v. Salerno*, 481 US 739 (1987)**, challenged the federal Bail Reform Act of 1984 on the grounds that it violated a defendant's Fifth Amendment Due Process rights and imposed punishment under the Eighth Amendment Excessive Bail Clause.

- Second Circuit found the Bail Reform Act of 1984 unconstitutional on its face because detention without bail punished the individuals for anticipated future crimes.
- The US Supreme Court reversed the Second Circuit, holding that the legislation could only be overturned as unconstitutional if "no set of circumstances exists under which the Act would be valid." While the Court acknowledged the Act might operate unconstitutionally under some conceivable set of circumstances

## Stack v. Boyle

- The U.S. Supreme Court found "that a defendant's bail cannot be set higher than an amount that is reasonably likely to ensure the defendant's presence at the trial."
- Essentially, if a court sets an unusually high bail for multiple defendants, the court needs to have evidence regarding the situations of each defendant (whether they are considered a "[flight risk](#)"). Otherwise it is regarded as cruel and unusual punishment according to the Eighth Amendment

## References and Resources

- "State of the Science of Pretrial Risk Assessment" - Pretrial Justice Institute (2011)
- "State of the Science of Pretrial Release Recommendations and Supervision" - Pretrial Justice Institute (2011)
- "Risk/Needs Assessment 101: Science Reveals New Tools to Manage Offenders" - Pew Center on the States (2011)
- "Promising Practices in Providing Pretrial Services Functions Within Probation Agencies- APPA/PJI (2010)

