

Marion County Oregon

An Assessment of the Marion County Pretrial Release System

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Disclaimer

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INTRODUCTION

This report summarizes the primary findings and recommendations from the assessment of the Marion County, Oregon pretrial release system. The Sheriff requested technical assistance to help them evaluate and improve the operation and effectiveness of the pretrial system 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 Marion County pretrial system and provide stakeholders and 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 pretrial practices that, if changed, would enable local decision-makers to begin to improve the pretrial phase of the local justice system.

METHOD

The project team consisted of two nationally-recognized pretrial services experts – Janice Radovick-Dean and Don Trapp (See Appendix A for full bios). The project team reviewed relevant documents and background information provided by the Sheriff's Department and researched bail laws and practices independently prior to the on-site visit. The project team was on-site April 22, 2017 through April 24, 2017, meeting individually and in small groups with the major stakeholders involved in the pretrial stage of the justice system and observing operations at the jail and courthouse (See Appendix B for a list of individuals). The preliminary findings were presented at a meeting on April 24, 2017 with various stakeholders.

FINDINGS

Findings and recommendations are grouped into several topics, most of which represent improvements to the pretrial system or the overall 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 rates for defendants, Federal and State constitutions, State of Oregon laws, local court rules, orders, national pretrial standards from the American Bar Association (ABA) and National Association of Pretrial Services Agencies (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 the Pretrial Stage of the Criminal Justice System

During pre-visit conference calls and the subsequent, preliminary on-site meeting with the requestors for technical assistance, the discussions focused on how pretrial services functions might reduce the Marion County Jail pretrial population, of which approximately sixty-five percent are pretrial defendants¹ being held for a felony offense. By utilizing evidence-based practices to identify pretrial defendants who can be safely released, the overall jail population could be reduced while maintaining public safety for Marion County. All stakeholders expressed considerable interest in, and support for development of evidence based pretrial practices in Marion County.

Regarding the NIC technical assistance it is noteworthy to mention here that Marion County established a pretrial committee to study evidence-based pretrial release due to the over reliance on cash bond schedules and the lack of risk assessment in the decision-making process. The objectives of the committee were to enhance public safety, enable all defendants to have equal access to pretrial release, reduce unnecessary use of county jail space and increase pretrial release rates based on appropriate assessment of risk. Marion County recognized the value of a pretrial services program and submitted a request for assistance to NIC. The request for technical assistance is indicative of the commitment to explore options that may alleviate problems suffered by detainees with pending cases. This endeavor is more likely to realize success, though, if approached systematically.

Marion County Oregon has a population of approximately 325,000, which includes approximately 160,000 people in the city of Salem. There are multiple arresting entities in the county, the largest being the Marion County Sheriff's Office, and the Salem Police Department. The jail, run by the Marion County Sheriff's office, has a population cap of 415, and currently has a Capacity Management Plan that is utilized when the population rises above 403. There is no agreement between Marion County Circuit Court and the Sheriff's Office and the City of Salem Municipal Court for usage of jail bed days. When the Capacity Management Plan is initiated, approximately 2.5 releases per day or 926 total in the last 12 months. Salem Municipal Court sentences and pretrial defendants are the first to be released. These Capacity Management

Plan releases for the pretrial population are not based on pretrial risk, but on where the cases originated and charge types. This causes dissension and mistrust between these stakeholders.

Many of the stakeholders with whom the team met indicated that law enforcement uses citation release for misdemeanor offenses; but, none knew what the criteria were that influenced the decision to issue a citation rather than arrest. Neither were any figures or policies available about the frequency of use.

Booking officers in the jail collect information on defendants admitted to the facility for use in the Public Safety Checklist (PSCL). If defendants score 45 or below on the PSCL and the offense is releasable, the staff has delegated release authority. Those with PSCL scores over 45 remain in jail pending arraignment. Ballot Measure 11 crimes (25 most serious offenses) and Domestic Violence cases cannot be released regardless of PSCL score prior to arraignment. Ballot Measure 11 crimes have a minimum \$50,000.00 bail set, which can be posted and the defendant released if he/she has the financial wherewithal. Defendants who are unable to make bail remain in custody. This system enables pretrial defendants who may be high risk to pay their way out of jail, and defendants who may be low risk, remain detained, costing in both taxpayer dollars, community safety and the fundamental presumption of innocent until proven guilty.

Awareness of Evidence-Based Practices

Pretrial Services programs offer an array of services to support the criminal justice system and provide objective information to the court to assist in the pretrial release decision making process. The basic role of a pretrial officer is to complete an investigation of newly arrested defendants, including a thorough criminal history analysis, conduct a risk assessment using an objective, statistically validated tool, make a recommendation for release or detention to the court and provide monitoring and supervision services to report compliance or non-compliance with conditions of release to the court. Other duties may include indigence screening for determining a defendant's eligibility for a public defender, mental health and substance abuse screening to develop supervision strategies and screening for specialty courts and diversion programs. Pretrial programs also conduct jail population reviews to identify defendants held after initial appearance who could be safely released into the community as well as failure to appear (FTA) interventions to locate defendants who did not appear in court. Lastly, in order to measure effectiveness and usefulness to the overall system, it is critical that pretrial programs develop performance and outcome measures. At minimum, measures of public safety-measured by new criminal activity while on pretrial release-and court appearance rates should be developed.

During the site visit it was discovered that several critical pretrial services functions were being performed by various agencies and departments. However, their existence was inherent to a performing entity's duties, not part of a cohesive pretrial processes. Because a structured pretrial services process does not exist, other fundamental practices are absent.

Existing Pretrial program related functions

- Criminal history analysis by jail/law enforcement officials
- Applying the PSCL for a risk score for only certain cases
- Jail population review conducted by jail staff

Pretrial program functions absent

- Investigation of a defendant's background prior to initial appearance
- Universal screening of all defendants entering the jail on new charges and failure to appear warrants
- Compilation of a report reflecting the defendant's information and a corresponding risk assessment
- Release recommendations to the court
- Monitoring compliance with any court-ordered release conditions²
- Review of criminal records to identify arrests while on pretrial release/bond
- FTA intervention
- Coordination of services
- Compilation of performance and outcome measures

Jail Analysis

The Marion County Jail system consists of a 726 bed (design capacity) correctional facility and a 144 bed Transition Center. The main facility, of a newer, modular design, has an operational capacity of 415. One 128-bed pod has been closed since 2011. The Transition Center allows inmates to transfer from the medium security correctional center upon achieving appropriate classification levels. Inmates would serve the remainder of their sentence there before being released. Some defendants may be sentenced directly to the center. At present, the correctional facility has been operating at or near its operational capacity for over 2 years. There has been a capacity management plan in place to address jail over-capacity issues since December 2014. This plan, consistent with state statutes, provides for the Sheriff to develop a mechanism by which to determine the release eligibility of jail inmates, during times of overcrowding, which supersedes their current status.

Based on data received from the Sheriff's Department, the jail processed in 15,341 persons from April 2016 to April 2017, of which 14,063 were lodged. The difference apparently due to provisions of the capacity management plan. During that same period, the average daily population (ADP) of the jail was 391 or 94.2% of operational capacity, with a standard deviation of 12.3. This translates to an ADP of 403 or greater 15% of the year, or once per week. The ADP of 403 is the level at which the capacity management plan is implemented. During this same period, the jail force released 926 inmates or 2.5 per day.

Pretrial defendants comprise a consistent 66% of the jail's ADP. Absent a formal and active pretrial release screening mechanism and release options, pretrial defendants remain in custody longer, which increases the average length of stay. For Marion County, given the number of persons received (14,063) with available

space (403) in the jail, the maximum length of stay per booking could not exceed 10.45 days. In order to maintain the operational capacity of 415, the average length of stay could not exceed 10.77 days. The current average length of stay in Marion County is 13.2 days, per the Sheriff's Department. The 2.5 bed day difference is equal to the number of inmates who were force released every day on average in the last year. Due to the number of available jail beds, small changes in the average length of stay could produce significant impact on the ADP. For example, a one day decrease in the average length of stay translates to 39 fewer jail beds needed.

An examination of the jail's pretrial population, assessed though a one-day snapshot, indicated that of the 306 defendants (66% of the total population):

- 25% (77) were held on Measure 11 charges
- 31% (95) were held on other person-to person charges, including non-domestic violence (18), domestic violence (70), and sex offenses (7)
- The average length of stay for the pretrial defendants was 70.12 days.
- 33.55% (101) were held on non-person charges, with an average length of stay of 30.76 days
- 11% (34) were held on non-person, non-weapons related charges and were in custody 10 days or less

The data suggest that the pretrial release rate is between 55% - 60% given the low percentage of defendants in custody fewer than 10 days. The percentage of defendants held on person-to-person charges is relatively high at 61% of the pretrial population. This is reflective of policies prioritizing detention for these types of charges, but also reflects the lack of other pretrial release alternatives such as supervision. The posting of bail occurs in less than 7% of all pretrial releases.

Calculation of a pretrial release rate could only be achieved through estimates. Given the number of jail admissions and subtracting persons charged with Measure 11 offenses (825) and held on probation/parole sanctions (1020), who are subject to different pretrial procedures, the pretrial release rate is estimated to be between 55 – 60%. The national average is 60%, according to data maintained by the Bureau of Justice Statistics. Assuming this rate is correct, the challenge for Marion County may not be the number of defendants released pretrial, but the manner in which they are released and the time necessary to make the release decision.

At present, the Public Safety Checklist (PSCL) is being calculated for each person admitted to custody, and is used to evaluate and score inmates for release eligibility under the capacity management plan. While the PSC was developed for use as a post-adjudication risk assessment, it has been validated for use as a pretrial risk assessment by Yamhill County and is being contemplated for similar use in Marion County. In terms of its use as a pretrial assessment, it could significantly impact the jail population. This is assuming it was applied to all release eligible defendants at admission to jail, and was used as the primary driver of release decision-making.

Pretrial defendants held on non-person charges had an average PSCL score of 35.5, placing them in the medium risk range. The scores had a standard deviation of 14.67, and 35% were 24 or below placing them

in the low risk category. If the PSCL was the primary factor in release decisions, these defendants would be in the presumptively release category. This compares with the 56% scoring in the low range of the PSCL and 39% scoring low or below average using the Virginia Pretrial Risk Assessment Instrument from the Yamhill County validation study (Appended to this report), and the 47.4 scoring low across adjudicated offenders in the 2014 DOC Public Safety Checklist Manual. Extrapolating to the annual number of jail admissions, the impact, along with the assumptions, may be estimated as follows:

- 14,063 Annual Admissions
- 11,250 (80% of 14063) Release eligible defendants (by statute and excluding Measure 11 cases, probation/parole violations, and domestic violence cases)
- 6,750 defendants (60% pretrial release rate) Released pretrial. [Note: there were 6,675 pretrial releases from April 2016 to April 2017]
- 2,363 low risk defendants, held on non-person charges, released within 6.6 days of admission (50% reduction from the average length of stay of 13.2 days)
- 42.72 jail beds saved, resulting in ADP of 372 or 89% of capacity
- Assumes no other changes to case processing or bail decisions on other cases

In summary, using the PSCL as a primary factor in pretrial release decisions could significantly impact population management at the Marion County Jail. Through expedited release decisions, the jail ADP could be maintained at or near 90% of capacity rendering the current capacity management plan moot. In addition, the risk-informed decisions are more likely to produce positive outcomes in terms of court appearance and pretrial misconduct than the current method.

RECOMMENDATIONS

Recommendation 1.0: Interview and conduct a risk assessment on all defendants arrested including those on new charges and bench warrants for failure to appear

An interview, investigation, criminal history background check and risk assessment should be conducted on all defendants arrested prior to initial appearance. Using the information obtained from the jail interview and investigation, it is recommended that a pretrial report be prepared with a recommendation to the court for pretrial release or detention. The format of the pretrial report should be developed based on input from all stakeholders. At minimum, the report should include the risk level, risk score and recommendation for release or detention. The report should be provided to the prosecutor, defense counsel and the court prior to initial appearance.

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's criminal activity while on pretrial release and risk of failure to appear. 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.³

Marion County has been using the Public Safety Checklist. This tool was chosen because it is automated and has been validated for pretrial risk in Yamhill County, Oregon (validation study included at end of the report). Staff have already been trained in its application, and information collected can be built upon as a defendant passes through the system.

The State of Oregon does not indicate that any specific pretrial risk tool be used, the technical assistance team would recommend that Marion County review other pretrial risk assessment tools to use in conjunction with the PSCL, have the PSCL validated specifically to the Marion County population and research assessments designed for specific defendants such as those charged with domestic violence, such as a lethality assessment or the ODARA. After the PSCL is validated for use in Marion County, the Pretrial Subcommittee should establish the levels of risk based on the scores (calibration). For example, in its current use as a post-adjudication assessment, scores of 24 and below are considered low. The level of pretrial risk may vary. In addition, once a calibration is completed the Committee should develop a release decision matrix (See Appendix C) which will establish general policy guidelines and expectations regarding release recommendations.

Knowing the risk a defendant poses to the community is essential to make a sound release / detention decision. Risk assessment research has identified several factors most associated with pretrial failure (failure being defined as either new criminal behavior during the pretrial period or failure to appear for a scheduled court appearance). Those factors are:

1. History of Failures to Appear
2. Employment
3. Residence
4. Substance Abuse
5. Previous felony / misdemeanor convictions

6. Prior incarcerations
7. Age at first arrest
8. Pending cases

Many pretrial risk assessment tools score most, if not all these factors. The PSCL scores two of these eight factors. Of the factors it does not score, “history of failure to appear” and “pending cases” was a reoccurring concern in stakeholder interviews. Confidence in the tool by the stakeholders is of utmost importance otherwise it will not be relied upon for the release decision. A tool that does not score pending cases could, for this community, lead to skepticism about the tool as well as a reason for overriding recommendations.

There are other public domain pretrial assessment tools currently in use around the country that include many of the above as a scored factor. A comprehensive sample of risk assessment tools may be viewed on the Pretrial Justice Institute (PJI) or the National Criminal Justice Association (NCJA) websites at www.Pretrial.org/solutions/risk-assessment/ or www.ncjpa.org/pretrial/risk-assessment-instruments-validation respectively.

Recommendation 2.0: Reduce reliance on financial conditions of release by moving from a financial bail schedule to a risk based schedule.

In order to improve the use of corrections resources, the Marion County criminal justice system must reinforce the use of nonfinancial pretrial release of low and moderate risk defendants by encouraging the greater use of nonfinancial alternatives and providing greater oversight of detentions based solely on a defendant’s inability to pay. The current structure of the criminal justice system is not conducive to expedited pretrial release. According to the stakeholders, defendants who are unable to make bail are often held in jail for long periods of time pre-conviction. Marion County should explore, through collaboration with all agencies, the development of processes and protocols that provide for a more aggressive review of defendants detained due to the inability to make bail, in a more timely fashion.

The technical team recommends that Marion County revise the currently used Bail Schedule from being financially based, to being risk based. An example of what the risk based schedule might look like can be found at Appendix C. This recommendation is being made in light of the following factors.

NAPSA Standard 1.4 (a) indicates that “each jurisdiction should adopt procedures designed to promote the release of defendants on personal recognizance.” Standard 1.4 (c) goes on to say that “Release on financial conditions should be used only when no other conditions will provide reasonable assurance that the defendant will appear for court proceedings. *Financial conditions should never be used in order to detain the defendant*” (emphasis added). Research has shown that financial bond does not affect public safety or court appearance but only serves to detain those individuals who are of a lower socio-economic status. However, financial bail and bail schedules do have a substantial effect on jail bed use. Two-thirds of the nation’s jails are filled with pretrial defendants many being detained not because they pose a threat to the community, but because they cannot afford to post even a few hundred dollars. When a defendant is unable to post a financial bond and remains in jail, the cost of their detention is the sole responsibility of the county. In addition there are other negative consequences to the use of financial bond.

The “research shows that defendants detained in jail while awaiting trial plead guilty more often, are convicted more often, are sentenced to prison more often and receive harsher prison sentences than those who are released during the pretrial period. These relationships hold true when controlling for other factors, such as current charge, prior criminal history and community ties.”⁴ Further, low risk defendants who are held pretrial for as little as 2-3 days are 40% more likely to commit a new crime before trial and 22% more likely to fail to appear than those held no more than 24 hours. The longer low risk defendants are held, the more intense the effect. Those held 31 days or more are 74% more likely to commit new crimes pretrial and 31% more likely to fail to appear. The negative effects of pretrial detention also carry forward to long term recidivism with those defendants being up to 51% more likely to recidivate post adjudication. By holding low risk defendants simply due to their socio-economic status, the system albeit unwittingly, is contributing to community harm.⁵

Most importantly for the community, a financial based system takes the detention / release decision away from the judge and places it with a third party. The defendant’s continued detention or release is decided by someone outside of the criminal justice system, to those being willing or able to post a monetary bond for the defendant. The definition of who is a “good risk” for these third parties may often differ from that of the criminal justice system or community. This divergence in priorities can lead to the release of dangerous criminals while those who pose minimal risk are detained. Moving away from financial means as the basis for release decisions, reclaims that judicial decision making authority.

Lastly, there have been a number of lawsuits filed against communities who employ bail schedules. These suits have been brought by *Civil Rights Corp*, an agency who has dedicated itself to fighting inequalities within the legal system especially for those living in poverty. To date, nine class action suits have been filed in seven states including Alabama, Missouri, Mississippi, Louisiana, California and Texas. A Declaratory Judgment issued on November 6, 2015 by the U.S. District Court for the Southern District of Mississippi states “No person may, consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, be held in custody after an arrest because the person is too poor to post a monetary bond. If the government generally offers prompt release from custody after arrest upon posting a bond pursuant to a schedule, it cannot deny prompt release from custody to a person because the person is financially incapable of posting such a bond.” The Department of Justice (DOJ) has also called into question the constitutionality of fixed bail schemes that rely solely of the defendant’s ability to pay in its *Statement of Interest* filed on February 13, 2015 in the case of *Varden v. City of Clanton*.

Recommendation 3.0: Create a Pretrial Services division within Probation or a stand-alone Pretrial Program to conduct pretrial risk assessments on all defendants booked into the jail.

The technical team recommends that a Pretrial Services program be created within the existing Probation Department or a stand-alone program under the Court. The determination of where the division should exist would ultimately have to be decided locally. Standard 1.3 of the National Association of Pretrial Services Agencies (NAPSA) indicates that “...every jurisdiction should have the services of a pretrial services agency or program to help ensure equal, timely, and just administration of the laws governing pretrial release. The pretrial services agency or program should provide information to assist the court in making release/detention decisions, provide monitoring and supervisory services in cases involving

released defendants...” A recently published NIC paper titled “A Framework for Pretrial Justice; Essential Elements of a Pretrial System and Agency” and “Pretrial Justice; How to Maximize Public Safety, Court Appearance and Release” broadcast is available on NIC’s website at www.nicic.gov.

In order for Marion County to move to a risk based system of release there must be some fundamental changes to how the current system operates. An assessment of an individual’s risk should be conducted within hours of the person coming into custody. This will require notification to the Pretrial Services Division each time a person is brought into the county jail for booking. Upon notification of an arrest, a Pretrial Officer will conduct a pretrial risk assessment using the agreed upon tool. The results of the initial assessment will be applied to the new risk based schedule. Individuals who meet the new risk based guidelines, and are not statutorily prohibited, should be administratively released with a date to appear in court. Oregon statutes allow for release authority to be delegated by the Court. This is recommended for use in what the release decision matrix indicates are presumptive releases. The County should consider limiting the number of charges that would be ineligible for release by reviewing the “no-go list.” Those who are not eligible for immediate release will be held for an arraignment to be conducted within 48 hours. The results of the pretrial assessment will be available to the Judge, prosecutor and defense counsel at that hearing so an informed, evidenced based decision regarding release / detention can be made.

The Pretrial Officer can assist in expediting the return of the defendant to court and potentially avoiding an arrest or new criminal charge by performing failure to appear interventions. Specifically, when a defendant misses a court appearance the Pretrial Officer attempts to locate the defendant by calling him or her or looking at criminal history information to determine if the defendant is incarcerated in another facility. Processes and protocols need to be developed to guide the response to the missed court appearance such as re-docketing cases, defendant surrender processes or expediting the service of warrants.

It is further recommended that continuous reviews of the pretrial jail population be conducted to identify defendants who can safely be released into the community pending trial, specifically defendants held on a cash bail. These defendants may need additional assessments to determine supervision strategies or need for services. For defendants with a “holder”, the Pretrial Officer can investigate the nature of the hold and determine if the defendant can be released or assist in expediting the process by which the holder can be resolved.

Recommendation 4.0: Use pretrial supervision and conditions of release based on risk (differential supervision).

NAPSA Standard 1.7 recognizes that some defendants released into the community will require supervision pending adjudication of their case, “in order to protect against risks of nonappearance and risks of danger to the safety of the community or to individual persons. Jurisdictions should provide adequate informational and supervisory resources to the pretrial services agency or program and to other justice system entities involved in pretrial decision-making, monitoring, and supervision.”

The pretrial assessment tool will identify defendants who fall into the probability of moderate / high risk. Generally these are individuals who may be at risk of pretrial failure but whose risk can be mitigated through appropriate interventions or supervision. Supervision services can improve pretrial outcomes through various means including; checking in with a pretrial case manager, and court date notification

/reminder calls. In keeping with the risk principle of evidenced based practices supervision strategies should match the level of risk posed by the defendant. This means prioritizing supervision and services for the higher risk defendants. This would include the frequency with which defendants are required to check-in or report. Not all risk levels require the same amount of supervision, and in fact research shows that over-supervision of low risk defendants can increase recidivism. Marion County should consider differential levels of supervision where the frequency of contact is driven by the level of risk (See Appendix D for an example of a pretrial case management matrix).

Conditions of bond should also be the *least restrictive* in achieving the pretrial goals of court appearance and remaining arrest free during the pretrial period. Managing risk is not about the number of conditions imposed, but rather the appropriateness and efficacy of those conditions. Moderate to high risk defendants are appropriate for supervision if the risks they pose can be mitigated through appropriate interventions. A discussion of pretrial conditions and their efficacy can be found in the document *State of the Science of Pretrial Release Recommendations and Supervision* (VanNostrand, Rose, 15 Weibrecht, 2011). As the Pretrial Services Unit evolves, the NAPSA standards should be used as a guide for continued policy development and implementation.

Recommendation 4.1: Develop a policy for handling technical and new arrest violations of pretrial supervision.

Pretrial misconduct is generally comprised of two categories; failing to appear and being arrested or alleged to have committed new criminal behavior while on release. Most agencies have policies dictating how defendants with these types of misconduct are to be handled. However, supervision agencies must also deal with a third type of behavior; technical violations. A technical violation occurs when the defendant fails to comply with a condition of release such as failing to check-in as directed, or having a positive drug test. Many agencies struggle with how to handle technical violations. The reasoning behind this struggle is often posed through a question; if a defendant is appearing in court as directed and has not engaged in new criminal behavior (the two stated purposes of bond) should a technical violation matter?

Of course each jurisdiction must answer this question for themselves. Standard 4.3 (a) of the NAPSA Standards indicates that, "The selection of an appropriate sanction for violation of conditions should take account of the seriousness of the violation, whether it was willful", and whether what the defendant did (or failed to do) actually impaired the administration of the court or heightened a risk to public safety." In reply to this standard many jurisdictions have begun to develop violation response guides. Stakeholders within the criminal justice system develop a matrix that lists the types of violations and the possible sanctions that could be imposed for the differing violations. Policy is developed alongside the matrix detailing how many administrative sanctions are allowed and when a revocation hearing or warrant request would be appropriate. Some jurisdictions have begun to give pretrial services limited authority in determining sanctions for low level violations. Often referred to as "administrative sanctions", this method allows for a swift response to violations without the use of expensive resources such as jail beds and court time. An example of a pretrial response matrix is included as Appendix E.

Recommendation 5.0: Assess IT capabilities in pulling existing data collection points together

As the technical team are not IT experts, the recommendation for assessing the IT capabilities should be done by a vendor with this expertise. It should be noted that from prior experience and past practice having the ability to have data points automatically score and populate a risk tool, whether from the pretrial services interview or existing data elements, reduces error in both data entry and scoring of the risk assessment. This ensures more accurate risk scoring, increased confidence in the assessment and reduces the chance of assessor inaccuracy and bias when hand-scoring the tool.

Recommendation 6.0: Development Performance and Outcome Measures

It is critical that pretrial programs develop outcome measures to evaluate effectiveness. One of the key outcome measures for pretrial services and risk assessment is the public safety rate, which is defined as the percentage of defendants who are not charged with a new crime while on pretrial release. Processes will need to be developed for the Officer to perform record checks on pretrial defendants to identify those who are charged with a new crime while on pretrial release. Access to the state criminal history system as well as NCIC will need to be obtained if the Pretrial Department is not under the Sheriff's auspices. The frequency of the record checks should be decided collaboratively by all stakeholders and should be based on the level of importance and the resources available. Depending on the number of pretrial defendants it may not be feasible to run manual weekly record checks on every defendant. Therefore, stakeholders should prioritize which defendants are checked and how often. Lastly, protocols and policies need to be established for the reporting of new criminal activity as well as the response to the behavior.

The second key outcome measure for pretrial services is the appearance rate, which is defined as the percentage of pretrial defendants who appear in court as scheduled. The definition of failure to appear varies across jurisdictions. Even within jurisdictions, different agencies use different definitions. Therefore, it is recommended that the criminal justice system stakeholders in Marion County agree on a standard definition of failure to appear so that accurate measurement and consistent responses can occur. One suggestion is to define failure to appear as a willful missed court appearance that results in a warrant or summons being issued by the court. Often times, when there is no intervention, the willfulness of a missed court appearance cannot be determined until after the bench warrant has been issued, served, and the defendant appears in court.

Performance and outcome measures should be developed to measure the effectiveness of the pretrial program. In 2010, the National Institute of Corrections (NIC) Pretrial Executive Network identified the need for consistent and meaningful data to track individual pretrial services program performance. The Network commissioned a working group to develop suggested outcome and performance measures and mission critical data.⁶ It is essential in collecting performance measures that

Court data be obtained and used. Although not all of the suggested measures are feasible for Marion County as the current data collection exists, the following measures, as defined by the Network are recommended and obtainable:

Appearance Rate: The percentage of supervised defendants who make all scheduled court appearances.

Safety Rate: The percentage of supervised defendants who are not charged with a new offense during the pretrial stage.

Success Rate: The percentage of released defendants who are 1) not revoked for technical violations due to condition violations, 2) appear for all scheduled court appearances, and 3) are not charged with a new offense during pretrial supervision.

Pretrial Detainee Length of Stay: The average lengths of jail stay for pretrial detainees who are eligible by statute for pretrial release.

Universal Screening: The percentage of defendants eligible for release by statute that the program assesses.

Pretrial Intervention Rate: The pretrial agency's effectiveness at resolving outstanding bench warrants, arrest warrants and capiases.

Number of Defendants Released by Release Type and Condition: The number of release types ordered during a specified time frame.

Pretrial Detention Rate: Ratio of pretrial defendants who are detained throughout pretrial case processing.

CONCLUSION

Overall, the project team found the state of the Marion County criminal justice system open to reform, 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 individuals charged and jailed but not yet convicted of a crime. In looking to shift from a monetary system of jurisprudence to a risk based system, educating not only system stakeholders, but the public and media is crucial for the success of the new procedures. Process changes that encompass interviewing all defendant's entering the jail on new charges and failure to appear warrants to enacting supervision protocols and violation procedures, must be documented and agreed upon by all parties involved. This system must be equitable and transparent. 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 and critically to the judiciary, must be devoted to the success of the program. When that is accomplished,

the Marion County justice system, which already has the building blocks to create an outstanding pretrial program, will be able to fully offer viable solutions to exigent problems and serve the needs of the community with justice.

References and Resources

COLLATERAL CONSEQUENCES INFORMATION

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SUPPORTIVE RESOLUTIONS, PAPERS, STANDARDS

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INTERNET LINKS TO PARTNERING AND AFFILIATED ORGANIZATIONS

National Association of Pretrial Services Agencies: www.napsa.org

National Institute of Corrections: www.nicic.gov

National Association of Counties: www.naco.org

American Jail Association: www.americanjail.org

American Probation and Parole Association: www.appa-net.org

American Council of Chief Defenders: www.nlada.org/Defender/Defender_ACCD

International Association of Chiefs of Police: www.theiacp.org

Association of Prosecuting Attorneys: www.apainc.org

National Association of Criminal Defense Lawyers: www.nacdl.org

National Sheriffs' Association: www.sheriffs.org

Conference of State Court Administrators: cosca.ncsc.org

National Judicial College: www.judges.org

Appendix A

Janice Radovick-Dean is a Pretrial Services subject matter expert and currently the Director of the Fifth Judicial District of Pennsylvania's Pretrial Services Department. She began her career with the Allegheny County Probation Department in 1989. During that time Ms. Dean has worked in the DUI Unit, the Electronic Monitoring Unit and the County's Drug Court Program. In 2001, Ms. Dean aided in the creation of the Allegheny County Ignition Interlock Program, which is one of the only County operated Programs in the state. In 2007, she was transferred to the newly created Pretrial Services Department. Ms. Dean has been instrumental in the creation of policies and procedures and to the overall changes made in the department and the Court. She holds degrees in Administration of Justice and Criminology from the University of Pittsburgh.

Ms. Dean is a nationally recognized Pretrial subject matter expert, providing technical assistance and training to numerous local and state jurisdictions through the National Institute of Corrections and providing written and oral testimony to legislators.

Ms. Dean serves as Immediate Past President of the Pennsylvania Pretrial Services State Association, and serves on the board for the National Association of Pretrial Services

Don Trapp is an Associate Faculty of Criminology and Criminal Justice at Portland State University, where he has provided instruction in applied criminal justice research through the Capstone Program. He is an Associate with Justice System Partners, where he worked on the MacArthur Foundation's Safety and Justice Challenge. Don Trapp has worked in community corrections in Oregon since 1988, where he served as manager of the Pretrial Services Program, the High-Risk Drug Offender Unit, and Centralized Intake Services. He has also served as the Project Manager for the Department of Community Justice's evidence-based practices initiative, and provided training to staff in Multnomah and other Oregon counties on evidence-based case management practices. Don has served as a consultant with the Crime and Justice Institute and has provided technical assistance in pretrial and related practices to local jurisdictions across the United States through the National Institute of Corrections. Don has a Master's Degree in Psychology from Portland State University, has conducted workshops and provided trainings for corrections agencies on implementing evidence-based practices, managing offender risk, and organizational change and development, and is the author of several papers in these subjects.

Appendix B

On-site meetings April 22-24, 2017:

Sheriff Jason Myers

Undersheriff Troy Clausen

Jail Commander Kevin Schultz

Jail Lieutenant Jeff Stutrud

Jail Lieutenant Doug Cox

P&P Commander Jeffrey Wood

P&P Lieutenant Jay Bergman

Ann-Marie Banfield, Health Department (Mental Health)

Judge Jane Aiken, Salem Municipal Court

Janet Carlson, Marion County Commissioner

Walt Beglau, District Attorney

Paige Carlson, ADA

Amy Queen, ADA

Jessica Kampfe, Public Defender

Diane Morse, Trial Court Administrator

Judge Tracy Prall, Marion County Circuit Court Judge

Sam Brentano, Marion County Commissioner

Bruce Armstrong, Legal Counsel

Appendix C

Sample Bond Schedule (Release Decision Matrix)

Class of Offense	Risk Score/Level	Release Type
Murder	All	Held Pending Hearing on Bond
Habitual Offender	All	Held Pending Hearing on Bond
Felony Level 1-4	All	Held Pending Hearing on Bond

Class of Offense	Risk Score/Level	Release Type
Felony Level 5	Low	ROR
	Moderate	ROR w/supervised release
	High	ROR w/supervised release
Felony Level 6	Low	ROR
	Moderate	ROR w/supervised release
	High	ROR w/supervised release

Class of Offense	Risk Score/Level	Release Type
Misdemeanor Class A	Low	ROR
	Moderate	ROR w/court notification
	High	ROR w/court notification
Misdemeanor Class B	Low	ROR
	Moderate	ROR w/court notification
	High	ROR w/court notification
Misdemeanor Class C	Low	ROR
	Moderate	ROR w/court notification
	High	ROR w/court notification

Appendix D

Example of Differential Levels of Supervision

In circumstances where the Praxis guides the recommendation to include pretrial supervision, a corresponding level of supervision will be included. The levels of supervision include monitoring, standard, intermediate, and intensive. The contact requirements for each supervision level are documented below. Monitoring does not require the defendant to contact our office, but they will receive court reminder notifications.

Supervision Level	Description
Monitoring	Court reminder notification only
Standard	1 contact per month and court reminder notification
Intermediate	2 contacts per month and court reminder notification
Intensive	1 contact per week and court reminder notification*

*Any defendant with the condition of electronic monitoring requires intensive supervision.

Appendix E

MESA COUNTY PRETRIAL SERVICES RESPONSE TO VIOLATIONS GUIDE

<i>Generally involves violations that show a lapse in judgment and do not cause harm to themselves or others.</i> Minor Violations	<i>Violations that appear to show a disregard for court orders and Pretrial Supervision, but did not cause harm or potential harm to others.</i> Moderate Violations	<i>Violations that appear to show a willful and/or repeated disregard for court orders and Pretrial Supervision, and/or violations which cause or present a risk of harm to themselves and/or others.</i> Severe Violations
New Charges - Traffic infractions / Petty Offenses	Failure to Report a New Arrest	New Misdemeanor and Felony Criminal Charges
Failure to Report Police Contact	Failure to Appear in Court	Failure to comply with Protection Orders
Missing a Check-in	Home Curfew Violation	Failure to Report for Initial Intake Within One Week
Failure to Call in at Designated Date/Time	Leaving State w/out Authorization	Unable to Locate Client for Compliance
Missed Case Manager Meetings	Missed Multiple Case Manager Meetings	Failure to Comply with Fast Track Bond
GPS Minor Violations	GPS Moderate Violations	GPS Severe Violations
Failure to Report Address or Phone Number Changes	Failure to Download Electronic Monitoring Equipment	Tampering with an Electronic Monitoring Device
Failure to Answer Calls From Pretrial	Positive Schedule 3 to 5 Controlled Substance Screen	Positive Schedule 1 & 2 Controlled Substance Screen
Failure to Pay Supervision Fees	Failure to Comply with Special Bond Conditions (includes failure to produce substance tests, fail to submit BA's, positive THC tests, etc.)	Tampering with a Urine Sample
Failure to Report After Court	Repeated Minor Level Violations	Repeated Moderate Level Violations

MESA COUNTY PRETRIAL VIOLATION RESPONSE GUIDELINES MATRIX

Supervision Levels	Minor Violation	Moderate Violation	Severe Violation
Basic	Low Response	Low to Medium Response	Medium to High Response
Enhanced	Low to Medium Response	Medium to High Response	High Response
Intensive	Low, Medium or High Response	Medium to High Response	High Response

DEFINITIONS OF RESPONSE

Responses may include one or more of the following actions:

Low Response	Verbal warning; May consult with attorneys; Consult with family members and friends; etc.
Medium Response	Meet with and counsel client; Increase services or supervision levels (increase UA's, BA's, etc); Referral to treatment; May consult with attorneys; Mandatory contact with attorneys on positive schedule 1 and 2 substance screens; Request an imposed curfew; etc.
High Response	Meet with and counsel client; Must send Notice paperwork to the D.A. & notify defense; Contact law enforcement; Request treatment as condition of bond; Request Pretrial Work Release; etc.

End Notes

- ¹ Compare this pretrial detainee percentage with the national average of 60% as determined by a representative sample of local jails. Golinelli, D., and T.D. Minton (2014) *Jail Inmates at Midyear 2013- Statistical Tables*, Washington, D.C. p.1. US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Accessed at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4988>
- ² See VanNostrand, M., Rose, K. J., & Weibrecht, K. (2011). *State of the Science of Pretrial Release Recommendations and Supervision*. Washington, DC: Pretrial Justice Institute. Available at <http://nicic.gov/library/025078>; <http://nicic.gov/library/022904> Topics in Community Corrections Annual Issue 2008 applying ebp in pretrial services; and *Jail Population Management: Elected Officials Guide to Pretrial Services*; Info available at <http://www.naco.org/newsroom/pubs/Documents/Health,%20Human%20Services%20and%20Justice/Jail%20Population%20Management%20Guide.pdf> for discussions on the effective use of release conditions and other critical pretrial program activities
- ³ For more information about risk assessments in general, See Latessa, Edward J. and Lovins, Brian(2010) *The Role of Offender Risk Assessment: A Policy Maker Guide*, Victims & Offenders, 5: 3, 203 — 219, available at <http://faculty.uml.edu/chigginsobrien/44.327/TOPICS/The%20Role%20of%20Offender%20Risk%20Assessment%20PDF.pdf>; The Pew Center on the States, September 2010, *Risk/Needs Assessment 101: Science Reveals New Tools to Manage Offenders*, available at http://www.pewstates.org/uploadedFiles/PCS_Assets/2011/Pew_Risk_Assessment_brief.pdf; Mamalian, C. A. (2011). *State of the Science of Pretrial Risk Assessment*. Washington, DC: Pretrial Justice Institute, available at https://www.bja.gov/publications/pji_pretrialriskassessment.pdf; and Lowencamp, C. and E. Latessa, *Understanding the Risk Principal: How and Why Correctional Interventions Can Harm Low-Risk Offenders*, Washington DC: National Institute of Corrections, 2004, available at <http://www.yourhonor.com/dwi/sentencing/RiskPrinciple.pdf>
- ⁴ *Rational and Transparent Bail Decision Making: Moving From a Cash-Based to a Risk-Based Process*, (PJI / MacArthur Foundation. 2012).
- ⁵ Alexander Holsinger, Christopher Lowenkamp, and Marie VanNostrand, *The Hidden Cost of Pretrial Detention*, November 2013.
- ⁶ National Institute of Corrections. (2011). *Measuring What Matters: Outcome and Performance Measures for the Pretrial Services Field*. NIC Accession Number 025172. Washington, D.C.: U.S. Department of Justice. Available at <http://nicic.gov/library/025172>