



MARION COUNTY SHERIFF'S OFFICE

JASON MYERS, SHERIFF

To: Sheriff Jason Myers
Undersheriff Troy Clausen

From: Commander Tad Larson
Lieutenant Jeff Stutrud

Date: December 18, 2017

RE: Pre-Trial Release

Background

Judicial decisions about the pre-trial release or detention of criminal defendants can have a significant, and sometimes determinative, impact on defendants and the disposition of their cases, while adding financial stress to the jails which hold them. Nationally, there is evidence that holding people in custody for more than 72-hours can have a destabilizing effect on these individuals—which is not consistent with the goals of public safety.

Currently, Oregon does not collect or measure the numbers of pre-trial defendants in custody or defendants released on security or on release agreements. The exact status of pre-trial defendants is not easily determined. This is a significant data need for that State of Oregon and Marion County.

Based on national information, it is reasonable to assume that a share of the defendants incarcerated pre-trial do not present a substantial risk of failure to appear or a threat to public safety, but may be being held solely due to financial inability to post security. Conversely, some with financial means are released from jail despite a significant risk of flight or threat to public safety.

Evidence-based assessments of a defendant's risk of failure to appear and risk of danger to the community can increase the probability of successful pre-trial release decisions. Imposing appropriate conditions on a defendant following a valid risk assessment will substantially reduce pre-trial detention without impairing the judicial process or threatening public safety. Although some jurisdictions in Oregon utilize a validated actuarial risk tool to inform their pre-trial release decisions, the overwhelming majority do not.

Additionally, people with mental health issues arrested for low level offenses can spend significant amounts of time in jail without access to appropriate services, which can cause them to further decompensate and become a higher risk to the community. This has led to a rise in defendants being held in jail who become unable to aid and assist in their own defense, and subsequently being committed to the Oregon State Hospital for evaluation and treatment. This disconnects that population from local services in their community which could be utilized to restore their fitness to proceed in criminal cases, and causes additional expense for the state.

If more individuals are able to be safely released pre-trial in the community, they will be able to maintain their living situation, day treatment participation, medical and social security benefits, as well as their family and community supports.

The issue inherent in the discussion of enhancing our local release functionality impacts all actors in the criminal justice system across multiple decision points.

In Oregon, some counties have implemented a pre-trial strategy of utilizing a locally validated pre-trial risk assessment tool, guidelines for release of certain low risk defendants prior to arraignment, training for all local stakeholders, and an automated court date reminder system. Although the data is tentative, to date, some county-specific jail pre-trial population have dropped by approximately 20%, while failure to appear rates dropped from approximately 20% at first measure down to 4%, where it has remained for several years.

Locally in Marion County, the Jail has a budgeted capacity of 415 beds. In 2016 the jail received over 15,000 new bookings. The Marion County Jail has a pre-trial population of approximately sixty-five percent pre-trial defendants are being held for a felony offense. By utilizing evidence-based practices to identify pre-trial defendants who can be safely released, the overall jail population could be reduced while maintaining public safety for Marion County.

The Marion County Jail is currently using a Capacity Management Plan in order to make release decisions. These release decisions are initiated due to the Jail reaching a maximum capacity number, the holding criminal charge and a “risk” score derived from the Public Safety Checklist (PSC). Although the releases consider community safety, they are nonetheless initiated due primarily to capacity issues, occur at the back end of the system and may not account for what is best for the offender, the Sheriff’s Office or the community. The offender population targeted by the Capacity Management Plan, are not always the most appropriate for release consideration. Utilizing an evidence-based assessment is a better way to make difficult release decisions.

Recommendations

Based in part to a April 2017 the National Institute of Corrections (NIC) assessment of the pre-trial system in Marion County, the following Vision, Mission, recommendations, and action steps are being forwarded for consideration:

VISION: Through local collaboration, initiate a pre-trial justice system that promotes public safety, addresses mental health issues, and enhance the constitutional and statutory rights of both victims and defendants.

MISSION: To utilize a policy-driven, data-informed strategic planning process to develop a plan that will increase effective collaboration between local partners, resulting in the implementation of improved pre-trial practices, policies, and programs.

ACTION STEPS:

- 1. Initiate a workgroup tasked to examine Oregon Constitution and statutes pertaining to pre-trial release. In addition to the Sheriff’s Office, collaborative partners could include representation from the courts, District Attorney’s Office, Defense Counsel, and Victim’s Advocate groups;**
- 2. Interview and conduct a risk assessment on all defendants arrested including those on new charges and bench warrants for failure to appear;**
- 3. Discontinue use of the modified MCSO PSC and initiate a directive to access the PSC utilized by drug and other specialty courts;**
- 4. Reduce reliance on financial conditions of release by moving from a financial bail schedule to a risk based schedule;**
- 5. Create a Pre-trial Services division within Probation or a stand-alone Pre-trial Program to conduct pre-trial risk assessments on all defendants booked into the jail;**
- 6. Use pre-trial supervision and conditions of release based on risk, utilizing examples provided by NIC or other counties in Oregon;**
- 7. Develop a policy for handling technical and new arrest violations of pre-trial supervision;**
- 8. Assess IT capabilities in pulling existing data collection points together; and**
- 9. Development Performance and Outcome Measures.**
- 10. Explore funding sources for additional staff necessary to implement a Pre-trial Services Program.**