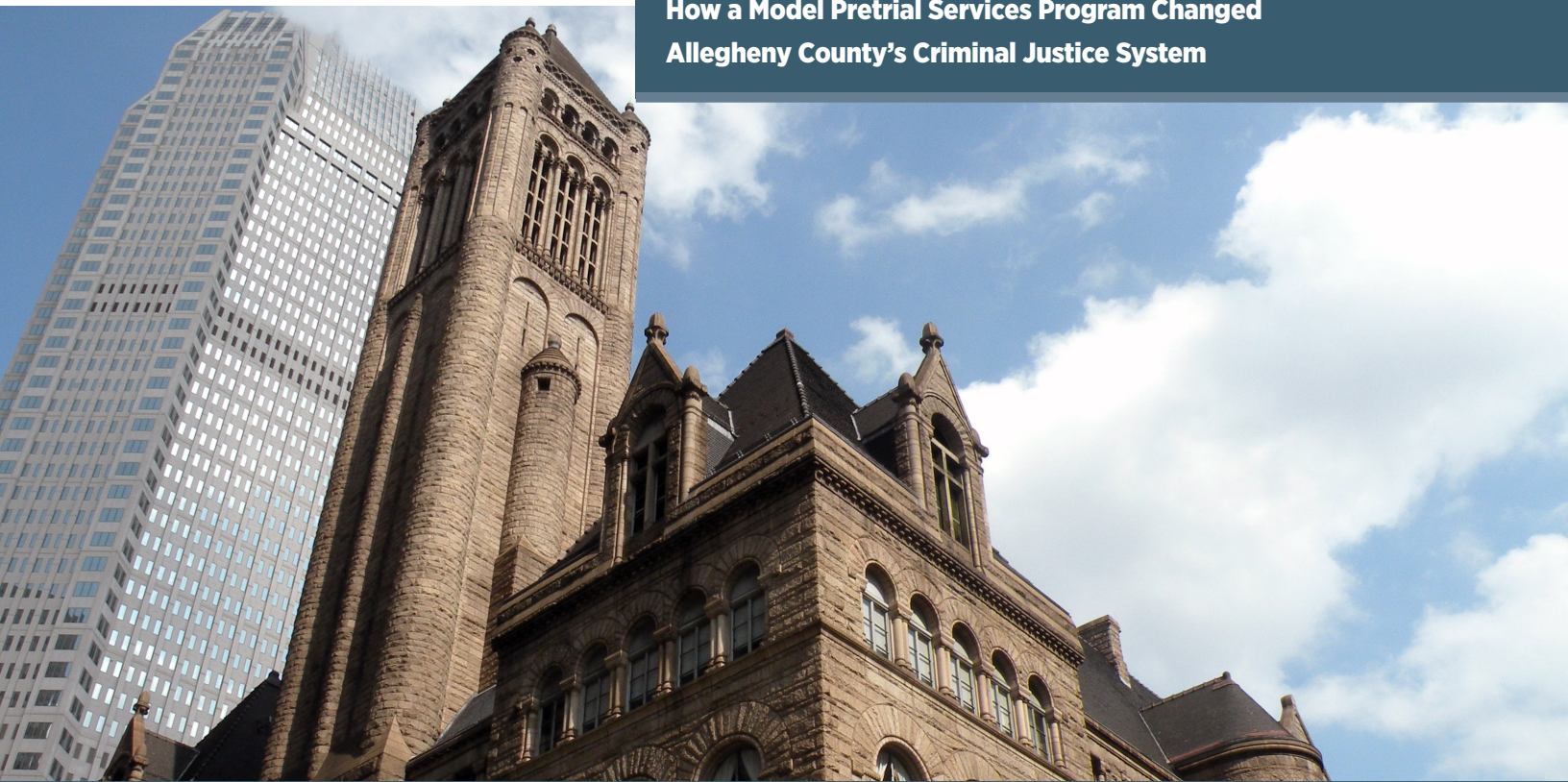


Pretrial Decision-Making: How a Model Pretrial Services Program Changed Allegheny County's Criminal Justice System



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Nearly every weekday at 11:00 a.m., Fifth Judicial District President Judge Jeffrey A. Manning calls Motions Court to order. The session gets its name from the miscellaneous motions, such as bond modifications and revocations, presented there. But in this case it could also refer to the pace of deliberations.

In quick succession, Judge Manning calls 15 defendants forward. Some, who were either arrested or turned themselves in on bench warrants after missing a hearing, are in the courtroom; others appear by video link from the Allegheny County Jail. Judge Manning listens to the details of each case, offers a few stern words like, “Don’t expect a break next time,” and announces his decision. Most of the defendants, including those who turned themselves in, get a second chance. Few cases take more than 45 seconds.

To a casual observer, Motions Court might appear to be a hasty or indifferent way of dispensing justice. But what the observer doesn’t see is the reason that Judge Manning feels confident about the decisions that he renders almost instantaneously. He relies heavily on the background research and recommendations of the Allegheny County Pretrial Services Department when making his decisions. Pretrial Services staff work quietly behind the scenes — but they are part of what has become a national model for handling important issues in a consistently fair way.

Judge Manning assumed responsibility for Motions Court in 2009; previously, the responsibility was rotated among judges assigned to the Fifth Judicial District Criminal Division. Through his daily collaboration with Pretrial Services, bond modification, revocation and reinstatement for incarcerated defendants has become a more efficient and equitable process, saving both time and money.

“Peter Drucker said that ‘efficiency’ is doing things right, and ‘effectiveness’ is doing the right things,” Judge Manning observed. “We have strived to be both efficient and effective through Pretrial Services.”

A BIG TURNAROUND

Pretrial Services, which quietly plays a major role in making the wheels of justice turn both faster and fairer in Allegheny County, didn’t even exist until 2007. Until then, as documented in a case study and a more extensive report by the Pretrial Justice Institute,¹ Allegheny County had performed pretrial investigations in the same, somewhat subjective way since 1972.

A lack of resources and the absence of a risk assessment tool were most apparent in the bail-setting process. When a defendant is arrested, a judicial officer has to determine under what terms the defendant may be released from jail pending a court hearing. While most people think of “bail” in terms of money, a number of other conditions — such as staying away from the victim or entering alcohol rehabilitation — can be ordered. In fact, experts discourage use of monetary bail, because it provides an easy way out for those who can pay and holds those without financial resources in jail unnecessarily.

The process used by the court’s bail agency until 2007 had numerous deficiencies. Staff did not interview defendants, relying instead on a self-reported questionnaire that had no consistent verification process. As a result, bail recommendations were largely subjective, and risk assessments were nonexistent. In such an environment, the typical reflex reaction is to play it safe by recommending high bail requirements. But this way of operating contributes to jail overpopulation and unnecessary disruption in the lives of the accused. Moreover, prolonged incarceration prior to trial results in increased criminal behavior down the road.²

When an outside review exposed these deficiencies, Donna Jo McDaniel, then criminal division administrative judge, advocated for modernization of pretrial services. By the time the reforms were complete, bail investigators were interviewing all defendants, using a locally validated standardized risk assessment, and relying more consistently on nonmonetary conditions of bail. The comprehensive Pretrial Services Department was formed by combining the bail agency with three other programs that work with defendants prior to trial — Accelerated Rehabilitative Disposition for nonviolent and DUI offenders, the Alcohol Highway Safety Program, and the Behavioral Assessment Unit for people with mental health issues.

“We want to be wise about how we are setting bail and jailing defendants,” said Tom McCaffrey, Pretrial Services’ first director and currently criminal division administrator. “If a person is not a public hazard, then he should not have to sit in jail because he is poor and doesn’t have \$200.” (Pretrial Services doesn’t need to recommend high monetary bail in order to keep dangerous people off the streets; it can advocate for no bail for those offenders whom it considers too dangerous to release into the community.)

¹ “Pretrial Justice Institute Guides Innovative Reforms, Helping Justice Trump Tradition” (Fall 2008), available at www.pretrial.org/download/pji-reports/Case%20Study-%20Allegheny%20County%20-%20PJ%202008.pdf

² Arthur W. Pepin, “Evidence-Based Pretrial Release” (2013), p. 4. This report was produced by the Conference of State Court Administrators (COSCA); Pepin was chair of the COSCA Policy and Liaison Committee at the time. The report is available at http://www.colorado.gov/ccjdir/Resources/Resources/Ref/EBPre-TrialRelease_2012.pdf. See also Texas Criminal Justice Coalition, *Costly Confinement and Sensible Solutions: Jail Overcrowding in Texas* (Austin, Tex.: Author, 2010), available at [http://www.texascjc.org/sites/default/files/publications/Costly%20Confinement%20Sensible%20Solutions%20Report%20\(Oct%202010\).pdf](http://www.texascjc.org/sites/default/files/publications/Costly%20Confinement%20Sensible%20Solutions%20Report%20(Oct%202010).pdf)

“Regardless of how much money you have in the bank, the bail recommendation and the information presented to the court do not change,” said current Pretrial Services Director Janice Radovick-Dean. “It ruins people’s lives to be in jail for two weeks. People lose houses, jobs and families over a bond that they can’t afford, for a charge that they haven’t been convicted of.”

Supervision of released defendants awaiting trial, staff training and information management, all of which had previously been completed on paper, were also restructured in accordance with national best practices. The dramatic nature of the changes has been recorded in a before-and-after chart that can be found on the last four pages of the Department’s guide to services as well as in the Pretrial Justice Institute report referenced above.

Within the first month after initiation of new pretrial practices in September 2007, the number of defendants processed through the Allegheny County Jail following preliminary arraignment decreased by 30 percent. Almost as quickly, Allegheny County’s pretrial program went from outdated to exemplary; in fact, it is the only county-level program cited as a national model in an American Bar Association guide to pretrial release decision-making.³

³ American Bar Association Criminal Justice Section, “Frequently Asked Questions about Pretrial Release Decision Making” (n.d.), p. 6.



Pretrial Services goes beyond the call of duty to help our office and our enormous client base. If there is a question regarding a bail recommendation, they are always more than willing to provide a detailed and thorough explanation of the reasoning behind the recommendation and all relevant factors relied upon in their assessment. They are flexible if given additional information later, and when we have cases with bona fide time constraints, they go above and beyond to schedule hearings responsive to our requests. They conduct themselves as unbiased third parties and provide the court with all relevant facts, whether they favor the Commonwealth or the defense. Furthermore, they routinely schedule hearings by their own motion for individuals represented by our office who were given bonds higher than their professional recommendation. It is truly an enjoyable experience to work with Pretrial Services.”

— Turahn Jenkins, Allegheny County Public Defender’s Office

WHAT’S BEHIND THE FAIRNESS

Improved processes put Allegheny County Pretrial Services on the right track. What keeps them there is a passionate commitment to two foundational principles of our justice system: 1) everyone is innocent until proven guilty, and 2) an adversarial process works best when both sides receive accurate and complete information.

“People are very quick to judge,” said Pretrial Services investigator Colleen Sypolt. “But these people haven’t been convicted of anything.”

Sypolt and her fellow investigators are disciplined about sticking to facts and presenting them fairly, so that they can stand up under scrutiny by defenders and prosecutors alike. “We have a very good professional working relationship with both sides,” she said. “They know we are going to be fair.”

Using a standardized risk assessment tool has added objectivity to the process, but bail investigators must still make important judgments about aggravating, mitigating or changing circumstances. An investigator’s fact-checking experience may uncover false information, such as when the defendant claims to be living in a location where he or she does not actually reside; on the other hand, experience may lead an investigator to conclude that a defendant with a steady job and a family to support is less likely to re-offend or fail to appear for a court date.

Pretrial investigators also play an important role when a material change occurs in a defendant’s status, such as when a defendant is offered the opportunity to enter rehabilitation for substance abuse. By recommending a bail modification, the investigator saves defense attorneys the time and cost of filing a formal appeal. Of course, the process is only effective when Fifth Judicial District Common Pleas judges can depend on pretrial investigators’ recommendations being balanced and fact-based.

THE VIEW FROM THE JAIL BASEMENT

While Sypolt and two colleagues in the Bail Court Unit work with defendants in the community — including about five per day who turn themselves in voluntarily at Pretrial Services’ safe-surrender program after realizing that they missed a court date — 12 other investigators are based in the Allegheny County Jail. Since 2007, the Bail Investigations Unit has changed its focus from back-end to front-end. In the past, the unit focused on “correcting” bail levels; now, the focus on comprehensive up-front investigation is designed to get it right the first time.



We recognize that the Pretrial Services investigators are professional and neutral when making a recommendation. They play an important and invaluable role in the Allegheny County justice system. In probably 90 percent of the cases, our office does not object to the initial assessment of Pretrial Services. When we do disagree, it’s based on our perspective and role as prosecutors.”

— Rebecca D. Spangler, First Assistant/Chief of Staff, Allegheny County District Attorney’s Office

The Bail Investigations Unit completes assignments in teams, with one staff member interviewing the arrestee while the other checks the subject’s criminal history and other background information. Data on employment status, home ownership, health and personal life stability, along with the defendant’s criminal record, are verified and used to determine risk level.

Bail Investigations Unit supervisor Marilyn Lahood explained that, prior to the 2007 reforms, she and her staff would make bail recommendations, but no formal supervision other than electronic monitoring was available. Now they can recommend bail terms consistent with the calculated risk level, such as release until trial with phone-in supervision for low-risk offenders, in-person reporting for medium-risk cases, and electronic monitoring for the highest-risk offenders.



A creatively simple solution streamlined the flow of paperwork between investigations and intake.

Jail intake areas are typically busy and chaotic, and bail investigators struggled for many years to get timely interview referrals. There was no direct path from the investigation office to the intake area, but the two shared a common wall. So Lahood and the intake supervisors implemented an ingenious streamlining innovation: they removed one block from the wall. Now paperwork arrives quickly because, instead of having to make a special trip, intake officers just turn around and pass papers through a hole in the wall.

Offenders are the most direct beneficiaries of the pretrial reforms. According to Lahood, accused defendants would frequently await arraignment behind bars for two days or longer. Now the Bail Investigations Unit moves most offenders to arraignment — and release, if they are not considered

high-risk — within six to 12 hours. Moreover, low-risk arrestees no longer languish in jail for lack of a \$200 bail bond.

Lahood emphasized that the overall justice system has benefited too, in terms of reduced jail overcrowding and fewer failures to appear at subsequent court hearings. “Defendants feel the process is fair,” she said. McCaffrey cited research findings that offenders not jailed during the pretrial period are less likely to commit further violations if placed on probation.⁴

⁴ See Pepin, “Evidence-Based Pretrial Release,” p. 5 and note 34.

SUPER SUPERVISION

Pretrial reform transformed investigator Debra Jefferson’s job, too. For 28 years, from 1979 to 2007, she made bail recommendations according to the outdated procedures. Without a validated means of risk assessment, she did the best she could with the tools available to her. “I would recommend \$5,000, across the board, on domestic violence cases,” she recalled — an amount that many could not come up with.

Jefferson knew this wasn’t the best method for making recommendations: “You never know what effect being in jail will have on someone. And our office was getting inundated with requests to reduce bail.”

Until 2007, the bail staff’s only role, beyond recommending a bond amount to magisterial district judges, was supervision of defendants on pretrial electronic monitoring. Since implementation of the reforms, about 3,000 people in Allegheny County are under pretrial supervision at any given time, which typically involves phone or personal contact every two to four weeks. For Jefferson, it means another opportunity to assist those who are pursuing a more positive life path.

“The new system affords us more of an opportunity to have direct contact with people and guide them,” Jefferson stated. “I try to take time with the younger defendants, especially those who seem to want to make a change in their lives. Sometimes they just need someone to acknowledge them and push them in the right direction.” Pretrial supervision officers have compiled a list of prospective employers and treatment providers who have indicated willingness to consider applicants with a criminal record. Pretrial staff also monitor fulfillment of release conditions, which commonly include completing a drug abuse or mental health evaluation, avoiding contact with an alleged victim, and/or continuing to reside at a particular address.

INTRODUCING REFORMS TO MAGISTERIAL DISTRICT JUDGES

Radovick-Dean’s busy schedule is interrupted by an interview request from a local reporter. The story line is the apparent inconsistency in bond decisions by Fifth Judicial District magisterial district judges (MDJs): one sets a \$20,000 bond for a defendant while another releases an offender facing similar charges with no money bond.

Individual factors play a role, of course. But in response to the issue, Radovick-Dean and Pretrial Services staff have conducted training for MDJs to increase both their understanding of pretrial functions and their comfort with utilizing alternatives to monetary bonds.

Bail investigators make bond recommendations for all newly-arrested individuals who are processed through the Allegheny County Jail, but due to staffing issues, defendants who are arraigned in MDJ courts are not interviewed or assessed with the standardized tool. As a result, MDJs don't have the benefit of investigators' recommendations prior to arraignment, and many still rely upon monetary bonds to detain defendants. Radovick-Dean hopes to change this situation during 2014 by implementing a process under which risk assessments would be applied to all new arrestees in Allegheny County.

The Honorable Mary Murray, president of the association of Allegheny County MDJs, described the recommendations from Pretrial Services as "invaluable," although they are not binding on the judge.

Once defendants reach the jail, Radovick-Dean explained, Pretrial Services reviews each case in which monetary bond is the only restriction keeping the individual behind bars. If the offender is determined to be low-risk, Pretrial Services seeks a bond modification before the MDJ. Maintaining open lines of communication with MDJs is important, particularly so that Radovick-Dean and her staff are able to quickly address any questions or concerns about recommended modifications.

THE OTHER THREE PARTS OF PRETRIAL SERVICES

The Bail Unit is by far the most visible unit within Pretrial Services and the only one that has undergone dramatic reform. But Radovick-Dean insists that, while reform was not necessary for the other three divisions, they should be acknowledged for their important contributions to the department.

The Alcohol Highway Safety Program, supervised by Christopher Shanley, has served Allegheny County's roughly 5,000 DUI arrestees annually since 2010. All first- and second-time offenders are sentenced to a mandatory 12.5 hours of educational programming; a percentage of offenders are also sentenced to receive additional treatment and attend Alcoholics Anonymous meetings.

DUI offenders are forced to recognize the consequences of their behavior in the Alcohol Highway Safety Program, which is designed to encourage better decision-making and reduce repeat offenses.

Shanley receives feedback from many safety school attendees who say that they wish they had known earlier about the consequences of driving under the influence. But he knows that people tend not to care about the cost of drinking and driving until they get caught. "The whole gist of the two days," he said of the program, "is to help them make better decisions the next time."

In addition to the Alcohol Highway Safety Program, Shanley also manages the Ignition Interlock Program, for second-time and subsequent DUI offenders, which requires offenders to provide a breath sample before their car will start. And he oversees the Alternative to Jail Program (often referred to as the DUI Hotel) which served more than 600 offenders in 2013. Participation in this program allows first-conviction DUI offenders to complete their sentence, classes and treatment during a four-day residential program.

Most first-time DUI offenders and first-time nonviolent offenders are processed through Pretrial Services' Accelerated Rehabilitative Disposition (ARD) office, a pretrial diversion program that oversees offenders' completion of restitution and community service requirements. Once participants have fulfilled these requirements, the criminal charge is dismissed, and the record is expunged from their criminal history.

Supervisor Girard Hildenbrand and five probation officers manage ARD caseloads of approximately 1,000 offenders each. Their biggest challenge is to help offenders stick to a payment plan to cover court costs. The criminal record is not expunged until all costs are paid and court-ordered stipulations are completed.

Geardean Young, manager of the Behavioral Assessment Unit, is responsible for assessment of defendants who may not be mentally competent to stand trial. Behavioral Assessment Unit forensic psychiatrists see approximately 1,500 such cases each year.

Young contracts with five psychiatrists for the evaluations, but she can also become personally involved in various aspects of the job, often going the extra mile to locate safe and stable alternatives to living on the street or in an unhealthy environment. She recalled one case in which a man found sleeping on a porch in Pittsburgh turned out to be from Anchorage, Alaska.

Working with Anchorage police, she was able to reconnect the man with his family. In another instance, she tracked down a female client's son in a Texas prison and coordinated with psychiatrists to arrange her return to Texas.

NOT READY TO QUIT IMPROVING

What do you do when the American Bar Association and other specialists in the field point to you as a national model? In the case of the Pretrial Services department, you keep exploring ways to improve.

McCaffrey and Radovick-Dean closely follow new research on pretrial assessments, and will be participating in a study to determine whether risk assessments can be as accurate if they are not performed face-to-face. The proposed new tool would be used to predict both the probability of a new arrest and the risk of violent behavior. Radovick-Dean is already considering how this approach — if results are favorable — can further improve her office's operations.

While Pretrial Services appreciates the national recognition, what really motivates the hardworking staff is their commitment to fair and respectful treatment for everyone who interacts with the Fifth Judicial District court system.