

University of Pittsburgh  
Institute of Politics

# CRIMINAL JUSTICE TASK FORCE

brief

CRIMINAL JUSTICE IN THE 21ST CENTURY:  
ALLEGHENY COUNTY PRETRIAL DECISIONS

NOVEMBER 2016



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## LETTER FROM THE COCHAIRS

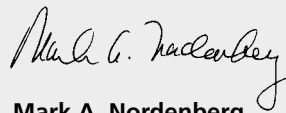
In the fall of 2015, the Institute of Politics at the University of Pittsburgh devoted much of its annual retreat for elected officials to the serious and increasingly visible issue of mass incarceration. Following that program, which generated considerable interest, Allegheny County Executive Rich Fitzgerald asked the Institute to assemble a group of distinguished civic leaders to examine what could be done to make our current system of criminal justice “fairer and less costly, without compromising public safety.”

In response to the county executive’s request, the Institute convened the Criminal Justice Task Force, consisting of 40 regional leaders. The group included criminal justice professionals currently holding positions of leadership within the system; distinguished academics with expertise in such directly relevant areas as criminology, law, and psychiatry; and respected community leaders with a strong interest in the system but generally with no direct links to it. Each task force member was recruited to serve because of the unique contributions that he or she was positioned to make by adding to the group’s collective potential to make a real difference in this area.

The members met on a monthly basis for most of a year, with regular pre-session and post-session reading assignments. Sessions typically began with a best-practices presentation from a respected professional from outside the region followed by an experienced task force member adding a sense of local context. At critical points in the process, we benefited from the help of Nancy La Vigne, director of the Justice Policy Center at the Urban Institute, who served as

its outside consultant. Though differing perspectives often surfaced, meetings were characterized by civil discussion and a commitment to consensus building, thoughtful reflection, recognition that Allegheny County already has been a leader in criminal justice reform, and a belief that we should strive to do even more to achieve ever-higher levels of fairness and cost-effectiveness.

We are privileged to lead this distinguished group and are pleased to present this report as the product of its committed efforts. In crafting this document, we deliberately chose to focus on a manageable number of targeted opportunities for reform. It is our hope, shared by the members of the task force, that the ideas advanced herein can make Allegheny County’s criminal justice system both more equitable and more cost-effective. As other communities continue to deal with similar challenges, we hope that some of these ideas also will be of help to them, just as we will continue to look for good ideas from other communities.



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# THE PRETRIAL DECISIONS

Because defendants are presumed to be innocent, imprisonment is not the default judicial response; jail is intended to detain only those defendants who have a significant risk of failing to appear in court or who are risks to public safety.

In Allegheny County, the district judges in the Fifth Judicial District of Pennsylvania make critical pretrial decisions. Their decisions matter because national research has shown that people who are detained in jail while they wait for their trials have a much greater chance of receiving a sentence of incarceration when compared to people with similar criminal histories who are released pending trial.<sup>1</sup> Research supported by the Laura and John Arnold Foundation found that “defendants who were detained for the entire pretrial period were more than four times more likely to be sentenced to jail and more than three times more likely to be sentenced to prison than defendants [with similar criminal histories] who were released at some point pending trial.”<sup>2</sup>

**“In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”**

– CHIEF JUSTICE WILLIAM H. REHNQUIST  
U.S. Supreme Court  
(<https://www.law.cornell.edu/supremecourt/text/481/739>)

Pretrial decisions also matters because “most pretrial defendants present as low to moderate risk of failure to appear,” and evidence has shown that when people with these lower risk levels are released with restrictions rather than being detained in jail or expected to post money bail, they are more likely to appear in court.<sup>3</sup>

Detaining people before trial is unnecessary in most cases and costs taxpayers the expense of jailing them. It also costs defendants their jobs, families, their means of supporting children, and at times even compromises housing arrangements. Holding lower-risk pretrial defendants in jail for even a few days “is strongly correlated with higher rates of new criminal activity both during the pretrial period and years after case disposition; when held two or three days, low-risk defendants are almost 40 percent more likely to commit new crimes before trial than equivalent defendants held no more than 24 hours.”<sup>4</sup>

# OPTIONS AVAILABLE TO DISTRICT JUDGES

Judges have several options for balancing community concerns (safety, failure to appear in court) with the defendant’s right to liberty. These are enumerated in the Pennsylvania Rules of Criminal Procedure Rule 524. District judges can decide to:

1. release the defendant on his or her own recognizance (ROR);
2. release the defendant on nonmonetary conditions, with or without monitoring;
3. release the defendant on unsecured bail bond (defendants pay only a fixed amount of money if they fail to appear or violate any bond conditions);
4. release the defendant on nominal bail [defendants are released for a small amount of money, i.e. \$1.00, when a designee agrees to act as surety];
5. release the defendant on a monetary condition (in the form of property, cash, or surety; these defendants are unsupervised in the community once the money bond is paid); or
6. hold without bail (defendants are detained in the jail without bail).

The first five options are classified as pretrial release.

# HOW JUDGES MAKE THEIR PRETRIAL DECISIONS

## From the American Bar Association Criminal Justice Section:

Statutes and court rules list factors judges must consider when making pretrial release decisions. These include: the nature of the offense and weight of the evidence; the defendant’s criminal history and prior appearances in court; the defendant’s residence, employment status, and ties to the community; and any problems the defendant has with substance abuse or mental health. Under most state statutes<sup>A</sup> there is a legal presumption that defendants should be released on the least restrictive conditions necessary to assure community safety and court appearance. This presumption must be overcome to impose more restrictive conditions of release. Detention without pretrial release should only be used for defendants who cannot be released while reasonably assuring community safety or court appearance. This policy is supported by the American

<sup>A</sup> See the Pennsylvania Code section 524, which says, “No condition of release, whether nonmonetary or monetary, should ever be imposed for the sole purpose of ensuring that a defendant remains incarcerated until trial.” See Standard 10-5.3, ABA Standards for Criminal Justice, Chapter 10, Pretrial Release.”



Bar Association (ABA) [and the National Association of Pretrial Services Agencies' (NAPSA) Standards] on Pretrial Release.

ABA Standards also specify that money bail “should be imposed only when no other less restrictive conditions of release will reasonably ensure the defendant’s appearance in court.” These standards advise that money bail should not cause a defendant to remain detained because he lacks the means to post bail. Money bail is not a way to enforce community safety; otherwise potentially dangerous defendants could obtain release by simply posting a dollar amount.<sup>5</sup>

## SUPPORTING JUDGES IN THEIR PRETRIAL DECISIONS

To provide district judges with the information they need to make pretrial decisions and to mitigate risk when they release defendants to await trial in the community, the Fifth Judicial District formed Allegheny County Pretrial Services in 2007.<sup>6,7</sup>

### Pretrial Services:

- **assesses defendants’ risk of failure to appear for their court dates and the likelihood they will commit a new crime during the pretrial period.** Allegheny County is among 12 jurisdictions in Pennsylvania that use a validated risk tool<sup>8</sup> to determine these risks.<sup>8</sup>
- **uses the results of these assessments to make recommendations** for all people arrested and brought to the Allegheny County Jail. Some people are not arrested and brought to the jail but instead receive a summons to appear before one of the 35 district judges outside Pittsburgh Municipal Court. Pretrial Services does not have the staff to be able to provide risk assessments at each of these locations. However, in March 2016, Pretrial Services began piloting a national tool to provide risk assessments using administrative data to the rest of the district judges, beginning with a subset of those district judges.
- through supervision of defendants, **mitigates risk of those defendants who judges release from jail with conditions.**
  - In 2015, Pretrial Services supervised approximately 5,000 defendants; on any given day, it supervises 1,200 defendants. Those people who are at low risk of failing to appear in court or committing a new crime will check in by phone during the pretrial period,

<sup>8</sup> The Laura and John Arnold Foundation used Allegheny County Pretrial Services’ risk assessment data to help develop a national risk assessment tool that will allow smaller jurisdictions to use “administrative data” to calculate a risk score that will assist judges in making their pretrial decisions.

those with moderate risk will report in person to Pretrial Services, and those who are at high risk may be placed on electronic monitoring.<sup>9</sup>

- Staff supervise defendants in the community to ensure that they are meeting the conditions of their release (e.g. obtaining drug and alcohol/mental health evaluations).<sup>10</sup>
- **tracks and reports outcomes.** Pretrial Services collects information on three well-established measures of success: failure to appear rate, safety rate, and success rate. In addition, Pretrial Services compares the cost per day of pretrial supervision (\$10.32 per person) with the daily cost of jail detention (\$78.59 per person).

## MOTIONS COURT

The president judge of the Fifth Judicial District of Pennsylvania holds motions court daily, which provides Pretrial Services, defense counsel, and the prosecution with the ability to present pretrial motions, including ones to modify bond decisions. Please see Appendix A for a list of all the motions that are brought to this court.

## NATIONAL STANDARDS FOR PRETRIAL SERVICES

The National Association of Pretrial Services Agencies (NAPSA) lists seven standards for pretrial services programs. The table below shows where Allegheny County Pretrial Services stands on each of these standards.

Standard	Status
Dedicated pretrial services program	Compliant
Mission reflected in operations	Compliant
Universal screening	Cases brought to Pittsburgh Municipal Court; to be expanded
Validated assessment instrument	Compliant
Sequential review of release/diversion eligibility	Compliant
Supervision to match risk	Compliant
Performance measurement	Compliant

For a more detailed description of the status of each standard, please see Appendix B.

# KEY LOCAL DATA: PRETRIAL DECISIONS

## Question 1: Who receives a pretrial risk assessment?

In 2014, there were 33,981 new criminal filings at the lower court in Allegheny County:

- Fifty-one percent (17,270) of these defendants were brought into the Allegheny County Jail, and all were assessed by Pretrial Services.
- The remaining defendants were arraigned in one of the 35 district courts outside Pittsburgh Municipal Court, and did not receive a pretrial assessment.

## Question 2: What is the pretrial detention rate (the share of pretrial defendants who are detained throughout the pretrial period)?

Of all cases held for Court of Common Pleas in 2014, only 8 percent (1,189) were detained during the entire pretrial process.<sup>11</sup> (See Table 1 on page 5.)

## Question 3: What are Pretrial Services' recommendations to the judges?

Pretrial Services conducts risk assessments on all people brought to the jail on a new arrest. In 2014, it conducted more than 17,000 risk assessments. Most recommendations are for ROR or supervised release (62 percent). In addition, most of the defendants who were assessed as low risk were never booked into the Allegheny County Jail. (See Table 2 on page 5.)

## Question 4: How many people are in jail awaiting resolution on a new arrest on any given day?

On September 1, 2015, 34 percent of the population of the Allegheny County Jail was made up of defendants awaiting resolution of a new arrest.

Note: There are data limitations for holds that are initiated outside Allegheny County's criminal court. For example, a defendant may be in jail awaiting resolution of a new arrest and also have a family court hold or an out-of-county hold. As a result, some people in the pretrial group are being held for reasons other than their new arrest. (See Table 3 on page 5.)

## Question 5: Are most of the pretrial defendants being detained with a violent charge?

Of the pretrial defendants in jail on September 1, 2015 only 31 percent had a violent offense as their most serious offense. (See Table 4 on page 6.)

## Question 6: What are Pretrial Services' performance indicators?

Using the NAPSA criteria for performance, Allegheny County Pretrial Services reports these five-year rates:

### Failure to appear:

- Eighty percent of pretrial defendants appeared at all their court hearings.
- Twenty percent failed to appear for at least one hearing. These numbers include all risk levels and those defendants placed on supervision, those released on ROR, and those who posted money bond.

### Safety:

- Seventy-nine percent of pretrial defendants did not have a new arrest during their pretrial period.
- Six percent of pretrial defendants were arrested for new violent criminal activity during their pretrial period. These numbers include all risk levels and those defendants placed on supervision, those released on ROR, and those who posted money bond.

### Success rate:

- Sixty-five percent of all defendants appeared for court and were neither charged with a new offense nor cited for any technical bond violations.

## Question 7: How often do district judges' pretrial decisions and Pretrial Services' recommendations align (concurrency rate)?

During 2014, 63 percent of all Pretrial Services recommendations were concurrent with the initial district judge bail decision. Allegheny County analysts are examining this rate by defendants' risk level.

**Table 1: Pretrial Detention Rate for All Cases Filed at the Lower Court, 2014**

Cases Filed in 2014	Total Cases Filed	In Jail Throughout Resolution of Case	Pretrial Detention Rate	Median Number of Days in Jail
Held for Court of Common Pleas	15,793	1,189	8%	156
Resolved at Preliminary Hearing	16,971	3,981	23%	12
<b>Total Cases Filed*</b>	<b>32,764</b>	<b>5,170</b>	<b>16%</b>	<b>16</b>

\*Of the 33,981 cases filed, 1,217 are still pending resolution.  
 Source: Allegheny County Adult Probation and Parole, February 2016

**Table 2: Risk Assessment (at Time of Arrest) and Release Recommendation, 2014**

Pretrial Initial Risk Assessment	Total Assessed (1)	% of Total	Never Booked into the Allegheny County Jail (2)	% of Total Risk Group Never Booked
Low (ROR)	2,165	13%	1,756	81%
Low (Supervised Release)	2,802	16%	1,831	65%
Medium (Supervised Release)	5,633	33%	2,784	49%
High (No recommendation for release)	6,670	39%	1,511	23%
<b>Total</b>	<b>17,270</b>	<b>100%</b>	<b>7,882</b>	<b>46%</b>

(1) Pretrial Services recently revalidated its risk assessment using an external researcher and is in the process of incorporating the updated risk assessment into practice. It expects that using the revalidated assessment will result in a larger proportion of defendants being assessed as low or medium risk.  
 (2) The majority of defendants booked into the Allegheny County Jail are not booked for the entire pretrial period (see Question 2).  
 Source: Allegheny County Adult Probation and Parole, February 2016

**Table 3: People in the Allegheny County Jail including Alternative Housing by Category on September 1, 2015**

Group	Total	% of Total
Detained Technical Violations Only	272	10%
Detained New Criminal Charge	771	28%
Pretrial	929	34%
Sentenced	539	20%
Federal Hold	48	2%
Other (1)	181	7%
<b>Total</b>	<b>2,740</b>	<b>100%</b>

(1) "Other" includes individuals detained for the state, other Pennsylvania counties, ICC, ARD, and Family Division bench warrants.  
 Source: Allegheny County Adult Probation and Parole, February 2016

**Table 4: Crime Type and Highest Grade for Pretrial Defendants in the Allegheny County Jail on September 1, 2015**

Group	Ungraded Offense		Misdemeanor as Highest Charge Filed		Felony as Highest Charge Filed		Total	
	N	% of Total	N	% of Total	N	% of Total	N	% of Total
Crimes against Persons	13	1%	57	6%	220	24%	290	31%
Crimes against Property	4	0%	39	4%	131	14%	174	19%
Crimes against Public Peace	3	0%	19	2%	10	1%	32	3%
Drug or Alcohol Offenses	7	1%	57	6%	70	8%	134	14%
Miscellaneous Offenses (1)	39	4%	115	12%	146	16%	300	32%
<b>Total</b>	<b>66</b>	<b>7%</b>	<b>287</b>	<b>31%</b>	<b>577</b>	<b>62%</b>	<b>930</b>	<b>100%</b>

(1) Forty-three percent of the miscellaneous charges were for firearm offenses, terroristic threats, or escape charges.

Source: Allegheny County Adult Probation and Parole, using data from Data Warehouse, the Adult Probation Case Management System, district judges, and the Common Pleas Criminal Case Management System.

## ISSUES

Jurisdictions across the United States are striving to adhere to the NAPSA standards and build programs that use Allegheny County Pretrial Services as a model. Nonetheless, defendants here in Allegheny County still face some of the same issues as people in other parts of the United States, in part because pretrial decision making involves others in the system, including elected judges, police, defense counsel, and prosecutors.

## MONEY BOND

The American Bar Association,<sup>12</sup> Justice Policy Institute,<sup>13</sup> and Pretrial Justice Institute<sup>14</sup> are just a few of the organizations that have called for limiting or eliminating money bond because of the following reasons:

- Defendants who cannot afford to pay the bail stay in jail, even when their risk of failing to appear or committing a new crime before trial is low. This also can mean that innocent people plead guilty just to leave jail sooner because they cannot make bail.
- Even large bail amounts are no assurance that the person released on bail will be kept from harming others.
- “Decisions about the amount of cash required are often made on the basis of the charge, ignoring substantial empirical evidence that other factors are better predictors of how a defendant will do on pretrial release. There is even a formal instrument that is used in most jurisdictions that institutionalizes this shortsighted practice of setting

bond amounts by charge, called a bond schedule. A bond schedule is a list of all criminal charges with each charge assigned a dollar bond amount.”<sup>15</sup>

- “A 2009 survey of 150 of the largest counties in the country found that more than half allow defendants to bond out of jail using bond schedules before seeing a judge. A 2011 study in one jurisdiction found that one half of all defendants who were released during the pretrial period obtained that release by using a bond schedule before going in front of a judge.”<sup>16</sup>
- “When defendants who have been released through a bail bonding company fail to appear in court, the bonding companies are technically responsible for locating them and returning them to court. In actuality, the police, not the bonding companies, bring in most out-on-bond defendants with bench warrants for failing to appear in court.”<sup>17</sup>

In 2014, more than half of the people arrested and brought to the Allegheny County Jail were given monetary bail—this was 79 percent of those charged with a felony and one-third of those charged with a misdemeanor.<sup>18</sup>

Despite the negative effects of money bond, ending the practice altogether could have unintended consequences. Judges who have been using money bail as a way of securing appearance in court and are not convinced that other forms of bond and supervision are effective may decide that defendants should stay in jail.



“In Washington, D.C., financial bond has been essentially eliminated and the commercial bail bonding industry long ago moved out. Only 5 percent [of defendants] have a financial bond, but those are imposed only in cases where the defendant has a hold in another case, and only upon the request of the defendant, so that the defendant can receive credit for time served if ultimately convicted.”

– PRETRIAL JUSTICE INSTITUTE

*Rational and Transparent Bail Decision Making: Moving from a Cash-based to a Risk-based Process, March 2012*

## LOW-RISK DEFENDANTS DETAINED IN JAIL

Allegheny County Pretrial Services has been able to screen all defendants in the jail and prepare their bail recommendations to the district judges within 6-12 hours of their arrest (which is down from the several days it took prior to the creation of Pretrial Services). Despite this, the jail continues to detain men and women past that screening period who are at low risk of failing to appear in court or of committing a new crime; these men and women are often nonviolent defendants whose highest offense is a misdemeanor—defendants one would expect to be released pending their trials.

### The reasons for this include:

- the defendants’ inability to pay the money bond set by a district judge (which can lead Pretrial Services to bring a motion in court to change their bond);
- the nonmonetary conditions of their bond require them to receive mental health or drug and alcohol treatment and there is no bed or treatment slot available; services offered by the county’s Justice Related Services unit also may be unavailable;
- they are being held in jail by another agency (e.g., out-of-county holds, probation detainers, Family Division holds, U.S. Marshals Service, Immigration and Customs Enforcement, and for extradition to other states); or
- the district judge has determined that they need to be held without bail.

### Addressing these issues will require:

- reduced reliance on money bond;
- the expansion of Pretrial Services’ screening, using the tool that it began to use for people arraigned on new charges in the district courts in March 2016;
- a careful examination of mental health and drug and alcohol assessment and treatment resources for those who are in the pretrial process (i.e., how these are being deployed and if the demand for these treatment beds and case management services is outstripping the supply); and
- an examination of the resources available for Pretrial Services’ community supervision, as shifts away from money bond and the expansion of pretrial screening will mean that more district judges will be asking for nonmonetary conditions that require some supervision. ■

Kentucky law now requires validated pretrial risk assessment for every defendant in jail “awaiting the initial appearance in court; in most cases, defendants found by the risk assessment to be low or moderate risk must be released on non-financial bond; and, in most cases, defendants who remain in jail on financial bonds are entitled to a daily credit of \$100 towards their bonds.”

– PRETRIAL JUSTICE INSTITUTE

*Rational and Transparent Bail Decision Making: Moving from a Cash-based to a Risk-based Process, March 2012*

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# APPENDIXES

## APPENDIX A: TYPES OF MOTIONS COURT DECISIONS

**Bond Forfeiture Warrants:** When a defendant is arrested on a bench warrant (a warrant issued by a judge), Rule 150 of the Pennsylvania Rules of Criminal Procedure requires that the court provide a hearing before a judicial officer “without unnecessary delay.” Within 48 hours of when a defendant has been arrested and lodged in the Allegheny County Jail on a failure-to-appear bench warrant, Pretrial Services presents a motion to the court. Pretrial Services also provides defendants who have failed to appear for court with the opportunity to self-surrender at the Pretrial Services office. In those cases, Pretrial Services will present in motions court that same day for a bail hearing, thus preventing these defendants from being jailed prior to their hearings.

**Bond Modifications/Revocations:** Pretrial Services screens the jail population daily to identify defendants who are being held on conditions that they cannot meet (e.g., money bond that is more than they can afford) and brings these to motions court for review. Defense counsel, prosecutors, and Pretrial Supervision (a unit within Pretrial Services) submit requests to the Pretrial Services Court Unit for it to present cases for bond modification/revocation. Defense counsel and the prosecution also may initiate modification/revocation directly with the court by filing a petition through Pretrial Services.

**Extraditions:** Motions court hears all cases in which defendants are to be extradited to another jurisdiction for a pending case.

**Mental Health Commitments:** Pretrial Services has a Behavior Assessment Unit whose forensic psychiatrists conduct mental health evaluations in cases in which a defendant may not be mentally competent to proceed to trial. If the psychiatrists find that someone is not competent, the Behavior Assessment Unit will bring a motion to commit him or her to a hospital until he or she is able to stand trial. In 2015, the Behavior Assessment Unit’s forensic psychiatrists completed 1,689 competency evaluations, with 109 defendants committed to Torrance State Hospital for “competency restoration”—the opportunity to recover sufficiently from their mental health disorder so that they are competent to stand trial.



# APPENDIX B: COMPARISON OF ALLEGHENY COUNTY PRETRIAL SERVICES AND NAPSA STANDARDS

Standard	Status in Allegheny County
<b>Dedicated pretrial services program</b>	Established (began in 2007)
<b>Mission reflected in operations</b>	<p>Allegheny County Pretrial Services mission: “To provide accurate and timely information to assist the court in making informed decisions regarding bond, competency, and treatment and to supervise and monitor defendants in a respectful manner, using cost-effective measures for the community, and to promote compliance with court orders, court appearances, and to support public safety.” Service to the court is performed with the highest professional and ethical standards. (Pretrial Services Annual Report 2014).</p> <ul style="list-style-type: none"> <li>• In 2014, Pretrial Services provided more than 17,000 recommendations within 6-12 hours of arrest.</li> <li>• Pretrial Services advocated for 1,288 bond modifications, a 30 percent increase over the 990 presented in 2013, and presented 2,701 bond forfeitures</li> <li>• Pretrial Services uses phone-in, in-person, and electronic monitoring for the estimated 1,200 daily supervised population.</li> <li>• Pretrial Services created a new electronic court reminder system in 2015 that will reduce failure to appear rates for a low county cost.</li> </ul>
<b>Universal screening</b>	<p>Roughly 60 percent of all arrests are screened by Pretrial Services. This percentage will be expanded with the rollout of the new Laura and John Arnold Foundation risk assessment tool.</p>
<b>Validated assessment instrument</b>	Validated in 2007 and re-validated in 2012
<b>Sequential review of release/diversion eligibility</b>	<p>Pretrial Services advocates for bail modifications for low-risk individuals and to ensure that defendants are diverted into drug and alcohol and mental health programs when appropriate.</p>
<b>Supervision to match risk</b>	<p>Low (ROR): no supervision recommended            Low (supervised release): phone-in or in-person supervision recommended            Medium (supervised release): in-person or electronic monitoring recommended            High: no recommendation for release</p>
<b>Performance measurement</b>	<p>Use of home-grown case management system and state court case management system to monitor key performance outcomes and process measures</p>

## NOTES

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