

A Case Study on the Practice of Pretrial Services and Risk Assessment in Three Cities



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Introduction

In any jurisdiction, the criminal justice system seeks to achieve several goals, including promoting public safety and protecting the rights of arrestees and victims. In practice, these forces are often in opposition, as in setting policy about whether to detain or release defendants awaiting trial. In the District of Columbia (D.C.), these tensions are managed by adherence to the local bail statute, which provides a range of nonfinancial pretrial release options as well as legally approved methods for detention and the use of a formal risk assessment by the Pretrial Services Agency for the District of Columbia (PSA).

The District of Columbia has long maintained a progressive policy in which very few defendants are held on monetary bail. The policy is based on the premise that decisions about release from jail should be made according to flight risk and public safety concerns rather than setting a monetary bond that the defendant is unable to pay. To assess a defendant's risk of flight and of offending during the pretrial period, PSA uses a formal risk assessment. PSA then recommends detention or conditions of pretrial release, which may include supervision and treatment. For those at low risk, unsupervised release can also be recommended.

At the request of the Executive Office of the Mayor in the District of Columbia, this report explores how PSA's practices differ from those in other jurisdictions. This report compares D.C., New York City (NYC), and Baltimore, Md., with a particular focus on their use of risk assessment. Because D.C. and NYC are both leaders in the pretrial services field, it is illuminating to contrast their operations.¹ The comparison of D.C. and Baltimore is natural given their proximity and similarly sized populations (581,530 and 631,366, respectively).²

For this study, Urban Institute (UI) researchers contacted the pretrial agencies in NYC and Baltimore³ and were able to meet with leadership at both agencies to learn about their operations and practices, with specific focus on their use of risk assessment. UI was also able to conduct courtroom observations in NYC and interviewed field staff there. This report also draws upon recent survey data on pretrial services programs collected by the Pretrial Justice Institute (2009).

The comparison across jurisdictions is revealing. It makes apparent that risk assessment practices cannot be separated from other related aspects of the pretrial system, including the stated goals of pretrial detention, the available alternatives to detention, and the larger mandate of the pretrial services agency. For example, detention considerations in D.C. included both the risk of pretrial flight (i.e., failure to appear or FTA) and the risk of offending, whereas only FTA is considered in NYC. In addition, in D.C., alternatives to detention include varied pretrial programs (conducted by PSA), whereas pretrial supervision is generally unavailable in NYC.

¹ This report is intended to compare practices; it is not an evaluation or comparative evaluation of any kind.

² These population figures for 2006 were obtained from the U.S. Census Bureau at <http://quickfacts.census.gov/qfd/states>.

³ Although UI also initially contacted pretrial services in Philadelphia, this comparison site was not ultimately pursued.

Differences such as these of course drive the risk assessment process in these cities. Such differences serve as the context in which pretrial risk assessment is conducted. Much of this report describes these differences, before focusing on risk assessment per se.

The Pretrial Services Agency for the District of Columbia

PSA was established by the federal Bail Reform Act of 1966 as the D.C. Bail Agency, and was primarily responsible for collecting and verifying information on defendants to assist judges with determining appropriate conditions of bail. In 1966, the D.C. Bail Agency developed the pretrial services program and began supervising defendants released to the community. In 1971, the D.C. Court Reform and Criminal Procedure Act took effect and required judicial officers in D.C. to consider the dangerousness of defendants as well as the risk of flight in setting bail bonds in noncapital cases.⁴ D.C.'s pretrial code (§ 23-1322) stipulates that if no condition or combination of conditions will "reasonably assure" that a defendant does not flee or pose a risk to public safety, "preventive detention" can be ordered.

The detention law in D.C. is profoundly rooted in the premise that a defendant's inability to pay should not determine pretrial detention. Along similar lines, there was heightened attention during the period of bail reform in the 1960s and 1970s to the abolition or at least the reduced use of bail appearance bonds. The national standards for pretrial release by the American Bar Association (ABA) reflected a presumption of pretrial release under less onerous, nonfinancial conditions. D.C. was particularly conscious of this issue⁵ and substantially reduced bail bonding for profit. The D.C. Court Reform and Criminal Procedure Act, which took effect in 1971, included several elements speaking to the use of bonds. In 1994, D.C.'s statute was amended to state that financial conditions could be utilized to ensure appearance if they do not result in preventive detention. In other words, if money is used, defendants are entitled to a bond they can meet, and money is never used to ensure community safety.

In 1997, PSA became an independent entity within a federal agency. This change occurred in the context of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Revitalization Act), in which the federal government relieved the District of Columbia of costs typically borne by state governments. Previously, D.C. had responsibilities comparable to those of states, including parole, probation, social services, and the Superior Court of D.C. However, the District did not have a comparable revenue system. The District was unable to tax nonresident income or to collect property taxes on the numerous tax-exempt properties located in the District, including federal properties, foreign embassies, and other tax-exempt international institutions (Garrison et al. 2008). With the passage of the Capital Revitalization Act, the federal government

⁴ District of Columbia Court Reform and Criminal Procedure Act of 1970. Pub. L. No. 91-358, 84 Stat. 473 (1970).

⁵ The Federal Bail Reform Act of 1966 applied to courts in the District of Columbia. A main goal of the act was to release defendants on the least restrictive conditions when possible, although monetary bail was still enforced. In 1968, a committee was formed in D.C. to address some concerns with the implementation of the act and to carve out a more active role for the pretrial agency, including supervision. These changes were adopted by Congress in 1970. For more information, see <http://pretrial.org/Success/Case%20Study%202020-%20DC%20Pretrial%20Services.pdf>.

relieved the District of Columbia of costs typically born by state governments. This legislation established the Court Services and Offender Supervision Agency (CSOSA),⁶ which was certified as a federal executive branch agency in 2000, with PSA as an independent entity within CSOSA.⁷

PSA today interviews about 20,000 defendants a year and supervises more than 17,000 defendants annually. PSA was among the first pretrial programs nationwide to offer defendant supervision based on varying levels of risk, and currently provides a wide range of services, including risk assessment, treatment, and supervision of defendants, to the U.S. District Court for the District of Columbia and the Superior Court of the District of Columbia.⁸

⁶ See <http://www.csosa.gov/about/history/pre-revitalization.aspx> for a brief history of CSOSA.

⁷ While PSA supervises defendants, CSOSA supervises convicted offenders. This includes probation supervision (for those not incarcerated) and parole/supervised release post-incarceration.

⁸ It relevant to point out that pretrial agencies are often housed in probation departments, the court, the sheriff's department, or jail administration. Most pretrial agencies serve a local jurisdiction or a small cluster of local jurisdictions. According to the 2009 Pretrial Justice Institute Survey on pretrial services programs, Kentucky was the only state that operated a statewide pretrial program.

The Context of Pretrial Services

The three pretrial agencies examined in this report serve different populations, operate within different governmental structures, and have different caseloads. Here we examine the contexts in NYC and in Baltimore.

LEGISLATIVE BACKGROUND

The ABA describes three main purposes of pretrial release decisions: “providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference” (2002, Standard 10-1.1). While the ABA’s standards on pretrial release practices have continued to evolve,⁹ different states have varying legal standards and procedures for pretrial detention, which influence the focus and objectives of a pretrial agency (including day-to-day practices and recommendations to the courts).

New York state law (§510.30) requires a review of multiple factors that are deemed relevant to determining what is “necessary to secure [the defendant’s] court attendance.” A potential threat to the community by defendants is not considered in pretrial decisionmaking in New York. Although the law allows for the consideration of community ties, criminal history, previous FTAs, and case-specific factors, such as the seriousness of the charge and evidence, there is no legal basis to detain pretrial defendants for their potential harms to the community.

In Baltimore, as in D.C., public safety concerns are considered in the process of pretrial decisionmaking. According to Maryland’s Pretrial Release code (§4-216), a defendant can be released prior to trial on personal recognizance or bail unless these methods are unable to “reasonably ensure” the defendant’s appearance and public safety. Appearance and public safety are among nine listed factors for judicial consideration, which also include the pretrial service agency’s recommendation, the State’s Attorney recommendation, information provided by the defense counsel, and other relevant information about the specific charge and evidence or the defendant’s previous or current criminal or personal history.

GOVERNMENT STRUCTURE

The Baltimore and NYC pretrial services agencies exist within considerably different government structures than D.C. In NYC, the Criminal Justice Agency (CJA) provides pretrial services to all five city boroughs under contract. CJA is a nonprofit organization dedicated to classifying pretrial defendants for other criminal justice agencies. In Baltimore, the Baltimore Pretrial Release Services Program (hereafter, the Baltimore pretrial

⁹ See <http://www.pretrial.org/Resources/NationalStandards/Pages/default.aspx> for updated pretrial guides and standards.

agency) serves the pretrial defendant population in Baltimore, and exists within the state's Division of Pretrial Detention and Services in the Department of Public Safety and Correctional Services.

CRIME RATES AND PUBLIC SAFETY

The local contexts of public safety in which the three agencies operate also vary. Table 1 shows the number of property and violent crimes per 100,000 residents in the three cities.

Table 1. Violent and Property Crimes per 100,000 Residents in 2009

	D.C.	NYC	Baltimore
Violent Crime	1,265	552	1,512
Property Crime	4,504	1,690	4,565

Source: Compiled and calculated from Uniform Crime Reports data, and includes Part 1 crime.

NYC has the lowest crime rate per 100,000 residents (not even half the level of the other two cities) and the lowest level of property crimes. Given that the national average is around 450 violent crimes and 3,200 property crimes per 100,000 residents, D.C. and Baltimore both have noticeably high crime rates.

A significant portion of pretrial caseloads consists of defendants charged with drug crimes. It is difficult to compare the jurisdictions directly, because there are no comparable data on drug crimes in all three cities. According to the estimates from the 2009 Arrestee Drug Abuse Monitoring (ADAM II) program, the percentage of arrests involving a drug charge was 31 percent in NYC (Manhattan data only), and 50 percent in D.C.¹⁰ Baltimore is not one of the participating jurisdictions in the ADAM II program, but Uniform Crime Reports data indicate that approximately 35 percent of Baltimore crimes were drug-related.¹¹ Looking at the pretrial services caseload, CJA's 2009 annual report reveals that 29 percent of its cases were charged with drug crimes as a top charge. Similarly, approximately 31 to 36 percent of adult arrestees processed by PSA were tested positive for any illegal drugs.¹² A similar report on caseload profiles is not available for Baltimore at the time of this writing.

¹⁰ ADAM II is a federal data collection program that conducts interviews and tests for drugs in adult male arrestees held in police booking facilities. The estimates from ADAM require caution as they were derived from a sample that does not represent official crime data or other population surveys (Office of National Drug Control Policy 2011). More specifically, the program excludes female arrestees and relies on a nonrandom sample in some jurisdictions. NYC is one such example. The estimates for NYC are based on Manhattan only.

¹¹ This information was provided by the Federal Bureau of Investigation (FBI) at the request of the authors, because drug crimes are tracked in Part II offenses in the Uniform Crime Reports Program and not all jurisdictions report that information to FBI. For instance, FBI does not have Part II offenses data for NYC and D.C.

¹² These figures are based on PSA's drug test reports from recent months. Available at <http://www.dcpsa.gov/psa.aspx?content=drugstats&title=Drug%20Testing%20Statistics>.

Current Practice in Pretrial Services

Despite differences in the history, structure, and functions of each agency, there seems to be a general consensus that the three pretrial agencies embrace the notion of utilizing the best available evidence from scientific research to influence their practices. Evidence-based practice extends across many fields of human services, including health care (Sackett et al. 1996), education (Pirrie 2001), psychology (American Psychological Association 2005), criminal justice (Crime and Justice Institute 2004; Sherman 1998), and social work (Littell 2006).

The field of criminal justice, including pretrial justice, has experienced a significant trend in which research efforts based on rigorous and systematic analyses develop well-informed decisions about criminal justice policies and programs. Some of the emerging studies concerning pretrial justice have examined how accurately or reliably objective risk assessment tools can predict the dangerousness of defendants, which pretrial supervision strategies are effective to keep them crime-free while awaiting trial, or how public safety can be improved (in measurable terms) by effective management of pretrial defendant populations. In what follows, we turn to how the three pretrial agencies manage and process pretrial defendants with this perspective in mind.

DISTRICT OF COLUMBIA

OVERVIEW

Although an independent entity within CSOSA since 1997, PSA was established in the 1960s and formalized as an agency in 1966. Over its four decades of service, PSA has evolved to a staff of nearly 370, interviewing about 20,000 defendants a year, supervising more than 17,000 defendants annually, and providing a variety of other services to both the U.S. District Court for the District of Columbia and the Superior Court of the District of Columbia.

PSA serves two primary roles for the District of Columbia: (1) collecting information about pretrial defendants and reporting this information to the court with its release or detention decision, and (2) supervising pretrial defendants released by the court with conditions of supervision and informing the court of any violations of these release conditions.

PSA is well positioned and interested in serving as a model for other pretrial agencies throughout the country. In fact, PSA's 2008 annual report is entitled "Leading in the Field," and discusses different methods and strategies employed over the years that may also be beneficial to other jurisdictions.

THE PRETRIAL PROCESS

The pretrial process in D.C. begins with law enforcement officers presenting the complaint to the prosecutors of the United States Attorney's Office or the District of Columbia Attorney General's Office. The United States Attorney processes felony and U.S. misdemeanor charges in District Court and Superior Court, and the Attorney General handles D.C. misdemeanor and local traffic offenses in Superior Court.

The overall process for pretrial defendants in D.C. is as follows: After an arrest, law enforcement agencies process arrestees at one of the city's local police districts, and fingerprinting is done in the central cell block. Arrestees charged with nonviolent misdemeanors may receive a citation release from the police station, with a future court date provided by PSA. Otherwise, after processing, arrestees are transferred to the court for an arraignment (for misdemeanors) or presentment (for felonies) hearing.

RISK ASSESSMENT

PSA conducts a risk assessment for defendants to assist judicial officers in determining appropriate pretrial release or detention. The risk assessment process consists of two components: conducting the background investigation and interviewing defendants.

Pending arraignment or presentment, Diagnostic Pretrial Services Officers from PSA conduct background investigations on defendants to make a release or detention recommendation to judicial officers. They conduct an interview with the defendant to collect and verify information on the defendant's community ties, criminal history, physical and mental health status, substance abuse, and current arrangements with probation or parole agencies. This process takes place for most defendants within 24 hours of arrest.

Generally speaking, pretrial detention can be ordered in the District of Columbia if the judicial officer concludes that a defendant presents an unmanageable risk of flight or harm to the community. There are several crime types (e.g., crime of violence, dangerous crime) or circumstances of crime (e.g., current criminal justice system supervision—probation, parole, supervised release, or pretrial supervision—or threats to witnesses or jurors) that may lead to a determination that the defendant presents a risk of flight or reoffending.

D.C.'s risk assessment instrument is designed to capture two outcomes: public safety risk (the likelihood that a defendant is a risk to public safety) and appearance risk (the likelihood that a defendant will not appear in court at the next scheduled date), although the risk assessment instrument is weighted heavily toward safety considerations.

PSA has utilized a formal risk assessment system since its inception in the mid-1960s. The assessment was overhauled in 2004 from a "problem/solution" matrix to a point scale common to most pretrial programs nationwide. The current risk assessment instrument has 38 factors, among them different types of convictions, FTA histories, pending criminal justice supervision status, citizenship status, substance abuse, and mental health conditions.

As discussed further in a later section of this paper, most of these risk factors concern prior criminal history. Some of the included factors are, for example, the number of dangerous/violent convictions within the past 10 years, felony convictions within the past 10 years, misdemeanor convictions within the past 10 years, and FTA or escape convictions within the past 5 years. Another notable aspect of the risk assessment instrument is the incorporation of public safety concerns, measured by the presence of a victim and weapon in the current crime.

The risk scores for FTA and public safety are calculated based on different combinations and different weights for these risk factors. The calculated scores reflect the likelihood of FTA and rearrest. Based on the scores, defendants are classified into three categories: high risk, medium risk, and low risk. PSA staff provide judicial officers with recommendations for detention or release based in part on the risk score and the defendant's eligibility for statutory detention. Staff can override a risk assessment category—with supervisory approval—if they believe the level does not truly match the defendant's perceived risk, although this is rare.

SUPERVISION

PSA supervises most defendants released during the pretrial period by monitoring their compliance with certain conditions of release and helping to ensure that they appear for scheduled court hearings. There are a

number of programs and supervision conditions that can be assigned to defendants based on their risk and needs. PSA may place defendants in a variety of prosocial intervention/treatment programs in an effort to decrease the likelihood of future criminal behavior (Pretrial Services Agency 2006). Defendants may be ordered into one of several supervision programs, which include but are not limited to general supervision, Drug Court supervision, High-Intensity Supervision Program (HISP), and specialized supervision.

The general supervision unit (referred to as the U.S. District Court Unit for District Court defendants, and the General Supervision Unit for Superior Court defendants) handles the majority of defendants. General supervision provides a variety of low- and medium-level release conditions designed to minimize the defendant's risk of failure to appear or rearrest. Case managers monitor compliance with release conditions and provide the court with regular updates of noncompliance. Case managers may also recommend higher levels of supervision based on the defendant's compliance with court-ordered conditions or assessed substance abuse or mental health service needs. When appropriate, case managers also refer defendants to community-based social services providers.

HISP targets defendants identified by the risk assessment as higher risk, those initially detained by statute at arraignment or presentment, and those who violate conditions of supervision in other PSA programs, such as stay-aways from complainants or other witnesses. HISP provides immediate sanctions (such as home confinement) in response to any program infractions. All defendants placed in HISP are required to report regularly to a case manager, drug test at least once a week, and maintain an electronically monitored curfew. The program also promptly notifies the court, prosecution, and defense counsel of program infractions and violations.

PSA case managers can utilize global positioning surveillance (GPS) monitoring as part of supervision under HISP for defendants with stay-away orders from specific individuals or locations. Defendants on GPS are closely monitored, and PSA notifies the court within a day if GPS defendants violate the established geographic boundary limitations.

PSA staff also provide some monitoring (with the D.C. Department of Corrections) for defendants ordered into work release/halfway house placement. These defendants, who live in a community correctional center/halfway house, must fulfill certain requirements to qualify as eligible for the program (such as no outstanding warrants, a medical clearance, and no significant mental health issues). As appropriate, PSA case managers may connect work release defendants to social services and monitor defendants' drug testing requirements to ensure that their behavior is compliant with their supervision conditions.

TREATMENT

PSA provides substance abuse treatment programs through in-house PSA programming or through external service providers. Internal treatment programs include the following:

- The Superior Court Drug Intervention Program (Drug Court), which is open to defendants who are involved in substance abuse and have non-violent misdemeanor or felony charges. The Drug Court's diversion track is available to misdemeanor defendants who have no prior convictions for violent offenses; are not currently on probation, parole, or supervised release for a violent misdemeanor;¹³ and have no currently pending weapons or felony offenses.
- The New Directions Intensive Drug Treatment and Supervision Program is a separate drug treatment program for defendants who are not eligible for Drug Court. The New Directions Intensive Drug Treatment and Supervision Program involves regular drug testing and service referrals and the same treatment options as Drug Court (which may include outpatient, intensive outpatient, or residential

¹³ Violent misdemeanors may include assaults, threats, and stalking.

treatment). However, infractions under the New Directions program—such as positive drug tests, missed group sessions, and missed clinical or supervisory contact—are addressed with internal program sanctions rather than by a Drug Court judge.

- The Specialized Supervision Unit (SSU) provides specialized services and supervision to defendants diagnosed with mental illness, mental retardation, or co-occurring substance abuse and mental disorders. All SSU defendants receive case management, service referrals, mental health assessments and subsequent treatment referrals, drug testing, and, when assessed as needed, substance abuse treatment. In addition, the Options Track focuses on immediately connecting defendants to mental health services and offers transportation for defendants, a small number of housing placements, and a smaller defendant-case manager ratio. In conjunction with the services provided by PSA that help ensure the defendants receive effective supervision, the Mental Health Community Court offers a diversion track for defendants charged with non-violent misdemeanors. Felony-charged defendants in the Mental Health Court can have their felony pleas reduced to misdemeanor pleas upon successful completion. Misdemeanor-charged defendants who successfully complete the Mental Health Community Court program have their charges dismissed.

The substance abuse treatment programs are sanction-based, and a defendant's negative performance while in treatment may result in re-orientation sessions, temporary jail detention, increased drug testing, and modification of or removal from treatment.

Treatment decisions are based on assessment instruments. PSA's Social Services & Assessment Center conducts assessments on defendants who continue to test positive for drugs while being supervised or who request treatment to help overcome their substance abuse or addiction. This includes comprehensive substance abuse, mental health, and social service needs assessments. The Social Services & Assessment Center also provides referrals for substance abuse and mental health services, employment services, vocational training, GED preparation, community-based skill building groups, government-issued identification, education assistance, community service placements, and housing assistance.

DATA MANAGEMENT AND TRACKING PROGRESS

PSA began using an automated system in 1977 to track information on defendants assessed for pretrial release or detention eligibility and those placed under the agency's supervision. In 1984, PSA added a system for drug test information. In 2002 the main data collection system was replaced by the Pretrial Real-Time Information System Manager (PRISM), the agency's enterprise defendant management system. It provides reliable information that helps the timeliness and quality of pretrial recommendations and decisions associated with supervision of pretrial defendants. In addition to its usefulness to practitioners managing defendants in and out of the criminal justice system, PRISM is a useful database for researchers looking to analyze various aspects of the pretrial process or practices.

SUMMARY

PSA operates an extensive collection of pretrial services. A systematic approach to assessing, supervising, and managing pretrial defendants forms a foundation for all of its services and responsibilities for defendants awaiting trial or sentencing. PSA also has a dedicated research division and an automated data management system that allows ready analysis of defendant cases. The research and development capacity of the agency is consistent with its interest in evidence-based practices, which are well reflected in several treatment programs as well as the use of risk assessment instruments. For the purposes of this report on the use of risk assessment, it is important to emphasize that while risk assessment is a critical responsibility, the bulk of PSA's workload actually consists of supervision and treatment.

NEW YORK CITY

OVERVIEW

New York City has a long history of involvement with key innovative developments in the pretrial field. For instance, the NYC-based Vera Institute of Justice's bail reform project gained national attention and influenced bail legislation (notably the federal Bail Reform Act of 1966).

New York City's pretrial service agency is CJA, a private, nonprofit organization working under a city contract to provide pretrial services. CJA was established in the mid-1970s as a descendent of the Manhattan Bail Project of the Vera Institute of Justice, a research project designed to understand inequalities in the bail system and consider alternatives to bail (CJA 2010).

CJA has been a pioneer in the pretrial field by upholding the following goals:

- Minimize the length of pretrial detention
- Assist in providing alternatives to incarceration programs in screening defendants for a range of noncustodial services
- Reduce the failure-to-appear rate of pretrial defendants
- Provide information and research to criminal justice policymakers, city officials, and the public.

CJA has more than 200 employees in offices in all five counties (boroughs) of the city. It is governed by a Board of Directors that includes the Criminal Justice Coordinator for New York City.

THE PRETRIAL PROCESS

The initial processing of pretrial cases for CJA is not much different than it is for PSA. After defendants are arrested, those who are proceeding to arraignment are interviewed by CJA within 24 hours of their arrest. Interviews are conducted during the day (8:30 a.m.–5 p.m.) and during night shifts (until 1 a.m.) in the courthouse's holding cell. CJA conducts approximately 300,000 interviews a year. Staff members enter interview responses into handheld Palm Pilot devices, which get synchronized into a consolidated database upon completion of the interview. All relevant agencies are able to upload their reports into an electronic arraignment system (or "e-arraignment") to quickly produce a recommendation report to deliver to the court. Unlike PSA, CJA does not provide supervision and treatment services to released defendants (with rare exceptions), thereby not requiring court proceedings as frequently as in D.C.

BAIL RELEASES

At Criminal Court arraignment in NYC, defendants processed at the felony level may receive one of the following decisions: release on recognizance (67 percent), bail (32 percent), or remand (1 percent) (CJA 2010). Unlike D.C., the use of bail is extensive in NYC. When setting bail, judges may specify a single amount, with or without designating the form in which bail should be posted. When the form is not specified, the defendant may post a bond or cash for the entire bond amount set. Judges may also set a bond amount with a lower cash alternative so that the defendant can choose to post a bond for the whole amount or pay a percentage of the bond in cash.

To reduce unnecessary pretrial detention, CJA operates a Bail-Expediting Program that assists defendants who cannot make bail set at a few thousand dollars or less. This program applies to bail amounts that are \$3,500 or less in Queens and \$2,500 or less in the Bronx. CJA staff members attempt to re-interview the defendant and look for a contact person for the defendant to help him or her make bail.

With respect to monetary bonds, the courts have several options, such as a secured bond (secured by personal or real property), an unsecured bond, or a partially secured bond. However, bonds posted in NYC

are mostly commercial surety bonds, which are secured through the services of a bail bondsman (CJA 2011).¹⁴

RISK ASSESSMENT

CJA has been a leader in developing and validating actuarial risk assessment tools in the pretrial field. CJA maintains a research unit responsible for, among many other things, developing and validating risk assessment instruments. However, since New York's state statute focuses on failure to appear (and does not incorporate a defendant's risk to public safety during the bail setting), CJA's primary contribution to risk assessment concerns failure to appear.

Throughout years of research and experience, CJA has examined several key factors by which to predict the likelihood of FTA. CJA's current recommendation system is based on the following six items of information collected in the pre-arraignment interview and from rap sheets (Siddiqi 2007):

- Does the defendant report a NYC area address?
- Does the defendant have a working telephone in his or her residence, or a cell phone?
- Is defendant employed, in school, or in a training program (or a combination) full time?
- Does defendant expect someone at arraignment?
- Does the prior bench warrant count equal zero?
- Does the open case count equal zero?

In addition to these factors, two other pieces of information are reported to the court: residential stability measured by the length of time in residence, and the defendant's household composition. This consideration of residential stability is salient in that recent research lends support for the relationship between criminality and living arrangements/residential stability (Hipp and Yates 2009; Wooldredge and Thistlethwaite 2005). Like D.C.'s PSA, CJA maintains an electronic database system for collecting and managing defendant information and conducting research.

SUPERVISION

One major distinction in CJA's operations (compared to D.C.'s PSA) is that CJA is neither required nor equipped to provide community supervision and treatment to released defendants. Although CJA operates a pilot program to supervise defendants in the community, it has limited capacity to engage in pretrial work beyond the risk assessment and classification of defendants.

Supervised release is a new program for CJA still in the early stages, with a subcommittee meeting on the topic in the early 2000s, serious discussions occurring in 2008, and a formal (but limited) pilot implementation taking place in August 2008. The supervision program was not previously initiated because the vast majority of cases were disposed of at arraignment, and half of those not disposed of were release on own recognizance (ROR) cases. There was also a concern that supervision would be inappropriately applied to those who should receive ROR instead. However, after the risk assessment instrument was revised, those

¹⁴ Commercial bonds have been one of the frequently used forms of pretrial release in recent decades (Cohen and Kyckelhahn 2010). The extensive use of commercial bonds has recently called for a national discussion on how to reform the current bail system (visit <http://pretrial.org/symposium.html> for more information). CJA is at the center of such debates in the pretrial field concerning the use of monetary bail, the impact of economic inequities on defendants, and whether other supervision options may reduce pretrial detention costs—especially as states and localities are attempting to reduce costs (CJA 2011; Human Rights Watch 2010).

with low/moderate classification levels had significant differences from the high-risk cases, so supervision has been established as a pilot option for the moderate cases.

At the time of this writing, the supervision program was only available in Queens and had certain constraints for participation, such as applying only to felony cases (but not violent felonies) and only including cases with a high likelihood that bail would be set in lieu of participation in the program. If the offense is not severe and the defendant is low risk, CJA would not usually take the case because the likelihood of detention tends to be low. It is also notable that judges sometimes ask CJA to take a person into the program.

In the first year of the program, 255 cases were processed. The program internally received a high rating for its cost-effectiveness.¹⁵ There have also been discussions of extending supervision to a second borough if there is funding in 2011. However, there is still political resistance to expanding the program to those with violent felonies.

CJA also operates Failure-to-Appear Units in Queens and Brooklyn to reduce FTAs. In this program, CJA pursues defendants for up to 29 days, calling to inform them of missed appearances. Negligence (as opposed to malignance) is often a cause of failure to appear in court. By iteratively reminding defendants of their court appearances, this program has reportedly achieved success in managing pretrial defendants without necessarily increasing the use of formal sanctions. It seems reasonable to suggest from these programs and practices that CJA puts an emphasis on avoiding the use of pretrial detention to the extent possible. There is, however, no pretrial detention statute in NYC, so the only way to hold a defendant is to set a high money bond that the court believes the defendant will be unable to post.

SUMMARY

Like PSA, CJA has a pretrial research division and described evidence-based practices as valuable and necessary. CJA puts a great emphasis on limiting the use of pretrial detention, although the courts still employ monetary bail that has the effect of detaining pretrial defendants. It should also be noted that while CJA is experimenting with adding supervision into its pretrial practices, it is not currently required or prepared to provide high levels of community supervision and treatment to released defendants.

¹⁵ CJA interviewees estimated the program costs approximately \$600,000/year to run, which they viewed as “substantial savings estimated by preventing detention.”

BALTIMORE

OVERVIEW

Owing to funding changes, the Baltimore Pretrial Release Services Program has transitioned through multiple offices since its inception in 1965 (including the circuit court, clerk's office, state's division of probation/parole in the mid-1980s, and being its own division in 1988) and is now housed in the Department of Public Safety and Supervision Service's Division of Pretrial Detention and Services. Baltimore's pretrial agency is located throughout the City of Baltimore, including central booking, three district court houses, and the circuit court. According to the Department of Public Safety and Supervision Services (www.dpsscs.md.gov), Baltimore's pretrial agency provides services to an average of 1,250 defendants annually.

THE PRETRIAL PROCESS

Following arrest, a defendant is sent to central booking and is usually processed within an hour. Within 24 hours of arrest (12 to 14 hours on average), the defendant must see the court commissioner and receives a release decision (ROR, bail, without bail/held). A defendant is statutorily required to be held without bail for certain offenses such as murder. If the defendant is not released, the case is then referred to the district court judge for a bail review. Baltimore utilizes the commercial bail system, and Baltimore pretrial data showed that as of 2010, approximately half of those in jail were offered monetary bail as an alternative to detention until trial (Justice Policy Institute 2010).

RISK ASSESSMENT

The Baltimore pretrial agency has used the same objective instrument for the past 10 years. Unlike CJA or PSA, the Baltimore pretrial agency does not have a dedicated research unit that provides research support to pretrial staff as well as policymakers. The University of Maryland designed the current risk assessment instruments to assess the defendant's risk of failure to appear in court and rearrest. At the time of this writing, a contractor was redesigning a new one based on data the University of Maryland collected and made accessible electronically for other purposes.

The risk assessment instrument currently in use by the Baltimore pretrial agency is short, with 15 questions and a section for staff to tally the risk score, record the recommendation, reason, judge's decision, and any recommendation override justifications (which a supervisor must approve). Staff also employ their own judgments to recommend additional (substance abuse or mental health) assessments. The Baltimore pretrial agency has also implemented a Violence Prevention Initiative Screening, a research-based instrument designed to identify defendants who are most likely to commit a violent crime. This screening tool is currently used by the Division of Parole and Probation.

While CJA and PSA relied on an extensively automated electronic system to collect and process information, at the time of the interviews with the Baltimore pretrial agency, risk assessments in Baltimore were conducted on paper and were not transferred to an electronic database.

SUPERVISION

The Baltimore pretrial agency provides community supervision to defendants awaiting trial through a domestic violence unit, mental health unit, specialized pretrial unit for prostitution, and priority unit (which is specific to violent crimes, such as handgun or robbery charges). In addition, the Baltimore pretrial agency works closely with an independent unit called the Forensic Alternative Suppression Team. There is also a

prostitution unit, which contains defendants who are typically at the highest risk of FTA. The prostitution diversion program is designed to provide intensive supervision with regular meetings with a social worker. According to the director, the prostitution unit has been operating successfully for one year, with a 56 percent success rate.¹⁶

TREATMENT

In addition to the supervision units, the agency provides services to defendants in specialized courts. Baltimore has problem-solving courts to handle defendants with certain issues, such as substance abuse, mental health conditions, and domestic violence. The agency reviews the treatment history of defendants at intake and arranges an assessment as necessary. If defendants are deemed fit, the agency makes a referral to send them to a specialized court.

SUMMARY

The four primary functions of the Baltimore pretrial agency are investigation, case management, case diversion, and detention. Like PSA and CJA, it also assesses criminal history and personal data to classify the risk level of defendants for bail review, and like PSA, it provides community supervision to defendants awaiting trial.

Due to financial hardships, technical challenges (e.g., lack of an automated data collection process), and the governmental structure within which it operates, the agency does not conduct research to the same degree as the other two agencies. The Baltimore pretrial agency was in the process of adopting promising advances at the time of our interview. In addition to updating its risk assessment instrument with the most recent research-based FTA and public safety indicators, the agency was transitioning to an automated case load system (called the Offender Case Management System, or OCMS). OCMS was online and operative as of late 2010, and is expected to be fully implemented by mid-2011. The director noted that OCMS will contain demographic, trial, and case information, in addition to case notes and other data, which will allow for the analysis of current practices and procedures.

¹⁶ Success was defined by the Baltimore pretrial agency as completing the program and not being rearrested during that time.

Summary

COMPARING THE JURISDICTIONS

PRETRIAL OPERATIONS

The scope of pretrial services and programs varies across the three jurisdictions. Most notably, the fact that D.C. and Baltimore consider the risk to public safety as well as the risk of flight leads to significant differences in pretrial operations, and to risk assessment in particular. Risk assessment is conducted in D.C. for both the risk of flight and the risk of rearrest, whereas the two other jurisdictions do not assess the risk of rearrest for their pretrial defendants. Each agency collects relevant information to make such assessments at intake interviews and engages in the supervision or management of defendants in accordance to such practices.

The differences in service provision along with the availability of supervision programs are summarized in Table 2. PSA engages in a wide range of supervision programs for pretrial defendants. Compared to the Baltimore pretrial agency, PSA additionally provides drug monitoring for defendants in D.C. Department of Corrections halfway houses and an electronic tracking program for pretrial defendants. Further, with respect to defendant notification, the pretrial agency in NYC relies on automated modes of notification for scheduled hearings, such as a computer-generated notification or automated phone calls, whereas the Baltimore pretrial agency conducts an in-person notification. PSA reminds pretrial defendants of hearing schedules through both modes of notification. Given that relatively a larger proportion of defendants is released to the community in D.C., it seems reasonable to expect that more supervision programs and services are available in D.C.

PSA supervises released defendants through various programs, including Drug Court, mental health courts, electronic monitoring, and halfway houses. To some extent, this is similar to the Baltimore pretrial agency in that Maryland's Pretrial Release Code also requires that the safety of the alleged victim, another person, and the community be ensured in the pretrial release decisionmaking process. The court may place pretrial defendants under court supervision and require drug or alcohol testing as a preventative measure to pretrial misconduct.

Table 2. Pretrial Services and Programs in D.C., NYC, and Baltimore

	D.C.	NYC	Baltimore
Pretrial Operations			
Acceptance to National Association of Pretrial Services Agencies Standards	X	X	X
Agency Responsible for Supervision of Pretrial Defendants	X		X
Risk Prediction for Public Safety and Flight Risk	Both	Flight Risk	Both ¹⁷
Release Recommendation Scheme in Use: Objective and/or Subjective	Both	Objective	Objective
Recommendation Override Rate	5–15%	5% or less	5% or less
Little or no Reliance on Monetary Bail	X		
Electronic Records Management	X	X	
Defendant Notification Modes			
Staff Review During Check-ins: In Person or via Phone	X		X
Notified Upon Release	X		X
Automated Dialing System Calls Prior to Court Date		X	
Computer Generated Letter or Postcard	X	X	
Supervision Programs in Use			
Stay Away Orders for Certain Places or Persons	X		X
Curfew	X		X
Referral to Substance Abuse Treatment	X		X
Referral to Mental Health Services	X		X
Reporting to Supervising Officer	X		X
Third Party Custody to Community Organization	X		X
Drug Testing	X		X
Alcohol Testing			X
Drug Courts/Mental Health Courts	X		X
Home Confinement: Electronic Monitoring	X		X
Electronic Tracking or GPS	X		
Halfway House	X		

Note: Data were reconstructed from the 2009 Pretrial Justice Institute Survey on pretrial services programs (Pretrial Justice Institute 2009).

¹⁷ Although the Pretrial Justice Institute indicates that Baltimore considers only flight risk, our interviews indicate that public safety is also considered.

RISK ASSESSMENT

Objective pretrial risk assessment instruments have increasingly been adopted by pretrial agencies across the country, and all of these three pretrial agencies have objective risk assessment instruments in use. As Mamalian (2011) remarks, many pretrial agencies cannot afford to have a risk assessment instrument customized for their own jurisdiction. These three pretrial agencies are distinctive in that they are relatively well equipped to implement a jurisdiction-specific risk assessment instrument that addresses the risk of pretrial misconduct in their jurisdiction.

Yet the focus and content of their risk assessment instruments vary (see Table 3). In particular, PSA is distinct from CJA and Baltimore in that the risk assessment instrument makes a release recommendation based on both flight risk and danger to the community, while CJA and the Baltimore pretrial agency only consider whether or not defendants are at risk of flight.

Table 3 presents data domains in which the three agencies collect information to gauge the risk of defendants, as reported in the Pretrial Justice Institute Survey on pretrial services programs (Pretrial Justice Institute 2009). Although several risk factors are commonly found in more than one risk assessment instrument, each agency employs a different set of risk domains (risk factors).

Below are key differences among the three risk assessment instruments.

- PSA and CJA assess the community ties of defendants in several different ways, whereas community ties are not a notable consideration in the Baltimore pretrial agency's risk assessment instrument.
- PSA considers a wider range of public safety indicators such as pending criminal charges and prior involvement in certain criminal acts.
- PSA's risk assessment instrument measures the presence of mental health problems or substance abuse problems, unlike the other two risk assessment instruments.

Because PSA provides a wider range of services and programs to its defendant population, PSA assesses a wide variety of conditions and characteristics of pretrial defendants and makes release and supervision recommendations accordingly. It is clear that the scope of pretrial services and operations shapes the practice of risk assessment in all three jurisdictions.

Table 3. Risk Assessment Instrument in Each City

Risk Assessment Items	D.C.	NYC	Baltimore
Appearance: Contact Information Indicators			
Unknown Citizenship	Y		
Local Address / Area Resident	Y	Y	
Working Telephone Number		Y	
Length of Time at Present Address		Y	
Verifying Mailing Address	Y		
Living Arrangements (e.g., whether married or living with relatives)		Y	
Appearance: Other Indicators			
Employment and/or Educational Training Status		Y	Y
Whether the Defendant Expects Someone at His/Her Arraignment		Y	
Suspected Mental Health Problems*	Y		
Suspected Drug / Alcohol Abuse*	Y		
Prior Court Appearance History	Y	Y	Y
Prior Pretrial Condition or CPO Violation*	Y		
Safety: Criminal History Indicators			
Open Case(s) / Currently Under Supervision	Y	Y	Y
Compliance with Probation, Parole, or Pending Case	Y		
Obstruction of Justice	Y		
Prior Warrant(s)		Y	
Prior Arrest(s) / Recent Felony Arrest(s)			Y
Pending / Previous Criminal Charge	Y		
Pending Drug / Violent Felony Charge	Y		Y
Prior Convictions	Y		
Safety: Other Indicators			
Whether the Current Crime Involves a Victim	Y		
Whether the Current Crime Involves a Weapons-Involved Charge	Y		

Note: Data were reconstructed from the Pretrial Justice Institute Survey on pretrial services programs (Pretrial Justice Institute 2009).

Prior convictions in D.C. are separated into 10 risk factors, based on combinations of whether it was a dangerous/violent, felony, or misdemeanor conviction; if it was an adult or juvenile conviction; if it occurred ever and/or within the past 10 years, and whether it was “1-2” or “3 or more”. There are two additional risk factor questions for FTA/escape/Bail Reform Act convictions. There are also multiple categories for charges, and D.C. has several risk factors that are considered for both the safety and appearance categories (noted with an asterisk in Table 3).

In sum, the three jurisdictions use objective risk assessment instruments that reflect the national standards that have been prolific in the past decades. For example, the ABA Standard suggests that pretrial services

information “should be organized according to an explicit, objective and consistent policy for evaluating risk and identifying appropriate release options” (Standard 10-4.2 (g)). The National Association of Pretrial Services Agencies also recommends that risk assessment instruments and pretrial recommendations to judicial officials be based on an explicit, objective, and consistent policy for evaluating risks and identifying appropriate release options (Standard 3.4). This is particularly relevant to PSA because PSA provides an array of services to pretrial defendants.

CONCLUSION

This report compares three pretrial agencies—Washington, D.C., New York City, and Baltimore—and discusses their practice of pretrial services and programs, with a particular focus on risk assessment. While the pretrial agencies in D.C., NYC, and Baltimore differ in many ways, we identify three key features that differentiate D.C. from the two other jurisdictions.

First, PSA offers the most comprehensive supervision services to pretrial defendants. Second, PSA emphasizes public safety in all of its operations, from risk assessment to treatment and supervision. Third, D.C. does not rely on monetary bail, but instead utilizes pretrial services or detention to manage the risk of flight or risk to public safety.

These features condition the use of pretrial risk assessment in the District. While risk assessment is a critical PSA role and helps guide PSA’s other services, the range of treatment and supervision programs provided by PSA ultimately means that risk assessment per se is a relatively small part of PSA’s function. At the same time, PSA’s pretrial risk assessment is more comprehensive than in the other two agencies, because it is both designed to inform the use of a broad range of pretrial treatment and supervision options and is focused on helping to reduce and manage the risk to public safety posed by pretrial defendants.

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DCPI is a nonpartisan, public policy research organization focused on crime and justice policy in Washington, D.C. DCPI connects a diverse team of prominent scholars and policy experts. With funding from the Justice Grants Administration (JGA) in the Executive Office of the District of Columbia Mayor (EOM), DCPI was established at the Urban Institute in 2009.

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