



# Pretrial Agency Assessment for Clark County, NV

Summary and  
Recommendations

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## CONTENTS

Acknowledgement .....	i
Summary .....	iii
Introduction.....	1
Rating Criteria.....	2
Nevada Rules for Pretrial Services Agencies.....	2
NIC Essential Elements Framework.....	3
Pretrial Agency Standards .....	3
Final Review Criteria .....	4
Ratings Scale.....	6
Agency Assessment .....	7
Dedicated Pretrial Services Agency .....	7
Operationalized Mission Statement .....	8
Universal Screening .....	8
Validated Risk Assessment.....	9
Sequential Bail Review.....	10
Risk-based Supervision .....	11
Court Date Notification .....	12
Outcome and Performance Measurement.....	12
Supporting Best Practices .....	12
Findings and Recommendations .....	14
Appendix: Suggested Response to Defendant Conduct Policy .....	18

## SUMMARY

This report presents findings from a review of the Las Vegas Justice Court Pretrial Services Division by the Justice Management Institute (JMI). JMI staff used as review criteria:

1. The legal foundation for pretrial release and detention found in Nevada’s Constitution and statutes on criminal procedure, and
2. Recognized legal and evidence-based practices and national standards for pretrial services agencies.

Information for this report came from interviews with pretrial services staff and direct observation of agency operations by JMI. Additional information came from discussions and meetings with local judicial, court, prosecutor, defense, law enforcement, and community corrections stakeholders and data supplied by the Pretrial Services Division.

Our primary finding is that the Pretrial Services Division does not meet many of the recognized “essential elements” of a high functioning pretrial services agency. While meeting the generally-accepted description of an independent pretrial services agency, the Division lacks an operationalized mission statement, does not make recommendations to the Las Vegas Justice Court or County District Court regarding bail at initial appearance or at subsequent court hearings, offers limited supervision options to courts, and does not track significant pretrial-related outcome and performance metrics. The Division’s services mostly are restricted to the Las Vegas Justice Court and, to a lesser extent, the District Court, preventing a significant number of defendants in the county from being assessed for possible nonfinancial release. Finally, while the agency uses a validated pretrial risk assessment, the instrument has not been validated to the local defendant population.

JMI’s recommendations center on expanding Pretrial Services’ functions to all county Justice Courts, expanding functions to include release recommendations, sequential bail review, and enhanced supervision, and eliminating functions that duplicate those of other justice agencies or are inconsistent with a pretrial agency’s mission and objectives.

## INTRODUCTION

As part of its technical assistance to Clark County (Las Vegas), NV under the John D. and Catherine T. MacArthur Foundation's Safety and Justice Challenge, the Justice Management Institute (JMI) conducted a review the Las Vegas Justice Court's Pretrial Services Division. For the review, JMI used the essential elements framework developed by the National Institute of Corrections (NIC) for pretrial services agencies. JMI also incorporated state laws, evidence-based practices from the field, and national pretrial services standards. The assessment identified steps needed to expand the Division's services to all county Justice Courts, have the Division meet accepted best practices for pretrial services agency, and help the county comply with the requirements of recently-enacted bail reform in the state. JMI Program Director Spurgeon Kennedy served as reviewer for this project.

This report highlights JMI's appraisal of Pretrial Services' operations, policies, and procedures, based on:

- Interviews and meeting with the Pretrial Services Director and agency staff,
- Observation of agency assessment and supervision functions,
- Discussions with justice system stakeholders, including representatives of law enforcement, the judiciary, prosecution, defense, and corrections,
- Reviewer's analysis of current and proposed Nevada law governing pretrial services agencies, and
- Data from the Pretrial Services Division.

# 1 RATING CRITERIA

To review the Pretrial Services Division against state requirements and nationally recognized best practices, JMI created ratings criteria based on Nevada’s rules for bail and pretrial services agencies, nationally-recognized best practices—including those established by the National Association of Pretrial Services Agencies (NAPSA) and the National Institute of Corrections (NIC), and practices of recognized high-functioning pretrial services agencies.

## Nevada Rules for Pretrial Services Agencies

The legal foundations for Nevada’s bail system are found in Article I—Declaration of Rights, Sections 6 and 7 of the state’s Constitution<sup>1</sup> and Chapter 178 (Bail) of the Nevada Revised Statutes. The Nevada Legislature recently passed reforms to the state’s bail provisions that will take effect July 2022.<sup>2</sup> Assembly Bill 424 is a response to the Nevada Supreme Court’s decision in *Valdez-Jimenez v. Eighth Judicial District Court* (163 Nev. Adv. Op. 20 (April 9, 2020)), which requires lower courts to hold prompt, individualized bail hearings. Under the new law, these hearings must occur within 48 hours of arrest. In addition, the state must show reasons for a defendant’s continued detention due to factors such as the defendant’s background and history of missed court appearances, among other clear and convincing evidence.

None of the provisions outline specific requirements for pretrial services agencies, though they do outline court functions traditionally supported by agencies. These include consideration of the factors for bail decision-making (Section 178.4853) and conditions of bail (178.4851).

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<sup>1</sup> Under Article I, Section 6, “Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted, nor shall witnesses be unreasonably detained.” Section 7 mandates bail for all defendants except those charged with capital offenses or murders punishable by life imprisonment without possibility of parole when the proof is evident or the presumption great.

Section 8A also outlines rights of victims of crime regarding bail, including:

- to be reasonably protected from the defendant and persons acting on behalf of the defendant.
- to have the safety of the victim and the victim’s family considered as a factor in fixing the amount of bail and release conditions for the defendant.
- to prevent the disclosure of confidential information or records to the defendant which could be used to locate or harass the victim or the victim’s family.

<sup>2</sup> A second reform bill—AB 440—would expand law enforcement’s use of citation release. It will take effect in 2023.

## NIC Essential Elements Framework

With the release of *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*,<sup>3</sup> NIC sought to standardize bail reform and pretrial justice by presenting and defining the fundamentals of an effective pretrial system and the essential elements of a high functioning pretrial services agency. JMI employed the essential elements for this review. The “Framework” for pretrial services agencies includes the following:

1. An operationalized mission statement related to pretrial specific outcomes.
2. Universal screening of all bail eligible defendants.
3. Validated pretrial risk assessment.
4. Sequential bail review of the detained and released pretrial populations.
5. Supervision or monitoring at levels consistent with the defendant’s assessed risk.
6. Outcome and performance measurement to track the organization’s meeting of mission and strategic goals.

## Pretrial Agency Standards

NAPSA is the national professional association for the pretrial release and pretrial diversion fields. Its mission is to make pretrial justice the norm in America’s courts. The Association has engaged in numerous partnerships and collaborative projects to communicate and advance the best and promising practices in pretrial release and diversion. These collaborations have helped jurisdictions incorporate effective pretrial practices and have highlighted the work of hundreds of well-established pretrial programs nationwide. NAPSA’s revised Standards for Pretrial Release outlines several requirements for pretrial services agencies,<sup>4</sup> including:

1. An operationalized mission with objectives to assist judicial officers to make prompt, fair, and informed bail decisions that promote future court appearance and enhance public safety; and provide the Court with practical, risk-based monitoring, supervision, and support options for defendants that require oversight while on pretrial release.
2. Core functions that include:
  - a) Collect and verify defendant background and criminal history information for all defendants eligible for pretrial release;
  - b) Assess a defendant’s likelihood of future court appearance and crime-free behavior while on pretrial release, using factors shown by research to predict the likelihood of pretrial failure;
  - c) Use of defendant background interview and investigation, criminal history, risk assessment results, and other information to formulate appropriate risk assessment results and recommendations of appropriate conditions of pretrial release and supervision;

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<sup>3</sup> Pilnik, L., Hankey, B., Simoni, E., Kennedy, S., Moore, L.J., Sawyer, J. (2017). *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*. Washington, D.C.: National Institute of Corrections. NIC Accession Number: 032831.

<sup>4</sup> See NAPSA (2020), pp. 58-81.

- d) Supervise and monitor defendants released pretrial according to court-imposed conditions;
- e) Notify the court, prosecution, and defense of a defendant's compliance with release conditions and recommend appropriate changes to pretrial release status and conditions;
- f) Review the status of detained defendants to determine their eligibility for pretrial release; and
- g) Measure and report pretrial-related outcome and performance metrics.

## Final Review Criteria

Based on the above, JMI utilized the following ratings criteria for this review:

***Dedicated Pretrial Services Agency:*** A jurisdiction's operational pretrial functions (risk assessment, release/detention recommendation, supervision, compliance monitoring, and performance measurement and feedback) under a single organizational structure. The pretrial services agency should be a separate, independent entity or a component of a larger organization with the following organizational capacities:

1. A clearly-defined, pretrial service-related function as its purpose;
2. Staff assigned only to pretrial-related work with pretrial defendants; and
3. Management that can make independent decisions on budget, staffing, and policy.

***Operationalized Mission Statement:*** A mission statement that communicates the organization's purpose and guides its organization's strategic decision-making, allowing leadership to develop short and long-term objectives and strategies to accomplish these objectives. For the pretrial services agency, the mission statement must be consistent with maximizing release rates for appropriate defendants, court appearance, and public safety.

***Universal Screening:*** A pre-bond screening of all defendants eligible by statute for release consideration to make informed, individualized, risk-based recommendations to the court regarding bail. Screening occurs before the defendant's initial court appearance so that the judicial officer can factor screening results into his or her release decision. Screening functions should include:

1. Defendant interview (mitigating/aggravating factors to rec);
2. Criminal history investigation;
3. Independent investigation and verification of interview information, specifically information that may affect the agency's supervision intervention; and
4. Application of a validated pretrial risk assessment.

***Recommendation:*** A suggested strategy of monitoring or supervision to promote court appearance and public safety. The recommendation should be individualized to the defendant's assessed risk level and other aggravating or mitigating factors found during the



pretrial investigation and outline the least restrictive intervention needed to assure court appearance and community safety.

**Validated Risk Assessment:** The use of a locally validated or nationally recognized pretrial risk assessment instrument to gauge a defendant's risk of failure to appear and to public safety based on factors shown through research to predict these outcomes. As per the Framework, the instrument should be an "adjusted actuarial assessment" that allows pretrial services agency staff limited and well-defined recommendation overrides of assessment results, based on mitigating or aggravating circumstances discovered during the universal screen.

**Sequential Bail Review:** Review of the detained and released defendant populations to ensure that a defendant's status continues to match their risk level. This function includes report to the court when material changes warrant a reconsideration of bail. Agencies prioritize these sequential reviews to pretrial detainees whose assessed risk level may not warrant detention and released defendants who are noncompliant with release conditions, have missed a scheduled court appearance or have been rearrested pretrial.

**Risk-Based Supervision:** Supervision and monitoring to promote court appearance and public safety with levels matching the defendant's assessed risk level. Supervision conforms to the "risk principle" and the requirement found in Federal and most state bail laws—and supported by pretrial release standards—that pretrial conditions are the least restrictive needed to assure court appearance and public safety.

**Court Notification:** Notification of upcoming court appearances (including phone calls, recorded phone messages, mail notification, text messaging, and e-mail) fully implemented at all levels of supervision and monitoring to reduce the risk of failure to appear.

**Outcome and Performance Measurement:** Metrics that track success at meeting mission and strategic objectives. Agencies define and measure success with the right metrics, identifying practices that work, need improvement or are nonproductive. Suggested measures for pretrial services agencies support maximizing release, court appearance, and public safety:

1. **Release Rate:** The percentage of bail eligible defendant who secure release pending adjudication.
2. **Appearance Rate:** The percentage of released defendants who make all scheduled court appearances.
3. **Safety Rate:** The percentage of released defendants who are not charged with a new offense during the pretrial stage.
4. **Success Rate:** The percentage of released defendants who appear for all scheduled court appearances and are not charged with a new offense pending adjudication.

## Ratings Scale

JMI created a ratings scale to review Clark County's pretrial system under each ratings criterion outlined above. The scale ranged from the system fully meeting the functions and requirements of a particular criterion to the criterion not being present in procedure or policy. The scale is as follows:

- 1) *Fully compliant*: Policy and procedures fully comport with the ratings criterion.
- 2) *Mostly compliant*: Policy and procedures mostly comport with the ratings criterion. However, certain policy or procedure deviate from the criterion or significant criterion functions are not present.
- 3) *Not compliant*: Policy and procedure do not comport with the ratings criterion.
- 4) *Not implemented*: Policy and procedure do not include the ratings criterion.

## 2 AGENCY ASSESSMENT

In this section, the findings of the review will be presented using the criteria outlined in Section 1.

### Dedicated Pretrial Services Agency

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**RATING DEFINITION:** A JURISDICTION'S OPERATIONAL PRETRIAL FUNCTIONS (RISK ASSESSMENT, RELEASE/DETENTION RECOMMENDATION, SUPERVISION, COMPLIANCE MONITORING, AND PERFORMANCE MEASUREMENT AND FEEDBACK) UNDER A SINGLE ORGANIZATIONAL STRUCTURE. THE PRETRIAL SERVICES AGENCY SHOULD BE A SEPARATE, INDEPENDENT ENTITY OR A COMPONENT OF A LARGER ORGANIZATION WITH THE FOLLOWING ORGANIZATIONAL CAPACITIES:

1. A CLEARLY-DEFINED, PRETRIAL SERVICES-RELATED FUNCTION AS ITS PURPOSE;
  2. STAFF ASSIGNED ONLY TO PRETRIAL-RELATED WORK WITH PRETRIAL DEFENDANTS; AND
  3. MANAGEMENT THAT CAN MAKE INDEPENDENT DECISIONS ON BUDGET, STAFFING, AND POLICY.<sup>5</sup>
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The Clark County Pretrial Services Division fits the definition of a “pretrial services agency” under the Framework. The agency performs all county-related pretrial functions (risk assessment, recommendations, and supervision/ monitoring) under a single management structure. The agency has a well-defined pretrial related function, and its director makes independent decisions on budgeting or staffing.

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#### RECAP

- ALL PRETRIAL RELATED FUNCTIONS UNDER A SINGLE MANAGEMENT STRUCTURE
  - STAFF THAT PERFORM MOSTLY PRETRIAL-RELATED FUNCTIONS
  - EXTERNAL CONTROL OVER AGENCY BUDGET, AND STAFFING
- 

**Rating: Fully compliant.**

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<sup>5</sup> Pilnik, et. al. (2017). p. 31.

## Operationalized Mission Statement

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**RATING DEFINITION:** A MISSION STATEMENT THAT COMMUNICATES THE ORGANIZATION'S PURPOSE AND GUIDES ITS ORGANIZATION'S STRATEGIC DECISION-MAKING, ALLOWING LEADERSHIP TO DEVELOP SHORT AND LONG-TERM OBJECTIVES AND STRATEGIES TO ACCOMPLISH THESE OBJECTIVES. FOR THE PRETRIAL SERVICES AGENCY, THE MISSION STATEMENT MUST BE CONSISTENT WITH MAXIMIZING RELEASE RATES FOR APPROPRIATE DEFENDANTS, COURT APPEARANCE, AND PUBLIC SAFETY.<sup>6</sup>

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The Division does not have a mission statement.

**Rating: Not implemented.**

## Universal Screening

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**RATING DEFINITION:** A PRE-BOND SCREENING OF ALL DEFENDANTS ELIGIBLE BY STATUTE FOR RELEASE CONSIDERATION TO MAKE INFORMED, INDIVIDUALIZED, RISK-BASED RECOMMENDATIONS TO THE COURT REGARDING BAIL. SCREENING OCCURS BEFORE THE DEFENDANT'S INITIAL COURT APPEARANCE SO THAT THE JUDICIAL OFFICER CAN FACTOR SCREENING RESULTS INTO HIS OR HER RELEASE DECISION. SCREENING FUNCTIONS SHOULD INCLUDE:

- DEFENDANT INTERVIEW, TO INCLUDE THE DEFENDANT'S FAMILY TIES, EMPLOYMENT, FINANCIAL RESOURCES, CHARACTER AND MENTAL CONDITION;
  - CRIMINAL HISTORY INVESTIGATION;
  - INDEPENDENT INVESTIGATION AND VERIFICATION OF INTERVIEW INFORMATION, SPECIFICALLY INFORMATION THAT MAY AFFECT THE AGENCY'S SUPERVISION INTERVENTION; AND
  - APPLICATION OF A VALIDATED PRETRIAL RISK ASSESSMENT.<sup>7</sup>
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The Division attempts to screen all bail-eligible defendants scheduled for initial appearance in the Las Vegas Justice Court. The screening includes most components recommended by the Framework and NAPSA Standards: an interview, verification of interview information, application of a validated risk assessment, and full local and state criminal history investigation. The interview includes questions on defendant's demographic, employment, education, residence, community ties, and military service. Division staff and stakeholders confirmed that judicial officers find this information useful for bail setting. The screen also includes a financial affidavit used to determine a defendant's ability to pay bail.

The Division presents a report at initial appearance with interview, risk assessment, and criminal history information. The report does not include a bail recommendation, nor does it identify defendants who are eligible for diversion or problem-solving court placement.

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<sup>6</sup> Pilnik, et. al. (2017). p. 35.

<sup>7</sup> Id. at p. 36-37.

Full screenings are available only for defendants in the Las Vegas Justice Court. Similar services for defendants in the other Justice Courts are either sporadic or do not occur.

RECAP	
• SCREENS ATTEMPTED FOR ALL BAIL-ELIGIBLE DEFENDANTS IN THE JUSTICE COURT	• NO BAIL RECOMMENDATION MADE AT INITIAL COURT APPEARANCE
• SCREEN INCLUDES MOST APPROPRIATE FRAMEWORK ELEMENTS	• SCREEN IS LIMITED TO A SINGLE JUSTICE COURT
• SCREENING INFORMATION INCLUDED IN A REPORT PRESENTED AT INITIAL APPEARANCE	• THE DIVISION PERFORMS A FINANCIAL AFFIDAVIT USUALLY COMPLETED BY OTHER JUSTICE AGENCIES IN MOST COURTS
• LOCAL AND STATE CRIMINAL HISTORY CHECKS	

**Rating: Mostly compliant.**

### Validated Risk Assessment

**RATING DEFINITION:** THE USE OF A LOCALLY-VALIDATED OR NATIONALLY-RECOGNIZED PRETRIAL RISK ASSESSMENT INSTRUMENT TO GAUGE A DEFENDANT’S RISK OF FAILURE TO APPEAR AND TO PUBLIC SAFETY BASED ON FACTORS SHOWN THROUGH RESEARCH TO PREDICT THESE OUTCOMES. AS PER THE NIC ESSENTIAL ELEMENTS FRAMEWORK, THE RISK ASSESSMENT SHOULD BE STRUCTURED WITHIN AN “ADJUSTED ACTUARIAL ASSESSMENT” FORMAT, WHEREBY INITIAL APPEARANCE STAFF HAVE LIMITED AND WELL-DEFINED RULES TO OVERRIDE ASSESSMENT RESULTS, BASED ON MITIGATING OR AGGRAVATING CIRCUMSTANCES DISCOVERED DURING THE UNIVERSAL SCREEN.<sup>8</sup>

Pretrial Services Division uses the Nevada Pretrial Risk instrument (NPR), developed by JFA Institute as a pretrial risk instrument for the state of Nevada. The NPR meets the Framework and NAPSA Standards’ criteria for a validated pretrial risk assessment. Similar to other such assessments, the NPR as applied in Clark County rated most defendants as low to moderate risks for missed court dates or new rearrests. In a sample of cases filed from January to July 2019, 36 percent of defendants assessed as low risk, 45 percent as medium risk, and 19 percent as high risk.

Given that the Division does not make bail recommendations, it does not meet the Framework’s protocol regarding the adjusted actuarial risk assessment approach. Under this technique, practitioners have limited and well-defined rules to override NPR results, using mitigating and aggravating information gathered from a pretrial interview, criminal history investigation or from outside sources.<sup>9</sup> The Division collects background information and

<sup>8</sup> Id. at p. 38-41.

<sup>9</sup> For example, the Ohio Risk Assessment System/Pretrial Assessment Tool (ORAS/PAT) permits users to consider a set of mitigating and aggravating circumstances following the risk assessment calculation when formulating recommendations to Court. Latessa, E., Smith, P., Lemke, R., Makarios, M., and Lowenkamp, C. (2009). *Creation and Validation of the Ohio Risk Assessment System: Final Report*. Cincinnati, OH: University of Cincinnati School of Criminal Justice Center for Criminal Justice Research.

criminal history data, but does not consider this information as potential aggravating or mitigating criteria to the risk assessment.

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RECAP	
<ul style="list-style-type: none"><li>• USE OF A RECOGNIZED PRETRIAL RISK ASSESSMENT</li><li>• HIGH RATE OF RISK ASSESSMENT APPLICATION TO THE DEFENDANT POPULATION</li></ul>	<ul style="list-style-type: none"><li>• NO LOCAL COUNTY VALIDATION</li><li>• RISK ASSESSMENT NOT USED TO MAKE BAIL RECOMMENDATIONS</li><li>• NO USE OF AN ADJUSTED ACTUARIAL ASSESSMENT APPROACH</li></ul>

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**Rating: Mostly compliant**

## Sequential Bail Review

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**RATING DEFINITION:** REVIEW OF THE DETAINED AND RELEASED DEFENDANT POPULATIONS TO ENSURE THAT A DEFENDANT'S STATUS CONTINUES TO MATCH THEIR RISK LEVEL. THIS FUNCTION INCLUDES REVIEW OF THE DEFENDANT POPULATION AND REPORT TO THE COURT WHEN MATERIAL CHANGES WARRANT A RECONSIDERATION OF RELEASE OR DETENTION. AGENCIES PRIORITIZE THESE SEQUENTIAL REVIEWS TO PRETRIAL DETAINEES WHOSE ASSESSED RISK LEVEL MAY NOT WARRANT DETENTION AND RELEASED DEFENDANTS WHO ARE NONCOMPLIANT WITH RELEASE CONDITIONS, HAVE MISSED A SCHEDULED COURT APPEARANCE OR HAVE BEEN REARRESTED PRETRIAL.<sup>10</sup>

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The Pretrial Services Division—and the Clark County court system—lacks a regular sequential bail review function. Reviews of previous release and detention decisions usually occur only upon defense motion. According to judicial, prosecutor, defense, and Pretrial Division stakeholders interviewed, bail review occurs due to some change in the defendant's circumstance or the case, such as charge reduction.

**Rating: Not implemented.**

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<sup>10</sup> Pilnik, et. al. (2017). p. 42-43.

## Risk-based Supervision

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**RATING DEFINITION:** SUPERVISION AND MONITORING DESIGNED TO PROMOTE COURT APPEARANCE AND PUBLIC SAFETY WITH LEVELS MATCHING THE INDIVIDUAL DEFENDANT’S ASSESSED RISK LEVEL MINIMIZING THE THREAT THE DEFENDANT MAY POSE TO AN INDIVIDUAL OR TO THE PUBLIC. SUPERVISION CONFORMS TO THE “RISK PRINCIPLE,” THAT SUPERVISION LEVELS AND CONDITIONS MATCH AN INDIVIDUAL’S ASSESSED RISK LEVEL AND THE REQUIREMENT FOUND IN FEDERAL AND MOST STATE BAIL LAWS—AND SUPPORTED BY PRETRIAL RELEASE STANDARDS— THAT PRETRIAL CONDITIONS ARE THE LEAST RESTRICTIVE NEEDED TO ENSURE COURT APPEARANCE AND PUBLIC SAFETY.<sup>11</sup>

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Division supervision consists almost exclusively of routine defendant contact with case managers. Other common conditions of pretrial release such as drug testing and electronic surveillance are overseen by the Marshalls and Sheriff, respectively.<sup>12</sup> Defendants can report in person to a designated case manager, or an electronic kiosk located at the county jail or by telephone (Note: Pretrial Services staff noted that the kiosk’s operation has been unstable). According to staff, the average in-person check-in takes five to ten minutes and includes a check of the defendant’s identity and confirmation of their next scheduled court appearance. Staff do not perform warrant checks before the scheduled report.

Agency procedure regarding defendant reporting is stricter than outlined in the Framework or NAPSA Standards. Defendants receive a set date and time to report (between Monday and Thursday) and must report within that timeframe to be considered compliant. Defendants cannot make up missed check-ins even during the reporting week. Reporting times are restricted to agency dates and hours, even with the additional of an electronic kiosk.

The agency sends Supervision Progress Reports to the courts at each scheduled court date. The report describes the defendant’s compliance status (for example, “Satisfactory” or “Unsatisfactory”) and contact history during the periods between court appearances. According to agency staff, “satisfactory” defendants are those that meet all contact requirements during the reporting period. The agency lacks administrative responses to missed reports, including definitions of “successful” or “unsuccessful” compliance or recommendations to the courts regarding “unsatisfactory” defendant compliance.

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### RECAP

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|--|--|
| <ul style="list-style-type: none"> <li>● USE OF GENERALLY-ACCEPTED CONDITION OF PRETRIAL SUPERVISION</li> <li>● MINIMAL NUMBER OF CONDITIONS REQUIRED PER DEFENDANT</li> </ul> | <ul style="list-style-type: none"> <li>● RIGID REPORTING SCHEDULE</li> <li>● LACK OF HIGHER-LEVEL SUPERVISION CONDITIONS</li> <li>● NO FIRM DEFINITIONS OF COMPLIANCE AND NONCOMPLIANCE</li> </ul> |
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<sup>11</sup> Id. at pp. 44-49.

<sup>12</sup> Several judicial stakeholders recommended that the Division add an electronic surveillance component to its supervision protocol. We discuss that option in the Conclusion.

**Rating: Mostly compliant.**

## Court Date Notification

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**RATING DEFINITION:** ROUTINE NOTIFICATION TO DEFENDANTS OF UPCOMING SCHEDULED COURT APPEARANCES. THE NOTIFICATION SHOULD BE IN THE FORMAT BEST SUITED FOR THE DEFENDANT (I.E., MAIL, E-MAIL, TEXT NOTICE) AND OCCUR WITHIN 3-5 DAYS OF THE SCHEDULED COURT DATE.<sup>13</sup>

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Defendants under Pretrial Services supervision receive text notification of upcoming court dates. The Las Vegas Justice Court's criminal division also sends text messages via a contracted vendor. We do not know if the District Court has a notification system.

**Rating: Fully compliant.**

## Outcome and Performance Measurement

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**RATING DEFINITION:** USE OF METRICS TO TRACK AN ORGANIZATION'S SUCCESS AT MEETING ITS MISSION AND STRATEGIC OBJECTIVES. AGENCIES DEFINE AND MEASURE SUCCESS WITH THE RIGHT METRICS, IDENTIFYING PRACTICES THAT WORK, NEED IMPROVEMENT OR ARE NONPRODUCTIVE. SUGGESTED MEASURES FOR PRETRIAL SERVICES AGENCIES SUPPORT MAXIMIZING RELEASE, COURT APPEARANCE, AND PUBLIC SAFETY:

- 1) RELEASE RATE: THE PERCENTAGE OF BAIL-ELIGIBLE DEFENDANTS THAT SECURE RELEASE PENDING ADJUDICATION.
  - 2) APPEARANCE RATE: THE PERCENTAGE OF SUPERVISED DEFENDANTS WHO MAKE ALL SCHEDULED COURT APPEARANCES.
  - 3) SAFETY RATE: THE PERCENTAGE OF SUPERVISED DEFENDANTS WHO ARE NOT CHARGED WITH A NEW OFFENSE DURING THE PRETRIAL STAGE.
  - 4) SUCCESS RATE: THE PERCENTAGE OF RELEASED DEFENDANTS WHO APPEAR FOR ALL SCHEDULED COURT APPEARANCES AND ARE NOT CHARGED WITH A NEW OFFENSE PENDING ADJUDICATION.<sup>14</sup>
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The Division does not regularly collect nor use outcome and performance measurement data, particularly regarding appearance, safety, concurrence, or success rates.

**Rating: Not implemented.**

## Supporting Best Practices

Besides the ratings criteria, we noted the presence of policy and procedure that fit the definition of *supporting best practices* (i.e., programmatic features recommended for pretrial services agencies by current standards for the field and many pretrial practitioners). Our

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<sup>13</sup> NAPSA (2020). p. 72.

<sup>14</sup> National Institute of Corrections (2021). *Measuring What Matters: Outcome and Performance Measures for the Pretrial Field: 2<sup>nd</sup> Edition*. Washington, D.C.: NIC.



observation found that the Pretrial Services Division incorporated a mix of these best practices:

Best Practice	Present	Not Present
Voluntary pre-bond interviews	✓	
Non-monetary bail recommendation scheme		✓
Risk assessment quality assurance procedures		✓
Regular criminal records check of medium- to higher-level defendants		✓
Administrative responses to infractions of court-ordered conditions		✓
Notice to court of violations of conditions within 3 working days of event		
Notice to court of FTA or rearrest within 1 working day of event		✓
FTA resolution		✓
Substance abuse screening		✓
Mental health services screening		✓
Rules for the confidentiality of defendant-sensitive information		✓

Our review also found functions performed by the Division not common to (or recommended for) a pretrial services agencies:

1. *Collection of secured bail amounts and associated fees:* Division staff at the Detention Center collect monies posted for secured bail imposed by the Justice Court.<sup>15</sup> This occurs even though staff are not trained nor bonded to handle such financial transactions. In most jurisdictions, collection of posted secured bail usually is a function of corrections or court clerk staff. This practice also is counter to NAPSA Standards, which recommend that pretrial agencies not be involved in financial-based conditions.
2. *Warrant resolution:* Individuals with outstanding arrest warrants can schedule appointments with Pretrial Services for interviews and assessments. Agency staff assigned to the Detention Center place a motion on the court’s calendar requesting warrant resolution. We note that this function usually is performed by corrections or court staff. Pretrial staff also noted that this was a very time and resource-consuming function.

Division staff at the Detention Center also complete a financial affidavit on defendants awaiting initial appearance in the Justice Court. The Pretrial Director and judicial stakeholders noted that the court uses the affidavit to determine a defendant’s ability to pay bail. This is a developing practice within the pretrial field, with agencies in Harris County (Houston) and Dallas County (Dallas), TX performing this function for their respective courts. However, some Division staff believed the court used the affidavit to determine eligibility for court-appointed counsel. The Pretrial Director also noted his concern that financial information obtained often is unverified.

<sup>15</sup> The District Court collects its own posted bonds.

## 3 FINDINGS AND RECOMMENDATIONS

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FOR MOST OF AMERICA'S JUSTICE SYSTEMS, REAL BAIL REFORM WILL BE TRANSFORMATIVE, REQUIRING A HOLISTIC CHANGE IN LOCAL CULTURE AND ATTITUDES ABOUT PRETRIAL RELEASE, THE RIGHTS OF PRETRIAL DEFENDANTS, AND WHAT TRULY IS NEEDED TO REASONABLY ASSURE FUTURE COURT APPEARANCE AND PUBLIC SAFETY. PROPER IMPLEMENTATION OF THIS REFORM MUST INCLUDE ALL ELEMENTS OF AN EFFECTIVE PRETRIAL JUSTICE SYSTEM, PROPERLY DEFINED AND FUNCTIONING WELL.<sup>16</sup>

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Las Vegas Justice Court Pretrial Services Division falls short of most of the essential elements of a high functioning pretrial agency. While the agency employs a validated pretrial risk assessment and provides the court with limited supervision of released defendants, it lacks an operationalized mission statement, formal bail review protocols, and pretrial-specific outcome and performance metrics. The agency also performs many functions counter to or broader than the recognized operations of an effective pretrial agency. Finally, the agency's administrative location restricts its work largely to defendants processed in the Las Vegas Justice Court.

To help Pretrial Services expand its services to all courts and ensure that its policies and procedures meet recognized best practice, JMI recommends the following:

**1. Move the agency's administrative location under the Clark County executive branch as an independent department:** Given the independence of the Justice Courts and the District Court, no agency located under any single court can adequately meet the needs of all entities. As an executive agency, Pretrial Services would have the scope to staff and service all county courts while maintaining the necessary independence to make objective recommendations for pretrial release and manage supervision policy and procedure.

**2. Add limited electronic surveillance to pretrial supervision for cases involving significant victim/witness security issues or location restrictions:** A frequent request from local stakeholders is for Pretrial Services to add electronic surveillance to its supervision protocol to better manage high-level defendants. This proposed EM/GPS program would be similar to one now operated by the county sheriff but without the rules of that program that most stakeholders find overly-restrictive for pretrial defendants. We agree that electronic surveillance is an appropriate addition to Pretrial Services' supervision and monitoring but recommend specific restrictions to this practice. However, JMI is compelled to note there is

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<sup>16</sup> Pilnick, et. al. (2017).

little evidence to correlate electronic monitoring placements to improved pretrial outcomes.<sup>17</sup> Moreover, several studies link electronic monitoring to increased technical violations by pretrial defendants.<sup>18</sup>

The developing consensus within the pretrial field is that electronic monitoring should not be imposed as a stand-alone condition but rather a means to enforce compliance to other conditions such as stay away from persons and locations, curfews, and house detention.<sup>19</sup> Therefore, we recommended that Pretrial Services offer electronic surveillance only:

- to enforce one of those conditions;
- in cases involving a victim crime; and
- where the defendant scores at medium or high level on the NPR or where there are special circumstances identified by the court or prosecutor that require a higher level of supervision.

Also, based on JMI's assessment of workloads of pretrial services agencies in Cook County (Chicago), IL, Maricopa County (Phoenix), AZ, and Harris County (Houston), TX, we recommend that electronic surveillance caseloads be capped at 55 defendants per case manager if the court does not impose other conditions of supervision or 35 defendants to one case manager if other conditions are included.

**3. Conduct an agency resource analysis:** If the Pretrial Services Division is moved administratively and enhances its supervision protocols, the county should determine the resources the Division would need to fully service all courts. This analysis should include: 1) a workload analysis of pretrial screening and defendant supervision functions, including a caseload ratio for supervising pretrial officers; 2) an assessment of policies and procedures either in need of development or revision to make Division operations compatible with

<sup>17</sup> See, for example, Coopriders, K. W. and Kerby, J. (1990). A practical application of electronic monitoring at the pretrial stage. *Federal Probation*, 54(1), 28-35. Hatton, R. (2019). Research on the effectiveness of pretrial electronic monitoring. <https://cjl.sog.unc.edu/files/2019/09/EM-Briefing-Paper-9.26.2019.pdf>; Maxfield, M. G., & Baumer, T. L. (1991). Evaluation of pretrial home detention with electronic monitoring: Brief summary (NCJRS No. 133526). <https://www.ncjrs.gov/pdffiles1/Digitization/133526NCJRS.pdf>. Cadigan, T. P. (1991). Electronic monitoring in federal pretrial release. *Federal Probation*, 55(1), 26-30. <https://www.ncjrs.gov/pdffiles1/Digitization/133410NCJRS.pdf>.

Wolff, K. T., Dozier, C. A., Muller, J. P., Mowry, M., & Hutchinson, B. (2017). The impact of location monitoring among U.S. pretrial defendants in the District of New Jersey. *Federal Probation*, 81(3), 8-14. [https://www.uscourts.gov/sites/default/files/81\\_3\\_2\\_0.pdf](https://www.uscourts.gov/sites/default/files/81_3_2_0.pdf).

<sup>18</sup> Coopriders & Kerby, 1990. Wolff et al., 2017. 20. Sainju, K. D., Fahy, S., Hamilton, B. A., Baggaley, K., Baker, A., Minassian, T., & Filippelli, V. (2018). Electronic monitoring for pretrial release: Assessing the impact. *Federal Probation*, 82(3), 3-10. [https://www.uscourts.gov/sites/default/files/82\\_3\\_1.pdf](https://www.uscourts.gov/sites/default/files/82_3_1.pdf).

<sup>19</sup> Oren M. Gur, Peter R. Ibarra & Edna Erez (2016) Specialization and the Use of GPS for Domestic Violence by Pretrial Programs: Findings from a National Survey of U.S. Practitioners, *Journal of Technology in Human Services*, 34:1, 32-62, DOI: 10.1080/15228835.2016.1139418 To link to this article: <http://dx.doi.org/10.1080/15228835.2016.1139418>. DeMichele, M. T., Payne, B. K., & Matz, A. K. (2011). Community supervision workload considerations for public safety. Report of the American Probation and Parole Association. Retrieved from <https://www.appa-net.org/eweb/docs/APPA/pubs/CSWCFPS.pdf> Dron, J. (2013). Soft is hard and hard is easy: Learning technologies and social media. *Form@re*, 13, 32-43. Retrieved from <http://www.fupress.net/index.php/formare/article/view/12613>. Erez, E., Ibarra, P. R., & Gur, O. M. (2013). Using GPS in domestic violence cases: Lessons from a study of pretrial programs. *Journal of Offender Monitoring*, 25(1), 5-10. Erez, E., Ibarra, P. R., & Lurie, N. A. (2004). Applying electronic monitoring to domestic violence cases: A study of two bilateral programs. *Federal Probation*, 68(1), 15-20.

recognized best practice; and 3) an evaluation of the Division's information technology needs.<sup>20</sup>

**4. End unnecessary administrative practices and evaluate the defendant financial affidavit procedure:** Pretrial Services should end the practices of bail collection and warrant resolution. As noted previously, these procedures usually are performed by other criminal justice agencies or—in the case of bail collection—run counter with established best practices for pretrial services agencies. These functions also are time and resource-consuming and take staff away from mission-critical screening and assessment work.

Given the Pretrial Director's concerns about the quality of data collected to assess a defendant's ability to post bail, the Pretrial Services Division and the Court should review current policy and procedure to collect and verify financial status information.

**5. Create a response to defendant policy:** Consistent with the Framework and NAPSA Standards, the Pretrial Services Division should establish a response to defendant conduct procedure that would allow agency staff to respond administratively to initial infractions and adherence to court-ordered conditions and alert the court only when judicial action is needed. Supervising officers would recommend reductions in supervision (for example, from in-person to remote reporting or reductions in drug testing frequency) for defendants meeting specific levels of supervision success. This policy would allow Pretrial Services to focus more resources on higher-end cases, increase overall defendant compliance with court conditions, save compliant defendants the continued cost of in-person reporting, and reduce supervision costs for the agency and the county. A suggested "Response to Defendant Conduct" procedure is presented in the Appendix.

**6. Adopt pretrial-specific outcome and performance metrics:** The Pretrial Services Division should adopt pretrial-specific outcome and performance metrics found in the NIC's *Measuring What Matters: 2<sup>nd</sup> Edition*. These measures are considered by NIC and NAPSA as the most appropriate for pretrial services agencies. Outcome measures should include:

1. *Release Rate:* The percentage of bail-eligible defendants who secure release pending adjudication.
2. *Appearance Rate:* The percentage of supervised defendants who make all scheduled court appearances.
3. *Safety Rate:* The percentage of supervised defendants who are not charged with a new offense during the pretrial stage.
4. *Success Rate:* The percentage of released defendants who appear for all scheduled court appearances and are not charged with a new offense during adjudication.

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<sup>20</sup> Currently, the Pretrial Services Division uses separate data management systems for its screening and supervision procedures. Division staff cited the inability of these systems to share cross-share data or to link to the Justice and District courts' information systems as major impediments to their work.

The Division should use these data routinely to measure agency performance and suggest meaningful solutions to address shortcomings. We recommend that at six-month and end-of-the year intervals, the Division report metrics to stakeholders.

## APPENDIX: SUGGESTED RESPONSE TO DEFENDANT CONDUCT POLICY

### ***Definitions:***

*Adherence:* an individual's successful completion of a single condition requirement; for example, reporting to the pretrial agency, submitting a negative drug test, complying with a nightly curfew.

*Compliance:* a status denoting an individual recording a set number of adherent events to be considered compliant with a condition. For example, 4 made scheduled contacts with the pretrial agency, 3 consecutive negative drug tests, 60 days of made curfews. This status should signal a report to the court requesting termination of the condition, reduction in condition requirements, or completion of supervision.

*Infraction:* an individual's failure to complete a single condition requirement; for example, a missed scheduled report to the pretrial agency, a positive drug test, or missed curfew.

*Loss of contact:* A defendant's failure to maintain contact (reporting, drug testing, etc.) with the pretrial services agency. LOS is considered noncompliance.

*Noncompliance:* a status denoting an individual's record of infractions as to be noncompliant with a condition. For example:

- 2 consecutive missed scheduled contacts with the pretrial agency (usually defined as loss of contact);
- 3 positive drug tests with a refusal to submit to a treatment assessment;
- 3 missed curfews.

This status should signal a report to the court requesting court action to address noncompliant behavior. Program termination should only be recommended if the defendant also has missed a scheduled court date or been rearrested pretrial.

*Success:* defined by the court: positive behavior that warrants completion of a condition requirement or supervision.

*Violation:* defined by the court: negative behavior that warrants increase in supervision or supervision termination.

**Response Grid**

INFRACTION/RESPONSE		ADHERENCE/RESPONSE	
<b>Reporting</b>			
Infraction	Response	Adherence	Response
First missed report	1. Verbal warning 2. Report infraction to court	First made report	1. Positive verbal response 2. Report adherence to court
Second missed report	1. Warning that future infractions will be reported to court as noncompliance 2. Report infraction to court	Second made report	1. Positive verbal response 2. Report compliance to the court
Two consecutive missed reports	1. Consider the defendant in loss of contact. 2. Report loss of contact status to the court with recommendation of change to supervision status.	Third made report	1. Report compliance to the court with recommendation of change to supervision status 2. Reduce reporting requirement
Third missed report	1. Report noncompliance to the court with recommendation of change to supervision status.	Subsequent made reports	1. Send status report regarding continued compliance 2. Placement on inactive reporting schedule
Subsequent missed reports	1. Send status report regarding continued noncompliance		
<b>Electronic Surveillance--Curfew</b>			
Infraction	Response	Adherence	Response
1 <sup>st</sup> late return to residence	Verbal warning	30-days compliant behavior	Report to court
2 <sup>nd</sup> and subsequent late return	Immediate report to court	60-days compliant behavior	Request to court to remove condition
Failure to return to residence—24 hours	Immediate report to court	Ongoing compliant behavior	Status report to court at scheduled hearings with request to remove condition
Dead battery	In-person defendant report to resolve issues/Warning		
Device tamper	Immediate report to court		
Device removal	Immediate report to court		

Pretrial Agency Assessment for Clark County, NV

INFRACTION/RESPONSE		ADHERENCE/RESPONSE	
Electronic Surveillance—Stay Away			
Infraction	Response	Adherence	Response
1 <sup>st</sup> incursion into area/contact with victim	Immediate report to court	30-days compliant behavior	Report to court
2 <sup>nd</sup> and subsequent infraction	Immediate report to court with request for condition termination	60-days compliant behavior	Request to court to remove condition
Dead battery	In-person defendant report to resolve issues/Warning	Ongoing compliant behavior	Status report to court at scheduled hearings with request to remove condition
Device tamper	Immediate report to court		
Device removal	Immediate report to court		



## Estimated Impact of Adopting Decision-Making Framework in Clark County

2019 Total Cases:	28,306	
Cases Cancelled before IAC:	6,075	(custody change, vacated, clerical error, etc.)
Cases: Other Outcome	2,423	(court ordered release, DA denial, no PC)
Total "Release Eligible" Cases at IAC:	19,808	
Adjusted Total Cases at IAC:	17,761	(adjusted to remove cases coded as both bail and release)

**Table 1: Charge Level by Defendant Risk Level**

Charge Level	Defendant Risk Level			N/A	Total
	Low	Medium	High		
Misdemeanor	1,687 9.5%	1,074 6%	357 2%	225 1.3%	3,343 18.8%
Gross Misd.	670 3.8%	423 2.4%	407 2.3%	116 0.7%	1,616 9.1%
Felony	3,350 18.9%	5,603 31.5%	2,984 16.8%	865 4.9%	12,802 72.1%
Total	5,460 30.7%	7,347 41.4%	3,748 21.1%	1,206 6.8%	17,761 100%

**Table 2: Felony Charge Level by Defendant Risk Level**

Charge Level	Defendant Risk Level			N/A	Total
	Low	Medium	High		
Felony E	339 2.6%	1,458 11.2%	1,117 8.7%	228 1.8%	3,142 24.6%
Felony D	284 2.2%	600 4.7%	322 2.5%	100 0.8%	1,306 10.2%
Felony C	685 5.4%	978 7.6%	465 3.6%	110 0.9%	2,238 17.5%
Felony B	1,782 13.9%	2,409 18.8%	1,039 8.1%	391 3.1%	5,621 43.9%
Felony A	239 1.9%	153 1.2%	37 0.3%	32 0.2%	461 3.6%
Other	21 0.2%	5 >.01%	4 >.01%	4 >.01%	34 0.3%
Total	3,350 26.2%	5,603 43.8%	2,984 23.3%	865 6.8%	12,802 100%

**Table 3: Misdemeanor Releases: Release Type by Risk Level**

Release Type	Defendant Risk Level			N/A	Total
	Low	Medium	High		
Personal Recognizance	945 28.3%	378 11.3%	62 1.9%	84 2.5%	1,469 43.9%
PR w/Intensive Supervision	266 8%	130 3.9%	47 1.4%	30 0.9%	473 14.1%
PR w/ EM	314 9.4%	221 6.6%	66 2%	51 1.5%	652 19.5%
Surety w/EM	56 1.7%	88 2.6%	27 0.8%	15 0.4%	186 5.6%
Surety/Cash	106 3.2%	257 7.7%	155 4.6%	45 1.3%	563 16.8%
Total	1,687 50.5%	1,074 32.1%	357 10.7%	225 6.7%	3,343 100%

**Table 4: Gross Misdemeanor Releases: Release Type by Risk Level**

Release Type	Defendant Risk Level			N/A	Total
	Low	Medium	High		
Personal Recognizance	196 12.1%	155 9.6%	47 2.9%	31 1.9%	429 26.5%
PR w/Intensive Supervision	87 5.4%	121 7.5%	72 4.5%	19 1.2%	299 18.5%
PR w/ EM	69 4.3%	82 5.1%	38 2.4%	11 0.7%	200 12.4%
Surety w/EM	12 0.7%	48 3%	18 1.1%	12 0.7%	90 5.6%
Surety/Cash	59 3.7%	264 16.3%	232 14.4%	43 2.7%	598 37%
<b>Total</b>	<b>423 26.2%</b>	<b>670 41.5%</b>	<b>407 25.2%</b>	<b>116 7.2%</b>	<b>1,616 100%</b>

**Table 5: Felony Releases: Release Type by Risk Level**

Release Type	Defendant Risk Level			N/A	Total
	Low	Medium	High		
Personal Recognizance	910 7.1%	1,019 8.0%	406 7.1%	156 1.2%	2,491 19.5%
PR w/Intensive Supervision	497 3.9%	986 7.7%	534 4.2%	144 1.1%	2,161 16.9%
PR w/ EM	602 4.7%	636 5%	268 2.1%	90 0.7%	1,596 12.5%
Surety w/EM	639 5%	759 5.9%	258 2%	106 0.8%	1,762 13.8%
Surety/Cash	702 5.5%	2,203 17.2%	1,518 11.9%	369 2.9%	4,792 37.4%
<b>Total</b>	<b>3,350 26.2%</b>	<b>5,603 43.8%</b>	<b>2,984 23.3%</b>	<b>865 6.8%</b>	<b>12,802 100%</b>

**Table 6: Bail Decision Making Framework with Estimated Presumptive Release Type**

Charge Level	Presumptive Release Type by Risk Level			Presumptive Bond Range	Exceptions
	Low	Medium	High		
Misdemeanor	Personal Recognizance 1,686/10.2%	Personal Recognizance 1,074/6.5%	Personal Recognizance 357/2.2%	0-\$1000	Per Statute
Gross Misd.	Personal Recognizance 670/2.6%	Personal Recognizance 423/4%	Percentage Surety 407/2.5%	0-\$2,000	Per Statute
Felony E	Personal Recognizance 339/2%	Percentage Surety 1,458/8.8%	Percentage Surety 1,117/6.7%	0-\$2,000	Per Statute
Felony D	Personal Recognizance 284/1.7%	Percentage Surety 600/3.6%	Percentage Surety 322/1.9%	0-\$2,000	Per Statute
Felony C	Percentage Surety 685/4.1%	Percentage Surety 978/3.6%	Surety/Cash 465/2.8%	0-\$5,000	Per Statute
Felony B	Surety/Cash 1,782/10.8%	Surety/Cash 2,409/14.6%	Surety/Cash 1,039/6.3%	0-\$20,000	Per Statute
Felony A	Surety/Cash 239/1.4%	Surety/Cash 153/0.9%	Surety/Cash 37/>0.1%	TBD	Per Statute

Note: Data adjusted to remove “not available” risk assessment scores (n=16,555)

**Table 7: Estimated Impact of Adopting Decision Making Framework in IAC**

Release Type	Percentage Released	
	Existing	Proposed
Personal Recognizance	4,118 24.9%	4,833 29.2%
Supervision	2,740 16.6%	5,567 <sup>1</sup> 33.6%
PR w/EM	2,296 13.9%	1,225 <sup>2</sup> 7.4%
Surety w/ EM	1,905 11.5%	0
Surety/Cash	5,496 33.2%	4,899 29.6%
Total	16,555 100%	16,524 <sup>3</sup> 100%

<sup>1</sup> Under the proposed plan, these cases would be assigned to standard supervision rather than intensive supervision.

<sup>2</sup> Estimated 20% of Surety/Cash cases to be released on intensive supervision with EM.

<sup>3</sup> Total adjusted to remove charge types noted as "W" or "I" in data set.