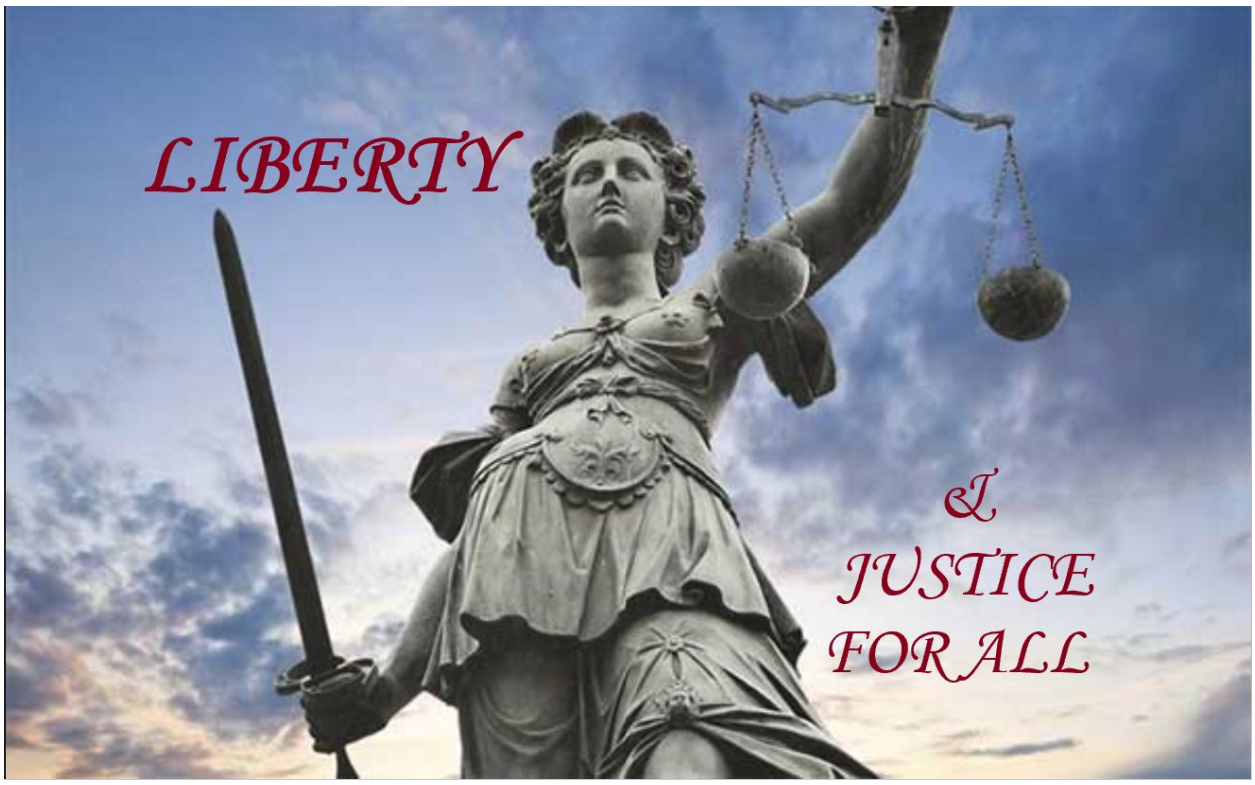
Franklin County, Ohio

# Bail Practices Review

## Public Performance Partners, Inc. 12/21/18




## Executive Summary

The purpose of bail is to ensure appearance and protect the public safety, while preserving the liberty of the accused. Driven by legislative action and the opportunity to improve social outcomes while reducing jail population, many jurisdictions have deployed predictive models and other practices aimed at reforming a system that has largely maintained the status quo for hundreds of years.

Public Performance Partners, Inc. (P3) found that 69% of Franklin County Correction Centers' (FCCC) average daily population (ADP) is held awaiting court case disposition at an estimated annual cost of $25M to county and municipal taxpayers, compared to the national estimate of 63%. It is important to note that only a portion of the 69% awaiting disposition could be released from jail and P3 lacked sufficient data to precisely determine the potential reduction. However, P3 did find opportunities to improve judicial concurrence with Franklin County Municipal Court's (FCMC) Pretrial Services Team (PTS) recommendations at arraignment and to expand the capacity and scope of municipal pretrial services with both the misdemeanor and non-violent felony populations, which should reduce the number of jail days spent awaiting case disposition.

P3's analysis revealed racial disparities not only in jail bookings, but in the FCMC court data, where whites were more likely to receive summons vs. incarceration for a criminal case, compared to blacks. Whites were also significantly more likely than blacks to receive a recognizance bond vs. financial bond when detained on criminal charges. P3 found FCMC's bail recidivism (10.8%) in line with other urban jurisdictions, and opportunities to improve the failure to appear rate of 32.3% by doubling down on investments in robocalls and text message reminders to address the root cause of non-appearance. Franklin County can learn from the best practices laid out in our report, from other jurisdictions in Ohio and across the country to improve pretrial outcomes by:

1. Replacing the 15 municipal judge arraignment rotation with a team of dedicated magistrates responsible for carrying out FCMC's pretrial policy.
2. Providing more information to these magistrates (or judges) at arraignment.
3. Assessing the risk of non-violent felony defendants prior to arraignment in FCMC.
4. Screening 100% of predisposition misdemeanor bookings.
5. Incorporating pre-arraignment risk screening into the booking process.
6. Bringing FCMC and FCCPC judges and magistrates together in dialog around bail best practices.
7. Expanding investment in efforts to reduce failure to appear in the FCMC.

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# Background

Public Performance Partners, Inc. (P3) was retained by the Franklin County Criminal Justice Planning Board (FCCJPB) to help county leaders understand bail practices currently in place across the county - especially in the Franklin County Municipal Court (FCMC), the effect of these practices on the Franklin County Corrections Centers (FCCC) and outcomes related to failure to appear (FTA) and new criminal activity while on bail, and recommendations to improve pretrial outcomes in Franklin County.

To accomplish this deliverable, P3 collected data from the Franklin County Sheriff's Office (FCSO) and the Franklin County Municipal Clerk of Courts (FCMCoC), conducted secondary and primary research on the latest best practices across Ohio and the country to improve pretrial outcomes, and conducted dozens of interviews and meetings with criminal justice leadership in Franklin County and the City of Columbus, including fourteen municipal judges, three common pleas judges and one magistrate, four pretrial services leaders/managers/supervisors, four officials from the City of Columbus Prosecutor's Office and Franklin County Public Defender, and three officials from FCSO. P3 is pleased to present our findings and recommendations to the Franklin County Criminal Justice Planning Board for their careful consideration, in a manner that will allow Franklin County to take the next steps in its journey toward equitable and effective bail practices.

## The Problem

The use of bail attempts to balance three main interests; securing a defendant's appearance in court, protecting the public safety, and protecting the rights of the accused. However, balancing these interests often results in the use of bail as a first resolution and is unintentionally applied disparately between defendants. Additionally, current pretrial practices and policy in many jurisdictions have inadvertently contributed to increasingly bloated jail populations. One study suggests that, since 2000, 95% of jail growth is due to the increasing number of defendants held pretrial.[1] A recent report by the Pretrial Justice Institute estimates that over 63% of the national daily jail population are awaiting trial and

[1] Menefee, M. (2018) The Role of Bail and Pretrial Detention in the Reproduction of Racial Inequalities. *Sociology Compass, Volume 12, Issue 5.*

cost taxpayers $38 million per day[2]. Annualized, that is $14 billion expended to detain residents not yet convicted of a crime, some whose charges may be dropped, and, in most cases, pose very little risk to the community. P3 found a similar story in the FCCC, where we estimate 69% of the average daily population was awaiting disposition of a court case, at an estimated annual cost of over $25M to the county and its municipal jurisdictions. Certainly the detainment of - especially violent - suspected criminals awaiting trial is an important part of any county jail's mission, and P3 does not advocate for complete elimination of this purpose and the related expense. We offer this statistic as a starting point for a conversation around how to optimize the balance of presumption of innocence, justice, public safety, and expense in Franklin County's criminal justice system. To that end, we explore the jail population and what can be done to safely reduce it later in this report.

Thirty-four (34) states, including Ohio, are on the move enacting bail reform legislation, statewide reviews, and rule amendments. Many jurisdictions are also deploying predictive algorithms to expedite pretrial risk assessments. The efficiency and ability of pretrial risk assessment tools to aid in this human balancing act are working to reform a system that inadvertently supports race, socioeconomic, and sentencing disparity.

Constitutional and equitable application concerns have put pressure on jurisdictions to decrease reliance on money bail. In early 2017, a case in Harris County, Texas involved a woman who was detained for driving without a valid license and was held in jail on $2,500 bail she was unable to pay. District Court Judge, Lee H. Rosenthal, wrote in the ruling, "Harris County's policy is to detain indigent misdemeanor defendants before trial, violating equal protection rights against wealth-based discriminations and violating due process protections against pretrial detention."[3] For example, in 2017, 28% of defendants were given a bond of $5,000 or less in the Cuyahoga County Jail but never posted and remained detained for an average of 104 days pretrial.[4] Ultimately, the current bail system in many jurisdictions unintentionally supports pretrial release based on varying socioeconomic statuses leaving indigent defendants detained and unable to post bail.

[2] http://www.pretrial.org/state-pretrial-justice-america/
[3] https://www.nytimes.com/2017/04/29/us/judge-strikes-down-harris-county-bail-system.html
[4] https://www.acluohio.org/wp-content/uploads/2017/10/Cuyahoga-County-Jail-Population-Analysis-Report-PJI-2017_final.pdf

Addressing wealth-based disparity before a pretrial hearing can be an effective first step in eliminating the issue. For instance, the state of New Jersey only collects objective defendant information outside of the risk assessment tool to determine if a defendant is indigent and requires the assignment of counsel. The information, collected through what they call a "5A Interview" (referring to the fifth amendment right to counsel), attempts to address any socioeconomic concerns before the judicial pretrial decision, including the inability to post assigned bail. Equal protection does not stop at wealth-based discrimination.

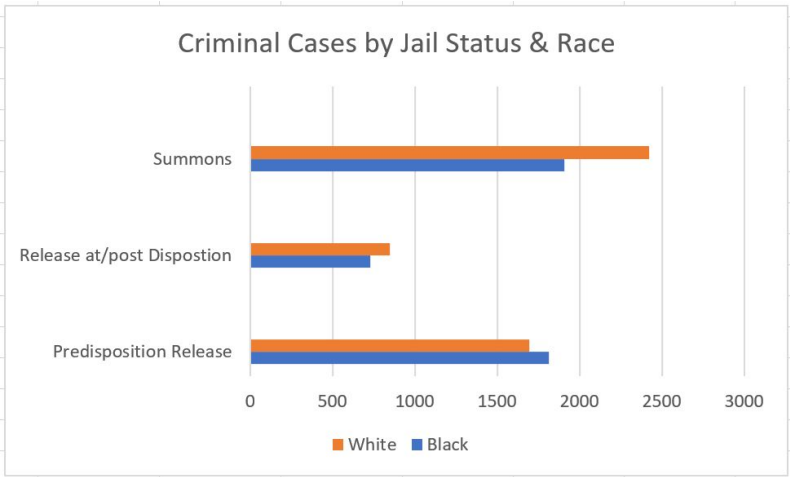
Wealth-based discrimination extends into discrimination applied to people of color. These disparate impacts often begin at a defendant's first contact with a police officer and continues through their disposition. People of color are more likely to be pulled over, searched, and arrested, and as such are disproportionately overrepresented in the criminal justice system.[5] A 2018 study found that black defendants were 3.6% more likely to be assigned bail and bail that is roughly $9,923 greater than their white counterparts.[6] Supporting this study was a law review article published in 2005 that found disparities between white and black defendants in pretrial decisions. Black defendants were 25% more likely to be denied bail than white defendants and 12% less likely to be granted non-financial release, but 50% less likely to make bail. These disparities were found regardless of the offense charged.[7] Exacerbating this disparity is the finding that white defendants are more likely to have access to financial resources, leaving black defendants to shoulder a stronger financial burden in their proceedings.[8] Risk assessment tools may not totally eliminate disparate impact on people of color, discussed later, but individual jurisdictional implementation can begin to alleviate these individual impacts.

P3 found a similar story unfolding in Franklin County, where 49.1% of jail bookings are associated with white inmates, versus 47.8% black. The county's jail bookings are not reflective of the overall census estimated 2017 population of ~1.3M (67.9% white vs. 23.2%

[5] Antonovics, K., Knight, B.(2009) A New Look at Racial Profiling: Evidence from the Boston Police Department.
[6] Arnold, D., Dobbie, W., Yang, C. (2018). Racial Bias in Bail Decisions.
[7] Schlensinger, T. (2005). Racial and Ethnic Disparity in Pretrial Criminal Processing. *Justice Quarterly, Volume 22, Issue 2.*
[8]See note 1

black).[9] This finding is no surprise given the well documented racial disparity in US incarceration rates discussed above.

P3 also found evidence of racial disparity in the court system in our review of criminal cases filed January 27, 2018 - June 30, 2018, even though black defendants were no more likely to fail to appear and were statistically less likely to have new criminal activity while out on bail compared to their white counterparts. While black defendants were more likely to obtain predisposition release on bail (40.7% of cases vs. 34.1% for white defendants), they were less likely to be granted release on a recognizance bond versus a financial bond (36.1% vs. 44.5%). Whites were also more likely to receive a summons (48.8% of cases vs. 42.9% of cases involving a black defendant) and avoid predisposition jail time altogether. These racial disparities were consistent when controlling for charge degree. P3 explores the FCMC data in much more detail later in this report. While the data does not conclude the reason for these racial disparities in the jail or the FCMC, we should nevertheless be aware of the material impact on minorities in the county.




While bail reform continues to push the collective needle of criminal justice forward, it is important to recognize the impact of bail and detention on every single individual. Compared to their wealthier counterparts, individuals who are assigned bail but do not have the means to pay are left worse off in the criminal justice system and in future proceedings. Those held on bail are at risk of having their employment terminated after missing work due to even short-term detention.[10] Further, research has indicated that the effects of detention do not stop with the defendant, but bleed into their family. Detention

[9] https://www.census.gov/quickfacts/fact/table/franklincountyohio/PST045217
[10] Comfort, M. (2016). "A Twenty-Hour-a-Day-Job": The impact of Frequent Low-Level Criminal Justice Involvement on Family Life. *Ann Am Acad Pol Soc Sci., 665(1): 63-79.*

unsettles family stability, affects childcare, transportation, and the ability to provide financially.[11] For those who are released or able to post bail, the probability of being found guilty decreases by 14% and the probability of pleading guilty decreases by 10.8%.[12] Alternatively, those who are held pre-trial are more likely to plead or be convicted and experience an increased probability of recidivism by almost 1% each year post-conviction.[13] A potential explanation for these findings is the additional barriers to securing and conferring with counsel before trial, impacting future judicial proceedings. The increased probability of guilt increases the probability of negative outcomes post-conviction, including the decreased likelihood of finding and maintaining employment,[14] the ability to legally vote,[15] and eligibility to receive state assistance, including food stamps[16] and student financial aid.[17] While Franklin County moves forward in its initiative to fight poverty it is pivotal to understand a criminal justice system where one decision determines the next, impacting those that come after it, culminating in systematic challenges.

## Franklin County Municipal Court Operations

The Columbus Municipal Court was created in 1916 by the Ohio General Assembly. In 1955, the court was given jurisdiction throughout Franklin County. The name of the court was changed to the Franklin County Municipal Court (FCMC) in 1968. Today, FCMC serves a population of just under 1.3 million people.[18] In 2016, 177,774 cases, including traffic, were filed in the FCMC .[19]

There are 15 judges on the FCMC, each of whom is elected to a six-year term and is prohibited from running for re-election once they reach age 70 by state law. One of the 15 judges is responsible for an environmental docket focusing on violations of environmental statutes and ordinances.

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[11] Geller, A., Garfinkel, I., Western, B. (2011). Paternal Incarceration and Support for Children in Fragile Families. *Demography, Volume 48, Issue 1.*
[12] Dobbie, W., Goldin, J., Yang, C. (2018). The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges. *American Economic Review.*
[13] See note 12
[14] See note 7
[15] https://www.nytimes.com/2018/04/21/us/felony-voting-rights-law.html
[16] https://www.themarshallproject.org/2016/02/04/six-states-where-felons-can-t-get-food-stamps
[17] https://studentaid.ed.gov/sa/eligibility/criminal-convictions
[18] https://www.census.gov/quickfacts/fact/table/franklincountyohio/PST045217
[19] http://www.fcmcclerk.com/documents/annual-reports/FCMC_AR_2016.pdf

## Arraignment

All preliminary arraignments of criminal cases in Franklin County take place in the FCMC, with arraignment of detained defendants taking place at 9:00 AM, Monday through Saturday in courtroom 4D of the Municipal Court Building.[20] These court sessions typically consist of up to 100 defendant arraignments, and each session may last upwards of 6 hours.[21] Judges serve as the arraignment judge once every 14 weeks for six consecutive days. The Environmental Division judge is not assigned regular arraignment duties but does fill in for other judges when they are not available.

Since the assignment of a judge to the arraignment docket is cyclical, only a relatively small number of cases will eventually be assigned to his or her docket. Several of the judges with whom P3 spoke find the arraignment docket responsibilities to be quite challenging due to the volume of activity in the courtroom and the importance of setting bond in each case.

P3 observed one of the arraignment dockets and noted there is a flurry of activity in the courtroom, with court personnel moving documents and case folders about the room as cases are heard and rulings are issued from the bench. Representatives from the prosecutor's office are present as are lawyers from the public defender's office and private attorneys. Other personnel enter information into computers. Franklin County does not use video arraignment and all defendants are brought into the courtroom to face the judge, with FCSO deputies bringing in several defendants at a time from a holding facility in the hallway behind the courtroom. Periodically, the court is adjourned while deputies return defendants to the jail and bring a new group of defendants to the courtroom.

The assistant prosecutor assigned to the arraignment docket provides information regarding the defendant's criminal record as well as any other information relevant to the issue of setting bond. The defense attorney, often an assistant public defender, speaks on behalf of the defendant offering whatever information he or she has been able to gather from the defendant in the few minutes they have to converse prior to the defendant's court

[20] There are a number of Mayor's Courts in Franklin County and some local ordinance cases are heard in these Courts.
[21] General approximate information provided by judges and Court personnel

appearance. If a private attorney has been retained, that attorney may have more detailed information to present to the court. The judge may pose questions directly to the defendant. In some cases judges have the benefit of a report that has been compiled by the court's Pretrial Services (PTS) department, but not all defendants are interviewed by PTS staff.

At a defendant's arraignment, judges are regularly called upon to approve deals made between the prosecutor and defense counsel. Judges are generally willing to accept guilty pleas and impose a sentence consistent with the agreement, allowing the court, prosecutors, and defense attorneys to manage the number of cases before the court. The defendants in these instances are offered the chance to enter a guilty plea in exchange for leniency regardless of their charges. At this point in the proceedings, no evidence has been entered into the court record and no testimony has been given. Defendants can ill afford to sit in the county jail while their case moves through the court system, especially if they are employed, have a family to support, or are enrolled in school. A review of case data from FCMCoC revealed only 6% of criminal cases for detained defendants were resolved within two days of booking, leading us to conclude that mostly traffic cases, in addition to some lower level non-violent misdemeanors are resolved in this manner.

## Felony Arraignment

Felony cases are arraigned through the same process as misdemeanor cases but will eventually be adjudicated in the Franklin County Common Pleas Court (FCCPC) if they are indicted by a grand jury. Judges in the municipal court do not have final jurisdiction over felony suspects but they do have the responsibility to set the initial bond. Felony cases are not reviewed by the FCMC Pretrial Services unit. As a result, Judges in the FCMC do not have the benefit of a PTS report when setting the bond in felony cases. One FCMC judge expressed a willingness to set low or recognizance (recog) bonds in nonviolent low-level felony cases. The Judges generally rely on information from the Franklin County Prosecutor's Office and Franklin County Common Pleas Pretrial Services, primarily the criminal history of the defendant, when setting the bond in a felony case.

If a defendant is indicted on a felony charge, the case is reviewed by the pretrial services office in the FCCPC. That office has a staff of eight pretrial officers, one supervisor, and one manager. If the defendant is not indicted, he or she is released after having spent up to 10 days in jail held on the bond set in municipal court. Individuals charged with felony drug possession will most often have their case dismissed without prejudice if a laboratory analysis of the suspected drugs cannot be completed within the legal time frame a felony case must be presented to a grand jury.

## Setting Bail

The primary duty of the arraignment judge is setting a bond, and any accompanying stipulations, that the defendant must post in order to be released from jail while the criminal charge is pending. The bond set by the court determines to a large extent whether a defendant will be released or will remain detained while the criminal case is decided. The judges in the FCMC follow a similar process in determining the bond but they may weigh bond related factors differently. They consider the nature of the alleged crime, the defendant's criminal record, the defendant's record of failing to appear in court as ordered, any recommendation from the prosecution, input from the defense attorney, drug or alcohol problems or dependency issues, mental health issues, the defendant's employment history, and family support. They will also consider a recommendation from the PTS division of the court's Department of Probation and Pretrial Services. Some of this information may not be available during the arraignment.

Judges may release a defendant on his/her own recognizance, also referred to as a "recog" release. Alternatively, the judge may order a defendant held until he/she can post money with the FCMCoC to secure release. In such a case, known as an appearance bond, the defendant must post 10% of the bond amount to secure release.

Defendants or their families often retain the services of a bail bondsman to secure the release of a defendant through the posting of a surety bond. Bail bond agencies agree to ensure the defendant will appear at all court appearances. In Ohio, some courts have historically set bonds requiring the posting of an appearance bond and prohibiting bail bond agents from securing release of the defendant through a surety bond. In 2014, the

Ohio Supreme Court ruled that courts must allow bail bond agents to enter into agreements with the court whereby they agree to pay the bond if the defendant fails to appear and cannot be located and presented to the court within a reasonable time frame, usually 30 to 60 days.[22]

From discussions with the FCMC judges, surety bonds are used frequently in the FCMC. Almost all of the judges generally feel that bail bond agents are effective in ensuring that defendants appear in court as scheduled and believe that agents are reliably able to locate and present defendants who have failed to appear in court. Several judges expressed concern that some bail bond agents allow defendants to pay only 5% down to secure their release and make payments toward the remaining 5%. These judges feel such arrangements reduce the incentive for the defendant to appear in court as scheduled.

## Pretrial Services

The Pretrial Services Department (PTS) is a division of the FCMC Department of Probation and Pretrial Services, and was created in 2015 to screen defendants prior to arraignment and to provide the arraignment judge with a report containing background information on the defendant. The report also contains information on where the defendant will be living and perhaps working if released on bond. On the morning of arraignment, PTS officers meet at the county jail with defendants charged with criminal misdemeanors, including domestic violence involving an intimate partner, and operating a motor vehicle while intoxicated (OVI). The PTS officers gather information about the defendant including employment information, educational background, family information, current residence and other social history information.

The PTS office is staffed with four investigators, three supervision officers, and one supervisor who oversees the operation. No clerical support staff are assigned to PTS. Policies and operational procedures are clearly and thoroughly identified and enumerated in a Pretrial Services Investigation and Supervision Policy and Procedure document. There are two county jail facilities in Franklin County that are serviced by PTS. One is adjacent to the government facilities on S. High St., including the municipal courts. The other facility is approximately one mile from the courts. One PTS officer goes to the off-site facility to

[22] http://www.dispatch.com/content/stories/local/2014/07/08/court_bond_ruling.html

conduct interviews while two other officers go to the downtown facility. One PTS officer remains at the office to answer phone calls, prepare for the upcoming arraignment docket, and prepare criminal and order-in history reports on all eligible defendants. Dedicated facilities for PTS officers to meet with jail inmates are not available, but the jail staff has cleared out some closets for use by PTS officers to conduct their interviews. Chief Deputy Geoffrey Stobart of the Franklin County Sheriff's Office, is supportive of PTS and advised that plans for the new consolidated county jail will include facilities specifically intended for use by PTS staff.

At the county jail facilities, the PTS officers administer the Ohio Risk Assessment System - Pretrial Assessment Tool (ORAS-PAT) using a defendant interview. If the inmate is charged with domestic violence, a lethality assessment is also conducted by PTS. It is designed to assess the risk posed to the victim if the defendant is released under PTS supervision. Domestic violence was not a crime eligible for PTS risk screening initially but was added to the list of eligible offenses in February of 2018.

Early mornings are a hectic time in the county jail facilities as deputies ensure that inmates are fed and are organized to be taken to court if scheduled to be arraigned. It is in the midst of this environment that PTS Officers attempt to meet with those inmates eligible for PTS screening. No doubt some of the inmates scheduled for arraignment have not had much, if any, sleep. Some inmates eligible for a pre-arraignment risk assessment refuse to meet with PTS officers, and others cannot be interviewed due to staffing capacity.

PTS investigative staff arrive at the jail facilities between 4:30 AM and 5:00 AM, the same time breakfast is starting. They have approximately 90 minutes to conduct as many interviews as possible with each interview intended to last ten minutes per defendant. At the conclusion of one interview the PTS officer requests that another defendant be brought to the interview room. Under the best circumstances each PTS officer can interview nine defendants in the 90 minutes allotted for interviews but delays in retrieving defendants can reduce the number of completed interviews to six or seven per officer. In the first half of this year, PTS interviewed 814 defendants awaiting arraignment which accounted for 60% of those eligible to be interviewed. The court placed 248 defendants of the 814 interviewed under PTS supervision.

When asked, there was a wide range of estimates from the judges on how many reports from PTS were received on the defendants appearing before them at arraignment. Some thought they were receiving PTS reports on as few as 10% of the defendants at arraignment while others thought they received PTS reports on as many as 60%. However, eligibility guidelines carve out of scope traffic, minor misdemeanors and felonies, causing the true percentage of those with a risk assessment at arraignment to be much lower.

Following defendant interviews, the PTS officers return to the courthouse and attempt to verify information obtained from the defendant. Efforts to verify residency, employment, and education with a third party are difficult at this time of day under a very tight window of time to reach them. According to PTS management, few interviews are fully verified. A report is compiled based on the information provided by the defendant, the defendant's criminal history and any verification obtained. The results of the ORAS-PAT risk assessment are included in the report provided to the arraignment judge. With these reports, the judge has more complete information than is available from the prosecution or the defense.

The PTS investigator's recommendation is driven by the risk of pretrial failure (failure to appear or re-booking) identified in the ORAS-PAT. If the investigator was unable to interview the defendant, a criminal and order-in warrant history is provided to the judge without a risk score. According to the department's policies and procedures, the recommendation will be recog without supervision in the low risk population and recog with supervision and potentially conditions - such as urine testing - for the moderate to high risk population. No recommendation is provided to the arraignment judge for defendants deemed too risky for release on recognizance with any level of supervision or conditions. Not all defendants are recommended for release under PTS supervision and not all defendants recommended for release on recognizance are granted release by the judge. Additional conditions of release may be ordered depending on the circumstances of the case and the needs of the defendant, especially in cases involving domestic violence, substance abuse or serious mental health issues.

In speaking with the judges of the FCMC, there are varying degrees of acceptance of the PTS recommendations. Through the first six months of 2018, judicial concurrence with PTS

recommendations averaged 58%. While all of the judges believe the additional information provided by pretrial services is of value, some judges remain hesitant to release a defendant on a recog bond with supervision by PTS except in low risk cases. One judge noted concern that every recommendation is release on a recog bond with supervision by pretrial services, and questions the validity of the recommendations since the recommendations appear to all be the same. Another judge indicated that he/she follows the recommendation in less than 50% of cases when a PTS report is available. That judge remains skeptical of the effectiveness of PTS supervision in more serious cases.

Most of the judges are inclined to believe appearance and surety bonds are effective in ensuring that the defendant will return to court and will not commit any new criminal offenses while awaiting disposition of the current case. One judge enthusiastically supports the efforts of the PTS office and routinely follows their recommendations, believing that too many defendants are being held pretrial in the county jail solely because they cannot afford to post bond. He/she is also a proponent of current efforts to reform bail bond practices in Ohio. Other judges expressed interest in knowing more details regarding these efforts.

## Risk Assessment Tools

All of the judges were asked if they have any thoughts on statistically validated risk assessment tools that allow judges to see a measurement of the risk associated with the release of any individual defendant. None of the judges were critical of the ORAS-PAT risk assessment tool used by PTS. With a few exceptions, the judges did demonstrate a cursory knowledge of the ORAS-PAT but generally did not have familiarity with other risk assessment tools.

The ORAS-PAT was developed by the University of Cincinnati at the request of the Ohio Department of Rehabilitation and Corrections (ODRC) and became fully operational in April, 2011.[23] It is part of a group of assessment tools that are used at various stages of the criminal justice process in Ohio by ODRC and local jurisdictions in their management of inmate populations. The ORAS-PAT is designed to provide an assessment of the risk posed

[23] http://www.drc.ohio.gov/oras

by the defendant to commit a new crime or fail to appear in court if released. A 2016 study conducted by Ohio State Professor Paul E. Bellair with FCMC PTS data found that "the ORAS-PAT is able to classify individuals into risk categories that are correlated in predicted ways with the likelihood of recidivism", and concluded that ORAS-PAT is a useful screening tool for the county.[24] P3's review of the study would suggest that statistical validity of the study could be improved with a larger sample size, but that the tool was statistically validated with data from across the State of Ohio during its creation, lending credibility to this outcome and the general usefulness of the tool.

ORAS-PAT evaluates four areas of the inmate's history and circumstances; criminal history, employment, residential mobility, and substance abuse. Each area of risk is scored and a total risk value is determined with 0 being the lowest risk and 9 being the highest risk. This risk score is included in the bond report submitted to the arraignment judge. A mental health assessment is conducted at the time of booking by jail personnel but is not made available to PTS staff while they are preparing their report for the court, nor to the judge at arraignment.[25]

While discussing the potential use of validated risk assessment tools, all judges were informed that such assessment tools are not intended to replace a judge's discretion in the setting of a bond but only to inform the judge of the level of risk identified through the assessment tool. It was also explained that some validated risk assessment tools do not require an interview, unlike the ORAS-PAT. Eliminating the interview would potentially save a significant amount of time in the preparation of the reports on each defendant and allow more reports to be completed while not compromising the predictive validity of risk of negative pretrial outcomes.

Generally speaking, with one exception, the judges interviewed believe the current process for setting bonds is effective. All indicated they would like to have as much information as possible when setting bond. Two judges expressed concern with a risk assessment tool that does not take into account systematic racial bias that exists in the criminal justice system according to a defendant's race, especially if the tool utilizes criminal records. One

[24] Bellair, P., LaPant, E. (2016). ORAS-PAT Final Report.
[25] http://www.ocjs.ohio.gov/ORAS_FinalReport.pdf

judge expressed a concern that criminal records are not always complete and any risk assessment tool that primarily relies on them to assess risk may not be reliable.

## Public Defender

Mr. Yeura Venters is the Director of the Franklin County Public Defender's Office. He oversees a staff of 120 full time employees including 91 attorneys, 12 social workers and support staff, and 40 part-time staff. He states that their primary responsibilities include providing quality legal representation to clients in a cost efficient, effective manner, and promoting public safety by advocating for courts to make better use of community resources to address the needs of defendants, assist them in making better choices, and change their behaviors to lead crime free productive lives. He believes that too many young people are labeled by the criminal justice system at an early age and that this is somewhat a result of their economic status. He sees drug and alcohol use as additional symptoms of behavior that lead many young people into the criminal justice system.

The Public Defender is generally supportive of PTS and their efforts to screen defendants prior to arraignment and provide judges with more in-depth information regarding the defendant. He recognizes that PTS officers are not able to meet with all eligible defendants and believes steps should be taken to remedy this. He believes that all low-level defendants should be offered drug and alcohol treatment since he feels this is a common problem afflicting many of the young defendants appearing before the court. He sees the public defender as the voice of the accused and the one entity advocating on behalf of the accused in the justice system. He is opposed to video arraignments because he believes that we maintain the dignity, decorum, and solemnity of our criminal justice system and promote public confidence by ensuring that all individuals charged with a crime have a formal face to face encounter with a judicial presence when addressing critical issues that could severely impact their lives, family, and public safety.

## Challenges & Opportunities

The judges in the Franklin County Municipal Court are under a heavy workload. Each judge weighs the factors associated with setting bail differently but all factor public safety into their bond decisions. Other factors such as education level and employment history are

given differential weight. The adoption of recommendations presented to the court by the PTS operation varies from judge to judge. Interest in considering other pretrial risk assessment approaches also varies. Only one judge expressed interest in and strong support for efforts to reform bail bond practices in Franklin County. This judge is convinced that changes must be made to reduce the pretrial jail population and save taxpayer dollars.

There seems to be an openness among the judges to consider different approaches to setting bond. None of the judges expressed outright opposition to looking at alternatives to the current bail bond practices. At least one judge expressed the hope that he/she might have new tools to help him/her make decisions on bond.

The FCMC utilizes the CourtView system to capture data on each case heard in the court. One judge believes the database holds the potential to provide more information to judges regarding their caseload and the outcomes of each case. Judges do not currently receive regular reports regarding their caseload, dispositions, pending cases, release outcomes, etc., beyond a monthly report required by the Ohio Supreme Court. Some judges indicated that they thought their bailiffs receive reports but were not familiar with these reports. One judge is familiar with a criminal justice database in another Ohio jurisdiction and suggested that the Franklin County judges would benefit from access to a centralized database containing aggregated information on defendants appearing before them.

Notwithstanding availability of data, in an environment where one judge only handles bond setting duties associated with arraignment about once a quarter, it cannot reasonably be expected that each judge maintain a deep acumen on the use of risk assessment tools they only occasionally receive for the arraigned defendants before them. The process they face is challenging and requires patience and leadership in the courtroom in order to make the proper decision in each case.

A different approach to the arraignment process should be considered; one which brings some specialization to the process. Currently the Franklin County Common Pleas Court (FCCPC) utilizes magistrates, reporting to judges with whom they share chambers, to conduct arraignments, offering advantages over the FCMC system. First, it frees the

elected judges to focus their attention on the adjudication of cases on their docket. In addition to their criminal docket, FCMC judges also are responsible for hearing civil cases involving values under $15,000. Second, this approach allows the court to bring in attorneys to serve as specialists in the magistrate position. Since these proposed municipal magistrates would be un-elected employees of the court, they could be directed in the discharge of their duties. While they would maintain discretion in final bail decisions, they could be trained in the purpose and use of the materials they receive from the PTS office and develop confidence in the results provided by the court's chosen risk assessment tool.

*Replacing the municipal judge arraignment rotation with a team of specialized magistrates would create continuity/consistency, allow judges to focus on their case dockets, and create specialization on mental health/substance abuse and domestic violence cases.*

The court should also consider separate arraignments for felony suspects and violent misdemeanor suspects, separate from non-violent misdemeanor and traffic offenders. Such delineation would allow the magistrates to focus on the class of offenders before them and the needs and challenges of each group. A magistrate specially trained in drug/alcohol and mental health afflicted offenders, as well as domestic violence/lethality assessments, would allow each case to be evaluated in consideration of those issues with the appropriate intervention as a condition of release. Most importantly, decisions regarding bond would be made through a more informed, consistent process with better alignment and understanding of the PTS team's risk scoring methodology.

The Pretrial Services operation is only three years old and is operating under duress due in part to inadequate staffing, but more importantly due to the lack of access to defendants at booking, further constraining access to inmates and the timeframe available for the team to process the eligible workload. As a result, 40% of 2018 eligible defendants cannot be screened and many more who are out of scope for screening appear at arraignment without the benefit of a risk assessment. In addition to the effect on jail population and pretrial outcomes, these circumstances have a significant impact on morale in the department. The county jail has welcomed the efforts of PTS and has made accommodations to allow PTS staff to interview defendants resulting in improved interview

acceptance rates but processes, staffing and accommodations should be redesigned to support real-time access to inmates at booking. The mental health assessment conducted by jail personnel at booking provides an opportunity to incorporate the ORAS-PAT interview either by the same jail personnel or a PTS officer around the same time.

Regardless the process, PTS staffing is a serious issue. There are no clerical support staff assigned to the office. As a result, one of the professional staff must remain in the office while other staff are conducting interviews and assessments at the jail facilities. Since only 60% of eligible defendants are currently being assessed, it is important that all professional staff be available to conduct assessments. Professional staff handling clerical duties such as answering telephones, responding to correspondence, and entering data diminishes their value to the municipal court.

Data entry is also an area of concern, with program participant data entered into an Excel spreadsheet. While the spreadsheet meets the current office needs, it requires administrative time from a pretrial officer and is certainly not adequate for the long term needs of the office. A more robust and modern database program should be in place to provide PTS with better reports and the ability to more easily analyze the effectiveness of the operation. The Office of Probation & Pretrial Services is planning the implementation of the Ohio Community Supervision System. Efforts should be made to ensure system configuration supports the workflow and reporting needs of the PTS department.

Changes in the utilization of defendant pretrial release assessments holds the potential to yield positive results in the FCMC. It is important that the assessment tools are statistically valid and are not solely dependent on subjective analysis. Judges should be provided with current information regarding the results seen in communities using assessment tools. As a group, FCMC judges appear open to considering new pretrial risk assessment tools and while some judges are more receptive to the idea, overall they recognize the challenges they face managing a large court with a cumbersome caseload. Engaging the judges in a dialogue regarding evaluation of risk and the needs of the justice system in Franklin County is a constructive first step.

The judges generally seem comfortable with the current bail bond practices of the court. They see bail bond agents as being effective in ensuring that defendants appear as scheduled. They expressed mixed opinions regarding the reports and recommendations they receive from PTS. Most judges like receiving information on defendants but several expressed doubts about relying on that information to set low bonds.

## Franklin County Criminal Justice Data Analysis

To support the Franklin County Criminal Justice Planning Board in their efforts to make fact-based policy decisions, P3 obtained jail booking records from the Franklin County Sheriff's Office (FCSO) and criminal court records from the Franklin County Municipal Clerk of Courts Office (FCMCoC). Common pleas criminal case court data were also requested of the Franklin County Clerk of Courts (FCCoC), but we were not able to obtain these data in time to incorporate into our report. P3 sincerely appreciates the efforts of all three agencies to comprehensively and efficiently provide the information requested. P3 is especially appreciative for the FCMCoC's careful consultation on the nature of their data to ensure proper interpretation and accurate analysis.

### Jail Analysis

P3 analyzed 14,595 jail booking records with booking dates between January 27, 2018 and July 19, 2018. In addition to the booking data, FCSO provided data related to court cases, charges, and court events to complete our analysis at the booking level. The goal of our analysis was to quantify the total and average number of days each booking spent prior to disposition of a corresponding court case versus post case disposition, and to extrapolate the potential effect of bail policy decisions on average daily population (ADP). Due to the lack of normalization of common data attributes across county systems, and other data availability issues, P3 was not able to join court case data to the jail files to make this determination on a booking by booking basis. Instead, P3 used FCSO's court event data to estimate court disposition milestones for purposes of attributing days to pre vs. post disposition. While this method produces directionally accurate results, it can be imprecise in the counting of pre vs post disposition days on an individual booking basis. Further, as it relates to the potential to save predisposition jail days, this analysis does not take into consideration factors that impact whether a defendant is released, such as violent criminal

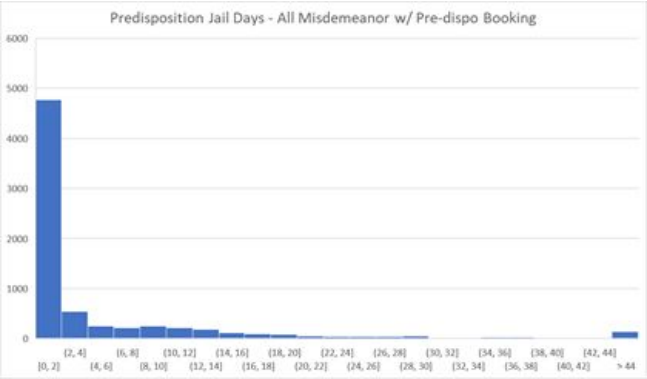
history, history of failure to appear, or if another case requires incarceration. This data is more useful for understanding the categorical magnitude of the opportunity for savings rather than a prescriptive measure of predicted outcome based on policy inputs. More details on the jail analysis methodology can be found in the appendix.

11,555 (79%) bookings had at least one associated predisposition court event, with a total of 148.5 thousand inmate-days attributed to predisposition status, representing 69% of the total inmate-days spent in the jail during the period analyzed. Said another way, sixty nine percent of the county's average daily jail population was awaiting disposition of their court case, at a total estimated cost of $12.2M ($82/day) for the 172 calendar days analyzed, which extrapolates to approximately $25.8M annually. Table 1 below highlights jail population drivers as it relates to the opportunity to safely reduce Franklin County's jail population, with the potential to improve social outcomes, while saving considerable expense.

**Table 1**

| Average Predisposition Days - Inmates w/ Pre-disposition Booking | | | | | | |
|---|---|---|---|---|---|---|
| | Non-violent Charges | | Violent Charges | | Total | |
| | Inmates | Average Days | Inmates | Average Days | Total Inmates | Total Avg Days |
| Felony | 3,324 | 18.6 | 999 | 44.2 | 4,323 | 24.5 |
| Misdemeanor/Traffic | 5,288 | 5.5 | 1,916 | 7.1 | 7,204 | 5.9 |
| Total | | | | | 11,527 | 12.9 |

While the misdemeanor population accounted for over 60% of the predisposition bookings, they accounted for less than 30% of the total predisposition days spent in jail, with an average of 5.9 predisposition days per booking compared to 24.5 in the felony accused population. Further examination of the data revealed a significant amount of variance and skew in the data, especially in the misdemeanor bookings, per the histogram to the left. Nearly two thirds of these bookings had predisposition days of two days or less.



P3 endeavored to understand the potential impact on ADP of expanding the municipal court's pretrial services team's (PTS) scope across the entire misdemeanor population. To do this, we collected data from PTS on the misdemeanor bookings assessed and interviewed during the same time period, per Table 2. We matched 1,290 assessment records to misdemeanor booking records eligible for a pre-arraignment interview and risk assessment. Due to staffing and/or inmate access issues, the team was able to actually interview 813, or 63% of eligible. PTS provided a criminal and order-in warrant history for the remaining 477 defendants they were not able to interview. No information was provided to the court for the 5,914 misdemeanor bookings ineligible for assessment. Table 2 describes the bookings and predisposition jail days for the assessed and unassessed misdemeanor jail population.

**Table 2**

| | Current State PTS | Total Bookings | Average Pre-disposition Jail Days | Distribution | Total Jail Days |
|---|---|---|---|---|---|
| Actual | Total Misdemeanor Bookings | 7,204 | 5.9 | | 42,416 |
| | Total Misdemeanor Bookings Assessed | 1,290 | 6.4 | | 8,318 |
| | Total Misdemeanor Bookings Interviewed | 813 | 5.0 | | 4,073 |
| | High Risk Misdemeanor | 169 | 8.7 | 20.8% | 1,478 |
| | Moderate Risk Misdemeanor | 381 | 5.2 | 46.9% | 1,991 |
| | Low Risk Misdemeanor | 263 | 2.3 | 32.3% | 604 |
| | No Interview - Crim/Order History Only | 477 | 8.9 | | 4,245 |
| | Un-assessed Misdemeanor Bookings | 5,914 | 5.8 | | 34,098 |

P3 wanted to understand the impact of expanding PTS' capacity to cover 100% of the eligible population. We have no way of confirming whether the un-interviewed eligible population would follow the same risk distribution, but if we assume that they do, per Table 3, we estimate the county would save an average of 3.9 predisposition days, yielding total savings of 10.8 ADP. However, P3 also cannot project judicial concurrence with PTS recommendations, which currently stands at 58% of the interviewed population.

**Table 3**

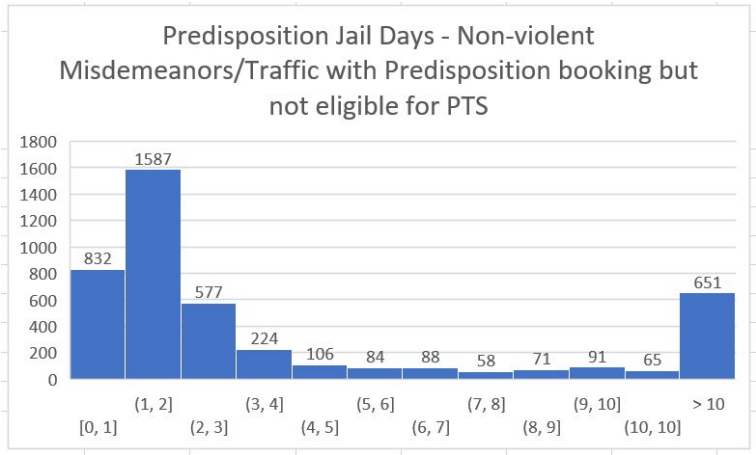
| | Expand PTS to Interview all Eligible | Total Bookings | Average Pre-disposition Jail Days | Total Jail Days |
|---|---|---|---|---|
| Projected Best Case | High Risk Misdemeanor | 99 | 8.7 | 867 |
| | Moderate Risk Misdemeanor | 224 | 5.2 | 1,168 |
| | Low Risk Misdemeanor | 154 | 2.3 | 354 |
| | Total Projected Interviewed Un-assessed | 477 | 5.0 | 2,390 |
| | Potential Days Saved | 477 | 3.9 | 1,855 |
| | Calendar Days Analyzed | | | 172 |
| | Potential Days Saved/Calendar Day | | | 10.8 |

PTS recommendation guidelines call for release on recognizance for low-risk misdemeanor offenders and release on recognizance with supervision, and potentially conditions, for the moderate-risk category. P3 values the role of judicial discretion in the setting of bail and does not advocate, practically, for 100% concurrence with PTS recommendations. However, for sake of illustration, we present a scenario in Table 4, which demonstrates potential ADP savings of 25.8 if the county expanded PTS' capacity to interview 100% of the eligible population and achieved 100% concurrence with their recommendations in the moderate and low risk categories, releasing all eligible misdemeanors at arraignment (assuming arraignments occur one to two days from booking). When it comes to saving jail capacity in the misdemeanor population, the opportunity to improve judicial concurrence should be seen as at least equal to the opportunity to expand PTS' capacity. That said, there is likely an equal or greater opportunity to save jail days in the 5,914 predisposition bookings deemed ineligible for risk assessment by the PTS team.

**Table 4**

| | Expand PTS to Interview all Eligible & 100% Judicial Concurrence | Total Bookings | Average Pre-disposition Jail Days | Total Jail Days |
|---|---|---|---|---|
| Projected Best Case | High Risk Misdemeanor | 268 | 8.7 | 2,345 |
| | Moderate Risk Misdemeanor | 605 | 1.5 | 907 |
| | Low Risk Misdemeanor | 417 | 1.5 | 626 |
| | Total Projected Interviewed Un-assessed | 1,290 | 3.0 | 3,878 |
| | Potential Days Saved | 1,290 | 3.4 | 4,440 |
| | Calendar Days Analyzed | | | 172 |
| | Potential Days Saved/Calendar Day | | | 25.8 |

In addition to all post disposition bookings, FCMC PTS protocols describe minor misdemeanors and traffic cases as being out of scope for eligibility. Lacking charge degree in the data provided by FCSO, P3 is unable to verify with certainty the nature of charges in this population. Probing deeper, P3 found 4,434 of these bookings carried only non-violent charges. Per the histogram below, 832 of these did not spend a full day in jail (booking date=release date), leading P3 to believe these misdemeanor offenders bailed out on the bond schedule. Most of the remaining bookings spent less than three days in jail, matching our anecdotal understanding of the arraignment



process for traffic and minor misdemeanors, where we observed many of these cases being plead in exchange for release. However, nearly 70% of these bookings were classified as a warrant arrest, which could include order in warrants, in addition to a wide variety of other warrants, complicating our understanding of the opportunity to reduce jail days within this population. There is a sense that many of these bookings are in fact brought in on traffic/minor misdemeanor charges, but with an outstanding order in warrant on an active case, which cannot be validated with the data P3 obtained.

Given the constraints of current state processes and risk assessment tools, FCMC PTS is not in a position to scale up to handle these 5,914 additional bookings over a 172 calendar day period. However, modern risk assessment tools can reliably predict pretrial outcomes without the use of a time-consuming interview and validation process, and potentially with automation that would bypass the need for a manual search of criminal and order in history, allowing for universal assessment of misdemeanor bookings at booking, rather than the following morning prior to arraignment. If these currently ineligible bookings follow the same risk profile distribution as the eligible population, Franklin County could potentially save .8 days per booking (5.0 vs. 5.8), yielding ADP savings of approximately 27. It should be noted that if the predominant attribute excluding these bookings from assessment is an order in warrant on an active case, the risk profile may skew higher, and judges may be less likely to concur with PTS on low and moderate risk cases, but for the sake of illustration, if we assume 100% judicial concurrence with low and moderate risk recommendations in this population, the potential savings jumps to nearly 95 ADP, per Table 5. Again, this analysis cannot conclude the precise result of policy decision inputs, but the planning board should consider the magnitude of opportunity the data suggests. And while the opportunity to save predisposition jail days in the misdemeanor accused population is significant, it is not as great as the opportunity we found in the non-violent felony accused population.

**Table 5**

| | Risk Screen 100% of Misdemeanors & 100% Judicial Concurrence | Total Bookings | Average Pre-disposition Jail Days | Total Jail Days |
|---|---|---|---|---|
| Projected Best Case | High Risk Misdemeanor | 1,229 | 8.7 | 10,751 |
| | Moderate Risk Misdemeanor | 2,772 | 1.5 | 4,157 |
| | Low Risk Misdemeanor | 1,913 | 1.5 | 2,870 |
| | Total Projected | 5,914 | 3.0 | 17,778 |
| | Potential Days Saved | 5,914 | 2.8 | 16,320 |
| | Calendar Days Analyzed | | | 172 |
| | Potential Days Saved/Calendar Day | | | 94.9 |

As always, the decision to release any accused should carefully consider the likelihood of appearance and any potential danger to the community, and this is especially true with the felony accused population where the stakes are often much higher. With that in mind, P3 advocates the further examination of the non-violent felony accused population where, per Table 1, the estimated average predisposition days per booking is 18.6, yielding a total of over sixty one thousand inmate days during the period analyzed.

As mentioned earlier, without a risk assessment prior to arraignment, FCMC judges anecdotally are reluctant to release or set attainable financial bonds for this population. This reluctance leaves many defendants in jail until the common pleas pretrial services team attempts an interview/assessment after indictment and prior to the defendant's felony arraignment in front of a common pleas magistrate. By aspirationally cutting the average predisposition days for non-violent felony bookings in half to 9.3, the county could save nearly 180 ADP. Again, P3 cannot conclusively predict precise outcomes from specific policy decisions, but anecdotally, there appears to be significant opportunity.

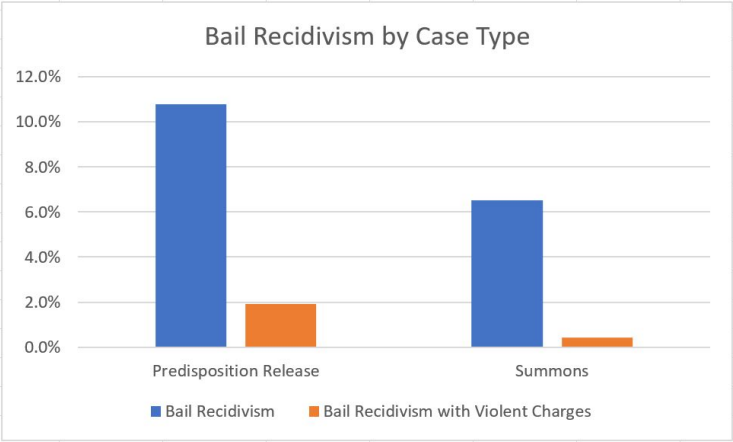
As with any large urban jurisdiction, Franklin County likely faces a large number of felony drug possession cases. Suspects in these cases are arrested, arraigned in the FCMC, and often detained under a high bond until their case is presented to a grand jury. If an analysis of the suspected controlled substance is not finalized before the case must be presented, the case must be dismissed. If the analysis confirms at a later date that the evidence is a controlled substance, the case may then be presented for indictment. This process results in drug possession suspects sitting in jail for up to 10 days before being released. As an alternative, some jurisdictions choose to release these suspects after 48 hours. After the drug analysis confirms a controlled substance, a direct indictment is obtained and a summons is issued for the defendant to appear in common pleas court for arraignment. Such an approach in Franklin County would undoubtedly save a significant number of jail days, which P3 was unable to conclusively quantify with the data we obtained.

## FCMC Court Case Analysis

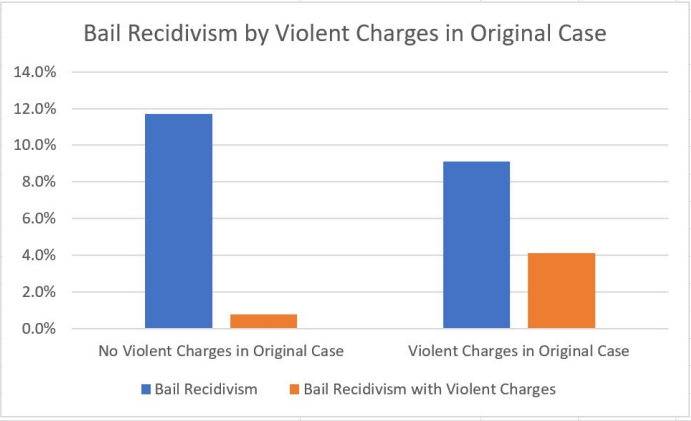
It is commonly understood that the purpose of bail is to protect the public safety (measured by bail recidivism) and ensure appearance (measured by failure to appear (FTA)), while balancing the accused's presumption of innocence and liberty, pending outcome of their case. P3 examined 11,233 criminal case records from the FCMCoC, filed between 1/27/2018 and 6/30/2018 to understand the effectiveness of the court's bail practices. P3's bail recidivism metric measures the prevalence of cases with at least one new criminal case opened against the same defendant, prior to the disposition of the original case. P3's FTA metric measures prevalence of cases with at least one failure to appear warrant issued prior to disposition of the case, regardless of whether the warrant was issued at or after arraignment. To allow for some aging in the analysis, P3 removed cases less than 30 days old if they had not reached a disposition. More details on the methodology of these analyses can be found in the appendix.

Bail recidivism and failure to appear metrics were calculated for FCMCoC criminal cases for two scenarios, which included cases where the defendant was incarcerated and bailed out of jail at some point prior to disposition, or "Predisposition Release", and a "Summons" category, where no jail record could be matched to the case based on the data available to us.

Mitigating risk to the public safety is the primary concern when it comes to the purpose of bail. P3 found 10.8% of criminal cases would have a new case filed prior to disposition of the original case, when the defendant was released from jail prior to disposition. In summons cases, where no jail record could be matched to the case, only 6.5% of cases would experience a recidivism event.

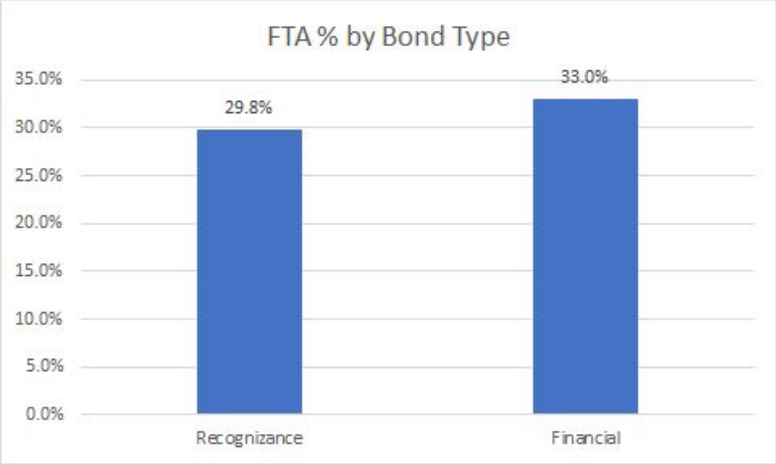


Interestingly, the data revealed a small but significant difference in recidivism across race.




In the predisposition release category, 12.3% of white defendants would have a recidivism event, versus 9.7% of black defendants, a difference which is statistically significant (p = .002). A similar difference was found in the summons category, where 7.4% of whites would have a recidivism event versus 5.8% of blacks. While this study does not control for risk, the results further underscore the need for understanding and mitigating the racial bias inherent in validated risk assessment tools that use prior criminal history, which will tend to produce higher risk scores for people of color.

Perhaps equally important, the data suggest 17.7% of recidivism events within the predisposition release population and 6.6% in the summons category will include violent charges, for an overall violent recidivism rate of 1.9% and .4% respectively. Not surprisingly, further examination of the violent recidivism events revealed strong correlation between violent charges in the original case and a violent recidivism event within the predisposition release category. Overall recidivism was actually higher in the non-violent group, at 11.7% vs. 9.1% of defendants with violent charges in the original case. However, only 6.4% of those with an original non-violent charge will have a violent re-offense, while 45.4% of violent re-offenders would have violent charges in the new case.

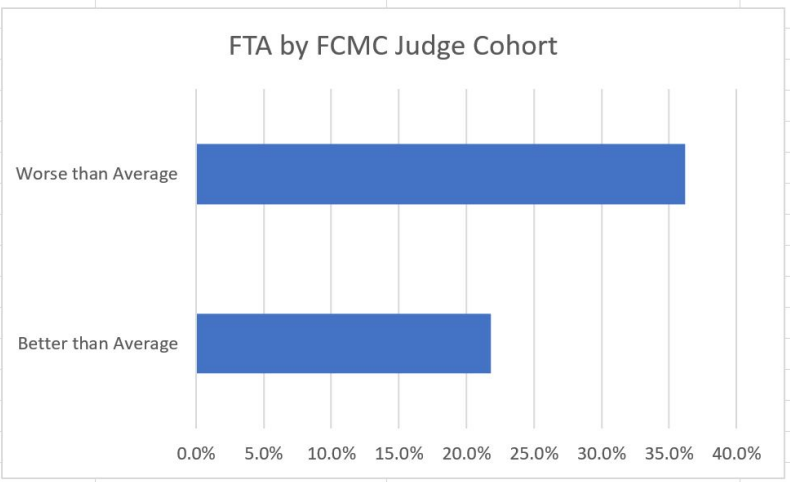



All of the judges of the FCMC P3 spoke with take their responsibility to protect the public safety very seriously, as they also do with ensuring appearance. However, FTA prevalence within both the predisposition release and summons populations was

significantly higher, at 32.3% and 12.8% respectively. Unlike the recidivism numbers, the FTA data revealed no significant differences across race, but there was a small difference when looking at FTA associated with recognizance release versus release on a financial bond within the predisposition release category, per the graph above. The difference of 3.2 percentage points is marginally significant (p=.06), but does not suggest that either form of bond is more effective at ensuring appearance, as it does not control for risk level, among other factors that could be driving the difference.

Differences within the recognizance category were more interesting when comparing the data across FCMC's 15 judges. P3's objective was never to assess individual judicial performance, but judge name was recorded in the bond type field we used for this broader analysis. While it would be unfair to pass individual judgement without a broader understanding of each judge's overall FTA results, it is instructive to know that there was a significant degree of variance in FTA by judge within the recognizance bond type, with FTA ranging from 18.6% (n=129) to 42.6% (n=62).

By grouping FCMC judges into cohorts of those with better than average recognizance FTA (n=627) vs. worse than average (n=525), in the graph below, the variance becomes more clear. P3 also noticed a positive correlation between judges who used recognizance more frequently and more favorable FTA results, although this was not the case with every judge. Three judges who used recognizance bond less than 20 times were not included in this analysis.




No human or quantitative predictive model is perfect when it comes to predicting a failure to appear for court. However, this does not mean FCMC cannot improve FTA rates by understanding the drivers of FTA and deploying interventions that address root cause. Recently, the FCMCoC partnered with the county's criminal justice policy team and an

outside vendor to begin robocalls to defendants immediately prior to their scheduled court date, with plans to roll out a texting program in the near future.

| Reasons for Not Appearing | M | SD |
|---|---|---|
| Had scheduling conflicts. | 2.77 | 1.81 |
| Had work conflicts. | 2.39 | 1.66 |
| Had transportation difficulty. | 2.07 | 1.59 |
| Forgot about the hearing date. | 1.89 | 1.50 |
| Had family conflicts (e.g. childcare) | 1.84 | 1.44 |
| Afraid of what the outcome would be if I went. | 1.72 | 1.20 |

These efforts are commendable and should be worth the investment. A 2011 study of failure to appear rates in certain Nebraska counties, commissioned by the National Institute of Justice, estimated the labor cost of issuing and serving a failure to appear warrant at almost $70[26], not including jail costs. The authors of the study proved the effectiveness of pre-appearance reminders, but they also identified the drivers of FTA based on a survey of those who did not appear, who rated the importance of reasons for non-appearance. Per the table above, "Forgot about the hearing date" ranked fourth, behind practical issues, like scheduling conflicts and transportation difficulties.

The presumption, especially among the misdemeanor population, that these no shows are fugitives from justice likely does not align with the reality that life got in the way of best intentions. P3 has no similar data to validate root cause for FTA in the Franklin County population, but we did notice significant differences in FTA by jurisdiction. Specifically, P3 found elevated FTA rates in outer ring suburbs to the north and east of Columbus. While the sample size in these jurisdictions is somewhat small, the difference compared to both Columbus and "Other" jurisdictions was still statistically significant in the Predisposition Release category. Only the comparison to "Other" jurisdictions was significant in the Summons category.

[26] Bornstein, Tomkins, Neeley, *Reducing Courts' Failure to Appear Rate: A Procedural Justice Approach*, 2011

| | Predisposition Release | | | Summons | | |
|---|---|---|---|---|---|---|
| | FTA | Cases | FTA % | FTA | Cases | FTA % |
| Columbus | 755 | 2118 | 35.6% | 391 | 2835 | 13.8% |
| North/East Suburbs* | 101 | 239 | 42.3% | 37 | 214 | 17.3% |
| Other | 324 | 1298 | 25.0% | 161 | 1569 | 10.3% |

*Dublin, Worthington, Westerville, Gahanna, Reynoldsburg

Improving appearance rates in Franklin County would not only save costs associated with issuing and serving warrants but should also have a latent impact on the jail population. Over 60% of the jail bookings analyzed by P3 were categorized as "warrant arrest". Certainly not all of these were associated with order-in warrants from the FCMC, but it is reasonable to assume that addressing the root cause of failure to appear in Franklin County will have a positive and significant effect on misdemeanor jail bookings.

## State & National Trends

Addressing pretrial challenges has culminated in national and statewide efforts to tailor pretrial practices effectively and practically, with the additional hope of decreasing jail populations. Following attempts in 2016 and 2017, federal legislation was again introduced in July 2018 to remove bail from the federal criminal justice system and provide incentives for states to follow suit. While federal bills might have an uphill battle, it's a strong signal that the nation is moving towards evidence-based pretrial solutions. On August 28, 2018 California signed into law the elimination of bail and limits on detention for non-violent offenders to 12 hours. The bill also introduces pretrial risk assessment for felony offenders, determining empirically if a defendant should be released or detained.[27] Those individuals who are determined to be high-risk as well as those who have committed certain sex crimes, violent felonies, were arrested for driving under the influence for the third time in 10 years, those already under supervision of the court, and those who have violated any conditions of pretrial release in the previous five years will remain in custody until arraignment. The Republican legislature and the governor and Democrats alike are cheering the bill's passing while acknowledging the changes that will need to be made as well as the American Civil Liberties Union's (ACLU) non-support of the bill. After initially

[27] https://www.sacbee.com/news/politics-government/capitol-alert/article217461380.html

offering its support, the ACLU changed their position to oppose the legislation. Their concern is that the bill does not do enough to ensure "sufficient due process nor adequately protect against racial biases and disparities that permeate our justice system."[28] Regardless of remaining concerns, the law takes effect October 2019, and joins the rank of those seeking reform.

Following the work the Ohio Sentencing Commission began in 2016[29], HB 439 was introduced in the 132nd Ohio General Assembly earlier this year.[30] The bail reform bill includes the elimination of the current bail schedule and introduces the use of a risk assessment tool to move away from charge-based bail and instead support public safety and defendant appearance. Additionally, the bill includes a data collection component to provide the information necessary to assess the effectiveness of bail practices and pretrial services in the state. The bill is facing a daunting uphill climb over concerns from legislators regarding the cost of implementation and the availability of data collection resources while social justice advocates believe the bill doesn't go far enough. Concurrently, the Ohio Supreme Court is pursuing amendment to Rule of Criminal Procedure 46. In its current state Criminal Rule 46 stipulates conditions of bail and bond schedule. The amendment proposal requires courts to utilize the least restrictive bond conditions and monetary bail to secure a defendant's appearance. Additionally, it would require the use of a risk assessment tool that does not cause unreasonable delay in bail decisions while using a bond schedule solely to secure release before initial appearance and may not be considered by a trial court during a bond hearing. While the future of HB 439 and Rule of Criminal Procedure 46 is still unknown, counties have picked up where the state has started, including Franklin County, which implemented a Pretrial Services Team (PTS) as part of its FCMC Department of Probation Services in 2015.

Other jurisdictions nationwide are targeting pretrial processes through the use of pretrial risk assessments. These tools are statistically validated and used to assess a defendant's probability of negative pretrial outcomes, failure to appear (FTA) and new criminal activity (NCA), based on a set of factors shown to predict these outcomes. Risk assessment tools

[28] https://www.aclusocal.org/en/press-releases/aclu-california-changes-position-oppose-bail-reform-legislation
[29]https://www.supremecourt.ohio.gov/Boards/Sentencing/resources/commReports/bailPretrialSvcsAdd.pdf
[30] https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-439

produce individual scores that correlate with risk of negative outcomes and pretrial recommendations that include release on own recognizance, secured bond and detainment, as well as influencing supervision requirements if released. In practice, these tools should serve as a starting place for judicial decisions for individual defendants while supporting effective pretrial processes, equity in pretrial decisions, and relief for overcrowded jails.

Interviewing six jurisdictions from around the country provided P3 insights into specific processes, challenges, and successes of utilizing pretrial risk assessment tools. Interviews included email correspondence with the Executive Director of the Philadelphia, PA pretrial services, and phone calls with the executive directors of Lucas County, OH, Summit County, OH, Washington, D.C., New Jersey, and Mecklenburg County, NC pretrial services. Interviews often lasted over an hour and provided important and in-depth insights into the everyday operations of pretrial services.

While the motivations and goals of utilizing these tools were roughly the same between jurisdictions the specific tools and processes used were as unique as the individual using them; tailoring and validating tools to support their specific population. Pretrial tools range from home grown and validated, like the proprietary tool utilized in Washington D.C., to the widely used Public Safety Assessment (PSA) from the Laura and John Arnold Foundation (LJAF).[31] Some tools utilize defendant interviews, while others rely only on auto-populated reports of criminal history and current charges. The number of risk factors in a tool can range from seven to seventy. The range of tools are expansive as are their minute differences, but one is dominating the market.

One of the most widely used tools is the LJAF Public Safety Assessment. The PSA is a nine-factor risk assessment tool that twenty-four jurisdictions are utilizing nationwide. The tool is publicly available and has been validated with and without a defendant interview and has the capability of being automated. The LJAF provides expansive resources and technical assistance including evaluating the readiness to implement a risk assessment tool, the validation of the tool, and measuring outcomes. However, other jurisdictions have seen success with other tools like D.C.'s 70-factor risk assessment tool that was born out of

[31] https://www.psapretrial.org

and still includes the use of interviews. The Virginia tool served as a starting place for many states to build on and includes eight risk factors as well as an interview. While Philadelphia currently uses the PSA, they are developing a homegrown tool based on machine learning and automation with plans to implement in 2019. The Ohio Risk Assessment System (ORAS) not only includes pretrial risk assessment but also utilizes a tool specifically for those who commit misdemeanors.[32] Tools vary widely and are numerous in number and in targeted populations, as the table below details.

## Pretrial Tools & Processes of Interviewed Counties

| Jurisdiction | Tool | Population assessed[33] | Interview | Automated | Time per Defendant |
|---|---|---|---|---|---|
| **New Jersey** | PSA | All booked defendants | Yes; does not affect risk score | Yes | 10 minutes |
| **Kentucky[34]** | PSA | All booked defendants | Yes; does not affect risk score | No | n/a |
| **Mecklenburg County, NC** | PSA | All booked defendants | No | No | 20-25 minutes |
| **Summit County, OH** | Modified Virginia Tool | Felony Defendants | Yes; felony defendants; does affect risk score | No | 60 minutes |
| **Lucas County, OH** | PSA | All booked defendants | Yes; felony defendants; does not affect risk score | No | 15-60 minutes |
| **Philadelphia, PA** | Linear Regression; transition to | All arrested defendants | Yes | Yes | 10-15 minutes |

[32]https://services.dps.ohio.gov/OCCS/Pages/Public/Reports/ORAS%20MAT%20report%20%20occs%20version.pdf

[33] No jurisdiction assesses individuals booked on a bench warrant or for probation violations

[34] Kentucky was not interviewed due to the transparent and expansive information provided by the state on their website

| | | | | | |
|---|---|---|---|---|---|
| | Machine Learning | | | | |
| **Washington, DC** | Home-grown, proprietary | All arrested defendants | Yes; does affect risk score | No | 15-60 minutes |

Regardless of the tool used and how each jurisdiction implements, key concerns should involve addressing equity across demographics and the failure of tools to accurately predict risk for domestic violence offenders. Recent studies have indicated that risk assessments can have a disparate impact on people of color. A 2018 study conducted on Kentucky's[35] use of the PSA found that while the tool did not produce disparate differences across the board, it still produced disparate results based on race. The prediction for new criminal activity and new violent crimes did not have a differential prediction (differences in the prediction of risk) between white and black defendants. However, differential prediction was found in predicting failure to appear with black defendants – identical scores do not indicate the same outcome expectations for both white and black defendants. Additionally, it has long been found that being a minority and having a criminal history are closely related. This relationship can lead to inherent bias if used in a risk assessment tool.[36] An analysis of Broward County, Florida found that 23.5% of white defendants were labeled higher risk and didn't reoffend, while in comparison 44.9% of black defendants who were labeled high risk had no re-offense.[37] In response to these concerns, jurisdictions are taking deliberate steps to identify and eradicate any disparity within their processes.

*Broward County, Florida's analysis further underscores the need to mitigate the racial bias inherent in any risk assessment tool that uses criminal history to predict the risk of negative pretrial outcomes.*

Philadelphia has made assessing bias "a top priority for our team [...] ensuring it is a main part of our discussions moving forward."[38] Mecklenburg County, North Carolina's most recent validation found accurate predictions of risk across races,

[35] DeMichele, M. (2018) The Public Safety Assessment: A Re-Validation and Assessment of Predictive Utility and Differential Prediction by Race and Gender in Kentucky.
[36] Skeem, J., Lowenkamp, C. (2016). Risk, Race and Recidivism: Predictive Bias and Disparate Impact. *Criminology, Volume 54, Issue 4.*
[37] https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing
[38] Direct quote from email-based interview

and Washington D.C. is currently conducting validation specifically to identify and address any racial bias. And lastly, New Jersey, knowing that people of color are arrested at a higher rate, is attempting to target bias by not counting the number of previous arrests as a part of the risk assessment score. Importantly, the state admits that as long as there is bias in earlier stages of the criminal justice process there will be bias in the criminal data analyzed and used to validate risk assessment tools.

Risk assessment tools have not been found to be predictive of future violent offenses, especially as it relates to domestic violence offenses.[39] This finding has led to concerns regarding public safety when accused individuals are released pretrial. This was most harrowingly displayed in Utah when a man charged with domestic violence was released after posting bail and flew a plane into his home with his wife and child inside, but only killing himself.[40] Implementation of any tool must include plans to address these discrepancies in prediction and suggests the need for differentiated tools for violent offenses. For instance, while a New Jersey statute called for a general approach to risk assessment, the Attorney General later produced a directive for law enforcement to utilize lethality tests before filing charges. Lethality tests include interviewing the victim of a violent crime, assessing the seriousness of the situation, and ultimately predicts the risk for future violent offenses.[41] The state is also exploring the integration of domestic violence related questions into the existing validated tool. Addressing these concerns is necessary to create an effective risk assessment tool and ensure specific jurisdiction validation.

Even with shared concerns, differences in implementation of pretrial risk assessment can stem from basic structure and existing processes. For instance, some jurisdictions like Mecklenburg County, North Carolina, provide risk assessments to magistrates who make the first bail decisions, while others, like Lucas County, Ohio, deliver completed risk assessments to the judge every morning. Some states, like New Jersey, have implemented statewide pretrial services, while Summit County, Ohio only operates pretrial services for two out of three municipal courts and contracts with an outside non-profit to conduct supervisory responsibilities. Population differences also create an impact on the process of

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[39] Sponsler-Garcia, C. (2015). Accounting for Risk and Danger Practice Checklists: Coordinating Risk Assessment in Domestic Violence Cases. *The Battered Women's Justice Project*.
[40] https://www.cnn.com/2018/08/13/us/utah-plane-crash/index.html
[41] https://www.ncjrs.gov/pdffiles1/nij/grants/247456.pdf

assessing defendants, with Washington D.C. who conducts and oversees 17,000 defendant assessments a year compared to Summit County's 4,000 per year. Other differences in implementation can stem from the tools themselves, and the priorities of each jurisdiction.

A key difference in current pretrial risk assessment implementation is in the decision to use or not use an interview as a part of the tool. Mecklenburg County, North Carolina decided against using defendant interviews after the PSA risk assessment tool was validated without an interview to be just as predictive of negative pretrial outcomes as an interview-based process.[42] Not using an interview made the process as efficient as possible, preventing cumbersome transportation of defendants from jail to pretrial services, and also fulfilled the preferences of local defense attorneys and prosecutors. In contrast, Lucas County, Ohio chose to add an interview to the PSA for accused felons in response to judicial feedback and preference. Judges felt most confident in their pretrial decisions if the risk assessment tool maintained more in-depth defendant information.

For those who use interviews, pretrial processing varies in the population interviewed. Washington, D.C. interviews every defendant booked into jail regardless of the offense charged while Lucas County uses what is best described as a hybrid interview-based approach. The county conducts a risk assessment on every defendant booked into a pretrial facility but only conducts interviews for felony offenders. However, not all jurisdictions that utilize interviews include collected information in the risk assessment score. Summit County, Ohio factors interview information, such as number of addresses in a year, gainful employment, and drug abuse history into a defendant's score. In contrast, Lucas County conducts an interview purely to provide the judge with additional background but does not factor the information into the risk score.

The practicality of using defendant interviews depends entirely on the jurisdiction, and where pretrial services is located. Pretrial services offices that are located in their local jail face fewer barriers to accessing defendants for interviews, while those who are located off-site face a more time-consuming process. The use of an interview can also significantly affect the time it takes for a pretrial services officer to complete a risk assessment tool; ranging from 15 minutes per defendant without an interview, to upwards of 60 minutes

[42] https://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_no-interview_FNL.pdf

with an interview. Some jurisdictions, like Kentucky, interview a defendant at booking before they are assigned a cell. Others, like Washington, D.C., interview a defendant after they are given a cell, sometimes waking defendants up. Additionally, while some pretrial offices are operated 24/7, others are only open Monday-Friday from 5:30am to 5:30pm. These differences in conducting interviews can greatly impact the amount of time needed for each defendant, and the number of pretrial officers necessary to support efficient pretrial processes. But the greatest influence on efficiency is the use of automation in the tool.

Automation in pretrial risk assessment does not have one definition or commonly accepted best practice. Definitions can range from the electronic storing of data that must still be manually collected, to a case management system that electronically delivers each defendant's record and risk assessment to all courts in the jurisdiction and the judge making pretrial decisions. At its most advanced, automation is considered to be a combination of an electronic case management system that will auto-populate the risk assessment tool with the necessary information and is immediately available to the judge or magistrate. While automation is heralded as the next step in pretrial risk assessment to save human capital and redirect vital resources to pretrial supervision, there are multiple challenges to achieving it.

One of the largest challenges to automation is the availability of data. Automation is possible through a shared system of information that allows a statewide, or even jurisdiction-wide, search for criminal history. However, without a central data warehouse, automation comes to a screeching halt and requires manual searches in multiple databases. The Ohio Sentencing Commission described criminal justice data in Ohio as "disparate, mismatched and complex,"[43] and further found that very few counties collect data on bail and pretrial services. Highlighting this issue was Summit County, Ohio. When choosing a risk assessment tool, the county opted to modify the existing Virginia tool because they did not have necessary data to accurately count failure to appear, an included factor in the original tool. The second challenge is a level of distrust in automation. Even with a central database, not all jurisdictions and criminal justice agencies enter information uniformly or according to the same process. These variances in data entry are difficult to

[43] See note 16

account for in data coding, and some are concerned that the automation of risk assessment would miss defendant information and would require a manual check. Lastly, the possibility of automation will depend on the resources available to pursue database creation and management, as well as the willingness of other jurisdictions to buy into the same system. Even with these challenges, one jurisdiction has successfully implemented full automation.

New Jersey is the only jurisdiction utilizing pretrial risk assessment that has fully implemented automation. All databases in the state feed into one another that allows a central mainframe to pull all defendant information when an assessment is run. After a defendant is booked into a pretrial facility they are entered into the case management system, and a pretrial officer opens the file and merely hits a "Run PSA" link in the system. If data are 100% accurate with no data flags raised a risk assessment can take under a second to return the score. In the rare occasion there is a problem identified with the data a manual check can take between ten and thirty minutes. In response to one of the key concerns raised, New Jersey's databases are able to differentiate between previous defendant warrants that are included in calculating risk assessment scores, and those that are not. Many jurisdictions are attempting to fully automate and are looking to New Jersey for guidance forward.

Outside of specific tools, jurisdictions can vary in how and when they use supervision for individuals released pretrial. As mentioned earlier, Summit County uniquely sends all individuals to be supervised by a third-party non-profit. This allows the county to maintain a smaller staff and let an entity with, among others, treatment, employment, and educational resources support a defendant. Jurisdictions also vary in how they structure supervision efforts, and who is recommended for each. Lucas County created a supervision grid to determine the level and stipulations of supervision according to a defendant's risk, charged offense, and specific needs. Below is the New Jersey pretrial monitoring framework.[44] Washington, D.C. separates pretrial supervision into three categories; general, high risk, and special populations. The jurisdiction not only attempts to minimize FTA and NCA but seeks to connect defendants to mental health and substance

[44] https://www.njcourts.gov/courts/assets/criminal/decmakframwork.pdf?cacheID=ZQXrVAh

abuse treatment.[45]

Table 1. Pretrial Monitoring Level Contacts and Conditions Monitoring

| Pretrial Monitoring Level | Phone Contact | Face to Face Contact | Conditions Monitoring |
|---|---|---|---|
| PML 1 | 1 per month | None | Yes |
| PML 2 | 1 per month | 1 per month | Yes |
| PML 3 | 1 every other week | 1 every other week | Yes |
| PML 3 + EM/HD | 1 every other week | 1 every other week | Yes |

One of the most important aspects of evaluating pretrial risk assessment is judicial concurrence with pretrial suggestions based on the risk assessment score; released on own recognizance, released on secured bond, and not recommended for release. Judicial discretion is a cornerstone of the criminal justice system and risk assessment tools are meant to serve that discretion by providing an empirically-based, statistically-validated baseline. Concurrence rates can indicate the level of trust judges have in the risk assessment tool and allow for targeted efforts to address the areas or offenses where judges are most frequently deviating from the recommended pretrial action. For instance, Washington, D.C. set a concurrence target of 70% and in 2017 exceeded the target and by 6%. Summit County, OH does not mandate the use of risk assessment in municipal courts leading to a concurrence rate of 50%, 30% lower than the common pleas court. Lucas County, OH held fewer defendants than were recommended for detainment (51% versus 47.5%) and released more defendants than recommended (17.5% versus 23%). Overall, tracking concurrence allows for narrowly tailoring a risk assessment tool to the community it serves.

Measuring success also includes tracking negative pretrial outcomes; the number of those released who fail to appear and the number of individuals who commit a new crime before their next judicial appearance. Nationally, between 1992 and 2009, failure to appear rates dropped from 25% to 17% while pretrial re-arrest increased from 14% to 16% for released felony defendants.[46] Measuring outcomes allows a jurisdiction to further assess the tool as

[45] https://www.psa.gov/?q=programs/defendent_supervision
[46] https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf

it relates to their population and priorities. Judges in Lucas County, Ohio, noticed that individuals who committed an offense with a weapon were often scoring low in their risk assessment, but had higher rates of re-offense. This knowledge allowed the county to create a stipulation for judicial override of the risk assessment score to reflect the priorities and realities of their community. When first implementing pretrial risk assessment, the county had a 41% failure to appear rate, and a 20% new criminal activity rate.[47] Currently, the county has a 28% failure to appear rate for those released pretrial, and a 10% new criminal activity rate; a 13% and 10% decrease respectively. In contrast Summit County, Ohio has a 6.5% new crime rate and a 10.5% failure to appear rate. However, it is important to note that the county only tracks negative pretrial outcomes for those on supervision. Additionally, tracking these negative outcomes can indicate the need for an updated validation of the tool, as well as reflect the successes of pretrial risk assessment and highlight areas for improvement. Most recently, measuring success has gone beyond negative pretrial outcomes and has allowed analysis at every level in the criminal justice system.

## Measured Outcomes of Interviewed Counties

| Jurisdiction | Number of Pretrial Officers | Concurrence | FTA | New Crime |
|---|---|---|---|---|
| **New Jersey** | 125 (statewide) | 57.4% | n/a | n/a |
| **Kentucky** | 217 (statewide) | n/a | 15% | 10% |
| **Mecklenburg, NC** | 6 | n/a | 7% | 15% |
| **Summit county, Ohio** | 5 | 50% municipal; 80% common pleas | 10.5% (calculated only for those on supervision) | 6.9% (calculated only for those on supervision) |

[47]http://www.arnoldfoundation.org/new-data-pretrial-risk-assessment-tool-works-reduce-crime-increase-court-appearances/

| | | | | |
|---|---|---|---|---|
| **Lucas County, Ohio** | 13 | n/a | 28% | 10% |
| **Philadelphia, PA** | 4 | n/a | n/a | n/a |
| **Washington, DC** | n/a | 76% | 10% | 12% |

Before pretrial risk assessment implementation Mecklenburg, NC was staring down plans for the creation of a new jail. Through targeting pretrial detention, and the reliance on bail the county was able to cancel plans to expand prison beds. In the first year of implementation, New Jersey was able to decrease the jail population by 35% since January 2015.[48] While the state has seen success in pretrial reform, it is important to note that they are facing a funding shortage; spending more on the program then current fees can cover.[49] This year Lucas County saw a 24% reduction in jail population through pretrial efforts. Summit County, Ohio decreased the length of pretrial stay from 60 to 21 days, and Kentucky had only 10% of 320,308 released defendants re-offend before their next judicial hearing. When implemented holistically with buy-in from key stakeholders and a commitment to tracking and measuring outcomes, pretrial risk assessment can begin to refresh a system reckoning with its long fraught challenges.

[48] https://www.cleveland.com/metro/index.ssf/2018/02/new_jersey_claims_bail-reform.html
[49] https://www.nj.com/politics/index.ssf/2018/02/report_finds_nj_bail_reform_is_working_--_but_its.html

## Recommendations

1. **Eliminate the fifteen (15) municipal judge rotation for presiding over arraignment court.** Assign and train magistrates to handle this process in courtrooms 4D and 4C. FCMC judges take their arraignment responsibilities very seriously, but it is difficult to be an expert at something you only do once for a week every few months. Concurrence rates and variance in failure to appear outcomes suggest the court would benefit from a more specialized, consistent approach. Hiring magistrates to handle this duty will ensure consistency around best practices aligned with the Franklin County Criminal Justice Planning Board's objectives and Pretrial Services Team's risk screening procedures, while allowing judges to focus on their dockets.

2. **Provide more information to judges (or magistrates) during arraignment.** In 2018, judges (magistrates) should have a 360-degree view of every defendant appearing before them during arraignment. Give them access to Franklin County criminal histories in real time and/or join JusticeWeb, an Ohio 17-county regional database that tracks criminal histories and case dispositions. Real time access to criminal/order in history would alleviate both the municipal and common pleas pretrial service teams' time-consuming task of preparing arraignment reports. Participation in this database would also bring data warehousing capabilities to normalize information across the jail, both county clerks of court, and both courts' probation departments, improving the accuracy and accessibility of criminal justice outcomes measurement.

3. **Assess the risk of the non-violent felony accused population prior to arraignment in FCMC.** The county's greatest opportunity to safely reduce jail population lies in the accused non-violent felon population. Given the higher stakes, the county should consider carving out one FCMC magistrate to specialize in the intricacies of both the accused felony and violent misdemeanor populations.

Discussions should also begin with the Franklin County Prosecutor's Office and Columbus City Attorney's Office on the detainment of felony drug possession defendants when those charges will inevitably be dismissed for future indictment due to the unavoidable delay in drug testing. Alignment of substance abuse diversion will be critical in this discussion.

4. **Screen 100% of predisposition misdemeanor bookings.** 82% of the jail's misdemeanor bookings (over 5,900) are currently considered out of scope for pretrial risk screening. Modern risk assessment tools could enable jail booking staff to quickly and efficiently assess risk without the need for time consuming interviews and validation procedures.
    - Evaluate risk screening tools that allow for automating the collection of criminal/warrant history and personal information that feed predictive algorithms. The ORAS-PAT tool is not suited to efficiently screen such a large number of bookings. New Jersey produces a risk score in less than 10 seconds; this should be the goal for at least the non-violent misdemeanor population.
    - Evaluate pretrial risk screening procedures in context of jail booking processes concurrent with the launch of the new jail facility in 2020.

5. **Incorporate pre-arraignment risk screening during the booking process.** Continuing to wake up inmates to ask if they would like to participate in a risk screening during an already chaotic early morning routine will maintain a flawed pre-arraignment process and prevent the Franklin County Criminal Justice Planning Board from achieving its pretrial justice goals, especially if it adopts recommendations three and four to significantly expand the scope of pre-arraignment screenings. Screening for both 100% of misdemeanors and non-violent felony defendants, per recommendations three and four, should be processed by jail booking staff in conjunction with mental health assessments already being done.

6. **Sponsor and coordinate an informational session for municipal and common pleas judges on risk assessment tools being implemented nationally and in Ohio.** Any evaluation of screening tools and expansion of eligibility should be guided by a committee of FCMC and FCCPC judges and leaders. Franklin County can facilitate deeper acumen and a dialog on pretrial best practices across both courts by, for example, arranging a site visit by a working group of municipal and common pleas judges to Lucas County, Ohio where an evidence-based risk assessment tool is operational across all bookings.

7. **Continue efforts to reduce failure to appear in the FCMC.** Franklin County is off to a good start implementing robocalls and text reminders to drive appearance rates before the court. The county should continue to design interventions for root cause issues that impact appearance, such as transportation, work schedule, and childcare. Doing so should help reduce the number of warrant arrests processed by the jail.

# Appendix

## Jail Analysis Methodology Summary

P3 received 14,595 jail booking records from the Franklin County Sheriff's Office from the inception of the new jail system (1/27/18) to the date of the data request (7/19/18). Each booking record contained information related to booking date, release date, arrest type, race, gender, and age, among other variables. Records related to jail charges, court cases, and case minutes (court events) were also provided by the jail as separate files with a Booking ID field to join back to the booking level.

P3 used a table of charges considered "violent" in nature, according to Ohio Revised Code, to flag jail bookings with violent charges. P3 used the jail court case data to identify bookings as felony or misdemeanor. For bookings with unknown case type, P3 used the jail's court event data to infer case type; where common pleas court event records were found, booking records were considered felony bookings. Jail bookings with only municipal court event records were considered misdemeanor/traffic in nature.

P3 also used the jail's court events data to establish a case disposition milestone to attribute booking days as either pre or post disposition. This method allowed P3 to understand case status at the booking level, even when multiple cases were associated with a single booking. To do this, P3 used the court event type field to categorize court events as either predisposition (arraignment, trial, etc.) or post disposition (probation violation, sentencing, etc.). The date of the latest occurring predisposition court event was recognized as the inferred case disposition date. If release date occurred prior to inferred disposition or after inferred disposition but without a corresponding post disposition event, the entirety of jail days served in the booking record were considered predisposition. If a post disposition event was associated with the booking record, any days spent in jail past the latest predisposition event were considered post disposition days. Revocation and probation violation hearings regularly occurred both before and after the latest pre-disposition event. If one of these occurred after the latest predisposition event, days served between the latest pre-disposition event and the revocation hearing were credited to post disposition days.

## FTA & Bail Recidivism Analysis Methodology Summary

21,596 charge-level case records were provided by the Franklin County Municipal Clerk of Court (FCMCoC) with a file date greater than or equal to Nov 1, 2017. A table of charges considered "violent" in nature, according to Ohio Revised Code, was joined to charge level case data to flag cases with violent charges. After deduping charges to the case level, 15,814 unique case records were analyzed for prevalence of FTA and bail recidivism. Cases were eventually further refined to match the date parameters of the jail data file.

FCMCoC also provided charge-level bond records related to each case. P3 attempted to identify the bond record most reflective of how bond was set for the case by applying the following rules:

1. Eliminate bond records associated with a post-disposition event (probation violations, etc).

2. Categorize bond records as "Financial" or "Recognizance" using the various codes in the Bond Type field.

    a. If both financial and recognizance bonds are identified for the same case, the financial bond record was retained.

Bond records also contained slate number, which allowed P3 to join jail data to both the bond record and the parent case record. Jail release dates were compared to case disposition dates to categorize each case as "Predisposition Release", "Disposition/Post-disposition Release", or "Summons" for cases with no jail record matched.

FCMCoC also provided warrant data in a separate table with a Case ID field to match to the case file. P3 filtered warrant records to those considered a failure to appear warrant type, according to FCMCoC IT staff. P3 then matched case disposition date to the warrant data to compare against warrant issue date and flag warrant records as either pre or post disposition. Only predisposition warrant records were considered in the failure to appear analysis.