Technical Assistance Report on:
Implementing a Pretrial Services Program
as a Pilot in Concord and the Feasibility
of its Implementation in
Merrimack County, New Hampshire

TECHNICAL ASSISTANCE REPORT

Bureau of Justice Assistance
CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT
A Joint Program of the Bureau of Justice Assistance, U.S. Department of Justice, and
American University School of Public Affairs
Technical Assistance Report on:
Implementing a Pretrial Services Program
as a Pilot in Concord and the Feasibility
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November 1998

Consultants

Pretrial Services Resource Center:

Jolanta Juszkiewicz, Ph.D.
Evie D. Lotze, Ph.D.
CCTAP Technical Assistance Report No. 98-010

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Assignment Data Sheet

Technical Assistance No.: 98-010

Requesting Jurisdiction: Merrimack County, New Hampshire

Requesting Agency: Merrimack County Diversion Center

Requesting Official: Michael Johnson, County Attorney

Local Coordinator: Leigh Freire, Director
Merrimack County Diversion Center

Date of On-Site Study: August 18-20, 1998

Consultant Assigned: Jolanta Juszkiewicz
Evie D. Lotze

CCTAP Staff Coordinator: Shavonne Cassidy

Central Focus of Study: Assistance with determining pretrial services needs in the county.

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Bureau of Justice Assistance Criminal Courts Technical Assistance Project 98-10, Merrimack County, NH
*Provided to client previously and not included in this report.
ATTACHMENTS

* Bail Reform in American, Wayne H. Thomas, Jr. (Excerpt)

* Ten Percent Deposit Bail, D. Alan Henry
  1988 Addendum

* Pretrial Services: A Cost Effective Alternative In the Resolution of Bench Warrants,
  Mohammad A. Chaudhari

* Why Defendants Fail to Appear: An Exploratory Review, Mohammad A. Chaudhari
FOREWORD: REPORT BACKGROUND

Technical Assistance Request and Site Visit

In May 1998, Leigh Freire, Director of the Merrimack Diversion Center, requested on behalf of the County Attorney, Michael Johnson, that the Bureau of Justice Assistance Criminal Courts Technical Assistance Project (CCTAP) at American University provide outside expertise to explore the feasibility of instituting county-wide pretrial services. The first step was to involve examining the implementation of pretrial services in the City of Concord and the Concord District Court, the largest city and district court, respectively, in the County.

In her June 4, 1998 memorandum to the Pretrial Services Resource Center, a CCTAP partner organization, Ms. Freire delineated four goals that implementation of pretrial services would achieve: (1) increasing law enforcement time on the street; (2) enhancing the information provided for bail determination; (3) consistent charging; and (4) decreasing pretrial detainee population. In subsequent conversations, it was agreed that two of the goals — increasing law enforcement time on the street and consistent charging — were beyond the scope of a pretrial services agency and would therefore not be addressed by the technical assistance effort.

In preparation for the August 18-20, 1998 site visit, PSRC staff reviewed the Final Criminal Justice Assessment Report for Merrimack County prepared by the Center for Effective Public Policy in February 1997 and the Final Report: Evaluating the Merrimack County Adult Diversion Program prepared by PSRC, June 1997. Following the site visit additional materials were reviewed, including: New Hampshire Criminal Code, Chapter 597 Bail and Recognizance; District Court Bail Commissioner’s Handbook, 1992 and attached forms; Department of Corrections Intra-Departmental Memorandum re: Bail Statute 497:2 “72 Hour Hold”; Bail Orders and accompanying documents (waiver and plea, bail bond); New Hampshire Department of Corrections Annual Report: For the Year Ending June 30, 1997, and statistics from various agencies, including arrests, jail inmate population, and public defender caseload.

During their visit, Jolanta Juszkiewicz (J.J.) and Evie Lotze of PSRC interviewed all key criminal justice actors and government officials. Following the visit an additional telephone interview was conducted with Tom Edwards of the New Hampshire Administrative Office of the Courts. Appendix A contains the schedule of interviews and Appendix B the list of names of those interviewed.

This report is divided into three parts. The first provides an analysis of the current bail setting process in the county, including anticipated changes. The second highlights considerations for implementing a pretrial services program. The third makes interim recommendations for a pilot pretrial services program in the City of Concord and long-range recommendations for county-wide pretrial services. An overview of the Merrimack County criminal justice system and views on implementing pretrial services in the county are presented in Appendix C.
PART I: AN ANALYSIS OF THE CURRENT BAIL SETTING PROCESS

Before starting a new pretrial program it is important to have a thorough understanding of the way pretrial release/detention decisions are made now. This section describes briefly the bail setting process for a person who is arrested in the jurisdiction of the Concord District Court and one who is arrested in the jurisdiction of the Henniker District Court, the former representing the majority of arrests/cases and the latter representing an outlying (i.e., from the jail and the Superior Court) jurisdiction. Just as important is an awareness of anticipated changes in the jurisdiction that would have an impact on how pretrial decisions are made and consequently the impact on the performance of the new pretrial program. Two changes that are anticipated in the Merrimack County criminal justice system — central booking and integrated automated management information system — are addressed also in this section.

Arrest:
[The arrest procedures do not differ by jurisdiction; the Concord example applies to Henniker.]

When the Concord police arrest a person on a state offense, the person is held in police custody until a bail commissioner is informed of the arrest and makes a bail determination. The Concord Police Department has 10 holding cells. The police run a criminal history check (termed a Triple I check, which consists of checking NCIC, the State criminal record system, and the State motor vehicle record system) of the arrested person and makes that available to the bail commissioner upon request. [According to the Concord City Prosecutor, Scott Murray, the police make the initial bail determination by recommending a certain bail to bail commissioners, who rarely second guess the police.]

Although the state statute allows the police up to 24 hours to contact a bail commissioner, bail commissioners are called within a few hours of arrest. The City of Concord Chief of Police, William Hallacy, said that the jail will not accept any defendants unless a commissioner has been contacted.

Bond Set by Bail Commissioner:
[The bonding procedures conducted by bail commissioners do not differ by jurisdiction; the Concord example applies to Henniker.]

The bail commissioner, who is on-call, will determine over the telephone if the arrested person is eligible for bail. Persons who are arrested on a bench warrant or other capias (e.g., violation of court order, fugitive warrant, federal or other hold, or probation or parole violations) are typically not considered eligible for release by the bail commissioner. According to Robert Tucker, Concord District Court bail commissioner, most of the calls come between 7:00 p.m. and 8:00 a.m. He said that he does not release individuals who are charged with a court default, such as failing to pay a fine, or arrestees who are under the influence of a substance — illicit drugs or alcohol — but rather, waits until they are sober.
The bail commissioner goes to the police station to interview persons who are considered bail eligible. A fee of $20 is paid to the bail commissioner for each face-to-face interview of an arrestee. Bail processing consists of asking the arrestee questions listed on a "Pre-Trial Release Questionnaire," including residence related questions, employment/education-related questions, pending offenses, and criminal history. The arrestee is then asked to sign the questionnaire. (See Appendix D for Questionnaire.)

The bail commissioner can release the arrestee on a personal recognizance bond or set cash or surety bond. Bail commissioner Tucker said that the surety bond is not a commercial bond, but rather a form of third party custody release, with a family member or friend serving as the third party. An unsecured money bond is usually attached to this type of surety bond. Commercial surety bonds are rarely used.

**Booked Into County Jail:**

*The booking process is the same across jurisdictions with the exception of the issue of transportation.*

Persons arrested in Concord who are not released by the bail commissioner are transported to and booked into the county jail. They will appear before the Concord District Judge the following morning at the 11:00 a.m. video arraignment. Special Saturday sessions are scheduled on an as-needed-basis. Those arrested after this time will appear at the 11:00 a.m. session the following Monday.

Persons arrested in Henniker who are not released by the bail commissioner are transported to and booked into the county jail; transporting those persons is sometimes problematic. If a Henniker police officer is not available, which is often the case, the Sheriff's Department provides a deputy to transport the arrestee to the county jail. Sheriff's deputies also transport pretrial defendants between the jail and court. The Henniker District Court only has part-time judges so schedules for bail arraignments are not as regular as in the case of the Concord District Court.

**Video Arraignment:**

*As mentioned above, only the Concord District Court has video arraignments. Arraignments in the other four districts are held in the respective District Courts. The County Prosecutor's Office contracts with 17 jurisdictions to prosecute Class A misdemeanor cases; in the others the law enforcement agencies prosecute misdemeanor cases. Only the City of Concord has its own city prosecutor.*

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1 When appointed, bail commissioners receive a handbook that contains all the necessary forms, including an interview form and a release form.

2 Henniker is located considerably farther from the jail than Concord. The Henniker police force has only seven full-time and six part-time officers who provide 24-hour coverage.

3 According to the Henniker Chief of Police, Timothy Russell, a new courthouse, consolidating Hillsboro and Henniker District Courts, is expected to be built by 2002. This will be an interesting development as these courts are located in different counties.
A Concord City prosecutor is present at the arraignment. The city prosecutor handles the prosecutions of all misdemeanor cases originating in the City of Concord (and two other jurisdictions) as well as the probable cause hearings for felony cases. The prosecutor conducts a criminal records check, noting particularly, violent offenses and defaults (i.e., failure to appear, failure to comply with bail conditions, failure to pay), repeat offending, and driving on a suspended or revoked license. Bail recommendations are made primarily on the basis of the current charge(s) and the criminal records check.

**Pretrial Options:**
*The available bail options cut across jurisdictions.*

The bail commissioners, as noted above, can release arrested persons on personal recognizance, third-party custody, or cash bail. They also can impose certain conditions of release, including abstinence from alcohol in addition to the standard conditions of appearing at all court hearings and not committing any offenses.

District Court judges have the ability to impose any conditions, including supervision by the Probation and Parole Office (PPO). The latter, as mentioned previously, involves pretrial defendants checking in either by telephone or in person with a case technician from the PPO.

**Anticipated Changes in the Merrimack County Criminal Justice System**

Two changes that are anticipated to occur in Merrimack County will have a considerable impact on the county’s criminal justice system, including the implementation of the pretrial services program. The first change, which is only in the conceptual stage, involves instituting central booking, whereby all persons who are arrested anywhere in the county are taken to the county jail for booking. The second change is already underway; it involves creating a statewide, automated information system. The recommendations concerning the functions of this new pretrial program will no doubt reflect, to the extent possible, these two changes.

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4 There is no public defender present at the hearing. Limited defense resources, preclude assignment of two public defenders to each video arraignment.

5 According to Tom Edwards, who works in the technology division of the Administrative Office of the Courts, the State Police Department is spearheading the effort. An interbranch committee was formed to address not only implementation (time frame, agencies to be included), but other relevant issues associated with establishing a state-wide information system, such as access issues and confidentiality of information issues. This is a multi-year, multi-stage process, according to Edwards. Currently, all law enforcement agencies, including prosecutors’ offices, and many corrections agencies, have access to the Triple I network, which consists of NCIC, state police and motor vehicle records, and FBI records. The next stage involves court-to-court information sharing. A two-court pilot is underway and should be concluded in the next 12 months. Once in place statewide, this network would allow one court to check if a person has any open cases in any other court in the state. The third stage involves broadening access to case information to other criminal justice agencies, including the public defenders’ offices, prosecutors’ offices, probation and parole offices, and pretrial programs. The final stage, which may be a few years down the road, involves providing public access through the Internet.
PART II: CONSIDERATIONS FOR IMPLEMENTING A PRETRIAL SERVICES PROGRAM

There are several other steps that should be taken in planning a pretrial program.

Reviewing State Constitutional and Statutory Rules and Regulations

The first step must be to review the state constitutional and statutory rules and regulations that govern pretrial release/detention decisions. This process should involve posing the following questions:

• Are there provisions or court rules defining the purpose of bail (flight risk only, or flight risk and community safety)?

• Are there provisions or court rules defining the specific conditions (financial and non-financial) under which a defendant may be released?

• Are there provisions or court rules establishing the criteria to be used by judicial officers in making the release decision?

The New Hampshire statute (RSA 597:1-41, Bail and Recognizance) provides that pending trial a person charged with an offense shall be released on personal recognizance or unsecured appearance bond "subject to the condition that the person not commit a crime during the period of release, and subject to such further condition or combination of conditions that the court may require, unless the court determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of the person or of any other person or the community.” (597:2)

Only in cases where the court determines that such release conditions are insufficient to assure the person’s appearance or will endanger the safety of others or the community, the court shall issue orders that include, in addition to the condition that the person not commit a crime during the release period, “[s]uch further condition or combination of conditions...which may include the condition that the person: (1) execute an agreement to forfeit...such designated property, including money...(2) furnish bail for his appearance by recognizance with sufficient sureties or by deposit of moneys equal to the amount of the bail...(3) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of the person or of any other person or the community.” (597:2(III))

There is a preventive detention provision for a person who is charged with an offense, who at the time of the offense was on: “release pending trial for a felony or misdemeanor under federal or state law; release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence...or probation or parole...” In these cases, the person may be held up to 72 hours, excluding weekends and holidays, pending a bail hearing. During the 72 hours law
enforcement officials are to notify the appropriate court, probation or parole officials or law enforcement officials of the pending bail hearing. In turn, the clerk is directed by the court “to notify by telephone the division of field services, department of corrections, of the pending bail hearing.” (597:2(V))

Devising the Mission and Goals of the Pretrial Program

The second step is to devise the mission and goals of the pretrial program. This should entail deciding what the program hopes to achieve (e.g., to facilitate release on least restrictive conditions while maximizing public safety and minimizing failure to appear); how it hopes to achieve it (e.g., by providing non-adversarial, accurate, timely information to bail setting judicial officers and monitoring compliance of defendants released under its supervision); when it hopes to achieve it (e.g., provide information prior to initial appearance); and why (e.g., to uphold the integrity of the administration of justice and protect the constitutional rights of defendants).

Determining the Administrative Locus of the Pretrial Program

The third step is to determine the administrative locus of the pretrial program. To make this determination, the following questions should be posed:

- What “umbrella” in this jurisdiction can provide a pretrial agency with the most autonomy to function as an independent, impartial agency?
- What placement would provide the pretrial agency the greatest credibility?
- What placement would give the pretrial agency the greatest access to information?
- What placement would best facilitate the goals, objectives, and overall vision of the pretrial agency?

The administrative locus of the pretrial program should take into consideration that it is intended to operate county-wide, notwithstanding its pilot in the City of Concord. Moreover, given that the program’s goals are to assist the courts in making informed release decisions by providing relevant, impartial, accurate information and release options, the obvious locus is the court, specifically the Superior Court of Merrimack County (rather than the Concord District Court as there are four other District Courts in the County). If that is not possible, for whatever reason(s), an already existing program appears best suited to assume the functions of a pretrial program, the Merrimack County Adult Diversion Center (henceforth to be referred to as the Diversion Center). Being under the Merrimack County Department of Human Services, it is an independent, impartial agency and has over the years earned the reputation among key officials of the criminal justice system for its credibility and effectiveness. Given its work in the criminal justice system, the Diversion Center has access to much of the information and no doubt will be accorded further access to all required information.
Developing Support for the Pretrial Program

The fourth step is to develop support, including financial support, for the pretrial program. From the outset it should be decided if the pretrial agency is to be initially funded as a pilot project with decisions about permanent financial support to be made in the interim.

- Will the umbrella agency assume fiscal responsibility for the pretrial agency?
- Will the pretrial agency be a “free-standing” non-profit organization that contracts with the county government?

At this point it is difficult to affirmatively state the source of funding for the pretrial program. Additional staff will be required at the Diversion Center to assume the duties of a pretrial program, not least of which is the responsibility for supervising the approximately 60 defendants who are currently released under the supervision of the Office of Probation and Parole. Seed money for the pilot project could be sought from the Bureau of Justice Assistance Block Grant Fund or other federal programs. Sustained funding for the county-wide program should be forthcoming from the county. Given that the pretrial program will be an integral part of the anticipated Central Intake at the county jail, perhaps a portion of funds for the construction and operation of that enterprise should be allocated to the pretrial program.

Deciding the Organizational Needs of the Pretrial Program

The final steps involve deciding about the organizational needs of the pretrial program, such as the physical needs (i.e., office space and location), staffing (full-time, part-time, volunteer, support, and professional, including the director position), technology, and equipment.

- Will the pretrial program be overseen by a Board of Directors? If so, the Board should be sought to assist with preparing the job description for the program’s director and hiring the director. If not a Board of Directors, it must be decided to whom the agency director will be accountable?6
- Regarding the duties of the director, the courts, or the administrative agency under whose authority the agency director falls, usually makes explicit the director’s fiscal and other responsibilities. (The responsibilities should be articulated clearly in the job description.) Over how many employees will the Director have supervisory responsibility? Will the Director have supervisory responsibility for creating or revising a Management Information System? Will the Director have the training responsibility for other staff? Will the Director have the responsibility for creating a pretrial agency policy and procedures manual? With whom will the Director be expected to maintain regular contact?

6 If the Merrimack Diversion Center is selected to perform the functions of a pretrial services program, then its current director should consider establishing an Advisory Board to assist with formulating the goals and objectives of the new program and to oversee or guide its operations during, at least, the pilot-stage of the project. The director should assume all the above-referenced functions as stated in the second bullet under, Deciding the Organizational Needs of the Pretrial Program.
Determining the Scope of the Pretrial Program

This section focuses on what is referred to as the “scope” of the program, namely its goals and objectives. According to national standards7 and national criteria,8 pretrial services agencies are intended to achieve the following goals:

- improve the release/detention decision process by providing complete, accurate, neutral information to judicial officers;
- identify defendants for whom alternative forms of supervision other than incarceration may be appropriate; and
- monitor compliance with court-ordered conditions of released pretrial defendants.

The benefits of effective pretrial practices are multifold. The information that a pretrial services program provides assists judicial officers to make better-informed decisions. The release/detention recommendations made by a pretrial services program provide consistency in the treatment of pretrial defendants and the necessary means to assess the defendants’ risk. The recommendation also serves to minimize their risk of failing to appear or posing a danger to the community. The release alternatives, such as supervision of release conditions, which pretrial services programs offer broaden the release options available to judicial officers. Criteria have been established to assess what makes a pretrial services program effective, known as the “Enhanced Pretrial Services (EPS)” criteria. These were developed by the Pretrial Services Resource Center, working with a national advisory board of criminal justice experts, under a Bureau of Justice Assistance sponsored grant.9

In starting a pretrial services program it is important not to overextend by having the program do everything at once. Until the pretrial program is well-established, it should perform only the most essential functions. The essential pre-initial appearance procedures of a pretrial services program are: information gathering, verification, assessment, and dissemination. Essential post-initial appearance procedures are: compliance monitoring, court notification, and referrals. There are other elements of a pretrial program that are also essential, including effective administrative measures and an effective management information system. Finally, it is essential that a pretrial program maintains regular contact with other agencies and collaborates and cooperates with those other agencies.

Certain procedures of a pretrial program are relegated to the status of “optional.” These include, having a staff member be present at the initial appearance, drug testing pretrial defendants, providing supervised release, having procedures to locate and return to court defendants who have failed to

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8 Bureau of Justice, U.S. Department Program Brief, “Pretrial Services Program,” 1990. See copy in Appendix E.

appear, conducting pretrial detainee screening, and implementing an automated information system. In the case of Merrimack County, however, there is overwhelming support from the criminal justice system and existing community resources to fashion a pretrial program that incorporates some, if not all, of the “optional” procedures.

There are certain considerations that have to be made in implementing a pretrial program. Deciding on the scope of the program involves making numerous decisions. Recommendations concerning these issues are presented in the next section.

- The target population [of arrestees/defendants]—who will be interviewed by the pretrial program must be identified. How will the defendant be notified of the uses of the information obtained in the initial interview? Can we begin by interviewing everyone before the initial appearance? Or is this a long-term goal?

- When will the interview take place—as soon as possible after arrest or prior to initial appearance.

- What information will be gathered? (If information beyond the interview is gathered more resources will be required.) What points will the initial interview cover? How will the information be verified?

- Which risk assessment method will be used?

- What will be the hours of operation—regular business hours, extended hours, or round-the-clock? Given the initial appearance schedules in this jurisdiction, what hours should interviewers work to assure that the chosen target population can be interviewed and information verified before the defendant’s initial appearance in court? Is video interviewing an option?

- What will be the geographic scope of program—City of Concord only or county-wide? Given the size and geographical configuration of this jurisdiction, are extra staff persons needed to cover outlying regions?

- How many will there be on the staff? Given the size of this jurisdiction’s defendant population and the stated goals, objectives and vision of the program, how many staff people need to be hired—in administrative, investigative, and post release (supervisory) positions? Is a secretary needed? Is there a local law school or criminal justice graduate program where interns might be found? How many staff will be needed to supervise at each level of supervision? Given the goals of this program for data collection, report generation, notification, etc., will an information technologist be needed? (Can those functions be a part of an administrative position?)

- How will the program be administered? What training procedures will be used, will a procedural manual be prepared? How will interview data be tracked? How will failure to appear and rearrest rates be measured? How will program performance be measured?
PART III: INTERIM AND LONG-RANGE RECOMMENDATIONS

The next section is devoted to recommendations related to the specific tasks to be performed by the pretrial services program specifically based on the above-referenced EPS criteria. The recommendations take into consideration implementation of a pretrial program first on a pilot basis in the City of Concord and then as a county-wide operation.

Population Targeted

Everyone arrested or charged with an offense for which the court has jurisdiction should be interviewed before initial appearance.

Interim Recommendation: Concord Pilot

The target population for the pilot phase of the project should be all persons who are booked into the jail whose cases fall under the jurisdiction of the Concord District Court.10 (Based on a review of arrest and jail figures, the number per week should amount to approximately 10 to 15 persons). There may be exceptions based on statutes or regulations, such as persons arrested for capital offenses for whom bail is not allowed or persons detained on certain holds (e.g., in the Merrimack County Detention Center there were a few persons on federal holds and immigration holds), or arrested solely on a probation and parole violations (again, there were several persons in the jail with that status). There should be a policy identifying categories of persons not to be included in the target population. Persons with a default charge(s) (i.e., contempt of bail, failure to appear) should not be automatically precluded from an interview because an effective pretrial program should result in fewer defaults.

The information that is gathered should be relevant to making assessments about the defendant’s likelihood of making court appearances and not committing offenses during the period of release pending disposition of the case. Information should include: (1) a defendant’s community ties, name, date of birth, current and former residences, length of current and former residences, employment/education status, citizenship status, marital status, current living arrangements, and current and former means of support; (2) a defendant’s medical, mental health, and/or substance abuse status and treatment history; (3) prior record, including prior FTAs and current involvement in the criminal justice system; (4) other information that is considered relevant to or associated with the likelihood of a defendant failing to appear and getting rearrested; and (5) names, addresses, and telephone numbers of references. (Several interview forms are attached — Appendix F — to serve as models for content, organization, style, and format. The interview form should reflect the suggestions and recommendations made by key criminal justice officials, namely the Concord District Court judges, the City and County prosecutors, the Public Defenders and assigned counsel, the Concord Chief of Police, and others.)

10 The bail commissioner would still be the first contact for arrestees who are not taken directly to the jail.
The pretrial program should begin operations to enable staff to interview and verify information for all defendants awaiting the Concord District Court 11:00 a.m. video arraignment. Consideration must be given to the fact that the Merrimack Diversion Center is located in Concord and the jail is located some 14 miles away in Boscawen, where the interview will take place. Consideration must also be given to the current space availability in the jail for telephone and criminal records access. Further consideration must be given to the fact that pretrial staff must prepare the report and be present at the court in Concord by 11:00 a.m. If only two or three defendants are arraigned each day, it may be sufficient to begin operations at 8:00 a.m. but the above-referenced logistics must support this start-up time. (The pretrial program must also acquire access to court records for purposes of determining current involvement and for court notification purposes.)

Long-range Recommendation: County-wide Program

Once central booking is in place, the pretrial interview should become part of the booking procedure. Pretrial program staff should interview all persons — under the jurisdiction of all five District Courts in the county — with whatever exceptions exist as a matter of policy. The pretrial program should have office space at central intake to accommodate its computer, telephone, and facsimile needs.

Once the state-wide automated information system is fully-integrated in the county, the pretrial program will be one component. Pretrial program staff will be able to use the computer to acquire information about the defendant as well as enter new information, namely interview information.

Advice Prior to Interview

Defendants targeted for an interview should be advised prior to the interview how the information will be used, what limitations will be placed on its use, and who will have access to the information.

Interim Recommendation: Concord Pilot

Pretrial personnel should inform defendants prior to conducting the interview, the purpose of the interview (i.e., to assist in bail setting) and the uses that can be made of the information (i.e., presented to the court, the prosecutor, and the defense). The interview form should contain a statement regarding the purpose of the interview and the use that will be made of the information provided. This statement should be read to the defendant or read by the defendant prior to the interview. If the defendant does not understand or cannot read in English the statement must be interpreted or a translated copy of the statement must be made available to the defendant prior to the interview.

There must be a written record, in the form of a consent form or a signature at the end of the statement, of the defendant's waiver or consent to the interview.

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11 There may be statutory exclusions, such as non-bailable offenses subject to capital punishment.
Long-range Recommendation: County-wide Program

The long-range goal does not vary significantly from the interim recommendation, except that it would now include interviewees throughout the county.

Information Verification: Reference, Current Status, and Criminal Records Check

Information provided by the defendant should be verified, including a complete criminal record check (e.g., in and out of county and state; prior history of failure to appear), a check of the defendant’s current criminal justice status (e.g., whether or not there are pending charges or holds), and a check of community ties (e.g., residence, employment/school enrollment).

Interim Recommendation: Concord Pilot

Pretrial program staff should attempt to verify all the interview information by contacting references and other sources.\(^{12}\) The information should be verified by contacting references and asking them open-ended questions (e.g., where does the defendant live, how long has the defendant lived there, who does the defendant live with, does the defendant own a telephone, does the defendant own or rent his place of residence, how long has the defendant been employed there, etc.)

The pretrial program should obtain Triple I check information for all persons awaiting the Concord District Court 11:00 a.m. video arraignment. Currently, there are several sources of this information: the Sheriff’s Office, the Concord Police Department, and the Concord City Prosecutor’s Office.\(^{13}\) In addition, the pretrial program should obtain information concerning any open cases, at a minimum, in the Concord District Court and the Merrimack Superior Court.

The verification phase of information gathering should occur in the Concord office of the pretrial program and be completed for the 11:00 am video arraignment.

At the pilot phase of the project it seems reasonable to assume that for purposes of conducting interviews and verifying information for Concord District Court defendants, one half-time person would be sufficient. (Given that the pretrial program will perform other tasks, such as monitoring compliance with court-ordered conditions, including supervision, the staffing needs are beyond this half-time position.)

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\(^{12}\) Initially-unverified information should be pursued by re-interviewing the defendant and checking other sources, until all the information is verified. If the defendant is not released because of unverified information, pretrial staff should continue verification efforts until as much, if not all, of the pertinent information is verified. The court should be immediately notified when such verification occurs and a new bail hearing or bail modification should be requested.

\(^{13}\) An agreement should be made with one of these agencies to supply the Triple I check information by a certain time each morning.
Long-range Recommendation: County-wide Program

The long-range goal does not vary significantly from the interim recommendation, except that it would now include verification of interviewees throughout the county. For interviewees under the jurisdiction of the Concord District Court, the verification process could occur either from the jail (Central Intake) or Concord office of the pretrial program. For interviewees under the jurisdiction of the other District Courts pretrial program staff could conduct the verification for interviews from the jail office.

Risk Assessment

A risk assessment instrument that is consistent and equitable should be used. An effective risk assessment determines the defendant’s likelihood of failing to appear at future court hearings or of posing a risk to community safety (where statutorily prescribed).

Develop the assessment instrument as a result of local research and evaluate or review it periodically; at a minimum of every five years.

The assessment should become the basis of a recommendation to the court as to an appropriate release/detention decision.

The court should be provided with a range of options (such as release on recognizance, restrictive non-financial conditions, and as the last resort financial conditions), arranged from least to most restrictive. Where applicable and appropriate, recommendations for preventive detention should be indicated.

Interim Recommendations: Concord Pilot

Currently, no risk assessment instrument exists. For the first six months or so the pretrial program should present the verified information to the court without making a recommendation.

During this time the pretrial program should gather pertinent information for the purpose of developing an objective risk assessment scheme. The information should include interview and verification information as well as the conditions imposed by the judge, financial and non-financial.

In addition, for all released defendants, information should be tracked pertaining to failure to appear and rearrest for offenses committed during the release period. This information about failure to appear and rearrest rates as it relates to the type of release conditions and defendant characteristics should form the basis of the trial risk assessment instrument.

After the predetermined amount of time the trial instrument should be put in place, that is, the pretrial program begins to make recommendations for defendants’ released based on the scores they achieve on the risk assessment scheme. In another six months or so the scheme should be tested for effectiveness. Based on the findings modifications should be made to the point scale or an alternative risk assessment scheme — guidelines or a matrix — should be developed.14

Once the pretrial program begins to make recommendations, the staff should use a range of monitoring and supervision options. The pretrial program should not recommend financial conditions. Levels of supervision should be imposed on a graduated basis beginning with the least restrictive conditions that would minimize failure to appear and rearrest. The options will change as community resources reflect local needs.

Bureau of Justice Assistance Criminal Courts Technical Assistance Project 98-010, Merrimack County, NH 13
Objective risk assessments provide several benefits to the pretrial program and the courts: predictability (i.e., objective criteria can provide a level of statistical probability for failure to appear and rearrest); consistency (i.e., minimized variation among staff in assessing similarly-situated defendants); and accountability (i.e., objective criteria may be easier to defend or explain, and may increase a court's confidence in the recommendations). However, objective schemes must be devised with the following cautions: they may introduce bias by emphasizing certain qualities such as employment, community ties that may discriminate against lower income defendants and they may be too rigid and not allow discretion in special or sensitive cases. To address the latter, pretrial programs may allow overrides by a supervisor.

In developing a risk assessment scheme, the following must be taken into consideration:

- At a minimum, risk assessment should follow the criteria for release set forth in the state bail law. In the case of the New Hampshire bail law, the only factors to be taken into consideration are whether or not the arrested person is on release pending another charge, pending sentence or appeal of sentence or conviction, or on parole or probation. Otherwise, it is in the setting of conditions that the court must consider which will assure appearance and safety.

- Risk assessments should be based on criteria validated by local research of the defendant population. This creates an assessment based on factors that are linked to misconduct and not the judgment of the staff. The strength of the link between a given factor (e.g., length of residence) and likelihood of appearance is defined, in a point scale, by the weight assigned to the factor. For example, if residence of one year at the same location is considered to be more strongly linked to appearance than residence of only three months, then more weight (or points) will be attached to the former than the latter. A similar process must be undertaken with other "community ties" factors (e.g., employment, family ties, means of support) and other factors (e.g., history of substance abuse, history of failure to appear, prior criminal history) that are considered to be predictive or at least linked to appearance and safety.

- Positive recommendations would be made for persons whose "score" indicates that they have strong community ties and weak connections to factors that are negatively associated with appearance and endangerment. (Examples of objective risk assessment schemes are provided in Appendix G.)

- The risk assessment instrument should be measured for effectiveness using these three measures: recommendation rate, agreement rate, and success rate. The recommendation rate refers to the proportion of defendants interviewed who are recommended for release. The agreement rate refers to the proportion of defendants recommended for release who are actually released; and the success rate refers to the proportion of defendants recommended

Currently, for example, there are not enough residential treatment beds for alcohol or substance abusers. Recommendations for such treatment should be made sparingly. Alternative treatment programs will have to be sought if the interviews and other sources reveal addicted defendants.
and actually released who did not fail to appear at all court hearings and did not get rearrested pending disposition of the instant case.\textsuperscript{15} An effective risk assessment scheme would score high on all three measures of effectiveness.

**Long-range Recommendation: County-wide Program**

The long-range goal is to have an objective county-wide risk assessment instrument that is periodically tested and modified accordingly. The long-range supervision goal is to have community resources match defendants’ needs at all levels of supervision.

**Report Preparation and Presentation**

| A report should be submitted to the court and access to the report should be provided to defense counsel and prosecutor. Pretrial program staff should be present in court or be readily available to the court during the release/detention hearing. |

**Interim Recommendation: Concord Pilot**

Pretrial program staff should be present in the Concord District Court at the video arraignment. In advance of the hearing, a report should be prepared and submitted to the court and the prosecutor and defense counsel.\textsuperscript{16} Until such time when counsel is present at the video arraignment, a copy should be made available to the defense attorney by facsimile the same day.

**Long-range Recommendation: County-wide Program**

Reports for all defendants should be made available — by facsimile or electronically via computer — to the respective five District Courts and appropriate prosecutors and defense counsel. With sufficient staff, pretrial program staff should be present at all five District Courts. The initial appearance hearings could be scheduled to allow pretrial staff to be present; the Concord District Court schedule is set at 11:00 a.m. Otherwise, pretrial staff should be available by telephone.

\textsuperscript{15} The success rate is the traditional or usual measure of effective bail decisions. If a pretrial program does not have the expertise in-house to examine the validity of the risk assessment scheme, outside assistance in the nature of graduate students or professors from a local college or university or outside consultants should be considered.

\textsuperscript{16} Two recommendations related to criminal defense were recently (August 1998) approved by the ABA House of Delegates: (1) "all jurisdictions ensure that defendants are represented by counsel at their initial judicial appearance where bail is set" and (2) that each jurisdiction provide adequate resources to supportive effective implementation of such representation for indigent defendants." See Appendix H.
Confidentiality

Written standards regarding confidentiality of information obtained in the interview and information contained in the pretrial report should not be admissible on the issue of guilt in any judicial proceedings. The information may be used, however, in certain other proceedings, including pretrial release condition violation proceedings, perjury proceedings, and for purposes of impeachment in any subsequent proceedings.

Interim Recommendation: Concord Pilot

The pretrial program must advise the defendant that the information provided in the interview and other information obtained for the pretrial report is confidential and cannot be used against the defendant on issues of guilt in the instant or any other subsequent proceedings. The defendant should be advised, however, that any information that is provided must be truthful, because it may be used as evidence in perjury proceedings or to impeach the credibility of all the information provided by the defendant.

Long-range Recommendation: County-wide Program

The long-range goal does not vary significantly from the interim recommendation, except that it would now include defendants throughout the county.

Checks for Consistency

A supervisor should check every report before submission to the court to ensure that program staff consistently use the assessment scheme.

Interim Recommendation: Concord Pilot

Pretrial staff who prepare reports (i.e., interview defendants, verify information, and conduct risk assessments) should submit reports to their supervisor for review prior to the bail hearings. The supervisor should monitor for consistency in the use of the risk assessment instrument and the quality (i.e., completeness and accuracy) of the reports. If the supervisor is the one who prepares the report, someone higher in the chain of command should periodically review the reports.

Long-range Recommendation: County-wide Program

The long-range recommendation does not differ significantly except that reports of all defendants scheduled for bail hearing at all five District Court should be monitored by a supervisor.

Supervision and Monitoring

Contact supervision or provision of services should be monitored for compliance. Supervision plans should be individualized and based on a scheme of graduated contacts and level of supervision dependent on pretrial performance.
Interim Recommendation: Concord Pilot

For persons released by the court under the supervision of the pretrial program, individualized supervision plans should be developed based on graduated contacts and levels of supervision (dependent on pretrial performance). If outside (program) services are provided as part of the supervision, the effectiveness and reliability of these services should be regularly monitored by the pretrial program.\footnote{When the pretrial program begins to make recommendations, the supervision plan should be prepared in advance and presented to the court as part of the recommendation or devised once the person is released to the program.}

A defendant’s compliance with the conditions of the supervision plan must be monitored. Monitoring a defendant’s compliance should include conducting an exit interview immediately after initial appearance or some time that day. Arrangements should be made to allow the exit interview to be conducted by pretrial staff via video once the judge has set release conditions.

The pretrial program should apply procedures, which have been agreed upon by judges, prosecutors, and defense counsel, for dealing with violations of release conditions. The agreement should be in writing, specifying when violations should be reported to the court, the procedures for using graduated court sanctions, and the sanctions that will be applied for noncompliance.

The pretrial program should prepare a final report on the defendant’s compliance with release conditions to assist in the compilation of pre-sentence report information.

During the pilot phase of the project, one full-time case worker would be required to handle the anticipated workload of at least 60 defendants released by the court on the condition that they report to and be supervised by a court agency (currently the Parole and Probation Office). The Merrimack Diversion Center may be able to assume these new responsibilities without the addition of administrative staff. (The Center should consider using interns, if possible, to handle some of the administrative tasks, including maintaining the management information system.) All this is subject to change if the duties or caseloads are expanded and, of course, once the program becomes county-wide. The Center office may have to acquire additional office furniture and equipment to accommodate the additional two positions (1.5 full time equivalent). The current Center director would assume the role of supervisor of this new program.

Long-range Recommendation: County-wide Program

The long-range recommendation does not differ significantly except that the pretrial program will provide supervision services and monitor compliance of release conditions by all defendants throughout the county.

Once central intake is in place, the exit interview of the defendants under the jurisdiction of all five District Courts should be conducted in the jail. The pretrial program, which will have an office(s) at the jail, will be able to conduct the exit interview and provide the defendants with a written notice or a schedule of contacts with the pretrial program.
Follow-up Procedures

Court date reminders should be issued to all defendants except those released on commercial bond. The pretrial program should carry out or supplement court notification. Procedures should exist for attempting to locate and return defendants to court to preclude the issuance of a bench warrant, as well as procedures for resolving the warrant once issued. The pretrial detainee population should be reviewed at least weekly to determine if factors associated with the initial detention decision still apply and such findings reported to the court.

Interim Recommendation: Concord Pilot

The court notification should be written, specifying the date, location, and time of appearance before each subsequent court appearance. When no court date is issued at the time of the court appearance, the pretrial program should provide written notification of the telephone number and name of a person to call who will provide such information (i.e., the date, time, and exact location of the court appearance).

Currently the Clerk of Court for the Concord District Court issues defendants a written court notification along with the release order. To supplement this procedure pretrial program staff should remind all defendants released to their supervision at each contact (in person or via telephone) of the next court hearing. The pretrial program should in addition mail and telephone all defendants released on non-financial conditions not requiring pretrial program supervision or monitoring before each court appearance. The pretrial program should maintain a record of each court notification contact.

The pretrial program should have procedures for attempting to locate and returning defendants to court to preclude the issuance of bench warrants as well as procedures for resolving warrants once issued. The pretrial program should provide information to aid in the return of defendants. When the defendants whereabouts are known, the pretrial program should try to persuade them to return to court voluntarily. Once the defendant has been returned, the pretrial program should provide the court information relevant to assessing the risk of future flight and dangerousness.

Long-range Recommendation: County-wide Program

The long-range recommendation does not differ significantly except that the pretrial program will provide notification to all defendants throughout the county and institute procedures for resolving warrants of and returning all defendants to the five District Courts.

Review of Pretrial Custody Population

The pretrial detainee population should be systematically reviewed, weekly or more frequently. Changes in the recommendation should be reported to defense counsel and/or judge (i.e., in some jurisdictions the pretrial program may have the authority to make a direct request to a judge for bail modification; in other jurisdictions the pretrial program provides information to counsel who in turn moves for bail modification).
Interim Recommendation: Concord Pilot

The pretrial program should periodically review the pretrial detainee population. There should be an agreed upon policy, by jail officials, the pretrial program, and the Concord District Court, prosecutors, and defense counsel for the pretrial program to review the situation of pretrial detainees on a regular basis (e.g., within 72 hours or five business days).

The pretrial program should develop procedures to make recommendations for bail modification to defense counsel and/or the judge, as indicated by these periodic reviews.

Long-range Recommendation: County-wide Program

The long-range recommendation does not differ significantly except that the pretrial program will review all defendants detained in the jail and institute procedures for bail modification recommendations that apply to all defendants in the five District Courts.
Management Information System

A systematic case tracking and information system — manual or automated — should be maintained for the following purposes: monitoring defendant pretrial performance, measuring program performance effectiveness, validating program practices, diagnosing problems, and testing the impact of implemented or proposed changes. Information needed to accomplish these include: defendant-based information and aggregated numbers (the latter is compiled on a regular basis in reports) as well as staff caseload information.

Defendant-based data elements:
- defendant characteristics, including age, sex, race/ethnicity, length of residence in county, marital status, drug use, and other factors deemed to be appropriate in the county;
- prior record information, including the number previously arrested/convicted (felony and misdemeanor), number previously failed to appear, number with previous parole/probation revocation, number with previous pretrial release revocation, number previously incarcerated; and
- current defendant criminal justice information, including arrest date, initial appearance date, pretrial release date (if different from initial appearance date), date(s) when defendant failed to appear, date defendant was returned to court, date of final adjudication, sentencing date.

Regularly generated reports:
- pretrial program intervention information, including the number of persons interviewed, the number of persons recommended for release (by type of conditions), reasons for not recommending release;
- court actions and outcome information, including the number of persons convicted and the types and lengths of sentences imposed (by charge and form of release or detention), the time spans between arrest, initial release from detention, and case disposition; and,
- current criminal justice information, including the number of persons arrested and charged with a criminal offense (misdemeanors and felonies), the number of persons released prior to trial on each form of release, the number of persons detained prior to trial according to charge and length of detention, the number of persons who failed to appear at a scheduled court appearance (by charge and form of release), the number of persons rearrested (by initial charge and rearrest charge and form of release).

Resource allocation:
- staff caseload information, including number of interviews conducted per staff member; number of reports prepared; number of defendants under supervision by type; number of compliance reports prepared;
- other staff information, including number of full-time, part-time, volunteer staff; number of support, administrative, supervisory staff, etc.

The information should be reviewed periodically to evaluate program practices and for planning.

Interim Recommendations: Concord Pilot

At the outset it is important to develop a management information system, which is essential to the smooth operation of the pilot project and will serve as a building block for expansion to a countywide program and to full partnership in an integrated automated management information system. Given that many changes are anticipated in the county and the program itself, during the pilot phase it may be sufficient to develop a manual management information system to keep track of defendants as they proceed through the criminal justice system. It is more important to develop a useful and
manageable management information system than to have an automated system, particularly when an integrated automation system is forthcoming.

Currently defendant-based information is gathered by local law enforcement and compiled by the state police in a statewide, centralized (criminal records) computer system. As mentioned earlier, a State Criminal Justice Information System, which ultimately will combine criminal record information with case-based information, is in the process of being developed and installed on a multi-stage basis across the state. Case-based, information is centralized in the state Administrative Office of the Courts. The information, however, is not integrated and is available only as separate databases for each District Court in the state.

As part of the management information system, the pretrial program should compile the following information: a record of compliance with the conditions of release of each defendant and data relevant to measuring the effectiveness of program performance. These data would include age, sex, race, length of stay in the county, marital status, drug use and any other factors currently used to assess risk, or thought to be useful in the future. The agency would also keep data on previous felony and misdemeanor arrests/convictions, previous failures to appear, previous parole and probation revocations, previous pretrial release revocations and previous incarcerations. Current charge information would be kept as well: arrest date, initial appearance date, pretrial release date, failures to appear, date of return to court, date of final adjudication and sentencing date.

The agency should report on a predetermined schedule to: the courts, the supervising agency, the District Attorney’s Office, and the Public Defender’s office. These reports would include the number of persons interviewed, the number of recommendations for release (arranged by type of conditions), and the number of persons not recommended for release with reasons for non-recommendation. The reports would also include a section on court actions, outcomes, sentencing, and analysis of time spans between court events (arrest to initial release, arrest to trial, arrest to case disposition).**18**

Current criminal justice information should be kept and used to analyze and report on:

- the number of persons arrested and charged (designated by type: felony and misdemeanor),
- the number of pretrial releasees (designated by type of release),
- the number of detainees (by charge and length of detention),
- the number of persons failing to appear at a scheduled court appearance (designated by charge and form of release), and
- the number of rearrests (by charge and form of release)

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**18** See Appendix I for an example of manual logs that form the bases of monthly statistical reports (Berkeley) and an example of an Annual Report (San Mateo).
The pretrial program should consider releasing statistical reports of accomplishments to the community and the mass media. The pretrial program should also serve as the source of information to the community and other agencies.

Long-range Recommendation: County-wide Program

The long-range goal, in addition to expanding to the County, should include periodic evaluations of program practices. The pretrial program serves as the source of information for other agencies or members of the media or community.

Program Management: Operation, Training, and System Interaction

A concise, written mission statement should be articulated. The mission statement is more than the statutory language incorporating the program; it reflects the program's aims and purposes.

A written, up-to-date "how to" manual should be created and made readily available to all staff. It should explain in detail the procedures that must be followed in performing each function of pretrial operations. The manual should explicitly detail the procedures for the pretrial interview, records check and verification, release assessment, supervision, and use of information systems.

A structured training program should be structured to orient and train new staff members, provide for on-going training, and ensure management training for supervisory staff.

Interim Recommendations: Concord Pilot

The pretrial services program should prepare a concise statement of the program's mission (purpose), goals (aims), and objectives (how to achieve those aims).

Irrespective of the program size, it should have a structured training process that should include an orientation session for new staff that features the mission statement and the unique role of pretrial services, as well as ongoing training for line staff, and management training for supervisory staff.

The pretrial program should prepare a procedural manual that serves as a "how to" document for program staff. The manual should explain in detail the procedures that must be followed in performing each function of pretrial operations. The procedures manual should document in detail each procedure (i.e., who performs what procedure, when, where, how, and why).

The manual should explicitly detail the procedures for the following: (1) the pretrial interview, records check, and verification; (2) release assessment; (3) supervision and compliance monitoring; (4) information system; and (5) program management and training.

In addition, the pretrial program should have the appropriate mechanisms for staff to report to supervisors. All staff, on a regular basis (annually at a minimum), should be objectively evaluated and given constructive feedback in a performance appraisal. The program should convene regular staff meetings that have reporting, planning, and staff input.

Like the mission statement, the procedural manual (and hence training material) is a living document. As procedures are established, they should be written down and made easily available.
to all staff for the sake of consistency. Eventually, each function of pretrial operations will be covered by a statement of the procedure for performing it.

The pretrial program should regularly interact with the other parts of the criminal justice system and the community that have bearing on the program. The pretrial program should regularly meet with and report to its supervising body. In addition, the pretrial program should regularly meet with judicial officers, as well as periodically meet with defense counsel and prosecutors. In a proactive strategy, the pretrial program should maintain contact with the local community and media for educational purposes. A press release should be prepared announcing the start of the pilot pretrial program in Concord. The pretrial program should make available contemporaneous press and public materials.

Long-range Recommendation: County-wide Program

The county-wide expansion of the pretrial program should be announced through a press release. Meetings with all key officials will obviously precede the expansion to include Merrimack County, the manual will change to reflect new procedures that may be required from this expansion.
APPENDIX A

AGENDA
Criminal Courts Technical Assistance Project
Site - Visit Merrimack County Criminal Justice Officials
August 18-20, 1998
Technical Assistance:
Jolanta Juszkiewicz and Evie D. Lotze

Tuesday, August 18, 1998

10:45 - 1:00  Michael Johnson
1:30 - 2:00  Tour of Merrimack County Detention Center
2:00 -3:00  Carole Anderson
3:30 - 4:30  Honorable Michael Sullivan
4:30 - 5:30  Scott Murray

Wednesday, August 19, 1998

9:00 - 10:00  Kathy Bateson
10:00 - 11:00  Nick Brodich
11:00 -12:00  Concord District Court Video Arraignment
12:00 - 1:00  Joanne Fortier
2:00 - 2:30  Chief William Hallacy
2:30 - 3:15  Edda Cantor
3:15 - 4:15  Barbara Sweet
4:15 - 5:00  Chief Chester Jordan

Thursday, August 20, 1998

9:00 - 10:30  Stuart Tracky and Kathy Rogers
10:30 - 11:00  Chief Russell
11:00 - 12:00  Lee Topham
12:00 - 1:00  Robert Tucker
1:00 - 2:30  Leigh Friere and Tamara Saxby

Via Telephone

Tom Edwards
APPENDIX B

Merrimack County, New Hampshire
List of Interviewees

The Honorable Michael Sullivan, Concord District Court
Michael Johnson, Esquire, Merrimack County Prosecutor
Barbara Sweet, Clerk Concord District Court
Edda Cantor, Assistant Commissioner, New Hampshire Department of Corrections
Joanne Fortier, Chief Probation and Parole Officer, New Hampshire Department of Corrections
Lee Topham, Esquire, New Hampshire Public Defenders Office
Nicholas Brodich, Esquire, Moir and Brodich (private law firm)
Scott Murray, Esquire, Concord City Prosecutor
Carole Anderson, Superintendent, Merrimack County Department of Corrections
Chester Jordan, Sheriff, Merrimack County Sheriffs Department
Kathy Bateson, Business Administrator, Merrimack County Board of Commissioners
Stuart Trachy, Chairman, Merrimack County Board of Commissioners
Kathy Rogers, Commissioner, Merrimack County Board of Commissioners
William Hallacy, Chief of Police, Concord Police Department
Timothy Russell, Chief of Police, Henniker Police Department
Leigh Friere, Director, Merrimack County Diversion Center
Tamara Saxby, Merrimack County Diversion Center
Robert Tucker, Bail Commissioner, Concord District Court

Telephone Interviewee:

Thomas Edwards, Management Information Division, Administrative Office of the Courts
APPENDIX C

Overview of Merrimack County

County Population and Government

There are three levels of government operating in Merrimack County. There are the various (27) municipal — city and town — governments, the county government, consisting of three County Commissioners and a County Administrator, and county representative in the state government — 43 state representatives and 75 selectmen. Concord is the state capital and the county seat. According to the 1997 population estimate, there were 127,292 residents in Merrimack County, of whom 37,925 or 30 percent, resided in Concord. The county has 28 municipalities, of which five had populations of over 5,000 persons: Hookset (9,571); Franklin (8,411); Pembroke (6,724); Bow (6,406); and Hopkington (5,014).

Law Enforcement

There are 31 law enforcement agencies in Merrimack County, including 27 municipal police departments, the State Police, the Sheriff’s Department, the Games and Fish Wardens. The largest police department in terms of personnel and workload is the Concord City Police Department.

In 1995 the total number of arrests for state criminal offenses in Merrimack County were 4,012 of which 2,954 (74 percent) were for adults and 1,058 (26 percent) were for juveniles. (Uniform Crime Reports.) According to the Concord Police Department Summary Arrest Charge Code Report for 1997, a total of 2,650 individuals were arrested for committing 3,781 reported charges. Of the 2,650, 1962 (74 percent) were adults and 688 (26 percent) were juveniles. In an average year the police department will receive 34,000 calls for service, of which about one-third involve reports of crimes. Most arrests are for misdemeanor crimes, with the bulk being resolved in the Concord District Court.

According to the Chief of Police for Concord there appears to be a decline in the overall crime rate, although violent crimes, drug related crimes (mostly heroin) and crimes committed by juveniles are rising. There are no gang related crimes. He estimates that about 25 percent of arrestees in the county are suffering from either a mental illness or disorder or are substance abusers or both. The State hospital is located in Concord, which probably accounts for the high percentage. Persons determined to be mentally disabled (defined as incapable of caring for themselves to the extent that they will cause serious harm to themselves) or others are taken to the hospital for an evaluation and can be held there for up to ten days. Persons who are inebriated or under the influence of other drugs are taken to the jail and only after they are sober are they taken to the hospital for an evaluation.

Courts

In Merrimack County there are two levels of court: at the limited jurisdiction level there are five district courts (Concord, Hookset, Franklin, New London, and Henniker) and at the trial jurisdiction level, the Superior Court. The District Courts have criminal case jurisdiction of misdemeanor cases and preliminary hearings, including bail setting, in felony cases. The Superior Court has jurisdiction over felony cases. A recent change has been the repeal of de novo appeals by Superior Court of misdemeanor jury trials. Jury trials are available in every cases that may involve a term of incarceration (even one day) upon conviction.
District Court judges appoint bail commissioners to five year terms. Bail commissioners work on an on-call basis to make bail determinations for those arrested by the police. The commissioners earn a $20 fee for all personal interviews of criminal arrestees. Bail commissioners are guided by a Handbook and a set of instructions and bail forms. They are expected to attend one training/educational session per annum.

According to the Merrimack County, New Hampshire Criminal Justice System Assessment Final Report, February 1997, “all the courts in New Hampshire are centralized under a state system....All judges are appointed by the Governor for life. The Administrative Office of the courts (AOC) provides the administrative support for all the courts throughout New Hampshire.”

Prosecution

The County Attorney’s Office prosecutes all felony cases filed in the County. The Concord City Prosecutor’s Office prosecutes all misdemeanor cases in the Concord District Court and contracts with London and Bow to provide prosecution services. In addition, police have prosecuting authority for all misdemeanors. Currently, however, the County Attorney’s Office contracts with 17 of the 31 law enforcement departments to provide prosecution services for all but Class B misdemeanor cases.

According to the Concord City Prosecutor, Scott Murray, of the approximately 10,000 annual criminal case filings in the county, most are misdemeanors, with about 70 percent originating in Concord. The City Prosecutor’s Office has original jurisdiction in misdemeanor cases and conducts probable cause hearing for felony cases. The probable cause hearing is held 10 days after arrest, at which time bail may be reviewed. If probable cause is found that the case is a felony it is transferred to the Superior Court for prosecution and adjudication.

In Murray’s experience, the pervasive crime categories are drug, property, and domestic violence. The defendant population is increasingly multi-racial, with many more Hispanics; there are also a number of out-of-state residents, mostly from neighboring Massachusetts.

Defense

The primary source of defense services for indigent defendants is the Public Defender’s Office, a nonprofit state-funded corporation with offices throughout the state. Public Defender Lee Topham estimates that the office handles between two-thirds and three-fourths of all the indigent criminal cases in the county. For the fiscal year beginning July 1, 1997 and ending June 30, 1998, the Merrimack Office handled a total of 2,580 cases, of which 324 were felony cases (9 homicides), 798 were misdemeanor cases, and 222 were juvenile cases. The remaining 1,236 cases comprised appeals (18 misdemeanor appeals), parole and probation revocation hearings, extradition, sentence modification, juvenile reviews, Notice of Appeal to State Supreme Court, and advising citizens on rights. The remaining one-fourth to one-third cases are handled either by court-appointed counsel who work on contract with the courts or other attorneys who work on a case-by-case basis.

A defense counsel from the Public Defender Office used to be present at the Concord District Court arraignment but that is no longer the case. With video arraignment, the PD office required that two attorneys be present, one at the jail with the defendant and the other in the court. Given limited resources, the office did not have two attorneys available and now no defense counsel is present. The PD Office officially opposed the video arraignment but recognizes that it is here to stay. The preferred situation is to have PD representation at bail hearings.
In the Concord District Court a PD is appointed after the arraigned on the same day. In the outlying areas information is sent by facsimile to the PD office the day following arraignment. A PD is present at Superior Court arraignments.

Upon appointment, the PD receives the following information: the financial affidavit, the complaint or charging instrument, the appoint paper with the next court date, and the Gerstein affidavit of probable cause. The prosecutor’s office will supply prior record information upon request. The PD speaks to the prosecutor to discuss the prosecutor’s bail recommendation.

**Jail Administration**

The Merrimack County Department of Corrections operates the House of Corrections (county jail), which is located in Boscawen, about 14 miles outside Concord. The 15 year-old facility has a capacity of 168 beds. There are three levels of classification: protective custody, administrative population, and general population. Sentenced and pretrial detainees are intermingled based on security level. There are no women in the jail. Women are booked into the jail and transported for housing to the state women’s facility some x miles away.

The jail prepares monthly reports of who is in jail and how long they have been in the jail. The reports are distributed to all key criminal justice officials, including District Court judges, Superior Court judges, the prosecutors, the Public Defender Office, and the Probation and Parole Office.

The jail does not have a computer terminal that is connected to the state criminal records office. For classification purposes, the Sheriff’s Department provides a criminal history record, although this may take four to five days. The jail administrator, Carol Anderson, said that the Sheriff has agreed to install a one-terminal link-up to the criminal history records in the jail, but as of yet the funds are not available.

The jail’s “Pre-Trial Court Report for July 31, 1998” indicated that there were 91 pretrial detainees in the jail. Of these, 26 were held on “no bond” and the remaining 65 were held on a money bond, mostly “cash” or “cash with conditions.” The range of money bond was $400 (felony in possession of deadly weapon) at the low end to $300,000 (drug sales) at the high end. The mode and median bond amount were $5,000 and the mean $25,000.

The breakdown of charges was as follows:

<table>
<thead>
<tr>
<th>Charge</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violation of parole or probation</td>
<td>11</td>
</tr>
<tr>
<td>Federal holds</td>
<td>06</td>
</tr>
<tr>
<td>Contempt of bail, bench warrant Capias, failure to appear, fugitive</td>
<td>17</td>
</tr>
<tr>
<td>Violation of court or domestic order</td>
<td>06</td>
</tr>
<tr>
<td>Murder</td>
<td>03</td>
</tr>
<tr>
<td>Escape</td>
<td>01</td>
</tr>
<tr>
<td>Miscellaneous or habitual violations</td>
<td>04</td>
</tr>
<tr>
<td>Sexual or aggravated assault</td>
<td>08</td>
</tr>
<tr>
<td>Driving license revoked or suspended</td>
<td>05</td>
</tr>
<tr>
<td>Drug sales</td>
<td>03</td>
</tr>
<tr>
<td>DWI</td>
<td>02</td>
</tr>
<tr>
<td>Tampering with witnesses, hindering prosecution, threatening</td>
<td>03</td>
</tr>
<tr>
<td>Miscellaneous: shoplifting, simple assault</td>
<td>22</td>
</tr>
</tbody>
</table>
criminal mischief, theft by transfer, conspiracy, kidnaping, reckless conduct, arson, burglary, drug possession, weapon possession by felon

A snapshot of the jail population on August 18, 1998 revealed that the jail held a total of 128 inmates: 45 (35 percent) sentenced inmates, 64 (50 percent) pretrial detainees, nine persons on federal and one person on an immigration hold, four having a dual status — both pretrial and other status, four for 24 hour processing, and one on a protective order.

Of the 62 out of 64 pretrial detainees for whom the length of stay could be calculated, range was between 1 day and 279 days, with the median stay being 36 days, the mean 66 days, and the mode 11 days.

A more detailed breakdown of the lengths of stay shows the following:

<table>
<thead>
<tr>
<th>Days</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 days or less</td>
<td>10</td>
</tr>
<tr>
<td>11 to 30 days</td>
<td>18</td>
</tr>
<tr>
<td>31 to 60 days</td>
<td>12</td>
</tr>
<tr>
<td>61 to 90 days</td>
<td>07</td>
</tr>
<tr>
<td>91 to 120 days</td>
<td>05</td>
</tr>
<tr>
<td>121 to 180 days</td>
<td>0</td>
</tr>
<tr>
<td>181 to 210 days</td>
<td>03</td>
</tr>
<tr>
<td>211 to 240 days</td>
<td>01</td>
</tr>
<tr>
<td>241 to 270 days</td>
<td>04</td>
</tr>
<tr>
<td>271 or longer</td>
<td>0</td>
</tr>
</tbody>
</table>

A review of a one-day snapshot of the jail population revealed that a few of the detainees were being held for some time on cash bonds of $5,000 or less. Some examples include: (1) an individual charged with four offenses — criminal trespass, simple assault, criminal mischief, and resisting arrest or detention — had been detained for 34 days on a $1,000 cash bond; (2) another person had been held for 65 days on a $500 cash bond for driving after revocation or suspension; (3) one person had been in jail for 39 days on a $2,000 bond for loitering or prowling and resisting arrest or detention; (4) one person who was charged with criminal trespass and contempt of bail had been held for 50 days on a $2,500 cash bond; and (5) a cash bond for a simple assault offense kept one person in jail for 19 days.

**Probation and Parole Services**

The probation and parole services are combined in one office under the New Hampshire Department of Corrections. In Merrimack County, the Probation and Probation Office (PPO), located in Concord, also has responsibility for supervising court-ordered pretrial defendants. The Concord office has a staff of 11 PPO officers, one substance abuse counselor, and a part-time "case technician," who is responsible for, among other things, court-ordered supervision of pretrial defendants.

On August 19, 1998 the case technician, who is not a PPO (does not have arrest authority or a permit to carry a weapon), had a caseload of 59 bail supervision defendants; the remainder of the 272 person caseload comprised of collection cases (i.e., probation fees, restitution fees), annulment cases (i.e., expungement cases for a fee of $100), and post-conviction community service.

Typical pretrial conditions of supervision include: to abstain from alcohol, to notify the PPO office of address changes, and to check in (via telephone or in person) as directed, either daily or weekly. Monitoring of pretrial defendants involves keeping a log of call-ins and visits. If a person does not appear for visits or tests positive for drug use, the case technician will notify the prosecutor by mail. The case technician does
not notify the defendant of upcoming court dates; very often the case technician will not know the dates, according to the Chief Probation and Parole Office. The case technician does not prepare any reports on the supervision of pretrial defendants.

Pretrial defendants specifically released on electronic monitoring are supervised by a PPO. PPOs have the authority to revoke bail and arrest persons not complying with the conditions of electronic monitoring. There were 54 persons on electronic monitoring as of July 31, 1998, including pretrial and convicted individuals.

PPOs can make warrantless arrests (under rule 504) for three reasons: commission of a new offense by a defendant/offender, likelihood of flight, and if the defendant/offender presents imminent danger to the public. Persons arrested by the PPOs are held without bail until their appearance before a District Court judge.

The Chief PPO explained that some confusion exists about the 72-hour hold for a probation or parole violation charge. According to state statute, only the police can ask for or a judge can order a 72-hour hold to allow the PPO to check the incident and determine if a revocation is warranted. In practice, PPOs order holds upon learning that a parolee or probationer has been arrested.

Merrimack County Adult Diversion Center

The Diversion Center is a pretrial prosecution option for nonviolent, first time felony defendants. The Center is under the Merrimack County Department of Human Services. The current staff consists of seven full-time employees. The Center conducts diversion assessments that include: a defendant interview and when there is “sufficient evidence of excessive use or abuse” of alcohol or drugs, a substance abuse evaluation (the Michigan Alcohol Screening Test and the CAGE test) to determine current alcohol and drug use.

The Center develops an individualized service plan, provides supervision services, monitors compliance with diversion conditions including payment of restitution, and administers or oversees various programs, such as drug counseling, improved skills classes for parenting, communications, job search, etc., as well as the community service program for persons in diversion program and those convicted and sentenced to community service.

Views on a Pretrial Services Program

Persons who were interviewed were asked their opinions about starting a pretrial program and the role that the program should play in the bail process.

Views From the Bench

Concord District Court Judge Michael Sullivan noted that in establishing a pretrial services program there are two important issues that need to be addressed at the outset: sanctions for noncompliance and ensuring that with a wider range of options available judges do not “widen the net.” Judge Sullivan also wants the pretrial program to provide monitoring and supervision services including substance abuse monitoring, unannounced home and employment visits, and electronic monitoring. Private defense attorney Nick Brodich and the Public Defender Lee Topham said they would support a pretrial services program that not only provided information to assist judges in making bail determinations.
but also would provide the necessary supervision for conditionally released defendants. "Judges want release conditions monitored; it would be good if more people were to be released or more people released earlier because a pretrial program can provide the supervision," Topham remarked. Nick Brodich would also like the program to investigate what community resources are available to criminal defendants, especially for those with alcohol and drug abuse problems.

The preferred administrative locus of a pretrial services agency would be an independent county agency. Judge Sullivan does not believe that the State Supreme Court would approve having a pretrial program under the aegis of the court. In recent years it has been the policy to divest courts of extra duties rather than the reverse.

Concord District Court Judge Michael Sullivan estimated that about 95 percent of the defendants appearing in his court are released on personal recognizance or other non-financial conditions and only about five percent on cash bond. He remarked that if the judges had more options they would be inclined to use them. He mentioned as particularly welcome the capacity to conduct drug monitoring and active supervision, such as unannounced home visits. Others Judge Sullivan listed included: curfew, electronic monitoring, supervision. He said the current county environment is very receptive to a pretrial services program. Pretrial services programs offer what is most critical at bail setting — credible, verified information and options for release that would assure appearance and minimize danger risk.

Views From the Prosecutors and the Defense

Concord City Prosecutor Scott Murray remarked that accurate and timely and especially verified information prior to bail setting is very important. He added that obtaining such information is particularly crucial in the area because of its transient population.

As for the administrative location of the program, both agreed that the preferred placement would be the courts. The program must be considered a neutral agency, "the eyes and ears of the judge," Brodich termed it. Topham said that as a defense counsel he would not be concerned that defendants would make admissions or statements to pretrial services officers because an agreement between the existing diversion program and his office (and other defense counsel) provides assurances that such information would not be used against the defendant.

The pretrial program would have to prepare a report and recommendation prior to 11:00 a.m., when the video arraignments are held. The schedule of the arraignment is at this time unalterable given the commitment of the courtroom to other hearings at other times during the day. Even though the Concord District Court is only one of five in the County, it processes 85 percent of the cases.

The prosecutors' offices and the public defenders would be supportive of a pretrial services program. Currently there are good working relations between the two offices. A major complaint of the defense bar is the lack of pretrial release options, particularly for substance abusers. Nick Brodich, a private defense attorney who contracts with the county as an assigned court counsel, said that the only options are personal recognizance, monitoring by the Probation and Parole Office, cash or drug treatment. There are only two drug treatment facilities available and both have long waiting lists. Monitoring is not supervision and it is supervision that is necessary to allow more people to be released pretrial. The current situation of having the Probation and Parole Office responsible for monitoring pretrial defendants is not effective largely because of the large caseload, with only one person assigned to handle weekly call-ins or visits.
Other Views

The Assistant Commissioner of the New Hampshire Department of Corrections, Edda Cantor, said a pretrial services program should “definitely” be a county-level agency and not run by the state. Cantor iterated that the pretrial defendants and pretrial detainees in county jail are under the county’s jurisdiction. She added that a pretrial program should be able to not only monitor release conditions but make referrals to other agencies and services.