

PRETRIAL RELEASE AND DETENTION IN HARRIS COUNTY: ASSESSMENT AND RECOMMENDATIONS

By

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PRETRIAL RELEASE AND DETENTION IN HARRIS COUNTY: ASSESSMENT AND RECOMMENDATIONS

INTRODUCTION AND EXECUTIVE SUMMARY

Harris County, acting through the Administrative Office of the District Courts, requested that a project team organized by The Justice Management Institute (JMI) conduct an assessment of pretrial release and detention practices in Harris County and recommend ways to improve these practices. The primary focus of the study has been on the operations of the agency that provides pretrial services in the County, which is officially entitled Harris County Pretrial Services (in this report also referred to as “Pretrial Services” or “the agency”). To complete the assessment, the project team conducted interviews and focus group meetings with judges, Pretrial Services staff members, and other practitioners during July and September 2004 and March 2005. Additionally, the team reviewed relevant written materials including Texas constitutional provisions, statutes, and case law concerning bail and pretrial release; Pretrial Services policies and procedures manuals; the agency’s annual reports; statistical reports produced by the County’s Justice Information Management System (JIMS) and by Pretrial Services; and literature on the general topic of bail and pretrial release.

This report focuses on three main aspects of pretrial release and detention in Harris County: (1) the overall organization and operation of pretrial processes in the County, with attention to the strengths and weaknesses of the system; (2) the expectations of policymakers and key practitioners about the operations of Pretrial Services; and (3) the implications for future policy development that flow from considering the expectations of stakeholders in relation to the core functions of pretrial services and the realities of Pretrial Services’ staff size and capabilities.

The project team found that practices concerning pretrial release and detention in Harris County involve a complicated blend of substantial reliance on traditional surety bail as a primary mechanism through which arrested persons can gain release from detention; use by magistrates and judges (for purposes of setting bond amounts and conditions of release) of information developed by Pretrial Services on the backgrounds and prior criminal records of persons arrested on felony charges or on Class A or B misdemeanor charges; supervision by the agency of a relatively small number of defendants on personal bond plus an increasing amount of “courtesy supervision” of some defendants who obtain release on surety bond; and utilization of jail for a high proportion of defendants who cannot post financial bond.

The extensive reliance on bail schedules and surety bond as the principal means for an accused person to obtain release from custody is deeply embedded in the culture and practices of the criminal justice system in Harris County. For purposes of this project, we have assumed that—consistent with comments of a number of the practitioners we interviewed—it is highly unlikely that there will be major changes in this

system any time soon. However, even assuming that the commercial bail bond system remains in place, it should be possible to make significant improvements in overall justice system operations—and at the same time to reduce the use of unnecessary pretrial detention—by making more effective use of the capabilities of Pretrial Services. To do this, it will be desirable to build on the strengths of the existing system and to address some significant weaknesses.

STRENGTHS OF THE CURRENT SYSTEM

There are a number of highly positive characteristics of the current system for handling criminal cases in Harris County that are relevant to pretrial release and detention practices, including the following:

- Basic information about criminal cases is developed rapidly, in electronic form by the police and the District Attorney’s office.
- The initial stages of the process move very quickly. A probable cause determination is typically made within 12 hours of the arrest and the defendant is ordinarily in court on the morning of the next court day.
- Pretrial Services does an excellent job of acquiring information about arrested persons. The information is directly relevant to the setting of bond by the magistrate at the probable cause hearing and to the trial judge’s review of the bond amount and consideration of possible pretrial release.
- Pretrial Services has also developed a valuable ability to identify “special needs” cases such as those involving defendants who may have mental health problems, physical disabilities, or language difficulties.
- Pretrial Services has developed effective procedures for monitoring and supervising released defendants, to help minimize the risks of nonappearance and danger to the community.
- Overall case processing in the District Courts and the County Courts is relatively expeditious by comparison to case processing times in other large urban criminal courts. Minimizing case processing time delays helps to alleviate jail population pressures and Pretrial Services’ supervision caseloads.
- The information base potentially available to judges and other system practitioners is extensive, timely, and reliable. The County is now in the process of revising and updating its Justice Information Management System (JIMS), with early priority given to development of a common supervision module that can be used by Pretrial Services along with Juvenile Probation and the Community Supervision and Corrections Department. With updates that will enhance accessibility, the data in the JIMS system can be very valuable for problem

identification and planning as well as for managing day-to-day operations and providing information on individual cases.

- The information about individuals that is developed by Pretrial Services (both in the Defendant Report available through JIMS and in the defendant monitoring information now stored on the agency's in-house "Client-Master" system) can be extremely valuable for judges. It can also be valuable for a range of other users, including defense attorneys, prosecutors, and the Community Supervision and Corrections Department.
- There is a high level of support and approval, on the part of judges and other justice system practitioners, for Pretrial Services' interviewing, report preparation, and defendant supervision work. The agency is viewed as being well-managed, with a staff that works hard, is highly competent, and is very responsive to the requests of judges.

KEY WEAKNESSES

There are some significant weaknesses in the organization and operation of the existing system. These include the following:

1. There are major shortcomings in the two automated information systems currently used by Pretrial Services. The two systems do not interface with each other, and consequently require considerable duplicative data entry. It is difficult for potential users such as judges to gain on-line access to the information about individual cases in the JIMS-based Defendant Report produced by the agency for each defendant it interviews. The in-house Client-Master system used for the agency's monitoring and supervision of released defendants is rapidly running out of storage capacity and none of the information in this system is available to anyone other than Pretrial Services staff.
2. The information developed by Pretrial Services is under-utilized, in part because of the difficulty of using the existing information systems. Some judges, prosecutors, and defense attorneys make considerable use of information in the Defendant Report, but others rarely if ever use it. CSCD staff sometimes request information on specific defendants but do not appear to use information developed by Pretrial Services in any consistent way. The information is not used systematically for program evaluation or policy planning.
3. There may be a significant number of low-risk defendants who remain in detention because of inability to post bond. Although we do not at this time know the lengths of such detention, it appears that a large number of defendants with less serious charges—Class A and B misdemeanor defendants and defendants charged with fourth class (State Jail) felonies—may stay in detention after their initial court appearance despite being classified as "low risk" on Pretrial Services' Bail Classification Score and despite having no prior convictions. To the extent that defendants who pose no

serious risk of nonappearance or of danger to public safety remain in pretrial detention because of inability to post bond, the County incurs significant and unnecessary cost for the operation of the jail.

4. Pretrial Services' Bail Classification Score is not used by judges as a tool for decision-making concerning pretrial release. The Bail Classification Score does not provide judicial officers with information about the nature of the risk of allowing the defendant's release or about the supervision needs of the defendant. In light of these problems, it seems desirable to again consider what risk assessment instrument(s) and related practices concerning identification of appropriate release options could be most usefully adopted by Pretrial Services.
5. Pretrial Services lacks the staff resources needed to handle sharply increasing demands for monitoring and supervision of released defendants. Over the past several years, the agency's workload has increased substantially, while the staffing level has remained virtually unchanged. Of particular relevance, the number of defendants released on surety bond under special conditions to be monitored and supervised by Pretrial Services staff has grown enormously.
6. Judges' practices with respect to the use of "courtesy supervision" and the handling of violations of release conditions vary widely. Some judges request supervision by Pretrial Services in far more cases than do other judges, and often use a much greater array of special conditions that must be monitored. There is a clear need to develop policies that will produce greater consistency in the use of Pretrial Services' limited staff resources and provide for greater consistency in handling violations of conditions.
7. Current practices with respect to testing for possible drug use appear to be both expensive and extremely time-consuming, and there is no consistent overall strategy for using the results of the tests.
8. Little attention has been paid to Pretrial Services' governance and policy guidance in recent years. Governance and policy guidance for the agency should be strengthened, taking account of the needs and concerns of the judiciary and of other justice system stakeholders. Of particular concern, it is important to develop clear policies with respect to the priorities and allocation of staff resources for the different functions that the agency should perform.

RECOMMENDATIONS

1. ***Re-examine and clarify the mission, goals, and core functions of Pretrial Services, as a first step in shaping policy and decision-making for the future. The agency's mission and goals should be developed in collaboration with the courts and other justice system stakeholders, and should address three key functions: (1) the gathering and presentation of information about newly-arrested persons, to assist judicial officers in making decisions about custody***

and release; (2) the supervision of released defendants; and (3) the review of cases of “low-risk” defendants who remain in detention because of inability to post financial bond.

- 2. As a high priority for the JIMS 2 initiative, make essential upgrades in the Pretrial Services’ automated information system software used in connection with initial investigations and in connection with subsequent monitoring and supervision of released defendants. Place top priority on replacement of the “Client-Master” system with a monitoring and supervision module that is compatible with the software used for information obtained through initial investigations. If possible, incorporate information gathered through initial investigations and preliminary risk assessments of defendants into the JIMS 2 system upgrades.*
- 3. Develop reliable information on the extent to which there may be unnecessary detention of low-risk defendants who are unable to post financial bond.*
- 4. Develop plans to minimize the unnecessary detention of low-risk defendants unable to post bond whose release, subject to appropriate supervision by Pretrial Services, would not be likely to pose significant risks of nonappearance or danger to public safety.*
- 5. Revise Pretrial Services’ risk assessment methodology and practices to (a) provide judicial officers with more useful information and guidance concerning the nature and seriousness of possible risks of releasing individual defendants; and (b) provide judicial officers with information on release options or conditions that may be helpful in minimizing the risks of release.*
- 6. Re-format Pretrial Services’ Defendant Report to make it more “reader friendly” and to highlight the most essential (and most widely used) portions of the report.*
- 7. Provide for timely distribution of Pretrial Services’ Defendant Report to defense attorneys in all cases.*
- 8. Re-examine Pretrial Services’ role in monitoring and supervising released defendants. Establish priorities for the types of cases in which Pretrial Services will be asked to supervise released defendants and for the types of conditions to be imposed on defendants and monitored by the agency.*
- 9. Develop policies and guidelines for Pretrial Services and judges to follow in responding to defendants’ failure to comply with conditions of release. These should include (a) a general strategy for responding to different types of violations of conditions; and (b) a set of policies for handling violations that includes a continuum of actions that can in some instances be taken by the agency without the necessity of judicial review. Particular attention should be*

paid to developing a coordinated approach to drug testing of released defendants and to handling cases in which drug tests indicate that a released defendant has been using illegal drugs.

- 10. Develop plans for improved resource-sharing and continuity of services between Pretrial Services and the Harris County Community Supervision and Corrections Department.*
- 11. Develop a research and planning capacity within Pretrial Services, to enable improved evaluation of agency operations and facilitate planning for budgeting and allocation of resources.*
- 12. Provide for an increase in Pretrial Services' staff size as soon as possible, in order to alleviate severe workload pressures. Couple this increase with plans to review the agency's staff size and staff allocation in relation to the functions that the agency will be expected to perform once Pretrial Services has undertaken the re-examination of its mission, goals, and core functions called for in Recommendation #1. Plan and budget for the necessary staff, equipment, and other resources that will be needed to support the anticipated workload, and develop appropriate performance measures.*
- 13. Develop plans for educating judges, court staff, defense lawyers, prosecutors, and CSCD senior managers and staff about the mission and functions of Pretrial Services, with particular attention to how the work of the agency can assist them in the effective performance of their duties and responsibilities. Continue and broaden in-service training of PTSA staff, with emphasis on changes in operations that may be undertaken in light of the upgrades in the JIMS 2 system and implementation of other recommendations in this report.*
- 14. Plan for Pretrial Services' location and functions in any new or renovated facilities used for the booking and detention of newly arrested defendants, to ensure that the staff has adequate space for prompt, thorough, and secure interviewing of defendants and for other investigative functions relevant to preparation of the Defendant Report.*

I. OVERVIEW OF THE CURRENT SITUATION

A. The Legal and Organizational Framework

The United States Constitution provides in the Eighth Amendment that “Excessive bail shall not be required.” U.S. Supreme Court cases interpreting this provision have made it clear that there is no absolute right to bail for persons accused of a crime, but also emphasize that—as Chief Justice Rehnquist’s opinion for the Court in the 1987 case of *United States v. Salerno* phrased it, “[i]n our society liberty is the norm, and detention prior to trial is the carefully limited exception.”¹ The Texas Constitution provides that all prisoners “shall be bailable” except in certain enumerated cases involving serious felony charges and other factors (Const., Art. I, Sec. 11 and 11a), and Article 17 of the Texas Code of Criminal Procedure provides the statutory framework for making decisions concerning bail. Under the statutory scheme, the determination of whether to grant bail—and, if so, what kind of bail and in what amount—is essentially a matter of judicial discretion, to be exercised within a framework established by statute and taking account of the circumstances in individual cases. Article 17.15 provides a specific set of guidelines for the exercise of judicial discretion in setting bail:

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
2. The power to require bail is not to be so used as to make it an instrument of oppression.
3. The nature of the offense and the circumstances under which it was committed are to be considered.
4. The ability to make bail is to be regarded, and proof may be taken on this point.
5. The future safety of the victim of the alleged offense and the community shall be considered.²

Texas law provides for two types of bonds: a “bail bond” and a “personal bond” designed to assure the appearance of the accused person for scheduled court events. The term “bail bond” includes both *cash bond* and *surety bond*. Cash bond is a written undertaking by the defendant, to appear for court proceedings, with U.S. currency posted with the custodian of funds of the court providing security to back the promise. Surety bond—which is by far the most common type of bond used in Harris County—is a written promise to appear made by both the defendant and the surety (generally a commercial surety bond company), with the amount of the bond to be forfeited by the company if the defendant fails to appear for court events. The bonding company has a separate agreement with the defendant under which the defendant (or a family member or friend) pays a fee for the bond to be posted and agrees to indemnify the bonding company if the defendant fails to appear.

¹ *United States v. Salerno*, 481 U.S. 739 (1987) at 755.

² Texas Code of Criminal Procedure Article 17.15

Both the District Courts and the County Courts have adopted “bail schedules” which set a fixed bail amount based on the nature and seriousness of the offense(s) charged and the number of the defendant’s prior criminal convictions. The bail schedule can be used as soon as the District Attorney’s office accepts the charges filed by a law enforcement agency. This enables some defendants to post bail (either surety bond or cash bond) at the station where they are booked, thus avoiding any detention in the county jail. Once the complaint has been filed, both the magistrate presiding at the probable cause hearing and the judge to whom the case is assigned can depart from the bail schedule in setting a bond amount, though most use it as at least a starting point for making the bail determination.

Personal bond is simply a promise by the defendant to appear for court proceedings and to pay the full amount of the bond amount set by the court (plus collection expenses) in the event of nonappearance. The term personal bond is sometimes used interchangeably with the terms “release on recognizance,” or “personal recognizance” (“PR”), but the Texas statute that authorizes this practice uses the term “personal bond.”³ No separate surety is involved. Under Texas law, a county or judicial district may establish a *personal bond office* to “gather and review information about an accused that may have a bearing on whether he will comply with the conditions of a personal bond” and report its findings to the court before which the case is pending.” If a court releases a defendant on personal bond, it is to assess a fee of \$20 or 3 percent of the amount of the bail fixed for the offense, whichever is greater. The fee amount (which can be reduced or waived by the court for good cause) is to be used to help defray the expenses of the personal bond office. In Harris County, the personal bond office is Harris County Pretrial Services, a county agency whose roots go back to the early 1970s.

The criminal justice system in Harris County utilizes all three types of bond, though the practices of individual judges vary in the ways that they are used. Over the past thirty years, the bail/pretrial release system in Harris County has evolved through a series of court decisions and changing local practices and jail conditions. The modern history of pretrial release in the County begins with the 1975 decision by a federal court in the case of *Alberti v. Sheriff of Harris County*.⁴

1. Establishment of Harris County Pretrial Services: The Alberti decision and its aftermath. The *Alberti* decision was the main outcome of a lawsuit filed in federal court by prisoners in the County who complained about conditions in overcrowded detention facilities. The court found that a “massive crisis” existed, with over 2,500 inmates incarcerated in facilities designed to hold approximately 1,150 inmates. More than two-thirds of the inmates were pretrial detainees, many of whom could not afford the surety bond but would be eligible for release on their own recognizance [i.e., personal bond] if information about their circumstances had been brought to the attention of a judicial officer.

³ Texas Code of Criminal Procedure Articles 17.03-17.04.

⁴ *Alberti v. Sheriff of Harris County*, 406 F. Supp. 649 (S.D.TX, 1975).

The court recognized that a significant proportion of the defendant population did not need to be detained in order to assure their appearance and protect public safety. A well-functioning pretrial release program would be able to conduct background interviews, provide information to judicial officers concerning eligibility for personal bond, and provide supervision of those released. However, the then-existing system was clearly inadequate. A Pre-Trial Release Agency designed to help facilitate the release of detainees who constituted good risks had been started in Harris County in 1972 with the assistance of a grant from the federal Law Enforcement Assistance Administration (LEAA) supplemented by a small budget provided by the Commissioners Court. However, that agency was never able to function very effectively. The federal court found that the agency had been ineffective for a number of reasons including inadequate numbers of personnel, inadequate supervision and training of personnel, inadequate and insufficient office space, high personnel turnover (resulting from the small budget and low salaries), inability to interview many defendants who would otherwise be eligible for release on recognizance, time-consuming interviewing techniques that utilized subjective evaluations of interviewees' suitability for release, the active opposition of the commercial bail bond companies, and lack of credibility with the judges because of lack of success in ensuring releasees' timely appearance for court events.

The federal judge's sweeping order to remedy the jail crisis included a number of provisions designed to strengthen and speed up the pretrial services function. The order transferred operational control over the Harris County Pre-Trial Release Agency (as the agency was originally called) to the Harris County District Judges, while leaving fiscal control with the Commissioners Court. It directed the agency to develop and use an objective point system for determining eligibility for release on recognizance [personal bond] and to rapidly re-evaluate every pretrial detainee for possible release on this basis. The court also ordered the Commissioners Court to provide substantially larger office space and interviewing space for agency staff in order to enable the staff to interview every incoming prisoner, and directed that steps be taken to develop adequate staffing and salary levels for agency personnel to enable the interviewing of all arrested persons.

2. *Current organization of pretrial services and release practices.* The organizational framework for the functioning of a pretrial services agency in Harris County that was established by the 1975 decision in the *Alberti* case has remained essentially constant for the past thirty years. The agency's name has changed a couple of times during this period (it is now Harris County Pretrial Services), but the basic agency functions contemplated in the *Alberti* decision and order have remained quite constant. Pretrial Services is a County agency that resides organizationally within the Office of Management Services. It receives policy guidance from a Standing Committee on Pretrial Services that includes judges of both the Criminal District Courts and the County Criminal Courts at Law. The agency has a staff of 99 persons, organized into four units:

- The Pretrial Screening Division (PSD) is responsible for interviewing newly-arrested defendants, verifying information provided in the interview (when time permits), and preparing automated reports with information on the defendants that are distributed to the District Courts, County Courts, and

magistrates responsible for conducting probable cause hearings. Pretrial Services staff in this division may also refer defendants to the Mental Health and Mental Retardation Authority when they have reason to believe that mental impairment screening may be helpful. This division operates on a 24/7 basis, with staff always available to conduct interviews.

- The Defendant Monitoring Division (DMD) is responsible for supervising all defendants released on personal bond through the agency and, when requested by the court, will also provide supervision for defendants who have secured release on surety bond or cash bond. They review with the defendant the release conditions with which the defendant must comply, notify the defendants of impending court dates, and take steps to assure their appearance in court. When special conditions are imposed by the court, the DMD staff monitors compliance with those conditions (for example, by collecting urine samples for drug tests, inspecting electronic monitoring devices to check for possible tampering, reviewing vendors' reports on defendants' compliance with restrictions addressed through ignition interlock and electronic monitoring devices, and making phone calls to check on compliance with curfew restrictions). Staff members report to the court on the defendants' compliance with release conditions. DMD staff also collect statutorily authorized fees from defendants that are designed to help cover the costs of urinalysis and electronic monitoring and also collect the bond fee required by Article 17.42 of the Code of Criminal Procedure for defendants released on personal bond. DMD staff work weekdays only, operating between 7 AM and 7 PM, except on Fridays when the workday ends at 5 PM.
- The Computer Applications Division maintains the agency's two information systems (discussed below in Section I.C) and provides liaison with the county-wide JIMS system.
- The Administration Unit consists of the Agency's Director, the Deputy Director, an administrative assistant, a secretary, and a clerk. The Director and Deputy Director, together with the Directors of the other three divisions, form the senior management team of the agency.

Staff of the Pretrial Screening Division interview newly-arrested persons at a very early post-arrest stage. Pretrial Services officers located at two Houston Police Department facilities (HPD Central and Southeast) conduct approximately 49 percent of all the interviews. Another group of officers in this division, assigned to the County Jail's Inmate Processing Center adjacent to the Criminal Courts building, interview the persons who are brought to that center after being arrested, usually by agencies other than the HPD. Over 88 percent of persons arrested on felony charges or for Class A or B misdemeanors are interviewed by agency staff, using an interview format that captures a great deal of information that may be relevant to pretrial decision-making by judicial officers. The information acquired through every interview is entered immediately into the JIMS system. Almost all of the defendants not interviewed are persons who have

gained rapid release by posting financial bond pursuant to the bail schedule prior to the interview. There are also a few defendants who simply refuse to be interviewed.

The agency provides the information acquired through defendant interviews plus information gained from other sources (including prior criminal history record checks) to judicial officers using a standard report—the “Defendant Report”—generated through the JIMS system. The report includes a summary section that uses an objective “risk assessment” calculation, derived from information gathered through the defendant interview and from other sources, to provide input to judicial officers on the extent of the risk posed by a defendant’s release. (The risk assessment strategy is discussed below in Section III.) In addition to the Bail Classification Score, the Defendant Report includes information on a range of factors that may be relevant to a judicial officer’s decision concerning bail and the possible imposition of conditions of release, including:

- The defendant’s physical descriptors, education level, citizenship, and language spoken;
- The defendant’s prior criminal record – including the defendant’s own reports of criminal and juvenile case history plus information acquired by Pretrial Services from sources that include the Houston Police Department, the JIMS data base, and the databases of the Texas Crime Information Center (TCIC) and the National Crime Information Center (NCIC);
- Any prior failures to appear if the person has previously been a defendant;
- Any open warrants for the defendant;
- Any other cases in which the individual is a defendant;
- The defendant’s current and former addresses, living arrangements, and length of residence in the Harris County area;
- The defendant’s employment status and information on previous employment;
- The defendant’s financial situation;
- Whether the defendant has an automobile or other access to transportation;
- Whether the defendant has a telephone;
- Information about possible disabilities, physical health problems, mental health problems, or desire for substance abuse treatment; and
- Persons named by the defendant as next-of-kin and/or as persons who can verify information provided during the interview.

The interviewing of newly arrested persons and preparation of the Defendant Report is one of the Pretrial Services’ two main functions. The second main function is the monitoring and supervision of certain categories of defendants released from custody. As it has since 1975, the agency provides supervision of almost all defendants released on personal bond. Additionally, the agency now also provides what is called “courtesy supervision” of some defendants released on surety bond and of a very small number released on cash bond. As discussed below, there are a number of issues related to the practice of having PTSA supervise defendants released on surety bond, which has been consuming a steadily increasing amount of the agency’s staff resources.

3. Court processes. While Pretrial Services provides information to judicial officers that includes data relevant to the defendant’s eligibility and suitability for personal bond, the judicial officers—the magistrates who preside at the probable cause hearing, the District Court Judges who handle felony cases, and the County Court judges who handle misdemeanor cases—are under no obligation to use the information or to grant release on personal bond even if Pretrial Services determines that the defendant is a “low risk” for pretrial misconduct (i.e., nonappearance or pretrial crime). The bail schedules adopted by the courts may serve as guidelines or starting points for the judicial officers in setting bond amounts in individual cases, but the judicial officers can generally use their discretion and depart from the bail schedules to take account of the circumstances of individual cases.⁵ The judicial officers can also specify the type(s) of bond that can be posted—i.e., financial bond or personal bond. As shown by the data in the next section, personal bonds are used with some frequency in misdemeanor cases but rarely in felony cases.

The initial stages of the criminal justice process in Harris County function very rapidly. Indeed, in some respects the “front-end” practices in Harris County are among the best in the United States. An arrested person who does not post bail at the police station will generally be interviewed by a Pretrial Services officer shortly after being arrested and booked, and will generally be brought before a magistrate for a probable cause hearing in less than 12 hours after the arrest.⁶ The probable cause hearings are held seven days a week, throughout the day and night. Following the arrest, an assistant district attorney will have reviewed the police report and the defendant’s criminal record (both of which are communicated electronically to the DA’s office by the police) and prepared a complaint. The complaint serves as the charging document and statement of probable cause to hold the defendant to answer the charges. The filing of the complaint with the Clerk initiates the court process. During the same period, Pretrial Services staff will have followed up on the interview by checking the defendant’s prior criminal record and (if there is sufficient time) making phone calls to references to verify information provided by the defendant in the interview.⁷ A four-page Defendant Report summarizing the information acquired by Pretrial Services and printed in small type, will be generated via the JIMS-based computer. The Defendant Report is provided to the magistrate who presides at the probable cause hearing.

⁵ In practice, magistrates conducting probable cause proceedings adhere closely to the bail schedules adopted by the District and County Courts in setting bail amounts. Some judges have issued specific instructions for magistrates to follow concerning the setting of bail in cases that are to be assigned to their courts.

⁶ In *County of Riverside v. McLaughlin*, the U.S. Supreme Court held that a probable cause hearing must be held within a maximum period of 48 hours following the arrest of the accused person. The practice in Harris County is well within the standard established by that case.

⁷ The prior record check procedure followed by Pretrial Services involves checking the several different criminal history databases, including those of the Houston Police Department, other local law enforcement agencies, the state and national criminal history repositories (TCIC and NCIC) and the JIMS system. It is done using identifiers recorded during the interview (e.g., name, date of birth) and includes a check on other pending cases as well as prior cases.

At the probable cause hearing, the magistrate informs the defendants of the nature of the proceeding, the charges against them, and their right to counsel including the right to have counsel appointed by the trial court if they cannot afford counsel. (Defendants are not represented by counsel at the probable cause hearing and initial bail setting during that proceeding unless they have already retained a lawyer who is present.) The magistrate also reviews the complaint filed by the prosecutor to determine whether it sets forth probable cause. If it does, the magistrate sets a bail amount, almost always following the bail schedule established by the judges, and in some circumstances may authorize the defendant to post personal bond. (It should be noted, however, that most of the District Court Judges and many of the County Court Judges have declined to delegate to the magistrates the authority to grant release on personal bond.) The magistrate also informs the defendant of the court to which the case has been randomly assigned. In all felony cases and in all misdemeanor cases in which the defendant is unable to post bond, the case will be on the calendar in the assigned court on the next morning that court is in session. If a misdemeanor defendant does post bond before the next court day, the first appearance will be within seven days.

When the defendant first appears in District Court or in County Court, the judge again considers what type and amount of bond will be set, and may decrease or increase the amount established presumptively by the bail schedule or set by the magistrate at the probable cause hearing. The information about the defendant that has been developed by Pretrial Services and entered into the agency's Defendant Report form will have been printed out and sent to the judge by the agency unless the judge has informed Pretrial Services that the form should not be sent.⁸ Some judges make extensive use of the information in the Defendant Report when fixing a bail amount and setting other conditions of release, while others barely glance at the form or simply do not use the information at all. One copy of the Defendant Report on every defendant is provided to the District Attorney's office, which in turn provides the reports to the assistant district attorneys assigned to each courtroom. Unless they have retained their own attorney, defendants are typically not represented by counsel when they first arrive at this courtroom, though if they request counsel a lawyer may be appointed to represent them during this court session. The defense attorneys do not routinely receive a copy of the Defendant Report, but some judges try to make sure that they receive a copy.

B. Pretrial Release Practices in Harris County, 1994-2004

1. Bookings and interviews. As Table 1 indicates, there were 86,037 bookings in Harris County during 2004, an increase of over 7 percent from the 2003 total of 79,988 and an increase of more than 36 percent since 1994. Pretrial Screening Division staff interviewed 76,464 individuals, or about 89 percent of the total number of persons booked by law enforcement agencies in the county and charged with a felony or Class A or B misdemeanor during 2004.

⁸ Information provided by Pretrial Services indicates that 6 of the 15 County Criminal Courts at Law Judges receive the Defendant Reports and that 15 of the 22 Criminal District Court Judges receive them.

Table 1. Bookings and Pretrial Services' Defendant Interviews, 1994-2004

BOOKINGS	1994	1997	2000	2003	2004	Percent Change, 1994-2004
Misdemeanors	40,908	41,957	47,754	48,972	53,328	30.36%
Felonies	22,160	23,227	25,993	31,016	32,709	47.60%
TOTAL	63,068	65,184	73,747	79,988	86,037	36.42%
INTERVIEWS						
Misdemeanors	36,016	37,742	38,790	42,017	46,485	29.07%
Felonies	21,652	22,793	25,372	28,525	29,979	38.46%
TOTAL	57,668	60,535	64,162	70,542	76,464	32.59%
PTSA EMPLOYEES	101	100	101	98	99	-1.98%

Source: Pretrial Services database.

Table 1 shows the increase in both bookings and interviews over the ten year period between 1994 and 2004. With 76,464 interviews conducted in 2004 compared to 57,668 interviews in 1994, the increase in the number of interviews during that period is more than 32 percent.

2. Release patterns. Table 2 shows that of the persons arrested and interviewed by Pretrial Services in 2003, 32,863 (about 47 percent) were released on one of the three types of bond used in Harris County: surety bond, cash bond, or personal bond. More than three quarters of those released were persons who posted surety bond through a commercial bail bonding company. Only 2,775 (8.4 percent) were released on personal bond, almost all of them in misdemeanor cases.

Table 2. Custody/Release Status of Defendants Interviewed by Pretrial Services in 2003

Custody/Release Status	Felony Defendants	Misdemeanor Defendants	All Defendants
Released – Surety Bond	9,009	17,553	26,562
Released – Cash Bond	230	3,296	3,526
Released – Personal Bond	70	2,705	2,775
Subtotal – Released	9,309	23,554	32,863
Detained	18,691	18,102	36,793
TOTAL	28,000	41,656	69,656

Source: Pretrial Services database.

Not surprisingly, misdemeanor defendants were much more likely to obtain release than felony defendants. As Table 2 indicates, 23,554 of the misdemeanor defendants interviewed in 2003 (about 57 percent of the total) obtained some form of pretrial release, compared to 9,309 felony defendants (about 33 percent of the total).

3. Supervision by Pretrial Services. As noted above, Pretrial Services is responsible for supervising most defendants released on personal bond, a practice that dates back to the 1970s. The supervision is done principally by the agency’s Defendant Monitoring Division.⁹ All defendants supervised by the agency are required to comply with the following standard conditions of release:

- Check-ins with the agency by telephone at least every two weeks.
- Call-in to the agency the day before court to confirm the court date.
- In-person check-in at the agency’s office in the courthouse on the court date.
- Notify the agency of any change in address, telephone number, or employment.
- No travel out of the Harris County area.
- No contact with a complaining witness.

In some instances, additional or “enhanced” conditions may be set on the release of a defendant on personal bond. Typical enhanced conditions include providing urine samples for drug testing (by far the most common additional condition for defendants on any type of bond), submitting to requirements for home confinement and electronic monitoring, and abiding by curfew requirements and “stay-away” orders forbidding contact with alleged victims or witnesses. Since the early 1990s, the agency has also been asked by some of the judges, in both the District Courts and the County Courts, to provide supervision for some defendants released on surety bail with special conditions that must be monitored. As Table 3 shows, the frequency with which the agency has provided supervision for defendants released on financial bond (i.e., cash bond or surety bond) has increased very sharply over the past decade, rising from a total of 243 cases in 1994 to 5,112 in 2004.

Table 3. Pretrial Services Supervision Caseloads, 1994-2004

Defendants Supervised	1994	1997	2000	2003	2004	Percent Change, 1994-2004
Personal Bond - Misd	6,895	4,103	2,899	2,864	3,173	-53.98%
Personal Bond – Felony	1,859	687	147	131	109	-94.14%
Financial Bond - Misd	7	377	1,988	2,341	2,114	30,100.00%
Financial Bond - Felony	236	642	1,637	2,490	2,998	1,170.34%
Post Adj/Other	0	25	24	38	27	
TOTAL	8,997	5,834	6,695	7,864	8,421	-6.40%

Source: Pretrial Services database.

⁹ Staff working in the agency’s Pretrial Screening Division do some monitoring on weekends (e.g., curfew checks via phone) between interviews.

Table 3 also provides information on the changing nature of the caseload supervised by the agency. It shows that the number of cases assigned to the agency for supervision has decreased slightly (from a total of 8,997 in 1994 to 8,421 in 2004, a drop of about 6 percent), but that the makeup of this caseload has changed dramatically. There has been a sharp decrease in the number of defendants on personal bond who are supervised by the agency and a very large increase in the number of persons on financial bond (almost always surety bond) who are being supervised by Pretrial Services.

During this ten-year period the average size of the agency's supervision caseload has dropped by about a third (from 1,982 in 1994 to 1,579 in 2003), but the composition of the caseload is very different from what it had been in 1994. While the average number of "general supervision" cases has decreased, the average number of number of defendants supervised for compliance with special conditions at any one time has increased from 383 to 1,202.¹⁰ Because the amount of work and the skills needed for supervising defendants on special conditions are far greater than for supervising those on general conditions, this has meant significantly greater workloads for agency staff responsible for supervision of defendants.

Over the 1994-2003 period, the size of Pretrial Services' staff has changed only slightly, fluctuating between a high of 101 in 1994 and a low of 98 in 2003. In 2004, one staff position was added, bringing the total to 99. Thus, while the agency's staff size has remained virtually unchanged, the information in Tables 1-3 makes it clear that its workload—in terms of both interviewing of arrested persons and supervising those released on personal bond or on financial conditions requiring supervision by agency staff—has grown enormously.

4. Utilization of special conditions and supervision by Pretrial Services staff. Most defendants who are released on surety bond or cash bond are under no obligation to have any contact with Pretrial Services after the bond is posted. However, as noted above, judges will sometimes impose special conditions of release *in addition to* the financial bond. As Table 3 shows, this happens considerably more frequently in felony cases than in misdemeanor cases. In 2004, Pretrial Services' supervision caseload included 2,998 felony defendants who were released on financial bond and 2,114 misdemeanor defendants on financial bond.

Defendants' compliance with some release conditions, such as requirements to check in with Pretrial Services by telephone or to report in person at specific intervals, is easy to monitor. Compliance with some of the special conditions imposed by judges—including submitting to urinalysis tests, abiding by curfew restrictions, and abstaining from alcohol use—can be much more difficult to monitor, requiring substantially more staff effort.

Judges vary widely in the frequency with which they call upon Pretrial Services to monitor defendants' compliance with special conditions. For example, during the first

¹⁰ This information is drawn from data provided by Pretrial Services. The average caseload size is based on end-of-month caseload size for the twelve months of the year.

six months of 2004, one County Court judge imposed a total of 1,240 additional conditions on 301 different defendants. At the other end of the spectrum, during the same period another County Court judge imposed 97 such conditions (of which 87 were simply requirements for telephone check-in) on 94 different defendants. The range of variability in the use of special conditions is similarly wide among judges of the District Courts.

C. Information Technology Issues

As noted above, Harris County's criminal justice system has developed some of the best "front-end" business practices in the country, in part because of foresighted work more than two decades ago in developing a county-wide integrated justice information management system (the "JIMS" system) and re-designing many business practices at that time. The County's current information on criminal justice is an amalgamation of the large JIMS database and many smaller databases that have been created by different agencies. The separate databases have been created through the years to solve specific problems and address the needs of individual agencies for specific types of information. Although JIMS is an excellent source of information, the software platform which manages the data is now antiquated and needs to be updated. Among other problems, it is difficult and time-consuming to program the JIMS system to meet the needs of agencies for ad hoc reports. In addition, the separate databases that have been created over the years are not able to interface with JIMS and are generally not able to "talk" (or share data) with each other. The result, for Pretrial Services, is a great deal of redundant data entry done by agency staff, difficulty in using valuable stored data for problem identification and planning purposes, and lots of inefficiencies.

Pretrial Services uses two automated information systems. The existing JIMS system is used by the agency to store and disseminate information acquired through interviews of arrested persons and related inquiries relevant to completion of the Defendant Report that is prepared on virtually all newly arrested persons. A separate in-house system, designed in the mid-1990s, is used for information related to the monitoring and supervision of defendants released on conditions that provide for supervision by Pretrial Services. This system, called "Client Master", holds information on the defendant (redundant to the information already in JIMS but necessarily separately entered into the Client-Master system) and information on the conditions imposed on the defendant, the defendant's compliance with release conditions (including, for example, drug testing compliance and results), and payment of fees.

The two automated systems used by Pretrial Services do not interface with each other, which results in labor-intensive duplicate data entry and inhibits effective operations. Both systems are difficult to use, both for in-putting data and for making inquiries and generating ad hoc reports. For potential users who are not members of the agency's staff, access to the agency information in the JIMS system is possible but difficult. Access to information in the Client-Mastsr system is simply not feasible. It is difficult and time-consuming to program either system for purposes of preparing new management reports or analyzing data contained in the computer files. Additionally,

because of the limitations of the Client-Master system, the maximum number of records that its database can accommodate will be reached in the not-too-distant future—possibly by early 2006. If that point were to be reached, the Client-Master database would be useless and the office would be without a key tool needed for managing the supervision caseload. However, with planning for the new JIMS 2 system now well underway, it is expected that a new JIMS 2 supervision module—usable by Pretrial Services, the Juvenile Probation Department, and the Community Supervision and Corrections Department—will be in place by the end of 2005.

D. The Jail Situation

At the time of the *Alberti* decision in 1975, the design capacity of the jail facilities in Harris County was approximately 1,150. In the thirty years that have passed since that decision, there has been an eight-fold expansion in jail capacity in the county, which now stands at 9,329. Over the same period, however, there has been a large increase in the number of persons arrested in the county. The actual population of the jail as of May 16, 2005 stood at 8,748. Of that number, 4,423 (51 percent) were pretrial detainees.

E. Caseflow and Case Processing Times

The Harris County District Courts and County Courts handle their cases relatively expeditiously compared to courts in other large urban jurisdictions. For example, a recent examination of data on case processing times in the County Courts at Law indicates that about half of the cases in those courts are resolved in 30 days or less. Approximately 48 percent of the cases involving defendants in detention are resolved at the time of the defendant's first court appearance. Case processing times in the felony cases handled by the District Courts are longer, but still more expeditious, overall, than in most urban felony courts. Relatively speedy case processing times helps alleviate caseload pressures on Pretrial services staff responsible for monitoring and supervising released defendants.

II. EXPECTATIONS OF JUSTICE SYSTEM STAKEHOLDERS CONCERNING PTSA MISSION AND OPERATIONS

A. The Mission and Core Functions of the Pretrial Services Agency

When Harris County Pretrial Services was established in what is basically its current form following the *Alberti* decision in 1975, it was designed to have two primary functions: (1) interviewing newly-arrested defendants to develop information relevant to a judicial determination concerning their release status and preparing reports to the courts concerning the defendants' eligibility and suitability for release on their own recognizance [personal bond]; and (2) when defendants were released on personal bond, maintaining contact with them to assure their return for court appearances and compliance with other conditions of release. Additionally, it was contemplated that the agency's staff would periodically review the jail population to identify any persons not

initially released on personal bond or on financial bond, to identify “good risks” who could be safely released on personal bond. This function constituted a significant portion of the agency’s work during the years immediately following the *Alberti* decision.¹¹ The two primary functions (the first now provided by Pretrial Services’ Pretrial Screening Division and the second by its Defendant Monitoring Division) remain the core of the agency’s operations in 2005, with the important addition of an increasingly significant responsibility for supervising some defendants released on surety bond. The function of reviewing the cases of pretrial detainees who are good risks for release but have been unable to post bail has gradually fallen into disuse.

The current mission statement of the Pretrial Services Agency, as approved by the Standing Committee on Pretrial Services in 1994, is framed broadly. It calls for the agency to:

develop and provide services that support informed, accountable pretrial and detention practices that neither unduly restrict a defendant’s liberty nor compromise the community’s safety.

As currently framed, this mission statement does not directly address questions about the agency’s primary functions and top priorities. As workload increases and demands for services provided by Pretrial Services’ staff continue to grow, it becomes increasingly important to clarify the agency’s mission and set priorities for allocation of the limited resources available to it. Doing so may be difficult, however, because there are sharply conflicting views about these topics among the judges that the agency serves.

B. Practitioners’ Perspectives on PTSA’s Mission and Main Functions

In interviews with judges and others involved in criminal justice policy in Harris County, we found some divergence of opinion concerning what should be the agency’s overall mission and primary functions. Some of the judges felt that the agency’s mission should be re-defined to put significantly greater emphasis on the supervision function, particularly the supervision of high-risk offenders. These judges felt that the agency’s monitoring and supervision staff did an excellent job in helping to prevent the commission of crime by persons released on bond. They would like to be able to use Pretrial Services’ staff more extensively to help protect against the risk of danger to the community.

¹¹ Under the *Alberti* decision, a top priority for the newly reorganized Pre-Trial Services Agency back in 1975-76 was to re-evaluate all pre-trial detainees, to determine which ones should be considered for release on recognizance [personal bond] and bring their eligibility to the attention of the courts immediately (406 F. Supp. 649 at 674-75). This “bail review” function has not been part of the agency’s operations for a number of years, but it may be one that should be considered anew in light of the growing jail population, the PTSA data indicating that a large number of defendants who score as low-risk on the bail classification score remain in detention, and the candid acknowledgement by a number of the judges that they simply do not know if there are defendants in detention whose release would pose low risk of nonappearance or danger to the community.

Other judges, however—as well as the magistrates who preside at probable cause hearings, prosecutors, defense attorneys, and court administrators—placed strong emphasis on the information gathering function. The magistrates who preside at the probable cause hearings and make the initial bond determination rely heavily on the information provided by Pretrial Services, and expect the Defendant Report to be prepared and available to them by the time a defendant’s case first appears on their docket. Although some judges do not use the Defendant Report distributed by the agency, others use it regularly for setting bond amounts and conditions. Several of them noted the valuable function that the agency’s information gathering serves in flagging “special needs” cases—for example, persons with mental health problems, substance abuse issues, physical disabilities, or language difficulties. All of these factors can affect the way that a case is handled in the courtroom and between court events. Judges’ knowledge about such issues can enable them to fulfill their judicial role more effectively beginning on the first day that the case is in the courtroom. Some judges also make sure that the defendant’s lawyer is familiar with the contents of the Defendant Report (prosecutors in the courtrooms will already have a copy), to help familiarize them with the defendant’s background and facilitate discussions that may lead to negotiated resolution of the case.

Pretrial Services’ supervision of released defendants was universally praised by the judges who use the supervision services. The agency’s Defendant Monitoring Division staff is recognized as being effective in monitoring a wide range of conditions and as effective in keeping the judges informed about defendants’ compliance (or noncompliance) with conditions. When asked about the types of cases for which supervision by the agency is most important, by far the most common response of the judges was “the higher risk cases.” Several of the judges with whom we spoke reported that they would like to use the agency’s supervision services for more defendants, but expressed reservations about overloading the agency. There was broad recognition among the judges that Pretrial Services’ resources were being severely stretched, and substantial consensus that it would be desirable to develop policy guidelines concerning the appropriate utilization of the agency’s supervision capabilities.

A few of the persons interviewed mentioned the third original function of the agency: reviewing the cases of persons held in detention to identify those in which defendants who would be good risks for release have been unable to post bond, and bringing these cases to the attention of the judge. A number of the judges were candid in acknowledging that they do not have any knowledge of whether there is a significant number of defendants who meet this description currently in detention. The agency’s director observed that the function of reviewing the cases of low-risk defendants remaining in detention had not been performed for a number of years, for two main reasons: the agency’s lack of staff resources and an apparent lack of interest in performance of this function on the part of the judiciary.

Regardless of their views about which functions should receive priority, the judges and other practitioners we interviewed were unanimous in recognizing that the agency has for several years been stretched very thin. Pretrial Services’ resources have

not kept pace with either the rising volume of arrests or the increasing demands for provision of supervision services. There is also concern among the judges and other practitioners about the fact that some judges make far more extensive use of the agency's limited supervision resources than do other judges.

C. Pretrial Services' Staff Perspectives

From interviews and meetings with Pretrial Services' management team and line staff, it is clear that agency staff members at all levels consider both of the main functions—interviewing and supervision—to be vitally important to the agency's mission and operations. At the same time, however, they are acutely aware of the workload pressures. They recognize that there will have to be either a significant expansion in the size of the staff or major revision in existing practices. They have welcomed this review and look forward to a serious re-examination of the agency's mission, core functions, and priorities for operations.

In discussing existing practices, several staff members noted that there is wide variation among the judges with respect to the use of information produced by Pretrial Services. Some judges use the information regularly, while others do not use it at all. They also noted the wide variation among judges with respect to imposition of special conditions and observed that there are some types of conditions for which compliance monitoring is extremely difficult if not impossible. Curfew conditions, for example, are difficult to monitor without voice recognition software that can be used to augment random telephone checks. Even then, technological innovations such as call-forwarding can make it difficult or impossible for staff making phone checks on defendants to be certain whether the defendant is really abiding by the curfew restrictions. Additionally, monitoring of curfew conditions on weekend nights is problematic under current staffing levels.

The staff of the agency's small Computer Applications Division is currently very concerned about the inadequacies of the two computer systems used by Pretrial Services—in particular the space limitations on the agency's in-house Client-Master system that is the information base for the agency's supervision of released defendants. All staff are frustrated by the difficulty in making inquiries of the databases, the inability of the two systems to share information with each other, and the resulting necessity for a great deal of duplicative data entry.

III. DATA ON THE RISK CLASSIFICATION SCORES OF DEFENDANTS NOT RELEASED ON BOND

A. Pretrial Services' Risk Assessment Tool: The Bail Classification Score

One part of the order in the 1975 *Alberti* case was a direction that the re-organized Pre-Trial Services Agency develop an objective point system for determining release

eligibility of newly arrested persons.¹² The agency did so, adapting a version of the point scale developed by the Vera Institute of Justice for its ground-breaking Manhattan Bail Project in the early 1960s. In the early 1990s, the agency’s managers decided to explore the possibility of developing an empirically-based predictive instrument that would provide better guidance for judicial officers in making pretrial release decisions. With funding from the State Justice Institute, a study was undertaken that—using data from court and agency records—examined the characteristics associated with varying levels of risk that a defendant would (a) fail to appear for scheduled court appearances; and/or (b) commit a criminal offense while on release.

The result was the development of a new “Bail Classification Score” that came into use in the agency in January 1993.¹³ The Bail Classification Score utilized an array of factors in developing a point scale and categorizing defendants as “low”, “medium”, or “high” risk for pretrial misconduct—i.e., nonappearance or re-arrest. The point system developed through the Bail Classification Study utilizes information acquired through the Pretrial Services’ defendant interview and its checks of court and criminal history records. The Bail Classification Score is still used by the agency and works as follows, starting with a zero score:

Add one point if:

- Defendant has access to transportation
- Defendant has a telephone in his nor her residence
- Defendant is employed, attending school full time, retired, disabled, or a homemaker
- Defendant lives alone or with his/her spouse or children.

Subtract one point if:

- Defendant is under 21 years old
- Defendant has one or more verified failures to appear
- Defendant has two or more prior misdemeanor convictions

Subtract two points if defendant has two or more prior felony convictions.

Using this point system a defendant is categorized as “low risk” if the score is plus 2 or higher; as “medium risk” if the score is minus 1 to plus 1; and “high risk if the score is minus 2 or lower. The bail classification score does not, however, specify the type of pretrial misconduct risk would be posed by the defendant—i.e., nonappearance or criminal activity of different types.

¹² *Alberti v. Sheriff of Harris County*, *supra* note 4, 406 F. Supp 649 at 654, 674.

¹³ See Stephen Jay Cuvelier and Dennis W. Potts, *Bail Classification Profile Project, Harris County, Texas: Final Report* (Alexandria, VA: State Justice Institute, 1993). Three years after this report was completed, the authors re-evaluated the risk classification instrument developed in the initial study and determined that the instrument was performing its functions well and no further revisions were needed at that time. Cuvelier and Potts, *A Reassessment of the Bail Classification Instrument and Pretial Release Practices in Harris County Texas* (Houston: Harris County Pretrial Services Agency, 1997).

B. Analysis of Release Outcomes in Light of Defendants' Bail Classification Scores,

As discussed in the next section of this report, some concerns have been raised about the usefulness of the Bail Classification Score for purposes of setting bail and establishing conditions of pretrial release. However, the research conducted in the 1990s indicates that the point scale is a useful predictor of the likelihood of some type of pretrial misconduct by a defendant. The likelihood of misconduct (nonappearance or pretrial crime) rises from slightly over 3 percent to about 50 percent as the defendant's Bail Classification score moves from plus 4 to minus 5.

Table 4 indicates that there are large numbers of defendants who remain in detention because of inability to post surety bond, even though their Bail Classification Score predicts that their release would present low risk of pretrial misconduct. This table, based on Pretrial Services and JIMS data on defendants arrested and interviewed during 2003, shows the number of defendants charged with offenses of differing levels of severity (from capital felonies down to Class B misdemeanors) who remained in detention after the first court appearance. The table also shows the level of risk indicated by the defendants' Bail Classification score and indicates whether the defendants in each category had any record of prior convictions.

Table 4. Risk Levels and Prior Records of Detained Defendants Interviewed by Pretrial Services in 2003

Charge Level	Low Risk w/ Priors	Low Risk No Priors	Medium Risk w/ Priors	Medium Risk No Priors	High Risk w/ Priors	High Risk No Priors
Capital Felony	2	1	3	1	0	0
Felony 1	406	358	777	184	103	2
Felony 2	780	578	1,323	263	215	8
Felony 3	908	411	1,381	137	207	0
Felony 4 (State Jail Felony)	1,946	1,051	5,570	501	1,488	22
Felony (Unspecified)	15	20	24	5	1	0
A Misdemeanor	2,099	1,025	2,510	397	400	11
B Misdemeanor	3,384	2,211	4,455	892	694	19
Misd Unspecified	4	0	1	0	0	0
TOTAL	9,544	5,655	16,044	2,380	3,108	62

Source: Pretrial Services database. Table is based on cases filed during 2003 that were disposed on or before October 31, 2004.

Obviously, the perceived risk to community safety is more serious in the case of serious felony cases than in Class A or B misdemeanors. Additionally, in any of these cases there may be specific reasons why a judicial officer would hesitate to allow release on personal bond or low financial bond amounts even if the Bail Classification score indicated that the defendant fell into the "low risk" category. However, the large numbers of defendants in some of these categories—most strikingly, the 2,423 Class B misdemeanor defendants, 1,076 Class A misdemeanor defendants, and 1,103 state jail

felony defendants who have no prior convictions—indicates that there may be significant numbers of defendants who are being kept in detention although they pose no significant risk of nonappearance or danger to victims or the community.

What cannot be ascertained from this table—or from any other readily available data—is the length of time that these apparently “low risk” defendants remained in detention prior to the disposition of their cases. It is possible that many of these cases (especially those involving persons charged with misdemeanors) reached resolution at the first appearance or shortly thereafter, and that the actual number of jail bed days they consumed is not large. Even if this is the case, however, it seems questionable whether it is good policy to hold low risk defendants in detention even for short periods of time. At a minimum, it seems desirable to find out how frequently (and for what lengths of time) such detention takes place.

C. Concerns About the Usefulness of the Bail Classification Score

From our interviews with judges in both the District Courts and the County Courts, it is clear that Pretrial Services’ Bail Classification Score is not used as a tool for decision-making regarding pretrial release. The judges don’t know the history of how the Bail Classification Score was developed, don’t regard it as a useful guide to setting bond, and don’t view it as helpful to them. Several judges did, however, note that they look at the factors that go into making up the score, in making their own determinations concerning bond for defendants.

One of the problems with the current Bail Classification Score is that it is designed to predict the risk of “pretrial misconduct” without differentiating between the risks of nonappearance and pretrial crime. For most judges, the most serious risk is that a released defendant will commit a crime of violence. As one judge stated in an interview, “If a defendant smokes dope while on bail, the public won’t much care. But if the defendant commits a rape or robbery, they will care a lot.” The Bail Classification Score does not provide the judge with information about the nature of the risk of allowing the defendant’s release or about the supervision needs of the defendant. The agency does not provide the judge with information about possible release options that might be used to mitigate identified risks. By contrast, the recently adopted American Bar Association Standards on Pretrial Release provide explicitly that:

“The presentation of the pretrial services information and the recommendations made to the judicial officer should link assessments of the risk of flight and of public safety during the pretrial period to appropriate release options designed to respond to the specific risk and supervision needs identified.”¹⁴

¹⁴ American Bar Association Standards on Pretrial Release (2002), Standard 10-4.2(h). See also National Association of Pretrial Services Agencies (NAPSA) *Standards on Pretrial Release* (Third Edition, 2004), Standard 3.4 (b) and accompanying commentary.

Given the judges' disregard of the Bail Classification score and their interest in having guidance about appropriate supervision options for defendants, there appears to be a clear need to reconsider what type of risk assessment instrument and related practices could be most usefully adopted by the Pretrial Services Agency.¹⁵

IV. STRENGTHS AND WEAKNESSES OF THE CURRENT HARRIS COUNTY PRETRIAL RELEASE PROCESSES

A. System and Agency Strengths

There are a number of highly positive characteristics of the current system for handling criminal cases in Harris County that are relevant to pretrial release and detention practices, including the following:

1. Basic information about each criminal case involving an arrest is recorded and transmitted rapidly by law enforcement agencies, in electronic form, to the District Attorney's office. The DA's intake staff, working on an around-the-clock basis, reviews police reports, contacts the arresting officer if necessary to obtain clarification, drafts charges, and files complaints with the Clerk's office.
2. The initial stages of the pretrial process move very quickly, with the case record in electronic form. With a judicial officer (magistrate) on duty throughout the day and night, a probable cause determination is typically made within 12 hours after the arrest. The same magistrate sets bond for detained defendants at the time of the probable cause hearing.
3. The Pretrial Services Agency does an excellent job of acquiring information about arrested defendants. The information is directly relevant to the initial setting of bond by the magistrate and to the trial judge's review of the bond and consideration of possible pretrial release when the case is on the court calendar the next court day.
4. In addition to providing information for purposes of pretrial release decision-making, Pretrial Services has also developed a valuable ability to flag cases involving defendants who may have mental health problems or other special needs that should be taken into account in subsequent stages of the case.
5. Pretrial Services has developed effective procedures for monitoring and supervising released defendants. While there are some obvious limits on the agency's capabilities in this area, it has demonstrated an ability to help minimize the risks of nonappearance and danger to the community that may be posed by

¹⁵ The authors of the original Bail Classification Study noted in their 1993 report that "prediction instruments need to be reevaluated about every two to three years" and that "adopting evaluation methods that are rarely updated is like telling time with a stopped watch". Cuvelier and Potts, *Bail Classification Profile Project Final report*, *supra* note 12, at p. 29.

released defendants. At present, the agency provides supervision services for virtually all of the defendants released on personal bond and for approximately 18 percent of the defendants released on surety bond or cash bond.

6. Overall case processing in the District Courts and the County Courts is relatively expeditious by comparison to case processing times in other large urban criminal courts with similar jurisdiction. Although some cases take longer than would be desirable, most judges are attentive to problems of delay and are especially concerned to make sure that cases involving defendants in detention are resolved expeditiously.
7. The information base available to judges and other system practitioners is extensive, timely, and reliable. While the JIMS system is difficult to program and can be difficult to access, potentially it is an enormously valuable base for planning and analysis as well as for managing day-to-day operations and providing information on individual cases.
8. The information about individual defendants that is developed by Pretrial Services—both the information in the Defendant Report available through JIMS and information in the defendant monitoring database stored (but not accessible to anyone other than agency staff) on the agency’s Client-Master system—can be extremely valuable for judges. The information can be used not only in making bond determinations but also in sentencing convicted defendants, especially in cases that are resolved rapidly. The information could also be valuable to the Community Supervision and Corrections Department (CSCD) in creating files and developing supervision plans for defendants who are placed on probation.
9. There is a high level of support and approval, on the part of judges and other justice system practitioners, for the Pretrial Services Agency’s interviewing, report preparation, and defendant supervision work. Every practitioner that we interviewed had praise for the work of the agency. It is viewed as being well-managed, with a staff that works hard, is highly competent, and is very responsive to the requests of judges.

B. Key Weaknesses

As indicated above, there is a strong foundation on which to build an improved system for making custody/release decisions and for providing supervision of released defendants. To do so, however, it will be necessary to address some significant weaknesses in the organization and operation of the system. This section discusses six key problem areas.

1. Information technology issues. Both of the two automated information systems used by Pretrial Services—the JIMS system (used for information acquired through interviews of newly arrested defendants and for preparation and storage of the Defendant Report forms prepared by agency staff) and the Client-Master system (used for

information related to monitoring and supervision of defendants)—have significant problems. The most immediate problem is the limited storage capacity of the Client-Master system, which is expected to reach capacity within the next twelve months. Planning is now well underway to replace the Client-Master system with a module of the new JIMS 2 system now being developed. Installation of the new system is expected before the end of Calendar Year 2005. For Pretrial Services, the prompt development and installation of this system is essential for its ability to monitor and supervise defendants.

The installation of the new JIMS 2 defendant monitoring software will provide vastly increased file storage capacity and should also substantially reduce the amount of duplicative data entry now done by agency staff. With the agency's Defendant Monitoring Division using the same computer system as the Pretrial Screening Unit, it should be possible for the DMD staff to draw down information initially entered into the computer at the time of the initial defendant interview.

Other information system problems will remain, however. The existing JIMS system is not "user-friendly". It is difficult for a person not trained in its intricacies to access information about individual defendants. Thus, a judge who might be interested in obtaining information about a defendant that was developed by Pretrial Services at the initial interview stage cannot easily make an inquiry to get online information. Even more severe problems exist with respect to defendant supervision information on the current Client-Master system, none of which is accessible to judges (or anyone other than agency staff) on an on-line basis. Access to the supervision information can presumably be improved with the design of the new JIMS 2 software. One way to increase utilization of the Defendant Report prepared by Pretrial Services would be to make the report easily available on-line. There is some question as to whether this can be done before a defendant interview module of the new JIMS 2 system is developed, which is not currently a priority. As the new JIMS 2 modules are developed, it will be important for the designs to provide for easy on-line access by judges (as well as Pretrial Services staff) to defendant information acquired through both initial interviews and subsequent monitoring and supervision.

2. *Under-utilization of the information developed by Pretrial Services.* As noted above, some judges make extensive use of the information on individual defendants that is provided by Pretrial Services, but others use it rarely or not at all. In some courtrooms, the judges make sure that defense attorneys have an opportunity to review the Defendant Report. In most courtrooms, however, it is up to the individual defense attorney to seek out the information if they know of its availability. There are a variety of reasons for the under-utilization of the reports by judges and defense lawyers, including (a) the difficulty of reading the reports and locating key items of information in the dense small type that takes up four pages; (b) the lack of easy on-line access to the information in the reports; and (c) lack of awareness of the value of the information in the reports.

It is not only judges and defense attorneys who fail to make effective use of the information. The Community Supervision and Corrections Department, which theoretically could use the information as the foundation for developing supervision plans for persons placed on probation, rarely uses it. Nor is the information used effectively for purposes of overall system planning, despite the fact that the defendant information in the database is a rich potential source for analysis of trends and decision-making in the courts.

3. Possible unnecessary detention of low-risk defendants. As discussed above in Section III.B, it appears that a large number of defendants with less serious charges—Class A and B misdemeanor defendants and defendants charged with fourth degree felonies (“State Jail Felonies”)—remain in detention because they are unable to post financial bond, despite being classified as “low risk” on Pretrial Services’ Bail Classification Score and despite having no prior convictions. As indicated in that section, it has not been possible for us to learn how long these defendants typically remain in detention, but the existence of this large block of apparently low risk defendants in detention should be a cause for concern. To the extent that defendants who pose no significant risk of nonappearance or of danger to public safety remain in pretrial detention because of inability to post bond, the County incurs significant and unnecessary costs for the operation of the jail. Such detention also appears to be contrary to Texas law requiring individualized consideration of the circumstances of each defendant in setting bail.¹⁶

There are a number of possible reasons for the apparently large number of low risk defendants who remain in detention. These include (a) defendants’ inability to raise the funds (including both the fee and the security) needed to post surety bond; (b) judges’ lack of confidence in Pretrial Services’ classification of specific defendants as “low risk”; (c) lack of pro-active investigation and advocacy by defense lawyers with respect to setting bond at amounts that would be affordable to the defendant; (d) Pretrial Services’ lack of staff resources to review the cases of defendants classified as low risk who remain in detention for periods of over a week; and (e) a general practice, followed by some judges, of leaving the bond at the amount set (usually in accordance with the bail schedules adopted by the District Courts and the County Courts) by the magistrate at the probable cause hearing. Whatever the reasons, it seems desirable to learn more about the frequency with which defendants who actually are “low risk” remain in detention because of inability to post bond and to take steps to reduce this number to a minimum.

4. Outdated risk assessment instrument and lack of information concerning availability and appropriateness of specific release options. As noted in Section III, the Bail Classification Score developed in the early 1990s has not been updated since it was first implemented in January 1993 and simply is not used by judicial officers to make bond determinations. In the meantime, there has been considerable turnover among the

¹⁶ See Texas Code of Criminal Procedure Article 17.15. Texas case law indicates that all of the factors enumerated in that statute (page 7) should be considered in setting bail. See, e.g., *Ex parte Pemberton*, 577 S.W.2d 266, 267 (Tex Crim. App 1979); *Ex Parte Rubac*, 611 S.W. 2d 848, 849 (Texs Crim App 1981); *Ex parte Durst*, 148 S.W. 3d 496 (Tex App. Houston 14th Dist. 2004).

judges of both the District and County Courts, new technologies have been developed to help assess the risks of release and monitor the behavior of defendants released under supervision, and new programs—especially in the area of substance abuse and mental health treatment—have been developed. Because of the short time available to make risk assessments, it is not feasible for Pretrial Services to routinely conduct risk assessments similar to those that can be conducted after an adjudication of guilt. However, it should be possible to initiate a process that would enable information acquired during the Pretrial Screening Division’s initial interviews and follow-up investigations to be incorporated in a new risk assessment instrument that would provide helpful guidance to the judges. Any new approach to this problem should seek to assess the nature of the risks that would be posed by release of the defendant. Beyond a generalized risk of “misconduct”, what specific risks of nonappearance or danger to the community would be posed by the defendant’s release? And, importantly, what specific strategies or available programs would be appropriate to deal with the specific types of risks posed by individual defendants?

5, Pretrial Services’ lack of resources to handle the sharply increasing demands for monitoring and supervision of released defendants. As the data in Section I.B shows, the workload of Pretrial Services has been increasing dramatically over the past several years (and especially in the last three years), while the staffing level has remained unchanged. The growth in the number of defendants placed under the agency’s supervision, often with a number of different special conditions to be monitored, has been particularly sharp. While the increasing demands can be viewed as an acknowledgement of the agency’s effectiveness in monitoring and supervising released defendants, it is apparent that the agency simply cannot keep up with the increasing demands for providing such services without diminishing the quality of the services. At present, Pretrial Services has no way of distinguishing between requests for supervisory services. As a practical matter, it is difficult for the agency to say “No” to any request for supervision of a defendant, because there are no criteria for the utilization of these services.

The steadily increasing demands for the agency to monitor and supervise released defendants will ultimately force choices with respect to policy and resource allocation. At some point, the agency will have to say “No” to some requests simply because it does not have the staff resources needed to conduct the supervision. Alternatively, the agency and the courts can collaboratively develop criteria that can be used to guide the agency’s response to requests for supervision. Importantly, the criteria will have to reflect the fact that supervision is not the only function that the agency can or should perform.

Given the importance of several functions—including (a) the acquisition of information about defendants and presentation of that information to judicial officers; (b) the supervision of some categories of released defendants; and (c) the identification of low risk defendants who remain in detention because of inability to post bond—which ones should receive priority in the allocation of resources by the County and in the agency’s day-to-day operations? How should the priorities be set? These are questions that should be resolved through a collaborative process that includes the agency’s senior

managers, judges of both the District Courts and the County Courts, and other key stakeholders.¹⁷

6. *Widely varying practices of judges concerning use of courtesy supervision and handling violations of conditions of release.* As the data in Section I.B.4 shows, judges vary widely in the frequency and ways that they use Pretrial Services staff to monitor and supervise defendants released prior to trial. All judges make at least some use of the agency’s supervision capabilities, but some use these capabilities very extensively while others use them very rarely. Further, when judges request supervision by Pretrial Services, they vary considerably in their practices with respect to handling violations of conditions. In many respects, this variation in practices is similar to the range of practices documented in a 2003 JMI report on the Harris County Community Supervision and Corrections Department.¹⁸

7. *Drug testing policies and practices.* It is very common for judges to order released defendants to submit to testing for use of illegal drugs. Pretrial Services personnel conduct the procedures (which involve the defendant providing a urine sample), and in most instances the agency then sends the sample to the Medical Examiner’s Office for analysis. Turnaround times for receiving the results are reportedly very lengthy—ten days to three weeks if the results of the test are negative, and as long as four to eight weeks if the test of a urine sample is initially positive and confirmatory analysis must be conducted. Once the results are received, judges vary very widely in how they use the results, assuming that the case has not already been resolved by the time that the results are received. Sometimes a positive test is used as the basis for revocation. Other times the judge may caution the defendant, may order the defendant to participate in a treatment program as a condition of continued pretrial release on bond, may take the test result into account in connection with acceptance of a plea or imposition of sentence, or may not take any action at all. Defendants pay a fee per test, but our understanding is that the fee covers only a small fraction of the costs of the tests for many different kinds of drugs that are done by the Medical Examiner’s Office. For practical purposes of learning whether a defendant is using drugs and adjusting the conditions of release to inhibit such use, it should be practical to in-house procedures that produce much faster results (in minutes, not weeks) and are less expensive. Such methods are used widely across the U.S. While the results of such a test may not be usable as a basis for revocation of bond, they should be adequate for purposes of aiding judges in setting or adjusting conditions of release.

Initial steps have been taken to enable speedier test results with plans for Pretrial Services to install and use a “pupillometry” device. Once a baseline of normal substance-

¹⁷ We understand that the County’s Director of Management Services may convene a Criminal Justice Committee that would include leaders and/or senior managers of the key institutions involved in criminal justice in Harris County. Such a committee would provide an appropriate vehicle for addressing broad policy issues relevant to the work of Pretrial Services.

¹⁸ Barry Mahoney and Peggy McGarry, *The Harris County Community Supervision and Corrections Department: A Preliminary Assessment of the Current Situation* (Denver: The Justice Management Institute, March 2003).

free status has been established for a released defendant under the agency's supervision, the device can determine whether there has been any subsequent drug use by measuring ocular movements after the individual's eye is given a controlled amount of light. This technology shows promise of enabling much more expeditious determination of whether a defendant has in fact been using an illegal substance, but it will require additional staff and will not completely eliminate the need for urine testing. Having faster turnaround on drug test results will enable more rapid response by judges to violation of conditions, but does not resolve the difficult question of what overall policy the courts should adopt in handling cases involving drug-abusing defendants who do not pose a significant risk of danger to public safety or to individual persons.

8. Governance and Policy Development. Pretrial Services is located administratively in the County's Office of Management Services, but with policy direction set principally by the judges of the District Courts and the County Courts. The eight-member Standing Committee on Pretrial Services, on which both District Court and County Court judges serve, is the main vehicle for providing oversight and policy guidance to the agency. In recent years, little attention has been given by the Standing Committee (or by any other entity) to core questions about the agency's mission, core functions, and priorities with respect to the utilization of available resources. These questions have become more pressing as the demands for services—especially supervisory services—have increased. It seems clear that, if new resources were to become available, the new resources could rapidly be consumed in providing supervisory services for ever-increasing numbers of defendants on pretrial release, with some judges making vastly greater use of these resources than others.

Pretrial Services clearly needs additional resources simply to handle its current workload. That workload can be expected to increase in the future, and it is also possible that the agency may be asked to take on additional functions—particularly if increased attention is to be paid to the issue of unnecessary detention of low risk defendants and/or to the development of new risk assessment methods. Because the work and services of the agency can be so valuable for front-end decision-making and improved system operations, it will be important to ensure that the agency's leaders are included in system improvement planning, and that the needs of the overall system are taken into account as the agency does its own strategic planning.

As part of the overall strategic planning and budgeting process for future years, it seems desirable for Pretrial Services to reconsider its mission, core values, and primary goals. This should be done in close consultation with the judges that the agency serves and with input from the other agencies and groups (including the District Attorney's office, the defense bar, and county officials responsible for jail costs and operations). The last time that this type of planning was undertaken by the agency was well over a decade ago. In the intervening years there have been significant advances in technology that can affect the delivery of pretrial services. There have also been changes in the practices and expectations of the judges of the District and County Courts, many of whom have come onto the bench within the past ten years. Additionally, there have been developments in the law and in approaches to handling cases involving defendants with

substance abuse and mental health problems that may be relevant to strategic planning about the organization and delivery of pretrial services. Because of the importance of the governance and policy setting functions, this area is at the top of the list of recommendations in the next section of this report.

V. RECOMMENDATIONS FOR THE FUTURE

Harris County Pretrial Services is highly regarded by judges and other practitioners in Harris County. The agency is viewed as well-managed, with a competent and highly professional staff. The staff is seen as doing an outstanding job of obtaining essential information about newly-arrested persons, flagging cases that present special needs, monitoring and supervising released defendants, keeping judges apprised of relevant developments in the behavior of released defendants subject to their supervision, and responding to judges' requests concerning services. However, this high quality service cannot be maintained in the face of ever-increasing demands for services on a staff that has not increased in size in the past twelve years.

Judges and others interviewed during this project recognize that the demands for the agency's services (especially with respect to supervision of released defendants) have been steadily increasing and they know that there needs to be a reassessment of the role and core functions of the agency in light of the limited resources available. The need for such an assessment is especially acute if—as seems likely—there is no prospect of a significant increase in staff resources in the near future.

The recommendations that follow seek to build upon the strong base that now exists, recognizing that there are threshold issues—mainly concerning the core mission and top priority functions of the agency—that must be resolved. The core problem involves resource allocation: given limited resources available to the agency, how should those resources be used, taking account not only of the needs of the judges for information and supervisory services but also of the public interest in minimizing unnecessary detention of defendants who pose little or no risk to the safety of the community or of individual persons?

Recommendation #1:

Re-examine and clarify the mission, goals, and core functions of Pretrial Services, as a first step in shaping policy and decision-making for the future. The agency's mission and goals should be developed in collaboration with the courts and other justice system stakeholders, and should address three key functions: (1) the gathering and presentation of information about newly-arrested persons, to assist judicial officers in making decisions about custody and release; (2) the supervision of released defendants; and (3) the review of cases of "low-risk" defendants who remain in detention because of inability to post financial bond.

Comment: It is time for Pretrial Services to take a fresh look at its mission, goals, and key functions in light of the changes that have taken place in practices and in technology over the past two decades. During at least the past decade, the practices of the agency have reflected a primary concern with only two of the three key functions of pretrial services agencies: information gathering and supervision. The third function—identifying persons who pose no significant risk of nonappearance or danger to the community who remain in detention because of inability to post financial bond—was part of the agency’s original mission, but has fallen into disuse over the past two decades. Additionally, the ways that the other two functions are performed should be re-examined. Three sets of issues need particular attention:

(1) Risk assessment. With respect to the collection and presentation of information to assist the judge in release/detention decision-making, to what extent should the agency seek to present more detailed information about the nature and seriousness of possible risks that would be posed by release of the defendant? Closely related to the issue of risk assessment, to what extent should the agency provide information or recommendations about possible release options and/or conditions for consideration by the judicial officer? Both the American Bar Association’s Pretrial Release Standards and the Pretrial Release Standards recently adopted by the National Association of Pretrial Services Agencies (NAPSA) call for this type of focused risk assessment and presentation of information or recommendations about ways to meet the risks. Currently, however, Harris County Pretrial Services provides only a generalized Bail Classification Score that indicates the level of risk of “pretrial misconduct” (either nonappearance or pretrial crime) that the defendant poses, without attempting to specify the nature of the risk and without recommending or providing information about specific release options. The judges reviewing the agency’s Defendant Report make little or no use of the Bail Classification Score.

(2) Supervision: scope and priorities for agency services. With respect to supervision, there is an ever-increasing demand for Pretrial Services to provide supervisory services, but no consensus whatsoever as to the appropriate scope of the agency’s supervisory responsibilities. The judges would clearly like to have as much in the way of supervisory services available as possible, to help minimize the risk of pretrial crime committed by released defendants. However, resource limitations make it highly unlikely that the agency will ever be able to have a level of supervisory staff that would enable the agency to meet all of the judges’ desires for such services. There are three related sets of questions here: First, is it desirable to use the Pretrial Services Agency as a kind of publicly-supported guarantor or service provider for surety bond companies? In cases where a defendant on surety bond is released under special conditions that provide for monitoring and supervision by Pretrial Services, such monitoring and supervision should help ensure the defendant’s law-abiding conduct and return for scheduled court appearances. One practical effect of this practice is to reduce the bonding company’s risk, at no cost to the bonding company. Second, to what extent does the pressure to provide supervisory services for defendants released on surety

bond (including some defendants who can fairly be characterized as “high risk”) tend to divert the agency’s staff from performing other essential functions—in particular, (a) the supervision of defendants on personal bond for whom they have direct responsibility; and (b) obtaining and presenting information on low-risk defendants who remain in detention because of inability to post financial bond? Third, what are the types of supervisory risks for which the Pretrial Services Agency should be expected to provide specific types of monitoring and supervision? At present, judges call upon the agency to provide a wide variety of different types of supervision and there is no sense of priorities in the allocation of supervisory resources.

(3) Review of cases of low-risk detainees. The data shown in Table 4, *supra*, indicates that there may be large numbers of low-risk defendants who remain in detention because of inability to post bond. Whether these numbers are large or small, and regardless of the length of time that they remain in detention, any unnecessary detention of defendants during the pretrial stage of criminal cases is undesirable. At present, there appears to be no clear data on the extent does such unnecessary detention actually takes place. At a minimum, it will be important to get a much better picture than is currently available of the numbers of such defendants, the lengths of time that they remain in detention, and characteristics of their cases that may help explain why such detention occurs (see recommendation #3, below).

In recommending that the agency’s re-examination of mission and key functions take place in collaboration with the courts and other key stakeholders, we recognize that policies and practices concerning the release and detention of accused persons are of concern not only to the agency and the judges but also to other entities involved in the administration of criminal justice in Harris County and to the public. Decisions in this area involve serious questions of individual liberty, public safety and utilization of limited fiscal resources.

The judges of the Harris County District and County Courts constitute the principal policy board for the agency. Beyond the judges’ formal authority, the reality is that, if a pretrial services agency is to function effectively in any jurisdiction, it must have the confidence and support of the judges with whom it works. Fortunately, the relationship of the agency with the judges of both the County and District Courts is one of mutual confidence and respect, so there is a solid basis for collaborative work. The primary vehicle for the judiciary’s exercise of policy guidance concerning the operations of Harris County Pretrial Services is the Standing Committee on Pretrial Services, which includes judges of both the District Courts and the County Courts. If the agency is to be successful in shaping its mission and priorities, it will need to work effectively with this committee. The agency’s staff should take the lead in developing detailed recommendations concerning Pretrial Services’ mission, goals, and core functions, and can provide essential information, but the Standing Committee should be a principal mechanism for shaping policy.

The Standing Committee is not the only relevant group that has interests in a well-functioning pretrial release program, however. Because the agency's work can have a significant impact on overall system operations, it will be important to ensure input from other justice system stakeholders as Pretrial Services' future mission and priorities are shaped. Optimally, this would be done at least in part through participation by agency leaders in the work of a county-wide criminal justice coordinating council or similar policy group.

Recommendation #2

As a high priority for the JIMS 2 initiative, make essential upgrades in Pretrial Services' automated information system software used in connection with initial investigations and in connection with subsequent monitoring and supervision of released defendants. Place top priority on replacement of the "Client-Master" system with a monitoring and supervision module that is compatible with the software used for information obtained through initial investigations.

The most immediately pressing issue with respect to Pretrial Services' information systems is the storage capacity of the Client-Master system that is used to record and store information relevant to the monitoring and supervision of defendants. That system is rapidly reaching capacity and probably will not last much beyond the end of calendar year 2005. At a minimum, action must be taken to provide the necessary capacity for the agency to have a functioning information system usable for monitoring and supervision. Beyond that bare minimum, however, there are several improvements that should be made in the agency's information system capabilities. Three areas are particularly important for attention as the County's JIMS 2 initiative moves forward and the investigation and supervision modules are re-designed and integrated for future use:

1. Data entry should be made easier than under either of the two systems now in use (JMIS and Client-Master), both of which require extensive training to use effectively for data entry by Pretrial Services staff.
2. Data transfer between the investigation and supervision modules should be simplified, eliminating the duplicative entry of large amounts of data on individual defendants that now takes place. When both the investigation and supervision modules become part of a new JIMS 2 system, it should be much easier to move data between the investigation and supervision functions.
3. The process of making on-line inquiries of the database should be greatly simplified, making it easy for judges and others with a legitimate need to access information in the Pretrial Services database to do so. One of the main reasons that many judges now make little or no use of the agency's Defendant Reports is that each report is a minimum of four densely printed pages. The information gathered by the agency is not readily accessible via the computers that each judge has on the bench, because it requires special training and familiarity with a large series of screens to locate specific pieces of

information. When judges are considering the setting or revision of conditions of release, it is important for them to be able to have ready and easy access to the information in the Defendant Report. Additionally, easy access to this information can be of great assistance to judges in sentencing defendants; to defense lawyers in initiating discussions with their own clients, making motions concerning bail and conditions of release, and developing strategies for negotiations concerning resolution of the case; and to Community Supervision and Corrections Department personnel in developing recommendations concerning post-sentence supervision of defendants.

We understand that Pretrial Services has been working with the Juvenile Probation Department and the Community Supervision and Corrections Department on development of a “Common Supervision Program” module that would be part of the new JIMS 2 system. The cooperative approach seems highly desirable, and should lead to significantly improved data entry, storage, and transfer capabilities for all of the entities.

Recommendation #3

Develop reliable information on the extent to which there may be unnecessary detention of low-risk defendants who are unable to post financial bond.

Comment: The data shown above in Table 4 indicates that there are a large number of defendants—including many charged with Class A and B misdemeanors and fourth degree felony offenses—who remain in detention because of inability to post financial bail despite posing what Pretrial Services’ Bail Classification Score indicates would be low risk of pretrial misconduct (either nonappearance or pretrial crime). It is possible that in some of these cases the duration of the detention is in fact very short (perhaps as short as a single day if a resolution of the case is reached at the first appearance in the court to which the case is assigned). It is also possible that some of these defendants may not be viewed as “low risks” by the judges for any of a variety of possible reasons. However, at this point, there is simply no hard knowledge of the extent of the problem of unnecessary detention of low risk defendants. It is beyond the scope of this project to undertake the type of detailed analysis that would be necessary to gain a better picture of the scope of this problem. However, this is something that can be done through close examination of the records of a sample of the defendants classified as low risk by the agency.

From the data in Table 4, it appears that, at the same time that some “low risk” defendants remain in detention, some defendants who are classified as “high risk” are obtaining release, generally on surety bond. From a policy standpoint, it is incongruous to have high risk defendants obtaining release while low risk defendants remain in detention. Part of the problem may lie in the definition of what constitutes “low risk” and “high risk”. This issue is discussed in connection with Recommendation # 5, which deals with re-examination and possible revision of Pretrial Services’ risk assessment methodology. However, even before such a re-examination takes place, it should be possible to develop ways to determine the number of truly low-risk defendants who

remain in detention longer than a day or two. While the jail population is currently below the rated capacity for Harris County's jail facilities, the jail population has been steadily creeping up over the past several years.¹⁹ Particularly if the population continues to rise, it will become necessary to consider more aggressive approaches to identifying low-risk detainees who can be safely released.

Recommendation #4:

Develop plans to minimize the unnecessary detention of low-risk defendants unable to post bond whose release, subject to appropriate supervision by Pretrial Services, would not be likely to pose significant risks of nonappearance or danger to public safety.

Comment: Even before Pretrial Services' current risk assessment methodology is re-examined and possibly revised, it should be possible to develop procedures aimed at minimizing the number of low-risk defendants who remain in detention prior to adjudication of their cases. Of particular relevance, the provisions of Article 17.15 of the Texas Code of Criminal procedure—which require courts to ensure that the power to require bail is “not to be so used as to make it an instrument of oppression” and call for the courts to take account of the defendant's ability to make bail—would seem to authorize reconsideration of the circumstances of individual defendants who pose low risks of nonappearance and danger to public safety but who are unable to make the bail originally set.

The existing Bail Classification Score can provide a starting point for review of cases in which low risk defendants remain in detention. The JIMS system is capable of providing a daily report of defendants in detention, indicating the most serious offense charged and the length of time that the defendant has been in detention. It would be possible to review this report on a regular basis (possibly daily; in any event not less frequently than weekly) to identify the defendants classified as low risk who have remained in detention longer than a defined period of time. At a minimum, these cases could be flagged for review by the judges to whom the case is assigned, for possible reconsideration of bail and release conditions. If thought appropriate, additional information relevant to a risk determination and the defendant's financial circumstances could be developed by Pretrial Services staff and provided to the court, the defense attorney, and the prosecutor.

Developing such a bail review function within Pretrial Services would, of course, require staff resources. Thus, consideration of the importance of this function—and the priority that it should be given in resource allocation—must be weighed against the other demands on the agency's staff. However, whether or not the agency develops this

¹⁹ See Charles Friel, *Forecast of the Harris County Jail Population, June 2004 to May 2005* (Huntsville, TX: Sam Houston State University, June 2004). In June 2004, Friel predicted that the jail population would rise by 7.85% over the next twelve months, to a total of 8,821 prisoners at the end of May 2005. The population figure on May 16, 2005 (8,748) is very close to Friel's projections. A continuation of the recent trend would put the population over capacity by mid-2006 unless new policy changes were introduced.

function as a part of its core mission, it seems clear that—to the extent that a problem of unnecessary detention of low-risk defendants exists in Harris County—it is incumbent upon the judiciary and county officials to address it. Such detention wastes scarce jail resources and is contrary to public policy favoring the release of defendants prior to trial unless they pose unacceptable risks of nonappearance or danger to the community.

Recommendation #5

Revise Pretrial Services’ risk assessment methodology and practices to (a) provide judicial officers with more useful information and guidance concerning the nature and seriousness of possible risks of releasing individual defendants; and (b) provide judicial officers with information on release options or conditions that may be helpful in minimizing the risks of release.

Comment: As noted above in Section III, the agency’s risk assessment methodology was developed in the early 1990s and first introduced in January 1993. Interviews with a number of judges make it clear that at this time the Bail Classification Score generated by applying the risk assessment methodology is simply not used by the judges in setting bail and establishing other conditions of release. There are a number of possible reasons for the non-use, but the bottom line is that the existing methodology does not provide judges with information that they find useful.

Revision of the risk assessment methodology is not a simple task, but it is one that should be undertaken for at least two major reasons: First, the existing risk assessment methodology does not let the judicial officer know what types of risks a defendant poses and provides no guidance with respect to what types of release options or conditions might be appropriate to minimize the risks. Second, lacking a sound methodology for assessing risks and potential ways of minimizing, the agency is without any firm policy to use in providing supervision for defendants who pose similar types of risks.

In revising the risk assessment methodology, it will be important to take account of the realistic concerns that judicial officers have with respect to pretrial release of defendants charged with different types of offenses and having different types of prior records. At the same time, it will also be important to develop objective data that indicate the nature and degree of risk that appears to be posed by release of different categories of defendants. Two recently updated sets of national standards concerning pretrial release—one adopted by the American Bar Association and the other by the National Association of Pretrial Services Agencies (NAPSA)—have some key common elements relevant to reconsideration of Pretrial Services’ role in assessing the risks posed by a defendant and suggesting possible release options. While they use different terminology in addressing issues of report preparation and presentation of information to the judicial officer, both sets of standards provide that:

- The information presented by the agency to the judicial officer should be demonstrably related to the purposes of the release decision.

- The report should be in written form, should include factors shown to be related to risk of flight or of threat to public safety or of threat to the safety of any person, and should present an assessment of the risks posed by the defendant.
- The assessment of risk of flight or of public safety threat should be linked to appropriate release options designed to respond to the specific risk and supervision needs identified.
- The identification of release options and recommendations concerning release options should be based on detailed agency policies or guidelines developed in consultation with the judiciary. Suggested release options should be supported by objective, consistently applied criteria contained in the agency’ policies or guidelines.²⁰

Adoption of the approach recommended by the ABA and NAPSA standards would mean significant changes in long-established Pretrial Services operating procedures. A new risk assessment methodology would have to be adopted, optimally based on detailed analysis of the existing data base to help identify factors empirically shown to be related to different types of specific risks—not simply a generalized risk of pretrial misconduct.

In addition to developing a “point score” type of instrument that could help predict the seriousness of different types of risks based on readily-available information, it would probably also be desirable to develop some type of short-form assessment instrument that could be administered to defendants in at least some types of cases. One drawback to such an approach is that use of a multiple-question risk assessment instrument could be very time-consuming.²¹

Development of any new approach to the presentation of information about defendants, including information or recommendations concerning possible release options to address identified risks, would have to be developed in consultation with the judiciary and other criminal justice system stakeholders.. This could be done by the agency working collaboratively with the Standing Committee on Pretrial Services and with a broader criminal Justice Committee, but it would not be a short-term project. Specific funding would have to be found to undertake revision and testing of the risk assessment methodology.

Recommendation #6

Re-format Pretrial Services’ Defendant Report to make it more “reader friendly” and to highlight the most essential (and most widely used) portions of the report.

²⁰ American Bar Association, *Standards on Pretrial Release* (adopted February 2002), Standard 10-4.2 (g) and (h); National Association of Pretrial Services Agencies, *Standards on Pretrial Release* (Third Edition, adopted October 2004), Standard 3.4.

²¹ One possible approach to the problem of finding time to administer the risk assessment instrument would be to provide for this to be done, for defendants who met threshold eligibility criteria, after the initial interview and probable cause hearing.

Comment: In interviews with judges of both the District Courts and the County Courts, we repeatedly heard comments about the difficulty of using the Defendant Report, even from judges who found the information in it to be very valuable for their decision-making. Re-design of the form is something that it should be possible to do with input from the actual users—mainly judges and the magistrates who handle probable cause hearings, but possibly others including defense attorneys and prosecutors. Key tasks would include (1) ascertaining what pieces of information judges most want to have for purposes of release/detention decision-making; and (2) re-designing the Defendant Report to highlight the most critical pieces of information in the report or make them easier to locate and read. Larger type on the printed forms would be helpful. On a longer-term basis, making the reports available on-line to authorized users would be highly desirable.

In the event that Recommendation #5 is adopted and Pretrial Services begins to make more specific identification of risks and supervision needs, then revision of the form to take account of the new information will be essential. Even if practices with respect to risk assessment remain unchanged, however, re-design of the form to make it more usable would be likely to increase use of the information.

Recommendation #7

Provide for timely distribution of Pretrial Services' Defendant Report to defense attorneys in all cases.

Comment: At present, the Defendant Report prepared by Pretrial Services is distributed routinely to the magistrates who handle probable cause hearings; to the judges of the District and County Courts to whom the defendant's case has been assigned (unless the judge has specifically requested that the report not be delivered to the court, as some have); and to the District Attorney's office. Defense attorneys do not routinely receive the report, although a few judges try to make sure that a copy of it is provided to them. However, the report contains valuable information that is used as the basis for judicial decision-making on issues of pretrial release and detention and sometimes for purposes of sentencing. It should be made available to defense lawyers on a routine basis.

Once the necessary upgrades are made in the automated information system as part of the JIMS 2 system improvements, it may be possible for defense attorneys to access the report online. Until that time, it seems desirable to provide some means of making sure that the report gets into the hands of the defense attorney not later than the time that the attorney first appears in court as the defendant's lawyer or, preferably, as soon as the appointment is made. Bail issues are typically addressed at the defendant's first appearance, and it is desirable for the defense lawyer (like the prosecutor) to have the information at that time, in order to represent the defendant effectively at this stage.

Recommendation #8

Re-examine Pretrial Services' role in monitoring and supervising released defendants. Establish priorities for the types of cases in which the agency will be asked to supervise released defendants and for the types of conditions to be imposed on defendants and monitored by agency staff.

Comment: At present, Pretrial Services supervises virtually all defendants released on personal bond plus a rapidly growing number of defendants released on financial bond. The supervision of defendants on personal bond is clearly a core function, and has been ever since the agency was established in essentially its present form in 1975. The supervision of defendants on surety bond is a much more recent phenomenon, one not originally contemplated at the inception of the agency. Over the past several years, particularly, the use of such "courtesy supervision" has increased markedly, though the extent to which it is used varies widely among the judges.

The agency's staff is regarded as being very effective in its monitoring and supervision, and there can be no doubt that most judges would like to be able to make even more use of Pretrial Services' capabilities if they could. However, as indicated above in the discussion concerning Recommendation #1, there are several basic policy issues that must be resolved concerning the allocation of agency resources to this task. In particular, it will be important to consider the level of resources devoted to supervision in light of decisions about the priorities to be given to collection of information about newly arrested defendants and to review of cases involving low risk defendants who remain in detention because of inability to post surety bond or cash bond.

Assuming that there are sufficient staff resources to do at least some types of monitoring and supervision of defendants on financial bond, it will be important to set parameters around the use of these services. To some extent, the development of policies and priorities in this area is related to the development of a new risk assessment methodology and the presentation of information or recommendations concerning release options and possible conditions. Optimally, Pretrial Services would be able to provide guidance to the judges on the nature and seriousness of the risks that would be posed by release of individual defendants and also to indicate what release options might be appropriate. While decisions concerning specific release options would necessarily remain with the judge, work by the agency on risk assessment and options to respond to specific types of risks could help to develop consistent judicial policies concerning the imposition of conditions. Of particular note, to the extent that special conditions are imposed with the expectation that Pretrial Services will monitor compliance with them, the conditions should be ones that are in fact readily monitorable by agency staff given the level of resources available.

A related issue involves the funding for Pretrial Services' monitoring and supervision of defendants on surety bond. When Pretrial Services is directed to supervise defendants on personal bond, the released defendant is required to pay a fee to the agency (waivable in the case of indigent defendants) to help cover the cost of supervision. However, when a defendant on surety bond obtains release under special conditions that, in addition to posting the surety bond, require the defendant to be subject to monitoring

by the agency, no such fee is paid although the defendant does have to pay a fee (unless waived by the judge) for specific types of supervisory services such as electronic monitoring. The level of PTSA staff resources required to monitor compliance with the conditions of the defendant on surety bond is often substantially greater than needed to monitor defendants on personal bond, because many of the defendants on such “courtesy supervision” pose greater risks to public safety and need closer monitoring.

Recommendation #9

Develop policies and guidelines for Pretrial Services and the judges to follow in responding to defendants’ failure to comply with conditions of release. These should include (a) a general strategy for responding to different types of violations of conditions; and (b) a set of policies for handling violations that includes a continuum of actions that can in some instances be taken by the agency without referral of the case to the court. Particular attention should be paid to developing a coordinated approach to drug testing of released defendants and to handling cases in which drug tests indicate that a released defendant has been using illegal drugs.

Comment: One of the key issues in pretrial services, as with respect to probation, is how to deal with violations of conditions imposed by the judge. Nationally, there is broad recognition that conditions vary in importance and that not all violations are of equal significance for purposes of protecting against risks of nonappearance and danger to community safety. Therefore, not every violation of a condition of release must be met with action to consider revocation of release. In some instances, rapid action by the pretrial services agency may be more effective—and less costly—than action to revoke the release.

In Harris County, there are significant differences across the courts in the types of policies that judges expect Pretrial Services to follow in handling violations of conditions. For the agency to function effectively—and for the courts as well as the agency to make effective use of limited resources—it makes sense for the courts and the agency to develop an overall strategy that provides greater consistency in handling violations. The strategy should leave the agency with some discretion in the handling of relatively minor violations.

Practices with respect to testing released defendants for use of illegal drugs and responding to positive test results should receive particular attention. At a minimum, the expensive and time-consuming current practice of sending urine samples to the Medical Examiner’s Office should be reexamined and revised to enable information about defendants’ drug use to be provided to judges on a timely basis. The courts should seek to develop cost-effective common policies concerning when drug testing should be ordered, for what types of drugs, how and by whom the tests should be conducted, what responses should be made to test results, and when (under what circumstances) the drastic step of revoking bond should be taken.

When a defendant fails to appear for a scheduled court date or date to appear for drug testing, it is important for the agency to take prompt action to assure the defendant's return. Sometimes, the failure may be inadvertent (for example, if there has been a miscommunication about the exact time or location of the event) and can be remedied quickly by a phone call that will result in the defendant's appearance the same day. Other common types of violations should be considered by the agency and the Standing Committee, with a view to developing consistent policies about appropriate responses. It will not be possible to anticipate every possible situation, but it should be possible to begin by considering the most common types of violation behaviors and developing presumptive responses that will be appropriate and cost-effective.

Recommendation #10

Develop plans for improved resource-sharing and continuity of services between Pretrial Services and the Harris County Community Supervision and Corrections Department

Comment: Because both Pretrial Services and the Community Supervision and Corrections Department have monitoring and supervision responsibilities, and in many instances will end up supervising the same defendants, it is logical to consider how the two agencies can work more closely and effectively with each others. Resource sharing can enable some saving in costs, and may also facilitate smooth transition in supervision of defendants between the pretrial and post-adjudication stages.

It should be noted, however, that there are some significant differences between supervision during the pretrial period and supervision of a defendant after being placed on probation. First, pretrial supervision almost always involves a shorter period of time than probation, but often involves much more frequent contact by the officer with the person under supervision. Second, the purposes of the supervision are somewhat different. Supervision of defendants on probation is explicitly rehabilitative, designed to re-integrate the offender into the community. By contrast, defendants on pretrial release are, by definition, not convicted of the crime with which they are charged. The purposes of the supervision are to assure appearance at court events and to minimize danger to the community. Third, supervision by Pretrial Services must be undertaken immediately after release, with—at least as of now—no risk assessment of the individual that can help guide supervision strategies and techniques.

Despite these differences, there are undoubtedly some areas where resource sharing is feasible and desirable. Perhaps the most obvious area is information: the information base developed by Pretrial Services—both through its initial interviewing and in its monitoring and supervision of released defendants—can provide a foundation for CSCD's preparation of files and information on the defendant. A second potential area is in purchasing (and possibly in use) of equipment and supplies used for monitoring and supervision. Some collaborative work is now being done by Pretrial Services and CSCD on equipment and supplies used for electronic monitoring. There are likely to be other areas in which such collaboration can be fruitful.

Recommendation #11

Develop a research capacity within Pretrial Services, to enable improved evaluation of agency operations and facilitate planning for budgeting and allocation of resources.

Comment: Pretrial Services has no research specialist and no program for conducting evaluation of its current practices or experimentation with alternative approaches. However, the agency has an excellent database that can be used for research purposes, and its staff includes persons with skills in research and computer-based data analysis. Indeed, the original Bail Classification Score was the product of research for which the current Assistant Director was a principal investigator. A major reason for the recent lack of attention to research is that the entire agency (including the persons with research skills) has been consumed by day-to-day pressures. This recommendation emphasizes the desirability of either obtaining new resources dedicated to research or freeing up current staff to conduct research on key issues. Two such issues have been discussed above: (1) ascertaining the number of low-risk defendants who remain in detention because of inability to post bail; and (2) developing a new and more useful risk assessment methodology. Research on both topics can be important in shaping release/detention policy in Harris County.

There a variety of ways that the research function could be structured, including (a) the addition of new staff with research skills; (b) reorganizing the responsibilities of current staff to enable the staff members with research skills to undertake important research assignments; (c) use of outside consultants, possibly on an on-going basis; and (d) a combination of some or all of these approaches.

Recommendation #12

Provide for an increase in Pretrial Services' staff size as soon as possible, in order to alleviate severe workload pressures. Couple this increase with plans to review the agency's staff size and staff allocation in relation to the functions that the agency will be expected to perform once the agency has undertaken the re-examination of its mission, goals, and core functions called for in Recommendation #1 . Plan and budget for the necessary staff, equipment, and other resources that will be needed to support the anticipated workload, and develop appropriate performance measures.

Comment: As this report amply demonstrates, Pretrial Services' workload has grown enormously in recent years while staff size has remained virtually unchanged. To alleviate the workload pressures now facing staff, some staff increases will be necessary unless some current functions are to be reduced in scope.

Beyond the desirability of short-term increases to meet the burgeoning workload, it seems desirable to defer further increases in the agency's staff size until after a careful re-examination of the agency's mission and core functions has been undertaken as called for in Recommendation #1. In the course of such a re-examination of functions, it will be

desirable to pay attention to Pretrial Services' role with respect to the possible problem of unnecessary detention (Recommendations #3 and 4), to the suggested changes in risk assessment practices (Recommendation #5) and to the setting of priorities for monitoring and supervision of released defendants and the handling of violations of release conditions (Recommendations #8 and 9). The staff size and the deployment of staff should reflect the mission and functional priorities that are developed through the strategic planning exercise. Thus, while there will inevitably be pressures for more staff resources to be put into supervision of released defendants, it is possible that attention should first be given to adding resources that will enable significant reduction in the number of low-risk defendants unnecessarily detained and/or to different ways of assessing the risks posed by defendants.

Once the strategic planning has been done and the dimensions of the possible problem of unnecessary detention have been ascertained, it will be appropriate to consider what additional resources are necessary. If the agency's work can result in a reduction in costly but unnecessary pretrial detention and in more effective early decision-making in cases, then the case for some expansion of staff becomes appreciably stronger.

After the recommended review of agency goals and functions has been accomplished, the agency should seek to develop an updated performance assessment system that will accurately reflect any new agency and individual staff responsibilities. The performance assessment system should cover both the performance of Pretrial Services as an entity and the performance of individual staff members responsible for specific functions. Initial planning for an updated performance measurement system should logically be a part of the re-examination of mission, goals, and core functions discussed under Recommendation #1.

Recommendation #13

Develop plans for educating judges, court staff, defense lawyers, prosecutors, and CSCD senior managers about the mission and functions of Pretrial Services, with particular attention to how the work of the agency can assist them in the effective performance of their duties and responsibilities. Continue and strengthen in-service training for Pretrial Services staff.

Comment: If judges and other practitioners are to make effective use of Pretrial Services' information and of the other services provided by the agency, it is important for them to know more about what the agency does, how it does it, and why. The judges and other practitioners who are familiar with the work of the agency are strong in their praise for the work. However, many judges and others do not know much about the agency's history, the reasons for its existence, the functions it performs, or the ways in which the agency's reports and other functions can be valuable to them in their own work. The starting point for education and training about the work of the agency is probably the Standing Committee on Pretrial Services. The members of that committee should be fully familiar with the agency's work and the issues it faces.

One logical approach to develop the Standing Committee members' knowledge about the agency is through collaborative work by the committee with agency leaders on the issues and recommendations outlined in this report. The Standing Committee is the main vehicle for linking the agency with the judges, and plans for educating the full complement of judges about key issues and proposed changes can be developed as part of the collaboration in addressing threshold issues of mission and core functions.

Pretrial Services already has a program of orientation and in-service training for staff members, but severe caseload pressures in recent years have left little time for staff training. The agency's in-house training program should be continued and enhanced, with revisions in training curriculum as needed to make sure that staff members are well-equipped to handle any new or revised functions.

Recommendation #14

Plan now for Pretrial Services' location and functions in any new or renovated facilities used for the booking and detention of newly arrested defendants, to ensure that the staff has adequate space for prompt and secure interviewing of defendants and for other investigative functions relevant to preparation of the Defendant Report.

Comment: We understand that plans are under development for new or renovated facilities to be used for the booking and initial detention of newly-arrested persons. As such planning moves forward, it will be important to take account of the role and functions of Pretrial Services. The agency's staff should have adequate, secure, and well-ventilated space in which to conduct interviews of arrestees and to prepare the Defendant Reports to be provided to judicial officers and others.