NYAPSA NEWS

A Publication of the New York Association of Pretrial Service Agencies
Established in 1976

Inside this issue:

Queens Supervised Release Program ... 2

Probation: Major Case Management System Upgrade … 3

Monroe Co. Now Offering Intervention Classes … 3

NYAPSA's 2013 Conference … 4

State of the Judiciary - Bail Initiative … 5

NYAPSA NEWS is published annually. Articles for submission relating to pretrial release and diversion are always welcome.

Send your article (in MS Word format), along with your full name, title, and organization via e-mail (or on a disk) to:

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PRESIDENT'S LETTER

By Craig McNair

I hope everyone has had a productive spring and summer. The NYAPSA Board has been busy behind the scenes on a variety of topics. 2013 will certainly be an exciting year.

Previously I announced that NYAPSA, in conjunction with the NYC Criminal Justice Agency (CJA), received a technical assistance grant by the Bureau of Justice Assistance, awarded to the Crime and Justice Institute (CJI), to look at the state of pretrial in New York. NYAPSA and CJA partnered with the New York State Office of Probation and Correctional Alternatives, with the aid of CJI, to create and administer a state-wide survey on pretrial release practice. Our goal is to gather and analyze the survey results to provide a roadmap for future discussion, and technical assistance opportunities. By now many of you have participated in the survey, and we are anxiously awaiting the results for analysis and to help us develop a roadmap for future discussion and technical assistance in the state. This has been an exciting project, and one that will ultimately involve NYAPSA in assisting jurisdictions throughout the state and to help ensure continued pretrial training and best practices.

The NYAPSA Board has been working behind the scenes planning a statewide conference for this October. By now you should have received a "Save the Date" card. The conference "New York - A Pretrial State of Mind" will be held on Sunday October 20 and Monday October 21, 2013 in Troy, NY. We are very excited and believe this will be a wonderful opportunity for pretrial professionals to gather, network, share ideas, and plan for the future of pretrial in New York. Please watch for registration materials. I encourage you to attend.

As we update our website, we will post information regarding important pretrial initiatives around the state. Should you have any questions, or would like other assistance, please don't hesitate to email me at:

cmcnair@monroecounty.gov

Thanks and best wishes!

QUEENS SUPERVISED RELEASE PROGRAM

By Mary Phillips, Ph.D.

The New York City Criminal Justice Agency, Inc. (CJA) has operated a supervised release program for persons charged with nonviolent felony offenses in the borough of Queens since August 2009, when it began as a pilot project funded by the City through the Office of the Criminal Justice Coordinator (OCJC). The program has recently been extended to Manhattan, where a Manhattan Supervised Release Program began operating in April 2013.

It is too early to provide any data from the Manhattan program, but after nearly four years of operating Queens Supervised Release (QSR), CJA has published a *Research Brief* describing the Queens program and presenting data from its first 40 months of operation. *Research Brief* No. 32 is available on CJA's website at: www.cjareports.org/research/brief32.pdf

This article presents the highlights from that Brief.

Objectives

The QSR program's objectives are to reduce reliance on money bail and lower pretrial detention for a population that does not pose a substantial risk to public safety. The project helps to minimize the costs of incarceration, both institutional (e.g., the amount the City spends on jail) and individual (e.g., loss of income, ability to attend school and care for one's family). The program also seeks to offer clients opportunities for voluntary treatment where appropriate as early as possible.

The program was designed to provide judges with an alternative to setting money bail without "widening the net" by replacing release on recognizance (ROR). To avoid net widening, the program does not actively pursue persons who appear to have no prior arrest and who are recommended by CJA for ROR. (CJA interviews virtually all defendants between arrest and arraignment, and issues a recommendation based on objective, validated factors.) Additionally, certain charges with a low probability of bail being set are excluded. The program also utilizes the defense attorney as the "gatekeeper" regarding the likelihood of detention on bail, and will not proceed with a case if the defense refuses.

Program Exclusions

To address public safety concerns, the program excludes from consideration those charged with a Violent Felony Offense (VFO) and those at highest risk for re-arrest or failure to appear (FTA). The defendant's conviction history is used to assess risk of pretrial recidivism, and CJA's pretrial recommendation is used to assess risk of FTA.

Program Participation

The program uses validated intake-assessment instruments that help identify substance abuse and mental health needs. Referrals to outside agencies for voluntary services are made where appropriate. Program participation requires frequent face-to-face and telephone contacts with program staff, and cooperation with program verification efforts concerning applicable activities and responsibilities. Case managers, who are social workers, evaluate the client's service needs and his/her supervision requirements as determined during the intake-assessment process and throughout the pendency of the case. Written progress reports are submitted at all scheduled court appearances, and unscheduled reports are provided in advance of the court date if there is a serious failure in compliance with the conditions of release.

Successful and Unsuccessful Termination

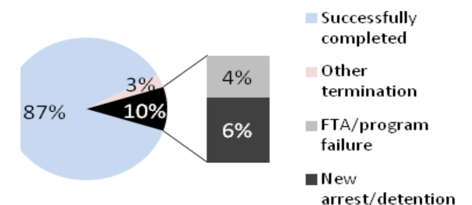
Successful completion of supervision occurs typically when the client enters a plea to a misdemeanor and receives a non-incarcerative sentence. A client's participation also ends successfully upon entering a guilty plea to a felony or when supervision is transferred to a specialized court or Alternative to Incarceration (ATI) program.

Unsuccessful terminations occur when the Court revokes supervision by setting bail on the case or changing the detention status. These unsuccessful terminations are associated with being re-arrested and detained on a new felony case, not reporting to the program, failing to appear for a court date, or other client misconduct.

Some terminations fall into a more neutral category, and may include a client being held for immigration or being detained on a violation of probation or parole on a previous case.

Program Data

By November 30, 2012, 1,001 clients had been accepted into the program, and 864 (86%) had completed it by that time. Half of all clients were assessed to be in need of substance abuse treatment, mental health services, or both. Very few were already linked to services, so the opportunity to receive referrals was an important component of program participation for many.



Of the 864 clients who had completed the program by the cut-off date, 87% completed it successfully, 10% unsuccessfully, and 3% were terminated for reasons other than client misconduct. Only 4% had supervision revoked because of FTA, and 6% because of a new arrest (together comprising the unsuccessful terminations). When re-arrests did occur among these felony-charged defendants, they were overwhelmingly for less serious offenses.

Conclusions

The high success rate of the program in Queens was a major factor in the City's decision to support its extension to Manhattan. The boroughs differ somewhat in the composition of the nonviolent felony population as well as in some case-processing procedures, so changes in the program may be required as it moves from one county to another. Those insights will be critical as we strive to comply with Chief Judge Lippman's recent call for consideration of supervised release programs across the state.

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DON'T FORGET TO REGISTER!

NYAPSA'S 2013 CONFERENCE IS THIS OCTOBER 20-21

THE DEADLINE TO RESERVE A HOTEL ROOM AT THE SPECIAL CONFERENCE RATE IS SEPTEMBER 20TH!

NYAPSA's conference will be held at the:
Hilton Garden Inn
235 Hoosick Street
Troy, New York, 12180

Room reservations must be made directly with the Hilton Garden Inn, by calling:
(518) 272-1700.

Rooms must be booked by September 20, 2013 to secure the special conference state room rate of $109.00 (single or double occupancy).

Conference attendees are responsible for their own room charges.

Fill out the registration form on the next page, or our conference registration packet which is coming in the mail soon!

Probation Undertakes Major Upgrades to Case-Management System

By Jonathan Heller

For most of the first half of 2013, the primary case-management system for probation in New York State has been involved in a major upgrade. As of June 1, Caseload Explorer version 5.2 has been deployed in the following 46 counties: Jefferson, Nassau, Ulster, Warren, Albany, Allegany, Cattaraugus, Chautauqua, Chenango, Clinton, Columbia, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Hamilton, Herkimer, Montgomery, Madison, Dutchess, Niagara, Onondaga, Ontario, Orleans, Oswego, Otsego, Rockland, Saratoga, Schenectady, Cortland, Schuyler, Greene, Tompkins, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Monroe, Wyoming, Yates, Schoharie, Suffolk, and Lewis.

This progress reflects the efforts of so many during the past several months, including the seven pilot counties, the county probation departments and their IT staff, DCJS IT staff, and our partners at AutoMon, Inc. (the vendors for Caseload Explorer). The coordinated efforts and commitment by the vendor, the New York State Office of Probation and Correctional Alternatives, and the designated staff in each of the counties is what saw this difficult process though to the end.

The new version of Caseload Explorer provides for a standardized Pre-sentence Investigation (PSI) template, a mechanism to track administrative vs. active cases, the ability to track merit credits and graduated responses activities, and other enhancements to accommodate the new supervision rule. While the incorporation of the new supervision rule into the system was the primary driver behind the upgrade, this process allowed for other significant enhancements, such as a standardization of the statewide version of the product (allowing for universal upgrades, enhancements and changes on a consistent statewide basis), and the ability to create a Statewide Pre-sentence Investigation Repository.

Up until now, the Repository has included PSIs from only the 5 boroughs of New York City. As pretrial programs have repeatedly demonstrated, having and sharing information is key, and the enhancement of the Repository will go a long way in improving access and timeliness of records retrieval.

MONROE COUNTY ADDRESSES DEFENDANTS' NEEDS

By Charlene Leistman

Budget cuts, insurance changes, unemployment, lack of resources -- we've heard it all. For defendants in need of intervention services, these barriers can be like brick walls. Pre-Trial Services of Monroe County has come up with a solution.

We are now offering several curriculum-based educational classes. While the concept originally grew from a need within our Diversion Program, classes are open to all defendants involved with our agency whether weekly call-ins, Release Under Supervision, or Diversion. These classes are designed for defendants who require intervention services, but do not meet DSM IV criteria that would make them eligible for community mental health or chemical-dependency treatment. They are also free or low-cost ($5 per session). Classes range in length from a single session to an eleven-week course. Topics are: Drug/Alcohol Education; Parenting; Anger Management; Choices and Changes; Life Skills; and Young Adult Behavior. We are looking to add Wellness and Self-Esteem/Anti-Bullying.

The Diversion Counselors or interns facilitate the classes. Once a defendant is determined to be in need of services, attendance becomes mandatory and the court is notified of non-compliance. Certificates of completion are given if all requirements, including homework assignments, are finished.

The feedback from staff, defendants, attorneys, and the judiciary has been extremely positive. They are thrilled to have these classes as an option to assist defendants in complying with Court requirements, and to know that quality services are being offered to assist defendants in addressing their needs.

NYAPSA CONFERENCE REGISTRATION FORM

Complete this form and mail it with your payment to NYAPSA (see address below). Fill out one form per conference registrant please. Print or type your name, title, and organization exactly as you would like it to appear on your conference name tag. A conference "Attendee List" will be arranged in alphabetical order based on the last name of each registrant.

Name: ____

Title: ____

Organization: ____

Address: ____

Phone: ____________________ FAX: ____________________

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REGISTRATION FEES

[NOTE: Hotel reservations must be made directly with the Hilton Garden Inn at (518)272-1700]

Postmarked *by* September 13, 2013:

Member: ☐ $85.00

Non-Member*: ☐ $110.00
(fee includes $25.00 membership!)*

Postmarked *after* September 13, 2013:

Member: ☐ $100.00

Non-Member*: ☐ $125.00
(fee includes $25.00 membership!)*

ONE DAY REGISTRATION:

Postmarked *by* September 13, 2013:

Member: ☐ $60.00

Non-Member*: ☐ $85.00
(fee includes $25.00 membership!)*

Postmarked *after* September 13, 2013:

Member: ☐ $80.00

Non-Member*: ☐ $105.00
(fee includes $25.00 membership!)*

Total amount enclosed: $________

Make check payable to: NYAPSA

Mail this form and your check (or voucher) to: NYAPSA Conference
PO Box 240531
120-55 Queens Blvd.
Jamaica, New York 12602

Please indicate the meal functions you will be attending:
_____ lunch – Sunday, October 20 (12:00 - 1:30 PM)
_____ lunch – Monday, October 21 (1:00 - 2:30 PM)
_____ reception – Sunday, October 20 (5:00 – 6:00 PM)

If you require a vegetarian meal check here: ☐

Questions?
Contact Craig McNair at (585) 454-7350 / Email: cmcnair@monroecounty.gov

• STATE OF THE JUDICIARY 2013 •

BAIL INITIATIVE: Ensuring a Rational Approach to Pre-Trial Justice

Chief Judge Jonathan Lippman

I begin by addressing a critically important concern in criminal justice, an area in which New York has seen so much progress. For the past twenty years, the state has confounded expectations by managing to reduce both crime and incarceration. Many have played a key role in this success -- from the police departments that have instituted new management techniques, to the mayors and governors who have embraced new approaches to enforcement, to the judges who with great wisdom and skill interpret and apply our laws and offer meaningful alternatives to incarceration to thousands of offenders in our drug courts, mental health courts and community courts.

Amidst all of this good news, however, there is still one vitally important area of the criminal justice system that has been untouched by reform: the process of making bail determinations while a case is pending in our criminal courts.

A. REVAMPING OUR BAIL STATUTES

New York offers special challenges in achieving bail reform. In almost every other state, judges are required by statute to consider public safety when making a bail determination. In New York, they are not required, or even permitted, to do so. Because of this, defendants in New York are screened for their risk of failure to appear in court -- using a range of factors such as ties to the community, criminal record and past failure to appear -- but not for their risk of committing a new crime. As a result, defendants may be put back on the street with insufficient regard to public safety, with possibly catastrophic consequences. Few, if any, would seriously argue that judges should not consider the safety and well-being of people on our streets or in our homes when making bail decisions. This makes no sense and certainly does not serve the best interests of our communities and our citizens.

The time has come to join 46 other states and the District of Columbia by changing New York's bail laws to require judges to take into account public safety considerations. Fixing this glaring deficiency must be the top priority of any revision to our bail statutes. Judges must be authorized to consider public safety as well as the risk of failure to appear for court when making bail decisions. To allow the present situation to continue is bad public policy at a time when we need to do everything we can to be smart, effective and principled in combating crime and violence in our society.

But this should be just the start of a top-to-bottom revamping of the rules governing bail in our state -- a new vision of pre-trial justice in New York. Back in 1964, Robert F. Kennedy made a powerful case for bail reform, saying: "Usually only one factor determines whether a defendant stays in jail before he comes to trial. That factor is not guilt or innocence. It is not the nature of the crime. It is not the character of the defendant. That factor is, simply, money." While, thanks to the efforts of reformers like Herb Sturz and others, much has improved in our criminal justice system in New York since Kennedy spoke these words, the reality is that we still have a long way to go before we can claim that we have established a coherent, rational approach to pre-trial justice.

Our overriding goal must be to ensure that pre-trial detention is reserved only for those defendants who cannot safely be released or who cannot be relied upon to return to court -- and to do all we can to eliminate the risk that New Yorkers are incarcerated simply because they lack the financial means to make bail. More than simply being unfair, incarcerating indigent defendants for no other reason than that they cannot meet even a minimum bail amount strips our justice system of its credibility and distorts its operation. Jailing defendants before trial can subject them to economic and psychological hardship, limit their ability to assist in their defense and place them at a serious disadvantage in the plea bargaining process.

To avoid these results, our bail statutes must be reformed to make clear that, where defendants are charged with non-violent offenses, there is a statutory presumption that they will be released with the least restrictive conditions possible unless prosecutors demonstrate that the defendant poses a threat to public safety or a legitimate risk of failure to appear in court. At the same time, to support judges when they make determinations to release defendants pre-trial, we need to ensure that they have authority to impose a range of release conditions when necessary, such as curfews, drug testing and substance abuse treatment.

Finally, we also need to ensure that judges have accurate and complete information before them when they make these important, and often *difficult*, decisions. For example, in some instances, primarily in rural parts of the state, judges do not always have the defendant's criminal history record (the 'rap sheet') at the arraignment. This is not only contrary to law but it also defies common sense, and we need to do everything we can to rectify this problem.

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B. EXPANDING SUPERVISED RELEASE

New York's present approach to bail is not cheap. It costs a lot of money to jail thousands of New Yorkers each year before even determining whether they are in fact guilty as charged. At a time when our governments are under pressure to reduce spending, we should be taking a hard look at these expenditures. The research suggests that an evidence-based approach called "supervised release" -- which monitors defendants who are released pre-trial and also provides them with access to needed services -- can, in a carefully structured program, both guarantee that defendants appear in court and save substantial money by avoiding incarceration costs.

Nationally, the average cost of pre-trial detention is $19,000 per defendant. The average cost to put a defendant in a supervised release program that keeps him or her in the community but monitors his or her whereabouts and provides access to social services, is between $3,100 and $4,600. Nearly 30,000 people are held in local jails in New York State at any given moment. You do the math -- there is enormous potential savings if we can figure out how to safely and responsibly keep non-violent defendants in the community while their cases are pending. For example, a supervised release pro-gram in Kentucky has saved the state approximately $31 million dollars since 2005, with nearly 90 percent of participants reliably appearing for trial without having com-mitted any new crimes during release.

Given these results, New York should be making a deeper investment in supervised release. In Queens, Mayor Michael Bloomberg and the City of New York have success-fully tested one model -- focusing on felony cases -- with the help of the Criminal Justice Agency and the active support of local judges. I applaud Mayor Bloomberg for his vision and his commitment to change and I encourage counties across the state to consider such supervised release programs.

We should be mindful, however, that the vast majority of the cases in our criminal justice system are misdemeanors, not felonies. While misdemeanor defendants are typically detained for shorter periods of time than their felony counterparts, the sheer volume of misdemeanor cases and the frequency with which such defendants are detained on minor bail amounts demand that we look at reforming bail practices for this population as well. I am pleased to announce that the court system and the Center for Court Innovation will be developing a supervised release program in New York City that will target misdemeanor defendants who are currently being detained pre-trial because they are unable to make even low bail amounts.

C. REFORMING THE BAIL BOND INDUSTRY

Bail reform is further complicated by the role of the bail bond industry. Bail bonds-men, who typically receive a fee equal to 10 percent of the bond amount, almost never write bail bonds for $1,000 or less, because there is only a small profit to be made in such bonds. They are far more likely to underwrite high bail amounts, which means, ironically, that defendants charged with serious offenses are more likely to obtain bailbonds than those accused of minor crimes.

Studies reveal that, in recent years, the use of bail bonds has increased across the nation. Along with this trend, pre-trial release rates have fallen and the role of commercial bail-bonding companies has expanded. With precious little public accountability, bail bondsmen exercise enormous influence over who is released pending trial and who stays in jail. The fact is that, in many cases, bail bondsmen, not judges and not prosecutors, ultimately make the most critical decisions affecting the liberty of those accused of crimes in our criminal justice system. How can that be? Are there other options that can take the place of bail bonds? In fact, several alternatives are already authorized by statute, including partially secured and unsecured bonds. We should be encouraging judges to make greater use of these options, when appropriate, instead of relying so heavily on traditional bail bonds.

At the same time, we should also be testing whether we can take the profit motive out of bond making. State legislation passed last year allows not-for-profit organizations to act as bail bond agents, provided they are licensed by the State Insurance Department. This legislation was prompted by the work of The Bronx Defenders, an institutional defender office, that created a special fund to help low-income offenders post minor bail amounts. The fund reports a 93 percent appearance rate for participating defendants. In the days ahead, we should be considering approaches like this in other parts of the state and with larger bail amounts.

Just last week, the U.S. Conference of Chief Justices unanimously adopted a resolution urging court leaders across the nation to promote evidence-based practices that limit the use of pre-trial detention to those defendants who present a risk to public safety or of failure to return to court. The three-pronged strategy that I announce today -- revamping our bail statutes to require public safety considerations and a presumption of release for non-violent offenders, investing in supervised release programs with great cost savings for New York's taxpayers and exploring alternatives to traditional bail bonds -- will overhaul our approach to pre-trial justice in New York and place us in the front ranks of bail reform in the United States. I will shortly submit legislation to make these changes a reality and to bring us a step closer to achieving the fundamental promise of our justice system: to protect public safety and ensure fairness for all. Nothing could be more important!

NEW YORK ASSOCIATION OF PRETRIAL SERVICE AGENCIES

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We'd like to know your email address for future correspondence.

You can email it to us at:

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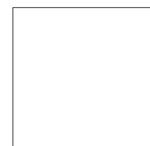

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