

**THE PRETRIAL SERVICES
AGENCY FOR THE
DISTRICT OF COLUMBIA**

**LESSONS FROM FIVE DECADES
OF INNOVATION AND GROWTH**



The Pretrial Justice Institute (PJI) is centering racial justice as the foundation of our vision, mission and work to advance pretrial justice in order to end mass incarceration. This document may contain language choices or recommendations that are no longer aligned with this vision, but it remains in the UP library because of technical, subject-matter or historical merit.

In 1963, the District of Columbia Junior Bar Association toured the city's jail and wrote a scathing report on its conditions. The report noted that most of the inmates were pretrial defendants who could not pay bail. As a result of that report, the Georgetown Law School submitted a proposal to the Ford Foundation for a two-and-a-half-year pilot bail project, similar to the Manhattan Bail Project, which had been implemented in New York City two years earlier. The proposal was funded and later that year, with a staff of five interviewers and one secretary, the D.C. Bail Project began its work, using a borrowed office in the law school's building near the courthouse.



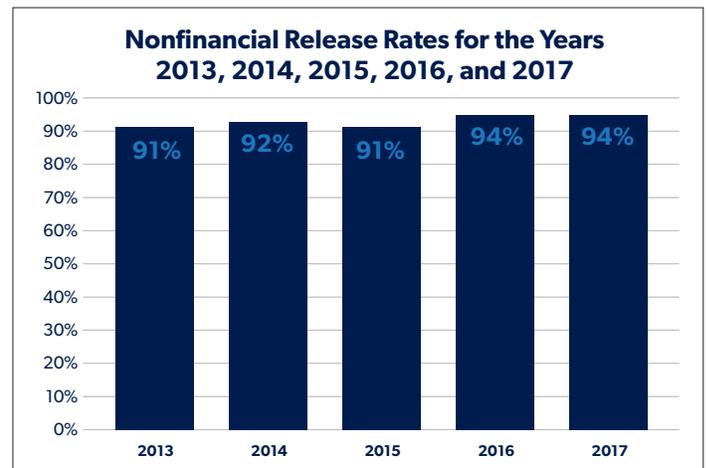
Bruce Beaudin

Bruce Beaudin, who was a Georgetown law student at the time, was the first interviewer hired by the D.C. Bail Project. He recalls the first case the program handled. "It took two and a half days," says Beaudin. "The judge had never gotten detailed information about the defendant for a bail hearing before, and he kept asking for more, so we'd have to go back and get what he wanted. But in the end he did release the defendant."

Since that modest beginning, the Pretrial Services Agency for the District of Columbia has grown to a staff of over 300, interviewing about 20,000 defendants a year, and maintaining oversight of approximately 17,000, while providing a variety of other services to both the U.S. District Court and the Superior Court of the District of Columbia. It is universally acknowledged by stakeholders within the district as indispensable to the operation of the criminal justice system.

The agency is also a national model, demonstrating that the vision for pretrial justice outlined in the standards of the American Bar Association and the National Association of Pretrial Services Agencies can be achieved. Those standards call for the use of the least restrictive conditions of release to reasonably assure public safety and appearance in court, the use of detention when those assurances cannot be met, the sparing use of financial bail, and the abolition of commercial surety bail.

The following chart shows the incremental but steady progress made by the agency in realizing the vision for a pretrial release decision-making process that results in the safe release of the majority of people and virtually eliminates the use of money bail.



As the chart shows, over 90 percent of all people are currently released without a money bond. The remainder are held by the court without bail. Only 5 percent have financial bail. None are out on commercial surety bail.

The high nonfinancial release rate has been accomplished without sacrificing the safety of the public or the appearance of people in court. Agency data show that 90 percent of released people make all court appearances and that 91 percent complete the pretrial release period without any new arrests.¹

This case study looks at how the Pretrial Services Agency for the District of Columbia moved the district's courts from being totally reliant upon money bail to virtually eliminating its use while maintaining high rates of court appearance and good conduct by arrested people while on pretrial release. It tells the story of an agency that has always been on the move, seeking to define its own future and the future of the system it serves, rather than allowing circumstances outside its control to dictate the course of events. It also provides lessons that other jurisdictions could learn when seeking to move closer to the vision outlined in the national standards.

GETTING OFF THE GROUND

According to Beaudin, who went on to serve as director of the agency from 1968 until his appointment as a District of Columbia Superior Court judge in 1984, the agency began by targeting selected people charged with felonies who remained in jail after their first appearance and while they were awaiting indictment. "We had no standing in the courtroom," explains Beaudin. "So when we identified those who we thought had a chance, we had to take those cases to legal aid [the predecessor of the Public Defender Service] and the prosecutor and have them bring those cases before the court."

This situation began to change with the passage of the Federal Bail Reform Act of 1966, which provided a list of factors that the judge must consider in making a pretrial release decision. Many of those factors, such as community ties, residence status, and employment, involved information that was not available to the court in most cases. But it was information that the Bail Project, which by then was called the D.C. Bail Agency,² was collecting. And since the Federal Bail Reform Act was applicable to courts within the District of Columbia, judges in Washington needed the added information.

Thus, by 1967, the agency was interviewing all felony defendants and providing the results of its investigations directly to the court. The number of staff had grown to 13 and the annual budget to \$130,000. Still, the growth did not come without difficulties as the agency worked to implement, through its recommendations, the Bail Reform Act's call for release on the least restrictive conditions reasonably calculated to assure appearance. "We went through a lot of trials and tribulations back then," says Beaudin. "Some judges kicked us out of their courtrooms."

As Beaudin later wrote of the difficulties encountered in those days: "Little thought was given to testing the conditions enumerated in the [Bail Reform] Act and financial bond continued to be used as a means of detaining high-risk accused. Some of the problems of administering the act which had not been anticipated soon surfaced. There was no method designed to notify those released of their court dates. There was no one to supervise releasees prior to trial."³

These concerns led to the creation in 1968 of a committee chaired by U.S. District Judge George Hart to study the implementation of the Bail Reform Act in Washington. That committee, looking at the work the agency had done until that point, recommended expansion of the agency “to carry out a broad new range of pretrial services,” including providing supervision of people with pretrial status and serving as “the central check-in and information agency at the courts for all people released pending appearance in criminal proceedings.”⁴

THE AGENCY’S MISSION EVOLVES

In 1970, Congress adopted most of the Hart committee’s recommendations as part of the D.C. Court Reform and Criminal Procedure Act. This act, which took effect in 1971, greatly expanded the responsibilities of the agency, leading to a growth from 13 to 39 staff and the establishment of a supervision unit. The act also required that judges consider the probability of danger to the community, in addition to failure to appear in court, in the pretrial release decision, and authorized the court to hold people in pretrial detention in specific, limited circumstances. In addition, the act mandated that the agency “supervise all persons released on nonsurety release, including release on personal recognizance, personal bond, nonfinancial conditions, or cash deposit or percentage deposit with the registry of the court”—a provision that came to be understood to mean that the agency did not supervise persons released on surety bonds.⁵

“The organizational culture of the agency was formed at that time,” says John A. (Jay)

Carver, who joined the agency in 1971 while still in law school and served as its director from 1984 to 1997. As Carver explains, while the agency was established out of concern over the poor not being able to post bail, by the early 1970s it was clear that the law required a new mission for the agency—to provide information and a range of options to the court on all cases so the court could make an informed decision in every case.

The agency recognized that the only way to assure the court was getting the best information and range of options possible was to collect and analyze data. At a time when automated information systems were just a dream for most government agencies, the agency was hard at work building its own computer database. In 1974, the agency sought and received a U.S. Department of Justice grant of \$53,000 to develop the automated system. With the system, which was implemented in 1977, the agency was able to enter and store information from its interview and verification process, speed up significantly the time needed to prepare reports, monitor compliance with release conditions, and generate court-date reminder letters. The agency was also able to generate data on its performance.

The agency also used the data to drive its innovations. For example, the data showed that in the late 1970s the agency was refraining from making any recommendation to the court in 40 percent of cases due to the perceived low probability of success on release. When the agency reviewed data showing that the court was actually releasing about 40 percent of the people that the agency was not even recommending, it decided it had to revamp

its recommendation scheme. It determined that it would no longer refrain from making a recommendation in the tough cases. Rather, it would present the court with a release option—with conditions as appropriate—in every case. Moreover, since the law required that the court consider both danger to the community and appearance in court in the release decision, the agency would make a separate assessment for each of these two considerations.

The agency also decided it would begin to encourage the court and prosecutor's office to make greater use of the detention provisions allowed by law. Up until that time, the detention provisions of the Court Reform Act were invoked sparingly. The court continued to use high money bail as the vehicle to hold people believed to present a danger to the community. The agency began identifying which people were eligible for detention under the law and recommending hearings to determine whether detention was necessary to protect the community.

The new recommendation scheme was implemented in 1980. In an evaluation of the scheme published in 1984, the evaluators suggested the agency rethink its position of making a release recommendation in every case because, according to the findings of the evaluation, the court was declining to follow those recommendations in a large number of cases.⁶ In a written response, the agency said: "We are committed to forging policies that 'set the tone' for what we believe to be the requirements of the law. If these policies do not seem to comport with current practice, we do not feel it incumbent upon us to change them only to reflect the status quo."

Rather than change its recommendation policies so they better fit the decisions made by the court, the agency responded by working to expand the options available to the court. "The commitment was to always expand the range of options available to judges," says Carver. Over the next few years, the agency created three significant bodies to address the concerns of judges: a Failure to Appear Unit, which worked to prevent the issuance of bench warrants for people who had legitimate reasons for missing court and to resolve warrants by encouraging people to surrender on the warrant to the agency; a Drug Testing Unit, which screened all people for drug use prior to their initial appearance in court and also provided regular testing of people on release when ordered by the court; and an Intensive Supervision Unit, which supervised people in halfway houses.

These innovations gave the court the confidence to expand nonfinancial release, but there was still significant use of money bail in cases of people who were eligible for detention. Data collected by the agency over a six-month period in 1990 showed that while 29 percent of people were eligible for detention hearings, such hearings were held for only about 5 percent, and less than half of those were ultimately detained. Two-thirds of those eligible for detention had a money bond set instead. While many of these people remained in jail because they could not post the bail, many other, potentially dangerous people were able to purchase their release.

In 1991, at the height of a crack cocaine epidemic in Washington, a number of highly publicized drive-by shootings focused attention on the bail system. Carver worked closely

with the U.S. Attorney’s Office and the Public Defender Service on a bill before the D.C. Council. The resulting legislation, passed in 1992, expanded the scope of pretrial detention and included several rebuttable presumptions for detention. Carver was also successful in getting language inserted in the bill that prohibited the court from setting a financial bail that resulted in people remaining in jail. **Here is the language (bold added for emphasis):**

(Sec.2 §23-1321(c)(3) of the D.C. Code)

A judicial officer may not impose a financial condition under paragraph (1) (B)(xii) or (xiii) of this subsection to assure the safety of any other person or the community, but may impose such a financial condition to reasonably assure the defendant’s presence at all court proceedings ***that does not result in the preventive detention of the person***, except as provided in § 23-1322(b).

The impact of the bill was immediately apparent. In the year before the law took effect, only 2 percent of people were held under a detention provision. In the year after it became law, 15 percent were detained.

Many in the district’s criminal justice system credit Carver’s insertion of the clause forbidding the use of money bail to detain a defendant as the single most important event in ridding Washington of bail bonding for profit and restricting any use of money bail to

rare occasions. “If that statutory command is interpreted to mean that you have a right to a bond that you can meet, then money quickly loses its efficacy in almost all contexts,” notes D.C. Superior Court Senior Judge Truman A. Morrison III (ret.), pointing out that 95 percent of people involved in court in Washington are indigent.

While acknowledging the importance of the 1992 act, Carver says that the virtual demise of money bail in Washington and the certainty of detention for people with a low probability of success on release was a long process of demonstrating how the pretrial release decision-making process could work without money bail. “To make the detention parts work, we had to make the release options work. By expanding those options, we got away from money. It was a natural progression.”

SUSTAINING A ‘CONSISTENT COMMITMENT TO INNOVATION’

The long process of establishing a pretrial release process that could work well without relying on money bail did not end in 1992. As Judge Morrison notes, the agency continues to exhibit “a consistent commitment to innovation.” The agency, he says, has a “captive courthouse when they innovate. The court listens to the agency when it has plans to make changes. This in itself is remarkable.”

Since 1992, the agency has begun and sustained the following initiatives:

- The administration of the Superior Court’s Drug Intervention Program or “Drug Court,” which acts as a diversion program for people charged with nonviolent

offenses and provides an opportunity for dismissal of charges or favorable treatment at sentencing.

- The provision of assessments and supervision for people participating in the Mental Health Community Court Program for those with mental illness charged with nonviolent crimes.
- The establishment of the Specialized Supervision Unit, which targets people with severe and persistent mental illness, mild mental retardation, and co-occurring mental health and substance-use problems.
- The establishment and maintenance of two U.S. Department of Health and Human Services-certified, on-site drug testing laboratories to provide the most accurate drug test results. Most recently, the labs have introduced universal screening for synthetic cannabinoids and exploratory research into synthetic opiates.
- The implementation of the Drug Testing Management System to automate the collection and analysis of urine samples for the on-site laboratory, using barcode technology to track each step in the process and to assure accurate and timely transmission of test results to the court.
- The implementation of the High Intensity Supervision Program, which uses electronic monitoring (EM), including wireless cellular EM, and Global Positioning System (GPS) technology to monitor people with a low probability of success on release.

- The establishment of the Social Services and Assessment Center, which conducts comprehensive mental health and substance-use treatment assessments.
- The development of PRISM, a web-based client information management system.
- Introduction of a scientifically validated assessment that predicts probabilities across four domains: failure to appear, rearrest, rearrest on a dangerous or violent offense, and rearrest on a domestic violence charge (for people previously arrested on a domestic violence charge).



Leslie Cooper,
director, Pretrial
Services Agency
for the District of
Columbia

Leslie Cooper, director of the agency, says: “We pride ourselves on being an evidence-based and data-driven organization. In order to maintain our status as leaders in the field, we employ continuous evaluation and improvement activities that guide the direction for our efforts. Our responsibility to

the courts, the defendants and the community that we serve requires that we continue to challenge ourselves to perfect the fair administration of pretrial justice.”

To some, consistently seeking to innovate, especially after the agency had virtually achieved the vision of the ABA and NAPSA standards for a system that operates without bail money, may seem perilous. What would happen to the agency’s hard-won reputation for excellence if any of its innovations should fail?

IMPLICATIONS FOR OTHER JURISDICTIONS

The agency's administrators, past and present, have identified several keys to the success of the agency in creating and sustaining bail reform that are transferable to any jurisdiction:

- ***Belief in and focus on the mission and vision of the agency.*** The mission and vision of the agency are constantly present before the staff (the mission and vision statements are posted throughout staff members' offices and are embedded into their email correspondence), and every piece of work that staff does is tied to the agency's mission and vision. The agency makes a concerted effort to ensure that all employees understand their role in achieving the mission and feel valued for their contributions.
- ***Having a "reformer" mentality as an organizational culture.*** Staff fought at the outset against the injustice of poverty. As the bail laws changed, changing with it the mission of the agency, the office culture retained the reformer mentality, but staff focused reform efforts on providing good government.
- ***Empowering staff to be productive by creating a continuous learning environment.*** In the agency's early years, on-the-job training was all that was available to new staff. The agency soon designed a structured and intensive training program for new staff and ongoing, in-service training opportunities. Over the years, the training programs

have been constantly reviewed and enhanced. The agency also provides staff members with an array of career-development opportunities that allow them to hone their skills. For example, the agency has established a program in which senior staff members serve as mentors to less-experienced staff. In recent years, the agency also has added a shadowing program to expose staff to various functions across the agency and a leadership program to help prepare entry-level personnel for advancement.

- ***Making the collection, analysis, and distribution of reliable data a high priority.*** The agency learned very early the role that data could play in identifying problems that needed to be addressed and then in designing problem-solving strategies. "Back then, we were the only reliable source of data," says Carver. "It is the reason why we were able to get federal grants." Today, the agency uses data in sophisticated logic models to measure performance and to set new goals.
- ***Recognizing the importance of consultations and collaborations.*** From participating in in-service training of other key stakeholders (i.e., judges, prosecutors, public defenders, police) to making sure that it is always a participant at the table, the agency has been a full partner in the district's criminal justice system. Moreover, the agency has focused on how the whole system can be enhanced with effective pretrial services. As an active participant on the district's Criminal Justice Coordinating Council, the agency

shares information, as allowable and appropriate, to advance the conversation on maintaining public safety in the nation's capital.

- ***Building on its reputation to get buy-in for new initiatives.*** As the agency's reputation for excellence grew within Washington's criminal justice system, so did the trust level. The agency used others' trust to convince key stakeholders that it could make new initiatives work.

To be sure, factors unique to Washington certainly have contributed to the successes the agency has enjoyed over the past five decades. For example, the resources available to the program grew dramatically when it became a federal agency, but that did not happen until 2000—long after the agency had established its local and national reputation for innovation and excellence. And the agency operates under a bail statute that is close to the model laid out by the ABA and NAPSA standards, but other states have such statutes as well.

The Pretrial Services Agency model is often criticized as too expensive for states to follow. The agency has a high budget because it is an independent federal agency and must adhere to federal salary ranges; likewise, it is not able to scale its administrative, human resources, or IT costs by combining functions with another agency, as a state agency might be able to do. Moreover, the agency maintains a robust, independent drug testing lab to identify and

MISSION AND VISION OF THE PRETRIAL SERVICES AGENCY (PSA) FOR THE DISTRICT OF COLUMBIA

The mission of the PSA is to promote pretrial justice and enhance community safety.

PSA's vision is to thrive as a leader within the justice system by developing a diverse and inclusive workforce that embodies integrity, excellence, accountability, and innovation in the delivery of the highest quality service

treat drug use while establishing swift and certain consequences for continued drug use. Factoring in these issues, the supervision cost for the agency is about \$18 per day per person—far less than it costs in most jurisdictions to keep a person in jail for a day.

The Pretrial Services Agency for the District of Columbia has drawn the only architectural plans that exist for successfully building a pretrial release decision-making process that results in the safe release of the overwhelming majority of arrested people and does not rely on money bail. Other jurisdictions seeking the same result should carefully examine what the District of Columbia has done.

Endnotes

1. Pretrial Services Agency for the District of Columbia, Fiscal Year 2015 Outcomes, www.psa.gov/?q=data/performance_measures.
2. The name of the agency was changed to the District of Columbia Pretrial Services Agency in 1978.
3. Bruce D. Beaudin, "Bail in the District – What It Was; Is; and Will Be," *American University Law Review*, Vol. 20 (1970-71).
4. Quoted in Wayne H. Thomas, Jr., *Bail Reform in America*, University of California Press; Berkeley (1976), pp. 166-167.
5. D.C. Court Reform and Criminal Procedure Act, Pub. L. 91-358, title II, § 210(a), 84 Stat. 640 (1970); D.C. Official Code § 23-1303(h).
6. Mary A. Toborg, Anthony M.J. Yezer, Philip Tseng, and B. Lynn Carpenter, *Pretrial Release Assessment of Danger and Flight: Method Makes a Difference*, Lazar Management Group, Inc., (1984), at p.30.