

*CONTINUING LEGAL EDUCATION*

SPRING 2016

MARCH 31, 2016

**NEW PROGRAMS FOR DEFENSE ATTORNEYS:  
SUPERVISED RELEASE AND BEHAVIORAL  
HEALTH INITIATIVES**

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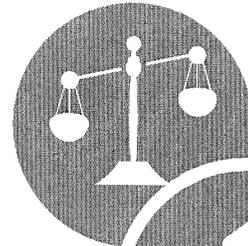
Sponsored by:

Appellate Division, First Department and the  
Assigned Counsel Plan for the First Department

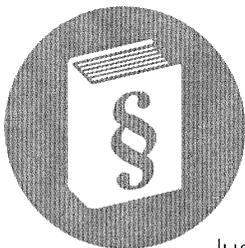
# Pretrial Justice Legal & Research Facts

Stack v. Boyle (1951) says, "the spirit of the [bail] procedure is to **enable... [defendants] to stay out of jail** until a trial has found them guilty."<sup>1</sup>

U.S. v. Salerno (1987) says, "In our society, liberty is the norm, and **detention prior to trial** or without trial **is the carefully limited exception,**" and a defendant's pretrial liberty cannot be denied without extensive due process protections.<sup>2</sup>



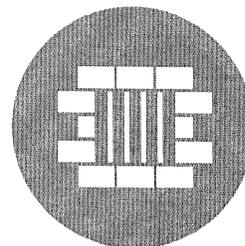
Schnacke (2014), one of the nation's foremost pretrial legal experts, describes how **U.S. pretrial law requires the balancing of the legal principles of the Presumption of Innocence, Right to Bail, Due Process, Equal Protection, Individualization, and Excessive Bail** when making pretrial release-or-detention decisions.<sup>3</sup>



The American Bar Association's Criminal Justice Standards (2007), an authoritative source in over 5,000 court opinions and law journal articles,<sup>4</sup> state:

- "In deciding pretrial release, the judicial officer should assign the **least restrictive condition(s)** of release that will reasonably ensure a defendant's attendance at court proceedings and protect the community, victims, witnesses or any other person."
- "Every jurisdiction should establish a **pretrial services agency** ... to collect and present ... risk assessments ... Pretrial services should also monitor, supervise, and assist defendants released prior to trial."<sup>5</sup>

Schnacke (2014) wrote that **nearly all state constitutional bail provisions and/or bail statutes are outdated** and in need of revision because their **preventive detention language** is charge-based only and does not instruct the court to deny pretrial release based on the defendant's risk.<sup>3</sup>



1. Stack v. Boyle, 342 U.S. 1, 4-5, 7-8 (1951); United States v. Salerno, 481 U.S. 739, 755 (1987).

2. United States v. Salerno, 481 U.S. 739 (1987).

3. Schnacke, T. R. (2014). Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform. Washington, DC: National Institute of Corrections.

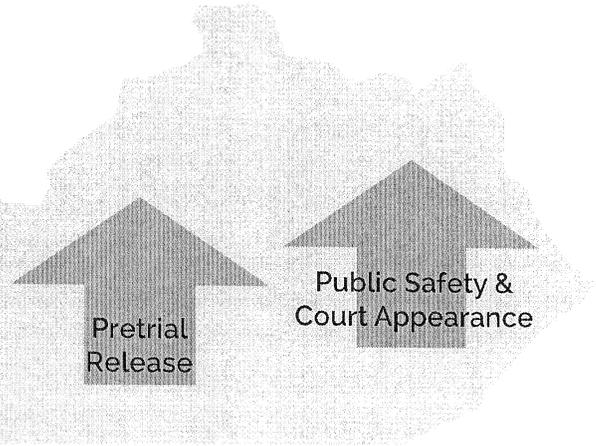
4. Martin Marcus, The Making of the ABA Criminal Justice Standards, Forty Years of Excellence, 23 Crim. Just. (Winter 2009).

5. American Bar Association. (2007). ABA Standards for Criminal Justice, Third Edition, Pretrial Release. Washington, DC: Author.

## An Example of Where Risk-Based Pretrial Practices Are Making a Positive Difference

In 2014, the Laura and John Arnold Foundation found that in **Kentucky**, after implementing a new, validated pretrial risk tool:

- "[The] courts have achieved a truly remarkable result: They have been able to **reduce crime** by close to 15% among defendants on pretrial release, while at the same time **increasing the percentage of defendants who are released before trial.**"
- "While more defendants are now being released, **Kentucky has not seen any increase in the rate at which defendants miss court.**"<sup>6</sup>

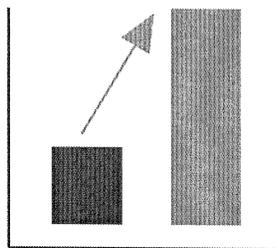


States and large and small counties have data that show **it is possible to predict an individual defendant's pretrial risk** of non-appearance and new criminal activity with a high degree of statistical accuracy.<sup>7</sup>

# 1 in 2

defendants who are the **highest risk** of committing new crimes or missing court are **released** pretrial today when financial-based instead of risk-based pretrial release methods are used.<sup>8</sup>

When **low risk defendants** are not released from jail within **1 day**, they fail to appear and engage in new criminal activity up to 74% more when they eventually are released, and they recidivate up to 51% more two years later.<sup>9</sup>



Several studies have shown that **pretrial supervision** does statistically improve moderate- and high-risk defendants' pretrial outcomes.<sup>10</sup>

6. Laura and John Arnold Foundation. (2014). Results from the First Six Months of the Public Safety Assessment-Court in Kentucky. Houston, TX: Author.

7. Pretrial Justice Institute. (2015). Pretrial Risk Assessment: Science Provides Guidance on Assessing Defendants. Gaithersburg, MD: Author.

8. Laura and John Arnold Foundation. (2013). Developing a National Model for Pretrial Risk Assessment. Houston, TX: Author.

9. Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). The Hidden Costs of Pretrial Detention. Houston, TX: Laura and John Arnold Foundation.

10. Lowenkamp, C. T., & VanNostrand, M. (2013). Exploring the Impact of Supervision on Pretrial Outcomes. Houston, TX: Laura and John Arnold Foundation.



**SUPERVISED RELEASE PROGRAM  
AGREEMENT**

**PEOPLE OF THE STATE OF NEW YORK**

against

\_\_\_\_\_

Defendant (*Acusado/Acusada*)

\_\_\_\_\_

Street Address (*Dirección Postal*)

\_\_\_\_\_

City, State & ZIP (*Ciudad, Estado y Cód. Postal*)

\_\_\_\_\_

Telephone Number (*Número de teléfono*)

\_\_\_\_\_

Docket Number (*Número de Expediente*)

\_\_\_\_\_

Arrest Number (*Número de Arresto*)

\_\_\_\_\_

Next Court Date & Part (*Próxima fecha de aplazamiento y Sala*)

\_\_\_\_\_

Date Released (*Fecha de excarcelación*)

**Supervised Release Program Agreement  
(Acuerdo del Programa de Libertad bajo Supervisión)**

I understand that I have been released and have to follow the instructions of the Judge and the Supervised Release Program.  
(*Yo comprendo que he sido puesto en libertad, y que debo cumplir con las instrucciones del/de la Juez y del Programa de Libertad bajo Supervisión.*)

- I will report for an intake meeting and complete an assessment at the Supervised Release program office located at:  
(*Me presentaré para una entrevista de ingreso y completaré una evaluación en la oficina del Programa de Libertad bajo Supervisión, localizada en:*)

Program name (*Nombre del Programa*): \_\_\_\_\_

Program address (*Dirección Postal del Programa*): \_\_\_\_\_

Program phone number (*Número de teléfono del Programa*): \_\_\_\_\_

- I will show up to the Program office for my intake meeting on \_\_\_\_\_ at \_\_\_\_\_ am/pm.  
(*Me presentaré en la oficina del Programa para mi entrevista inicial de ingreso el día \_\_\_\_\_ a las \_\_\_\_\_ a.m. / p.m.*)
- I will stay in touch with my Supervised Release case manager by phone and in-person meetings when the case manager tells me to.  
(*Me mantendré en contacto telefónico y acudiré personalmente a reunirme con el/la encargado/a de mi causa penal del Programa de Libertad bajo Supervisión, cada vez que él/ella me lo indique.*)
- I will always come to court when the Judge tells me to and I will not commit any new crimes or get arrested.  
(*Compareceré ante el Tribunal cada vez que el/la Juez me lo ordene, y no cometeré delito alguno ni seré arrestado nuevamente.*)
- I will tell my Supervised Release case manager immediately if I am arrested again or if my address or telephone number changes.  
(*En caso de que yo sea arrestado nuevamente o cambie de domicilio o de número de teléfono, se lo informaré inmediatamente al encargado de mi causa penal del Programa de Libertad bajo Supervisión.*)
- I will follow the instructions given by the Judge and the Supervised Release program.  
(*Cumpliré con las instrucciones que me den el/la Juez y el Programa de Libertad bajo Supervisión.*)
- I understand that the Supervised Release program will make sure I follow all of the instructions given by the Judge and will tell the Court whether or not I follow these instructions.  
(*Comprendo que el Programa de Libertad bajo Supervisión se asegurará de que yo cumpla con todas las instrucciones dadas por el/la Juez, y le informará al Tribunal si cumplo o no cumpla con dichas instrucciones.*)

I understand that if I do not follow these rules, the Court may set bail and/or issue a warrant for my arrest. This means that I may be held in jail until my court case is finished.  
(*Comprendo que si no cumpla con estas condiciones, el Tribunal puede fijar fianza, y/o emitir una orden de aprehensión en mi contra. Esto significa que podría ser encarcelado hasta que concluya mi causa penal.*)

\_\_\_\_\_  
Defendant's Signature/Firma del/de la Acusado/Acusada

\_\_\_\_\_  
Date/Fecha

\_\_\_\_\_  
Judge's Signature/Firma del/la Juez

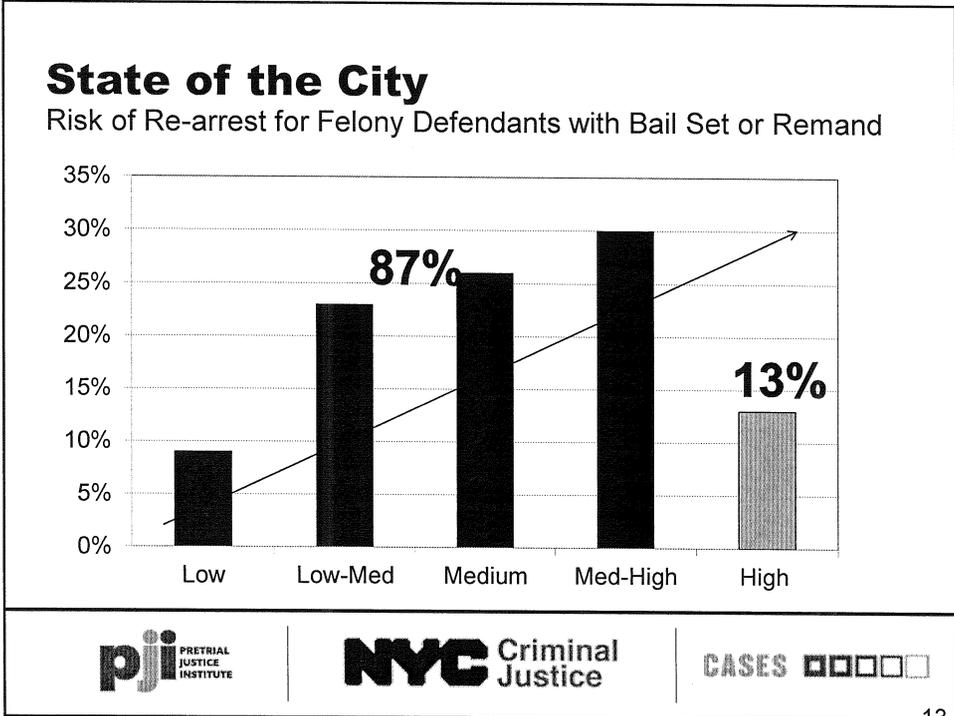
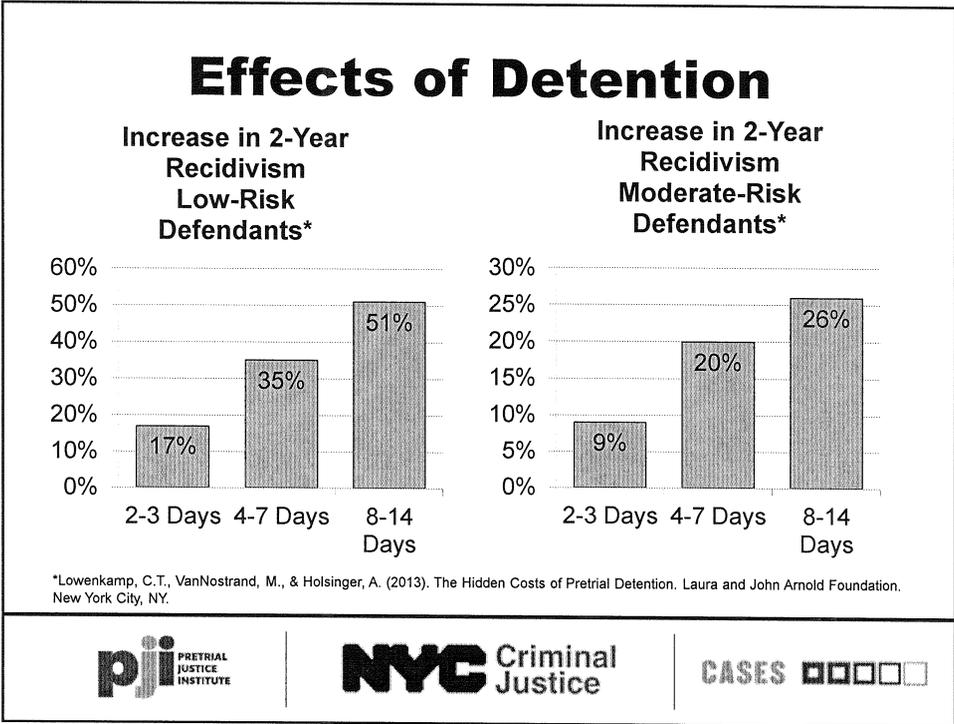
\_\_\_\_\_  
Date/Fecha

	<h1>Fundamentals of Pretrial Justice &amp; New York City Supervised Release</h1>
	
	
<p>March 31, 2016</p>	

## Welcome!

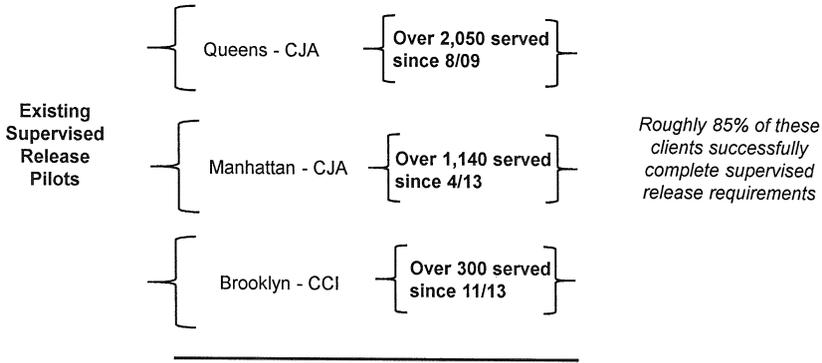
- Objectives:
  - Discuss the public safety impact of unnecessary detention
  - Overview of the current population detained in NYC
  - Description of new supervised release process and supervision structure





# State of the City

Supervised Release pilot programs have been operating in NYC since 2009



# Supervised Release Eligibility

- Defendants charged with misdemeanors and non-violent felony offenses
- Defendants at high risk of felony pretrial re-arrest will not be considered



# Supervised Release Risk Tool

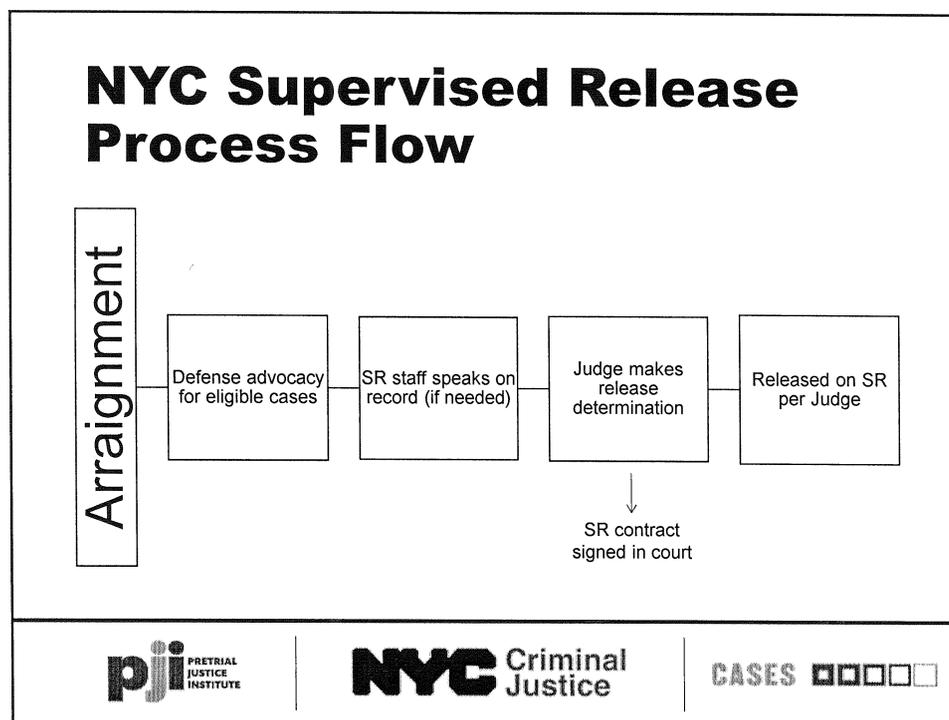
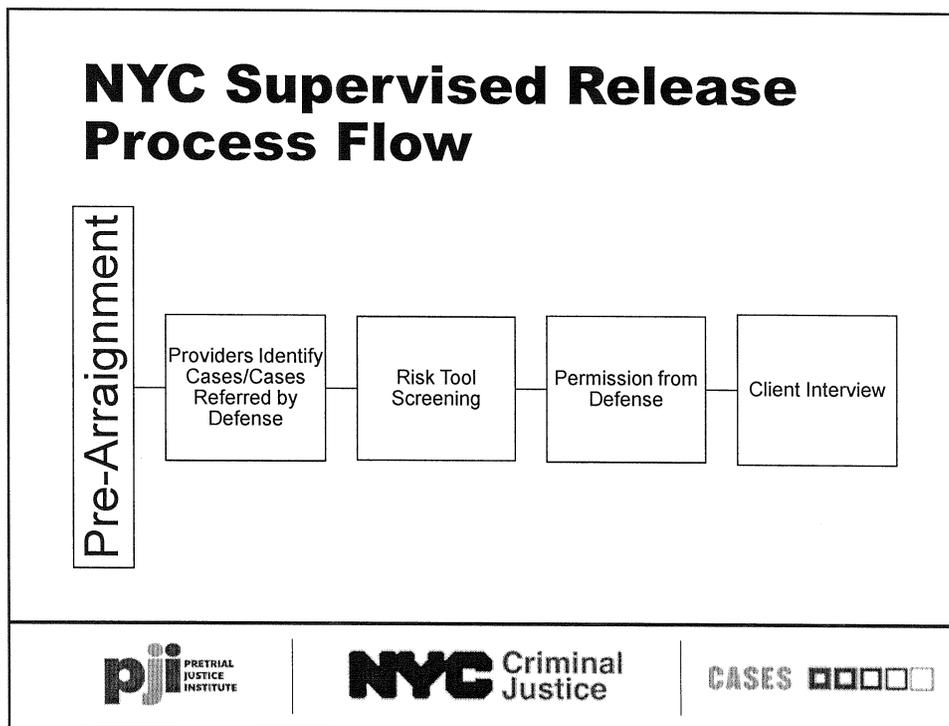
Risk Prediction Factors	Risk Points
<b>Age at current arrest</b>	
16 to 19	6
20 to 29	-3
30 to 39	-4
40+	
<b>Open Cases</b>	
No	-1
Yes	1
<b>First arrest</b>	
No	3
Yes	-3
<b>Prior warrants last 4 years</b>	
No	-1
Yes	1
<b>Misd conviction in last year</b>	
No	-2
Yes	2
<b>Felony conviction in last 9 years</b>	
No	-1
Yes	1
<b>Drug conviction in last 9 years</b>	
No	-2
Yes	2
<b>Report fulltime activity (caregiver, work, school)</b>	
No	2
Yes	-2



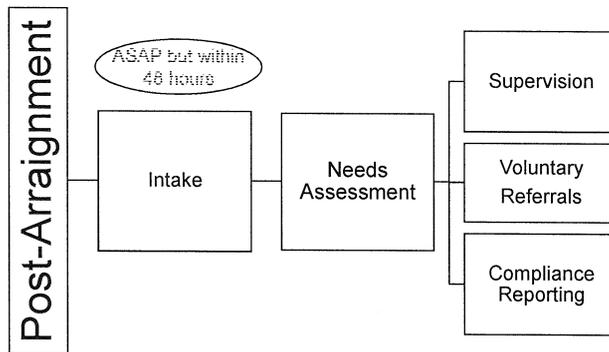
# Supervised Release Risk Tool

Risk Category	Risk Points
Low	lowest through -10
Medium Low	-9 through -5
Medium	-4 through 0
Medium High	1 through 4
High	5 through highest





## NYC Supervised Release Process Flow



## Non-Compliance

- Within 24 hours of a missed appointment or call the provider will reach out to the defense attorney and any other contacts given by the client
- Within 48 hours of a missed appointment or call, if the provider has had no contact from the client, the provider will inform the court via email and provide a written letter to the appropriate court part



## Risk Management/ Community Supervision

All levels	phone call/text message court reminders			
	criminal history check before each court date			
Level 1	One face to face contact per month - planning phone call before court date			
Level 2	One face to face contact and two phone calls per month			
Level 3	Two face to face contacts per month and two phone calls			
Level 4	One face to face contact and one phone call per week			

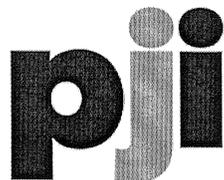
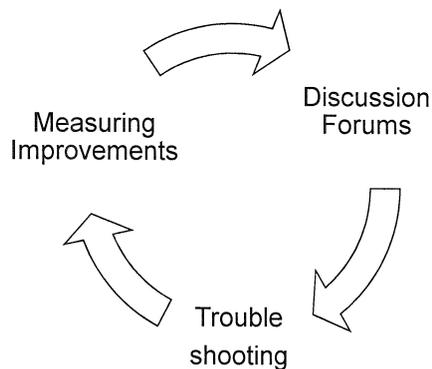


## Risk Management/ Community Supervision

SR Risk Category	Misdemeanor	Misdemeanor with aggravating factors	Non-violent felony offenses	Non-violent felony offenses with aggravating factors
low	1	2	1	2
low-med	1	2	1	2
medium	2	3	2	3
med-high	2	4	3	4
high	ineligible			



## Continuous Feedback & Improvement



**PRETRIAL JUSTICE  
INSTITUTE**

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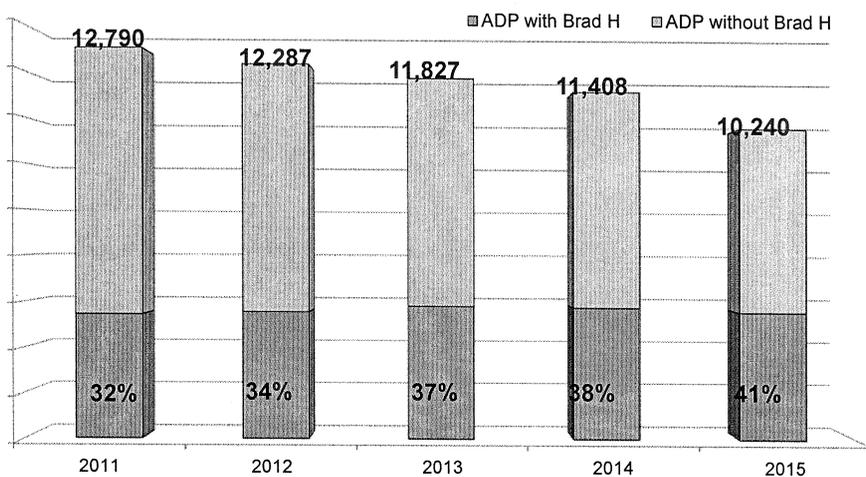
## THE MAYOR'S TASKFORCE ON BEHAVIORAL HEALTH AND THE CRIMINAL JUSTICE SYSTEM

Trish Marsik, Executive Director

March 31, 2016

**NYC** Criminal  
Justice

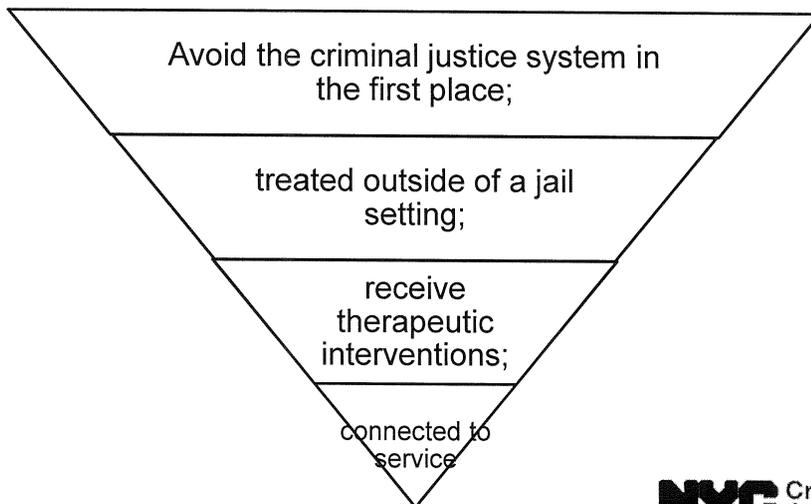
## AVERAGE DAILY POPULATION (FY 2011-2015)



**NYC** Criminal  
Justice

## THE GOALS

Ensuring for people with behavioral health issues:



**NYC** Criminal Justice

## THE ACTION STEPS



Behavioral Health training for first responders  
1458 TRAINED

Public Health Diversion Centers

**NYC** Criminal Justice

## THE ACTION STEPS



- Behavioral health screenings >5000 COMPLETED
- Connection to services for vets >450 screened to VA
- Supervised release programs 3,400 slots March 2016
- Risk assessment pilot program
- Shortened case processing times
- Reduced reliance on monetary bail

**NYC** Criminal Justice

## THE ACTION STEPS



### De-escalation strategies

- Crisis Intervention Teams
- Ongoing revisions to the DOC's use of force policy
- Reduce punitive segregation

### Programming and staffing strategies

- Specialized units that provide preventative services
- Specialized services for adolescents, including trauma-informed care
- Plan for substance use disorder treatment expansion
- Plan for idle time and violence reduction programming

## THE ACTION STEPS



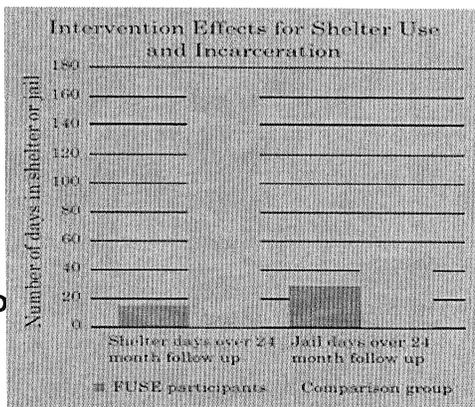
- Increase access to Medicaid
- Expand discharge programming
- Connections to Health Homes
- Agency coordination around discharge planning



## THE ACTION STEPS



- Supportive, permanent housing
- Behavioral health services team at Probation
- Housing planning team
- Employment and paths to self-sufficiency



Source: CSH- The NYC Fuse program

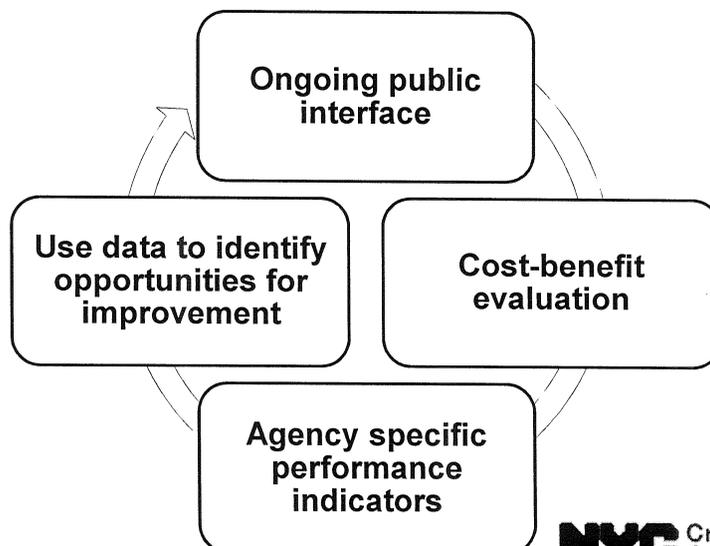


# THE TASK FORCE AND MEDICAID



**NYC** Criminal  
Justice

# THE IMPACT



**NYC** Criminal  
Justice

## Mayor's Task Force on Behavioral Health and the Criminal Justice System

### **Risk Assessment Tool + Supervised Release:**

New, validated risk assessment instrument is used to screen all cases in arraignments citywide to divert people who do not pose a high risk of flight or reoffending into supervised release programs, to reduce pre-trial detention. If your case is eligible as determined by the risk score [low to medium-high], the supervised release provider will approach you in arraignment for consent to interview your client. The provider will be available to speak on the record if needed.

For more information contact Miriam Popper at the Mayor's Office of Criminal Justice: (646) 576 -3487  
[mpopper@cityhall.nyc.gov](mailto:mpopper@cityhall.nyc.gov)

### **Bail Reform Initiatives:**

Several strategies have been tested to reduce court reliance on monetary bail and remove impediments to paying bail to divert people from pre-trial detention. Several judges have been trained and use alternatives to monetary bail. A citywide bail fund will be implemented by summer 2016, and clients and family members will be able to pay bail electronically and more easily in court by May.

For more information contact Molly Cohen at the Mayor's Office of Criminal Justice: (646) 576 -3496  
[MCohen2@cityhall.nyc.gov](mailto:MCohen2@cityhall.nyc.gov)

### **Case Processing:**

Case Processing initiatives focus on resolving Supreme Court cases pending for longer than a year, the implementation of one-month adjournment caps on Supreme Court cases in Brooklyn, and early discovery on certain felony cases in Manhattan.

For more information, contact Chidinma Ume at the Mayor's Office of Criminal Justice: (646) 576 -3493  
[CUme@cityhall.nyc.gov](mailto:CUme@cityhall.nyc.gov)

### **Enhanced Pre-Arrest Screening Unit:**

All booked arrests during the hours of 6am-2pm in Manhattan are brought to the pre-arrest screening unit where they are seen by clinical staff to determine if there are any physical or behavioral health needs. A diversion liaison employed by Correctional Health Services, HHC, with consent, interviews individuals with behavioral health needs and produces a clinical summary for defense attorneys. The clinical summaries are then put in the defense files by court clerks with a survey. The clinical summaries provide health information and recommendations to be used for advocacy at arraignment and beyond.

For more information contact Diversion Liaison Nicole DiLorenzo: 212-225-1575 [dilorenn@nychhc.org](mailto:dilorenn@nychhc.org)

## **Health Homes:**

There are several efforts to connect people with chronic illness, mental illness, or substance use disorders in the criminal justice system to Health Homes, a part of Medicaid reform. Health Homes are a model of care coordinated through a single point of contact called a Care Manager, who can access information about an individual's medical needs, helps individuals stay in continuous care, healthy, and living a crime-free. Care managers can appear in court, and Health Homes provide intensive services based on the needs of the individual. There are Care Managers in AR1 in Brooklyn Criminal Court Tuesday – Thursday starting April 5<sup>th</sup> to determine eligibility and enroll people in the Brooklyn Health Home network.

- For more information Brooklyn Health Home Criminal Justice Director, Hannah Loeffert (O) 718.283.5949 (M) 347.786.0663 [HLoeffert@maimonidesmed.org](mailto:HLoeffert@maimonidesmed.org)
- In Manhattan contact the Diversion Liaison in the Enhanced Pre-Arrest Screening Unit, Nicole DiLorenzo: 212-225-1575 [dilorenn@nychhc.org](mailto:dilorenn@nychhc.org)

For all boroughs or if client is in custody call: 855-602-HOME (4663) or email: [HHHealthHome@nychhc.org](mailto:HHHealthHome@nychhc.org)

## **Discharge Planning:**

In collaboration with the Department of Corrections, an additional 4,100 enrollments into discharge planning services are available, which is designed to reduce recidivism. Anyone on Rikers more than seven days with a medium to high risk score is eligible.

For more information contact Re-Entry Services Director: (718) 546-0431

## **Substance Use Disorder Discharge Planning:**

An additional 4,100 enrollments for substance use disorder discharge planning are available for incarcerated individuals.

For more information contact Correctional Health Services: [ajordan@nychhc.org](mailto:ajordan@nychhc.org)

## **Supportive Housing for Criminal Justice Involved:**

In collaboration with the Department of Health and Mental Hygiene, permanent supportive housing units, which provide mental health and substance use services in addition to housing for the most at-risk individuals, are available.

To see if your client is eligible for supportive housing contact: Office of Housing Services (347) 396-6940

## **Behavioral Health Services for Probationers:**

Behavioral Health clinical teams were implemented at the Department of Probation to provide consultation citywide for adults and juveniles on Probation to adequately address mental health and substance use issues, to reduce violations of probation and incarceration.

For more information contact: Behavioral Health Services (212) 361-8801