

Pretrial Analysis for Middlesex County, Massachusetts

Technical Assistance Report

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Addendum
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Addendum to the report of December 29, 2014

This addendum to the December 2014 report is being prepared in response to questions and discussions that have occurred since its release. A key concern, which was referenced throughout the report, was the quality of the available data from which conclusions were drawn. The data provided for the December report were sufficient from which to describe and model the flow of in-custody defendants through the Middlesex County Court System. While they did lack a level of detail which would have improved the accuracy of the model and the descriptions of sub-populations of the jail, they were adequate to diagnose, illustrate, and make recommendations to address the key challenges in managing the jail population.

This addendum focuses on an assessment of the Middlesex County Jail population based on a 3-27-15 snapshot, with additional details than those available in December 2014. It also incorporates information provided during a discussion with stakeholders on April 1, 2015. This action is being taken as a courtesy to address concerns, correct errors, and incorporate new information into the report. As will be discussed, this new analysis does not invalidate the summary and conclusions of the original report. Specifically, the need for improved collaboration and coordination between the major stakeholders; the need to develop, maintain, and utilize system performance and outcome measures in driving policy, and the need to address case processing issues such as: risk-based versus money bail release decisions, and pretrial supervision and diversion options.

From page 9, paragraph 2 of the December report:

The reference to the 22,977 defendants arraigned across Middlesex County in FY 2014 has been amended based on a report compiled by the Massachusetts Trial Court. The correct number of arraignments during FY 2014 is 31,918. This would mean that the percentage of arraignments for in-custody defendants is 15.6%. This is reflective of a high functioning citation to appear process in criminal complaints. The 4132 default warrants would equate to a 12.94% default rate. As stated in the original report, the data do not allow this number to be disaggregated to separate fail-to-appears from contempts of court, to other forms of default. The high rate of citation to appears suggest that the persons arrested and taken to custody are the highest risk defendants charged with the most serious offenses. This would explain the relatively low pretrial release rate as well as the high percentage of defendants held on person-to-person charges and held without bail. The inference that these 15.6% are the highest risk cases and defendants increases the urgency that release decisions are reliably and validly derived, and that pretrial release options are available across the continuum of risk.

From page 6, paragraph 4 of the December report:

The reference to the utilization of money bail being almost universal should be viewed in regard to in-custody defendants only. As stated above, the in-custody population is only 15.6% of all criminal defendants. Thus, it is clear that the county very effectively, and at a very high rate, utilizes citations to appear in lieu of arrest and physical custody. The reference to the utilization of money bail should be interpreted to refer only to in-custody defendants.

Jail Analysis

An analysis of the jail population was conducted using a 3-27-15 snapshot, which included: status, charge, bail amount, booking date, and special status indicators. As a reference, the 10-31-14 snapshot analysis is attached.

Table 3: Middlesex County Jail snapshot of population 10/31/2014

| Jail Snapshot 10/31/2014 | Number | Percent |
|--|--------|---------|
| Pretrial population | 811 | 100% |
| Defendants held w/o bail | 346 | 42.66% |
| Held on bail <\$1000 cash bail | 184 | 22.68% |
| Held on bail >\$100,000 | 81 | 9.98% |
| Population by Charge | | |
| Held on Drug Charges | 110 | 13.56% |
| Held on Property Charges | 87 | 10.72% |
| Held on Sex Offenses | 42 | 5.17% |
| Held on Violation of Protection Order | 32 | 3.94% |
| Held on OUI Charges | 23 | 2.83% |
| Held on Person to Person Charges, including Murder | 333 | 41.06% |

Jail Snapshot 3-27-15

| Pretrial Population | Number | Percent | Sentenced Population | Number | Percent |
|--|---------------|----------------|-----------------------------|---------------|----------------|
| Total | 751 | 56.4% | Total | 580 | 43.6% |
| Probation Holds | 70 | 9.3% | | | |
| Bail Revocations | 81 | 10.7% | | | |
| Fugitive Warrants | 10 | 1.3% | | | |
| Dangerousness Holds | 66 | 8.7% | | | |
| Held without Bail | 346 | 46% | | | |
| Total Excluding Probation/Fugitive Holds | 671 | | | | |
| Held on < \$1000 or less Bail | 112 | 16.7% | | | |
| Held on \$1000 < \$10,000 Bail | 85 | 12.66% | | | |
| Held on \$10k < \$50k Bail | 98 | 14.6% | | | |
| Held on \$50k < \$100k Bail | 54 | 8.0% | | | |
| Held on \$100k or more Bail | 54 | 8.0% | | | |
| Population by Charge | Number | Percent | Sentenced Population | Number | Percent |
| Assault/Battery | 124 | 18.47 % | Assault/Battery | 124 | 21.4% |
| Drug Offenses | 115 | 17.1% | Drug Offenses | 82 | 14.1% |
| Property Offenses | 72 | 10.7% | Property Offenses | 104 | 17.9% |
| Violation ABO | 26 | 3.87% | Violation ABO | 17 | 2.9% |
| Murder/Assault/Robbery | 197 | 29.36% | Murder/Assault/Robb | 35 | 6.0% |
| Sex Offenses | 59 | 8.8% | Sex Offenses | 21 | 3.6% |
| OUI | 23 | 3.4% | OUI | 54 | 9.3% |
| Breaking & Entering | 43 | 6.5% | Breaking & Entering | 40 | 6.9% |

- Some percentages may exceed 100% due to multiple charges

Length of stay (LOS) for selected group:

- Average LOS for all pretrial detainees = 118.64 days; Standard Deviation = 200.87 days
- Median LOS = 29 days; 25th percentile = 16 days; 75th percentile = 149 days
- Average LOS for defendants on probation holds = 26 days; Standard Deviation = 26 days
- Median LOS for defendants on probation holds = 21 days

- Average LOS for sentenced offenders = 181 days; Standard Deviation = 198 days

- Median LOS for sentenced offenders = 119 days

Summary:

The data from the two snapshots share similar characteristics in a number of areas. The number of persons held without bail is the same, with comparable numbers in terms of the number of defendants held for \$100,000 or more bail. The additional detail in the 3-27-15 dataset reveals similarities in percentages for defendants held for bail ranges from \$10,000 to \$100,000. As stated in the December report, the bail ranges reported here were established only to illustrate defendants of similar pretrial risk. Bail amounts are a proxy measure for risk, and can be used to estimate release eligible/ineligible defendants. For example, defendants held on relatively low bails (\$1000 or less) are typically lower risk defendants charged with less serious offenses. However, it appears that local practice often establishes a low bail amount on defendants who have pending charges in other Courts. The purpose of the bail allows the defendant to earn time credit towards any sentence that might be imposed on the pending case. The data do not provide the detail to make this distinction. This appears to be the case in one-third (40 of the 112) of these cases.

Examining the population by charge revealed similarities in the population, particularly for defendants held on person to person charges, including murder. The similarities extended to persons charged with OUI offenses (2.83% in the October sample versus 3.4% in March). Slight differences between the samples are present, but not to any degree of significance.

The data support the inference that arrest, booking, and bail setting practices are stable. The inclusion of probation indicators in the latest dataset indicate that almost 10% of the pretrial population is held for a probation violation. Data coding issues could increase that number slightly. These 70 defendants were removed from calculations related to the pretrial population. Typically, probationers are subject to the same pretrial provisions as other defendants, so should

be included in the analysis. This does not exclude Probation from county-wide discussions about violation practices and the effective use of jail and non-custody resources.

The data also affirm the earlier conclusion that the jail population appears to be the highest risk type of charges, as illustrated by higher rates of person to person charges. This would be consistent with practices that utilize citation to appear with the frequency of Middlesex County. The fact that these may be the highest risk defendants increases the urgency that pretrial assessments or bail recommendations be able to make valid distinctions between high and low risk defendants, to establish conditions of bail or release that will provide assurance of community/victim safety and court appearance, and that can be made reliably and validly across all defendants. Moreover, that pretrial release supervision options be available to manage the risk of released defendants.

The latest dataset do not further inform about pretrial release and detention practices. In addition, the new data and information does not contradict the assessment that a risk-informed process would support a release rate between 51% - 58%. The current snapshot indicates that pretrial defendants comprise 50% of the capacity of the HOC, and 56.4% of the total population. With a sentenced population of 580, the current population of 1331 is slightly less than the optimal 90% of capacity of 1351. Populations in excess of that begin to compromise the ability to execute the facility's classification system, and ultimately create circumstances under which emergency population releases would be necessary.