

**CRIMINAL  
DISPOSITION  
COMMISSION**



SI Newhouse  
Center for Law and Justice  
15 Washington Street  
Newark, New Jersey 07102

**BRIEFING REPORT**

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December 1989

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**SUPERVISED PRETRIAL RELEASE**

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**Criminal Disposition Commission  
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**122067**

PREPARED BY:

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## BRIEFING REPORT

# SUPERVISED PRETRIAL RELEASE

By Edward J. Coyle  
Research Analyst

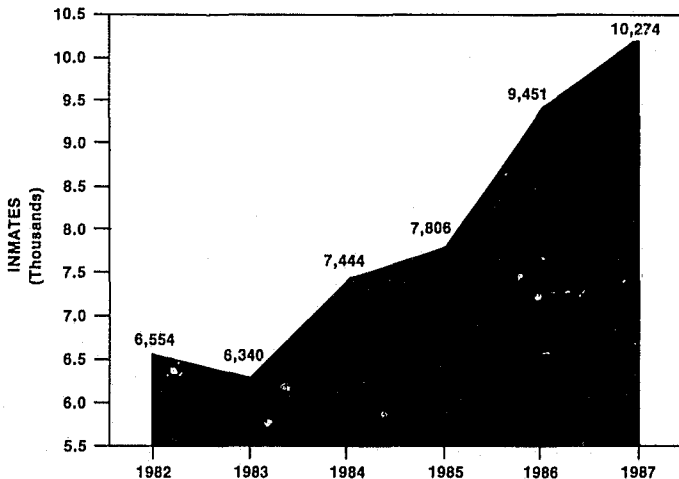
of the Courts, County Jail Population Delineation, December 5, 1989).

### Introduction

The county jail population in New Jersey is rapidly growing (Figure 1), and in 1988, county jail operating costs totalled 129.8 million dollars (New Jersey, 1989, p. 40). One of the largest segments of the jail population is that group of inmates being held awaiting trial in lieu of posting cash bail or release on their own recognizance.

Figure 1

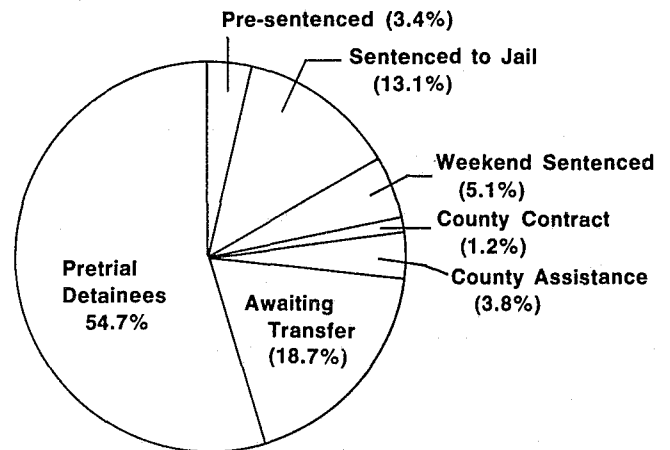
### COUNTY JAIL POPULATION GROWTH DECEMBER 1982-DECEMBER 1987



The New Jersey County and Municipal Government Study Commission (1989) estimates that 54.7% of the jail population in New Jersey are persons held awaiting trial (see Figure 2). As of December 5, 1989, 7,563 people, or 53% of the total county jail population, were held awaiting trial in New Jersey (N.J. Administrative Office

Figure 2

### CATEGORIES OF INMATES IN COUNTY JAILS



In an era of limited fiscal resources, various strategies have been developed to reduce the number of pretrial inmates held at the jail in order to preserve limited bed space for other growing segments of the jail population (i.e. sentenced state inmates awaiting transfer to State Prison) without compromising certainty of appearance at trial or public safety.

### Purpose and Scope of this Report

In New Jersey, Essex and Middlesex Counties have developed Supervised Pretrial Release programs for their jurisdictions in an attempt to alleviate the pretrial jail crowding problem. Supervised Pretrial Release (SPTR) refers to a program where defendants, who can not make

cash bail or satisfy ROR requirements, are released pretrial in exchange for adherence to a set of conditions and restrictions (i.e. scheduled contacts, curfew, rehabilitation program participation).

The Criminal Disposition Commission, recognizing the viability of this option, contracted with the Program Resource Center at the School of Criminal Justice, Rutgers University to study and describe these programs to provide information to decision makers who are considering the use of these options in their jurisdictions. The report, prepared in 1988, identifies other program models and evaluations and describes critical aspects of the programs in New Jersey based upon interviews with key SPTR program actors. This briefing report is a summary and overview of the important elements of the Rutgers Study.

## **SPTR Program Models: Review of the Relevant Literature**

SPTR programs have been empirically evaluated in several jurisdictions. The research findings are briefly summarized to provide policy makers with current information and to create a foundation for the empirical study of the programs currently operating in New Jersey. The studies presented here were selected based upon the scope of their findings and level of methodological sophistication.

Sorin (1978) examined 550 Baltimore program participants who received either cash bail, own recognizance, or special services (i.e. some form of supervision) release. Defendants who received special services release had fewer community ties and references, thus indicating a greater risk of flight from prosecution. He found that the special services group had the highest failure to appear rate (12.1%) compared with the bail (8.3%) and own recognizance (3.5%) groups. Those failing to appear did so at least once (usually 32 days after release), and tended to have more serious charges pending against them.

Sorin also found that the special services group (i.e. some form of supervision) were arrested more frequently (13.6%) than either those groups receiving cash bail (10.5%) or own recognizance (5.4%) release. It should be noted, however, that the special services group were more likely to be arrested for failing to comply with program conditions rather than new criminal activity. This finding is evident when conviction data are analyzed: there are no differences in the new offense conviction rates for those receiving bail (6.3%) or special service (6.1%) release. Those who were arrested for new

offenses tended to be more serious offenders with more extensive prior records but were likely to be accused of property-related crimes rather than violent crimes.

Pryor (1982) describes 92 pretrial release programs in the United States focusing specifically on the criteria used by jurisdictions in making the pretrial release decision. He found that over 40% of the programs surveyed indicated that they used some form of subjective criteria, rather than an objective risk assessment instrument, to determine program eligibility. Also, about 78% of all programs stipulated release to a third party and, in 70% of those cases, some form of supervision was imposed as a condition of release.

The programs in this survey were also found to offer a wide variety of services ranging from employment counseling to community service either on an "in-house" basis or through a referral system (Pryor, 1982, p. 100), however, participation in counseling and referral services were automatically imposed in fewer than 10% of the programs. Frequently, the program only notified the defendants of their upcoming court appearance dates and required them to "check in" on a scheduled basis.

Although Pryor did not measure failure to appear at trial, he did measure the pretrial criminal involvement of program participants. He found a rearrest with conviction rate of less than 10% while participants were under some form of supervision and approximately 40% of the programs surveyed reported a successful termination rate of between 90 and 99% (p. 106). It should be noted that the results presented here are tentative in that no quantifiable, empirical tests were conducted in this project.

Peterson (1979) describes the admission process, criteria, and conditions for the Santa Clara County, California program. This program closely resembles the program now operating in Middlesex County. Here, staff members interview each defendant at the jail using a subjective assessment device focusing on social work factors like drug and alcohol abuse problems rather than employing an objective risk assessment instrument. Once verified, the information is provided to the Court with a recommendation from the District Attorney. Often, those held on misdemeanor complaints were usually granted an OR release within two days.

Felony offenders are also considered eligible for participation in the Santa Clara SPTR program. Within five days, the Court reviews the verified information then alters bail, releases the defendant on OR, or refers the application to the SPTR program. If accepted into SPTR, the defendant must (1) report on a weekly basis; (2) remain in Santa Clara County; (3) report any change

of address in writing; (4) obey all laws; and (5) participate in all required programs.

The results of the Santa Clara program appear favorable. Peterson reports a 7.9% failure to appear (FTA) rate for SPTR participants. Although the FTA rate for the SPTR participants is somewhat higher than the bail (5.1%) or OR (3.0%) releases, the estimates probably reflect the Santa Clara policy of releasing more serious felony offenders into the program. Reinvolve-ment in criminal activity also appeared to be more likely for SPTR participants (13.0%) than for the other two groups, however, it is not certain whether the arrests for the SPTR participants reflected arrests for new offenses or program violations, thus, caution is warranted when interpreting these data.

In one of the most comprehensive evaluations of SPTR programs, the National Council on Crime and Delinquency (Austin, et al., 1984) examined three programs in Dade County, Florida, Milwaukee County, Wisconsin, and Multnomah County, Oregon. Using an experimental design, NCCD compared two program approaches in each jurisdiction: (1) defendants who received only supervision; and (2) defendants receiving supervision and services. The "contact schedules" for each group were similar. For example, during the first month, participants were required to make at least one weekly phone contact and two face-to-face contacts with the program staff. Those in the "supervision plus services" group were required to make an additional in-person contact with the "service" staff. After the initial month, participants were required to make one weekly telephone contact and report in-person as directed by program supervision staff.

The three programs studied by NCCD dealt mostly with young, unemployed, male felony offenders, some charged with violent crimes, with relatively minor criminal histories who satisfied an important program condition: access to a telephone. Jurisdictions differed according to the salient features which made the SPTR concept appealing and readers are referred to the NCCD report to obtain a better understanding of how different sets of goals were operationalized in different ways. The following important conclusions from the NCCD study are worth serious consideration by decision-makers considering the development or expansion of SPTR programs to alleviate jail crowding in their respective jurisdictions:

1. Release on SPTR does not result in failure to appear or pre-trial crime as compared to other felony releases; in fact, they have higher appearance rates.

2. Among SPTR releases, highest rearrest and failures to appear were found among property offenders and those with substantial criminal histories.
3. Intensive supervision is beneficial for improving court appearance rates, but not as much so for preventing new arrests.
4. Social services do not improve outcomes.
5. It is difficult to predict, from case and program characteristics, which defendants will fail to appear in court or be rearrested.
6. By itself, SPTR can not be expected to reduce jail populations due to its limited pool of defendants. The rate of pre-trial release in the studied jurisdictions was not affected by SPTR.
7. Disposed SPTR cases were, for the most part, given probation or other community sanction. On the other hand, SPTR cases who failed to appear in court or who were rearrested were more likely than those who succeeded to receive a term of incarceration (Austin, et al., 1984, p.124-127).

In summarizing the conclusions of NCCD project, the Rutgers Study reports that, "the NCCD evaluation strongly supports the viability of supervised pre-trial release programs that are well-planned and executed" (Chayett, et.al., 1988, p.54), but point out that NCCD stresses that emphasis on numbers released may backfire, citing the experience in Dade County where outcome measures were not as positive as the other two sites in the study. In Dade County, emphasis was placed primarily on the pressure to reduce jail crowding rather than develop a viable option to reduce the pretrial population regularly held at the jail throughout the year.

## **New Jersey Program Models**

The Rutgers Study describes three SPTR programs currently operational in New Jersey: one in Middlesex County and two in Essex County. The research report provides information on several program dimensions (i.e. goals and objectives, perceived benefits and definitions of success, and program processes, participants, current operations) as seen through the eyes of key actors involved in administering the SPTR programs in these jurisdictions.

### **Middlesex County**

The Middlesex County Pretrial Release Program (SPTR) was designed and implemented to relieve jail

overcrowding and SPTR program actors identified several perceived benefits of the program which affect virtually every component of the criminal justice system as well as the defendant. First, defendants on SPTR are given an opportunity to remain free, structure their lives, obtain employment, and seek treatment for their substance abuse problems since the program draws attention to personal treatment needs. Defendants can also establish a "track record" that may bode well for post adjudication supervision and demonstrate to the court that they can "make it" in the community.

Second, SPTR affects the efficiency and effectiveness of court operations. The program is perceived to increase court effectiveness in two ways: (1) the SPTR "track record" provides more information for the judge in sentencing decisions; and (2) it allows the court to fulfill its crime prevention obligation by making more resources available to confine dangerous offenders, since jail space is "freed up" by the pretrial release of a selected group of offenders.

Third, SPTR benefits probation in the nature of the job itself as well as in the preparation of participants for post-adjudication community supervision. SPTR is said to ready the defendant for probation supervision by making him aware of what is expected of him, and often, compliance with SPTR conditions is viewed as an indicator of a good candidate for regular (i.e., post adjudication) probation supervision. Also, the program provides probation with an opportunity to be an effective arm of the court by allowing officers to achieve that delicate balance between "people and paper" thus leading to greater job satisfaction because clients reportedly respond well to SPTR supervision.

Finally, the Middlesex County program is perceived to have a positive effect on other system components and programs in a wide variety of ways. The SPTR program was seen as a mechanism to alleviate jail overcrowding, reduce pressures put upon the Prosecutor and Public Defender to "rush" cases through the process, ease the burden on the Sheriff's Department to transport defendants to their court appearances, and provide an opportunity for early treatment intervention.

The Middlesex County program does not use any explicit, objective criteria to determine an applicant's eligibility, however, some general program participant characteristics are evident. Pretrial defendants who can neither satisfy the requirements for ROR release nor afford cash bail are considered eligible for SPTR if they:

1. are third or fourth degree offenders;
2. have minimal prior records;

3. have a stable, suitable residence;
4. are employed or have an opportunity for steady, gainful employment; and
5. have an adequate community sponsor (1).

These characteristics must be verified and the selection process for SPTR in Middlesex County takes approximately three days to complete (See Figure 3). Typically, Middlesex County excludes "very violent, serious, or heinous" first and second degree offenders who are accused of committing offenses like murder, sexual assault, sexual assault on children, official misconduct offenses, and those who are arrested in police Task Force raids where large quantities of narcotics are seized. Frequently, those with very high bails also tend to be excluded from consideration. This latter exclusion may be due to the fact that high bails are normally associated with allegations of very serious criminal behavior or a high risk of flight from prosecution or pretrial criminality.

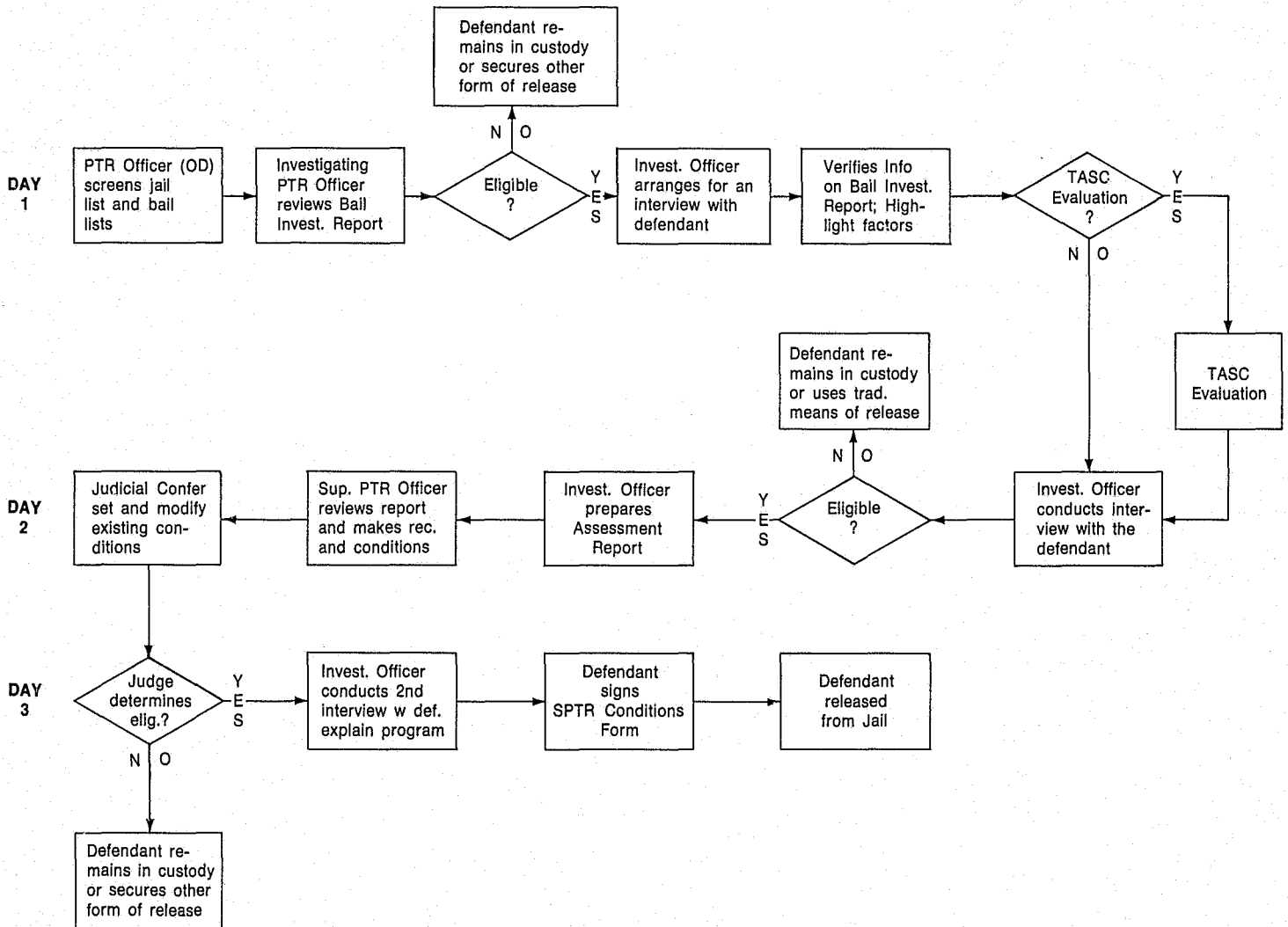
Those defendants selected to participate in the Middlesex County program are given a list of conditions, restrictions, and directives by the Investigating SPTR Officer before being released from the County Jail. The participant is usually expected to report in person to his assigned officer at least once each week and/or once a week by telephone. Some more "risky" defendants are equipped with a Telsol monitoring system (wristlet) to monitor compliance with curfew and house arrest restrictions. Out-of-state residents are required to report at least once a week to their officer by telephone. As illustrated, the reporting schedules vary by individual defendant and the number of required reports diminishes over time and with the participant's compliance with the conditions.

"Special conditions" are imposed on the defendant following a conference between the Investigating SPTR Officer and the Judge. These conditions are imposed in order to "identify, diagnose, and treat the crime producing condition." Conditions like urine monitoring, substance abuse treatment, family counseling, and full-time employment are intended to rehabilitate the SPTR participant.

Other conditions like curfew, home detention, and the provision not to leave the State without permission serve to incapacitate the defendant so not to commit new offenses while under SPTR supervision and to reduce the risk of flight from prosecution. SPTR officers do conduct some home calls to verify the defendant's compliance with the conditions, however, the respondents in the Rutgers study noted that home calls were normally lim-

Figure 3

**SCHEMATIC PRESENTATION OF THE MIDDLESEX COUNTY SPTR PROGRAM**



ited to wristlet equipment checks and in cases where the participant is evidently not complying with the case plan.

Non-compliance with program restrictions and conditions is handled in a variety of ways, ranging from immediate revocation to counseling sessions between the supervising officer and the defendant. The method of addressing non-compliance depends upon the specific type of infraction. For example, one experienced officer observes that some program participants "test the waters" to see how far they will be permitted to transgress from the rules. Here, he suggests that one way to handle a "dancing" defendant is to make a home call, meet with the defendant and the sponsor, and reinstall

the enthusiasm for release the individual had while housed at the County Jail. On the other hand, those who prove to be a substantial risk to public safety or demonstrate that they may flee the jurisdiction are revoked. When a decision is made to revoke a defendant, the process is swift, certain, and streamlined. The Judge will issue a Bench Warrant after reviewing the circumstances of the accusation and reinstate bail and, unlike Violation of Probation (VOP) proceedings, there are no hearings and no appeals of the Judge's decision.

The Middlesex County SPTR program is currently administered by the Criminal Case Manager's Office in New Brunswick, New Jersey. As of April, 1989, 2,493 applicants for SPTR were screened and interviewed. Of

these, 1,326 (53.2%) were accepted to participate in the program with 616 successfully completing the requirements or satisfying their legal matters before the Court. Currently, Middlesex County supervises an average caseload of 75 participants per officer. Since the inception of the program in May 1987, available program statistics indicate that 161 defendants were returned to jail for program non-compliance (76) or new arrests (85). These rates, 5.7% and 6.4% respectively, are well within the range of the national rates presented in the literature review above, however, data measuring failure to appear at trial or other scheduled court appearances were not analyzed in the descriptive study prepared by the Rutgers researchers.

## **Essex County**

Essex County has two operational SPTR programs. One program, called the "Pretrial Release to the VCPO With Conditions Program" (Non-Wristlet program), occurs at the post-arrest stage of the criminal adjudication process. The other, "Pretrial Release-Wristlet Program," typically deals with defendants who are post-indictment. The original impetus for the development of these programs was to alleviate jail crowding, and, as one judge noted, many of the defendants appearing before him were being incarcerated at the pretrial stage of the process simply because they could not make cash bail.

The SPTR programs are perceived as benefiting a wide range of individuals and system components in Essex County. For example, SPTR release may contribute to the likelihood that a defendant receive a favorable adjudication and disposition of his case in that the defendant can participate in and finance his own defense and demonstrate that he can be a productive member of the community by maintaining gainful employment and staying crime free. Three additional benefits for participating defendants were identified by Essex County program actors: (1) it may enhance the defendant's ability to obtain a better plea bargain arrangement by demonstrating his amenability to a community-based disposition and his commitment to a "better life;" (2) it shields the defendant from suffering the consequences of court delay while incarcerated; and (3) it provides an alternative to the cash bail system for defendant's experiencing economic hardship.

SPTR also is seen as having a positive impact upon the efficiency and effectiveness of the courts in Essex County. For example, it reduces backlog and lessens the necessity for Bench Warrants since the SPTR defendants generally appear as scheduled. SPTR also facili-

tates the delicate balance between the court's dual obligation to release defendants pretrial and to assure appearance at trial and public safety.

For probation, SPTR can identify those defendants who are likely to be successful on regular supervision and also prepares the defendant for adhering to the conditions and reporting schedule on post-adjudication supervision.

The community was also perceived as a benefactor from the SPTR programs in Essex County. Supervised pretrial release programs provide a substantially less costly alternative to jail detention without compromising community security because those under SPTR supervision pose less of a threat than defendants released without supervision. This assumption, however, has not been empirically tested in this jurisdiction to date, therefore, this observation is speculation on the part of the respondents.

## **Essex County Non-Wristlet Program**

Individuals selected for participation in the non-wristlet pretrial release program at the CJP stage of the criminal adjudication process are typically nonviolent, lesser drug offenders who appear at arraignment and who would be incarcerated at the Essex County Jail in lieu of posting cash bail. Using information provided by the Criminal Case Manager's Office, the Public Defender, and the Prosecutor, a Central Judicial Processing Court Judge determines a defendant's eligibility based upon a subjective assessment of and a "feel" for the individual appearing before him (See Appendix A). The Rutgers Study reports that the CJP Judge indicated that the underlying emphasis in his decisions focuses on stability since it directly influences the defendant's appearance in court and the likelihood that the defendant will not become involved in criminal activity while awaiting disposition of the pending charges. It should be noted that those accepted into the CJP program are usually individuals who would normally receive a noncustodial sentence upon the final disposition of the charges.

The participants in this program are required to report to a probation officer, usually once a week, to verify attendance at employment, employment and substance abuse counseling if applicable, and to maintain contact with the criminal justice system regarding their pending legal matters. In some cases, the judge will order urine testing to detect continued substance abuse. In domestic violence and aggravated assault cases, the defendant is prohibited from interacting with the victim until the final disposition of the charges or until a Family Court decision is rendered.



The CJP judge plays an active role in monitoring compliance with the conditions he prescribes. The defendants are required to provide proof to the CJP judge that they are attending treatment and counseling at subsequent court appearances before him. Those who fail to adhere to the conditions and restrictions are exposed to program revocation and the reinstatement of bail.

The CJP pretrial release program was formally created in March, 1988. Currently, one probation officer supervises an average caseload of approximately 65 pretrial defendants. As of September, 1989, 115 defendants have been referred to the program. Fifty-two participants completed the program with only 3 (about 2% of those referred) being returned for non-compliance with program conditions and an additional 3 persons returned for new criminal activity (2%). These figures are consistent with national data. Data was not collected on failure to appear at scheduled court appearances in this program.

## **Essex County PTR (Wristlet) Program**

Defendants selected for participation in the post-indictment "Wristlet" program typically must satisfy the following requirements:

1. charged with a third or fourth degree, non-violent offense;
2. minimal prior record;
3. suitable residence with a telephone in the immediate Newark area;
4. stable employment and community ties.

In this program, an Essex County Superior Court Judge determines suitability for SPTR release based upon the above criteria as well as his own subjective assessment which usually involves: (1) whether the defendant uses any aliases, and (2) the amount of time the potential participant has been incarcerated. The decision-making judge interviewed in the Rutgers Study firmly believes that these latter criteria are directly related to the risk of flight from prosecution and failure to appear at trial. This selection process is schematically presented in Appendix B.

The judge calculates the amount of time served pretrial, the probability of conviction, and the likelihood that the defendant will receive a lengthy prison term if convicted to determine the defendant's "investment" in appearing for scheduled court appearances. Those who possess an acceptable level of "investment" are considered eligible for this SPTR program. Reportedly, those who are considered eligible for SPTR are ordinarily given noncustodial terms upon conviction.

The supervision practices of this program vary according to the characteristics of the offender and the offense. The Essex County Probation Department monitors compliance with court-imposed conditions (i.e., curfew, urine testing, home detention) and makes frequent house calls to check the telephone monitoring equipment. The SPTR staff also notify defendants of upcoming scheduled court appearances and arrange for a public defender for indigent participants.

The Essex County SPTR program receives additional support from the American Friends Committee (AFC) and Offender Aid and Restoration (OAR). Members of these volunteer agencies visit the jail three times a week to explain the program to inmates, screen eligible candidates, and make recommendations to the SPTR officer and provide supplemental services like life skills training (i.e. employment, housing, career development) to the participant. These programs are readily accessible and both programs are reported to be favorably received by SPTR staff and decision-makers.

Like the other programs, the revocation proceedings in the Wristlet Program are streamlined. If a participant violates any of the conditions imposed by the court, fails to appear as scheduled, or gets rearrested, the court will reinstate bail and frequently the participant returns to the County Jail.

The Wristlet Program was created in June 1986, and as of August, 1988, the program has employed one full-time staff member responsible for screening and supervising a average caseload of approximately 50 participants. The program has screened 546 applicants and accepted 32% of those screened (175). According to program statistics, 124 people have currently completed the requirements. The Essex County program reports a quite favorable success rate in that only 16 failed to appear at trial (9%) and 20 were returned for non-compliance with programmatic conditions (11%). Again, these data reflect the national FTA and technical violation rates. Information on pretrial criminality and arrest rates, however, were not collected by the SPTR program staff.

## **Conclusion and Recommendation**

The in-depth descriptive analysis in the Rutgers Study draws some important conclusions about the state and future of SPTR programs that warrant discussion here. The authors of the report point out that both the Middlesex and Essex County programs serve as examples of innovation, creativity, and commitment to alleviating jail crowding while protecting public safety and the rights of accused defendants. They also note that, "while it is premature to assess the degree to which these

efforts have been successful at achieving their stated goals and objectives, there is clearly a pressing need for more SPTR programs in New Jersey" (Chayett, et al., 1988). However, they do encourage policy makers to clarify prospective program goals and objectives, consider the potential and utility for widening the net of social control, and recognize the need for the empirical examination of these programs before expanding SPTR throughout the state. With this in mind, the Rutgers Study offers the following recommendations:

1. Evaluation of existing, as well as planned programs is necessary.
2. Resources should continue to be used to develop and implement SPTR programs in New Jersey.
3. Program goals should be specific, reflect a particular philosophy of SPTR, and be directed at predefined acceptable levels of success.
4. Program planners and staff need to be sensitized to issues that can undermine the intent and approach of the SPTR program (i.e., disparity).
5. Programs should reflect the local jurisdiction in which it is located. A local leader, someone in the criminal justice system with an articulable presence who has authority and power, is ideal for inculcating support and obtaining resources for program efforts.
6. Jurisdiction-specific objective criteria for selection of defendants for the program should be developed and used. Planners should also consider expanding the criteria describing the target population.

Based upon the information provided in this report, the New Jersey Criminal Disposition Commission recognizes the need to continue to further explore the viability of supervised pretrial release programs.

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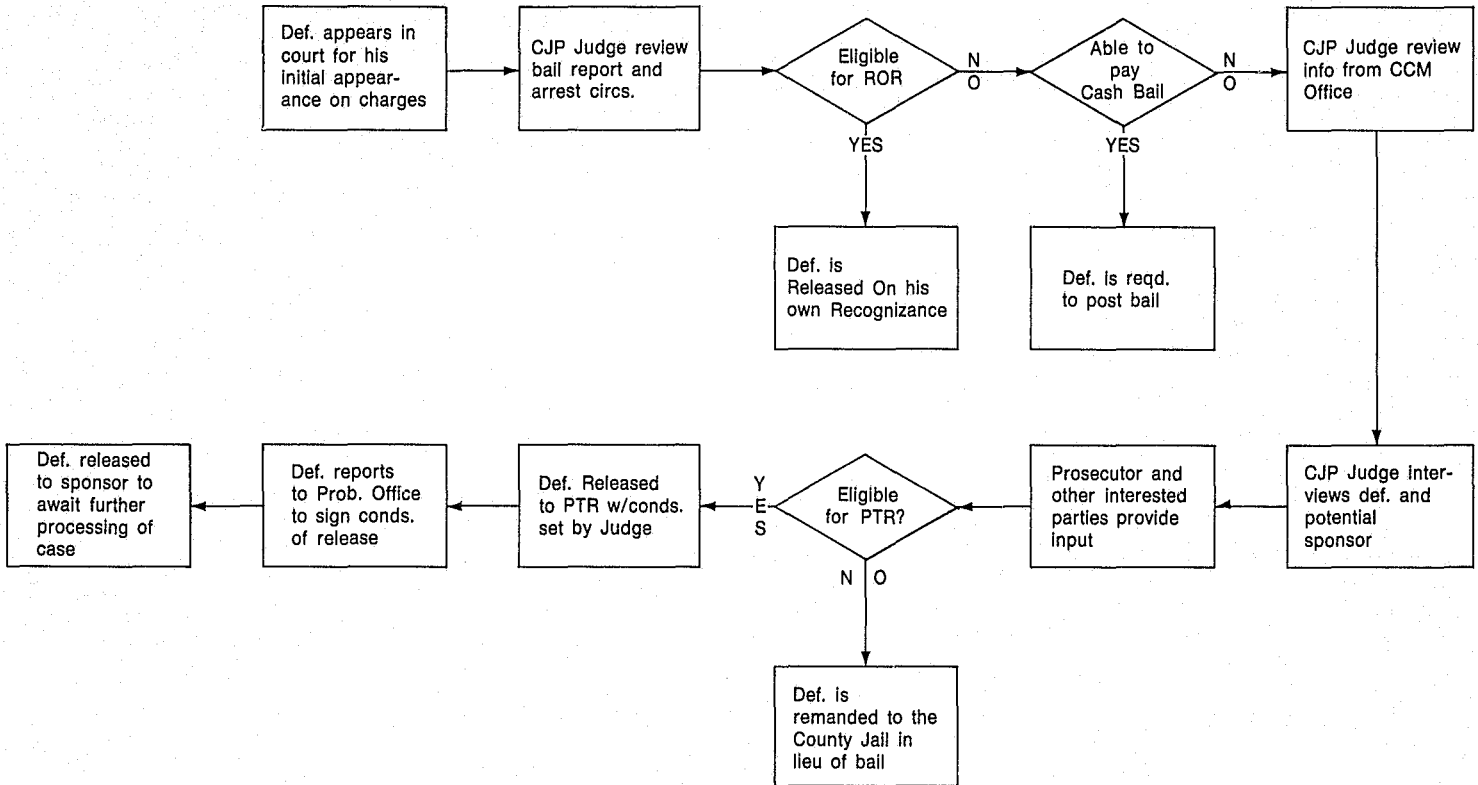
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## NOTES

1. A community sponsor is normally a family member or other responsible member of the community (i.e., employer) who accepts the responsibility of assuring the defendant's compliance with the imposed conditions, thus providing an added level of supervision.

**ESSEX COUNTY CJP PROGRAM  
(SPTR RELEASE TO VCPO WITH CONDITIONS)**



**ESSEX COUNTY PTR (WRISTLET) PROGRAM**

