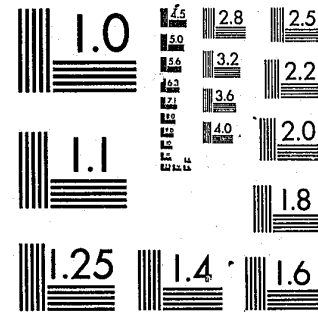


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SUFFOLK PROBATION'S 1979 PRE-TRIAL SERVICES PROGRAM:  
ANALYSIS & RECOMMENDATIONS

August, 1979

Pre-Trial Services - 1979  
Report #2

77508

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I. INTRODUCTION

The purpose of this study is to analyze the 1979 pre-trial service program conducted by the Suffolk County Probation Department; and to offer recommendations for systemic improvements based on the program's stated objectives. This document reports the results of the second phase of a three stage research effort which began in the spring of 1979.

The first phase of this research resulted in a Probation Departmental report published in June, 1979 entitled: Suffolk Probation's 'Release-On-Recognizance' and Legal-Aid Eligibility Services: An Operational Analysis (revised 8/79). This initial report presented the goals, major objectives, operational procedures, risk-assessment instruments, program effectiveness and cost benefits of the existing system. In addition, this first report attempted to trace the historical development of the 'Release-On-Recognizance'/'Legal-Aid-Eligibility' (ROR/LA) program in Suffolk County. Comparative annual workload statistics were also presented. However, recommendations for programmatic change were deferred in the initial report pending completion of additional data collection, information verification and analysis. Copies of 'Pre-Trial Services (1979) - Report #1' are available upon request to the Suffolk County Probation Department, P. O. Box 188, Yaphank, N. Y. 11980.

This current 'Pre-Trial Services - Report #2', offers an analysis of the major issues regarding pre-trial services in Suffolk County including the following:

- 1) Revalidation of the Risk-Assessment Instrument
- 2) Modification of the 'Automatic Exclusion Criteria'
- 3) Expansion of the follow-up validated ROR procedure to certain subgroups

- 4) Supervised ROR Services
- 5) The impact of video arraignment
- 6) Expansion of services to include a social-service component
- 7) Screening of jail cases for minor offenses

The third phase of this research effort will include the statistical validation of the risk-assessment instrument currently in use and will be completed in 1979. In addition, an assessment of the 'automatic-exclusion' criteria with recommendations for modifications will be made.

This report (Pre-Trial Services #2) has been organized to provide a system-wide overview in Section II; an analysis of the subgroup that failed to return to Court in Section III; analysis of those given 'automatic exclusion' treatment in Section IV; and discussion of the major issues for Suffolk pre-trial services with specific recommendations in Section V.

## II. PROBATION PRE-TRIAL SERVICES IN SUFFOLK COUNTY

As illustrated in Figure 1, there were 15,960 total ROR/LA interviews begun by Probation in 1978. These interviews included 4,775 legal aid status interviews, 8,202 full release on recognizance interviews; and 2,983 - 40-8 or automatic exclusion interviews. The automatic exclusion (40-8) classification means that these particular cases were excluded from a full ROR investigation either because a recent ROR report was already conducted; or the individual had a fugitive warrant outstanding; was a non-resident; etc.

As illustrated in Figure 2, 73.3% of all the cases in 1978 were given full ROR investigations and 26.7% were automatically excluded from full ROR investigations wherein 40-8 forms were prepared and submitted to Court. Figure 2 reports the results of an analysis of the automatic exclusion cases in Suffolk between April 1, 1979 and June 23, 1979. As illustrated in this chart, 15.9% of these cases were excluded because a recent ROR report was available with current data. Thus, 4.2% of the total ROR referred population were given automatic exclusion treatment but were also eligible for ROR treatment. Thus, 22.5% were excluded from full ROR interviews and 77.5% were afforded ROR treatment.

Table 1 reveals that of those cases excluded from ROR interviews, the greatest single reason for exclusion was the non-resident (28.7%) status of the individual. If an individual is not a Suffolk or Nassau County resident, then automatic exclusion treatment is given. Other reasons for exclusion are as follows: No permanent address - 20.5%; Insufficient Time In Area (ITA) - 19.5%; Warrant Outstanding - 16%; Violation of Probation Proceedings - 4.7%; Refused Interview - 3.0%; Other - 7.6%. The other category includes the following reasons: intends to leave county, false identity; incoherent or intoxicated, willing to pay fine now, etc.

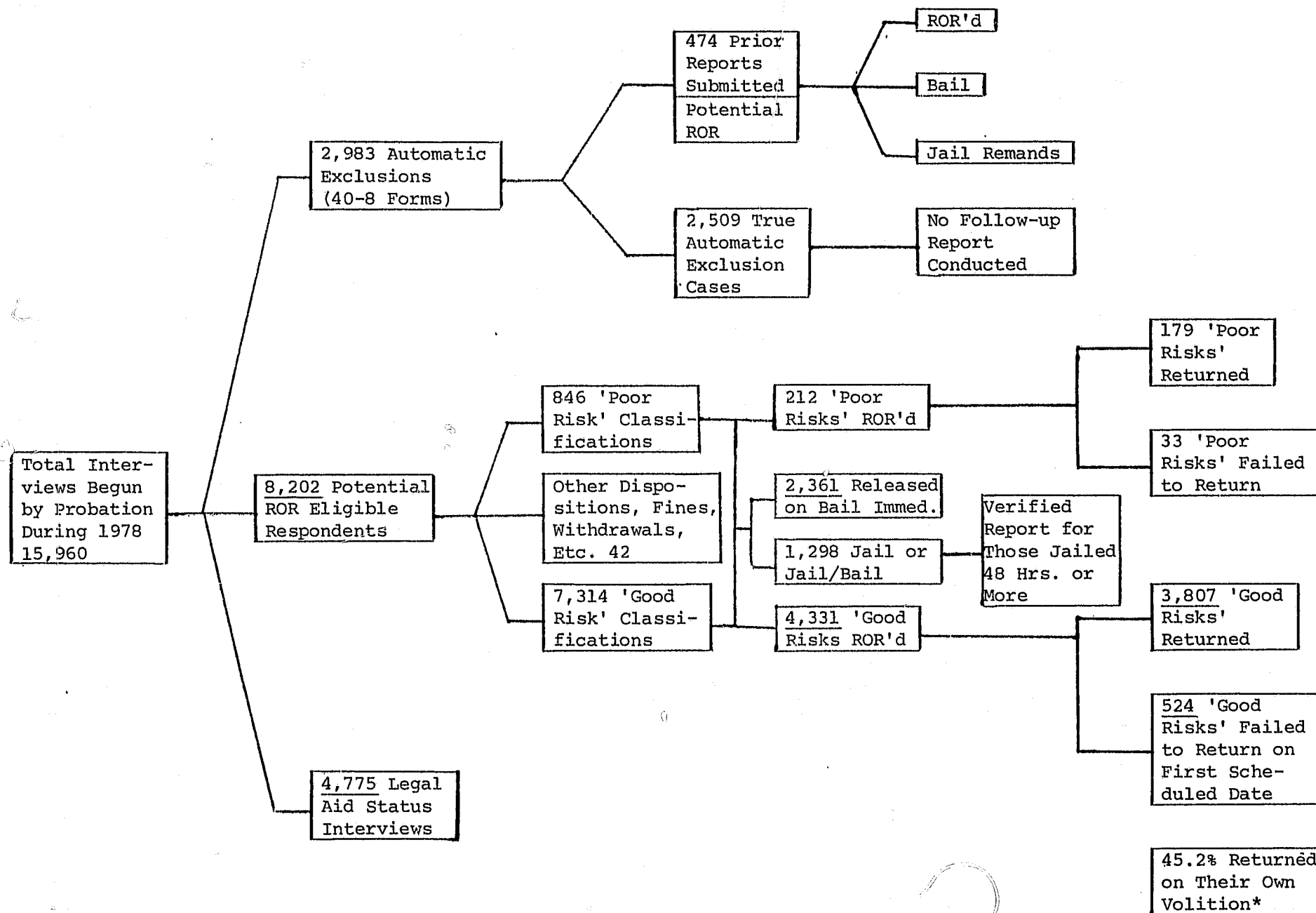


FIGURE 1: FLOW CHART OF ROR/LA CASES DURING 1978 ACCORDING TO PRE-TRIAL ALTERNATIVES

\*Note: A total of 94.2% of the respondents returned to Court on their own volition.

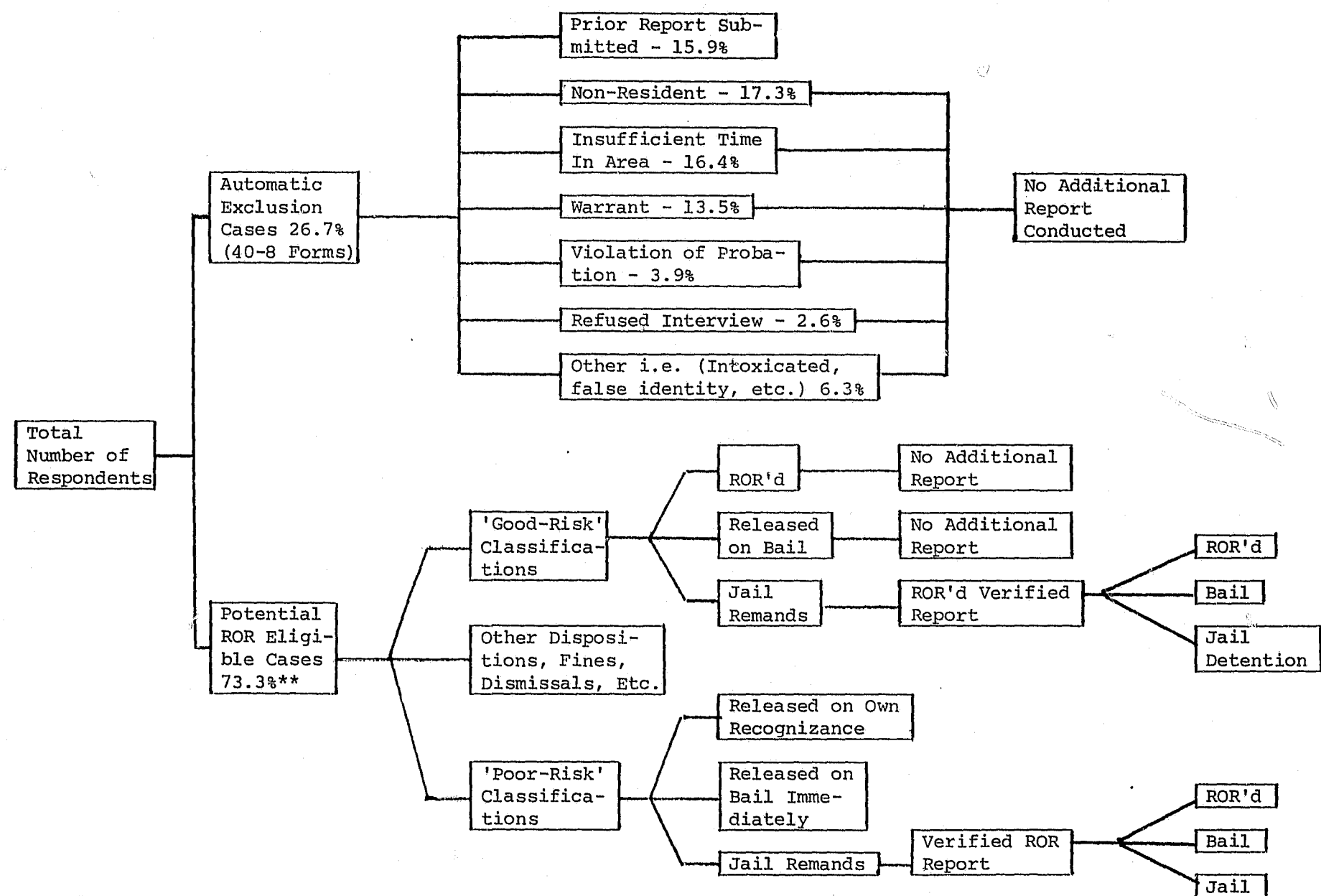


FIGURE 2: SYSTEMIC FLOW CHART OF PRE-TRIAL ALTERNATIVES

\*This category identifies cases that are excluded from a full ROR investigation for a variety of reasons including those who had a recent report conducted.  
 \*\*This total represents potential ROR cases that had a full ROR investigation conducted.  
 \*\*\*This category are potential OR cases and represent an additional 4.2% eligible ROR cases.

TABLE 1: REASON FOR AUTOMATIC EXCLUSION  
IN SUFFOLK COUNTY DURING 1979

REASONS FOR EXCLUSION	NUMBER	PERCENTAGE
Non-Resident	159	28.7%
No Permanent Address	114	20.5%
Insufficient Time In Area	108	19.5%
Warrant (Fugitive, Parole, Prob.)	89	16.0%
Violation of Probation	26	4.7%
Refused Interview	17	3.0%
Other	42	7.6%
TOTAL	555	100.0%

Basically, 68.6% of the automatic exclusion classifications (based on risk or legal status) are due to the fact that the respondent is a non-resident, has no permanent address or has recently moved into the area (and is without attachments). Refer to Section III for further analysis of the automatic exclusion category.

In Suffolk County follow-up verified ROR reports are only conducted on potential ROR cases that are subsequently detained in jail. Verified follow-up ROR reports are not conducted on cases given automatic exclusion treatment by pre-trial services.

There are two major ROR classifications conducted by Probation's pre-trial services unit which include: 1) distinguishing automatic exclusion cases from potential ROR interview cases; and 2) classifying 'good-risk' versus 'poor-risk' respondents. The judiciary uses the ROR report as one indicator in the assessment of whether an individual will return to Court as scheduled, and releases both 'good-risk' and 'poor-risk' respondents. Of both the 'good-risk' and 'poor-risk' categories, there is a subgroup of individuals that 'fail-to-return-to-Court' as scheduled after being ROR'd. The next section analyzes this subgroup in greater detail.

### III. THE "FAILED-TO RETURN-TO COURT" SUBGROUP

As indicated in Pre-Trial Services - Report #1,<sup>1</sup> additional information was needed regarding those individuals who were released-on-their own recognizance and failed to return to Court as scheduled. The research question was simply: "How many individuals ROR'd, returned to Court on their volition?" By determining this fact, we would be able to identify the hard core group that refused to return to Court and/or fled the jurisdiction of the Court. Field observation indicated that many people who were reported by the ROR/LA Unit as unsuccessful cases, actually returned to Court on the following day or later the same day, etc. Lack of transportation, confusion regarding date of appearance, sudden illness, car trouble, etc. all contributed to the 'failure-to-return-as-scheduled' rate; but there is a critical difference between those individuals who are willing to return to Court vs. those who are resistant and refuse to cooperate.

In order to determine the 'willingness-to-return-to-Court' rate vs. 'the refusal to return' rate, the Criminal Court records in Hauppauge were checked for all 157 cases of ROR eligible individuals who failed to return to Court between January and June 23, 1979. These cases did not include the 'automatic-exclusion' category, nor the traffic offense category.

As illustrated in Table 2, out of the 157 case total of individuals ROR'd, 71 or 45.2% returned to Court of their own will shortly after their scheduled Court date; 57 or 36.3% had outstanding warrants as of 7/12/79; and 29 or 18.5% had warrants executed.

TABLE 2: DISPOSITION OF 'FAILURE-TO-RETURN-AS-SCHEDULED' CASES BETWEEN JAN.-JUNE, 1979

<u>DISPOSITION</u>	<u>#</u>	<u>%</u>
Returned-To-Court	71	45.2%
Warrants Outstanding	57	36.3%
Warrants Executed	29	18.5%
TOTAL	157	100.0%

Report #1 indicated that 89.4% returned to Court as scheduled between January and May, 1979. The 10.6% that failed to return of ROR eligible individuals are the subjects of the above Table #2. Thus, an additional 45.2% of the 10.6% of the total ROR eligible population or an additional 4.8% returned to Court on their own volition (45.2% X 10.6%). Also, 3.8% (36.3% X 10.6%) had warrants outstanding, while 2.0% (18.5% X 10.6%) had warrants executed.

Basically, these findings indicate that 94.2% of the individuals released on their own recognizance returned to Court of their own volition. 5.8% have warrants outstanding or had warrants executed.

Regarding the 29 cases or 18.5% that had warrants executed, 19 or 65.5% continued with subsequent Court appearances as scheduled while 10 or 34.5% have subsequent warrants still outstanding.

Approximately 95% of those individuals considered eligible for ROR treatment, and released on their own recognizance, in fact returned to Court of their own volition between January and June, 1979. In addition, of the 29 cases or 2% that had warrants executed, 19 or another 1.3% were released and subsequently returned to Court of their own volition. Thus, the vast majority of cases

currently considered eligible for ROR treatment return to Court under the current system.

The next section focuses in on the 'automatic exclusion' category which holds the greatest potential for impact on pre-trial detention services in Suffolk County.

#### IV. AUTOMATIC EXCLUSION CLASSIFICATION

According to the Suffolk County ROR system, some cases automatically are excluded from full interview services, and a recommendation to the Court for release is not made. These cases are automatically excluded and a form is sent to Court. This 40-8 Form contains the following information: 1) Date of Report, 2) Date of Birth, 3) Charge, 4) Address, 5) Legal Aid Eligibility, 6) Disposition, 7) Prior Record, and 8) Reasons for Exclusion.

Specific reasons for exclusion are as follows: 1) NR - Non-Resident (outside of Nassau or Suffolk Counties); 2) Warrant - if a probation or fugitive warrant exists; 3) Ref. Int. - Refused Interview; 4) N.P.A. - no permanent address; 5) V.O.P. - Violation of Probation outstanding; 6) I.T.A. - Insufficient Time in Area; 7) II - Incomplete Interview; 8) P.R.S. - Prior Report Submitted (if another ROR report was recently completed, a 40-8 Form is attached to that form instead of a new interview); 9) Will Pay Fine - (if the legal involvement is resolved with immediate payment of a fine); and 10) Incoherent.

An analysis of automatic exclusion classifications during April, May, and June of 1979 reveals the exact reason for exclusion of new ROR interviews. As Table 3 illustrates, there were 660 automatic exclusions between April 1st and June 23, 1979. The major reason for automatic exclusion treatment (40-8) was due to the non-resident or transient nature of the accused offender. Of the total 40-8 forms submitted to Court during this



period, the major reasons were as follows: Non-Resident - 159 (24.1%); No Permanent Address - 114 (17.3%), and Insufficient Time in the Area - 108 (16.4%). These three factors accounted for 381 out of the total 660 40-8 Forms submitted. In addition, 13.5% (or 89 out of 660 cases) were given 'automatic exclusion' treatment because warrants were outstanding on the individual. It is important to note that this category means that Courts other than the presiding Court at arraignment have issued warrants for the individual that remain outstanding. The 'warrant' population is truly considered ineligible for ROR consideration because of the existing conditions. Also, 2.6% refused the interview and 6.3% were intoxicated, incoherent, gave a false identity, or were willing to pay the fine now and would be released immediately.

TABLE 3 : Reasons for Automatic ROR Exclusions During April, May and June 1 - 23, 1979

Reason for Auto. Exclusion (40-8)	April 79		May 79		June 1-23,79		Total	
	#	%	#	%	#	%	#	%
Non-Resident (NR)	56	21.3	56	24.9	47	27.3	159	24.1
No Permanent Address (NPA)	50	19.0	42	18.7	22	12.8	114	17.3
Insufficient Time in Area (ITA)	34	12.9	39	17.3	35	20.4	108	16.4
Prior Report Submitted (PRS)	52	19.8	31	13.8	22	12.8	105	15.9
Warrant (Fugitive, Parole, Prob.)	34	12.9	29	12.9	26	15.1	89	13.5
Violation of Probation (VOP)	10	3.8	12	5.3	4	2.3	26	3.9
Refused Interview (RI)	7	2.7	7	3.1	3	1.7	17	2.6
Other*	20	7.6	9	4.0	13	7.6	42	6.3
<b>Total</b>	<b>263</b>	<b>100%</b>	<b>225</b>	<b>100%</b>	<b>172</b>	<b>100%</b>	<b>660</b>	<b>100%</b>

\*The 'Other' category includes the following reasons: intends to leave country, false identity, incoherent or intoxicated, willing to pay fine now, etc.

\*\*The June total is for the periods between June 1st. and June 23rd., 1979 and does not represent a complete month.

Table 4 illustrates the reasons that cases receive automatic exclusion treatment exclusive of the (PRS) 'prior-report-submitted' category. When the PRS category is omitted from the other automatic exclusion categories, the non-resident, no-permanent address, and insufficient time in area reasons account for 68.7% or all automatic exclusion cases.

TABLE 4: REASONS FOR AUTOMATIC ROR EXCLUSIONS FORM SUBMISSION (40-8) EXCLUSIVE OF THE PRS (PRIOR REPORT SUBMITTED) CATEGORY

REASONS FOR EXCLUSION	NUMBER	PERCENTAGE
Non-Resident	159	28.7%
No Permanent Address	114	20.5%
Insufficient Time In Area	108	19.5%
Warrant (Fugitive, Parole, Prob.)	89	16.0%
Violation of Probation	26	4.7%
Refused Interview	17	3.0%
Other	42	7.6%
<b>TOTAL</b>	<b>555</b>	<b>100.0%</b>

As illustrated in Table 4, 89 cases or 16% received automatic exclusion treatment because of an outstanding fugitive, parole or probation warrant. In addition, 26 or 4.7% of these cases have outstanding Violations of Probation. Also 17 cases or 3% refuse to participate in the interview, and 42 cases or 7.6% received automatic exclusion treatment for 'other' reasons. The 'other' category includes the following reasons: intends to leave country, false identity, incoherent or intoxicated, willing to pay fine now, etc.

In summary, 68.7% of the automatic exclusion classifications based on risk or legal status are due to the fact that the respondent is a non-resident, has no permanent address or has just recently moved into the

area (and is without attachments). A large percentage of those cases (20-30%) that have insufficient time in the area (ITA) have recently been released from incarceration. Our sample revealed that of this category, individuals were released from either the day before to several months before from Attica, Suffolk County Jail, Danamora Prison, Nassau County Jail, Honor Farm, etc.

In addition to the non-resident or transient status of the respondent, a large percentage of the automatically excluded cases (115 or 20.7%) have fugitive, probation, or parole warrants outstanding or have Violation of Probation proceedings outstanding. Thus, 89.4% of the automatic exclusion cases receive this treatment because of outstanding warrants, and violations of probation; because they reside outside of Nassau and Suffolk Counties; have no permanent address; or have spent insufficient time in the area because of recent incarceration or transient life-style.

The remaining miscellaneous cases that receive automatic exclusion treatment 10.6% are because of the respondent refusing to participate in the interview, incoherent or intoxicated behavior, willing to pay the fine now, submission of false identity, plans to leave the country, etc.

One of the most notable consequences of being identified an 'automatic exclusion' case is that a verified ROR report is not conducted when jail remand is ordered. Verified ROR reports are only conducted on potential full ROR cases that are jailed pending bail. The Judge does not have benefit of a follow-up verified ROR report on automatic exclusion jail cases that were given this classification because of intoxication, for example. Clearly, expansion of current pre-trial services should be made to insure follow-up verified ROR reports for certain subgroups of the 'automatic

exclusion' category. In fact, routine verified ROR reports should be conducted on all 'automatic exclusion' cases except those with warrants outstanding.

As indicated in 'Pre-Trial Report #1' 1979, the report prepared by Probation's pre-trial services unit is only one indicator used by the judiciary in assessing whether the individual will return to Court as scheduled. Many of the cases that are excluded by Probation from full ROR reports (automatic exclusion cases) are ROR'd or released on bail and return as scheduled. A close examination of the automatic exclusion criteria is necessary with specific modifications.

There are certain areas that require the maintenance of the automatic exclusion classification and they are as follows:

- 1) Warrant outstanding from another Court;
- 2) no permanent address;
- 3) non-resident (living beyond Westchester County or Out-of-State);
- 4) Violation of Probation proceeding in process;
- 5) incoherent or intoxicated at time of interview;
- 6) refused interview.

For these cases, pre-trial services must complete and submit a 40-8 Form excluding the explaining why the individual was excluded from a full ROR investigation. Full ROR investigations (with additional verified ROR reports for jail cases) should be completed on all other cases.

Thus, although the current criteria defines non-residents as all those residing outside of Nassau and Suffolk Counties, it is proposed that a full ROR investigation be conducted on all individuals that reside on Long Island, N. Y. City or Westchester. Non-residents account for 28.7% of all automatic exclusion cases.

For the category (ITA) Insufficient Time in the Area, full ROR investigations should be made with the length of residence and reason included on the ROR report. This total represents 19.5% of all automatic exclusion cases.

When a potential ROR individual is remanded to jail, a verified ROR report should be conducted on all cases that are jailed for more than 48 hours and the report submitted to Court. Changes in attitude, new developments, sobriety, etc. may provide new information that can be used to justifiably recommend ROR or a reduction in bail. Table 5 illustrates the type of pre-trial service proposed for individuals in the current automatic exclusion category.

TABLE 5: PROPOSED CRITERIA CHANGE FOR AUTOMATIC EXCLUSION TREATMENT

<u>Type of Automatic Exclusion Case</u>	<u>Full ROR Report</u>	<u>(40-8) Automatic Exclusion Report</u>	<u>Jail Case Verified ROR Report</u>
1. Warrant	No	Yes	No
2. Violation of Probation	No	Yes	No
3. (ITA) Insufficient Time In Area	Yes	No	Yes
4. Refused Interview	No	Yes	Yes
5. Intoxicated	No	Yes	Yes
6. Resident (L.I., NYC, Westchester)	Yes	No	Yes
7. Non-Resident (beyond Westchester)	No	Yes	No
8. False Identity	No	Yes	Yes

The current system does not conduct a full ROR report on the following: 1) non-residents of Nassau or Suffolk; 2) those with Insufficient Time In the Area (ITA); 3) incoherent or intoxicated individuals; or 7) those who refused the interview. The proposed changes represent a significant

departure for the current system and represents an increase of approximately 11%-15% of full ROR interviews that would be conducted.

In addition, for those cases that are remanded to jail, follow-up verified ROR reports are recommended within 72 hours. Verified ROR reports would not be conducted for the warrant, new non-resident definition and Violation of Probation categories. All other cases should have verified ROR reports completed. Thus, the individual who refused the interview or was incoherent or intoxicated at the time of the initial interview would have a chance for release with the benefit of a verified ROR report.

At the present time, cases cited in the above categories do not have follow-up ROR reports conducted.

V. MAJOR PRE-TRIAL ISSUES IN SUFFOLK COUNTY

1. Revalidation of the Risk Assessment Instrument

One of the characteristics of risk-assessment instruments is that they have to be revalidated periodically for optimal value. Classification of 'good-risk' and 'poor-risk' assessments must be continuously refined. Although only 212 or 25% of the 'poor-risk' cases were ROR'd, 84.4% of those that were released returned as scheduled. Statistic revalidation is necessary and would achieve two specific objectives: A) improve the 'return-to-Court-as-scheduled' rate; B) expand the range of 'good-risk' classifications (based on the probability of return to Court).

2. Modification of the 'Automatic Exclusion Criteria

As described in Section IV, the full ROR investigation should be conducted on all residents of Long Island, N.Y.C. and Westchester; and individuals formerly excluded because of insufficient time in the area. 'Automatic Exclusion' (40-8) treatment would continue for A) warrants, B) Violations of Probation; C) non-residents (out of State and beyond Westchester); D) incoherent or intoxicated individuals and E) those who refuse interview.

### 3. Expansion of the Follow-up Validated ROR Procedure

As illustrated in Table 5, validated ROR reports should be expanded from the current jail cases that were ROR eligible to also include the following groups: A) those that initially refused the interview and were jailed; B) those individuals that were intoxicated or incoherent at the time of the first interview and were subsequently jailed; C) those that were previously labeled as having insufficient time in the area (ITA); D) all residents of L.I., N.Y.C. and Westchester that were jailed but eligible for ROR release; E) those that previously gave a false identity, excluded from the ROR interview and jailed.

Validated ROR investigations for those individuals jailed with outstanding warrants or VOP's; or for non-residents are not recommended.

### 4. Supervised ROR Services

Supervised ROR services may not be possible on a cost effective basis. However, this approach could be tried on a pilot basis to determine the actual cost benefits, if any. The target population should be those individuals who after having a verified ROR report forwarded to Court are jailed again and are unable to make bail.

### 5. The Impact of Video Arraignment

Additional probation pre-trial resources will be needed to accommodate the video arraignment program. The proposed recommendations for modified automatic exclusion criteria, and the statistical validation of the risk-assessment instrument coupled with video arraignment, should reduce the number of cases remanded to jail awaiting trial. The full impact will be evaluated during the implementation of this LEAA grant.

### 6. Expansion of Services to Include a Social Services Component

At the present time, Probation's pre-trial services system does not include a social services component (i.e. counseling, transportation, housing, employment, etc.) because of limited resources. Also the current plans do not include providing expanded social services. Rather, each recommendation is purely based on the objective of insuring the return-to-Court as scheduled, of respondent in Suffolk Courts.

### 7. Screening of Jail Cases for Minor Offenses

As part of the verified ROR report follow-up procedure for jail cases, special attention should be given to cases involving minor offenses that are being held on remand because of an inability to raise the necessary bail.

Two actions should be made:

- 1) recommendations for reduced bail or ROR
- 2) efforts (by telephone) to locate relatives that would post bail.

### 8. Mail or Telephone Reminders

One technique used in certain jurisdictions is to remind respondents by telephone or letter of the Court date. Since approximately 95% of the cases return to Court on their own volitions, the cost effectiveness of this type of program is questionable. It would be necessary to notify 100% of the population to possibly increase the return to Court rate several percentage points. The value of any increase is not disputed. However, program priority in an area with limited resources is the specific issue to be considered.

The recommendation is to concentrate on verified ROR reports for jail cases and to revalidate the risk assessment instrument rather than develop a Court appearance notification program. If the Court system was totally computerized, this component would make more sense.

SUMMARY & CONCLUSION

This second phase of research concerning Suffolk Pre-Trial Services has resulted in the following recommendations;

- A) That the automatic exclusion criteria be modified so that full reports are conducted on 1) All residents of Suffolk County regardless of the time at their present address; 2) All residents of Long Island, N.Y.C. and Westchester.
- B) That Warrant, Violation of Probation and No-permanent address cases continue to be treated as 'automatic exclusion' cases.
- C) That verified ROR follow-up reports for jail cases be expanded for those who 1) were intoxicated at the initial ROR interview; 2) refused the initial interview; or 3) gave a false identity. (In addition, all cases that had a full ROR report conducted would automatically get a verified report within 72 hours if jailed).
- D) That the Risk Assessment instrument be statistically revalidated so that the 'return to Court' rate is maximized.
- E) That Probation take an advocary role in attempting to find relatives to post bail for certain respondents; as well as request a reduction in bail where appropriate.
- F) That a sophisticated evaluation component be designed and included into ongoing procedures of pre-trial services so that the criteria for release could be continuously validated and reported to the judiciary and Probation administrators.

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