

Estimating the Cost of the Proposed New Jersey Pretrial Service Unit and the Accompanying Legislation

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TOWSON UNIVERSITY

**Estimating the Cost of the Proposed New Jersey Pretrial Release Unit and Accompanying
Legislation**

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1.0 Executive Summary

The Regional Economic Studies Institute (RESI) of Towson University has been tasked with enumerating the potential costs to the State of New Jersey of instituting Senate Bill No. 946 (2014) and Assembly Bill No. 1910 (2014), both of which will alter the current pretrial process and establish the New Jersey Pretrial Service Unit (NJPSU).

Through the use of current pretrial service statistics, RESI enumerated the potential cost to New Jersey based on three separate categories, as described below.

- **Start-up costs** consist of the spending necessary to launch the NJPSA. These costs include the hiring and training of staff, the purchasing of equipment, and the furnishing of the workspace required.
- **Operating costs** were those incurred through the year-to-year functioning of the NJPSU. These costs included employee expenses, software licenses, facilities and upkeep, and programming provisions.
- **Indirect costs** quantify the potential expenses that would be incurred by the State as a result of the change in judicial practices as the bills mandate or as a result of actions by the NJPSU. These costs were collected from additional public defender and courtroom usage, and the failure to appear (FTA) and recidivism of released defendants. FTA and recidivism cost money to the state through rearrest costs and damages to the community. These costs can increase if levels pretrial misconduct are not properly managed through supervision and programming.

Figure 1: Cost Estimates by Expense Category

Expense	Cost Estimate
Start-Up Costs	\$16,591,360
Operating Costs	\$379,589,599
Indirect Costs	\$65,069,321

Source: RESI

As shown in Figure 1, RESI projected that NJPSU start-up costs would amount to approximately \$16.6 million, the annual operating cost of the NJPSU would amount to \$379.6 million, and the indirect cost to the state that would be induced by the bills could potentially reach at least \$65.1 million.

This cost projection was modeled off the DCPSA program as it best reflects the legislation provided for the NJPSU because it must provide for similar costs of living and because it is widely regarded as the most effective pretrial release program. It is important to note that the NJPSU also has a provision that requires it to consider monetary release conditions only as a final resort when non-financial conditions will not reasonably assure the safety of the community and the appearance of the defendant in court. In comparison, the DCPSA is to first

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consider monetary conditions before assigning DCPSA program release. Ultimately, this provides the potential for the NJPSU to experience even higher levels of program spending per arrest than the DCPSA.

RESI also considered the cost saving that would be generated by diverting pretrial defendants away from jail and prison due to release. Using figures from New Jersey’s “Report of the Joint Committee on Criminal Justice,” RESI found that decreasing the level of pretrial detention by 50 percent could save the New Jersey state budget approximately \$164 million dollars. However, there are several things to consider with this figure. First, the committee’s assumption that approximately 50 percent of pretrial detainees are being held needlessly is very generous, because most populations see a total release rate of approximately 50 percent. Furthermore, with each release there is an increased change of FTA and recidivism, incurring additional costs against the state. Finally, still considering the \$164 million in potential savings, RESI projects that the annual operating costs of the NJPSU would still result in a net budget cost of more than \$215 million per year.

Figure 2: Potential Net Cost

Expense	Cost Estimate
Operating Costs	\$379,589,599
Pretrial Detainment Savings	\$164,250,000
Net Cost	\$215,339,599

Source: RESI

The NJPSU and associated legislation were designed to shorten the aggregate time-to-trial and, as a result, reduce the time defendants remain in pretrial detention. From streamlining the pretrial process in such a way, a goal of the bills is to save the State money on the pretrial defendants. However, several provisions from the bills will likely extend the time-to-trial and the associated costs, including the following:

- Changing the “initial appearance” phase from an informational court appearance into something that more closely resembles an adversarial hearing.
- Granting defendants the right to appeal the release decision made in aforementioned hearing.
- The use of non-monetary release conditions compared to monetary bonds, which can result in a substantial increase in the time-to-pretrial release of a defendant. This does not affect the overall time to trial, but affects the underlying source of cost (time in pretrial detention).

Time-to-trial is also affected by the judicial caseload. The additional appearances that will be necessary will have to be dispersed among an already overloaded judiciary.

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The bills also establish the 21st Century Justice Improvement Fund and grant the Supreme Court the power to increase statutory fees on filings and other matters, funds that are meant to then be distributed to several state judicial departments. However, considering the funding goals and the limit on additional fees (maximum of \$50 per instance), there would need to be approximately

- 300,000 applicable crimes committed to meet the \$15 million dollar funding cap for the NJPSU;
- 640,000 applicable crimes committed to meet the \$17 million funding cap for the e-court initiative; and
- 842,000 applicable crimes committed to meet the \$10.1 million funding cap for Legal Services of New Jersey.

The number of applicable crimes needed to meet the Legal Services cap is more than twice the number of arrests in 2012 (301,744) and would constitute the commission of an applicable crime by almost one of every ten citizens of New Jersey. The funding of the later programs may become difficult depending on where the courts find it applicable to increase fees.

The bills are also likely to negatively impact the commercial bonding industry and likewise hurt the New Jersey economy. If New Jersey enacts the NJPSU, it will divert pretrial release traffic to non-financial conditional release and away from commercial bondsman. The resulting loss in commercial bail usage will be manifested in the loss of commercial bail employees and, eventually, the closing of commercial bonding firms. RESI conducted an economic impact analysis using IMPLAN input/output modeling software. For every 10 employees lost in the commercial bail bonds industry, New Jersey would experience the following economic and fiscal impacts:

- Lose an additional 7 jobs.
- Lose nearly \$2.1 million in output.
- Lose nearly \$0.6 million in wages.
- Resulting in a loss of approximately \$103,000 in tax revenues.

Some of these losses could possibly be offset by the effects of employment gains in the NJPSU; however, the resulting wages would come from the budget of the state government, rather than from the private sector. Spending and employment by commercial bonding firms created a positive net fiscal impact. When the private employment changes to public employment, the net fiscal impact on the state government will be substantially negative.

A review of pretrial research illustrated the importance of maintaining a highly effective pretrial justice process. The presence of supervision on non-monetary releases is highly important, as the level of pretrial misconduct is highly correlated with the presence of proper supervision over all defendants. This indicates the importance of maintaining high quality supervision for non-monetary releases. Other research also further reinforced the importance of rapid pretrial

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processing as the length of pretrial detention was directly correlated with the likelihood of FTA and recidivism. Finally, research indicated that pretrial detention is directly correlated with the trial outcome and imprisonment. Though this correlation is often seen to be an injustice to detained defendants, it could also be an indication that the judiciary has substantial insight into correctly detaining those defendants who are likely to be guilty.

RESI found the net costs to the State of New Jersey of instituting Senate Bill No. 946 and Assembly Bill No. 1910 to be at least \$215,339,599 considering all potential savings. This cost could likely be higher if the NJPSU does not function quickly and effectively. Depending on the losses experienced by the commercial bail industry, the New Jersey State Government could also lose anywhere from \$100,000 to millions in tax revenue. Additionally, reductions in spending that stem from reductions in programming are likely to bring even greater costs in the form of FTA and recidivism. Considering the use of conservative figures throughout this report, RESI holds a \$215,339,599 cost to be a conservative estimate of the cost of Senate Bill No. 946, Assembly Bill No. 1910, and the NJPSU.

2.0 Introduction

The New Jersey Senate and General Assembly have recently introduced companion bills that require the provision of pretrial services for all arrested individuals in New Jersey. Senate Bill No. 946 (2014) and Assembly Bill No. 1910 (2014) establish a New Jersey Pretrial Release Services Unit (NJPSU).¹ This prospective entity will be responsible for assessing a defendant shortly after his or her arrest and submitting a release recommendation to the courts based on that defendant's characteristics. This release recommendation can include a myriad of release conditions that the NJPSU can utilize to reasonably assure reappearances of a released defendant and the safety of the community. Additionally, it is the responsibility of the NJPSU to oversee and ensure adherence to these conditions and manage sanctions when the conditions are violated.

The bills also give the NJPSU the power to recommend that a defendant be detained indefinitely until the trial if he or she poses a serious risk of failure to appear or recidivism. The bill contains additional provisions that are not directly associated with the creation or operation of the NJPSU; however, they are necessary for the practical implementation of the program. One of these provisions is a more intensive Initial Appearance before the court to accommodate the judgment process regarding pretrial release conditions. The bills additionally allow the appeal of this judgment, therein adding another potential step in the criminal justice process. The bill also creates a fund to be paid into through the assessment of additional court fees to help fund the NJPSU and several other judicial initiatives.

2.1 Legislation Language

To analyze the cost of the NJPSU and compare it to existing pretrial service programs, certain assumptions must be made about the intent and implementation of the provisions in the bills. SB 946 and HB 1910 provide an expansive, but vague framework for the establishment of a NJPSU. Some provisions are not fully detailed in terms of implementation. Other provisions contain language that must be interpreted contextually.

First, it is stipulated that the NJPSU will assess all arrested individuals. This function is derived from section 10, where it is provided that, "The Pretrial Services Unit shall conduct, prior to a bail hearing or first appearance, an assessment of all criminal defendants..."² RESI assumed that any individual who has been the subject of an arrest has been so arrested with the purpose of pursuing criminal charges against that individual. and that therefore, every arrest is subject to a

¹ This study was conducted with the support of the American Bail Coalition. All statements herein are the opinions of the Regional Economics Studies Institute of Towson University.

² State of New Jersey, Senate No. 946 (2014): 8, http://www.njleg.state.nj.us/2014/Bills/S1000/946_11.pdf.

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bail hearing or a first appearance and the criminal defendant status. It then follows that every arrested individual will be assessed by the NJPSU.

Section 10 continues to provide that assessments will be made, stating, “...for the purpose of making recommendations to the court concerning the appropriate disposition...”³ This language establishes that every assessment made will require the submission of a recommendation to the court as to the necessary conditions for the safe release of a defendant, if they so exist. These non-financial conditions under the NJPSU authority are enumerated in section 3, subsection b. of the bills.

Section 10 also stipulates that every defendant released on any number of non-financial conditions will be supervised by the NJPSU. It states, “the Pretrial Services Unit shall monitor each defendant released pursuant to subsection b. of section 3 to ensure that the defendant adheres to the condition or combination of the conditions of the defendant’s release ordered by the court.”⁴

The bills establish that various sanctions, penalties, and other punitive actions will be taken against released defendants who violate the terms of their releases.⁵ The duties of administering sanctions against supervised-release defendants who violate the terms of their non-financial release conditions are not explicitly assigned in the bills. As the NJPSU is the agency responsible for the supervision of the defendants under non-financial release conditions, RESI assumed that this agency will also be charged with filing and/or processing the sanctions against violating defendants.

Additionally, the NJPSU will be assumed to conduct drug testing of its participants as part of both the assessment and supervision phases of the program. Among the section 6 provisions that establish the assessment criteria, the bills state that the assessment should include a consideration of the defendant’s “history relating to drug and alcohol abuse.”⁶ As it cannot be assured that defendants will be forthcoming about this information, drug testing would likely be required to properly assess drug abuse. Additionally, one of the conditions of release that can be set by the NJPSU is that defendants “refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner.”⁷ Again, this would necessitate drug testing to ensure accurate supervision.

³ New Jersey Senate No. 946/Assembly No. 1910 (2014), 8.

⁴ Ibid.

⁵ Ibid, Section 7 and Section 9.

⁶ Ibid, 6.

⁷ Ibid, 3.

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The language of the bills also implies that the NJPSU will be responsible for providing proper medical, psychological, and psychiatric assistance for defendants released on non-financial conditions. One of the non-financial release conditions provided for use by the NJPSU in section 3 is to require that a defendant “undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose.”⁸ The bills do not specify whether the cost of this treatment would be deferred to the defendant or if it would fall to the NJPSU and the state government. However, in the following sections, it is made clear that the costs of this program and other similar to it will likely be expensed to the NJPSU itself.

One of the additional release options involving electronic monitoring states that the “costs attributable to the electronic monitoring of an offender shall be borne by the Pretrial Services Unit in the county in which the defendant resides.”⁹ This passage seems to indicate that costs of programming will likely be the responsibility of the NJPSU rather than that of the defendants it supervises. Additionally, many of the defendants who require the provision of treatment services may be low-income, and may not have the means to cover their treatment expenses. As one of the purported purposes of these bills is to eliminate financial release-barriers caused by commercial bonds, it seems unlikely that the bills would institute a self-payment policy that would exclude the release of a defendant based on financial disposition.

Based on the review of SB 946 and HB 1910, RESI compiled the following catalogue of services that it assumes the NJPSU will be responsible for providing:

- Assess all arrested individuals;
- Compose risk assessments and recommendations to the court as to whether or not defendants should be granted pretrial releases and, if so, on what conditions these releases should be granted;
- Supervise all defendants who are released pretrial on non-financial conditions;
- Administer sanctions against individuals who violate their non-financial release conditions;
- Test assessed and supervised defendants for current or continued drug or alcohol abuse;
- Secure proper medical, psychological, and psychiatric assistance for defendants released on non-financial conditions; and
- Provide electronic monitoring as a supervision method for defendants.

⁸ New Jersey Senate No. 946/Assembly No. 1910 (2014), 3.

⁹ Ibid.

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RESI used these program assumptions to predict the level of services that the NJPSU is likely to provide so that an assessment of the projected program cost could be more accurately conducted.

3.0 Cost Analysis

To formulate a projection of the total fiscal cost of the NJPSU, RESI examined three cost sources of implementing the legislation. These costs sources include the following:

- Start-up costs,
- Operating costs, and
- Indirect costs.

When applicable, these costs were calculated using the empirical and budget data from other pretrial service programs. RESI utilized informed assumptions to evaluate the cost of other variables where necessary.

3.1 Data Note

RESI utilized the in-depth budget report released by the District of Columbia Pretrial Service Agency (DCPSA) in multiple calculations as a baseline for the levels and cost of employees. Although the DCPSA provides some services that are currently outside the scope of the NJPSU provisions, RESI used this source because of the high level of detail that it provides. This high level of detail allows for the effects of these additional services to be easily removed from calculations when necessary. RESI also used total adult arrest data from the FBI Uniform Crime Report as the measure of a jurisdiction's total pretrial program participation.^{10 11} The use of this arrest data ensured a universal and consistent inter-program variable.

3.2 Start-up Costs

Start-up costs consist of the likely expenditures that the NJPSU would incur in establishing its operations. Some of these costs are one-time expenses, while others may reoccur in the future as part of ongoing operations. These costs may be accrued over the course of several months to several years, depending on the rate at which the NJPSU develops its operations to full function. Variables included in the start-up costs of the NJPSU are the costs of staff hiring and training, facilities, and computer hardware and software.

¹⁰ As the FBI UCR does not include arrest from Washington D.C.'s primary police force, the Metropolitan Police Department, RESI combined the UCR total with arrests reported in the Metropolitan Police Department's annual report.

¹¹ Metropolitan Police Department, "Annual Report (2012)," 30, accessed April 18, 2014, http://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/2012_AR_1.pdf.

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Staffing

The cost of hiring and training the NJPSU staff first requires calculating the number of employees that the unit requires. To do this, RESI assessed the number of employees that will be needed in the two primary service functions: assessment and supervision. RESI then developed a metric for calculating the cost of hiring and training of the NJPSU staff based on existing employee turnover research conducted by the Center for American Progress.

Assessment Staff

To calculate the number of assessment agents needed for the NJPSU, RESI used a ratio of cases per assessment agent. This ratio was gleaned from the DCPSA's 2012 operations data in conjunction with the 2012 arrest data from Federal Bureau of Investigation's Uniform Crime Report data. The DCPSA employed 61 assessment employees to manage 42,455 arrests. This yielded a ratio of 696 cases per assessment personnel, which was applied to the 301,744 arrests occurring in New Jersey in the same year.¹² This resulted in a projected need for approximately 433 assessment full time employees (FTEs) to oversee New Jersey's caseload.¹³

Figure 3: Assessment Staff

Pretrial Organization	Cases	Cases Per Assessment Employee	Assessment Employees
DCPSA	42,455	696	61
NJPSA	301,744	696	433

Sources: DCPSA, FBI Uniform Crime Report, Metropolitan Police Department Annual Report, RESI

Supervision Staff

The supervision staffing needs were calculated using a methodology similar to that employed in the previous subsection. The DCPSA supervised 19,146 cases between its 173 supervision employees. This equates to a rate of approximately 111 supervisions per employee. The number of prospective supervisions that will occur through the NJPSU was derived by applying the DCPSA ratio of supervisions per arrest to the level New Jersey arrests, resulting in 136,078 prospective New Jersey supervisions.¹⁴ The rate of supervision FTE per supervision was then applied to the level of prospective NJPSU supervisions, resulting in a total of 1,230 supervision FTEs required for New Jersey.¹⁵

¹² Uniform Crime Reports, Table 69 in "Crime in the United States 2012," accessed April 21, 2014, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/69tabledatadecpdf>.

¹³ Pretrial Services Agency for the District of Columbia, "FY 2014 Congressional Budget Justification," 15, accessed April 14, 2014, <http://www.csosa.gov/about/financial/budget/2014/FY14-PSA-Budget-Submission.pdf>.

¹⁴ RESI made the assumption that the ratio of supervisions to arrest will be the same in New Jersey as it is in D.C.

¹⁵ Pretrial Services Agency for the District of Columbia, FY 2014 Congressional Budget Justification, 15–21.

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Figure 4: Supervision Staff

Pretrial Organization	Supervisions	Supervisions per Supervision Employee	Supervision Employees
DCPSA	19,146	111	173
NJPSA	136,078	111	1,230

Sources: DCPSA, RESI

The total FTE for assessment and supervision staff for the NJPSA will be approximately 1,664 employees.

Cost of Hiring and Training

RESI conducted a literature review of the research on the cost of hiring and training new employees. However, RESI found that there was no study that adequately estimated these costs exclusively. To compensate for this lack of data, RESI used employee turnover cost research as a baseline.

Employee turnover cost differs from the cost of employee hiring and training because it encompasses the additional component of separation. As is explained in an employee turnover study conducted by faculty of the University of Nebraska, the cost associated with the turnover process consists of three parts: separation of the old employee, hiring of a new employee, and training the new hire.¹⁶ Because of a lack of information regarding the separation process of the NJPSU, RESI made the assumption that cost of separation would not exceed one third of the total cost of employee turnover figures, and that the remaining two thirds are the costs for hiring and training.

With this assumption, RESI derived hiring and training cost from an employee turnover study by the Center for American Progress. This study consists of a comprehensive review of 11 research papers and 31 case studies. RESI gleaned two data points from this report:

- First, the average turnover cost for non-physician, non-executives is 20.7 percent of the yearly salary.
- Second, in a case study contained within to be most similar, the turnover for government child protective services (CPS) workers was approximately \$10,000 per employee.

¹⁶ Graef, M. I. et al, "Costing child protective services staff turnover," Child Welfare 79 no. 5: 521, accessed April 15, 2014 via EBSCOhost.

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Applying the assumption that an employee hiring and training constitutes the remaining two thirds of the turnover cost, hiring and training alone will cost approximately 13.8 percent of employee salary or, alternatively, about \$6,667 per employee.¹⁷

According to the DCPSA budget, the average employee salary was approximately \$85,115. Applying this to the prescribed 13.8 percent of salary resulted in a new hire and training cost of \$11,727 per employee. The per employee training rates were then applied to the total FTE projections, resulting in a total of \$19,503,515 in hire and training cost based on the percentage of salary, and \$11,087,519 in cost based on the \$6,667 flat rate cost for CPS government employees. RESI calculated that hiring and training cost could range from \$11,087,519 to \$19,503,515. To keep the cost estimate conservative, RESI assumed a training cost of \$11,087,519.¹⁸

Figure 5: Hiring and Training Costs

	Cost of hiring and training per NJPSU Employee	NJPSU predicted Employment	Total Hiring and Training Cost
Ratio of Salary Cost	\$11,727	1,664	\$19,503,515
Flat Rate Cost	\$6,667	1,664	\$11,087,519

Source: RESI

Facilities

To conduct the day-to-day functions of the NJPSU, its employees will require office space. RESI assumed that, with support from current practices, every employee requires his or her own computer and workspace.¹⁹ This space must be procured and furnished.

Office Space

RESI calculated facilities costs based on the space requirements for the previously calculated total FTE. A frequently cited survey conducted by CoreNet found an average of approximately 176 square feet per employee. RESI reviewed several reports on the average cost of leasing office space in New Jersey and found concurring figures in the range of \$23 to \$25 per square

¹⁷ Heather Boushey and Sarah J. Glynn, "There Are Significant Business Costs to Replacing Employees," November 16 (2012): 2, accessed April 15, 2014, <http://www.americanprogress.org/wp-content/uploads/2012/11/CostofTurnover.pdf>.

¹⁸ Pretrial Services Agency for the District of Columbia, FY 2014 Congressional Budget Justification, 33.

¹⁹ Personal Com., DCPSA

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foot.²⁰ RESI used a median of \$23.88 per square foot.²¹ To accommodate the 1,663 employees required of the NJPSU, approximately 292,711 square feet will be required. Given RESI's assumptions, this square footage of office space will cost approximately \$6,989,927 per year.

The lease estimates also assume that the state government does not have vacant facilities that are suitable to house the NJPSU, nor will they be constructing new facilities, which would require greater start-up funds.

Furnishing

RESI used a cost calculator from AllSteel, an office furnishing company to develop a cost estimate based on FTE levels and total projected office space. This source also calculates cost based on the type of workspace being used, such as private managerial office or open workspace for non-managerial employees. According to an analysis of the Baltimore City Pretrial Service Program's current practices, the Maryland Department of Legislative Services found that approximately 5.4 percent of pretrial staff is managerial staff.²² Applying this ratio to the NJPSA FTE level yields approximately 90 managerial positions and 1,573 non-managers. With these factors, the AllSteel calculator estimated a cost of \$21 per square foot for economy-level furniture, which totals to a furnishing expense of \$6,146,920.²³

Alternatively, Business Furniture Incorporated provides a general purpose furnishing budgeting tool that uses inputs of employees and office space. This company provides furnishing to both federal and state governments in New York and New Jersey and is purportedly "New Jersey's largest State Contract furniture dealership."²⁴ Its price estimates were based on case studies of twelve different businesses. Business Furniture Incorporated found furniture costs to be approximately \$15 to \$30 per square foot and \$3,000 to \$5,000 per person.²⁵ Using this source,

²⁰ Cassidy Turley Commercial Real Estate Services, "Office Market Snapshot: Central New Jersey Third Quarter 2013," 1, accessed April 11, 2014, http://www.cassidyturley.com/DesktopModules/CassidyTurley/Download/Download.ashx?contentId=2901&fileName=Central+NJ+Office+Q3+2013_FINAL.pdf.

²¹ "Northeast Snapshot, March 2011: New Jersey Office Market," Northeast Real Estate Business, accessed April 11, 2014, <http://northeastrebusiness.com/articles/MAR11/snapshot1.html>.

²² Maryland Department of Legislative Services, "Fiscal and Policy Note: House Bill 1232," Maryland General Assembly (2014): 11, accessed April 18, 2014, http://mgaleg.maryland.gov/2014RS/fnotes/bil_0002/hb1232.pdf.

²³ "Square Footage Budgeting Tool," Allsteel, accessed April 14, 2014, <http://squarefootbudgeting.office.com/Pages/Home.aspx>.

²⁴ "Government," Business Furniture, Inc, accessed April 14, 2014, <http://www.bfionline.com/government-workplace-furniture.html>.

²⁵ Business Furniture, Inc, "What Does Furniture Cost?," PowerPoint presentation, accessed April 14, 2014, <http://www.slideshare.net/fullscreen/rbrandeisky/what-does-furniture-cost/1>.

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the approximate cost of furnishing the NJPSU facilities would likely range from \$4,390,658 to \$8,781,315.

RESI assumed that the cost of furnishing the NJPSU facilities will cost between \$4,390,658 and \$8,781,315. To keep the NJPSU cost estimate conservative, RESI utilized the \$4,390,658 figure for its total cost estimate.

Computing Equipment

RESI estimated computing equipment cost based on its employment estimate of 1,664 FTE and the assumption that each employee is issued his or her own computer. Based on an assessment of current entry-level business computer cost, RESI assumed a conservative price estimate per computer to be \$668.98. This cost includes the computing unit, the monitor, a keyboard and mouse, and Microsoft Office Home and Business 2013 software. RESI included this software in the calculation as RESI assumed that every computer will need this basic computing software to fulfill its function. This software is specifically licensed to each computer and is expected to last the lifetime of the computer.

Figure 6: Entry-Level Desktop Computers

Computer	Hardware (except monitor)	Monitor	Software	Total Cost
Inspiron One 20 ²⁶	\$429.99	\$109.99	\$209.25	\$749.23
HP Pavilion 500-205t ²⁷	\$479.99	\$89.99	\$219.00	\$788.98
Lenovo H500 ²⁸	\$379.00	\$109.99	\$179.99	\$668.98

Sources: Dell Inc., Hewlett-Packard Company, Lenovo Group Ltd.

Applying the cost of \$668.98 per computer to 1,664 employees results in total start-up costs of \$1,113,182.72 for purchasing computing equipment.

Case Software

In addition to basic computing equipment, NJPSU will likely require software designed for the assessment and supervision of pretrial defendants.

²⁶ "Shop for Work: New Inspiron Desktop 3000 Series," Dell, accessed April 15, 2014, http://configure.us.dell.com/dellstore/config.aspx?c=us&cs=04&fb=1&l=en&model_id=inspiron-3847-desktop&oc=smi3847mtw7p13573d&s=bsd&vw=classic.

²⁷ "HP Pavilion 500-205t Desktop PC with Windows 7," Hewlett-Packard Company, accessed April 15, 2014, http://www.shopping.hp.com/en_US/home-office/-/products/Desktops/HP-Pavilion/F9A61AV?HP-Pavilion-500-205t-Desktop-PC-with-Windows-7.

²⁸ "Lenovo H500," Lenovo, accessed April 15, 2014, <http://shop.lenovo.com/us/en/desktops/essential/h-series/h500/#customize>.

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Loryx Systems provides a full-service suite called Monitor that offers support for pretrial interviews, court report preparation, risk assessment, and supervision.²⁹ The software license costs approximately \$1,000 per license per year.³⁰ This cost would result in maximum cost of \$1,664,000 per license-year to purchase the Monitor software for every employee. It is important to note that the actual figure would likely be lower as not every NJPSU employee will require this software. Without more information on the duties of specific NJPSU employees, RESI advises that the calculating cost on a per user-license basis is difficult to conduct accurately.

New Dawn Technologies provides the same suite of service as the Loryx Systems Monitor software. However, unlike Loryx Systems, the company provides pricing on a “per case” basis. Based on a system of more than 350 users, New Dawn charges a flat rate of \$1.25 per case. Since it is assumed that the NJPSU will be conducting assessments on every arrested individual (per the explanation in Section 1.1 of this report), the cost of 301,744 cases at \$1.25 a case results in a total cost of \$377,180 per year.³¹

RESI determined a third price point using New Dawn Technologies’s typical fixed price for case management software for more than 350 system users. The company cites a flat cost of \$1,840,000 and an annual service and upgrade cost of approximately \$138,000.³² It is important to note that these figures are estimated at a base of 350 employees, roughly one-fifth of the expected NJPSU employee count.

Figure 7: Case Software

Software	Cost	Licenses/Cases	Total Annual Cost	Cost of Initial Installation
Loryx Systems (Monitor)	\$1,000 per license	1,664 licenses	\$1,664,000	n/a
New Dawn Technologies	\$1.25 per case	301,744 cases	\$377,180	n/a
"Typical Pricing"	n/a	350+	\$138,000	\$1,840,000

Sources: Loryx Systems Inc., New Dawn Technologies Inc., FBI Uniform Crime Report, RESI

²⁹ “Monitor Pretrial Services,” Loryx Systems, accessed April 11, 2014, http://www.loryxsystems.com/solutions/pretrial_services.html.

³⁰ Personal communication with Loryx Product Manager, April 14, 2013.

³¹ “Transaction-Based Pricing,” New Dawn Technologies, accessed April 11, 2014, <http://newdawn.com/solutions/purchasing-options/transaction-based-pricing/>.

³² Ibid.

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RESI used the New Dawn Technologies per-case cost estimate of \$377,180 per year for the final cost projection as this estimate captured the potential cost of software by the most accurate method available. By paying on a per-case model, it assures that the NJPSU would only be paying for its exact needs.

Start-up Cost Conclusion

Start-up costs totaled to a sum of \$16,591,360. The office space and case software portions were not included in the start-up expenses as they will be paid for annually, and will therefore be considered operating costs.

Figure 8: Total Start-Up Cost

Category	Total
Hiring and training	\$11,087,519
Furnishing	\$4,390,658
Computer hardware	\$1,113,183
Start-Up Cost Total	\$16,591,360

Source: RESI

3.3 Operating Costs

Aside from start-up costs, RESI calculated the expenses necessary for NJPSU's annual operations. Included in these costs are personnel expenses, office upkeep and utilities, programming, and electronic monitoring.

Office Facilities and Upkeep

In measuring the cost of office upkeep and utilities, RESI focused on substantial and foreseeable costs, including energy, furniture, computer hardware, and software. RESI did not include cost estimates that are likely to be relatively negligible, such as sewage and water, or that may be unforeseeable, such as renovations and natural disaster damage.

Facilities

As was calculated in Section 2.1 of this report, the annual lease for the NJPSU facilities will amount to approximately \$6,989,927 per year.

Energy

According to the Department of Energy, energy costs for a commercial building averaged approximately \$2.27 per square foot in 2014. Extrapolating this average against the total area

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estimate of 292,710 square feet results in a total projected annual energy cost of \$664,452.87 to power NJPSU office facilities.³³

Furniture

Based on tax standards, the depreciation rate for office furniture is approximately seven years. Using this depreciation rate against the total cost of furniture, \$4,390,658, the annual cost for replacing furniture will be approximately \$627,237.³⁴

Computing Equipment

The typical lifespan of an office computer is three to five years. In general, desktop computers are expected to last longer than their mobile counterparts because they are less likely to be dropped, bumped, or scratched in transit.³⁵ For this reason, RESI assumed that the computer turnover rate is five years. Additionally, the standard computer depreciation rate used for tax purposes assumes a five-year life span.³⁶ At that rate, the approximate annual cost to the NJPSU for computer depreciation/upkeep is \$222,636.54.

Based on the case software option selected in Section 2.1 of this report, the annual cost for case software for the NJPSU is \$377,180.

Figure 9: Facilities and Upkeep

Category	Cost
Facilities	\$6,989,927
Energy	\$664,452
Furnishings	\$627,237
Computer Hardware	\$222,636
Software	377,180
Total Facilities and Upkeep	\$8,881,432

Source: RESI

³³ U.S. Department of Energy, "3.3: Commercial Sector Expenditures," *Buildings Energy Data Book* (April 16, 2014): <http://buildingsdatabook.eren.doe.gov/TableView.aspx?table=3.3.8>.

³⁴ "Depreciation of Business Assets," Intuit TurboTax, accessed April 18, 2014, <https://turbotax.intuit.com/tax-tools/tax-tips/Small-Business-Taxes/Depreciation-of-Business-Assets/INF12091.html>.

³⁵ "What Is the Average Lifespan of a Computer?," *RecoverySoftware.com*, March 9, 2012, accessed April 17, 2014, <http://www.recoverysoftware.com/what-is-the-average-lifespan-of-a-computer/>.

³⁶ "Depreciation of Business Assets," Intuit TurboTax.

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Personnel Costs

RESI derived total personnel cost from the projected FTE levels for the NJPSU in conjunction with average employee cost based on the DCPSA budget. As documented in the DCPSA budget, the total employee cost for FY 2012, including salary and other expenditures, was \$44,548,000. This figure was averaged across 364 employees for an average employee cost of \$122,385.^{37 38} When applied to the estimated 1,664 NJPSU employees, the total cost for NJPSU personnel will be approximately \$203,812,571 per year.

Figure 10: Personnel Expenses

	Total FTE	Expenses per FTE	Total Personnel Expenses
DCPSA	364	\$122,385	\$44,548,000
NJPSU	1,664	\$122,385	\$203,812,571

Sources: DCPSA, RESI

Programming

As discussed in Section 1.2 of this report, there are a number of programs that the NJPSU will likely be responsible for including drug testing, mental health treatment, and rehabilitation. Aside from the loose provisions in the legislation, these programs are important to include in a pretrial unit to mitigate instances of both failure to appear and recidivism. RESI assumed that these programs will be included in the practices of the NJPSU.

Drug Testing

The DCPSA spent \$3,897,000 on drug-use assessments for 42,455 arrests in 2012.³⁹ Scaling up the DCPSA spending to the 301,744 arrests under jurisdiction of the NJPSU resulted in a prospective \$27,697,476 in drug-use assessment spending.

Drug Rehabilitation

The DCPSA referred 1,809 defendants for mental health treatment out of their 42,455 arrests in 2012, spending a total of \$12,532,000 on drug treatment and reducing drug use.⁴⁰ This spending went to support in-house drug treatment by the DCPSA, as well as contracted drug treatment providers. They referred approximately 4.3 percent of their arrests for drug rehabilitation treatment. When the DCPSA rate was applied to the NJPSU arrest load of

³⁷ Pretrial Services Agency for the District of Columbia, "FY 2014 Congressional Budget Justification."

³⁸ According to this DCPSA data, the average salary of employees made up \$85,115 of the average employee total cost.

³⁹ Pretrial Services Agency for the District of Columbia, "FY 2014 Congressional Budget Justification," 14, (Budget Strategy 3.1).

⁴⁰ Ibid, 14.

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301,744, it resulted in approximately 12,857 prospective drug rehab referrals. Scaling up the cost of treating the DCPSA's 558 referrals to treating NJPSU's 12,857 referrals resulted in approximately \$89,069,739 of predicted drug rehabilitation program spending for the NJPSU.⁴¹

Mental Health

The DCPSA referred 558 defendants for mental health treatment of their 42,455 arrests in 2012, spending a total of \$4,772,000. This spending went to support a clinically trained mental health assessment and treatment staff as well as funding to contracted mental health service providers. The DCPSA referred approximately 1.3 percent of their arrests for mental health treatment. When the DCPSA rate was applied to the NJPSU arrest load of 301,744, it resulted in approximately 3,966 NJPSU mental health referrals. Scaling up the cost of treating the DCPSA's 558 referrals to treating NJPSU's prospective 3,966 referrals resulted in approximately \$33,916,438 of mental health program spending for the NJPSU.⁴²

Electronic Monitoring

The NJPSU legislation states that the unit shall provide electronic monitoring of select defendants and will be responsible for bearing the cost of these programs. The DCPSA's High Intensity Supervision Program is responsible for supervising defendant with electronic monitoring through Global Positioning Systems and provides a model by which RESI can calculate the potential cost of such a provision in the NJPSU.

Of the 42,455 D.C. arrests, there were 1,268 defendants being electronically monitored by the DCPSA in FY 2012. DCPSA expenditures for assuring compliance through these systems and the associated partnerships totaled to \$2,281,000. Assuming the same rate of electronic supervisions to arrest for the NJPSU as exists for the DCPSA, NJPSU spending on electronic monitoring will amount to \$16,211,943 for 9,012 defendants.⁴³

⁴¹ Pretrial Services Agency for the District of Columbia, "FY 2014 Congressional Budget Justification," 21.

⁴² Ibid, 14.

⁴³ Ibid, Budget Strategy 2.1 and 4.1 of HISP.

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Figure 11: Programming

Program	DCPSA		NJPSU	
	Participants	Program Spending	Participants	Program Spending
Drug testing	-	\$3,897,000	-	\$27,697,476
Drug rehabilitation	1,809	\$12,532,000	12,857	\$89,069,739
Mental health treatment	558	\$4,772,000	3,966	\$33,916,438
Electronic monitoring	1,268	\$2,281,000	9,012	\$16,211,943
Total Cost	-	\$23,482,000	-	\$166,895,596

Source: DCPSA, RESI

Operating costs totaled \$379,589,599 per fiscal year based on 2012 data and budgets.

Figure 12: Annual Operating Cost

Category	Cost per Year
Facilities and Upkeep	\$8,881,432
Personnel	\$203,812,571
Programming	\$166,895,596
Total	\$379,589,599

Source: RESI

3.4 Indirect Costs

The indirect costs of the NJPSU legislation contained within the sister bills are those costs that the NJPSU itself will not be responsible for financing. The indirect costs are those cost that will be incurred by state government as a result of the practices and provisions of the NJPSU and the provisions of the bills. These costs include the increased spending on public attorneys and court room time caused by the additional step in the criminal justice process and the additional opportunity for a court decision to be appealed.

State government may also accrue costs due to an increase in failures to appear (FTA). Similarly, an increase in recidivism by pretrial release defendants could increase costs to state and local law enforcement agencies. There are also numerous social costs, including crime to persons

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and property, to community wellness, to personal security, and quality of life, that are beyond the scope of this study.⁴⁴

Public Defenders and Court Costs

Current New Jersey law establishes the Initial Appearance (IA) phase of the criminal justice process as a non-adversarial hearing in which the defendant is informed of his or her rights and the charges against him or her, future court dates are established, and bail decisions are set.⁴⁵ SB 946 and HB 1910 alter the IA phase by stipulating that judges will make rulings regarding defendants' applicability for pretrial release or detention and provide defendants with a right to council during this process. By extension, the bills guarantee public defenders to low-income defendants during this phase. Additionally, the bills allow the presentation of evidence and witnesses, making the IA an adversarial hearing.⁴⁶

Public Defender Costs

The provision of public defenders to indigent defendants incurs significant costs to state government. RESI used a study conducted by the Maryland Department of Legislative Services (DLS) to approximate the cost of the additional public council provisions. The DLS study examined the added cost to state government for public defenders after the ratification of a law that requires the Maryland judiciary to provide indigent defendants with representation at the IA phase of a criminal trial. This result is identical to the outcome that the New Jersey provisions will have. DLS found that, in Maryland, this provision would cost \$33,000,197 per fiscal year.

RESI assumed that the portion of indigent defenders per arrest in New Jersey is similar to that of Maryland. Under this assumption, RESI scaled the cost of IA public defenders from 191,281 arrests in Maryland, to 301,744 arrests in New Jersey. This resulted in a potential increased IA public defender cost of \$52,057,504 in New Jersey. This estimate includes the cost of assistant public defenders, support staff, IT employees, fiscal clerks, and human resources employees.

Court Costs

The additional IA provisions in the bills are likely to result in an increase in required court resources. The adversarial hearing will require more time from the court, as evidence and witnesses must be presented. By extension, this change will require additional spending on

⁴⁴ Kathryn E. McCollister, Michael T. French, and Hai Fang, "The Cost of Crime to Society: New Crime-Specific Estimates for Policy and Program Evaluation," *Drug and Alcohol Dependence* 108 (2010): 98–109, accessed April 14, 2014, <http://www.sciencedirect.com/science/article/pii/S0376871609004220>.

⁴⁵ "RULE 3:4. Proceedings Before the Committing Judge," New Jersey Courts, accessed April 15, 2014, <http://www.judiciary.state.nj.us/rules/r3-4.htm>.

⁴⁶ State of New Jersey, Assembly No. 1910 (2014): 5, http://www.njleg.state.nj.us/2012/Bills/A5000/1910_11.pdf.

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employee labor and may cause a potential space issue as IA hearing times increase. As the bills call for the use of a uniform risk assessment tool, the defense may often call into question issues of the actuarial sciences behind the tool, which will require expert witnesses provided by state government.⁴⁷

These cost, though they are substantial, are incalculable given the scope of this analysis. RESI cannot reasonably estimate the increase in court resource demand in practice. However, these costs are likely to incur a substantial burden on the courts.

Failure to Appear

Failure to Appear (FTA) occurs when a defendant who is released pretrial does not appear in court for his or her hearing. FTAs incur costs to state government through the need for law enforcement to recapture the fugitive as well as court downtime caused by the missed hearing. Whereas, with commercial bail, the cost of recapture is born by the bail bonding agency, under a pretrial service program, these costs fall to state and local jurisdictions.

RESI used two studies to calculate the potential cost of additional FTA caused by the implementation on pretrial services. A research report prepared by Robert G. Morris, Ph.D., surveyed the FTA and recidivism rates of released defendants in Dallas County, Texas, based on the method of release. These defendants encompassed both misdemeanor and felony charges. The survey found that defendants released on pretrial services had a FTA rate of 37 percent, while those release on commercial bonds had an FTA rate of 23 percent.

In a similar study, the United States Department of Justice surveyed the FTA rates for the 75 largest counties in the nation. The study focused on the FTA rate of 250,000 felony defendants. Again, the FTA rate is higher under pretrial conditional release, at 22 percent, than under commercial surety bonds, at 18 percent.⁴⁸

Based on the above studies, RESI assumed a possible increase in FTA ranging from 4 percent to 16 percent when utilizing pretrial service releases instead of commercial bonds. To calculate the potential increase in FTA occurrences in New Jersey that could be caused by a change from commercial bail system to a pretrial service release system, RESI first estimated the number of New Jersey releases. The common standard for release rate is 50 percent of defendants. Applying this assumption to the 301,744 arrests in the jurisdiction results in approximately

⁴⁷ New Jersey Senate No. 946/Assembly No. 1910 (2014), 5.

⁴⁸ U.S. Department of Justice Office of Justice Programs, "Pretrial Release of Felony Defendants in State Courts," Bureau of Justice Statistics Special Report (November 2007): 9, accessed April 18, 2014, <http://www.bjs.gov/content/pub/pdf/prfdsc.pdf>.

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150,872 releases. This equates to a potential increase in FTA of 6,035 to 24,140 defendants. According to the Morris report, the average FTA incurs a cost to state government of approximately \$1,775.⁴⁹ At this cost level, pretrial service releases have the potential to incur \$10,711,912 to \$42,847,684 in costs to state government.

It is important to note that these FTA rates are from a variety of jurisdictions that do not necessarily provide the same levels of pretrial programming as the DCPSA, the agency by which the NJPSU has been modeled thus far. The DCPSA maintains an FTA rate of 11 percent only on the cases that it is supervising and therefore may not include the FTAs of defendants who the agency had suggested to release on recognizance or personal bond.⁵⁰

Recidivism

Recidivism occurs when a defendant who is released pretrial commits another crime. The cost of recidivism to state government includes the cost of rearrest and reprocessing by the criminal justice system. Additionally, recidivism can incur property and social costs, such as loss of life, loss of property, diminished community quality of life, and loss confidence in the criminal justice system. However, examining all of the cost associated with these effects is outside the scope of this analysis.

Morris's research examines the effects of release method on the likelihood of defendant recidivism within twelve months of release. The report finds that commercial bond defendants are 1.2 percent less likely to recidivate than those released through pretrial services. In the Department of Justice's study of felony defendants, the data indicate that subjects were less likely to recidivate if they were released through pretrial services by 1 percent.⁵¹

Upon closer examination of both reports, RESI found that Morris also finds felony defendants approximately 1 percent less likely to recidivate. However, when misdemeanor and felony defendants were aggregated, the rate returns to 1.2 percent, in favor of commercial bonds. Because of the bias effect that restricting the study to felony defendants had on the findings, RESI did not consider the Department of Justice recidivism rate in its projection. Using Morris's reported recidivism levels, RESI assumed that New Jersey would experience approximately 1,810 additional recidivisms.⁵²

⁴⁹ Robert G. Morris, "Pretrial Release Mechanisms in Dallas County, Texas: Differences in Failure to Appear (FTA), Recidivism/Pretrial Misconduct, and Associated Costs of FTA," (January 2013): 7, accessed April 17, 2014, <http://www.utdallas.edu/epps/ccjs/dl/Dallas%20Pretrial%20Release%20Report%20-FINAL%20Jan%202013c.pdf>.

⁵⁰ Pretrial Services Agency for the District of Columbia, "FY 2014 Congressional Budget Justification," 7.

⁵¹ Morris, "Pretrial Release Mechanisms in Dallas County," 8.

⁵² Ibid.

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The cost of recidivism to state government differs from the cost of a normal arrest. A standalone crime incurs costs for arrest, processing, and detention. The cost of a recidivating criminal on pretrial release, however, should only consider the arrest and processing cost. The detention cost of a recidivating defendant is largely dependent on when the recidivism occurs relative to the defendant trial date. The closer to his or her trial date that a defendant recidivates, the less time he or she will spend in pretrial detention. This results in less detention cost to the state government. There is no available data or studies that would allow RESI to construct an assumption as to the average time to recidivism. Therefore, RESI did not consider the additional cost of detention as a cost of recidivism or an indirect cost of pretrial release.

A study by the Urban Institute Justice Policy Center finds that the minimum cost of processing a defendant up to the point of detention is \$1,270.34, with a maximum cost of \$2,049.25, based on the rearrest charges.⁵³ Applying these costs against the 1,810 additional recidivisms resulted in a potential indirect cost of \$2,299,905 to \$3,710,093 incurred by state government.

Figure 13: Potential Indirect Costs

Category	Potential Cost (low)	Potential Cost (high)
Public defenders and court costs	\$52,057,504	\$52,057,504
Failure to appear	\$10,711,912	\$42,847,684
Recidivism	\$2,299,905	\$3,710,093
Total Potential Indirect Costs	\$65,069,321	\$98,615,281

Source: RESI

3.5 Conclusion

The New Jersey Pretrial Service Unit is likely to be a capital intensive project. The level of arrests in New Jersey dictates that a large amount of employees will be needed to process defendants. To facilitate the work environment and resources of these employees, start-up costs will total at least \$16,591,360 (using economy and entry level materials). Operating costs will total to at least \$379,589,599 annually, a large part of which is driven by high FTE demands and the additional programming provisioned in the bills. The potential indirect costs could come to \$65,069,321 a year depending on the intensity at which the NJPSU pursues effective programming and personnel.

⁵³ John Roman and Aaron Chalfin, "Does It Pay To Invest In Reentry Programs For Jail Inmates?," The Urban Institute (2012), accessed April 22, http://www.urban.org/reentryroundtable/roman_chalfin.pdf.

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Figure 14: Cost Summary

Category	Total Cost
Start-up costs	\$16,591,360
Operations costs	\$379,589,599
Indirect costs	\$65,069,321

Source: RESI

4.0 Additional Cost Considerations

The cost projections provided above consider the additional costs likely to be incurred to the New Jersey state government due to the passing of Senate Bill No. 946 and Assembly Bill No. 1910. The above projections do not attempt to account for possible spending reductions within the cost estimate. This addendum will address some of the potential sources of spending reductions.

4.1 Cost Model

Potential spending reductions could be implemented if a less intensive pretrial services system were utilized as a model for the NJPSU. The DCPSA has a high level of spending per arrest when compared to the Kentucky Pretrial Services (KPS). The KPS has a total budget of approximately \$12,094,900 to serve approximately 172,434 arrests, while D.C. spent \$58,081,000 serving 42,455 arrests.⁵⁴ However, KPS does not provide the high level of services that DCPSA provides, nor does it provide the services that NJPSU would be required to provide under the bills.

The congruent services of the DCPSA and the NJPSU have already been established above. However, the KPS does not provide medical and drug rehabilitation services to its released defendants. Additionally, the Kentucky judiciary still assigned 111,684 monetary releases, and only 61,306 non-financial releases last year. This portion of monetary release to pretrial service release is much higher than the significant majority of pretrial releases that occur under non-financial conditions in the DCPSA and the prospective NJPSU.⁵⁵

The KPS would not be an accurate cost model, as it does not fulfill the goals of the NJPSU. The cost difference between these programs is further justified by the difference in cost of living of between the locations. To assess this difference, the cost of living calculations were first indexed against a \$50,000 salary in Kentucky. A Kentucky salary of \$50,000 adjusted for cost of living in New Jersey is an average of \$72,824, similar to that of that of D.C., which is

⁵⁴ Personal communication with Manager at Pretrial Services, Kentucky (Budget); Uniform Crime Reports, "Crime in the United States 2012," Table 69. (Arrests)

⁵⁵ Kentucky Statistical Analysis Center, "2010 Sourcebook of Criminal Justice Statistics in the Commonwealth," 72, accessed May 14, 2014, <http://justice.ky.gov/departments/gmb/2010+Sourcebook.htm>.

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adjusted to an average of \$79,502. The Kentucky cost of living is approximately 31 percent lower on average than New Jersey and 37 percent lower than D.C. These differences in salary caused by cost-of-living adjustments makes a significant impact on spending levels; in both the DCPSA and the KPS, personnel costs constitute more than 75 percent of the budget.^{56 57}

Using the DCPSA spending levels can be further substantiated through comparison with California's Santa Clara County Office of Pretrial Services (SCOPS). With the limited amount of pretrial service spending data, one of the few in depth budgets provided was from the SCOPS. The SCOPS spent \$5,059,184 during FY 2011, facilitating the counties 7,540 arrests in CY 2012.⁵⁸ Additionally, the SCOPS spent about \$4,400,000 on personnel expenses for its 37 employees, resulting in average per employee cost of about \$119,000, resembling the average DCSPA employee cost of \$122,385.⁵⁹

If a less intensive program is used as a model for the NJPSU, additional costs for FTA and recidivism should also be taken into account. The level of service provided by a pretrial release agency has a substantial impact on the outcome of a pretrial release. When a released defendant is not supervised during release, they are approximately 36 to 42 percent more likely to fail to appear, and up to 16 percent more likely to recidivate.⁶⁰ It is apparent that the intensity of a pretrial program has a significant impact on the effectiveness of its pretrial misconduct prevention. If the assumed spending levels – and likewise supervision level – of the NJPSU is reduced, the indirect costs that the state would incur from FTA and recidivism could increase dramatically, above what was projected in Section 3.4.

4.2 Reductions in Pretrial Populations

The NJPSU has the potential to save New Jersey money by reducing the pretrial populations being held in jails. In March 2014 the New Jersey Joint Committee on Criminal Justice released a

⁵⁶ "Cost of Living: How far will my salary go in another city?," CNN Money, accessed May 14, 2014, <http://money.cnn.com/calculator/pf/cost-of-living/>.

⁵⁷ These projections come from a calculator provided by CNN that utilizes data provided by the Council for Community and Economic Research.

⁵⁸ This results in the spending of approximately \$671 per arrest. This figure is about half the DCPSA spending of \$1402 per defendant. However, it is not indicated in the SCOPS audit that they are responsible for financing medical or drug rehab treatment, which represent a large portion of D.C. Budget.

⁵⁹ Management Audit of the Office of Pretrial Services, "Structure, Staffing and Budget of the Office of Pretrial Services," accessed May 14, 2014, <http://www.sccgov.org/sites/bos/Management%20Audit/Documents/PTSFinalReport.pdf>.

⁶⁰ Christopher T. Lowenkamp and Marie VanNostrand, "Exploring the Impact of Supervision on Pretrial Outcomes," Laura and John Arnold Foundation (November 2013): 12, accessed May 27, 2014, http://www.arnoldfoundation.org/sites/default/files/pdf/LJAF_Report_Supervision_FNL.pdf.

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report estimating the number of pretrial detainees who could be released under a reformed pretrial system.⁶¹

The report finds that there are approximately 9,000 pretrial defendants jailed in New Jersey on any given day. The report states that, “conservatively,” approximately 50 percent of these defendants are being held on low levels of bail and should, under a non-bail based system, be released pretrial.⁶² According to these figures, there are approximately 4,500 unnecessary pretrial detainees each day. The report estimates that it costs jails an average of \$100 to jail a detainee for a day. This results in approximately \$450,000 spent each day to detain defendants who could potentially be released into the community. If the NJPSU were able to achieve these additional release levels, it would save the state approximately \$164,250,000 a year. However, this figure is still less than half of the projected operating cost of \$379,589,599 and would still leave a net fiscal cost of \$215,339,599.⁶³

As a result of the additional releases projected by the New Jersey Joint Committee on Criminal Justice, there would also be additional costs for FTA and recidivism of the released defendants. According to the study, the pretrial detainees are jailed, on average, between 60 and 90 days. Applying this to the previous data outlined, this range means there would be approximately 18,250 to 27,375 additional releases each year. Even at low rates of recidivism and FTA, this will still result in a substantial amount of cost incurred by pretrial release misconduct.⁶⁴

There is no evidence to support that pretrial detainment will decrease as a result of the NJPSU and the associated legislative provisions, however, as the exact parameters of the risk assessment tool that the NJPSU will utilize are unknown. In contrast to the analysis made by the New Jersey Joint Committee on Criminal Justice report, it is possible that the NJPSU will find there are a greater number of high-risk defendants who are currently being detained, and therefore the cost of pretrial detainments will increase. For example, at the federal judicial

⁶¹ New Jersey Judiciary, “Report of the Joint Committee on Criminal Justice,” accessed May 12, 2014, http://www.judiciary.state.nj.us/pressrel/2014/FinalReport_3_20_2014.pdf.

⁶² The assumption from the New Jersey Joint Committee on Criminal Justice of a 50 percent pretrial detainee reduction does not sound “conservative.” This figure seems to be based on the commonplace figure of 50 percent of defendants being released pretrial in total. New Jersey already releases a large portion of its pretrial population. However, of those defendants who remain jailed, a significant portion of whom have likely remained jailed for other reasons (bail has purposefully been set high as the defendant is a risk to self/community, the family/individual are unwilling to pay because of reoccurring destructive behavior, the individual finds remaining in jail to be preferred to financial sacrifice required to post bail). Applying the 50 percent release rate to this population would not yield an accurate result, as this population is already dense with high risk defendants - a distilled section of the pool of pretrial defendants.

⁶³ New Jersey Judiciary, “Report to the Joint Committee on Criminal Justice,” 12.

⁶⁴ Ibid.

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level, approximately 64 percent of pretrial defendants are detained, even though the system only uses monetary release conditions for 27 percent of defendants. This illustrates a non-financial release dominated system that still experiences a high level of pretrial detention.⁶⁵

4.3 Time-to-trial

The NJPSU and associated legislation was developed with the goal to shorten the average time-to-trial and, as a result, reduce the length of time that defendants will remain detained or supervised before trial. As was mentioned in Section 4.2 of this report, pretrial detainment incurs a cost to the state. Reducing the time it takes to process defendants through the criminal trial process will reduce the total cost.

Reductions in time-to-trial will purportedly stem from a streamlining of the pretrial processes. Specifically, the rapid assessments and recommendations that the NJPSU will make to judges during the initial appearance phase are aimed to increase the courts' ability to make quick decisions regarding pretrial detention and release. However, the bills also provide other alterations to the pretrial process that are likely to increase the time required by the court to process defendants through their pretrial hearings.

The bill establishes that, at the initial appearance, the defendant will have the right to council as well as the opportunity to "testify, to present witnesses, to cross examine witnesses who appear at the hearing, and to present information by proffer or otherwise."⁶⁶ As was stated in previously in this report, changing what has traditionally been a non-adversarial judgment into a trial-like adversarial hearing will increase the time that these court proceedings will take. Additionally, the judicial decisions made in this stage can be appealed, further increasing the demand for court time.

Monetary release was also found to also decrease a defendant's time to pretrial release, and thereby decreases the amount of time that a defendant must stay detained as a fiscal burden to the State. In a study conducted on the Kentucky pretrial population, it was found that defendants who posted a monetary bond stayed detained pretrial for an average of 4 hours, while those assigned to a monetary bond were detained for 35 hours. Those defendants released through pretrial services were detained for more than 100 hours on average. Though monetary bails reduced time to release is not a direct decrease in time to trial, it achieves the same effect of reducing pretrial detention time and thereby lowering cost.

⁶⁵ U.S. Department of Justice, "Pretrial Release and Misconduct in Federal District Courts, 2008-2010," 5, accessed May 14, 2014, <http://www.bjs.gov/content/pub/pdf/prmfcd0810.pdf>.

⁶⁶ New Jersey Senate No. 946/Assembly No. 1910 (2014), 3.

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A shortage of judges in New Jersey compounds the issues of time-to-trial as it creates a virtual bottle-neck behind which cases become backed up. With the potential for time demanding pretrial hearings and appeals, the time-to-trial could increase even more. According to Assemblyman Gordan Johnson there are approximately 49 judicial vacancies statewide.⁶⁷ The report by the Joint Committee on Criminal Justice compared the caseload of judges in Washington D.C. to the caseload in New Jersey and found that in D.C. there was an average of 46.5 cases per applicable criminal judge compared to Essex County, New Jersey which had approximately 217 cases-per-judge.⁶⁸ Ultimately, from 2009 to 2013 there was a net increase of 1 percent in backlogged cases even though the total number of filings fell by 9%.⁶⁹ Again, the longer duration that cases are pending pretrial, the more costs that will be incurred by pretrial detention and pretrial supervisions.

It is difficult to accurately project the potential time demands on the New Jersey courts, as the exact in court actions and appeal rates will not be known unless the bills are put into practice. However, the additional time demands stated above indicate that there is a reasonable likelihood that time demand may increase. Adding to the issues caused by an increase in demand for court time, there already exists a shortage of judges in many jurisdictions. As these factors push time-to-trial longer, the costs to the state will increase as well.

4.4 21st Century Justice Improvement Fund

The New Jersey bills also establish a means by which the NJPSU and other programs will be funded. They permit the Supreme Court the power to increase filing fees and other statutory fees payable to the court by up to \$50 dollars per instance. All of the money collected through these increases will then be collected into the 21st Century Justice Improvement Fund. The disposition of these funds is also dictated by this bill as follows:

- The first \$15 million appropriated will contribute to funding the operation of the NJPSU.
- Any remaining funds up to \$17 million will fund the development of an e-court filing system.
- After that, any remaining funds go to Legal Services of New Jersey, up to \$10.1 million.
- The rest of the funds then go to the New Jersey General Fund, up to \$10 million.
- All remaining funds at the end would then return to the court for the further development, maintenance, and administration of court information technology.⁷⁰

⁶⁷New Jersey Budget Committee, Budget Hearing, recorded April 30, 2014 2:00 PM, http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=ABUB&SESSION=2014.

⁶⁸New Jersey Judiciary, "Report of the Joint Committee on Criminal Justice," 43 (footnote 179).

⁶⁹New Jersey Budget Committee, Budget Hearing, recorded April 30, 2014 2:00 PM.

⁷⁰New Jersey Senate No. 946/Assembly No. 1910 (2014), 5.

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For funding from the 21st Century Justice Improvement Fund to meet the NJSPU \$15 million funding cap, it would require approximately 300,000 instances of applicable fees to be collected. For perspective it is important to consider that there were approximately 315,000 arrests in New Jersey in 2012. Further, for the Fund to meet the e-court system funding cap and begin to contribute to Legal Services of New Jersey there would have to be at least 640,000 instances of applicable fees collected. As the Supreme Court has not yet assigned additional amounts to specific fees, RESI cannot estimate the potential collections of the 21st Century Justice Improvement Fund.⁷¹

5.0 Economic Impact Analysis

When New Jersey instates the NJPSU it will divert pretrial release traffic to non-financial conditional release, and away from commercial bondsman. The resulting loss in commercial bail usage will be manifested in the loss of commercial bail employees and eventually the closing of commercial bonding firms. The level of commercial bail employment and firm closure cannot be quantified without a full understanding of the future release rates, therefore RESI elected to model the loss of employment on a per-ten-employee basis. RESI conducted an economic and fiscal impact analysis for every 10 employees who are lost from the New Jersey's bail bonds industry. RESI used the IMPLAN input/output model. For more information regarding IMPLAN and RESI's methodology, please refer to Appendix A of this report. A glossary of terms can be found in Appendix B of this report.⁷²

5.1 Findings

According to RESI's analysis, a loss of 10 employees in New Jersey's bail bonds industry would result in a loss of approximately 17 employees, nearly \$2.5 million in output, and nearly \$0.6 million in wages. This loss is a compilation of the effects of direct, indirect, and induced impacts. A summary of the total economic impacts can be found in

⁷¹ It is important to note, however, that wherever the court finds appropriate to add these additional fees, there are instances in which indigent defendants will be unable to pay. And as one of the goals of the bills is to eliminate the holding of indigent defendants on small bonds, RESI assumes that the court will not be able to collect some portion of the fees that they assess.

⁷² This impact does not account for any positions created by the NJPSU. This is strictly the net impacts from 10 employees from the bail bond industry

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Figure 15 below. For detailed economic impacts, please refer to Appendix B of this report.

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Figure 15: Total Economic Impacts

Impact Type	Direct	Indirect	Induced	Total
Employment	10.0	4.1	3.3	17.4
Output	\$1,028,672	\$544,071	\$486,940	\$2,059,684
Wages	\$242,698	\$190,089	\$155,051	\$587,837

Sources: IMPLAN, RESI

RESI also estimated the fiscal impacts associated with a change of 10 employees in New Jersey's bail bonds industry. The fiscal impacts of 10 employees can be found in Figure 15.

Figure 16: Total Fiscal Impacts

Impact Type	Total
Property	\$47,813
Income	\$18,078
Sales	\$24,282
Payroll	\$872
Other	\$12,037
Total	\$103,082

Sources: IMPLAN, RESI

5.2 Conclusion

For a loss of every 10 employees in the bail bonds industry, New Jersey would lose 17 jobs, nearly \$2.1 million in output, and nearly \$0.6 million in wages. A loss of 10 employees in New Jersey's bail bonds industry would also result in the loss of approximately \$103,000 in tax revenues. These losses could be offset by the effects of employment gains in the NJPSU; however, the resulting wages would come from the budget of the state government, rather than from the private sector. Spending and employment by commercial bonding firms create a positive net fiscal impact. However, when the private employment changes to public employment, the net fiscal impact on the state government will be substantially negative. Though the tax income from the employment may remain the same, the government will incur an extra \$242,698, assuming that the wages paid are similar.

6.0 Legislation Review

Beyond the previous justifications for using the DCPSA as a model for the NJPSU costs, the language of the New Jersey bills when compared to the legislation of other pretrial programs

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further supports the assumption that the DCPSA is an accurate cost model.⁷³ An analysis of the D.C. Code, wherein it establishes the functions of the DCPSA, shows that the legislation establishing the NJPSU is nearly identical. Moreover, where the jurisdictions differ in their provision, it is the NJPSU that seems to call for more intensive pretrial services. RESI also examined the legislation that governs the KPS to illustrate how this program is not codified to be as intensive as the NJPSU and the DCPSA.

6.1 The District of Columbia Pretrial Service Agency

The powers and responsibilities of the DCPSA stem from Title 23, Chapter 13 of the D.C. Code. The important difference between the pretrial release process of the DCPSA and that of the NJPSU is found just prior to their respective release conditions. The D.C. legislation states that a non-financial release condition will only be used after it cannot reasonably assure reappearances and the safety of the community through release on personal recognizance or an unsecured appearance bond.⁷⁴ However, the New Jersey bills provide that release conditions be imposed after only personal recognizance if found inadequate, further stating that “monetary bail shall be set when it is determined that no other conditions of release will reasonably assure the defendant’s appearance in court and that the defendant does not present a danger to any person or the community.”⁷⁵ This difference is substantial considering that most of the rest of the legislation of the two jurisdictions remains the same. This establishes that though the DCPSA would first consider using a monetary condition of release thereby deferring the cost away from its pretrial programs, the NJPSU will instead have to seek non-financial release conditions first without considering monetary options. This potentially means the NJPSU will be responsible for higher levels of supervision, and more cost, than the DCPSA.

The release conditions at the disposal of the DCPSA are largely similar to that of the NJPSU. It has the power to limit where the defendant may travel, which in practice has evolved into the use of electronic monitoring. It also can require that a defendant remain under the direct supervision of an individual or organization. It can assign the defendant to check in with a pretrial officer at prescribed times, or return to custody for specified hours following release for school or work. Similar to the NJPSU, the DCPSA also has the power to require a defendant to “undergo medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency.”⁷⁶ The sections of the legislation from both D.C. and New Jersey pertaining to conditions of release can be found in Appendix D of this report, wherein all other release

⁷³ *Previous justifications* include those pertaining solely to the provisions of the NJPSU legislation in relation to the actual practices of the DCPSA, as well as the importance of instituting intensive programs to avoid indirect costs

⁷⁴ District of Columbia Code § 23-1321 (b).

⁷⁵ New Jersey Senate No. 946/Assembly No. 1910 (2014), 1.

⁷⁶ District of Columbia Code, § 23-1321 (c).

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conditions are also enumerated. These conditions of release are important as they represent the similar potential program cost between the DCPSA and the NJPSU.

The D.C. and prospective New Jersey legislation also provide a similar pretrial procedure regarding how the courts are to assess whether a defendant should be detained indefinitely before his or her trial. In both jurisdictions, upon motion from the prosecutor the court will conduct a hearing on whether the defendant can be released pretrial. These motions are restricted to defendants who meet any of several factors that indicate that the defendant may pose an increased risk of obstruction of justice, danger to individuals or the community, or failure to appear. In these hearings, the burden of proof rests on the defendant, as the legislation states that the assumption of the court will be that “no condition or combination of conditions will reasonably assure” the defendants good behavior upon release.⁷⁷ In both D.C. and New Jersey, judgments can be appealed for reassessment. In both jurisdictions, this hearing is adversarial, meaning that the defendant is allowed to call witnesses, cross-examine witnesses for the defense, and present evidence. Further similarities between the legislation of these hearings can be found in the excerpts of the bills found in Appendix E of this report. These similarities in the hearing process of higher risk defendants are significant as, among other factors, it likely indicates a similar rate of release of high risk defendants, and therefore a similar level of associated costs.

Finally, it is important that the D.C. legislation also establishes a framework for the salary of its employees. In § 23-1306, it states that “all employees other than the chief assistant shall receive compensation that is comparable to levels of compensation established for Federal pretrial services agencies.”⁷⁸ This aids in substantiating the employee expenditures of the DCPSA because it links the personnel costs to the salaries of Federal pretrial service employees who work in numerous jurisdictions across the country. This fact is important when using the DCPSA as a model for the NJPSU cost analysis as personnel costs naturally constitute a significant portion of the cost projections.

6.2 Kentucky Pretrial Services

Chapter 431 of the Kentucky Revised Statutes (KRS) establishes the pretrial processes for Kentucky defendants. It is first important to note that § 431.510 of the KRS states that all for-profit bail bonding is illegal in the state.⁷⁹ With a lack of traditional commercial bail options, this necessitates Kentucky to provide alternate pretrial release processes. RESI examined and highlighted some of the key factors that indicate that the Kentucky legislation calls for a less

⁷⁷ District of Columbia Code, § 23-1322 (b)

⁷⁸ Ibid, § 23-1306.

⁷⁹ Kentucky Revised Statutes, § 431.510.

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intensive and therefore less costly pretrial service program than does the legislation of New Jersey or D.C.

The most substantial difference between the NJPSU is that, similar to the DCPSA, the KPS is required to first consider release on the personal recognizance and unsecured bail bonds. Only defendants who are found to still pose a risk of FTA and danger to the community are then assessed for non-financial release conditions.⁸⁰ As stated previously, the NJPSU is only to consider monetary conditions as a last alternative, which can be reasonably assumed to result in the management of additional defendants on conditional releases. This speculation is substantiated, in part, by the large number of financial releases that are still assigned by the Kentucky courts, as discussed in Section 4.1 of this report.

The KPS is also limited in its options of pretrial release conditions. Outside the execution of a non-commercial bail bond, the KPS can utilize the following non-financial release conditions:

- Place the defendant in the custody of a person or organization who has agreed to supervise them;
- Place restrictions on travel, association and places of abode;
- Require the defendant to submit to drug testing;
- Require the defendant to participate in a faith-based drug or alcohol treatment or recovery program;
- Place the defendant in an electronic monitoring program which may include house arrest; and/or
- Require the defendant to return to custody after specified hours.

Kentucky requires any defendants participating in the drug testing or electronic monitoring to bear the costs of their participation if they are able. Additionally, the remaining cost of the electronic monitoring program is explicitly assigned to fall to the county or counties that have assigned the defendant to it. There is no provision for medical, psychological, or psychiatric treatment. The KPS is also authorized to “to impose any other condition deemed reasonably necessary to assure appearance as required.”⁸¹ RESI could not discern the extent of the use of this open-ended provision. These limited release options result in a program of lesser intensity and cost than what is expected from the NJPSU and what is experienced by the DCPSA.

6.3 Conclusion

A comparison of the D.C. and Kentucky legislation against that of New Jersey is useful in determining what the likely structure and intensity of the NJPSU program will be. RESI did not

⁸⁰ Kentucky Revised Statutes, § 431.520.

⁸¹ Ibid, § 431.520.

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include many administrative details in this review as they were similar across all of the programs and were insignificant in assessing the potential cost of the NJPSU.

Of the programs studied, RESI found the NJPSU is most similar to the DCPSA in its legislative parameters. Neither of the jurisdictions' legislation illegalizes commercial bonds as the Kentucky legislation does; however the goal of the legislation is to provide as many tools to the pretrial service programs as possible so that they may divert the maximum number of defendants away from commercial bond release conditions.

The similarity in provisions between the D.C. Code and New Jersey legislation, in conjunction with the statements made by the New Jersey committee, seem to indicate that the NJPSU is aimed to resemble the services and structure of the DCPSA.

7.0 Literature Review

7.1 "Exploring the Impact of Supervision on Pretrial Outcomes"

A study funded by the Arnold Foundation titled "Exploring the Impact of Supervisions on Pretrial Outcomes" found that very little empirical evidence exists regarding the effectiveness of pretrial supervisory programs on failure to appear (FTA) rates and new criminal activity (NCA) or recidivism. The objective of the study was to measure the impact of pretrial supervision on two different factors, FTA and NCA, using empirical evidence.

The study group included 3,925 defendants who were released from jail to wait out their case dispositions. The analysis group included 2,437 who were released with some type of pretrial supervision and 1,488 who were released without any supervision. It is important to note that the study did not differentiate between different terms of release (i.e., random drug testing, electronic monitoring, etc.). The terms of the release were left up to each jurisdiction that submitted data to define. As a result, terms of release could vary significantly. To test the possible outcomes of pretrial supervision, the researchers developed a series of bivariate and multivariate models.⁸² Findings included the following:

- Pretrial supervision of any length makes FTA less likely.
- The multivariate models that controlled a defendant's gender, race, time in the community, and defendant risk level indicated that supervision significantly reduced the likelihood of FTA.
- Those defendants who were supervised for longer than 180 days were 12 to 36 percent less likely to commit new criminal activity.⁸³

⁸² Bivariate models analyze the relationship between two variables while multivariate has more than one dependent variable.

⁸³ Lowenkamp and VanNostrand, "Exploring the Impact of Supervision on Pretrial Outcomes."

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In regard to the last finding, it is important to note that only some of the models that tried to determine the impact of pretrial supervision were statistically significant. The findings highlight the importance of pretrial agency supervision in pretrial release, and inform the assumption that there will be a direct correlation between the level of supervision and the likelihood of pretrial misconduct. This assumption is of pivotal importance when considering the balance that the NJPSU will have to seek between up-front program costs and the indirect costs caused by pretrial failure.

7.2 “The Hidden Costs of Pretrial Detention”

This study examined the effect that a period of pretrial detention has on a released defendant. The study was divided into two parts. The first considers the effect that pretrial detention has on FTA and recidivism of a defendant who is eventually released pretrial. The second portion examines the effect of pretrial detention on defendant recidivism after all trial proceedings had concluded and they had been released (post-disposition). The observed FTA and recidivism rates were then analyzed against factors including the length of pretrial detention, the risk level of the defendant, and the original crime of the defendant.

The study found that there was a slight correlation between the detention lengths and the likelihood of FTA. With all other variable controls considered, it was found that defendants who are detained two to three days are 1.09 times more likely to FTA than defendants detained for only one day. More significant, the study found that low-risk defendants who were held for two to seven days were 1.22 times more likely to FTA, and those held 15 to 30 days were 1.41 times more likely to FTA, compared to their counterparts who are held for one day or less.⁸⁴

Pretrial recidivism was also found to correspond with the length of pretrial detention. In general, the longer the defendant is detained pretrial, the more likely they are to recidivate; this is especially true for low-risk defendants, who are up to 1.74 times more likely to recidivate when held for 31 days or more. However, this trend is not as true for moderate- to high-risk defendants. Moderate-risk defendants saw the highest levels of recidivism focused in the pretrial detention periods from two to fourteen days. There was no discernable trend in high-risk defendant recidivism.⁸⁵

Pretrial detention was also positively correlated with post-disposition recidivism. Each increasing detention duration category showed an increased likelihood of pretrial recidivism,

⁸⁴ Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, “The Hidden Costs of Pretrial Detention,” Laura and John Arnold Foundation (November 2013): 10, accessed May 26, 2014, http://www.arnoldfoundation.org/sites/default/files/pdf/LJAF_Report_hidden-costs_FNL.pdf.

⁸⁵ *Ibid*, 11.

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with defendants “1.16 times more likely to recidivate if detained 2 to 3 days, increasing to 1.43 times if detained 15 to 30 days.” Overall, there was a 1.3 times greater likelihood for a defendant to recidivate if he or she was held pre-trial.⁸⁶

This raises questions on the efficacy and implementation of the proposed bills. The New Jersey courts already experience case back up, and this leads to long pretrial durations.⁸⁷ If the NJPSU and the associated legislation are not enacted in a way that can assure a rapid processing of pretrial defendants, the state could potentially experience a significant increase in FTA and recidivism. In a separate study based on defendants from Kentucky, the Kentucky Bar Association found that defendants who were release through pretrial services were held for approximately 100 hours, while the defendants who posted a monetary bond were released after an average of just four hours. Based on the findings of the original report, this disparity in detention time cause by the pretrial services system could be very harmful.⁸⁸

However, it is important to note that the study does not show that the relationship between pretrial detainment and FTA or recidivism is necessarily a causal one. It only shows that a correlation exists, stating that the “association [between pretrial detention and FTA/recidivism] could indicate that there are unknown factors that cause both detention and recidivism, but it is an association worthy of further exploration.”⁸⁹

7.3 “Investigating the Impact of Pretrial Detention on Sentencing Outcomes”

In another pretrial detention study by Arnold Foundation, researchers analyzed the effects of pretrial detention on the defendants’ sentencing outcomes. The study found a significant correlation between pretrial detention and sentencing. In total, they found that defendants detained until case disposition were 4.44 times more like to be sentenced to jail and 3.32 times more likely to be sentenced to prison. They also found that the length of a jail sentence for a detainee is approximately 2.78 times longer, and 2.36 times longer for a prison sentence.⁹⁰

⁸⁶ Lowenkamp, VanNostrand, and Holsinger, “The Hidden Costs of Pretrial Detention,” 19.

⁸⁷ New Jersey Judiciary, “Report of the Joint Committee on Criminal Justice,” 43 (footnote 179). States the overload of cases on New Jersey judiciary: “In the District of Columbia these [pretrial] cases are heard by one of the six “Felony One” judges. In July 2013, the active caseloads of these judges ranged from thirty-three (33) to fifty-six (56) defendants with an average of 46.5. In New Jersey these types of cases would be heard by Superior Court judges assigned to the Criminal Part. During July 2013, there were ten (10) judges assigned to Essex County. The active caseloads for these judges ranged from 169 to 263 with an average of 217. Essex is one of New Jersey’s twenty-one counties.”

⁸⁸ Kentucky Bar Association, “Amended Executive Summary, Uniform Schedule of Bail Pilot Project for 2010 Year End Report,” 1, accessed June 2, 2014, http://www.kybar.org/documents/cle/ac_material/ac2011_17.pdf.

⁸⁹ Lowenkamp, VanNostrand, and Holsinger, “The Hidden Costs of Pretrial Detention,” 20.

⁹⁰ Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, “The Effect of

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Low-risk defendants were found to have the highest sentencing difference, with pretrial detainees being 5.41 times more likely to be sentenced to jail than the released counterparts, and 3.76 times more likely to be sentenced to prison. Moderate-risk detainees were four times more likely to see jail time than their released counterparts and three times more likely to be sentenced to prison. High-risk detained defendants were approximately three times more likely to be sentenced to jail or prison than their released counterparts.⁹¹

The Arnold Foundation noted, in a research summary about the report, that the disparity in equality between released and detained defendants is representative of a failure of pretrial detainment, stating the findings “shed new light on the impact that a defendant’s release or detention before trial can have on the eventual sentence in the case.”⁹² There is an implied argument made by the Arnold Foundation that pretrial detention causes a greater likelihood of jail and prison sentences. However, this is not necessarily accurate. First, it is important not to confuse the existence of correlation for causation. The presence of a defendant in pretrial detention is not the cause of a jail or prison sentence, but rather those who are sentenced to correctional detention tend to also be those who are detained pretrial. Alternatively, the correlation can be easily explained by an efficiently functioning judiciary that detains many of the defendants who it foresees to be guilty, or assess the overall situation to be one that is indicative of a likely guilty verdict. The argument that pretrial detainment leads to a greater likelihood of jail and prison sentencing, and increases the length of sentencing, is likely exaggerated because of the lack of consideration for the aforementioned factors.

Pretrial Detention on Sentencing,” Laura and John Arnold Foundation (November 2013): 10, accessed May 26, 2014. http://www.arnoldfoundation.org/sites/default/files/pdf/LJAF_Report_Supervision_FNL.pdf.

⁹¹ Lowenkamp, VanNostrand, and Holsinger, “The Effect of Pretrial Detention on Sentencing,” 11.

⁹² Laura and John Arnold Foundation, “Pretrial Criminal Justice Research,” November 2013, 3, accessed May 27, 2014, http://www.arnoldfoundation.org/sites/default/files/pdf/LJAF-Pretrial-CJ-Research-brief_FNL.pdf.

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Appendix A—Methodology

A.1 IMPLAN Model Overview

To quantify the economic and fiscal impacts of an economic event on a region, RESI utilizes the IMPLAN input/output model. This model enumerates the employment and fiscal impact of each dollar earned and spent by the following: employees of the district, other supporting vendors (business services, retail, etc.), each dollar spent by these vendors on other firms and each dollar spent by the households of the event's employees, other vendors' employees, and other businesses' employees.

Economists measure three types of economic impacts: direct, indirect, and induced impacts. The direct economic effects are generated as the event creates jobs and hires workers to support the event's activities. The indirect economic impacts occur as the vendors purchase goods and services from other firms. In either case the increases in employment generate an increase in household income, as new job opportunities are created and income levels rise. This drives the induced economic impacts that result from households increasing their purchases at local businesses.

Consider the following example. A new firm opens in a region and directly employs 100 workers. The firm purchases supplies, both from outside the region as well as from local suppliers, which leads to increased business for local firms, thereby hypothetically creating jobs for another 100 workers. This is called the indirect effect. The workers at the firm and at suppliers spend their income mostly in the local area, hypothetically creating jobs for another 50 workers. This is the induced effect. The direct, indirect and induced effects add up to 250 jobs created from the original 100 jobs. Thus, in terms of employment, the total economic impact of the firm in our example is 250.⁹³

A.2 Input Assumptions

RESI determined economic impacts based on the loss of ten commercial bail employees. RESI analyzed IMPLAN industry sectors based on the provided expenditures. RESI's analysis includes the following modeling assumptions:

- Economic impact multipliers are developed from IMPLAN input/output software.
- IMPLAN data are based on the North American Industrial Classification System (NAICS).
- IMPLAN employment multipliers are adjusted for inflation using the Bureau of Labor Statistic's CPI-U.
- Impacts were based on 2012 IMPLAN data for New Jersey, the most recent available.
- Impacts are represented in 2014 dollars.

⁹³ Total economic impact is defined as the sum of direct, indirect, and induced effects.

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- Employment impacts include both full- and part-time employees. IMPLAN does not differentiate between full- and part-time employment.
- Impacts in this report are presented as a change of 10 employees. A change of 20 employees would result in impacts twice as high, while a change of 100 employees would result in impacts 10 times as high.
- RESI analyzed industry sectors based on NAICS code 812990, Other personal services.

Appendix B—Glossary

A glossary of economic and fiscal impact terminology frequently used throughout this report can be found in Figure 16.

Figure 17: Glossary of Terms

Term	Definition
Economic Impact	This term refers to the changes in the economy resulting from an event. RESI typically reports employment, output, and wage impacts.
Employment	This term refers to the number of new full-time equivalent (FTE) jobs created as a result of the event which has been modeled in IMPLAN.
Fiscal Impact	This term refers to the change in tax revenues resulting from an event. RESI typically reports state and local tax revenues, which are combined in IMPLAN.
IMPLAN	This term refers to the input/output modeling software used to model changes in the economy in a particular region. The user builds a model based on prepackaged economic data from IMPLAN (typically at the state or county level), then enters input figures—an industry change of employment or sales, a household change of income, and/or several other input types—for the industry sectors expected to be impacted as a “scenario.” IMPLAN runs the scenario created in the model and produces the economic and fiscal outputs.
Output	This term refers to the economic activity created as a result of the event which has been modeled in IMPLAN. It is synonymous with “state GDP.” In other words, it is the market value of all goods and services produced by the economy of the region being modeled.
State GDP	This term refers to the change in market value of all goods and services produced by the economy of the region which has been modeled in IMPLAN. It is synonymous with “output.”
Wage Impact	This term refers to the change in employee compensation (including all salaries and wages) associated with the job and output creation resulting from the event which has been modeled in IMPLAN.

Source: RESI

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Appendix C— Detailed Economic Impacts

Figure 18: Detailed Employment Impacts

Industry	Direct	Indirect	Induced	Total
Agriculture	0.0	0.0	0.0	0.0
Mining	0.0	0.0	0.0	0.0
Utilities	0.0	0.0	0.0	0.0
Construction	0.0	0.1	0.0	0.1
Manufacturing	0.0	0.0	0.0	0.1
Wholesale Trade	0.0	0.1	0.1	0.1
Retail Trade	0.0	0.0	0.6	0.6
Transportation and Warehousing	0.0	0.2	0.1	0.2
Information	0.0	0.2	0.1	0.3
Finance and Insurance	0.0	0.2	0.2	0.4
Real Estate and Rental and Leasing	0.0	0.3	0.2	0.5
Professional, Scientific and Technical Services	0.0	0.6	0.1	0.8
Management of Companies and Enterprises	0.0	0.0	0.0	0.0
Administrative and Support and Waste Management and Remediation Services	0.0	1.6	0.2	1.8
Educational Services	0.0	0.0	0.2	0.2
Health Care and Social Services	0.0	0.0	0.8	0.8
Arts, Entertainment and Recreation	0.0	0.3	0.1	0.4
Accommodation and Food Services	0.0	0.1	0.3	0.5
Other Services	10.0	0.2	0.3	10.5
Government	0.0	0.1	0.0	0.1
Total	10.0	4.1	3.3	17.4

Sources: IMPLAN, RESI

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Figure 19: Detailed Output Impacts

Industry	Direct	Indirect	Induced	Total
Agriculture	\$0	\$28	\$498	\$525
Mining	\$0	\$199	\$267	\$466
Utilities	\$0	\$9,427	\$10,708	\$20,135
Construction	\$0	\$7,882	\$3,889	\$11,771
Manufacturing	\$0	\$16,983	\$24,004	\$40,987
Wholesale Trade	\$0	\$12,343	\$24,123	\$36,466
Retail Trade	\$0	\$2,090	\$49,518	\$51,608
Transportation and Warehousing	\$0	\$21,479	\$12,108	\$33,587
Information	\$0	\$89,043	\$21,990	\$111,033
Finance and Insurance	\$0	\$52,917	\$61,449	\$114,366
Real Estate and Rental and Leasing	\$0	\$64,328	\$92,345	\$156,672
Professional, Scientific and Technical Services	\$0	\$96,118	\$22,020	\$118,138
Management of Companies and Enterprises	\$0	\$8,816	\$3,885	\$12,701
Administrative and Support and Waste Management and Remediation Services	\$0	\$109,151	\$12,921	\$122,072
Educational Services	\$0	\$133	\$10,098	\$10,231
Health Care and Social Services	\$0	\$11	\$83,693	\$83,704
Arts, Entertainment and Recreation	\$0	\$20,079	\$7,379	\$27,458
Accommodation and Food Services	\$0	\$7,698	\$21,527	\$29,225
Other Services	\$1,028,672	\$17,831	\$18,875	\$1,065,378
Government	\$0	\$7,514	\$5,645	\$13,159
Total	\$1,028,672	\$544,071	\$486,940	\$2,059,684

Sources: IMPLAN, RESI

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Figure 20: Detailed Wages Impacts

Industry	Direct	Indirect	Induced	Total
Agriculture	\$0	\$5	\$95	\$100
Mining	\$0	\$22	\$20	\$42
Utilities	\$0	\$1,319	\$1,576	\$2,895
Construction	\$0	\$2,913	\$1,033	\$3,945
Manufacturing	\$0	\$3,116	\$2,886	\$6,003
Wholesale Trade	\$0	\$4,691	\$9,167	\$13,858
Retail Trade	\$0	\$938	\$20,961	\$21,899
Transportation and Warehousing	\$0	\$7,335	\$3,965	\$11,299
Information	\$0	\$20,255	\$4,929	\$25,184
Finance and Insurance	\$0	\$17,391	\$18,268	\$35,659
Real Estate and Rental and Leasing	\$0	\$4,591	\$2,284	\$6,875
Professional, Scientific and Technical Services	\$0	\$38,738	\$9,767	\$48,506
Management of Companies and Enterprises	\$0	\$5,369	\$2,366	\$7,736
Administrative and Support and Waste Management and Remediation Services	\$0	\$61,488	\$6,369	\$67,857
Educational Services	\$0	\$71	\$5,548	\$5,618
Health Care and Social Services	\$0	\$5	\$42,089	\$42,094
Arts, Entertainment and Recreation	\$0	\$4,214	\$3,062	\$7,276
Accommodation and Food Services	\$0	\$2,974	\$8,355	\$11,329
Other Services	\$242,698	\$8,925	\$8,828	\$260,450
Government	\$0	\$5,730	\$3,483	\$9,213
Total	\$242,698	\$190,089	\$155,051	\$587,837

Sources: IMPLAN, RESI

Appendix D—Release Conditions Legislation

District of Columbia Code: § 23-1321. Release prior to trial

(a) Upon the appearance before a judicial officer of a person charged with an offense, other than murder in the first degree, murder in the second degree, or assault with intent to kill while armed, which shall be treated in accordance with the provisions of § 23-1325, the judicial officer shall issue an order that, pending trial, the person be:

- (1) Released on personal recognizance or upon execution of an unsecured appearance bond under subsection (b) of this section;
- (2) Released on a condition or combination of conditions under subsection (c) of this section;
- (3) Temporarily detained to permit revocation of conditional release under § 23-1322; or
- (4) Detained under § 23-1322(b).

(b) The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a local, state, or federal crime during the period of release, unless the judicial officer determines that the release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c) (1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, the judicial officer shall order the pretrial release of the person subject to the:

(A) Condition that the person not commit a local, state, or federal crime during the period of release; and

(B) Least restrictive further condition, or combination of conditions, that the judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition or combination of conditions that the person during the period of release shall:

(i) Remain in the custody of a designated person or organization that agrees to assume supervision and to report any violation of a condition of release to the court, if the designated person or organization is able to reasonably assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) Maintain employment, or, if unemployed, actively seek employment;

(iii) Maintain or commence an educational program;

(iv) Abide by specified restrictions on personal associations, place of abode, or travel;

(v) Avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) Report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

(vii) Comply with a specified curfew;

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- (viii) Refrain from possessing a firearm, destructive device, or other dangerous weapon;
 - (ix) Refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner; the terms "narcotic drug" and "controlled substance" shall have the same meaning as in section 102 of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981, (D.C. Law 4-29; D.C. Official Code § 48-901.02);
 - (x) Undergo medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, if available, and remain in a specified institution if required for that purpose;
 - (xi) Return to custody for specified hours following release for employment, schooling, or other limited purposes, except that no person may be released directly from the District of Columbia Jail or the Correctional Treatment Facility for these purposes;
 - (xii) Execute an agreement to forfeit upon failing to appear as required, the designated property, including money, as is reasonably necessary to assure the appearance of the person as required, and post with the court the indicia of ownership of the property, or a percentage of the money as the judicial officer may specify;
 - (xiii) Execute a bail bond with solvent sureties in whatever amount is reasonably necessary to assure the appearance of the person as required; or
 - (xiv) Satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.
- (2) In considering the conditions of release described in paragraph (1)(B)(xii) or (xiii) of this subsection, the judicial officer may upon his own motion, or shall upon the motion of the government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation or the use as collateral of property that, because of its source, will not reasonably assure the appearance of the person as required.
- (3) 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).
- (4) A person for whom conditions of release are imposed and who, after 24 hours from the time of the release hearing, continues to be detained as a result of inability to meet the conditions of release, shall upon application be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, on another condition or conditions, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition that requires that the person return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the

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condition. Unless the requirement is removed and the person is released on another condition or conditions, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed the conditions of release is not available, any other judicial officer may review the conditions.

(5) The judicial officer may at any time amend the order to impose additional or different conditions of release.

New Jersey Senate No. 946/ Assembly No. 1910 (2014)

(Section 1. through Section 4.)

1. (New section) The provisions of P.L. , c. (C.) (pending before the Legislature as this bill) shall be liberally construed to effectuate the purpose of relying upon contempt of court proceedings or criminal sanctions instead of financial loss to ensure the appearance of the defendant, that the defendant will not pose a danger to any person or the community, and that the defendant will comply with all conditions of bail. Monetary bail shall be set when it is determined that no other conditions of release will reasonably assure the defendant's appearance in court and that the defendant does not present a danger to any person or the community.

2. (New section) Upon the appearance before a court of a defendant charged with an offense, the court shall issue an order that the defendant be:

- a. released on conditions including the execution of a bail bond pursuant to subsection b. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill);
- b. released on his own personal recognizance; or
- c. detained pursuant to section 4 of P.L. , c. (C.) (pending before the Legislature as this bill).

3. (New section) a. Except as provided under section 4 of P.L. , c. (C.) (pending before the Legislature as this bill), a court shall order the pretrial release of a defendant on personal recognizance when, after considering all the circumstances, the court determines that a defendant will appear as required either before or after conviction and the defendant will not pose a danger to any person or the community, or obstruct or attempt to obstruct justice, and that the defendant will comply with all conditions of release.

b. Except as provided under section 4 of P.L. , c. (C.) (pending before the Legislature as this bill), if a court determines that the release described in subsection a. of this section will not reasonably ensure the appearance of the person as required or will endanger the safety of any other person or the community, or will not prevent the person from obstructing or attempting to obstruct the criminal justice process, the court may order the pretrial release of the person:

(1) subject to the condition that the person not commit any crime during the period of release and avoid all contact with an alleged victim of the crime and with potential witnesses who may testify concerning the offense; or

(2) subject to the least restrictive condition, or combination of conditions, that the court determines will reasonably ensure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person:

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- (a) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is reasonably able to ensure to the court that the defendant will appear as required and will not pose a danger to the safety of any other person or the community;
 - (b) maintain employment, or, if unemployed, actively seek employment;
 - (c) maintain or commence an educational program;
 - (d) abide by specified restrictions on personal associations, place of abode, or travel;
 - (e) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;
 - (f) comply with a specified curfew;
 - (g) refrain from possessing a firearm, destructive device, or other dangerous weapon;
 - (h) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner;
 - (i) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;
 - (j) return to custody for specified hours following release for employment, schooling, or other limited purposes;
 - (k) satisfy any other condition that is reasonably necessary to ensure the appearance of the person as required and to ensure the safety of any other person and the community; or
 - (l) be placed in a pretrial home supervision capacity with or without the use of an approved electronic monitoring device. The costs attributable to the electronic monitoring of an offender shall be borne by the Pretrial Services Unit in the county in which the defendant resides.
- c. Except as provided under section 4 of P.L. , c. (C.) (pending before the Legislature as this bill), if the court determines that the conditions under subsection b. will not reasonably ensure the appearance of the person as required or will endanger the safety of any other person or the community, or will not prevent the person from obstructing or attempting to obstruct the criminal justice process, the court may set bail for the offense charged in accordance with current statutory law and court rule.
- d. The court may at any time amend an order made pursuant to this section to impose additional or different conditions of release. The court may not impose a financial condition that results in the pretrial detention of the person.
4. (New section) a. The court may order the detention of a defendant before trial if, after a hearing pursuant to the section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), the court is clearly convinced that no amount of sureties, non-monetary conditions of pretrial release or combination of sureties and conditions would ensure the defendant's appearance as required, protect the safety of any person or of the community, or prevent the defendant from obstructing or attempting to obstruct the criminal justice process.
- b. Except where a defendant charged with a crime is subject to a hearing upon the motion of the prosecutor or upon the court's own motion as set forth under paragraphs (1) and (2) of subsection a. of section 5 of P.L. , c. (C.) (pending before the Legislature as this bill), there

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shall be a rebuttable presumption that some amount of sureties, non-monetary conditions of pretrial release or combination of sureties and conditions would ensure the defendant's appearance as required, protect the safety of the community, and prevent the defendant from obstructing or attempting to obstruct the criminal justice process.

c. A defendant shall have the right to appeal an order of detention before trial to the Appellate Division of the Superior Court, which may make a determination as to whether an amount of sureties, non-monetary conditions of pretrial release or combination of sureties and conditions would assure the defendant's appearance as required, protect the safety of any person or of the community, or prevent the defendant from obstructing or attempting to obstruct the criminal justice process. An appeal filed under this subsection shall be heard and decided no later than 30 days following the initial order of detention.

Appendix E—Release Hearing Legislation

New Jersey Senate No. 946/ Assembly No. 1910 (2014)

5. (New section) a. A court shall hold a hearing to determine whether any condition or combination of conditions set forth under subsection b. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) will ensure the defendant's appearance as required, protect the safety of any person or of the community, or prevent the defendant from obstructing or attempting to obstruct the criminal justice process:

(1) Upon motion of the prosecutor in a case that involves:

(a) a crime enumerated under subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2);

(b) an offense for which the maximum sentence is life imprisonment;

(c) any indictable offense if the defendant has been convicted of two or more offenses under paragraph (1) or (2) of this subsection.

(d) any indictable offense where the victim is a minor; or

(e) any indictable offense enumerated under subsection c. of N.J.S.2C:43-6.

(2) Upon motion of the prosecutor or upon the court's own motion, in a case that involves a serious risk:

(a) that the defendant will flee;

(b) that the defendant will pose a danger to any person or the community; or

(c) that the defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure or intimidate, a prospective witness or juror.

b. The hearing shall be held immediately upon the defendant's first appearance unless the defendant, or the prosecutor, seeks a continuance. Except for good cause, a continuance on motion of the defendant may not exceed five days, not including any intermediate Saturday, Sunday, or legal holiday. Except for good cause, a continuance on motion of the prosecutor may not exceed three days, not including any intermediate Saturday, Sunday, or legal holiday.

During a continuance, the defendant shall be detained, and the court, on motion of the prosecutor or sua sponte, may order that, while in custody, a defendant who appears to be a drug dependent person receive an assessment to determine whether that defendant is drug dependent.

c. At the hearing, the defendant has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The defendant shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials shall not apply to the presentation and consideration of information at the hearing. The facts the court uses to support a finding pursuant to section 4 of P.L. , c. (C.) (pending before the Legislature as this bill) that no condition or combination of conditions will reasonably ensure the defendant's appearance as required, protect the safety of any person or of the community, or prevent the defendant from obstructing or attempting to obstruct the criminal justice process shall be supported by clear and convincing evidence. The defendant may be detained pending completion of the hearing.

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d. The hearing may be reopened, before or after a determination by the court, at any time before trial, if the court finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably ensure the defendant's appearance as required, protect the safety of any person or of the community, or prevent the defendant from obstructing or attempting to obstruct the criminal justice process.

6. (New section) In determining whether no amount of sureties, non-monetary conditions of pretrial release, or combination of sureties and conditions would ensure the defendant's appearance as required, protect the safety of any person or of the community, or prevent the defendant from obstructing or attempting to obstruct the criminal justice process, the court shall take into account the available information concerning:

a. The nature and circumstance of the offense charged, including whether the offense is a crime enumerated under subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2), is an indictable offense where the victim is a minor, or involves a firearm, explosive, or destructive device;

b. The weight of the evidence against the defendant, except that the court may consider the admissibility of any evidence sought to be excluded;

c. The history and characteristics of the defendant, including:

(1) the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(2) whether, at the time of the current offense or arrest, the defendant was on probation, parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal or State law;

d. The nature and seriousness of the danger to any person or the community that would be posed by the person's release;

e. The release recommendation of the pretrial services agency obtained using a validated risk assessment instrument under section 9 of P.L. , c. (C.) (pending before the Legislature as this bill).

District of Columbia Code: § 23-1322. Release prior to trial

(a) The judicial officer shall order the detention of a person charged with an offense for a period of not more than 5 days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the government to notify the appropriate court, probation or parole official, or local or state law enforcement official, if the judicial officer determines that the person charged with an offense:

(1) Was at the time the offense was committed, on:

(A) Release pending trial for a felony or misdemeanor under local, state, or federal law;

(B) Release pending imposition or execution of sentence, appeal of sentence or conviction, or

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completion of sentence, for any offense under local, state, or federal law; or

(C) Probation, parole or supervised release for an offense under local, state, or federal law; and

(2) May flee or pose a danger to any other person or the community or, when a hearing under § 23-1329(b) is requested, is likely to violate a condition of release. If the official fails or declines to take the person into custody during the 5-day period described in this subsection, the person shall be treated in accordance with other provisions of law governing release pending trial.

(b) (1) The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in § 23-1321(c) will reasonably assure the appearance of the person as required and the safety of any other person and the community, upon oral motion of the attorney for the government, in a case that involves:

(A) A crime of violence, or a dangerous crime, as these terms are defined in § 23-1331;

(B) An offense under section 502 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-722);

(C) A serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness or juror; or

(D) A serious risk that the person will flee.

(2) If, after a hearing pursuant to the provision of subsection (d) of this section, the judicial officer finds by clear and convincing evidence that no condition or combination of conditions will reasonably assure the appearance of the person as required, and the safety of any other person and the community, the judicial officer shall order that the person be detained before trial.

(c) There shall be a rebuttable presumption that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community if the judicial officer finds by probable cause that the person:

(1) Committed a dangerous crime or a crime of violence, as these crimes are defined in § 23-1331, while armed with or having readily available a pistol, firearm, imitation firearm, or other deadly or dangerous weapon;

(2) Has threatened, injured, intimidated, or attempted to threaten, injure, or intimidate a law enforcement officer, an officer of the court, or a prospective witness or juror in any criminal investigation or judicial proceeding;

(3) Committed a dangerous crime or a crime of violence, as these terms are defined in § 23-1331, and has previously been convicted of a dangerous crime or a crime of violence which was committed while on release pending trial for a local, state, or federal offense;

(4) Committed a dangerous crime or a crime of violence while on release pending trial for a local, state, or federal offense;

(5) Committed 2 or more dangerous crimes or crimes of violence in separate incidents that are joined in the case before the judicial officer;

(6) Committed a robbery in which the victim sustained a physical injury;

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(7) Violated § 22-4504(a) (carrying a pistol without a license), § 22-4504(a-1) (carrying a rifle or shotgun), § 22-4504(b) (possession of a firearm during the commission of a crime of violence or dangerous crime), or § 22-4503 (unlawful possession of a firearm); or

(8) Violated [subchapter VIII of Chapter 25 of Title 7, § 7-2508.01 et seq.], while on probation, parole, or supervised release for committing a dangerous crime or a crime of violence, as these crimes are defined in § 23-1331, and while armed with or having readily available a firearm, imitation firearm, or other deadly or dangerous weapon as described in § 22-4502(a).

(d) (1) The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the government, seeks a continuance. Except for good cause, a continuance on motion of the person shall not exceed 5 days, and a continuance on motion of the attorney for the government shall not exceed 3 days. During a continuance, the person shall be detained, and the judicial officer, on motion of the attorney for the government or *sua sponte*, may order that, while in custody, a person who appears to be an addict receive a medical examination to determine whether the person is an addict, as defined in § 23-1331.

(2) At the hearing, the person has the right to be represented by counsel and, if financially unable to obtain adequate representation, to have counsel appointed.

(3) The person shall be afforded an opportunity to testify. Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but the testimony shall be admissible in proceedings under §§ 23-1327, 23-1328, and 23-1329, in perjury proceedings, and for the purpose of impeachment in any subsequent proceedings.

(4) The person shall be afforded an opportunity to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing.

(5) The person shall be detained pending completion of the hearing.

(6) The hearing may be reopened at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue of whether there are conditions of release that will reasonably assure the appearance of the person as required or the safety of any other person or the community.

(7) When a person has been released pursuant to this section and it subsequently appears that the person may be subject to pretrial detention, the attorney for the government may initiate a pretrial detention hearing by ex parte written motion. Upon such motion, the judicial officer may issue a warrant for the arrest of the person and if the person is outside the District of Columbia, the person shall be brought before a judicial officer in the district where the person is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section.

(e) The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person

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and the community, take into account information available concerning:

(1) The nature and circumstances of the offense charged, including whether the offense is a crime of violence or dangerous crime as these terms are defined in § 23-1331, or involves obstruction of justice as defined in § 22-722;

(2) The weight of the evidence against the person;

(3) The history and characteristics of the person, including:

(A) The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) Whether, at the time of the current offense or arrest, the person was on probation, on parole, on supervised release, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under local, state, or federal law; and

(4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

(f) In a release order issued under § 23-1321(b) or (c), the judicial officer shall:

(1) Include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) Advise the person of:

(A) The penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) The consequences of violating a condition of release, including immediate arrest or issuance of a warrant for the person's arrest; and

(C) The provisions of § 22-722, relating to threats, force, or intimidation of witnesses, jurors, and officers of the court, obstruction of criminal investigations and retaliating against a witness, victim, or an informant.

(g) In a detention order issued under subsection (b) of this section, the judicial officer shall:

(1) Include written findings of fact and a written statement of the reasons for the detention;

(2) Direct that the person be committed to the custody of the Attorney General of the United States for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) Direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) Direct that, on order of a judicial officer or on request of an attorney for the government, the person in charge of the corrections facility in which the person is confined deliver the person to the United States Marshal or other appropriate person for the purpose of an appearance in connection with a court proceeding.

(h) (1) The case of the person detained pursuant to subsection (b) of this section shall be placed on an expedited calendar and, consistent with the sound administration of justice, the

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person shall be indicted before the expiration of 90 days, and shall have trial of the case commence before the expiration of 100 days. However, the time within which the person shall be indicted or shall have the trial of the case commence may be extended for one or more additional periods not to exceed 20 days each on the basis of a petition submitted by the attorney for the government and approved by the judicial officer. The additional period or periods of detention may be granted only on the basis of good cause shown, including due diligence and materiality, and shall be granted only for the additional time required to prepare for the expedited indictment and trial of the person. Good cause may include, but is not limited to, the unavailability of an essential witness, the necessity for forensic analysis of evidence, the ability to conduct a joint trial with a co-defendant or co-defendants, severance of co-defendants which permits only one trial to commence within the time period, complex or major investigations, complex or difficult legal issues, scheduling conflicts which arise shortly before the scheduled trial date, the inability to proceed to trial because of action taken by or at the behest of the defendant, an agreement between the government and the defense to dispose of the case by a guilty plea on or after the scheduled trial date, or the breakdown of a plea on or immediately before the trial date, and allowing reasonable time to prepare for an expedited trial after the circumstance giving rise to a tolling or extension of the 100-day period no longer exists. If the time within which the person must be indicted or the trial must commence is tolled or extended, an indictment must be returned at least 10 days before the new trial date.

(2) For the purposes of determining the maximum period of detention under this section, the period shall begin on the latest of:

(A) The date the defendant is first detained under subsection (b) of this section by order of a judicial officer of the District of Columbia after arrest;

(B) The date the defendant is first detained under subsection (b) of this section by order of a judicial officer of the District of Columbia following a re-arrest or order of detention after having been conditionally released under § 23-1321 or after having escaped;

(C) The date on which the trial of a defendant detained under subsection (b) of this section ends in a mistrial;

(D) The date on which an order permitting the withdrawal of a guilty plea becomes final;

(E) The date on which the defendant reasserts his right to an expedited trial following a waiver of that right;

(F) The date on which the defendant, having previously been found incompetent to stand trial, is found competent to stand trial;

(G) The date on which an order granting a motion for a new trial becomes final; or

(H) The date on which the mandate is filed in the Superior Court after a case is reversed on appeal.

(3) After 100 days, as computed under paragraphs (2) and (4) of this section, or such period or periods of detention as extended under paragraph (1) of this section, the defendant shall be treated in accordance with § 23-1321(a) unless the trial is in progress, has been delayed by the timely filing of motions, excluding motions for continuance, or has been delayed at the request

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of the defendant.

(4) In computing the 100 days, the following periods shall be excluded:

(A) Any period from the filing of the notice of appeal to the issuance of the mandate in an interlocutory appeal;

(B) Any period attributable to any examination to determine the defendant's sanity or lack thereof or his or her mental competency or physical capacity to stand trial;

(C) Any period attributable to the inability of the defendant to participate in his or her defense because of mental incompetency or physical incapacity; and

(D) Any period in which the defendant is otherwise unavailable for trial.

(i) Nothing in this section shall be construed as modifying or limiting the presumption of innocence.