



# PRELIMINARY REPORT

## PRE-ARRAIGNMENT RELEASE PROTOCOLS

### EXECUTIVE SUMMARY

Historically, most arrestees booked into jail in Los Angeles County could obtain release prior to arraignment by posting money bail, notwithstanding their risk to public safety or likelihood to return to court. The amount of money required for release was determined only by the category of the alleged offense as listed in the bail schedule. **A person's access to money determined their release status – not their risk to public or victim safety or of not appearing for court proceedings**. Put differently, a person presumed innocent until proven guilty beyond a reasonable doubt who presented little risk, but was poor, stayed in jail for days, weeks, months, or even years. A person who presented a substantial risk, but with access to money, was released back into the community within hours. Repeated studies from Los Angeles County, the State of California, and other jurisdictions across the country have shown that a system based on wealth rather than risk not only has harmful consequences for individuals booked into jail but also increases reoffending and failures to appear.

We can and should do better to ensure equal access to justice. **Access to freedom prior to conviction should not arbitrarily be based on an arrestee's access to money. Rather, access to freedom prior to conviction should be based on the individual's risk – risk to public and victim safety, and risk of flight.** This is what is required not only by the Constitution of the United States and California, but also by applicable state laws. This is what the public should demand of our criminal justice system.

Since October 1, Los Angeles County has operated pursuant to a pretrial release system that upholds the foundational principles of the Constitution and the law. The [new Pre-Arraignment Release Protocols \(PARPs\)](#) ensure the decision to release most arrestees from jail prior to conviction is **no longer determined by a person's wealth**, but instead **by their risk to public or victim safety and their likelihood of returning to court**. Where traditional bail amounts are tied only to the currently alleged crime, the PARPs now allow judges to also consider the person's criminal history and their individualized risk in determining whether release is appropriate for low-level, non-serious crimes.

Access to freedom prior to conviction should not arbitrarily be based on an arrestee's access to money. Rather, access to freedom prior to conviction should be based on the individual's risk – risk to public and victim safety, and risk of flight.

It is imperative to note that existing law prohibits the new risk-based PARP system to apply to all arrestees. Ironically, those accused of the most serious crimes, including murder, rape and robbery, remain subject to traditional money bail and can pay their way out of jail, regardless of risk to public safety.

As this report will show, **the new PARP system has already shown significant benefits to public safety**. Individuals subject to the new risk-based system are, by and large, temporarily held in jail prior to arraignment when they present a significant risk to public or victim safety or are unlikely to return to court. If the individualized determination of risk conducted by judges reveals that the arrestee is a low risk to public safety or of flight, they are released. From October 1 – 21:

- 85% of the individuals released under PARP were low risk;
- 71% of those temporarily held in jail for arraignment were medium-to-high risk.

Disturbingly, 52% of those who were eligible for traditional money bail because of prohibitions in the law regarding serious and violent crimes, were medium-to-high risk, meaning, if they had access to money, they could buy their way out of jail without any individualized determination of their risk to public safety or likelihood to return to court.

There is simply no doubt that moving away from a money-based system of release to an individualized, fact-based, and risk-based system of release, is not only good for public and victim safety; it also restores a level of fairness and equity to a system that is much maligned and flawed for lacking both.

This report summarizes available data from the first three weeks of a new approach to pretrial release by the Superior Court of Los Angeles County.

## BACKGROUND INFORMATION

When a person is arrested in Los Angeles County and charged with a crime, their first appearance in court is at arraignment. Arraignment typically occurs less than 48 hours after booking but can occur up to four days after arrest if the arrest falls at the beginning of a holiday weekend. It is up to law enforcement officers to decide whether to book the person prior to arraignment into jail or to release the person in the field with a promise to appear at a future court date.

Under the traditional bail schedule model, most arrestees in Los Angeles County who were booked into jail could obtain release prior to arraignment simply by posting money bail – if they could afford to do so. The amount of money required for release was determined by the category of the alleged offense as set forth in bail schedules. Whether a person was released or stayed in jail rose and fell based upon their access to money, not based on their risk to public or victim safety or their likelihood of returning to court. People presumed innocent until proven guilty beyond a reasonable doubt who presented little risk, but were poor, stayed in jail. Those who presented significant risk, but had access to money, were released back into the community almost instantly.

In 2020, the Court adopted the Pretrial Risk Evaluation Program (PREP), a pilot program that allowed the Court to make individualized risk-based release decisions for certain arrestees. This is the same tool that the magistrate judges use today to assess risk. During the COVID-19 Pandemic, the Court adopted an Emergency Bail Schedule (EBS) pursuant to the Judicial Branch’s Emergency Rules Related to the COVID-19 Pandemic. And in May of this year, a court order issued in *Urquidi v. City of Los Angeles* found the traditional bail schedules as applied unconstitutional and prohibited the two largest law enforcement agencies in Los Angeles County (LAPD and LASD) from applying traditional bail schedules, resulting in the inconsistent pre-arraignment enforcement of bail within Los Angeles County.

Based on the Court’s experience with the PREP pilot program, experience when the EBS was in effect, the findings resulting from extensive scholarly research regarding pre-arraignment decisions, the recent court decision in *Urquidi* that has resulted in non-uniform pre-arraignment release decisions in LA County, and the experience of many other courts statewide and nationwide that have adopted innovative pretrial release protocols, on October 1, 2023, the Court adopted new bail schedules and associated PARPs, which eliminated traditional money bail for many non-violent, non-serious felonies and misdemeanors. Instead, release status for these alleged crimes is determined by an individualized determination by a judge of their risk to public and victim safety and likelihood of returning to court.

The new bail schedules and associated PARPs provide guidance to law enforcement whether an arrestee should be:

- Booked into jail and released; (Cite and Release (CR) or Book and Release (BR));
- Released only after a magistrate judge’s review (Magistrate Review – (MR)); or
- Pursuant to existing law, eligible for release on traditional money bail.

*\*As required by law, the new bail schedules continue to provide traditional money bail eligibility for offenses that are designated by statute as **serious and violent offenses**.*

*\*Persons arrested while out on Felony Probation, Parole or Post Release Community Supervision are referred to a magistrate judge for review.*

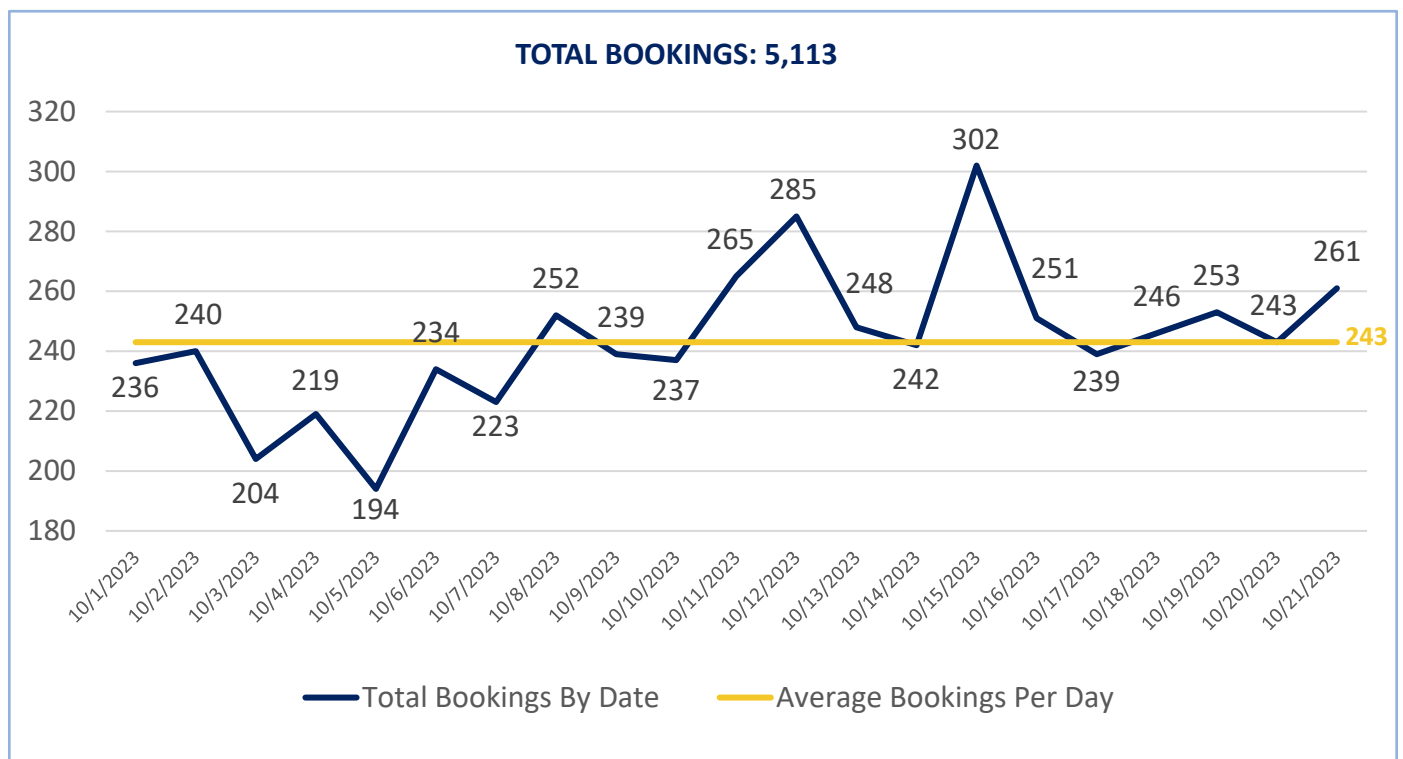
It is important to note that, as has been the case for decades, law enforcement may request review by a magistrate judge if they have additional or supplemental facts and information that would suggest a person arrested for an offense designated as CR or BR is an enhanced risk to public or victim safety or will not show up to court. This process is known as “bail deviation.” Law enforcement often has additional information about an arrestee, beyond the nature of the crime committed, that is not available to the magistrate judge at the time of the bail determination. This includes, but is not limited to, information about arrests that have not yet been formally filed as charges against the individual, particular facts about the individual’s alleged crime, and other criminal history outside of Los Angeles County. Bail deviation simply requires law enforcement to place a call to the County’s Probation Department (operating 24 hours a day, seven days a week) to request an individualized determination of risk.

For those arrestees subject to MR, the Court’s magistrate judges are available 24 hours a day, seven days a week, to conduct individualized risk assessments, which consider the offense the person was arrested for along with their criminal history and other information to determine the arrestee’s risk to the public or victim safety and their likelihood of showing up to court. Based on the individualized risk assessment conducted by the magistrate judge, the magistrate judge can order release of the individual on their own recognizance, release with non-financial conditions, or the individual held until arraignment if no release conditions exist that would protect the public or victim safety or assure the individual’s appearance in court.

## DATA FROM THE FIRST THREE WEEKS OF THE NEW BAIL SCHEDULES

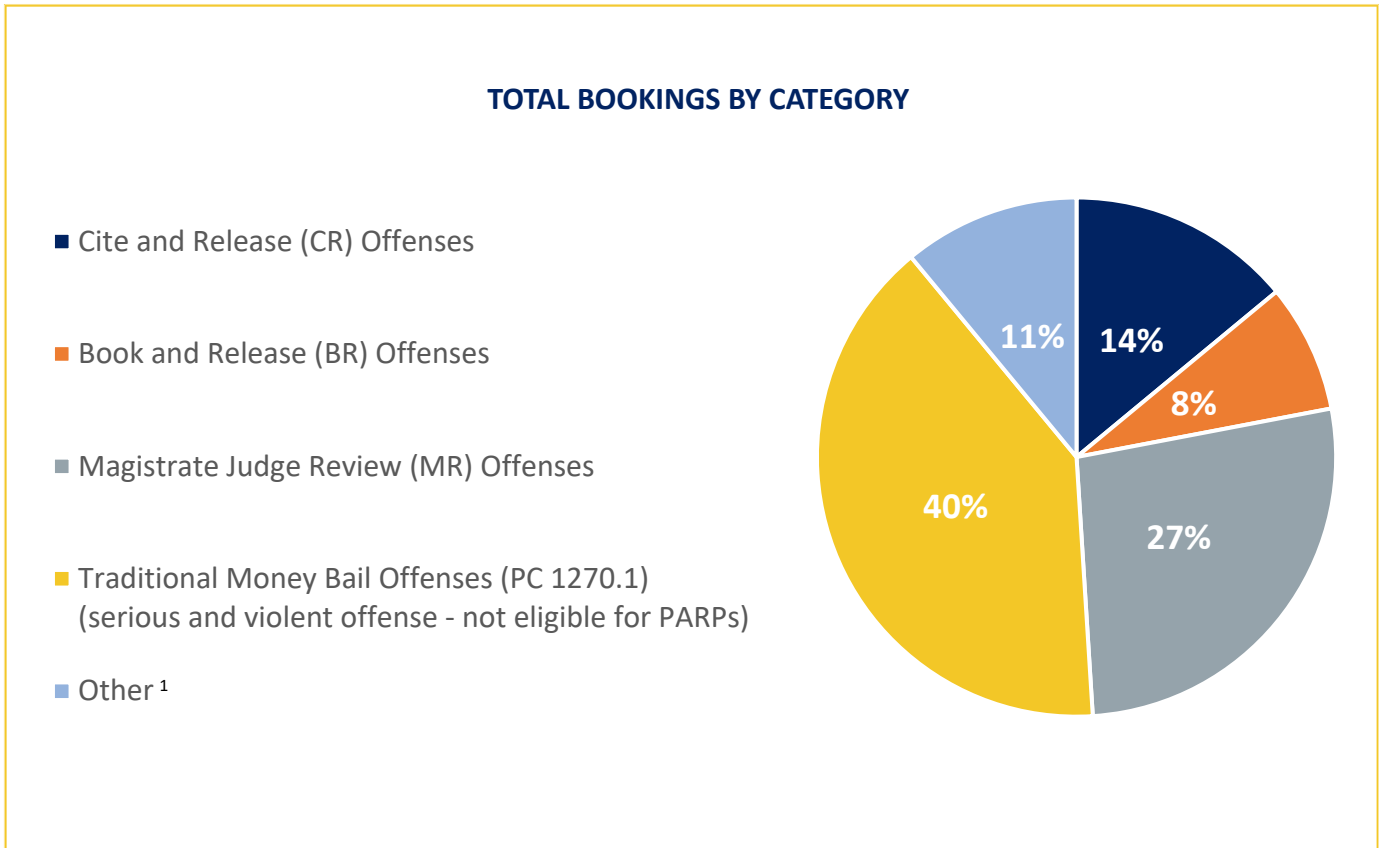
This report examines the 5,113 bookings between midnight, October 1 and 11:59 p.m., October 21, 2023.

A *booking* occurs when, after an arrest, the law enforcement officer fingerprints the individual. The data here does not count unique individuals. This sample does not include people who were cited and released in the field by law enforcement or those arrested on an arrest warrant. It does include people arrested for offenses designated as CR who are, nonetheless, booked.



The average number of daily bookings (243) is consistent with the average number of daily bookings over the previous 12-month period.

Individuals who were booked into jail fell into five main categories: CR, BR, MR, traditional money bail, and Other. The majority of the bookings were for crimes that are not eligible for review under the PARPs, meaning serious and violent crimes.



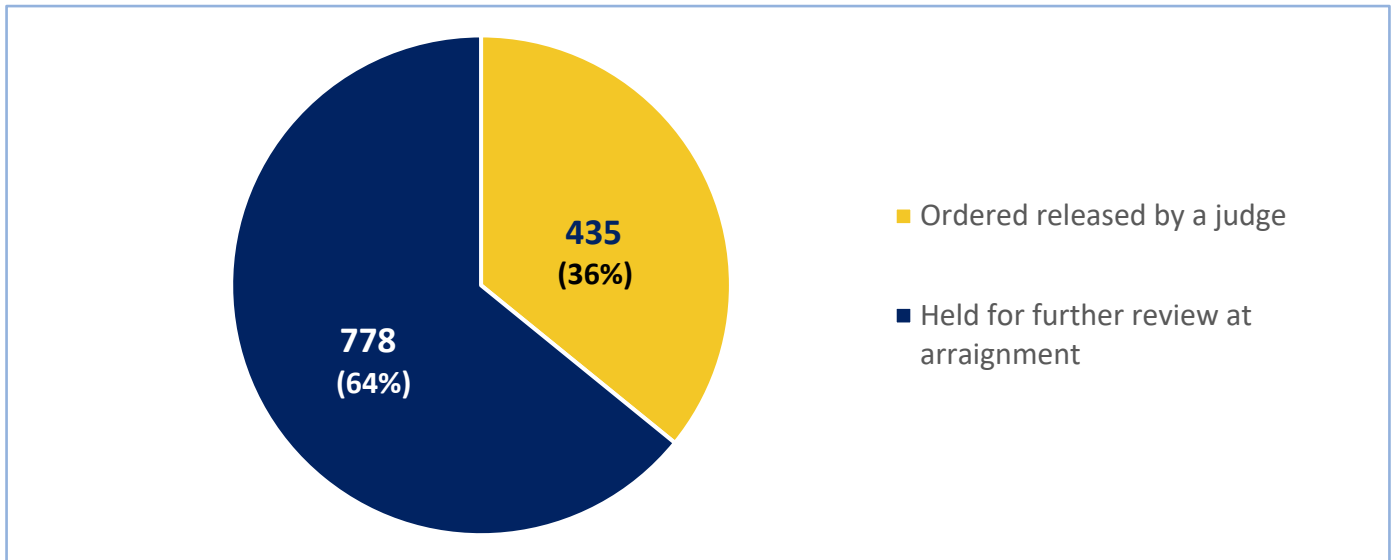
*\*Note that arrestees are booked at law enforcement’s discretion, and the data here consider only those persons who were actually booked by law enforcement.*

As noted previously, the bail schedules and PARPs provide the option for law enforcement to request enhanced review through bail deviation for any offense designated in the bail schedules as CR or BR. When the request is made, a magistrate judge conducts an individualized review of the arrestee’s risk and determines the appropriate release status, if any, based on the risk assessment. Despite having the option to do so, law enforcement requested enhanced review only 133 times, **or 3% of the time**. With regard to the other 97% of bookings, law enforcement did not request enhanced review and permitted the bail schedules and PARPs to operate as written.

<sup>1</sup> Bookings categorized as “Other” include bookings on charges that are not listed in the bail schedules. For a misdemeanor arrest charge, they are deemed CR. For a felony arrest charge, they are deemed BR.

## OUTCOMES BY RELEASE CATEGORY <sup>2</sup>

During the first three weeks after implementation of PARP, magistrate judges reviewed 1,213 bookings and assessed the risk of each arrestee for the purpose of determining the appropriate release conditions for that individual. Of those reviewed, magistrate judges ordered 64% temporarily held until arraignment because, based on their risk, there were no conditions available to the magistrate judge that would reasonably ensure the safety of the victim or public or the appearance of the arrestee at arraignment.



## OUTCOMES BY RISK

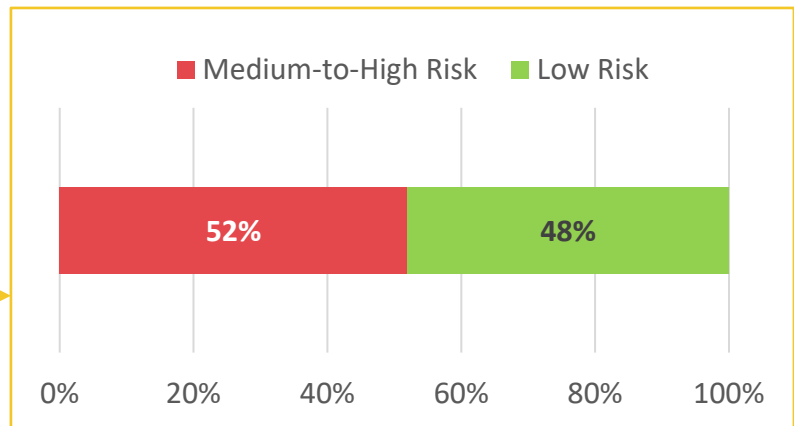
Paramount to determining the appropriate release status, if any, are public and victim safety. Therefore, data about the risk of reoffending for individuals who were eligible for release or released are informative and important. The risk of reoffending fell into three distinct outcomes based on the type of release.

Individuals who were eligible to buy their freedom through traditional money bail and who were arrested for more serious and violent offenses presented more significant risk as compared to those who were ordered released after a magistrate judge conducted an individualized determination of the arrestee's risk. Concomitantly, those who were ordered temporarily held by the magistrate judge until arraignment presented more significant risk factors. By way of comparison, prior to the imposition of PARP, pursuant to traditional bail schedules, these very same persons would have been eligible for traditional money bail and could have purchased their freedom, or they would have been released pursuant to long-standing law enforcement policies based on the category of offense. This is worthy of repetition – under the new bail schedules, those who present substantial risk cannot simply buy their way to freedom; conversely, under the old system, persons who present a substantial risk could have been back in the community within hours.

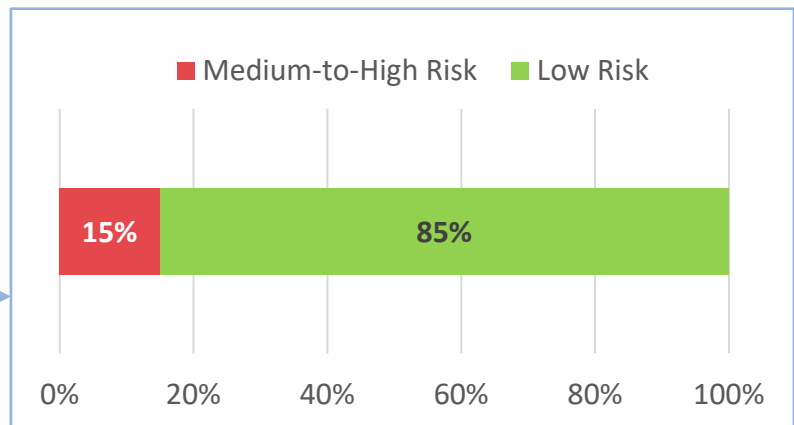
<sup>2</sup> Note that this data set does not capture the actual custody status of individuals. Individuals eligible for traditional money bail may or may not have obtained the funds to secure their release, and individuals ordered temporarily held until arraignment by the magistrate judge may have been released by law enforcement prior to arraignment. Some individuals may be released or held lawfully for other reasons.

## Risk of Reoffending During Release <sup>3</sup>

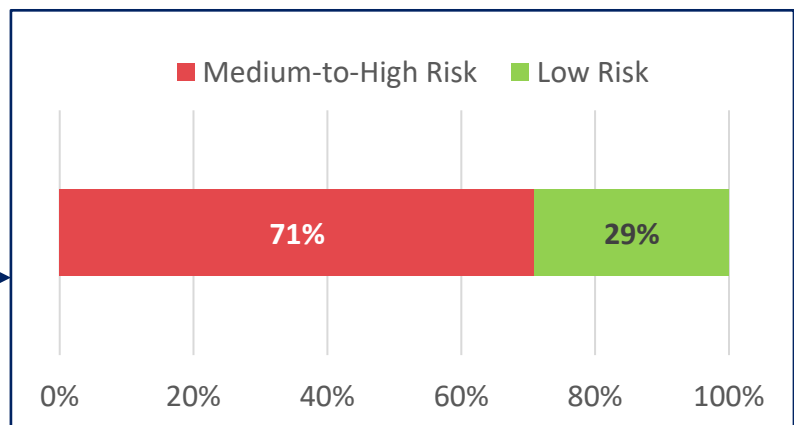
52% of those eligible for **traditional money bail** were medium-to-high risk while 48% were low risk.



15% of those ordered **released by a magistrate judge** were medium-to-high risk while 85% were low risk.



71% of those **held** were medium-to-high risk while 29% were low risk.



## REARRESTS

One of the key measures to examine regarding the success of a bail system is the extent of rearrest for individuals who are released pending resolution of their case. Notwithstanding the short period in which PARP has been in effect, this data is indicative of the success of the PARPs so far.

97.5% of individuals were booked only once during the first three weeks under the new bail schedules. Nearly half of those rebooked were persons who had been released on traditional money bail, meaning they were arrested for a serious or violent offense. Only two individuals ordered released after a magistrate judge's individualized review of the arrestee were rebooked during this period.

<sup>3</sup> Risk of reoffending is calculated on the basis of an individual's previous criminal history using a scientifically validated risk assessment tool: the Public Safety Assessment (PSA). Information on the PSA can be found here: <https://advancingpretrial.org/psa/about/>. A validation of the PSA in California can be found here: <https://www.courts.ca.gov/sb36.htm>

### A

#### **The PARPs enhance public safety.**

Those arrestees subject to MR, either because their offense is categorized as MR or because law enforcement chooses to elevate the arrestee to MR, are now subject to a detailed judicial review which goes beyond what occurs with traditional money bail. For eligible arrestees, not only is a judge now considering the current arrest, they are also considering the person's risk to public safety and the likelihood that the person, if released, will show up for their court appearances. This results in release decisions based on reducing risk to public and victim safety and increasing likelihood of the arrestee appearing in court, not on access to money. Release decisions based on access to money rather than risk do not take into account risk to the community/public safety or risk of non-appearance at court.

### B

#### **Money bail is antithetical to public safety.**

Disturbingly, the majority of those arrested and eligible for traditional money bail release (because they were arrested for a serious or violent crime) were determined to be medium-to-high risk of committing a new offense: 52%, compared to only 15% of those released under PARP.

In fact, 18% of those persons eligible for traditional money bail were at high risk of reoffending, and many of whom were rebooked after purchasing their release. This last group includes people arrested for such offenses as:

- Attempted murder;
- Robbery;
- Domestic battery or domestic violence;
- Assault with a deadly weapon; and
- Driving while under the influence and causing injury to another person.

By statute, these individuals could buy their freedom regardless of their risk to public safety or non-appearance at court.

### C

#### **Those subject to MR who were identified as medium-to-high risk were generally temporarily held for arraignment:**

- Of those arrestees subject to MR who were temporarily held prior to arraignment, 71% were medium-to-high risk.

### D

#### **Those subject to MR who were identified as low risk were generally released:**

- Of the people ordered released by a magistrate judge, 85% were low risk.
- Of the people held for arraignment, only 29% were low risk.
- Only two of those were rebooked for an offense after being ordered released subsequent to magistrate review.

## CONCLUSION

The new PARP system appropriately and effectively balances the need for public safety with the constitutional rights of the accused. In those cases in which PARPs apply, the vast majority of arrestees who are booked and assessed by a magistrate judge as being a risk to public or victim safety, or unlikely to show up for court, are properly being temporarily held until arraignment. Alternatively, where PARPs apply, most arrestees who are booked and assessed as having little risk to the public or victim safety and likely to show up to court are being released.

Very low rearrests rates thus far are encouraging. During the sample period, an overwhelming majority of arrestees booked into jail were not rearrested, and of those who were, about half were released on traditional money bail (serious or violent offenses), not under the PARPs.

More law enforcement training may be needed. Data indicates that law enforcement is rarely availing themselves of the bail deviation option of escalating CR or BR offenses to an MR if they believe the arrestee poses a significant threat to public or victim safety or is a flight risk. When law enforcement invoked the bail deviation process, 98% of the individuals were held, indicating that law enforcement, though rarely, is using the process appropriately. Low usage of the bail deviation tool suggests that more training is needed to ensure law enforcement officers in the field understand this option and use it appropriately.

Lastly, data indicates that traditional money bail is antithetical to public safety. Of concern is the fact that nearly half the individuals arrested during the sample period were subject to traditional money bail, not PARP. Despite half of that population having a medium-to-high risk of reoffending, all of those individuals had the option of paying their way out of jail, regardless of their risk.

In conclusion, early data suggests the new PARP system is effective in protecting our communities and reducing failures to appear. What is fundamental to the new PARP system is the recognition that release decisions should be based on individualized assessments of an arrestee's risk to public and victim safety and likelihood of showing up to court and not based on a person's access to money. The Court remains committed to working collaboratively with justice partners, including law enforcement, municipalities and elected officials, to continue to improve the new system using data-informed decision-making tools and processes. The Court remains hopeful that over time, leveraging the power of collaboration and data transparency will reinforce the inherent value of a pretrial release system that does not condition release on access to financial resources, but rather on individual risk.