American Indian Law Journal

Volume 4
Issue 2 *Volume IV, Issue II*

Article 1

5-15-2016

Proposals for Resolving Reservation Residents' Bail Catch-22: A Case Study of the St. Regis Mohawk Indian Reservation & the Town of Bombay, New York

John C. Carroll
BCF LLP

Proposals for Resolving Reservation Residents' Bail Catch-22: A Case Study of the St. Regis Mohawk Indian Reservation & the Town of Bombay, New York

Cover Page Footnote
B.A. History, University of New Hampshire, J.D. Syracuse University. Attorney at BCF LLP in Montréal, Québec and Fellow with the Sustainable Economies Law Center. The author would like to thank Professor Carrie Garrow of Syracuse University and Chief Judge P.J. Herne of the St. Regis Mohawk Tribe for their guidance and invaluable assistance in researching this Article.

PROPOSALS FOR RESOLVING RESERVATION RESIDENTS' BAIL CATCH-22: A CASE STUDY OF THE ST. REGIS MOHAWK INDIAN RESERVATION & THE TOWN OF BOMBAY, NEW YORK

John C. Carroll*

CONTENTS

---

* B.A. History, University of New Hampshire, J.D. Syracuse University. Attorney at BCF LLP in Montréal, Québec and Fellow with the Sustainable Economies Law Center. The author would like to thank Professor Carrie Garrow of Syracuse University and Chief Judge P.J. Herne of the St. Regis Mohawk Tribe for their guidance and invaluable assistance in researching this Article.

INTRODUCTION

The St. Regis Mohawk Indian Reservation (SRMIR) is among the largest Haudenosaunee Tribal Reservations and represents the U.S. side of a trans-border Mohawk community that exists on both banks of the St. Lawrence River.[1] The SRMIR, with a population of 3,228 according to the 2010 U.S. Census,[2] exists in close proximity to the Town of Bombay (which has only about a third of the population).[3] Although State of New York ("New York," or "the State") has concurrent jurisdiction with all Indian Nations within its borders,[4] the St. Regis Tribal Government has greatly expanded its judicial services over the last decade—a trend which continues to the present.[5] Nevertheless, the relatively small size of the SRMIR means that residents can find themselves charged with offenses before the Town of Bombay Court, which, depending on the seriousness of the charge, may result in their arrest and detention.

---

[1] The adjacent Canadian First Nation territory is the Akwesasne Reserve.
[2] *See* U.S. CENSUS BUREAU, *American Fact Finder*, CENSUS, http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml (typing in St. Regis Mohawk Reservation, Franklin County, New York into the Community Facts search bar provides this information) (last visited May 11, 2016).
[3] *Id.* (changing Community Facts search to Bombay town, Franklin County, New York).
[4] 25 U.S.C.A. § 232 (West 2004) (providing that New York has jurisdiction over offenses committed on Indian Reservations "to the same extent as . . . over offenses committed elsewhere in the State as defined by the laws of the State").
[5] *See generally* SAINT REGIS MOHAWK TRIBE, *Tribal Police*, SRMT-NSN, http://www.srmt-nsn.gov/divisions/tribal_police/ (last visited May 11, 2016); SAINT REGIS MOHAWK TRIBE, *Tribal Court*, SRMT-NSN, http://www.srmt-nsn.gov/government/tribal_court/ (last visited May 22, 2016).

The concerns of the treatment of Indians by non-Indian police and before non-Indian courts are by no means new ones and continue to be important issues.[6] However, the plight of SRMIR residents points to another area of concern which has received relatively little attention: the ability of Indian defendants to make bail.

On almost all Indian Reservations the alienation of tribal land is restricted either by the Federal Government[7]—which acts as trustee—or, by the tribe itself.[8] While such restrictions have an understandable purpose, given the history of dispossession and displacement of Indian tribes, it creates an unusual problem for Indian defendants: the collateral typically used for bail bonds is real estate and their fee interest in their lands is inadequate for this purpose.[9]

This Article aims to briefly sketch the contours of this problem using the situation of St. Regis Reservation residents as an exemplary case before proposing and evaluating some concrete responses to the issue. Part I discusses the mechanics and requirements of New York's bail laws and their application by New York courts. Here the conundrum facing SRMIR residents will also be portrayed and some of the negative effects discussed. Part II briefly examines some of the constitutional questions regarding the application of New York's bail laws to Indian Reservation residents

---

[6] *See generally* Timothy J. Droske, *Correcting Native American Sentencing Disparity Post-Booker*, 91 MARQ. L. REV. 723, 740–48 (2008); Gregory D. Smith, *Disparate Impact of the Federal Sentencing Guidelines on Indians in Indian Country: Why Congress should run the Erie Railroad into the Major Crimes Act*, 27 HAMLINE L. REV. 484, 484–88 (2004). A relatively recent scandal in Saskatoon, Saskatchewan shows that maltreatment of Indians by police is very much a North American phenomenon. *See* TWO WORLDS COLLIDING (National Film Board of Canada 2004) (documentary concerning the "starlight tours" deaths, where Saskatoon Police allegedly arrested Indians and then abandoned them outside the city without proper clothing to die).

[7] *See, e.g.*, 25 U.S.C.A §§ 391, 396c, 465 (West 2014); *see generally* Johnson v. M'Intosh, 21 U.S. 543 (1823).

[8] *See, e.g.*, ST. REGIS MOHAWK TRIBE, *St. Regis Mohawk Tribe Land Dispute Resolution Ordinance*, SRMT-NSN (2009), http://www.srmt-nsn.gov/_uploads/site_files/LandDisputeResolutionOrdinance_120309.pdf (the Tribe's "Land Dispute Resolution Ordinance," Section V provides that "[t]he power to make land assignments and to issue Use and Occupancy Deeds is vested in the St. Regis Mohawk Tribal Council" and that "Reservation land may not be sold to, held by or in any way relinquished to a non-Member of the St. Regis Mohawk Tribe") (last visited May 11, 2016).

[9] *Id.*

and suggests some approaches to a constitutional challenge, including an assessment of its prospects for success. Part III then turns to the subject of possible reforms, considering successful examples from inside New York and from other jurisdictions, including Pre-Trial Risk Assessment procedures, Charitable Bail Bond Organizations, and various "Alternative to Detention" Programs. Part IV then evaluates the practicability and effectiveness of these reform projects in light of the St. Regis Mohawk Tribe's needs and circumstances. The author hopes that this analysis, although factually limited to the case of the St. Regis Mohawk Tribe, will provide insight into possible approaches to resolving a problem that faces the members of other Indian tribes as well.

I. THE INDIAN DEFENDANT'S DILEMMA: BAIL BONDS AS A NON-OPTION

A. New York Bail Law & Methods of Posting Bail

Bail in New York, in the purest technical sense, is meant only to ensure that the defendant appears at the next scheduled court appearance, and New York law does not provide for consideration of any risks to the community.[10] Otherwise, the defendant should be released on his own recognizance, particularly for "non-felony" offenses.[11] New York is, in fact, one of only two states that does not provide for a public safety consideration when making bail determinations, although a recent study suggests that judges do in fact take public safety into consideration in their decisions.[12] Thus, residents of other states considering the case study in this Article should keep in mind that their jurisdiction may require consideration

---

[10] N.Y. CRIM. PROC. § 510.30(2)(a) (2012) ("the court must consider the kind and degree of control or restriction that is necessary to secure [defendant's] court attendance when required"); N.Y. CRIM. PROC. § 520.10 (2006).

[11] *See* HUMAN RIGHTS WATCH, *The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City*, HRW, 10 (Dec. 2, 2010), https://www.hrw.org/sites/default/files/reports/us1210webwcover_0.pdf (citing N.Y. CRIM. PROC. § 530.20).

[12] Shima Baradaran & Frank L. McIntyre, *Predicting Violence*, 90 TEX. L. REV. 497, 548–49 (2012). The study noted, however, that while New York judges appeared to be taking public safety into consideration, this factor was far less important than flight risk and carried far less weight than in other jurisdictions. *Id*.

of this additional factor, which is not provided for under New York law.

The forms of permissible bail in New York are actually very liberal, providing a range of options: cash bail, insurance company bail bond, secured surety bond, secured appearance bond, partially secured surety bond, partially secured appearance bond, unsecured surety bond, unsecured appearance bond, and even posting bail by credit card.[13] If the court chooses to fix bail in any manner other than unsecured bonds it must provide for at least two forms of posting.[14] The permissive forms of some of these options should be noted. For instance, the unsecured appearance bond is a written promise executed by the defendant whereby the defendant will agree to pay bail (an agreed amount) if they fail to make a scheduled court appearance. A variation on this form of bail is to permit the defendant to post a fraction of the agreed to bail amount, and should the defendant fail to make a scheduled court appearance, the remaining portion will become due (a partially secured appearance bond). Another simple variation is to permit a third person to employ these mechanisms on behalf of the defendant, even without any deposit or lien upon property (an unsecured surety bond).[15]

It should be noted that when these statutory mechanisms were approved in 1972 the New York State Legislature ("the Legislature") specifically stated that it was responding to the fact that "many defendants are incarcerated prior to trial for lack of collateral, even though the court may have been inclined to and under the impression that release of such defendants following the fixing of relatively low bail."[16] In New York, though, there seems to be a reluctance by the courts to rely upon mechanisms "other than cash or secured bond."[17]

For the purposes of this Article, it is important to briefly sketch how insurance company bail bonds ("bail bonds") are obtained. Defendants that lack sufficient funds to post cash bail will contract

---

[13] *See* N.Y. CRIM. PROC. § 520.10 (2006) (noting that credit card use is only authorized on vehicle and traffic law matters).
[14] N.Y. CRIM. PROC. § 520.10(2)(b) (2006).
[15] *See* HUMAN RIGHTS WATCH, *supra* note 11, at 12 (citing N.Y. CRIM. PROC. § 520.10 (2006)).
[16] *Id.* (citing N.Y. legislative record on bail mechanisms).
[17] *Id.*

with Bail Bond Agencies, which in exchange for a fee and with adequate collateral will secure the release of the defendant. Real property is the typical source of collateral for such a bond because it offers Bail Bond Agencies the security of immovable, identifiable property of relatively stable and ascertainable value.

B. Indian Land Trusts & Restrictions on Alienation: The Non-Viability of Bail Bonds

The territory of Tribal Reservations is typically held in trust by the United States government for the benefit of those tribes,[18] although the St. Regis Mohawk Tribe is the entity imposing restrictions on land within its territory.[19] While individual tribal members may be permitted to live on or use the land much the same as fee holders in other U.S. states, subject to federal and tribal regulation, they are not permitted to sell the land.[20] Indeed, in the case of lands held in trust by the Federal government, even the tribe itself lacks this power.[21]

The upshot of this is if a resident of an Indian reservation like SRMIR is arrested and brought before a court in the state of New York, their bail options are severely limited because they are unable to use their land as collateral for a bail bond. Judges typically favor providing defendants with two options, cash bail or secured bond, and typically set the secured bond at a far greater amount than cash bail.[22] For an SRMIR resident, however, this effectively means that

---

[18] *See* 25 U.S.C.A § 391 (West 2016) (permitting the President to "continue such restrictions on alienation for such period as he may deem best"); 25 U.S.C.A § 396 (West 2016) (requiring lessees of "restricted Indian lands . . . for mining purposes" to "furnish corporate surety bonds"); and 25 U.S.C.A § 465 (West 2016); *see also* Jessica A. Shoemaker, Comment, *Like Snow in the Spring: Allotment, Fractionation, and the Indian Land Tenure Problem*, 2003 WISC. L. REV. 729, 732–40 (2003) (discussing the problem of "fractionation" of land on Indian Reservations resulting from Federal Laws and policies and suggesting possible solutions); Padraic I. McCoy, *The Land must hold the People: Native Modes of Territoriality and Contemporary Tribal Justifications for Placing Land into Trust through 25 C.F.R. Part 151*, 27 AM. INDIAN L. REV. 421, 424–45 (2002–2003) (offering an excellent overview of the development of Indian Reservations and the conflicting concepts of territorial sovereignty).

[19] *See* ST. REGIS MOHAWK TRIBE, *supra* note 8.

[20] 25 U.S.C.A § 391 (West 2016).

[21] *Id.*

[22] *See, e.g.*, HUMAN RIGHTS WATCH, *supra* note 11, at 38–39 (examining the prevailing bail practices in New York City).

they are always compelled to come up with the cash bail if it is required.

Recent data obtained by the SRMIR Tribal Court from the Town of Bombay Court sheds some light on the scale of this problem.[23] The figures used here represent data during the period from April 1–July 31, 2014 and include all defendants arrested and brought before the Town of Bombay Court during that time.[24] In this period, the Town of Bombay Court set bail for 250 defendants, often for amounts of $10,000 or more.[25] Among the 160 persons held in jail and eventually *released*, 35 were Native Americans, 11 were black, and the remainder were white.[26] While white defendants typically received an average cash bail amount of $6,896 and a bond amount of $13,778, the Native Americans released received on average $10,320 and $20,382, respectively.[27] Regarding offenses charged, the Native Americans had a higher average number of misdemeanors (an average of 1.41 versus 0.877 for whites), while whites had a higher number of felonies (an average of 0.67 versus 0.54 for Native Americans).[28] While one might ascribe some of the deviations in bail and bond amounts (49 percent and 47 percent, respectively) to the higher number of misdemeanor charges amongst Native Americans, the higher felony rate among the white defendants raises some questions, as felonies are regarded as the more *serious* crimes.[29] Even if the differences in bail and bond amounts are ultimately justified, the fact remains that SRMIR residents facing high cash bail have far less room to maneuver than their white counterparts, who may at least be able to obtain a bond if they are unable to pay the cash bail.

---

[23] The data in question was compiled by the SRMIR Tribal Court Clerk in the fall of 2014. *See infra* APPENDIX I, II.
[24] *See infra* APPENDIX I—*Charges & Bail Amounts by Race.*
[25] *Id.*
[26] *See infra* APPENDIX I (the figures for black and "other" defendants have not been included in the Appendix because they were not relevant for further statistical analysis, but remain on file with the author).
[27] *Id.* (it should be emphasized that these are *average* figures—bail and bond amounts are usually whole dollar amounts, *e.g.*, $1000, $1500, etc.).
[28] *Id.*
[29] *Id.*

II. CONSTITUTIONAL QUESTIONS REGARDING THE NEW YORK BAIL LAWS

Reservation residents (who are usually also Indians) form a class of persons for whom bail bonds are often a foregone conclusion and are arguably owed a different set of alternatives. Indeed, the requirement that at least two forms of bail be set was specifically aimed to ensure that criminal defendants were not consigned to pre-trial custody simply because the form of bail set was unattainable.[30] The plight of Indian defendants in such situations not only illustrates a contradiction within the law itself but arguably rises to the level of violating the 14th Amendment's Equal Protection Clause as a result of its disparate impact on a recognized racial group.[31]

A. Nominal Intent of § 520.10 Versus Its Execution in Practice

The Legislature's express purpose in providing alternative forms of bail was to enable judges to provide defendants with methods to secure their release during the pre-trial phase of proceedings, even if they were unable to make the cash amount or obtain a traditional bail bond.[32] While the language of § 520.10 could conceivably support an interpretation by which a judge could specify a single form of bail, the New York Court of Appeals determined in *People ex rel. McManus v. Horn* that a judge's options were restricted: 1) setting a bail amount without any specified method or 2) specifying two or more methods as alternatives to the defendant.[33] However, this decision does not affect § 520.10(2)(b), which permits judges designating alternative bail forms to specify different amounts for the different forms. Instead, this permits judges to provide for bail forms that are "alternative" in only the most technical of senses: if a judge specifies that cash bail is $20,000 and that a partially secured appearance bond is $200,000, he has essentially required the

---

[30] N.Y. CRIM. PROC. § 520.10(2)(b) (2006); HUMAN RIGHTS WATCH, *supra* note 11, at 12 (citing the N.Y. legislature's express statement of purpose in altering the statute).
[31] U.S. CONST. amend. XIV, § 1; Washington v. Davis, 426 U.S. 229, 240–41 (1976).
[32] *See* HUMAN RIGHTS WATCH, *supra* note 11, at 12 (citing N.Y. CRIM. PROC. § 520.10 (2006)).
[33] New York *ex rel.* McManus v. Horn, 967 N.E.2d 671, 673–74 (N.Y. 2012).

defendant to come up with $20,000 regardless of bail form because the "partial security" on the bond equals 10% of the total amount.[34]

Furthermore, the bail forms that do not require defendants to sign over money up front, *e.g.*, unsecured surety or unsecured appearance bonds, are rarely utilized by judges in New York.[35]

B. Sketch of a Potential Constitutional Challenge to the New York Bail Laws

The mere fact that a given defendant cannot pay the bail amount in question, whether in cash or through some form of secured bond, does not automatically render the bail unconstitutional for being "excessive."[36] However, for reservation residents, such bonds might be unattainable entirely independent of the amount of bail because the chief form of collateral, real property, is unavailable for that purpose.[37] Given the discrete and disparate effect of New York's bail laws, and especially its judges' application of those laws to Indian defendants, there exists a real possibility that presenting Indians with such "non-alternatives" in obtaining bail constitutes precisely the kind of "invidious discrimination" that the U.S. Constitution's Equal Protection Clause prohibits.[38]

As an initial matter, it is important to understand that NY CPL § 520 does not explicitly target Indians or reservation residents and as such, "strict scrutiny" by courts on the basis of a "suspect classification" is not a given.[39] However, in *Yick Wo v. Hopkins* the

---

[34] *See* Maureen Wynne, Note, *Eighth Amendment Right to Reasonable Bail:* McManus v. Horn*:The Legality of Setting a Single Form of Bail: Court of Appeals of New York,* People ex rel. McManus v. Horn *(decided March 22, 2012)*, 29 TOURO L. REV. 1537, 1552 (2013).

[35] Justine Olderman, *Fixing New York's Broken Bail System*, 16 CUNY L. REV. 9, 18 (2012).

[36] *See, e.g.*, Jennings v. Abrams, 565 F. Supp. 137, 138 (S.D.N.Y. 1983) ("simply because a defendant cannot furnish the bail as set by the court" does not mean "it is excessive"); New York v. Burton, 569 N.Y.S.2d 861, 866 (N.Y. Sup. Ct. 1990) (the fact that homeowner's property was insufficient to cover bail did not render it an equal protection violation given "the absence of evidence of invidious distinctions between classes of citizens").

[37] *See, e.g.*, 25 U.S.C.A §§ 391, 465 (West 2016).

[38] U.S. CONST. amend. XIV, § 1; c*ompare* Jennings v. Abrams, 565 F. Supp. 137, 138 (S.D.N.Y. 1983)*; see also* Schilb v. Kuebel, 404 U.S. 357, 364–65 (1971) (discussing the standard for addressing possible equal protection violations).

[39] *See generally* Korematsu v. United States, 323 U.S. 214, 216 (1944) (first mentioning of "suspect classification").

Supreme Court held that even a facially neutral law may violate equal protection if it is unequally applied.[40] The Court noted:

> Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.[41]

The Supreme Court's decision in *Washington v. Davis* expanded on this concept, providing that plaintiffs could point to disparate impact on a protected class as a result of the operation or application of a given law to show discriminatory intent.[42]

While there is ample evidence to show that the Legislature's motivation in crafting the current bail statutes was to permit and encourage judges to utilize forms of bail that did not require cash or high bond amounts, and thereby ensuring that more defendants obtained pre-trial release,[43] judges in New York courts persist in setting bail in the form of cash or secured bonds (rarely making use of the alternative forms permitted them to by § 520).[44] The disparate impact that this decision has on Indian defendants can be statistically shown[45] and could form the basis of a challenge under the equal protection clause.[46] Having made a *prima facie* case, the burden would then shift to the State to show that the procedures in place were not only racially neutral but that the result in question was a consequence of their proper application.[47]

---

[40] Yick Wo v. Hopkins, 118 U.S. 356, 374–75 (1886).
[41] *Id.*
[42] *Davis*, 426 U.S. at 240–41.
[43] HUMAN RIGHTS WATCH, *supra* note 11, at 13.
[44] *Id.* at 17.
[45] The information gleaned by the SRMIR Tribal Court from the Town of Bombay Court records, cited in this Article, represent an admittedly limited data sample, but indicate the general contours of the problem; discussions by the author with Tribal Court Judges familiar with the situation indicates that the inability of Indian defendants to obtain counsel is a chronic issue. *See infra* APPENDIX I.
[46] *See generally Yick Wo*, 118 U.S. 356, 374–75; *Davis*, 426 U.S. at 240–41.
[47] *Davis*, 426 U.S. at 241.

This is not to say that such a constitutional challenge to the law is destined for success. The State would have no difficulty showing facial neutrality, as there is no "suspect classification" at work.[48] The State could also make a strong case for neutral application, analogizing the plight of Indian Reservation residents to that of defendants who lack sufficient property, real or otherwise, to use as collateral for a bail bond. According to this line of reasoning, there is no difference between Indian defendants unable to obtain bail bonds because of fee restrictions on their land and defendants unable to afford cash bail who have no property to put up for collateral.[49] Moreover, "discriminatory *intent*" remains the watchword of the disparate impact analysis developed in *Washington v. Davis*—the entire purpose of examining the effects of a facially neutral law is to ascertain any unstated or concealed discriminatory intent. In the Court's words:

> Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution. Standing alone, it does not trigger the rule . . . that racial classifications are to be subjected to the strictest scrutiny and are justifiable only by the weightiest of considerations.[50]

The Court later noted that "[l]egislatures are presumed to have acted constitutionally . . . and their statutory classifications will be set aside only if no grounds can be conceived to justify them."[51] Here, the Legislature's stated intent was not only racially neutral but in fact made no classifications at all—§ 520 applies to all criminal defendants without exception. Unless the disparity in the number of Indian defendants who fail to obtain release versus defendants from other racial groups is so dramatic as to permit no other conclusion, it appears unlikely that § 520 would be deemed unconstitutional in its application to Indian defendants.[52]

---

[48] *Id.*; Korematsu v. United States, 323 U.S. 214, 216 (1944).
[49] *See, e.g.*, Jennings v. Abrams, 565 F. Supp. 137, 138 (S.D.N.Y. 1983).
[50] *Davis*, 426 U.S. at 242.
[51] Schilb v. Kuebel, 404 U.S. 357, 364–65 (1971).
[52] *Davis*, 426 U.S. at 242.

III. SAME PROBLEMS, SAME SOLUTIONS?: APPROACHES TO BAIL REFORM

The problems faced by SRMIR residents are unique in that most home- or land-owners outside of Indian Country are not restricted in using their property to acquire such bail bonds. Nevertheless, the prolonged incarceration of persons because of their inability to make bail is neither new nor limited in geographic scope: across the country and over the course of several decades jurists, law enforcement, legislators, and community groups have repeatedly raised the issue and sought solutions.[53] This section examines in greater detail the efforts in a selection of communities that not only experienced success but could also be adapted to the SRMIR's particular circumstances.

For convenience and ease of reading, these examples have been grouped according to the methods that they employ. While variations among the individual programs grouped under a particular heading will be discussed, the focus will rest on their commonalities and the extent to which these common features succeeded in different settings.

A. Empirical Data & Individual Evaluation: Pre-Trial Risk Assessment in New Orleans Parish & Duluth, Minnesota

The use of Pre-Trial Risk-Assessment Instruments (RAIs) has spread in recent years as a method of applying empirically obtained

---

[53] *See* HUMAN RIGHTS WATCH, *supra* note 11; Alex Petrossian, Note, *Finally Some Improvement, but will it Accomplish Anything? An Analysis of Whether the Charitable Bail Bonds Bill can Survive the Ethical Challenges Headed its way*, 40 FORDHAM URB. L.J. 2013, 2025 (2013); Gustavo Rivera, *Bail Bond Charity*, N.Y. SENATE (2012), http://www.nysenate.gov/news/bail-bond-charity (referencing Kristen Sanchez, *Bail Bond Charity*, BRONX TIMES (Aug. 21, 2012), http://www.bxtimes.com/stories/2012/33/33_bail_2012_08_16_bx.html (last visited May 11, 2016)) (last visited May 11, 2016); NORTH CAROLINA GOVERNOR'S CRIME COMMISSION, *Pretrial Service Programs in North Carolina: A Prospect and Impact Assessment* (Oct. 2007), https://www.nccrimecontrol.org/div/gcc/pdfs/pubs/psp.pdf; Cynthia Jones, *Give us Free": Addressing Racial Disparities in Bail Determinations*, 16 N.Y.U. J. LEGIS. & PUB. POL'Y 919, 945 (2013); RACIAL JUSTICE IMPROVEMENT PROJECT, *Minnesota Task Force Members*, RACIAL JUSTICE PROJECT, http://racialjusticeproject.weebly.com/staff7.html (last visited May 11, 2016); Courtney Ham, *New Orleans Pretrial Services Program has Promising Future*, VERA (Apr. 22, 2014), http://www.vera.org/blog/new-orleans-pretrial-services-program-has-promising-future.

information to defendant behavior. The data is used to determine the precise risk that a given person poses for failure to appear or recidivism so that judges and court staff can make informed, objective decisions when setting bail conditions.[54] This section focuses on two instances where RAIs and the attendant procedures were implemented: the introduction of a system of pre-trial risk assessment in New Orleans Parish with the support of the Vera Institute and the introduction of RAIs in the courts of St. Louis County, Minnesota with the aid of the ABA's Racial Justice Improvement Project (RJIP).[55]

1. New Orleans Pre-Trial Services

New Orleans Parish has long experienced jail occupancy that is well above the national average.[56] This staggering difference did not decline in the post-Katrina period but was in fact exacerbated by the damage to facilities, the drain of personnel, and the general disruption that attended the storm and its aftermath.[57] The city enlisted the aid of the Vera Institute to address the myriad of issues facing the New Orleans criminal justice system, which focused its efforts on reforming the process of determining bail so that the ends of public safety and ensuring appearance were met without

---

[54] *See* NORTH CAROLINA GOVERNOR'S CRIME COMMISSION, *Pretrial Service Programs in North Carolina: A Prospect and Impact Assessment* (Oct. 2007); VERA INSTITUTE OF JUSTICE, *New Orleans Pretrial Services*, VERA, http://www.vera.org/project/new-orleans-pretrial-services (last visited May 11, 2016); NEW ORLEANS PRETRIAL SERVICES, *Why Pretrial Services*, PRETRIAL NOLA, http://pretrialnola.org/how-pretrial-works/ (last visited May 11, 2016); RACIAL JUSTICE IMPROVEMENT PROJECT, *Minnesota Task Force Members*, RACIAL JUSTICE PROJECT, http://racialjusticeproject.weebly.com/staff7.html (last visited May 11, 2016).

[55] VERA INSTITUTE OF JUSTICE, *New Orleans Pretrial Services*, VERA, http://www.vera.org/project/new-orleans-pretrial-services (last visited May 11, 2016); *Minnesota Task Force Members*, RACIAL JUSTICE PROJECT, http://racialjusticeproject.weebly.com/staff7.html (last visited May 11, 2016).

[56] Ham, *supra* note 53 (475 per 100,000 residents in New Orleans Parish compared to 250 per 100,000 nationally).

[57] Wyesondemand, *Reshaping a Greater New Orleans:Criminal* JUSTICE (last updated June 24, 2015), https://www.youtube.com/playlist?list=PLu0zbkIeJ5ZtrTZI3eTZ8OFZeK3mF1rmz (noting that in pre-Katrina New Orleans the coordination and cooperation between the District Attorney's office and the Police was insufficient to ensure that felony arrests were translated into felony prosecutions, resulting in cases of fruitless arrests for which defendants were jailed for failure to make bail but without an ultimate felony conviction).

unnecessarily confining defendants.[58] The Vera Institute helped design and implement a universal screening procedure after working with the various institutional players in the New Orleans criminal justice system. This procedure incorporates interviews with defendants, the gathering of relevant information prior to the first appearance, the use of an "empirical risk-assessment instrument to guide release decisions," post-release defendant supervision, and a "court-date reminder system to help defendants."[59]

The risk-assessment procedure begins with an interview shortly after arrest—administered in the New Orleans Parish Jail itself—by employees of New Orleans Pre-trial Services. This interview covers a number of factors that studies have shown to be indicative of the risk that defendants pose if released prior to trial: employment and job history, family and housing situation, prior convictions and open charges, and the nature of the charges, among others.[60] The intake staff verify the answers by calling employers and family members, and confirm criminal history.[61] These factors then generate a score which represents the degree of risk that the defendant will not appear or will commit further offenses prior to trial.[62]

The intake interview also represents an opportunity to fulfill other essential screening processes, enhancing its utility in and to the judicial system. Because the screening already takes account of a defendant's employment status and history, as well as assessing their financial means, the intake personnel are well situated to make an indigency determination.[63] The personnel then pass on this information to the court, the prosecutor, and the public defender's office, affording the latter a chance to get involved in the defendant's

---

[58] VERA INSTITUTE OF JUSTICE, *New Orleans Pretrial Services*, VERA, http://www.vera.org/project/new-orleans-pretrial-services (last visited May 11, 2016).

[59] *Id.*; TARA BOH KLUTE & LORI EVILLE, AN ASSESSMENT OF THE NEW ORLEANS PRETRIAL SERVICES PROGRAM NATIONAL INSTITUTE OF CORRECTIONS TECHNICAL ASSISTANCE NO. 13C1066, at 6 (2013).

[60] Wyesondemand, *Reshaping a Greater New Orleans:Criminal* JUSTICE (last updated June 24, 2015), https://www.youtube.com/playlist?list=PLu0zbkIeJ5ZtrTZI3eTZ8OFZeK3mF1rmz (the intake procedure is shown in action in this reportage); KLUTE & EVILLE, *supra* note 59, at 24.

[61] KLUTE & EVILLE, *supra* note 59, at 5.

[62] *Id.* at 11–12.

[63] NEW ORLEANS PRETRIAL SERVICES, *Services Provided*, PRETRIAL NOLA, http://pretrialnola.org/services-provided/ (last visited May 11, 2016).

case at an earlier point than had been possible prior to the advent of the screening process.[64] The intake screening also identifies which defendants are eligible for the District Attorney's diversion program, improving the reach and impact of this program and permitting defendants the chance to avoid the consequences of a criminal conviction through rehabilitation.[65] New Orleans Pre-trial Services also takes advantage of the opportunity to put defendants in contact with other public services, for example, substance abuse counseling or mental health assessment.[66]

The role of New Orleans Pre-trial Services does not end after the screening process, but instead continues until the defendant's court date and involves regular reminders to defendants released on personal recognizance or personal surety bonds.[67] This involves the development of an individualized supervision plan that incorporates court and all court-mandated elements, such as electronic monitoring, curfews, and drug testing.[68]

Pre-trial Services also plays an important role in data collection. Because of the expansive nature of the screening questions, Pre-trial Services acquires considerable and detailed information on defendants, permitting a continuous reevaluation of bail and supervision criteria.[69] This information also has the potential to aid police and prosecutors by indicating which defendants are likely recidivists, as well as identifying good candidates for diversion and other rehabilitative programs.[70] Currently, Pre-trial Services is integrating various databases maintained in the criminal justice system of New Orleans Parish into a single system, thereby eliminating redundancies and improving both access and the value of the information provided.[71]

The effects of the efforts made by New Orleans Pre-trial Services have been overwhelmingly positive. Almost a third of the defendants in one sample group were released on personal

---

[64] *Id.*; ORLEANS PARISH DISTRICT ATTORNEY, *Diversion Program*, ORLEANS DA, http://orleansda.com/divisions/diversion-program/ (last visited May 11, 2016).
[65] NEW ORLEANS PRETRIAL SERVICES, *supra* note 63.
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*; KLUTE & EVILLE, *supra* note 59, at 6–7.
[70] KLUTE & EVILLE, *supra* note 59, at 7.
[71] NEW ORLEANS PRETRIAL SERVICES, *supra* note 63.

recognizance or a cash bond of less that $2,500; 95 percent of these defendants appeared for their court date as required and 96 percent committed no further offenses while on release.[72] While this release rate was lower than the national average, its success rate was significantly higher, and proposals have been made to improve post-intake review procedures to identify defendants who might be eligible for release pending trial on non-violent charges.[73]

2. The Racial Justice Improvement Project in St. Louis County, Minnesota

The Racial Justice Improvement Project (RJIP), launched by the ABA in 2010 to "identify and reform policies and practices that produce racial disparities in local criminal justice systems," organized a task force in St. Louis County, Minnesota to address the disparities in jail time served as a result of failure to post bail.[74] St. Louis County, which includes the city of Duluth, Minnesota, stretches over 170 miles across the northeastern border of that state.[75] While Native Americans make up only about 2 percent of county residents, they comprise a disproportionately high number of those arrested and those held in pre-trial detention.[76]

To develop methods and practices to address this disparity, the RJIP formed a local task force that included the County Attorney, the Chief Public Defender, the Deputy Chief of Police, a criminal court judge, a representative from the American Indian Commission, the head of the local probation office, and a task force coordinator (the "Commission").[77]

The Commission first examined the bail practices in Minnesota which, under the state's law, permits judges to consider community safety, nature and circumstances of the offense, employment, family ties, financial resources, prior failures to appear at court, and prior

---

[72] KLUTE & EVILLE, *supra* note 59, at 8.
[73] *Id.* at 8–9, 11.
[74] *See generally About RJP*, RACIAL JUSTICE PROJECT, http://racialjusticeproject.weebly.com/about-us.html (last visited May 11, 2016); THE RACIAL JUSTICE IMPROVEMENT PROJECT, *Minnesota Task Force*, http://racialjusticeproject.weebly.com/minnesota.html (last visited May 11, 2016); Jones, *supra* note 53.
[75] Jones, *supra* note 53, at 946.
[76] *Id.*
[77] *Id.*

criminal history, among others.[78] However, judges were usually not aware of this information when making bail determinations and "pretrial release reports" were prepared by the probation office only upon a judge's request.[79] Initial inquiries indicated that many defendants awaiting trial in jail found themselves in that position because of their inability to make bail, not because judges had deemed them flight risks or dangerous on the basis of relevant information.[80] An empirical study of pretrial release data revealed that Caucasians "were at least twice as likely as other racial categories to be released on their own recognizance, and minority defendants were more likely to have bail set, even after accounting for offense severity level and number of felony charges."[81] The Commission also noted race-neutral factors that could account for some of the disparate impact on Native Americans. In particular, the tendency of judges to set higher bail for persons residing in distant locales, like the reservations in the state, was a factor.[82]

To address the situation, the Commission first educated both arraignment court judges and probation officers of St. Louis County about the factors indicating the danger or flight risk posed by defendants, as well as the best practices for cases involving low-risk defendants released without bail or under supervision.[83] Another key component for the Commission was ensuring that bail reports were available to judges in all felony cases. This in turn required working with the probation office to free up resources to produce thorough felony bail reports by reducing the number of bail reports in misdemeanor and other cases where defendants were likely to be released without bail.[84]

One part of the response to this situation was the development of a new pre-trial risk assessment tool: The tool was crafted in cooperation with an expert from the Pretrial Justice Institute and included regular procedures for its use so as to reduce the influence

---

[78] Cynthia Jones, *Confronting Race in the Criminal Justice System: The ABA's Racial Justice Improvement Project*, 27 CRIM. JUST. 12, 14–15 (Summer 2012) [hereinafter *Confronting Race*].
[79] *Id*.
[80] *Id*.
[81] *Id.* at 15.
[82] *Id.* at 15; Jones, *supra* note 53, at 949–50.
[83] Jones, *supra* note 53, at 954.
[84] *Id*.

of individual bias.[85] A key component of this procedure is a short checklist that reduces multiple recognized factors into a few determinative questions; at each phase of the procedure resulting in recommended courses of action.[86] The first phase ascertains whether there are any holds on the defendant through the Minnesota Department of Corrections or other jurisdictions and whether the defendant is charged with murder or attempted murder. If the answer to either of these is "yes" the checklist does not recommend completion of a Pre-Trial Release Study, reflecting the fact that these factors tend to indicate that higher bail (or perhaps even the refusal of bail) is necessary.[87]

The next phase moves on to the question of whether the State's sentencing guidelines "call for a presumptive stay of . . . imposition of sentence" and whether the defendant has a low criminal history rating.[88] If the answer to both questions is "yes" and the defendant is not released on his own recognizance a Pre-Trial Release Study is recommended.[89] This aims to prompt parole officers and judges to reconsider such cases where the defendant is charged with a relatively minor crime and has little prior record to indicate any likelihood of failing to appear or recidivism. Moreover, if the defendant is ultimately not released on personal recognizance, the court is asked to "state its reasons either on the record, or in a subsequent order."[90] The RJIP continues to work on the pre-trial evaluation process and is developing further materials to facilitate more just and sustainable alternatives to bail. For example, as of 2013, the RJIP was in the process of developing a chart that judges could use at the bench as a quick reference for appropriate alternatives to cash bail.[91]

---

[85] *Id.*; ABA RACIAL JUSTICE IMPROVEMENT PROJECT, *Pretrial Release Considerations*, RACIAL JUSTICE PROJECT, http://racialjusticeproject.weebly.com/minnesota.html (a copy of the pretrial release checklist now in use by the probation office and courts in Saint Louis County, Minnesota) (last visited May 11, 2016).
[86] *Id.*
[87] *Id.*; Jones, *supra* note 53, at 953–54.
[88] ABA RACIAL JUSTICE IMPROVEMENT PROJECT, *supra* note 85.
[89] *Id.*
[90] *Id.*
[91] Jones, *supra* note 53, at 954.

Finally, the Commission also made preparations for the implementation of regular data collection so that the probation office and the courts can reevaluate their practices in the future.[92]

B. "Get out of Jail Free": Charitable Bail Bond Agencies in New York

Charitable Bail Bond Agencies (CBBAs) have been tested extensively in New York and led the legislature to provide statutory language supporting the formation of these charitable agencies.[93] The formation of such an entity by the SRMIR Tribal government, in accordance with New York, presents an option for unilateral action that is not dependent on the cooperation of any municipal or state institutions. However, a CBBA is not without cost or controversy—and in any case, would only be able to aid a portion of Indian defendants.

The Vera Institute of Justice launched the first major effort in New York to provide bail services to indigent defendants who would otherwise spend the pre-trial period in jail.[94] The Vera Institute's aim from the outset was to create "a pretrial supervision program so good that it [could] compete with jail—one that [could] virtually guarantee that defendants under supervision [would] neither abscond nor commit new crimes."[95] The Vera Institute organized bail entities in three New York City area counties, including the Bronx. These counties posted bond at no cost to indigent defendants in exchange for each defendant's agreement to participate in an intensive pre-trial supervision program involving "daily physical monitoring of participants."[96]

The pre-trial supervision program created an opportunity for meaningful intervention by connecting defendants to substance abuse or other therapeutic programs that could have a lasting impact

---

[92] *Id*.
[93] N.Y. INS §§ 6802, 6805 (2016); Kristen Sanchez, *Bail Bond Charity*, BRONX TIMES (Aug. 21, 2012), http://www.bxtimes.com/stories/2012/33/33_bail_2012_08_16_bx.html (last visited May 11, 2016).
[94] Andrea Clisura, Note*, None of their Business: The Need for Another Alternative to New York's Bailbond Business*, 19 J.L. & POL'Y 307, 322–23 (2010).
[95] *Id*. at 323.
[96] *Id.* at 322.

on their lives and reduce the likelihood that the defendant would fail to appear or be arrested again.[97] The defendant's compliance with the program requirements could also be deployed at sentencing in the defendant's favor; showing the judge that a jail sentence would not be necessary.[98] However, the program was intense and stringent. The program required daily reporting tasks on the part of the defendant and constituted a virtual punishment before trial. Since the "defendant's freedom [was] . . . restricted in a way that it would not have been if the defendant had been able to post bail."[99] The restrictive nature of the bail conditions became especially impractical in cases where the trial did not take place until months after the arrest. Over the course of time, many defendants grew frustrated with the bail requirements, leading to more frequent infractions against the rules and then increasingly stringent requirements.[100] Particularly, in the Bronx the wait times were long and the rate at which the defendants were returned to jail correspondingly high.[101] In the end, the Bronx program proved unworkable and was shuttered, although the initiatives in the other counties continued.[102]

The Bronx Freedom Fund effectively picked up in 2007 where the Vera Institute had left off.[103] Founded by the Bronx Defender, the Freedom Fund is a revolving fund that posts bail for indigent defendants without any of the hefty supervision requirements imposed by the Vera Institute's model.[104] Instead, the Freedom Fund relies on lower-cost methods of ensuring appearance and ensuring return of the funds: maintaining phone and mail contact with defendants, making personal visits, requiring third parties to put up collateral for the defendants.[105] Despite having a smaller staff and a less expensive operation than the Vera Institute initiative, the Freedom Fund was able to ensure the appearance of the

---

[97] *Id.* at 323–24.
[98] *Id.* at 324.
[99] *Id.* at 323–24.
[100] *Id.* at 324–25.
[101] *Id.* at 324–25.
[102] *Id.* at 326.
[103] *Id.* at 326–27.
[104] *Id.* at 336–37.
[105] *Id.* at 335.

overwhelming majority of the defendants, the success rate reaching as high as 99 percent in the first months of operation.[106]

The Bronx Freedom Fund was briefly placed in a precarious position in 2009 when a Bronx County Supreme Court judge refused to accept bail from the Freedom Fund, reasoning that it did not fulfill the licensing requirements of a bail bond agency under New York's Insurance Law § 6801.[107] This incident, in turn, provided some of the impetus for New York's Charitable Bail Bonds Bill, which was passed a little over three years later and expressly permits an organization like the Bronx Freedom Fund to operate.[108]

New York's "Charitable Bail Organization" Statute, NY CLP Ins § 6805, provides for a licensing process and establishes the regulatory framework governing such institutions.[109] Section (b) of the statute imposes certain restrictions on CBBAs activities. For example, they are only permitted to provide bail money on behalf of persons "financially unable to post bail"; they may only provide bail for amounts of $2,000 or less; and they may only provide bail money for misdemeanor offenses.[110] Felony offenses and cases where the bail determination exceeds $2,000 are entirely excluded from a CBBA's scope of activities.[111] It is also worth noting that the previous and existing CBBAs discussed above operated in an even more limited fashion than the statute allowed. For example, the Bronx Freedom Fund restricts its activities to clients of the Bronx Defender, provides bail only where set for $1,500 or less, and only after completion of its evaluation determining the client is not a flight risk.[112] This has yielded great success in ensuring that the

---

[106] *About the Fund*, BRONX FREEDOM FUND, http://www.thebronxfreedomfund.org/what-we-do/ (last visited May 12, 2016). It should also be noted that the Bronx Freedom Fund employs a number of selection criteria: 1) only clients of the Bronx Defender are eligible; 2) bail must be $1500 or less (lower than the maximum set by the Charitable Bail Bonds Law); 3) charge must be a misdemeanor or non-violent felony; 4) the CJA assessment shows defendant to be at low risk of flight. *Id.*; Petrossian, *supra* note 53.

[107] New York v. Miranda, 899 N.Y.S.2d 62 (N.Y. Sup. Ct. 2009).

[108] Kristen Sanchez, *Bail Bond Charity*, BRONX TIMES (Aug. 21, 2012), http://www.bxtimes.com/stories/2012/33/33_bail_2012_08_16_bx.html (last visited May 11, 2016).

[109] N.Y. INS § 6805(a) (2012).

[110] N.Y. INS §§ 6805(b)(1), (2) (2012).

[111] *Id.*

[112] BRONX FREEDOM FUND, *supra* note 106.

clients in question made the required court appearances and the pre-trial release appears to have affected their case outcomes positively. However, it is important to recognize that the persons served by the Bronx Freedom Fund are a very select group among the broad mass of defendants unable to make bail. As a result, it is difficult to predict the success of any new CBBA, especially if it serves a wider range of indigent defendants.

C. Solutions Hidden in Plain Sight: Alternatives to Detention in New York & the SRMIR

Starting in 2013, New York's Office of Children and Family Services launched a new effort to fund local programming aimed at "keep[ing] youth out of detention and/or placement" and included support for the "statewide implementation of a validated detention risk assessment."[113] Such Alternative to Detention (ATD) Programs specifically target those youth who "would, in all likelihood, be in detention if the ATD did not exist," with the aim of ensuring that "participating youth return to court without re-arrest."[114]

Various local ATD Programs incorporate some system of reminders and informational assistance for the juvenile defendant and his or her family, and features frequent contact with youth and family—especially during nights and weekends.[115] All ATD Programs are required to track certain data metrics so that the effectiveness of each program can be measured and further development based on empirical information.[116] Among the ATD models highlighted by the Office of Children and Family Services as particularly effective are: Shelter or Respite Beds as a "safe, non-detention option . . . for youth who cannot currently return to their home"; Tracker Programs in which local staff "conduct periodic/random home visits to provide support and to ensure that

---

[113] *Detention Reform in New York*, OFFICE OF CHILDREN AND FAMILY SERVICES, http://ocfs.ny.gov/main/rehab/drai/ (last visited May 12, 2016); *see also Improving Juvenile Sentencing Recommendations in NYC*, VERA, http://www.vera.org/project/improving-juvenile-sentencing-recommendations-nyc-department-probation (last visited May 12, 2016).

[114] *Id.*

[115] *Detention Reform in New York*, *supra* note 113.

[116] Examples of the data tracked include failure-to-appear rates, re-arrest rates while participating in the program, average length of stay within the program and all reasons for ending program participation (even those not related to re-arrest). *Detention Reform in New York*, *supra* note 113.

youth are adhering to program requirements"; Evening Reporting Centers that provide youth with programs of activities to fill their evening and weekend times; and Electronic Monitoring combined with sobriety support for youth where necessary.[117]

The first evaluation of the New York ATD Program was performed in 2013 and classified it as "promising," although at that time improvements were not deemed clear enough to rate it as definitively "effective."[118] Although it indicated little to no effect on the entering of guilty pleas by youth offenders and little change in the amount of time they spent in jail, the ATD Program was successful in reducing recidivism in the six months following initial arrest and decreasing violent felony recidivism.[119] Interestingly, at that time, the program experienced the greatest gains among youth offenders with characteristics indicating a high risk of re-offense.[120] At present 59 counties and municipalities in New York are operating ATD Programs of various types, many of them rated "effective" in studies funded by the Office of Juvenile Justice and Delinquency Prevention.[121]

---

[117] *Id.*

[118] *See About Model Programs Guide*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, http://www.ojjdp.gov/mpg/Home/About (detailing the underlying factors involved in the rating evaluation) (last visted May 12, 2016); MICHAEL REMPEL, ET AL., THE ADOLESCENT DIVERSION PROGRAM: A FIRST YEAR EVALUATION OF ALTERNATIVES TO CONVENTIONAL CASE PROCESSING FOR DEFENDANTS AGES 16 AND 17 IN NEW YORK v–vi (Center for Court Innovation Jan. 2013).

[119] REMPEL, *supra* 118, at v (8 percent of program participants re-arrested on felony charges within six months versus 10 percent of those not participating in the program, with re-arrests for violent felonies standing at 4 percent and 5 percent respectively).

[120] *Id.*

[121] *See 2014-2015 Municipality Plans*, OFFICE OF CHILDREN AND FAMILY SERVICES, http://ocfs.ny.gov/main/jj_reform/14-15%20Submitted%20Plans.asp (last visited May 12, 2016); *Model Programs Guide*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, http://www.ojjdp.gov/mpg/Topic/Details/36 (last visited May 12, 2016). Among the "effective" alternatives to detention utilized in New York municipalities are "Functional Family Therapy (FFT)" and "Multidimensional Treatment Foster Care – Adolescents," and "Multisystemic Therapy (MST)." *Id.* Niagara County, for example, funds the Casey House, which employs MST programming with the goal of connecting youth offenders to key services and reuniting them with their family. *See STSJP 2014-2015 Annual Plan for Niagara County*, OFFICE OF CHILDREN AND FAMILY SERVICES (2014), http://ocfs.ny.gov/main/jj_reform/Niagara%20County/Niagara%20-OCFS-2121%20Supervision%20and%20Treatment%20Services%20for%20Juvenile%

Numerous Indian Nations, including the St. Regis Tribal government, have set up their own diversion and alternative to detention programs for defendants faced with substance abuse issues.[122] Release under "Community Supervision" has been promoted by scholars and implemented by many tribes.[123] Such a program might encompass individuals on pre-trial release, in a diversionary program, or even those convicted of a crime.[124] A 2007 resolution of the American Bar Association proposed the following eligibility guidelines for individuals to be admitted to a Community Supervision Program, that the offender: 1) does not pose a "substantial threat to the community"; 2) does not face charges for a crime involving substantial violence; 3) does not have a prior criminal history "that makes community supervision an inappropriate sanction"; and 4) is not currently on probation.[125] The precise form that release under Community Supervision takes can vary from tribe to tribe, but most involve some reporting requirements and involve contact with either the police or another agency.

Among the advantages of Community Supervision is the opportunity to engage the offender in therapeutic or rehabilitative programs, which have been shown to significantly reduce recidivism.[126] On the SRMIR, the primary diversion program is through the Tribe's Healing to Wellness Drug Court (HWDC), which

---

20Program%20(STSJP)%20NCDSS%2007-2014%20Revised%2010-29-14.pdf (last visited May 12, 2016); *see also* Nancy Fisher, *Casey House provides haven for young people needing help*, THE BUFFALO NEWS (June 21, 2015), http://www.buffalonews.com/city-region/niagara-falls/casey-house-provides-haven-for-young-people-needing-help-20150621.

[122] *See Kimberly A. Cobb & Tracy G. Mullins, Tribal Probation: An Overview for Tribal Court Judges,* 2 J. CT. INNOVATION, 329, 333 (2009) (describing guidelines for "community supervision" of tribal members).

[123] *See, e.g.*, Kimberly A. Cobb, Adam Matz & Tracy G. Mullins, *Rediscovering the Benefits of Community Supervision in Indian Country*, 35 PERSPECTIVES 74 (2011). This work, sponsored by the American Probation & Parole Association (APPA), provides an excellent overview of the state of community supervision efforts in tribal jurisdictions.

[124] *Id.*

[125] *Id.*

[126] *Id*. at 336–38; CRIME & JUSTICE INST., IMPLEMENTING EVIDENCE-BASED PRACTICE IN COMMUNITY CORRECTIONS: THE PRINCIPLES OF EFFECTIVE INTERVENTIONS 9 (2004), https://s3.amazonaws.com/static.nicic.gov/Library/019342.pdf (summarizing research on the subject).

permits both Mohawks and members of other tribes[127] to obtain treatment in lieu of confinement where the offense in question relates to drugs or alcohol, or is a non-violent offense committed while under the influence of such substances.[128] This program encompasses defendants appearing before the Town of Bombay Court and involves significant contact and cooperation with New York prosecutors in those cases.[129] As such, this program, which at present provides Tribal members with rehabilitative support in the context of plea agreements resulting in convictions, offers a strong model for approaches to pre-trial release that would substitute supervised participation in therapeutic and rehabilitative programs for bail in the form of cash or bond.

The process of entering the HWDC program begins soon after the arrest of a potential participant. Usually the defendant, a relative, or the defendant's attorney takes the initiative.[130] The HWDC then performs an evaluation, the contents of which remain confidential and which covers such diverse items as criminal history, current charges, eligibility requirements, and the individual's circumstances.[131] If the HWDC team determines that the applicant meets the eligibility requirements and would be an appropriate candidate for the program, an "offer of participation" is made to the applicant.[132] This is rarely the end of the intake procedure, however, as most participants are charged before New York courts (chiefly the Town of Bombay Court). As such, consent of the prosecution and incorporation of the treatment program in the plea or diversion agreement forms a further requirement for participation in the HWDC.[133] Once the participant has signed the contract with the

---

[127] ST. REGIS MOHAWK TRIBAL HEALING TO WELLNESS DRUG COURT – POLICY AND PROCEDURES MANUAL 7 (2012) [hereinafter DRUG COURT POLICY & PROCEDURES) (the eligibility criteria provide that the prospective participant must be "a member of or eligible for membership in the St. Regis Mohawk Tribe [or] a member of another federally recognized tribe") (document on file with the author and the AMERICAN INDIAN LAW JOURNAL, provided courtesy of the Drug Court).
[128] *Id.* at 7.
[129] *Id.* at 5.
[130] *Id.* at 7–8.
[131] DRUG COURT POLICY & PROCEDURES, *supra* note 127, at 7 (one exception exists for mandatory reporting of child abuse).
[132] *Id.*
[133] *Id.* at 8.

HWDC and the presiding judge approves the incorporation of the treatment regimen, the participant begins the first of the HWDC's four phases, each of which incorporates incentives and sanctions.[134] The program offers incentives for cooperation and successful completion of steps toward rehabilitation like advancement to further phases, lifting of sanctions, and other forms of positive reinforcement.[135] By contrast, noncompliance with the treatment plan results in sanctions levied by the presiding judge in consultation with the HWDC and may include increased urine-testing, return to earlier treatment phases, electronic monitoring, curfews, or even incarceration.[136] The HWDC team also meets independently prior to a participant's court appearance to evaluate their progress and determine what recommendations, if any, need to be made to the judge.[137]

Although the actual length of treatment varies depending on the individual participant's circumstances and behavior, the minimum period of treatment is one year, with each of the four phases comprising 90 days.[138] If at the end of the fourth phase the participant meets certain further requirements (*e.g.*, has been compliant with court mandates for at least eight months, can show sustained employment, has completed any specified program requirements) s/he may "graduate" from the program, at which point monitoring through the HWDC and the court ends.[139] However, those participants who desire or need further support can receive it through social services. HWDC alumni are also encouraged to stay engaged with the program through volunteer work, which creates a support network of peers for future participants.[140]

---

[134] *Id.*; *see also* SRMT HWDC DRUG COURT CONTRACT TEMPLATE 2–3 (provided courtesy of the HWDC and on file with the author and the AMERICAN INDIAN LAW JOURNAL).
[135] DRUG COURT POLICY & PROCEDURES, *supra* note 127, at 8.
[136] *Id.*
[137] *Id.* at 9 (initially HWDC participants appear in court every week to report their progress to the judge).
[138] *Id.* at 11–15 (the phases are individually termed "Orientation / Choice," "Challenge / Change," "Connections" and "Transition").
[139] DRUG COURT POLICY & PROCEDURES, *supra* note 127, at 15, 19.
[140] *Id.* at 19.

IV. EVALUATING THE POSSIBLE APPLICATION OF THE REFORM INITIATIVES TO THE SRMT'S SITUATION

While no one of the discussed mechanisms is regarded as inherently superior to the others, considerations of cost, benefit, and practicability are sketched here to stimulate thought and discussion on each option's merits. Although the focus here is on concrete, practical solutions to the bail dilemma facing Indian defendants, one should neither lose sight of the potential for a constitutional challenge to the New York bail regime[141] nor discount the potential for a fruitful dialogue with members of the New York judiciary. The options discussed here are also in no way mutually exclusive and may be combined with either each other, with a reform-oriented course of cooperation with New York state institutions, or pursued subsequent to a constitutional challenge to the validity of New York's bail regime, regardless of the outcome.

A. Pre-Trial Risk Assessment & Assuring Appearance

The introduction of a regime of pre-trial assessment tools and processes could significantly reduce the number of SRMIR residents who are forced to spend the pre-trial period in jail because of their inability to post bail while still ensuring their appearance at court.[142] Working in cooperation with the Town of Bombay Court, the SRMIR could develop RAIs based on empirically-tested data that would provide intake personnel with an objective measure of the likelihood that a defendant would fail to appear. Current programs, such as the St. Louis County project detailed above, offer further examples of materials and processes that can aid in the evaluation of the conditions of release for defendants.[143] The proliferation of such programs also indicates that the SRMIR and the Town of Bombay will have ample opportunity to seek out communities and programs that are relevant to their situation and enjoy the advantage of learning from others' mistakes.

---

[141] *See supra* Part II.B.

[142] Baradaran & McIntyre, *supra* note 12, at 502 (accepting the analysis in Baradaran and McIntyre's study, for example, would indicate that over 20 percent more pre-trial detainees could be released).

[143] Jones, *supra* note 53, at 946 (The Racial Justice Improvement Project is emphasized here because it dealt specifically with reservation residents who were detained pre-trial in disproportionate numbers and as such may have greater relevance to the situation of SRMIR residents.).

Furthermore, a pre-trial assessment regime opens the door to other rehabilitative options, as exemplified in the Alternative to Detention programs recently supported by New York.[144] For defendants suffering from substance abuse issues, who require counseling, or could otherwise benefit from available public services, the moment of contact with intake personnel represents an opportunity to fundamentally change the course of their lives for the better. A number of the programs supported by New York could serve as prime examples.[145]

Nevertheless, it is important to remember this solution that requires close cooperation with the court system of the Town of Bombay, which in turn necessitates negotiations and discussion of its development and the associated costs. Such a program would require at a minimum the preparation and training of probation and court personnel, and perhaps even the creation of specific intake positions, as in the case of New Orleans Parish described above.[146] The Town of Bombay and SRMIR would have to decide how to divide these costs, which could prove controversial in both communities. Still, a pre-trial assessment program would benefit not only the SRMIR residents but also residents of the Town of Bombay. The fact that the pre-trial assessment regimes discussed here were implemented in urban areas should not discourage the SRMIR nor the Town of Bombay since many rural areas in New York have also implemented such assessments.[147]

B. A Tribal Charitable Bail Bond Agency

The SRMIR could set up a CBBA to post bail for SRMIR residents charged with misdemeanors in the Town of Bombay. Because a CBBA set up for SRMIR residents would have to post

---

[144] *Detention Reform in New York*, *supra* note 113 (listing examples of intervention-oriented programs that have been attempted by New York communities).
[145] *Id*.
[146] *Why Pretrial Services*, NEW ORLEANS PRETRIAL SERVICES, *available at* http://pretrialnola.org/how-pretrial-works/ (last visited May 12, 2016); Wyesondemand, *supra* note 57.
[147] *See* CRIME JUSTICE INSTITUTE, ASSESSMENT OF PRETRIAL SERVICES IN NEW YORK STATE 16, 23, 28 (2014) (including survey data from a variety of rural New York counties), *available at* http://www.criminaljustice.ny.gov/opca/pdfs/NYS-Pretrial-Release-Report-7-1-2014.pdf.

bail before a court (or, potentially, courts) in New York, it would have to meet the requirements set forth in NY CLS Ins § 6802 and § 6805, including: (1) organization as a 501(c)(3) for federal tax purposes[148]; (2) registration as a charitable organization in New York; (3) obtaining the proper certification from the State; (4) ensuring that its employees are properly licensed; (5) restricting its bail posting to "amount[s] of two thousand dollars or less for a defendant charged with one or more misdemeanors"; and (6) depositing funds in only one county in the State.[149] Although there is no statutory bar to a 501(c)(3) organized under tribal law registering as a charity in New York, it does constitute an additional registration that a CBBA would have to undertake beyond the certification and licensing with the Superintendent of Financial Services.[150]

In assessing whether a CBBA would be an appropriate solution to the bail-related issues facing SRMIR residents, the Tribe would have to consider the expense and effort required to establish such an institution. As noted above, beyond the initial (federally focused) organization of a 501(c)(3) there remains much to do: registration as a charitable organization, certification process, and licensing of employees, all of which would claim man-hours and resources of the SRMIR, and in the case of the CBBA's certification, would re-occur every five years.[151]

The SRMIR would also have to provide the initial capital for the CBBA's fund, a one-time cost if it successfully functions as a revolving fund along the lines of the Bronx Freedom Fund. To make a CBBA sustainable there would have to be some sort of selective process by which the CBBA would decide which residents posed a flight risk or would be unlikely to appear at their court date, as posting bail in such cases could quickly deplete the fund.[152]

---

[148] I.R.C. § 501(c) (2016).
[149] N.Y, INS § 6805 (2012).
[150] N.Y. EXEC § 172 (2016).
[151] N.Y. INS §§ 6805(4), (5) (renewal of certification also carries a fee of $1000, although the Superintendent of Financial Services may waive this fee).
[152] *See* BRONX FREEDOM FUND, *supra* note 106. Despite the fact that the Bronx Freedom Fund already limits itself to clients of the Bronx Defender it further excludes those clients who are deemed at risk of flight/non-appearance following an evaluation, which therefore comprise only a fraction of those unable to post bail. Petrossian, *supra* note 53.

Depending on the number of persons that such an evaluation excluded, one might reasonably ask whether the benefits of a CBBA could justify the costs.

Finally, there is the question of public reaction to a CBBA, both within the SRMIR and in the Town of Bombay. SRMIR residents might reasonably question the decision to apply tribal resources to bailing persons out of jail, particularly as some might view this as effectively subsidizing bad behavior. The establishment of such a CBBA could also generate a degree of resentment among Town of Bombay residents, who might view the CBBA's activities as offering an unfair advantage to defendants from the SRMIR while other indigent defendants had to sit out their pre-trial time in jail. The possible effect of a CBBA on the relationship between the communities should figure prominently in any consideration of the CBBA option.

C. Coordinating New York and Tribal Alternative to Detention Programs

As detailed above, New York employs a range of Alternative to Detention Programs for juvenile offenders, many of which could prove effective in addressing the concerns of the Town of Bombay Court while obviating the need for bail. The variety and breadth of ATD Programs in New York show that New York municipalities, on the local level, are no strangers to such efforts. With regard to the SRMIR residents appearing before the Town of Bombay Court there is no need to develop new procedures from scratch, as the Tribal government's Healing to Wellness Drug Court has been working in cooperation with local prosecutors and the court for several years.

Two hurdles to securing a SRMIR defendant's release into one of these programs on a pre-trial basis is development of appropriate procedures by the HWDC and coordination between it and the Town of Bombay Court.[153] In principle, the relevant changes would be limited to adapting the HWDC's existing program to the unique aspects of a defendant's circumstances as opposed to a convict's. In fact, the HWDC in its early phase engaged with participants on pre-trial release but later discontinued this practice due to the difficulty of imposing sanctions on non-cooperative participants. While this

[153] DRUG COURT POLICY & PROCEDURES, *supra* note 127, at 9.

may have been the appropriate decision at that point in time, some of the incentive issues could be resolved by conditioning pre-trial release on adherence to the program's parameters, with the ultimate sanction of pre-trial incarceration available to the court and HWDC. The main task would be to obtain the court's cooperation in crafting the pre-trial release conditions, which might reasonably fit in the categories of unsecured appearance bonds.[154] The release would be conditioned on participation in the program and attendance at all corresponding court appearances. Otherwise, the existing HWDC procedures in cooperation with prosecutors and the court would continue to function more or less as is.

Utilization of such a diversion program would benefit the Town by reducing the jail population and, if ultimately successful in preventing recidivism, will lighten the burden on the Town's judiciary and police. Nevertheless, the Town is under no obligation to cooperate and could spurn such a proposed procedural change, either for cost and difficulty, or even to avoid the perception that it treats Indian defendants more favorably. Still, strong arguments can be made for cost and social benefits to the Town of Bombay: the SRMIR actually covers the cost of the diversion program itself, the Town would save the costs of detaining an Indian defendant, and the prospect of a decline in recidivism and crime is a substantial incentive in its own right.

Such a diversionary program is by no means a panacea for the pre-trial dilemma facing many Indian defendants. Many of the affected SRMIR residents may not be eligible for diversion, particularly if they have extensive prior criminal convictions that could make them ineligible for the program. Others might simply not fall within its scope, as it is geared toward defendants suffering from substance abuse issues.[155] Even a limited improvement for such recidivism could yield benefits for the Bombay court docket and the community at large. If the town and its court are willing to cooperate with the Tribal court and authorities, it is not overly

---

[154] *See* N.Y. CRIM. PROC. § 520.10 (2006).

[155] *See infra* APPENDIX II. Nevertheless, among the top five charges filed against recidivists on pre-trial release, one (Driving While intoxicated, 1st Offense) was alcohol-related and all alcohol-related charges together made up just a little less than 10 percent of all recidivist charges. While these form a minority of recidivist offenses, they are certainly not insignificant.

optimistic to expect the release of many of the tribal members who would otherwise spend extended periods of time in pre-trial detention at great cost to themselves and their community.

CONCLUSION

This Article does not endorse any specific reform initiative in responding to Indian defendant's difficulties in making bail. Nevertheless, having briefly assessed the merits of the various options and the obstacles facing their implementation, the author would like to recommend some guiding principles to any tribe that seeks to address this issue.

As mentioned at the beginning of Part IV, none of the options are mutually exclusive and can be combined with one another or other approaches largely as a tribe would see fit. Moreover, despite the utility of these reform approaches, there exist other potential axes of advance in addressing the bail conundrum facing Indian defendants. The author would recommend that tribes keep their options open and structure their efforts along a principle of "progressive escalation," where the tribal government can at first pursue low-cost and politically "palatable" solutions before pursuing options that either require a more serious commitment of resources (such as the programs described in this Article) or have the potential to burden the tribe's relationship with a state (such as challenging the constitutionality of a state's bail regime).

Initially, a tribe should seek out dialogue with the state or states in which their territory is located and where their members are most commonly arrested. As the RJIP efforts in Duluth, Minnesota, demonstrate, judges are often receptive to practices that obviate the need for bail bonds. Moreover, inducing judges to alter the way in which they assess bail may not require anything as formal as the solution developed by the RJIP example. In some cases, tribes may already have effective forums available to them in seeking dialogue with the state judiciary; the justices of the St. Regis Mohawk Tribal Court, for example, participate in a State-Tribe Court Commission in which they are joined by state judges and Federal officials and where they can air their concerns and proposals for cooperative action. If this avenue yields no satisfactory result, the tribe can consider some of the concrete reform efforts described in this

Article, whether in cooperation with state courts and agencies (*e.g.*, developing Risk-Assessment Instruments or developing procedures for release to Tribal Rehabilitative Programs) or unilaterally (as with a Charitable Bail Bond Agency, where possible). Finally, a constitutional challenge to a state's bail regime remains a possibility, although the prospects for success are questionable, as outlined in Part II.B. This option should probably be held in reserve until all or most others have been exhausted. While such a constitutional challenge does not necessarily preclude the pursuit of other approaches, it could complicate cooperation with state agencies and courts. Such a challenge also carries a degree of risk, as an adverse decision would essentially permit the state in question (and others with similar bail regimes) to proceed as before and reduce the incentive to cooperate with a tribe in seeking solutions to this bail issue. The threat of a constitutional challenge, even an unspoken or only implicit one, might yield results more quickly and at a lower cost.

Although this Article has sought to identify and discuss aspects of this problem and possible solutions in broad terms, case studies of other tribes' circumstances could be worthwhile. Tribe-to-tribe difference in land regimes (*i.e.*, federal trust or tribal control), variations in state court procedures and policies, as well as differing degrees of cooperation and communication between tribes and states all warrant additional examination. Once a broader picture of the Indian defendant's bail conundrum is produced, and other Indian tribes' options and responses are analyzed it may even be possible to develop a standardized approach or launch common efforts to resolve the bail issue.

APPENDIX I: CHARGES, BAIL AMOUNT, RELEASE DATE & REASON: APRIL 1– JULY 31, 2014

A. Charge Information

RACE	SEX	MISDEMEANORS	FELONIES	BAIL AMOUNT	BOND AMOUNT
Native	Male	5	0	$27,000	$54,000
Native	Male	0	1	$0	$0
Native	Male	4	0	$16,000	$32,000
Native	Male	0	1	$50,000	$100,000
Native	Male	N/A	N/A	$0	$0
Native	Male	N/A	N/A	$1,700	$3,400
Native	Male	1	0	$0	$0
Native	Male	1	0	$5,000	$10,000
Native	Male	1	0	$0	$0
Native	Male	1	0	$1,500	$3,000
Native	Female	0	1	$0	$0
Native	Female	0	1	$10,000	$20,000
Native	Male	1	1	$4,500	$0
Native	Male	N/A	N/A	$6,000	$12,000
Native	Male	2	3	$0	$0
Native	Male	1	0	$10,000	$20,000
Native	Male	1	0	$0	$0
Native	Male	4	2	$140,000	$280,000
Native	Male	1	0	$5,000	$10,000
Native	Male	2	0	$2,000	$4,000
Native	Male	1	0	$1,000	$2,000
Native	Male	N/A	N/A	N/A	N/A
Native	Male	2	0	$18,000	$36,000
Native	Male	0	1	$0	$0
Native	Female	1	0	$500	$1,000
Native	Male	0	0	$0	$0
Native	Male	1	2	$21,000	$42,000
Native	Male	2	0	$3,000	$6,000
Native	Male	1	0	$1,000	$2,000
Native	Male	3	2	$5,000	$10,000

Native	Male	0	2	$0	$0
Native	Male	3	0	$3,000	$6,000
Native	Male	0	1	$10,000	$20,000
Native	Female	4	1	$15,000	$30,000
Native	Male	1	0	$5,000	$10,000
White	Male	0	1	$0	$0
White	Male	1	0	$0	$0
White	Male	2	1	$0	$0
White	Male	N/A	N/A	$1,000	$2,000
White	Male	1	3	$7,000	$14,000
White	Male	N/A	N/A	$1,000	$2,000
White	Male	1	1	$10,000	$20,000
White	Male	1	0	$500	$1,000
White	Male	0	1	$5,000	$10,000
White	Male	2	0	$1,000	$2,000
White	Male	0	2	$10,000	$20,000
White	Male	1	1	$10,000	$20,000
White	Male	2	0	$0	$0
White	Male	2	0	$3,000	$6,000
White	Male	1	2	$0	$0
White	Female	1	2	$7,500	$15,000
White	Male	N/A	N/A	$45,000	$90,000
White	Male	1	1	$7,500	$15,000
White	Male	2	0	$10,000	$20,000
White	Male	N/A	N/A	$0	$0
White	Male	0	2	$0	$0
White	Male	N/A	N/A	$0	$0
White	Female	0	1	$5,000	$10,000
White	Male	N/A	N/A	$0	$0
White	Male	0	1	$0	$0
White	Male	3	0	$0	$0
White	Male	0	1	$1,000	$2,000
White	Female	3	0	$3,000	$6,000
White	Male	2	1	$20,000	$40,000
White	Male	0	2	$15,000	$30,000
White	Male	1	0	$0	$0
White	Male	0	1	$0	$0

White	Male	2	6	$115,000	$230,000
White	Male	1	1	$0	$0
White	Male	N/A	N/A	$0	$0
White	Male	1	1	$5,000	$10,000
White	Female	0	1	$2,500	$5,000
White	Male	1	1	$20,000	$40,000
White	Male	0	2	$0	$0
White	Male	2	0	$5,000	$10,000
White	Male	3	0	$10,000	$20,000
White	Male	0	2	$3,000	$6,000
White	Male	1	0	$4,500	$9,000
White	Female	1	0	$3,000	$6,000
White	Male	0	2	$20,000	$40,000
White	Male	0	1	$1,500	$3,000
White	Male	0	2	$20,000	$40,000
White	Male	1	4	$0	$0
White	Male	N/A	N/A	$0	$0
White	Male	N/A	N/A	N/A	N/A
White	Male	N/A	N/A	N/A	N/A
White	Male	1	0	$2,500	$5,000
White	Male	0	1	$10,000	$20,000
White	Female	0	1	$1,000	$2,000
White	Male	N/A	N/A	$0	$0
White	Male	1	0	$1,500	$3,000
White	Male	N/A	N/A	$0	$0
White	Male	2	0	$3,000	$6,000
White	Male	2	0	$1,200	$2,400
White	Female	N/A	N/A	$0	$0
White	Male	0	3	$0	$0
White	Male	0	1	$0	$0
White	Male	1	1	$20,000	$40,000
White	Male	N/A	N/A	$1,000	$2,000
White	Male	0	1	$0	$0
White	Female	N/A	N/A	$0	$0
White	Male	0	1	$0	$0
White	Female	0	2	$0	$0
White	Male	1	0	$500	$1,000

White	Male	N/A	N/A	$0	$0
White	Male	3	0	$7,500	$15,000
White	Male	1	1	$0	$0
White	Male	2	0	$2,000	$0
White	Male	1	0	$10,000	$20,000
White	Male	0	1	$1,000	$2,000
White	Male	0	1	$5,000	$10,000
White	Male	N/A	N/A	$0	$0
White	Female	1	0	$0	$0
White	Female	2	0	$500	$1,000
White	Male	2	1	$7,500	$15,000
White	Male	1	0	$25,000	$50,000
White	Male	1	2	$0	$0
White	Male	5	0	$0	$0
White	Male	1	1	$25,000	$50,000
White	Male	1	0	$0	$0
White	Male	1	0	$0	$0
White	Male	1	0	$0	$0
White	Male	4	0	$12,000	$24,000
White	Female	2	0	$0	$0
White	Female	N/A	N/A	$0	$0
White	Male	0	2	$0	$0
White	Male	0	1	$0	$0
White	Male	N/A	N/A	N/A	N/A
White	Male	1	1	$10,000	$20,000
White	Male	N/A	N/A	$500	$1,000
White	Male	0	1	$0	$0
White	Male	1	1	$10,000	$20,000
White	Male	0	2	$0	$0
White	Male	1	0	$500	$1,000
White	Male	0	1	$0	$0
White	Male	1	0	$1,500	$3,000
White	Male	0	1	$0	$0
White	Male	1	0	$1,500	$3,000
White	Male	N/A	N/A	$0	$0
White	Male	3	0	$2,000	$4,000
White	Female	N/A	N/A	$0	$0

White	Male	1	0	$1,000	$2,000
White	Female	1	0	$3,000	$6,000
White	Male	1	0	$3,500	$7,000
White	Female	1	0	$2,500	$5,000
White	Male	N/A	N/A	$0	$0
White	Male	0	1	$15,000	$30,000
White	Male	1	1	$10,000	$20,000
White	Male	0	1	$0	$0
White	Female	1	0	$2,000	$4,000
White	Female	0	2	$45,000	$90,000
White	Male	0	1	$0	$0
White	Male	0	1	$0	$0
White	Male	1	0	$2,000	$4,000
White	Male	4	0	$11,000	$22,000
White	Male	N/A	N/A	$0	$0
White	Female	4	1	$25,000	$50,000
White	Female	3	0	$15,000	$30,000
White	Female	3	0	$0	$0
White	Male	1	1	$0	$0
White	Female	0	1	$0	$0
White	Male	0	2	$0	$0
White	Male	1	0	$1,000	$2,000
White	Female	0	1	$1,000	$2,000
White	Female	0	0	$5,000	$10,000
White	Male	0	0	$0	$0
White	Female	1	0	$1,000	$2,000
White	Male	1	0	$5,000	$10,000
White	Male	0	1	$0	$0
White	Male	1	0	$500	$1,000
White	Female	1	0	$1,000	$2,000
White	Male	1	0	$0	$0
White	Male	3	0	$3,000	$6,000
White	Female	2	0	$10,000	$20,000
White	Male	2	5	$60,000	$120,000
White	Female	2	0	$1,500	$3,000
White	Female	2	0	$6,000	$12,000
White	Male	1	0	$1,000	$2,000

White	Male	1	1	$5,000	$10,000
White	Male	0	1	$1,500	$3,000
White	Male	1	1	$4,000	$8,000
White	Male	0	2	$0	$0
White	Male	3	2	$15,000	$30,000
White	Male	1	0	$1,000	$0
White	Male	1	1	$8,000	$16,000
White	Female	1	0	$0	$0
White	Male	1	1	$60,000	$120,000
White	Male	1	0	$500	$1,000
White	Female	1	0	$1,500	$3,000
White	Female	1	0	$500	$1,000
White	Male	0	1	$0	$0
White	Female	2	0	$0	$0
White	Male	0	2	$0	$0
White	Female	0	1	$1,500	$3,000
White	Male	0	3	$0	$0
White	Female	N/A	N/A	$750	$1,500
White	Female	2	0	$3,000	$6,000
White	Male	N/A	N/A	$3,000	$6,000
White	Female	1	0	$0	$0
White	Male	0	1	$0	$0
White	Male	0	0	$1,500	$3,000
White	Male	N/A	N/A	$0	$0
White	Male	0	1	$2,500	$5,000
White	Male	2	0	$0	$0
White	Male	1	0	$1,000	$2,000
White	Male	0	2	$0	$0
White	Male	1	0	$1,500	$3,000
White	Male	1	1	$100,000	$200,000
White	Male	1	1	$30,000	$60,000
White	Male	1	0	$2,000	$4,000
White	Female	N/A	N/A	$0	$0
White	Female	0	2	$0	$0
White	Male	1	1	$20,000	$40,000
White	Female	2	0	$1,000	$2,000
White	Female	1	0	$2,500	$5,000

White	Female	0	5	$5,000	$10,000
White	Male	7	2	$176,000	$355,000
White	Female	2	1	$32,500	$65,000
White	Male	3	1	$110,000	$220,000
White	Male	1	0	$0	$0
White	Male	1	0	$1,000	$2,000
White	Male	N/A	N/A	$0	$0
White	Female	0	1	$2,500	$5,000
White	Female	1	0	$0	$0
White	Male	1	1	$0	$0
White	Male	2	0	$5,000	$10,000
White	Male	0	1	$5,000	$10,000
White	Female	0	1	$0	$0
White	Female	N/A	N/A	$1,500	$3,000
White	Female	1	0	$1,000	$2,000
White	Male	0	1	$5,000	$10,000
White	Male	0	1	$20,000	$40,000
White	Female	1	0	$0	$0
White	Male	2	0	$0	$0
White	Male	0	1	$0	$0

B. Statistical Summary

	Avg. # of Misdemeanors	Avg. # of Felonies	Avg. Bail Amount	Avg. Bond Amount	Expiration of Sentence	Expiration Percentage
Native	1.419354839	0.542857143	$10,320.00	$20,382.86	5	15.15151515
White	0.87745098	0.676470588	$6,896.81	$13,778.92	42	20.68965517
Black	0.6	0.9	$11,720.00	$23,440.00		
% Difference (Native vs. White)	61.8000%	24.7200%	49.6300%	47.9200%		

APPENDIX II—BOMBAY COURT DOCKET RECIDIVISM: APRIL 1–JULY 31, 2014

A. Docket-Charge Description

Bombay Court Docket - Recidivism April 1st - July 31st, 2014

Race	Age	Arrest/Ticket Date	Charge Description	Docket Date	VTL	PL	Other	Police Agency	Mis.	Fel.
Native	20	5/6/2014	Petit Larceny, Agg Unlic Op 3	5/13/2014	1	1	0	State Police	2	0
		6/3/2014	Agg Unlic Op 3, Lane vio	6/24/2014	2	0	0	State Police	1	0
Native	26	5/28/2012	Crim Misch 4, Endan Wel x2, Harassment 2nd	4/22/2014	0	4	0	SRMT	3	0
		10/1/2012	Agg Unlic Op 3, Unlic Driver, Speeding	4/22/2014	3	0	0	SRMT	1	0
		12/12/2013	Obstruct Breath, Menacing 2, Endan Wel	4/22/2014	0	3	0	SRMT	3	0
		4/22/2014	Escape 3, Obs govt admin 2, Assault 3	5/6/2014	0	3	0	SRMT	3	0
Native	27	11/17/2012	Crim Contempt 1, Harrsmt 2, disord con.	7/8/2014	0	3	0	SRMT	0	1
		1/13/2013	Crim Contempt 1, resist arst, disord con.	7/8/2014	0	3	0	SRMT	1	1
		3/31/2014	Agg Unlic Op 2, Poss Marih, vio tail lamps, unlic drvr, misc vtl vio	7/8/2014	4	1	0	SRMT	1	0
Native	37	11/9/2009	Burg 3, Crim Misch. 4, Crim Tres. 2, Harrsmt 2	4/22/2014	0	4	0	State Police	2	1
		4/5/2012	Agg Unlic Op 2, Lane vio, Lv scn accdnt, unlic drv	7/15/2014	4	0	0	SRMT	1	0
Native	57	N/A	harassment 2	5/13/2014	0	1	0	SRMT	0	0
		5/6/2014	Agg Harass 2	5/13/2014	0	1	0	State Police	1	0
Native	30	1/23/2011	rckls drvng, unlic class drvr, imprdnt spd, flw too cls, lv scn accdnt	4/29/2014	5	0	0	SRMT	1	0
		1/14/2014	Assault 3	4/15/2014	0	1	0	State Police	1	0
Native	23	10/3/2013	Agg Unlic Op 3, lane vio	4/1/2014	2	0	0	SRMT	1	0
		4/1/2014	Petit Larceny	4/29/2014	0	1	0	State Police	1	0
		5/6/2014	Poss Marih., veh equip vio	6/24/2014	1	1	0	State Police	0	0
Native	20	7/17/2012	Reck endang 1, obs govt admn 2, resist arst, crim tres 2	4/22/2014	0	4	0	State Police	3	1
		5/15/2014	Sentence violation	5/27/2014	0	0	1	State Police	0	0
Native	46	10/9/2013	Burglary 2	4/8/2014	0	1	0	State Police	0	1
		1/7/2014	Petit Larceny	6/24/2014	0	1	0	State Police	1	0
Native	21	10/14/2012	DWI 1st Off, DWAI Alc, Unlic drv, Poss Marih, spdng, reg vio, no insp	7/29/2014	8	1	0	SRMT	1	0
		6/4/2013	poss marih	7/29/2014	1	0	0	SRMT	0	0
		7/12/2014	DWI 1st Off, DWI 08 of 1PCT, Agg Unlic Op 3	7/29/2014	3	0	0	SRMT	3	0
		7/22/2014	Agg Unlic Op 3, DWI 1st Off, DWI 08 of 1PCT	7/29/2014	3	0	0	State Police	3	0
Native	23	N/A	Sentence violation	4/29/2014	0	0	1	State Police	0	0
		6/19/2014	Criminal Contempt 1	7/8/2014	0	1	0	SRMT	0	1
Native	24	4/10/2010	Flee Officr 3rd, Agg Harass 2	4/29/2014	0	2	0	SRMT	2	0
		4/25/2013	speeding, Dwl 08 of 1PCT, DWI 1st Offense	4/29/2014	3	0	0	SRMT	2	0
		9/1/2013	Obs govt admin 2, lv scn accdnt	4/15/2014	1	1	0	SRMT	1	0
		11/20/2013	Agg Harass 2, stalking 4th	4/15/2014	0	2	0	SRMT	2	0
		1/17/2014	probation violation	7/29/2014	0	1	0	State Police	0	0
Native	28	12/18/2011	Agg Unlic op 2, reckless drvg x2, fail keep right, spdng, lane vio, imprudent	5/6/2014	7	0	0	SRMT	3	0
		1/13/2012	Crim poss weap 3&4, cpcs 7 x2, poss hypo inst, poss marih, cont sub vio x4	5/6/2014	0	6	4	SRMT	3	1
Native	25	9/13/2011	Speeding, Agg unlic op 3	4/22/2014	2	0	0	SRMT	1	0
		3/27/2013	Speeding, Agg unlic op 3	4/22/2014	2	0	0	SRMT	1	0
Native	27	8/15/2013	Menace 2nd x2, Endan wel child x2	5/20/2014	0	4	0	SRMT	4	0
		3/15/2014	Agg unlic op 3, unlic op, unaut use veh 3	5/20/2014	2	1	0	SRMT	1	1
		3/21/2014	Sentence Violation	4/8/2014	0	0	1	SRMT	0	0
		3/21/2014	Harass 2, Reck endang 2	4/8/2014	0	2	0	SRMT	1	0
		4/13/2014	Trespass	5/20/2014	0	1	0	SRMT	0	0
Native	41	N/A	Unaut use veh 3	5/20/2014	0	1	0	SRMT	1	0
		8/6/2013	Speeding, Agg unlic op 3	7/22/2014	2	0	0	State Police	1	0
Native	29	9/18/2009	Agg unlic op 2	4/22/2014	1	0	0	State Police	1	0
		3/25/2011	Harassment 2	4/22/2014	0	1	0	SRMT	0	0
		12/1/2012	Agg unlic op 3, fail keep right	4/22/2014	2	0	0	State Police	1	0
Native	23	3/12/2013	DWI 1st Off, Agg DWI, fail keep right, lane vio, fail comp ord, school zone	4/22/2014	6	0	0	State Police	2	0
		6/11/2013	Aggravated DWI	4/22/2014	1	0	0	State Police	1	0
Native	19	3/5/2013	DWI 1st Off, DWI 08 of 1pct, lv scn accdnt, unaut use veh 3, unlic drvr	4/29/2014	4	1	0	State Police	3	0
		5/24/2014	Crim Misch 2 x2, cpsp 5, flee ofcr 3, DWI 1st, DWI 08 of 1pct	6/17/2014	12	4	0	SRMT	5	2
		5/27/2014	Petit Larceny	6/17/2014	0	1	0	State Police	1	0
Native	25	4/11/2013	Stop sign vio, Viol misc rules	7/29/2014	2	0	0	SRMT	0	0
		5/8/2011	Assault 3	6/17/2014	0	1	0	SRMT	1	0
Native	35	4/15/2003	cpsp 4, reck endang 2	5/6/2014	0	2	0	State Police	1	1
		10/12/2011	disord conduct	6/17/2014	0	1	0	SRMT	0	0
		4/5/2013	Atv op vio x3, atv equp vio, harass 2, disord cndct, misc vio	4/8/2014	5	2	0	SRMT	0	0
Native	36	2/3/2014	agg unlic op 3, vio tail lamps	6/17/2014	2	0	0	SRMT	1	0
		2/15/2014	agg unlic op 3, unlic driver, vio tail lamps	4/22/2014	3	0	0	SRMT	1	0
Native	48	9/27/2012	DWI 1st off, agg unlic op 2, lane vio, resist arst, harass 2, disord conduct, br	4/8/2014	4	3	0	SRMT	3	0
		11/30/2012	agg unlic op 2	4/8/2014	1	0	0	SRMT	1	0
Native	29	11/2/2013	harass 2	5/6/2014	0	1	0	State Police	0	0
		11/13/2013	menacing 2	5/6/2014	0	1	0	SRMT	1	0
		3/18/2014	veh equp vio	4/15/2014	1	0	0	N/A	0	0
Native	25	3/23/2011	burglary 3, cpsp 3, grand larceny 3	4/22/2014	0	3	0	SRMT	0	3
		10/3/2012	agg unlic op 3, unlic driver, lane vio	4/8/2014	3	0	0	SRMT	1	0

Native	28	10/31/2012	resist arst, crim misch 4, harass 2, disord conduct	6/17/2014	0	4	0	SRMT	2	0
		12/3/2013	probation violation	5/6/2014	0	0	1	State Police	0	0
		12/9/2013	poss hypo inst, cpcs 7	4/8/2014	0	2	0	SRMT	2	0
Native	48	12/4/2012	speeding, unlic operation	6/3/2014	2	0	0	State Police	1	0
		2/4/2014	speeding, agg unlic op 2	6/3/2014	2	0	0	SRMT	1	0
		4/1/2014	unlic driver, unlic operation	6/3/2014	2	0	0	State Police	1	0
Native	40	8/12/2004	agg unlic op 3, unlic driver, seat belt violation	5/6/2014	3	0	0	State Police	1	0
		12/11/2010	imprudent speed, agg unlic op 3	5/6/2014	2	0	0	SRMT	1	0
		4/1/2011	crim contempt 2	5/6/2014	0	1	0	SRMT	1	0
Native	23	10/31/2013	speeding, agg unlic op 3	4/8/2014	2	0	0	SRMT	1	0
		2/1/2014	DWI 1st Off, DWI 08 of 1pct, vio lights	4/8/2014	3	0	0	SRMT	2	0
Native	N/A	N/A	Sealed	5/13/2014	N/A	N/A	N/A	SRMT	N/A	N/A
		N/A	Sealed	5/13/2014	N/A	N/A	N/A	SRMT	N/A	N/A
		N/A	Sealed	5/13/2014	N/A	N/A	N/A	SRMT	N/A	N/A
Native	24	8/6/2013	agg unlic op 2, unlic driver, no insp cert	5/13/2014	3	0	0	State Police	1	0
		2/24/2013	burglary 3, crim mischief 3	4/15/2014	0	2	0	SRMT	0	2
		1/7/2014	unlic drvr, fail keep right, unlic op, fail comp ord, num plate vio	5/13/2014	5	0	0	State Police	1	0
Native	22	3/7/2013	Agg asslt, crim misch 3 x2, endan wel, reck endang 2, rckls drvg	4/22/2014	6	5	0	SRMT	3	3
		N/A	sentence violation	4/22/2014	0	0	1	State Police	0	0
Native	30	7/14/2008	Assault 2nd	5/20/2014	0	1	0	SRMT	0	1
		8/30/2008	crim mischief 3 x2, assault 3	5/20/2014	0	3	0	SRMT	1	2
		9/10/2011	reckls drvng x2, agg unlic op 2, flee ofcr 3, veh equp vio, spdng	5/20/2014	20	1	0	SRMT	4	0
		9/30/2013	resist arrest	5/20/2014	0	1	0	SRMT	0	1
		3/11/2014	no insp cert, unlic op, unlic driver	4/8/2014	3	0	0	State Police	1	0
Native	21	11/1/2013	DWI 1st Off, DWI 08 of 1pct, imprdnt speed, obs govt admin 2	4/29/2014	4	1	0	SRMT	3	0
		4/26/2014	reckls drvng, flee ofcr 3, resist arst, fail keep right, spdng, etc	5/20/2014	7	2	0	State Police	3	0
Native	27	7/9/2013	lane violation, agg unlic op 2	4/15/2014	2	0	0	State Police	1	0
		1/25/2014	fail keep right, unlic driver, unlic operation	4/15/2014	3	0	0	SRMT	1	0
Native	30	8/18/2011	agg unlic op 2, unlic driver, no insp cert	6/17/2014	1	0	0	SRMT	1	0
		9/6/2012	DWI 1st off, agg unlic 1, vio lights, unlic drvr, breath test vio, etc	5/27/2014	8	0	0	SRMT	1	1
		12/27/2013	burglary 3, petit larceny	5/27/2014	0	2	0	SRMT	1	1
Native	25	5/25/2013	agg unlic op 3, speeding, vio tail lamps	4/29/2014	3	0	0	SRMT	1	0
		11/1/2013	endang wel, DWI 1st, agg DWI, imprudent speed, agg unlic op 3	4/29/2014	4	1	0	SRMT	4	0
		11/6/2013	agg unlic op 3	4/29/2014	1	0	0	State Police	1	0
Native	32	1/28/2013	reck endang 1, strangulation 2, endan wel child	4/8/2014	0	3	0	SRMT	1	2
		4/4/2013	harass 1, crim contempt 2 x2	4/8/2014	0	3	0	SRMT	3	0
		10/2/2013	crim contempt 2	4/8/2014	0	1	0	SRMT	1	0
		N/A	harassment 2	4/8/2014	0	1	0	SRMT	0	0
Native	24	2/11/2009	no insp cert, agg unlic op 3	7/1/2014	2	0	0	SRMT	1	0
		7/31/2012	agg unlic op 3, follow too close	7/1/2014	2	0	0	SRMT	1	0
		6/17/2014	vio tail lamps, DWI 1st off, DWI 08 of 1pct	7/1/2014	3	0	0	State Police	2	0
Native	32	12/4/2010	agg unlic op 2, unlic driver, vio tail lamps	7/22/2014	3	0	0	SRMT	1	0
		1/28/2012	agg unlic op 2, speeding, unlic driver	6/24/2014	3	0	0	SRMT	1	0
Native	23	10/4/2012	DWI 1st off, DWI 08 of 1pct, fail dim lights	4/8/2014	3	0	0	SRMT	2	0
		8/6/2013	DWI 1st off, DWI 08 of 1pct, fail keep right	4/8/2014	3	0	0	State Police	2	0
Native	31	12/18/2013	Petit Larceny	4/29/2014	3	0	0	State Police	1	0
		1/7/2014	Disord conduct, harassment 2	4/29/2014	0	2	0	State Police	0	0
Native	24	1/7/2014	unlic driver, agg unlic op 3, speeding	4/29/2014	3	0	0	State Police	1	0
		1/14/2014	agg unlic op 3, no insp cert	4/1/2014	2	0	0	State Police	1	0
Native	31	3/12/2011	DWI 1st off, DWI 08 of 1pct, agg unlic 1, fail keep right	6/24/2014	4	0	0	SRMT	2	1
		5/20/2014	unlic driver, registration vio, agg unlic op 2	6/10/2014	3	0	0	State Police	1	0
Native	23	1/23/2012	agg unlic op 3, speeding, unlic driver	5/20/2014	3	0	0	SRMT	1	0
		2/4/2014	speeding	4/8/2014	1	0	0	State Police	0	0
Native	35	3/31/2012	veh equip vio, agg unlic op 3, endan wel, cpcs 4,5 & 7	6/17/2014	2	4	0	SRMT	2	2
		3/11/2014	burglary 3	4/22/2014	0	1	0	State Police	0	1
					229	118	9		146	31

B. Charge Tally

Bombay Court Docket - Recidivism April 1st - July 31st, 2014 (Charge Tally)

Charges	Tally
agg assault	1
Agg DWI	3
Agg Harss 2	3
Agg unlic 1	2
Agg Unlic Op 2	14
Agg Unlic Op 3	26
assault 2	1
Assault 3	4
ATV equip vio	1
ATV op vio	3
breath test vio	2
Burglary 2	1
Burglary 3	5
cont sub vio	4
cpcs 4	1
cpcs 5	1
cpcs 7	4
cpsp 3	1
cpsp 4	1
cpsp 5	1
Crim Contempt 1	3
Crim Contempt 2	4
crim misch 2	2
Crim misch 3	5
Crim Misch 4	3
crim pos weap 3	1
crim pos weap 4	1
Crim Tres 2	2
disob trfc device	1
Disord Conduct	7
DWAI Alcohol	1
DWI 08 of 1pct	11
DWI 1st Offense	16
endan wel child	9
Escape 3	1
fail comp order	4
fail dim lights	1
fail keep right	10
flee officer 3	4
follow too close	2
grand larceny 3	1
harassment 1	1
harassment 2	12
imp pass on right	1
imprudent speed	6
Lane Violation	12
Lv Scn Accdnt	4
menacing 2	4
misc violation	1
misc vtl violation	1
no insp cert	9
no safety glass	1
num plate violation	3
Obstruct Breath	1
obs govt admin 2	4
Op MV alc under 21	1
op MV no ins	1
Petit Larceny	6
poss hypo inst	2
Poss Marih	5
probation violation	2
Reck endang 1	2
reck endang 2	3
reckless drvng	8
Registration vio	3
Resist Arrest	6
school zone	1
SEALED	3
seat belt violation	1
sentence violation	4
speeding	20
stalking 4	1
stop sign violation	2
strangulation 2	1
trespass	1
turn signal vio	5
unauth use veh 3	3
Unlic class drvr	1
Unlic Drvr	22
unlic Op	6
unsafe passing	3
Veh Equip Vio	4
veh regis susp	1
vio lights	2
vio misc rules	4
vio tail lamps	6

Top 5 Charges	
Agg Unlic Op 3	26
Unlic Driver	22
Speeding	20
DWI 1st Off	16
Agg Unlic Op 2	14

TOTAL CHARGES:	358		
# Alcohol-related:	35	% of Total:	10