



Pre-Trial Releases at Seattle Municipal Court

When a defendant is booked into jail on a violation of the Seattle Municipal Code, there are several paths for release from jail during the pre-trial phase. After booking and up to the defendant's first arraignment hearing, there are two points at which these options occur: at a screening with the Seattle Municipal Court's (SMC) personal recognizance (PR) screeners (typically conducted a few hours after booking) and at the first appearance before a judicial officer, which generally occurs within 24-48 hours of arrest.

Pre-trial release decisions are based on two main factors: 1) the impact of public safety if the defendant is released and 2) the likelihood that the defendant will appear at future hearings. The information used to inform these decisions is a mixture of history with the criminal justice system, ties to the community (what the defendant has to "lose" by committing another crime and/or having a warrant out for their arrest for failing to appear), and the mental health of the defendant¹.

PR Screener Phase

PR Screeners are employees of the SMC Probation Division and are not judicial officers. The release options available to a screener and/or defendant at PR screening are:

- **Release on personal recognizance.** If certain criteria are met, such as a lower-level charge, little or no criminal history, little or no history of failing to appear at court hearings, and ties to the community, then the screener may release the defendant on their own recognizance, since there is a high likelihood they will return for their next court date.
- **Deny release on personal recognizance.** If the defendant meets some criteria outlined for possible release on PR, but not others, the screener may deny release, since there is some concern for public safety and/or risk of failing to appear at a future court hearing. The information that the PR screener collects

¹ Mental health in of itself is not a factor, but rather whether the defendant is likely to harm themselves or others due to illness. In addition, many defendants suspected of having mental health issues undergo an assessment to determine if they are competent to stand trial. In some cases, the defendant may undergo involuntary commitment proceedings in Superior Court.

on the defendant in this case will be passed on to the judge at the first arraignment hearing for consideration of release by a judicial officer.

- **Hold defendant for arraignment.** In some cases, the screener cannot release on PR, since the defendant does not meet strict criteria for release by a screener. An example of this is domestic violence charges, where a screener, per SMC policy, cannot release a defendant on PR. In other cases, it is a combination of charges and criminal history that would prohibit release by the Screener. The information that the PR screener collects on the defendant in this case will be passed on to the judge at the first arraignment hearing for consideration of release by a judicial officer.
- **Default bail posted.** Most criminal charges have bail amounts predetermined by charge type. Some criminal charge types, like domestic violence assault, have no predetermined bail amounts. For those charges that have a bail amount set, a defendant can be released by posting the bail amount before the arraignment hearing and have an out-of-custody arraignment hearing. This can happen at any point before the first arraignment.

Attachment 1 shows the SMC release guidelines for the PR Screeners. These guidelines are reviewed regularly and are currently undergoing a 2015 review, so the criteria contained here is subject to change.

Arraignment Hearing

The next point at which release is considered is the first arraignment hearing. Arraignment hearings are the first court hearings in front of a judicial officer with the prosecutor present and the defense attorney (many of which are court-appointed public defenders for those that cannot afford an attorney). The release options available to a judge and/or defendant not released in the PR screening stage are:

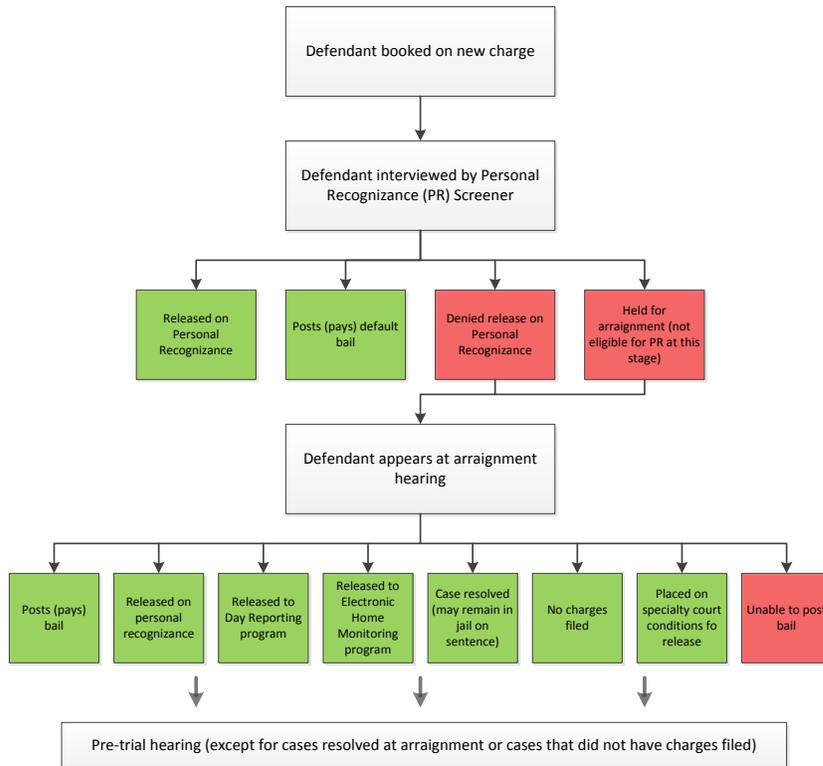
- **Bail posted.** The defendant can be released by posting bail themselves or work with a bail bond agency to pay the amount of the bond that will be returned upon the end of the pre-trial phase, if they appear at all hearings. Those using a bail bond agency will also be charged a fee for their services by the agency. The prosecutor may ask for an increase in bail above the default amount – the judge may agree and set a higher bail if they see a public safety risk and/or a risk that

the defendant may not appear at future court dates. Occasionally, a judge will order bail in addition to Day Reporting or electronic home monitoring.

- **Release on personal recognizance.** The judge may release a defendant on PR if they feel there is little risk to public safety and the likelihood that the defendant will appear at future court hearings is high.
- **Release to Day Reporting.** The Day Reporting program is designed to provide a non-confinement alternative to defendants that normally would be released on PR or post bail, but cannot be due to financial circumstances and/or lack of ties to the community. A defendant on Day Reporting must report as directed to the court and check in with a Probation employee during the course of their pre-trial phase. If a defendant is in need of human services, such as housing, treatment, financial assistance, etc., they are referred to the Court Resource Center, which houses a variety human service providers and referral services.
- **Release to Electronic Home Monitoring program.** The Court contracts with a vendor to provide electronic home monitoring (EHM) for defendants. Defendants have to pay the costs associated with this service. In order to enter the EHM program, defendants must have a stable home and access to a telephone.
- **Case resolved at arraignment.** Some cases are resolved at arraignment, typically through a negotiated plea between the prosecutor and the defendant. In some of those cases, the defendant may stay in jail, but as a post-trial sentence.
- **Conditions of release signed.** In some cases, the defendant is released after agreeing to conditions of release imposed by the Court which do not include any of the other options listed here. Often these cases are associated with a specialty court such as Mental Health Court or Veteran's Treatment Court.
- **No charges filed.** At SMC, those who are booked have a case created by the Court. It is not unusual for the prosecutor to decline to file the case after review. The court uses resources in creating the case and dealing with the results of the filing decision at arraignment, so they are included in the numbers of cases. These cases may result in the defendant being released prior to arraignment, depending on when the court and jail are notified of the decision.

Chart 1 shows the pre-trial release actions outlined above in a high-level flow chart. Please note that there are the exceptional cases that do not fit exactly into the pre-trial actions that are outlined in this analysis.

Chart 1: High-Level Flowchart of Pre-Trial Release Actions



Release Decisions

It is worth noting that pre-trial release decisions are predicated on protecting public safety, the safety of the defendant themselves, and ensuring that a defendant appears at future court dates. Trying to predict future behavior is a very difficult task.

Judicial officers have no choice but to use past behavior and current accusations of criminal behavior as an indicator of future behavior. In addition, Washington Court Rule 3.2 directs judges to take *“the accused’s employment status and history, enrollment in an educational institution or training program, participation in a counseling or treatment program, performance of volunteer work in the community, participation in school or cultural activities or receipt of financial assistance from the government; the accused’s family ties and relationships; the accused’s reputation, character and mental condition; [and] the length of the accused’s residence in the community;...”* into account as relevant factors when determining pre-trial release. Just looking at release decisions without context around past behavior and current life circumstances would provide an incomplete picture of why judges make the decisions they do around pre-trial release.

Methodology

The release actions outlined above are not ones that lend themselves to a quick and easy analysis of data. In order to get data and provide context, the Court's Research, Planning, and Evaluation Group (RPEG) pulled a random sample of booked cases in 2014. The booked cases were only those that were booked at the point of the initial charge. For this study, 352 cases (8.5% of the total booked population) were chosen at random out of the 4,148 booked cases, giving the percentages used in the analysis roughly a 5% margin of error if the percentages were to be applied to the 2014 booked cases as a whole.

Table 1: Number and Percentage of Total Booked Population²

	Number Booked	% of Booked
Non-DV/DUI	2,332	56%
DUI	308	7%
DV	1,508	36%
Grand Total	4,148	100%

Table 2: Number and Percentage of Booked Population Sample

	Number in Booked Sample	% in Booked Sample
Non-DV/DUI	201	57%
DUI	26	7%
DV	125	36%
Grand Total	352	100%

The pre-trial release decisions were only checked at the first point at which a defendant on a case was booked. Many cases see defendants fail to appear at pre-trial hearings, which subsequently results in a warrant being issued for the defendant's arrest. When/if the warrant is served in the case of a failure to appear at a court hearing, it is highly likely that any subsequent pre-trial release option will be more restrictive than the first option – since concern about failing to appear at hearings is a paramount factor in releases from jail. Proven failure to appear at a court hearing typically results in higher bail being set, less reliance on PR, etc.

² Totals may not sum to 100% due to rounding.
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Information on a defendant’s criminal history, failure to appear history, and financial status was collected from SMC’s PR Screening application. These screenings are done immediately after booking - some of the defendants are uncooperative or hostile, so information on personal aspects (financial) can be suspect. The information given to the Screeners by defendants is verified by a reference, when possible, but even then might not fully reflect actual circumstances. Documentation to verify financial and other personal information is typically non-existent.

Custody Status and Arraignment

It is worth noting that in Seattle, a large number of misdemeanor defendants are never booked into jail, but receive a summons to appear at an out-of-custody arraignment. As Table 3 shows below, half of misdemeanor and gross misdemeanor criminal cases in Seattle involve defendants that are never booked into jail.

Table 3: Percentage of Cases that are Booked in Jail at Case Creation

Booked into Jail at Case Creation	50.3%
Out-of-Custody at Case Creation	49.7%

This analysis will only focus on the 50.3% of defendants that are booked into jail at case creation. The other 49.7% of cases (approximately 4,100 cases) were not booked into jail by the Seattle Police Department at the point their case was created.

PR Screening

The Personal Recognizance Screeners are employees of the SMC Probation Division. While the PR Screeners are able to release some defendants, their discretion and latitude on release decisions is extremely narrow or non-existent, depending on the charge, criminal history, and other factors. Attachment 1 shows the guidelines used by the PR Screeners.

Table 4 and 5 below show the releases done at the PR Screen stage. For this analysis, those cases that were denied PR or held for arraignment due to non-PR-eligible charges were grouped together into a “not released” category. Cases that had no PR Screener information were listed as held in-custody (not released), since the PR Screener did not make a release decision.

Table 4: Releases from Jail at the PR Screening Stage

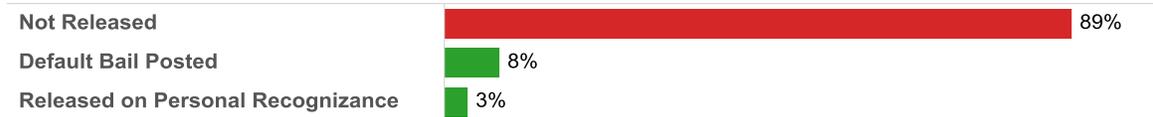
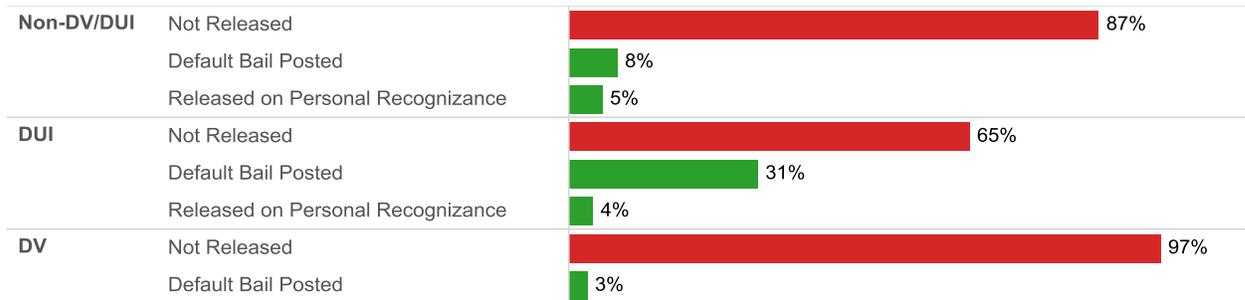


Table 5: Releases from Jail at the PR Screening Stage, by Case Category



As evidenced in Table 5, the large majority of all cases, especially domestic violence cases, were held in custody prior to arraignment.

First Arraignment Hearing

The first arraignment hearing is an in-custody defendant’s first hearing before a judge. First arraignment hearings occur within 48 hours of booking. One of the items the judge addresses at this hearing is a possible release. Tables 6 and 7 show the breakdown, by case type, of release actions at the first arraignment hearing. Please note that a defendant may be released at a subsequent hearing during the pre-trial phase. For this analysis, only releases at the first arraignment were recorded. All of the data below excludes those that were released at the PR screening phase. Please also note that some defendants in the “No Bail Posted” category may have been not released due to warrants in other courts, including felony charges.

Table 6: Releases from Jail at First Arraignment Hearing

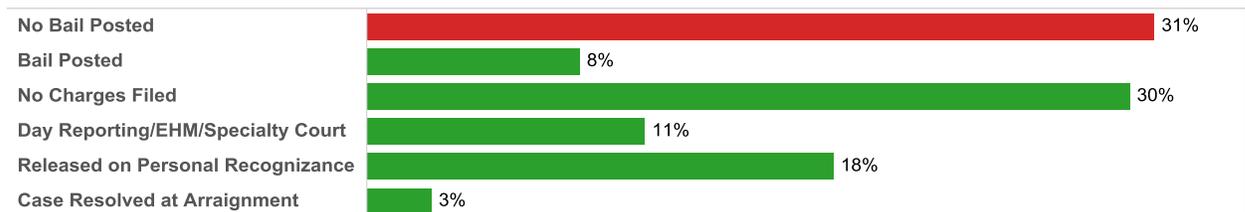
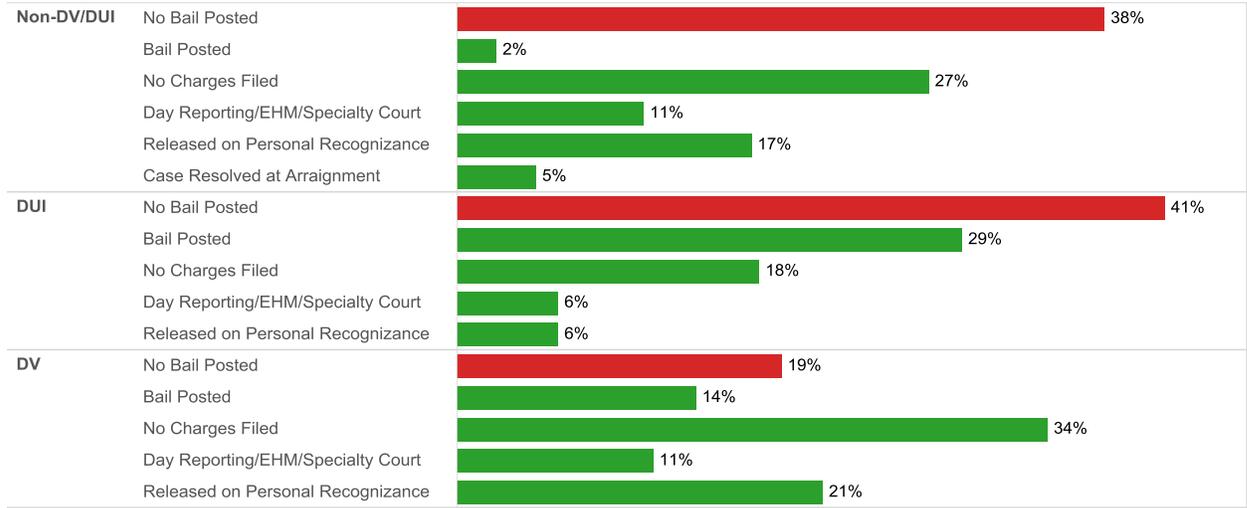


Table 7: Releases from Jail at First Arraignment Hearing, by Case Category



Defendant History and Status

A judge deciding on a motion to increase bail typically factors in a variety of different information sources in order to estimate future risk to public safety and the likelihood that the defendant will appear at the next court date. Table 8 shows the average bail amount for each type of release – some of the bail amounts were adjusted by the judge, while some remained at the default level of \$500 for a misdemeanor and \$1,000 for a gross misdemeanor, per charge.

Table 8: Average Amount of Bail at Arraignment by Release Action and Case Type

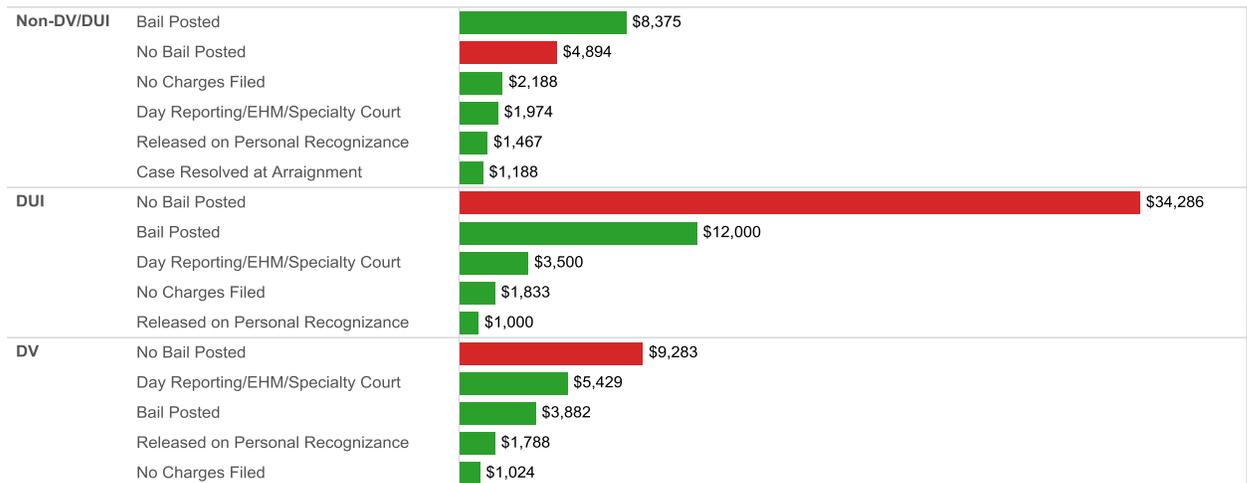
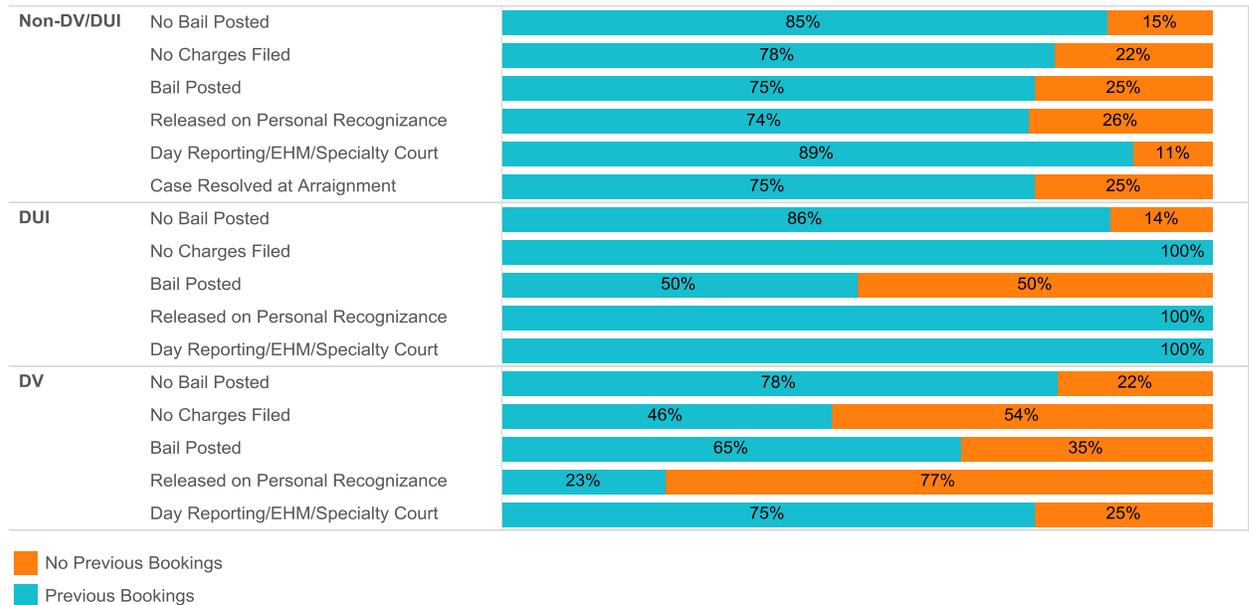


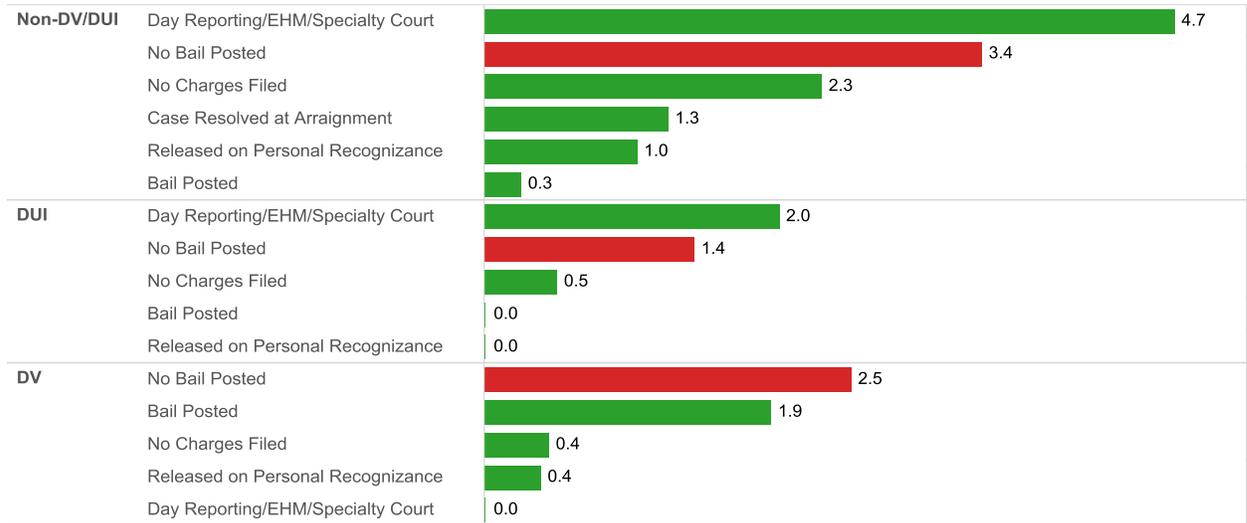
Table 9 shows the percentage of defendants with previous bookings in the King County Jail as for each release type, broken out by case type. For this analysis, cases with incomplete data from the PR Screener were excluded.

Table 9: Previous Cases with King County Jail Booking



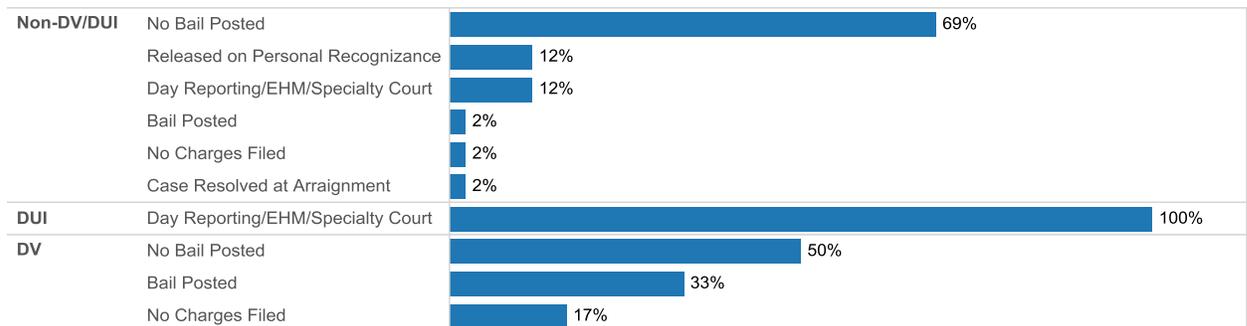
Another key piece of information that judges take into account for decisions on release and bail is the number of warrants a defendant has had in the past two years. Warrants are typically issued for failing to appear at a court hearing. Table 10 shows the average number of warrants issued for defendants over the previous 24 months from the date of the initial PR screening.

Table 10: Average Number of Warrants Issued to Defendants in Past 24 Months



Another item taken under consideration for release is the mental health of defendants. For some defendants, mental illness may create concerns for public safety and/or the well-being of the defendant. Some defendants are scheduled for competency hearings, often at arraignment, to determine if they are competent to stand trial. Table 11 shows the percentage of defendants within each case category that had mental health and/or competency hearings by release action.

Table 11: Percentage of Defendants with MHC/Competency Hearing



Defendant Income and Housing

One concern that is commonly expressed around bail is that it penalizes those that cannot afford to post bail by keeping them in jail. It is worth noting that judges do have information on defendant employment and income that is captured during the PR

screening process when eligibility for a public defender is determined. As mentioned earlier, bail is a tool that is used to help insure that defendants appear at future court hearings. Those that do not have funds or resources to post bail, but are seen as little risk to public safety are frequently referred to the Court’s Day Reporting Program.

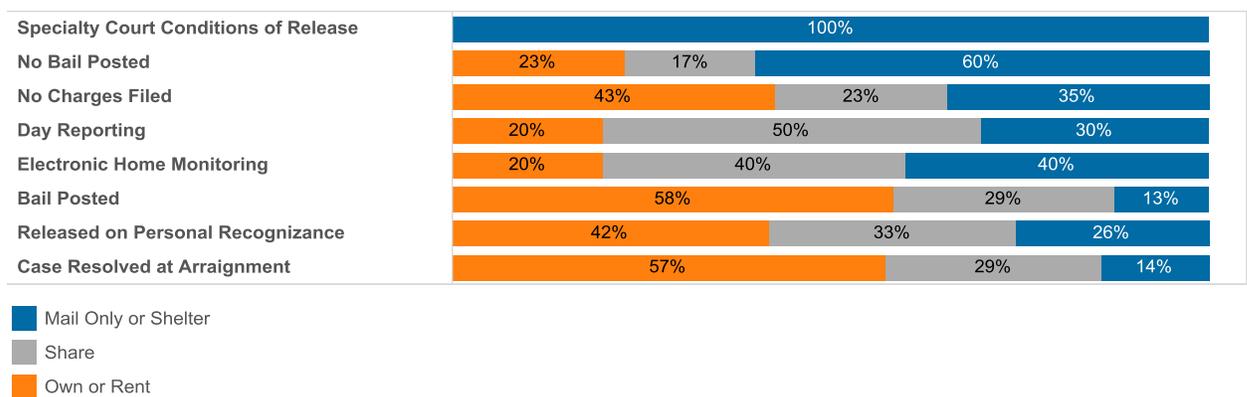
The defendant income information outlined in Table 12 is based on a PR Screener’s queries into personal finances to determine if a public defender is needed. Please keep in mind that defendants rarely have documentation to support their claims to employment and expenses in jail. While PR Screeners do attempt to verify information given to them by defendants, income is largely self-reported for recently booked individuals. **The overall percentage of indigent defendants for the booked population is 90%.**

Table 12: Percentage of Defendants Screened as Indigent by Release Action



Much the same as income, housing status is collected and verified by the PR Screeners, however, it should be considered largely self-reported due to limitations of possessing documentation while in-custody. Table 13 shows the housing status by release action – please note that “Mail Only or Shelter” should be considered as homeless, for the most part.

Table 13: Housing Status by Release Action



Race and Pre-Trial Release

Table 14 and 15 show the race of defendants by release action at the PR Screening and arraignment phase, respectively. Please note that SMC’s case management system, MCIS, does not capture ethnicity – only race, so Hispanic is not captured as a distinct category.

Table 14: Release Actions at PR Screening Stage, by Race

Asian	Not Released	83%
	Default Bail Posted	17%
Black	Not Released	94%
	Default Bail Posted	4%
	Released on Personal Recognizance	2%
Native American	Not Released	100%
Unknown	Not Released	71%
	Default Bail Posted	14%
	Released on Personal Recognizance	14%
White	Not Released	86%
	Default Bail Posted	10%
	Released on Personal Recognizance	4%

Table 15: Release Actions at Arraignment, by Race

Asian	No Bail Posted	30%
	No Charges Filed	10%
	Day Reporting/EHM/Specialty Court	30%
	Released on Personal Recognizance	30%
Black	No Bail Posted	33%
	Bail Posted	6%
	No Charges Filed	23%
	Day Reporting/EHM/Specialty Court	14%
	Released on Personal Recognizance	21%
	Case Resolved at Arraignment	3%
Native American	Bail Posted	33%
	No Charges Filed	33%
	Released on Personal Recognizance	17%
	Case Resolved at Arraignment	17%
Unknown	No Bail Posted	17%
	Bail Posted	17%
	No Charges Filed	33%
	Released on Personal Recognizance	17%
	Case Resolved at Arraignment	17%
White	No Bail Posted	31%
	Bail Posted	9%
	No Charges Filed	35%
	Day Reporting/EHM/Specialty Court	8%
	Released on Personal Recognizance	16%
	Case Resolved at Arraignment	2%

Findings

Determining which defendants get released pre-trial is, in the end, a subjective process based on information at hand. Judges must balance the freedom of the individual with the safety of the public. SMC has spent considerable resources over the past ten years broadening release options to better address both sides of the equation. The creation of the Day Reporting Program and strengthening of services for mentally ill defendants are two areas that have helped reduce the jail population. The main findings from the study are:

- Half of the cases created at SMC are not initiated with a booking (not booked at arrest).
- The PR Screening process releases a small number of individuals with low public safety risk, leaving the majority of release decision in the hands of judicial officers.
- Average amounts of bail are mostly larger for those that do not post bail, inferring that those cases are more likely to be a risk to the public and/or unlikely to appear at future court hearings.
- Those not able to post bail have large numbers of previous warrants and jail bookings – both of which increase the likelihood they are a risk to public safety and/or are unlikely to appear at future court dates.
- Those not able to post bail also had a high rate of mental health issues, which increase the likelihood of them posing danger to themselves and/or others.

ATTACHMENT 1

PR RELEASE GUIDELINES

NEVER RELEASE

- A. Defendants who are booked on:
1. No bail (designated as \$9,999,999 on booking screen)
 2. Firearm
 3. Unlawful use of Weapon (brandished or used vs. simply in possession)
 4. Stalking
 5. When defendant is booked on domestic violence charge.
 6. When evidence contained in probable cause statements, victim or reference statements, or excited utterances indicates defendant will present an immediate threat to the public if released.
 7. When defendant is intoxicated or otherwise in any way impaired to the extent that he/she is unable to understand the interview process, participate fully in the interview process, or appears unlikely to be able to comply with the directive that he/she return to court for future hearings.
 8. If defendant is currently booked on a DUI or physical control and has been convicted of a prior DUI or Physical Control within the last 10 years, a vehicular homicide or vehicular assault ever, two prior

DUI's ever or has a pending DUI in any court. To check, run defendant on OAC and NCIC.

9. If defendant intentionally gives misleading information.
10. If warrant is marked "No PR."
11. If warrant is for FTA sentencing; trial; readiness; bench trial or FTA any DV related case. All FTC are excluded except FTC-CSH which *may be* PR'able. (Community service hours as a condition of sentence: PR; Community service in lieu of fine: PR; **community service in lieu of jail: NO PR (this should show in MCIS under the jail obligation as JCSH)**.-Judge Hightower 1/12/09.)
12. If warrant is for FTA for a 2nd or subsequent PTH (1st FTA PTH is PR'able) *unless* defendant is scheduled for BWADD or has reasonable explanation. If defendant has reasonable explanation, PR at screener's discretion.
13. When no probable cause is available and the charge is for crime against person, or any crime of a possibly violent nature without PC.

SELDOM RELEASE

- A. If defendant is currently booked on five charges or more.
- B. If defendant has been previously PR'd on the same case (by screeners, warrants or court).

- C. When defendant has extensive criminal history (especially for similar charges), extensive FTA history, or extensive booking history.
- D. When no probable cause statement was completed by arresting officers.