

Evaluation of the Pretrial Release Pilot Program in the Mesa Municipal Court

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ABSTRACT

Pretrial release is a common practice in many courts throughout the country. Electronic monitoring of defendants is also becoming more common. Usually these occur in courts dealing with felony crimes. This report reviews a pretrial release pilot project incorporating the use of electronic monitoring as an alternative to bond for misdemeanor cases in a limited jurisdiction court.

The first project of its kind in the State of Arizona, the Mesa Municipal Court utilized Global Positioning System (GPS) enabled ankle bracelets to monitor pretrial released defendants. This report reviews the first four and a half months (August 11, 2008 through December 31, 2008) this pilot project was in place.

In custody defendants who met the following guidelines were eligible for the program:

- Case is at pre-adjudication status
- Defendant does not pose a potential threat to others
- Defendant does not have a request to be held from another jurisdiction
- Defendant has the ability to charge the device for two hours each day

Existing court staff was used to manage the pretrial release program. Monitoring was performed 24 hours a day, seven days a week, the day shift consisted of staff from the In-Custody Unit, the evening, night, weekend and holiday shift consisted of a Deputy Court Administrator.

Equipment and technology issues were greater and more time consuming than anticipated. Thirty-eight percent of the devices experienced a technical or mechanical breakdown, which required replacement of the device. Satellite and cellular coverage also caused numerous issues that weren't expected.

The use of electronic monitoring eliminated the time a defendant had to spend in the Maricopa County Sheriff's Office (MCSO) jail awaiting their next court hearing. It also reduced the time a defendant being held on bond had to stay in the MCSO jail waiting for their next court hearing from an average of two weeks to as little as two days. This saved the city \$73.46 for every day a defendant did not have to be housed in jail. A total of 151 defendants were placed on electronic monitoring for a combined total of 3,598 days and a monitoring cost of \$25,186. Utilizing monitoring costs only, the use of electronic monitoring saved an estimated \$144,000 during the four and a half month pilot. Defendants received a reminder call the day before their next court date, reducing the Failure to Appear (FTA) rate from a court average of 29% to five percent.

A survey was completed by the seven judges of the Mesa Municipal Court to assess their views and opinions regarding the program. There was overwhelming support of the program and the benefit it provided.

The pretrial release program established that electronic monitoring is a viable alternative to bond in pretrial misdemeanor cases. While additional resources would be needed for proper electronic supervision, the cost savings and benefits to the court, city and defendants make this a worthwhile program.

INTRODUCTION

The Mesa Municipal Court is a limited jurisdiction court serving over 462,000¹ constituents. Mesa Arizona is a large city encompassing 133 square miles, located 16 miles east of metropolitan Phoenix.² It is the 38th most populous city in the United States.³

The Arizona Court system has three levels, consisting of two courts at each level (see Appendix A). The first level is the limited jurisdiction courts which consist of Justice of the Peace and Municipal Courts. These courts have jurisdiction over a limited variety of cases and they are not a court of record. The second level is the general jurisdiction courts which consist of a Superior Court in each of Arizona's 15 counties and a Tax Court for the entire State. The Superior Court, which may have several divisions, has jurisdiction over the widest variety of cases and they are a court of record. It also functions as the appellate court for the limited jurisdiction courts. The third level is the appellate courts which consist of the Court of Appeals and the Supreme Court. These courts review cases appealed to them from both Superior Court and Limited Jurisdiction Courts. Both are a court of record. The Court of Appeals hears all cases with the exception of a death penalty appeal, a case involving elected officials or a dispute between counties. These cases go directly to the Supreme Court. The Supreme Court is the court of last resort in Arizona. They are not required to hear every appeal they receive.

¹ *Community Profile, 2008-2009 City of Mesa, Arizona*
http://www.mesaaz.gov/economic/PDF_Files/Brochures_Handouts/CommunityProfile_2008.pdf at page 1

² Ibid.

³ Ibid.

The Mesa Municipal Court has jurisdiction over city ordinance violations, civil traffic violations and misdemeanor cases. As the third largest municipal court in Arizona, with seven Magistrates (the more common term of judges will be used throughout this report.), one Civil Traffic Hearing Officer and a non-judicial staff of 83, each year it typically:

- provides service to over 262,000 people who enter the court
- handles over 240,000 incoming telephone calls
- processes over 137,000 case filings
- provides interactive voice response processing on over 140,000 telephone calls, and,
- provides Internet processing on over 127,000 transactions.

While some municipal courts have probation officers, the Mesa Municipal Court does not. As of this writing, no other municipal court in the state of Arizona is utilizing a GPS enabled ankle bracelet for pretrial release.

This project was first discussed in September 2007, when the Mesa Police Department requested the Mesa Municipal Court evaluate the use of electronic monitoring. The motivation was to reduce direct jail costs, estimated by the Mesa Police Department to be in the range of \$4.2 million to \$6 million each year, paid to the MCSO for housing defendants. The Mesa Police Department's holding facility is not large enough to house prisoners overnight and MCSO jail fees have increased every year for the past six years.

Table 1 – Maricopa County Sheriff Jail Fees

Maricopa County Sheriff Jail Fees

Fiscal Year	Booking Fee (Includes Day 1)	Daily Housing Fee
2003/2004	\$99.36	\$45.84
2004/2005	\$108.13	\$47.14
2005/2006 ^[1]	\$134.19	\$56.23
2006/2007	\$163.64	\$62.29
2007/2008	\$189.23	\$72.33
2008/2009	\$199.35	\$73.46

^[1] This included special medical costs charged for City prisoners for medical services. Cities are no longer billed directly by hospitals.

After a comprehensive evaluation of the In-Custody Court, pretrial defendants were identified as a population that could utilize electronic monitoring. From July 1, 2006 through June 30, 2007 (FY 06/07), the In-Custody Court⁴ saw defendants on 19,526 cases⁵. Of the cases where the defendant appeared before the judge for the first time, 61% were resolved at the first appearance. Of the remaining cases, 38% were released own recognizance and 62% were held on bond.

On the cases held on bond, 38% posted the bond before their next scheduled court date. Approximately 45% posted bond within 24 hours and 80% posted bond within four days. The defendants who did not post bond were held an average of 12 days before their second In-Custody Court hearing.

⁴ In-Custody Court includes activities held in the Video Courtroom. Video Court is held each weekday between 7:30 AM and 8:00 AM.

⁵ A defendant is seen on all related cases when they appear in the In-Custody Court. A defendant may be seen on a case multiple times in a year.

During the second appearance in court, 75% of cases were resolved. Of the remaining cases, 26% were release own recognizance and 74% were continued to be held on bond. On the cases held on bond, 9% posted bond before their next scheduled court date. Approximately 25% posted bond within 24 hours and 30% posted bond within four days. The defendants who did not post bond were held an average of 14 days before their third In-Custody Court hearing.

Appendix B outlines the process flow for the In-Custody Court.

The length of time a defendant is held in the MCSO jail is determined by some or all of the following:

- The number of defendants transported from the MCSO Jail to the In-Custody Court each day is limited to 13 by the Mesa Police Department.
- Availability of the assigned Public Defender.
- Contact with the victim(s) by the City Prosecutors Office.
- Continuance requested by an Attorney or Prosecutor.

There was concern that defendants who were unable to post bond would spend an average of 12 days in jail and then possibly an additional 14 days in jail if they did not or could not resolve their case. Additionally, the evaluation of the In-Custody Court estimated the cost of holding these defendants in the MCSO Jail while they wait for their next scheduled court date to be over \$1.9 million.

This report seeks to determine if use of a GPS enabled ankle bracelet for electronic monitoring can be a viable alternative to bond under pretrial conditions for a Municipal Court. It is important to keep in mind during this discussion that the Mesa Municipal Court is a limited jurisdiction court that primarily handles misdemeanor crimes.

Would utilization of electronic monitoring reduce the number of days a defendant held on bond spends in jail awaiting transport for their next court hearing? What will the effect be on

court resources? Will this affect the number of pleas at arraignment and pretrial? Will this affect the number of defendants release own recognizance, placed on bond and who paid bond? Will the project reduce jail costs?

Following a review of the relevant literature regarding the use of electronic monitoring, the methodology used in conducting the project and survey is described. The results will be displayed in the Findings section of the report in two steps.

- The first step includes the process used to monitor and track defendants along with various statistics.
- The second step includes a review of the survey results.

Following the reporting of the results, conclusions and recommendations are presented.

LITERATURE REVIEW

I. History

James Madison, widely viewed as the chief architect of the United States Constitution, wrote, “Every word in the constitution represents a struggle between power and liberty.”⁶ The struggle between the power of government and a person’s right to liberty is one of the basic premises of our judicial system and is at the heart of pretrial release programs.

Pretrial release programs and bond are not new to the legal system, roots of this process can be traced back to 293 BC Rome. Documents show an individual could be released on a promise to pay a certain amount if they failed to return.⁷ In medieval England, a person was released into the custody of family or friends on their word (thus the saying, “my word is my bond”) the accused would return when the magistrate traveled to their county. If the accused failed to return, the person who vouched for them would be required to surrender themselves.⁸

While this process worked well when people lived close to each other, it didn’t work well in America where there were large, open areas that made absconding easy. To address this issue, bond changed to a sum of money that would be forfeit if the person did not appear.⁹ Even with this situation, an individual’s right to liberty was of such concern to our founders that it was

⁶ J. George, JR, **Criminal Justice Issues – Preconviction Release**, Citizens Research Council of Michigan, November 1977, page 6.

⁷ Carl Sontag, **Die Entlassung gegen Caution in deutschen**, 1865 cited in Evie Lotze, John Clark, D. Alan Henry, and Jolanta Juskiewicz, *The Pretrial Services Reference Book, History, Challenges, Programming*, **Pretrial Services Resource Center**, December 1999, page 7.

⁸ **Pretrial Release and Supervision Program Training Supplement**, Washington, DC, Pretrial Services Resource Center, 1997, P.1, cited in Evie Lotze, John Clark, D. Alan Henry, and Jolanta Juskiewicz, *The Pretrial Services Reference Book, History, Challenges, Programming*, **Pretrial Services Resource Center**, December 1999, page 7.

⁹ Evie Lotze, John Clark, D. Alan Henry, and Jolanta Juskiewicz, **The Pretrial Services Reference Book, History, Challenges, Programming**, Pretrial Services Resource Center, December 1999, page 7.

placed in our Constitution as an Amendment. The Eighth Amendment to the U.S. Constitution prohibits excessive bail.

The issue of what constitutes ‘excessive bail’ was addressed in 1951 in *Stack v. Boyle*. In that decision the court ruled:

... since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that individual. The right to release before trial is conditioned upon the accused’s giving adequate assurances that he will stand trial and submit to sentencing if found guilty. Like the ancient practice of securing the oaths of responsible persons to stand as sureties for the accused, the modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of the accused. Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is excessive.¹⁰

Closely following this decision was the 1952 case of *Carlson v. Landon*¹¹ which stated that while the Eighth Amendment prohibited excessive bail, it did not mean that bail was a right in all cases. Bail could be denied in death penalty cases.

There was growing frustration in the Judiciary as the current bail system was not providing for equality and due process as outlined in the 14th Amendment to the U.S. Constitution. Release - an individuals right to liberty - had turned into a system that became dependent on a person’s ability to raise money.¹²

In 1961 the Manhattan Bail Project demonstrated that another non-monetary system could be used with great success. The pretrial screening program found “those with strong

¹⁰ 342 U.S. 1, 4-5 (1951)

¹¹ 342 U.S. 524, 545-546 (1952)

¹² Barry Mahoney, **Evaluating Pretrial Release Programs**, National Center for State Courts, September 1976, page 4

community ties were likely to return to court if released pretrial.”¹³ This created the foundation to change release from being based only on a person’s ability to raise money.

In 1966, “The Bail Reform Act of 1966” was passed by congress. It was the first major reform of the federal bail system since the Judiciary Act of 1789. Its five major provisions were:

1. there is a presumption of release on recognizance on non-capital crimes as long as the court believes you will show up for your next court appearance;
2. supervised or conditional pretrial release could be imposed to address the risk of failure to appear;
3. bail would only be imposed if the court believed non-financial release conditions would not ensure appearance at the next court date;
4. a 10 percent deposit of the total bond amount would be sufficient for release; and
5. all defendants held for 24 hours or more would have their case reviewed for bail.¹⁴

This reform was a great success in requiring judges to use the least restrictive conditions for pretrial release. This changed the focus from being about how much money you could raise to due process and equal justice under the law. However, over the next decade as these new pretrial release programs were being evaluated, it was found that many who were out of custody on pretrial release were committing crimes. To address this issue, Congress passed, “The Bail Reform Act of 1984” which added a provision stating a judge could take public safety into consideration when determining conditions of release.¹⁵

¹³ Wayne Thomas, **Bail Reform in America**, Berkley: Univerisity of California Press, 1976 cited in Evie Lotze, John Clark, D. Alan Henry, and Jolanta Juskiewicz, *The Pretrial Services Reference Book, History, Challenges, Programming*, **Pretrial Services Resource Center**, December 1999, page 9.

¹⁴ Evie Lotze, John Clark, D. Alan Henry, and Jolanta Juskiewicz, **The Pretrial Services Reference Book, History, Challenges, Programming**, Pretrial Services Resource Center, December 1999, page 10.

¹⁵ **Ibid**, pages 11-12

The State of Arizona began its pretrial program in 1975 in Maricopa County.¹⁶ The Pretrial Services Agency is part of the Maricopa Superior Court. It was established to address the statutory requirements of ARS §13-3967¹⁷ which outlined the information a judicial officer would consider when determining release conditions.

II. Legal Foundation

While the history discussion mostly dealt with laws at the federal level, it is important to understand that state laws also provide for these protections. The entire legal system of the United States provides many protections to defendants throughout the time their case is being resolved - including pretrial.

The Crime and Justice Institute and the National Institute of Corrections published an excellent paper addressing this issue titled, *Legal And Evidence Based Practices: Application of Legal Principals, Laws, and Research to the Field of Pretrial Services*.¹⁸ In this paper VanNostrand identified six legal principals that form the foundation of rights for an individual at the pretrial stage of a case.

1. Presumption of Innocence – While not part of the U.S. Constitution, there is no greater differentiator in the American legal system then this concept. A person is presumed to be innocent until proven guilty beyond a reasonable doubt. Justice White wrote in 1985:

“The principal that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement

¹⁶ Barry Mahoney, Bruce D. Beaudin, John A. Carver III, Daniel B. Ryan, and Richard B. Hoffman, **Pretrial Services Programs: Responsibilities and Potential**, March 2001, page 16.

¹⁷ ARS §13-3967, **Release on bailable offenses before trial, definition**, is reproduced in Appendix C.

¹⁸ Marie VanNostrand, **LEGAL AND EVIDENCE BASED PRACTICES: Application of Legal Principals, Laws, and Research to the Field of Pretrial Services**, The Crime and Justice Institute and the National Institute of Corrections, Community Corrections Division, April 2007.

lies at the foundation of the administration of our criminal law.”¹⁹

2. Right to Counsel – Another fundamental legal principal is the right to counsel. Established through the Sixth and Fourteenth Amendments and case law,²⁰ any defendant who could be sent to jail if convicted has the right to counsel to assist them in their defense.
3. Right Against Self-Incrimination – Probably one of the most known rights, the “right to remain silent” has been made famous by television and the movies. *Miranda v. Arizona*²¹ stated when a person is taken into custody, there must be procedures in place to ensure a person does not say something that could be used against them at a later time. It also emphasized the right of a defendant to have counsel.
4. Right to Due Process of Law - The Fifth and Fourteenth Amendments²² to the U.S. Constitution offer safeguards to ensure the due process of the law. There is a

¹⁹ Coffin v. United States, 156 U.S. 432 (1895) at 545 cited in Marie VanNostrand, *LEGAL AND EVIDENCE BASED PRACTICES: Application of Legal Principals, Laws, and Research to the Field of Pretrial Services*, The **Crime and Justice Institute and the National Institute of Corrections, Community Corrections Division**, April 2007, page 4.

²⁰ Johnson v. Zerbst, 304 U.S. 458 (1938); Gideon v. Wainwright, 372 U.S. 335, 344 – 345 (1963); and Argersinger v. Hamlin, 407 U.S. 25 (1972) cited in Marie VanNostrand, *LEGAL AND EVIDENCE BASED PRACTICES: Application of Legal Principals, Laws, and Research to the Field of Pretrial Services*, The **Crime and Justice Institute and the National Institute of Corrections, Community Corrections Division**, April 2007, page 4.

²¹ *Miranda v. Arizona*, 384 U.S. 436 (1966) cited in Marie VanNostrand, *LEGAL AND EVIDENCE BASED PRACTICES: Application of Legal Principals, Laws, and Research to the Field of Pretrial Services*, The **Crime and Justice Institute and the National Institute of Corrections, Community Corrections Division**, April 2007, page 5.

²² **Amendment V** states: *No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*

²² **Amendment XIV Section. 1** states: *All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State*

presumption of innocence and any restriction on a persons liberty is supported by evidence presented to an impartial judicial officer.

5. Right to Equal Protection Under the Law – When most people hear about equal protection under the law they think about discrimination because of a person’s race, gender or religion. However in *Griffin v. Illinois*, Justice Black writes:

In criminal trials a State can no more discriminate on account of poverty than on account of religion, race, or color. Plainly the ability to pay costs in advance bears no rational relationship to a defendant’s guilt or innocence and could not be used as an excuse to deprive a defendant of a fair trial.²³

This means a person’s financial condition should not be the only reason a person is denied their liberty.

6. Right to Bail that is Not Excessive – As discussed in the Historical section of this review, there have been several Bail Reform Acts that have established standards that should be followed to ensure bail is not excessive. Chief among these is the presumption of release on the least restrictive of terms when there is a belief the defendant will appear for their next court appearance and they do not pose a threat to society.

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

²³ Griffin v. Illinois, 351 U.S. 12 (1956) cited in Marie VanNostrand, *LEGAL AND EVIDENCE BASED PRACTICES: Application of Legal Principals, Laws, and Research to the Field of Pretrial Services*, **The Crime and Justice Institute and the National Institute of Corrections, Community Corrections Division**, April 2007, page 6.

III. General Program Responsibilities

Now that we have a solid historical reference of bail and pretrial release, it is important to understand what constitutes the general responsibilities of a pretrial release program. However, this is easier said than done. While pretrial release standards regarding services and practices have been set by the American Bar Association and the National Association of Pretrial Services Agencies, and many perform several, few programs include all of the standards.²⁴

Acknowledging there are many important responsibilities of a pretrial release program, the following two are vital.²⁵

1. Obtaining information regarding the defendant that a judicial officer can utilize when making a decision regarding their release.
2. Supervision of defendants during their pretrial release including compliance in appearing for their next court date.

The literature in this field, and for the most part all of the programs, focus on defendants who have been accused of felony crimes. The project being evaluated differs in this respect as it is being piloted in an Arizona Municipal Court, which is a court of limited jurisdiction. Here the defendants reviewed for conditions of release are accused of misdemeanor crimes. This has been challenging as Arizona statutes have only contemplated release at the felony level, which in some instances resulted in unintended roadblocks.

Since this project has been operating as a pilot project, no additional staff have been available to perform the pretrial services duties. Since the Municipal Court only deals with misdemeanor cases, it was decided to have the judge continue to use the same methodology to gather information used to determine release. The judge would verbally ask the defendant

²⁴ John Clark and D. Alan Henry, **Pretrial Services Programming at the Start of the 21st Century, A Survey of Pretrial Services Programs**, Bureau of Justice Assistance, July 2003, page 19.

²⁵ Barry Mahoney, Bruce D. Beaudin, John A. Carver III, Daniel B. Ryan, Richard B. Hoffman, **Pretrial Services Programs: Responsibilities and Potential**, National Institute of Justice, March 2001, page 3.

questions as outlined in statute. ARS §13-3967(b) specifies the information the judicial officer must take into account when determining release.

13-3967. Release on bailable offenses before trial; definition

B. In determining the method of release or the amount of bail, the judicial officer, on the basis of available information, shall take into account all of the following:

1. The views of the victim.
2. The nature and circumstances of the offense charged.
3. The weight of evidence against the accused.
4. The accused's family ties, employment, financial resources, character and mental condition.
5. The results of any drug test submitted to the court.
6. Whether the accused is using any substance if its possession or use is illegal pursuant to chapter 34 of this title.
7. Whether the accused violated section 13-3407, subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407(01).
8. The length of residence in the community.
9. The accused's record of arrests and convictions.
10. The accused's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.
11. Whether the accused has entered or remained in the United States illegally.
12. Whether the accused's residence is in this state, in another state or outside the United States.

The judicial officer would also take into account ARS §13-3961(B)²⁶ which outlines the purposes of bail and conditions for release. Based on the information the judicial officer receives

²⁶ **13-3961. Offenses not bailable; purpose; preconviction; exceptions**

- B. The purposes of bail and any conditions of release that are set by a judicial officer include:
1. Assuring the appearance of the accused.
 2. Protecting against the intimidation of witnesses.

from the defendant, conditions of release would be determined. There are three release conditions the judicial officer could choose.

- Release own Recognizance
- Release on Electronic Monitoring
- Release on Bond

With the vital element of providing information to the judicial officer being addressed, the next item to consider is the issue of supervision.

IV. Supervision

Supervision with limited staffing can only be accomplished with the assistance of technology. The technology utilized was electronic monitoring in the form of a (GPS) device. This type of device was determined to be the best tool to meet the needs of the Mesa Court while infringing the least on the rights of the defendant.

Most people equate electronic monitoring as a revolutionary advancement in technology. While it is definitely a technology with regular improvements, it has been used for over 40 years. In 1964 an experimental system was used in Cambridge and Boston, Massachusetts on research volunteers, parolees and mentally ill patients.²⁷

A GPS device can be a one or multiple piece device. The Mesa Court is utilizing a one piece device. A transmitter and cellular receiver are inside the device. The position of the device is determined by triangulation from three satellites. The cellular receiver (similar to a cell phone) sends the information to the monitoring computer. If a violation has occurred, the monitoring computer will send a message by text, email or a telephone call. The person

3. Protecting the safety of the victim, any other person or the community.

²⁷ R.K. Gable, **Application of Personal Telemonitoring to Current Problems in Corrections**, 1986 Journal of Criminal Justice, 14 (2), 167-176 Cited in Ann H. Crowe, Linda Sydney, Pat Bancroft, and Beverly Lawrence, *Offender Supervision With Electronic Technology*, **American Probation and Parole Association**, 2002, page 2.

supervising the defendant then follows up on the violation. If no violation has occurred, no message is sent.

Because the device tracks the location in “real time” (there is a one to three minute delay – depending on the type of device used) there is the ability to set up ‘exclusion’ and ‘inclusion’ zones. An exclusion zone is often used when a defendant is told not to return to a specific area or address. For example, it could be a residence, in the case of a domestic violence charge; a specific store, in the case of a shoplifting or trespassing charge or it could be as generic as do not go near any school or park. The location(s) are entered in the software and if the person wearing the device goes into an area they are not supposed to be in, a violation will be sent to the monitoring computer and then notification to the person supervising them would be sent. The entire notification process takes between one and two minutes on average. Once a violation occurs, the device will track the persons location every 15 seconds.

An inclusion zone is often used when a person has a curfew or is on home arrest. A defendant would be told they need to be at a certain location (usually their home) during a specific time period. It could be from 10 PM to 7AM or all day. The time period is configurable in the software. If they go outside of the inclusion zone, notification is sent and the person supervising them would be notified.²⁸

It is important to understand and promote electronic monitoring as a tool and not an end to itself. Use of this technology may deter crime because the defendant knows their movements are being tracked, but it cannot prevent crime. A comparison would be an Order of Protection. The Order may deter someone from hurting you, yet the piece of paper will not stop someone from hurting another. The use of this technology can provide more information and make it

²⁸ Ann H. Crowe, Linda Sydney, Pat Bancroft, and Beverly Lawrence, **Offender Supervision With Electronic Technology**, American Probation and Parole Association, 2002, pages 55-57.

more efficient to use, though by itself it does not make supervision more effective. To be effective, proper procedures and processes need to be in place to react to the information received.²⁹

V. Assessment

An important part of any project is the determination of its success. A comparison of measures taken before and after project implementation should be conducted to determine the change and identify areas of improvement.

In 1976 the National Center for State Courts published the outcome of an extensive survey and literature review that identified six areas that could help assess the effectiveness of a pretrial program.³⁰

1. **Release Rates** – How effective is the program in securing the release of the total defendant population?
2. **Speed of Operations** – How quickly is a determination made regarding the defendants release?
3. **Equal Justice** – How effective is the program in minimizing different treatment of defendants based on financial considerations?
4. **Failure-to-Appear Rates** – How effective is the program in ensuring defendants return for their next scheduled court appearances?
5. **Pretrial Crime** – How effective is the program in deterring crime committed by a defendant who is released awaiting trial?
6. **Costs and Benefits** – How cost-effective is the program?

Analysis and comparison of measures 4, 5 and 6 to prior project data will determine how successful the project is and identify areas for improvement.

²⁹ Mario Pappozzi and Carl Wicklund, **Perspectives**, Spring 1998, pages 8-9 cited in Ann H. Crowe, Linda Sydney, Pat Bancroft, and Beverly Lawrence, *Offender Supervision With Electronic Technology*, **American Probation and Parole Association**, 2002, page 4.

³⁰ Barry Mahoney, **Evaluating Pretrial Release Programs**, National Center for State Courts, September 1976, page 12.

While not specifically listed in any literature as an outcome measure to success, it is beneficial to survey those involved with the project. A survey of policymakers was created by the National Center for State Courts.³¹ For any project to be a success, an understanding of policymakers knowledge, views and expected outcomes is essential. Analysis of this information can help guide statistical tracking, provide insight into the common beliefs and identify areas for educational opportunities. For these reasons, a survey was conducted. While originally intended for all policymakers in the City of Mesa, it became clear that a survey of judicial policymakers was the most critical during this pilot program.

³¹ Robert V. Stover and John A. Martin, **Policymakers' Views Regarding Issues In The Operation And Evaluation Of Pretrial Release And Diversion Programs: Findings From A Questionnaire Survey**, National Center For State Courts, April 1975.

METHODOLOGY

The pretrial release pilot program began on August 11, 2008 to evaluate if the use of electronic monitoring, by means of a GPS enabled ankle bracelet, could be a viable alternative to bond under misdemeanor pretrial conditions.

When reviewing conditions for release there is always a presumption of release. Electronic monitoring provided judges an additional option to the existing Release Own Recognizance (ROR) and an Appearance Bond. Judges continued to follow the Arizona criminal rules regarding release of defendants who are in custody and the American Bar Association Standards. Defendants who met the following guidelines were eligible:

- Case is at pre-adjudication status
- Defendant does not pose a potential threat to others
- Defendant does not have a request to be held from another jurisdiction
- Defendant has the ability to charge the device for two hours each day

As with any technology, electronic monitoring provides benefits but it is not the panacea many envision. Electronic monitoring of defendants is a very time intensive activity. It is a 24 hour a day, seven day a week responsibility that requires someone to always be available to review every alert. This means someone must monitor the defendants every night, weekend and holiday. Because it is a pilot no additional staff was allocated. Daytime monitoring duties were provided by the in-custody staff while night, weekend and holiday monitoring was provided by the Deputy Court Administrator who oversees the In-Custody Court and was project manager for this pilot. Monitoring activities were in addition to their regular daytime court activities. The Mesa Police Department and City Prosecutor also utilized existing staff during this pilot.

It became evident very quickly that the technology limitations of GPS devices provide for many alerts that only require further monitoring, i.e. no contact with the defendant is necessary.

Depending on the construction of the building, a person at work, shopping or watching/participating in an indoor recreational activity could lose the ability to connect with a satellite. If they are in this area for a period of time you will receive an alert that they can no longer be monitored. Similarly, if they are in an area with poor cell phone data reception an alert will be sent that the monitoring computer can no longer connect with the device.

A higher than expected number of Tamper Alerts and Strap Alerts³² were received that resulted in a determination the defendant was not trying to tamper or remove the device. In most instances the device was replaced and the unit was returned to the vendor. During the course of this pilot, 34 of the 90 devices (38%) had to be returned to the vendor due to communication issues or broken and/or cracked units.

The technological limitations not only affect the defendants but also the staff who are placing the devices on the defendant. Before a device is placed on a defendant it has to be activated. Activation means it has connected to the cellular data provider and at least three satellites. Three satellites are needed to triangulate the position of the device. It took several weeks to determine the best location to activate devices. Activation should take ten to 15 minutes. During this time frame it was taking ten to 60 minutes to activate the devices. Activation was affected by the time of day and location where the devices were activated. The combination of satellite position, subscriber cell phone activity and location had to be tested to determine a location that would provide consistent activation. Once the optimum location was identified it now consistently takes ten to 15 minutes to activate devices. Additionally, to reduce the amount of time needed to assign, activate and place the device on a defendant, a 'batch' process system was developed. After the In-Custody Court sessions have ended, this is usually mid afternoon; all of the devices are assigned, activated and placed on the defendants at the same

³² See Appendix E for definitions.

time. For example, if five defendants are to be placed on electronic monitoring, it would take 50 to 75 minutes to activate each device individually. Activating all the devices at one time takes ten to 15 minutes saving up to an hour of time.

Communication with the defendant is critical to prevent misunderstandings and ensure they are following their conditions of release. While a telephone was not a requirement for placement on electronic monitoring, it was proven beneficial when there was one. Most defendants used cell phones as their primary means of communication. Having a cell phone number for a defendant was more beneficial than a regular land line because people usually carry their cell phone with them. Battery alerts, which indicate the device needs to be charged, frequently happen when the defendant is not at home. It is beneficial to have quick communication when this happens so the defendants understand they will be held accountable for their conditions of release and the person monitoring knows when the device is not charged.

Use of only cell phones for communication can also provide challenges. A cell phone can be turned off very easily. This prevents communication, usually in the late evening and night. Cell phone coverage can also vary significantly. If the defendant is in an area where service is not available or where the provider does not service, the monitor ends up making repeated calls until they are back in a service area. The best solution is to get as many contact numbers as possible. This allows for possible contact at home, on their cell phone, at work and with family or friends.

To review, during the period of August 11, 2008 through December 31, 2008, a total of 151 defendants were placed on electronic monitoring for a combined total of 3,598 days. The highest number of defendants monitored at one time was 44.

During the pilot, data would be entered into the Court's Automated Court Information System Tracking (ACIST) content management system to identify and track defendants who were placed on electronic monitoring. The City of Mesa's Information Technology Division extracted case data from ACIST and created a text file for data analysis and an on-demand reconciliation report for billing. An Excel workbook was created to manually track upcoming court dates, outcome of hearings and other miscellaneous data. Finally, a survey was given to the Court's seven judges regarding the pilot project.

This project represents the first Municipal Court in Arizona to pilot a pretrial release program utilizing electronic monitoring. While it was exciting being a pioneer in this area, there were several issues that needed to be addressed. The Arizona statutes were written for felony pretrial release rather than misdemeanor pretrial release. Existing forms and procedures utilized in the General Jurisdiction Courts were also tailored to felony pretrial release. This required the creation of forms such as the *Electronic Monitoring Requirements and Acknowledgment Form* located in Appendix D and procedures like the *Electronic Monitoring Alert Matrix* located in Appendix E.

Tracking codes were created to identify when a defendant was placed on and removed from electronic monitoring. Utilizing these codes, data was extracted for analysis. Appendix F lists the fields extracted and the data capture instruments.

To determine the percentage of defendants' who posted bond before their next court date, the date the bond was posted was needed. This information is not captured in ACIST so a physical case review is required. A random sampling of 147 cases was reviewed to determine the date bond was posted. Standard sampling methodology was used to determine the sample size.

The parameters were:

Population size: 235
Margin of error: 5%
Confidence level: 95%

The data capture tool is provided in Appendix G. The number of days between the “Event Date” and the “Date Bond Paid” fields determines the number days the defendant stayed in the MCSO Jail before they were released. Once the percentage of defendants for each day was determined the percentages were applied to the entire population size to determine the overall percentage for each day.

A survey was conducted to: 1) learn how judges view the Pretrial Release Pilot Project; 2) to determine whether there is consensus on the program; and, 3) to provide insight into possible adjustments that may be necessary. The instrument used was based on the survey work completed by Stover and Martin.³³ The survey instruments they created were for a national audience in the General Jurisdiction (primarily felony) arena. The specific instrument sent to judges contained several questions that were not relevant to a Limited Jurisdiction Municipal Court. The survey instrument used contains a subset of the original questions; however, the questions themselves were not changed (see Appendix H). The survey was hand delivered to the seven Mesa Municipal Court judges with a request to complete and return the survey. There was a 100 percent response rate. Results were entered in Microsoft Excel utilizing the data capture tool in Appendix H.

³³ Robert V. Stover and John A. Martin, **Policymakers’ Views Regarding Issues In The Operation And Evaluation Of Pretrial Release And Diversion Programs: Findings From A Questionnaire Survey**, National Center For State Courts, April 1975.

FINDINGS

The review of the data collected as listed in the Methods section of this paper is detailed in this section. During the period of August 11, 2008 through December 31, 2008 a total of 151 defendants were placed on electronic monitoring as an alternative to bond.

Table 2 – Electronic Monitoring Statistics

Electronic Monitoring Statistics

<u>Number of Defendants</u>	<u>Number of Days</u>	<u>Monitoring Costs</u>
151	3,598	\$25,186

On average, defendants fail to appear (FTA) for their next court date 29% of the time. To reduce the number of defendants who FTA, a reminder call was placed to each defendant the day before their next court date. During this pilot project defendants failed to appear for their next court date 5% of the time. It is unclear if the reduction is due to the reminder call, if the defendant wanted to get the device removed or a combination of the two. Further studies are needed to determine if success was due to the phone call or the opportunity to get the device removed.

Table 3 – Failure to Appear Rate

Failure To Appear Rate

<u>Court Average</u>	<u>Pilot Project</u>
29%	5%

Crimes committed while a defendant is on pretrial release is an area identified that can help assess the effectiveness of a pretrial program. Eight defendants, or 5% of the defendants, committed a crime while on electronic monitoring. Additionally, eight defendants cut the strap while on electronic monitoring. Four of the devices were not recovered at a cost of \$4,800. Six of the eight defendants have been arrested.

Table 4 – Crimes Committed While on Pretrial Release

Crimes Committed While On Pretrial Release

<u>Type of Crime</u>	<u>Number of Defendants</u>
Felony Burglary	2
Shoplifting	2
Trespassing	3
False Information	1

The use of electronic monitoring changed the dynamics of the In-Custody Court in several ways. The use of electronic monitoring has a cumulative effect, meaning the more defendants placed on pretrial release the more benefits are recognized. This is most notable in two areas. The first deals with the return transport of defendants from the MCSO Jail to the In-Custody Court. At the start of the program a defendant would be scheduled for transport two to three weeks out for a return hearing. Currently a defendant can be transported in as few as two to seven days. This means a defendant could spend one to two weeks less in jail. This leads to the second notable area of cost savings. For every day a defendant does not have to spend in MCSO jail it saves the City \$73.46. Utilizing monitoring costs only, during this pilot the use of electronic monitoring has saved an estimated \$144,000.

The number of defendants released own recognizance (ROR), as a percentage of the total cases, increased over the baseline year. The number of defendants who entered a plea at arraignment, as a percentage of the total cases, stayed the same as the baseline year.

Comparing one quarter of data (August 11, 2008 through December 31, 2008) to the baseline year (July 1, 2006 through June 30, 2007) identified the following.

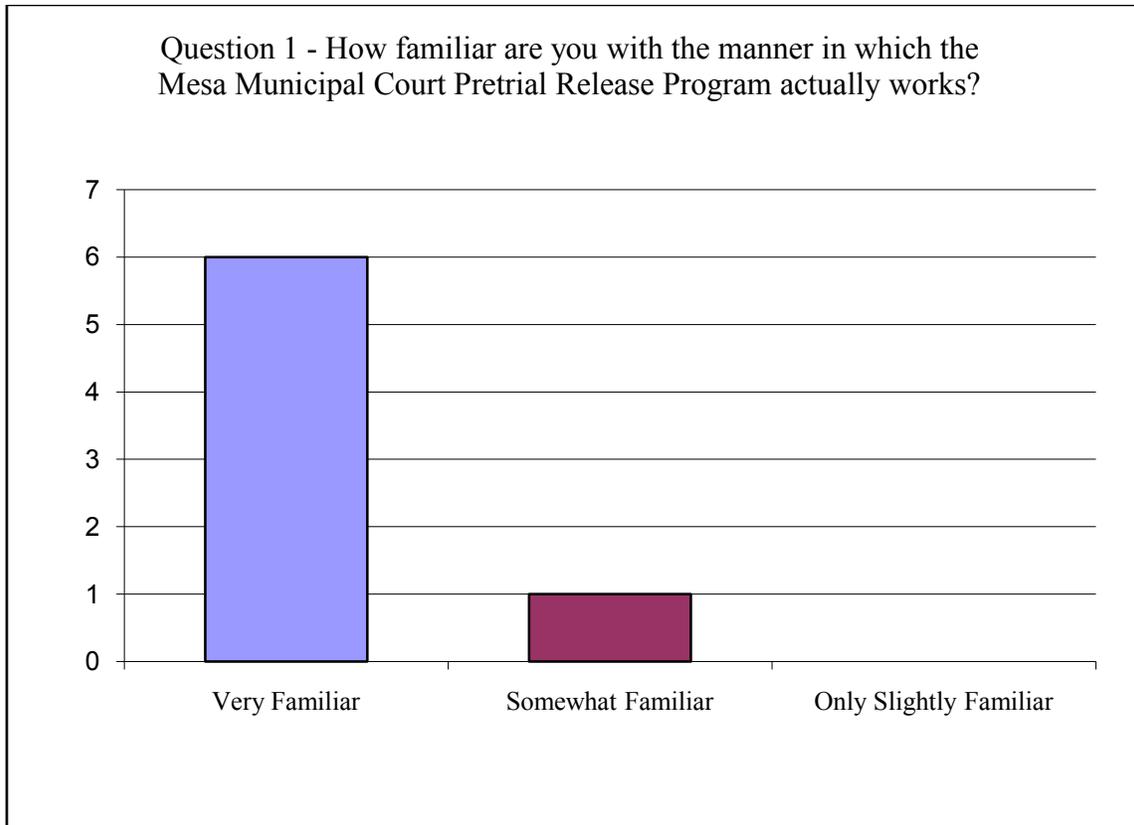
Table 5 – Comparison of In-Custody Court Statistics

Comparison of In-Custody Court Statistics

Item	8/11/2008 through 12/31/2008	7/1/2006 through 6/30/2007
Total Cases	7,596	19,526
Cases Completed at 1st Appearance	4,098	11,835
Defendants who Plead at Arraignment	1,881	5,474
Defendants Placed on Bond	1,489	5,092
Defendants Who Paid Bond	235	1,355
Average Days Defendant Held on Bond	11	14

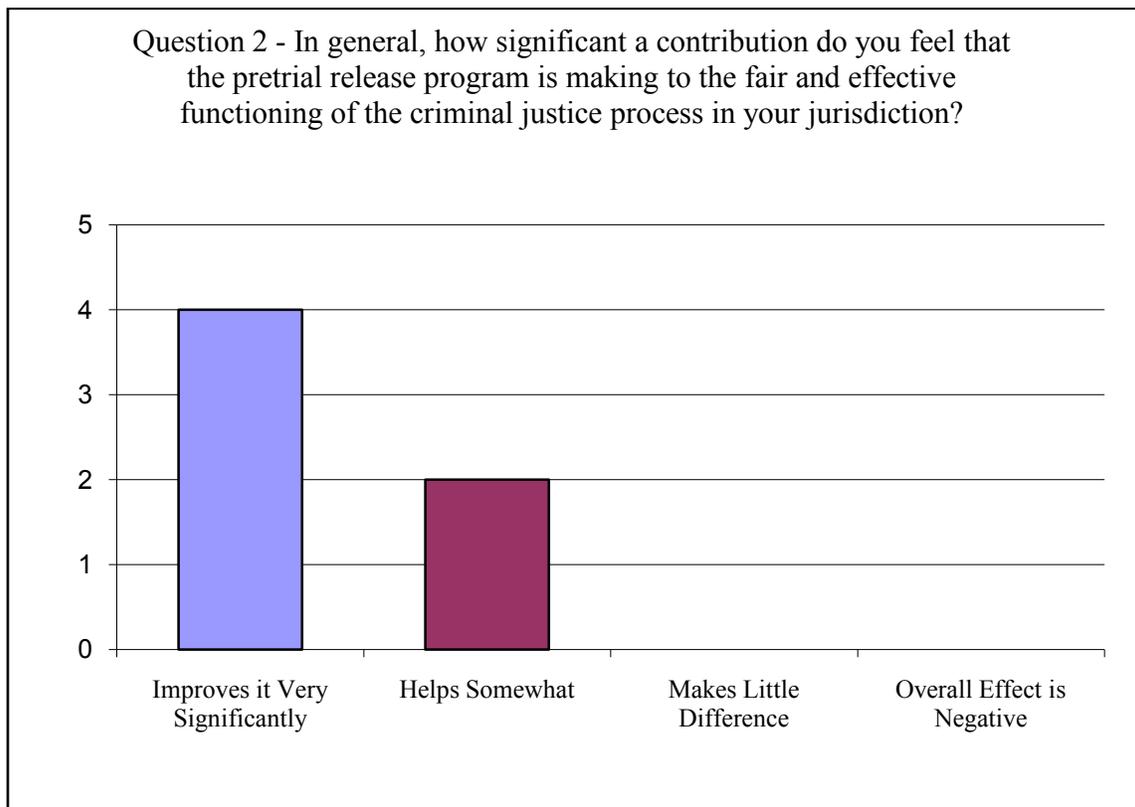
The results of the survey were separated, tabulated and graphed. The first question identifies the level of the judges familiarity with the pilot program. Results indicate the majority of judges are very familiar with the program.

Chart 1 – Familiarity With The Pretrial Release Program



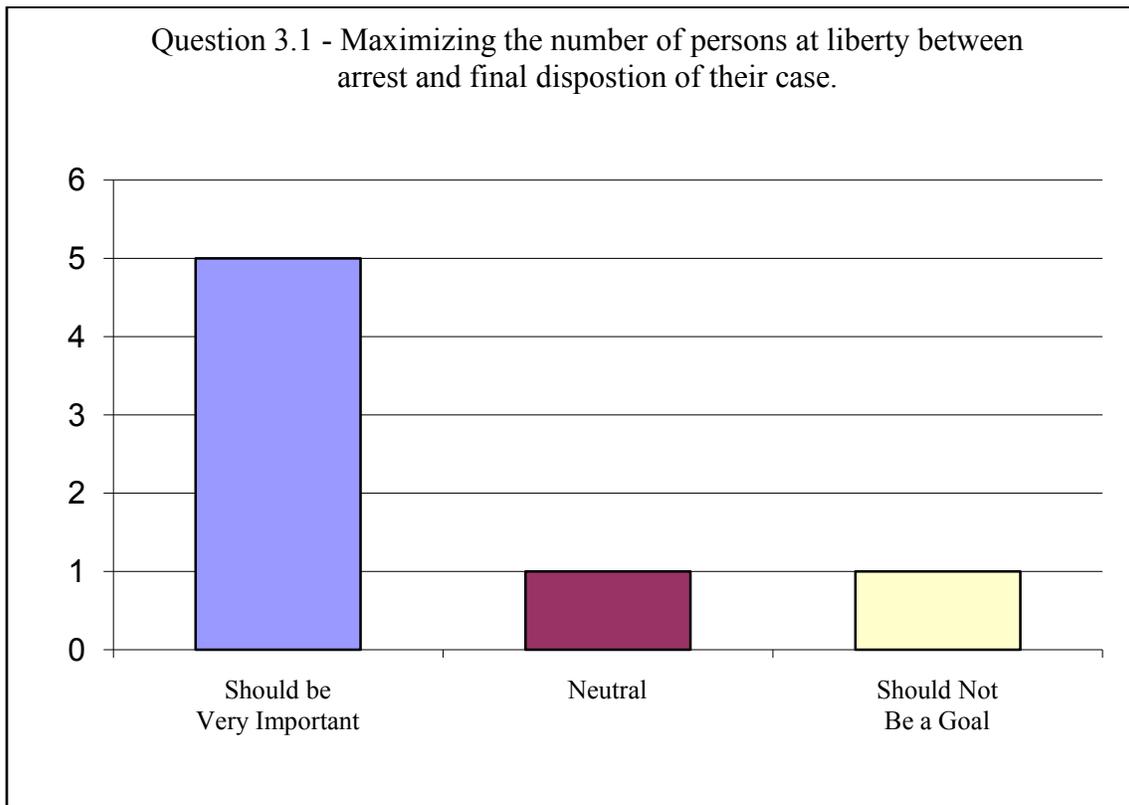
The second question identifies the judges view on the impact the pretrial release program is making to the criminal justice process. All of the responses indicate the pretrial release program is perceived as having a positive impact on the criminal justice process.

Chart 2 – Pretrial Release Program’s Contribution to the Criminal Justice Process



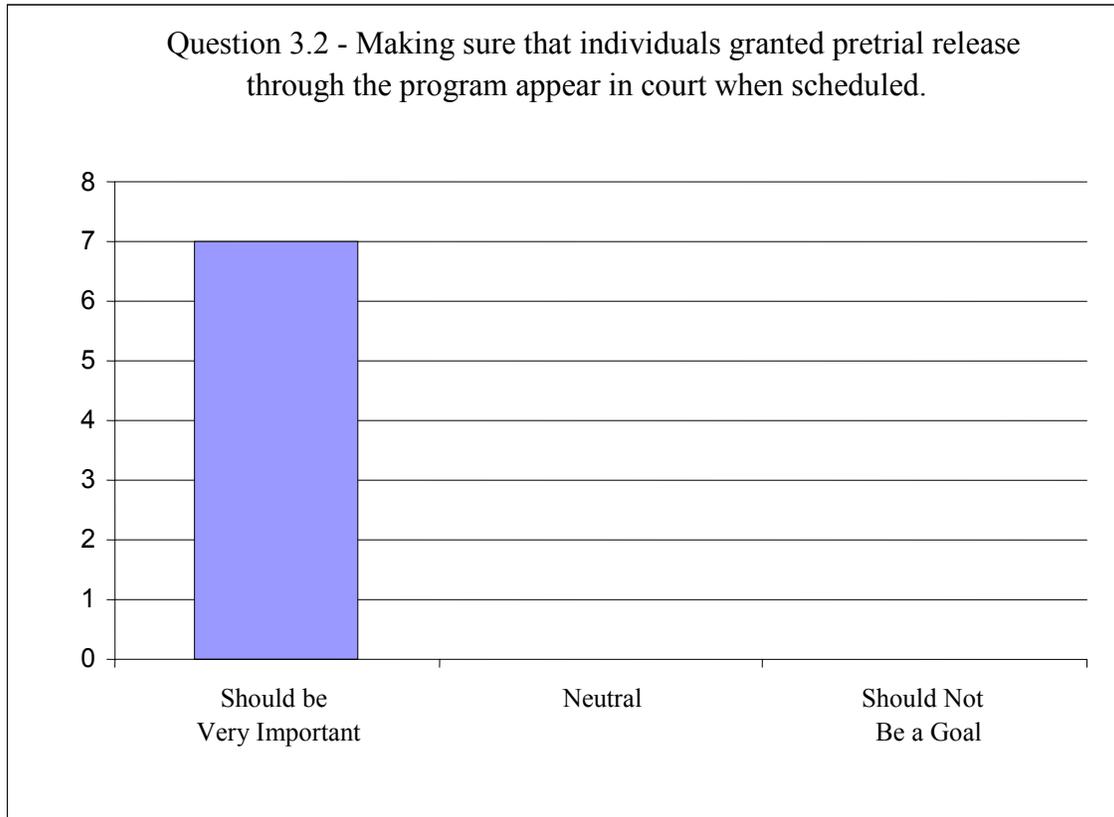
Possible goals question 3.1 identifies the judges view regarding the importance of a defendants liberty during the period between arrest and final disposition. The majority of responses indicate this goal should be very important with one judge being neutral and one judge stating it should not be a goal.

Chart 3 – Importance of Defendants Liberty Between Arrest and Final Disposition



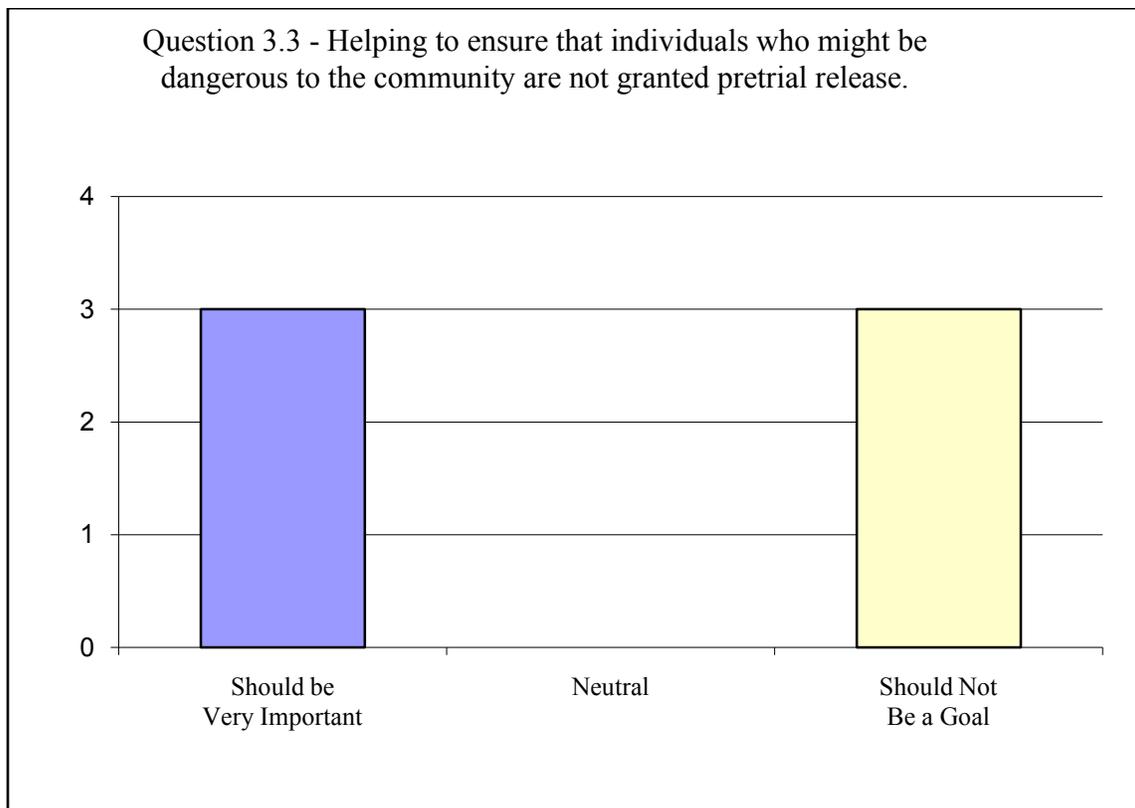
Possible goals question 3.2 identifies the judges view regarding a defendants appearance in court. Not surprisingly, all of the judges felt a defendant appearing in court when scheduled should be a very important goal.

Chart 4 – Defendants Appearance in Court When Scheduled



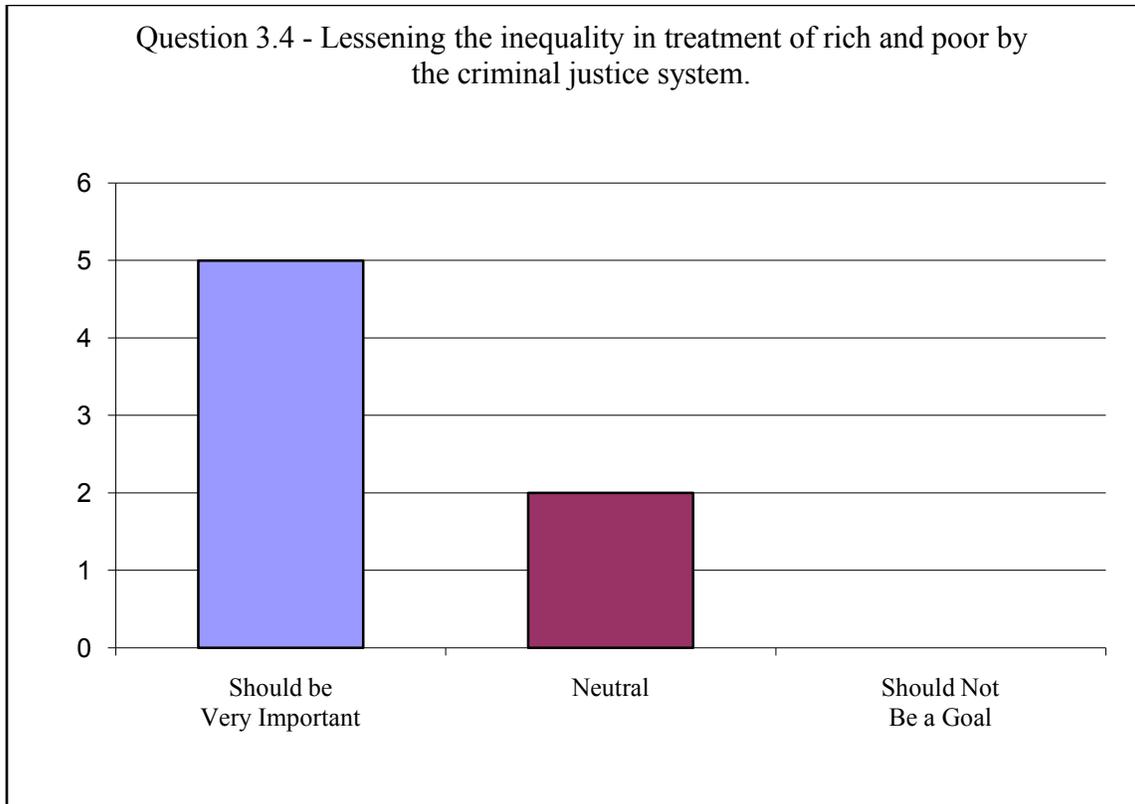
Possible goals question 3.3 identifies the judges view regarding the granting of pretrial release to defendants who might be pose a threat to the community. This provided the most interesting outcome of the survey as it showed an even split among the judges. Three judges stated it should be a very important goal and three judges stated it should not be a goal. One judge did not answer the question.

Chart 5 – Pretrial Release and Community Safety



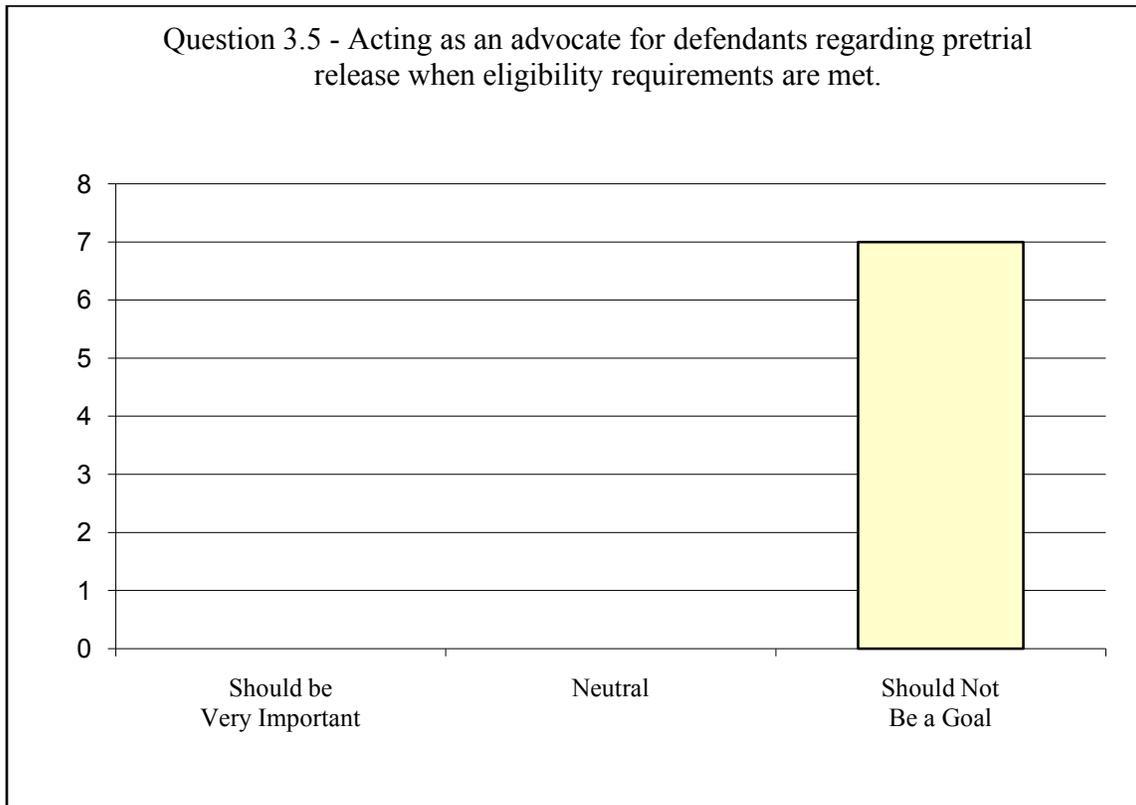
Possible goals question 3.4 identifies the judges view regarding financial inequality in the criminal justice system. The majority of the judges thought it was very important and should be a goal. Two judges were neutral regarding setting this as a goal.

Chart 6 – Financial Inequality in the Criminal Justice System



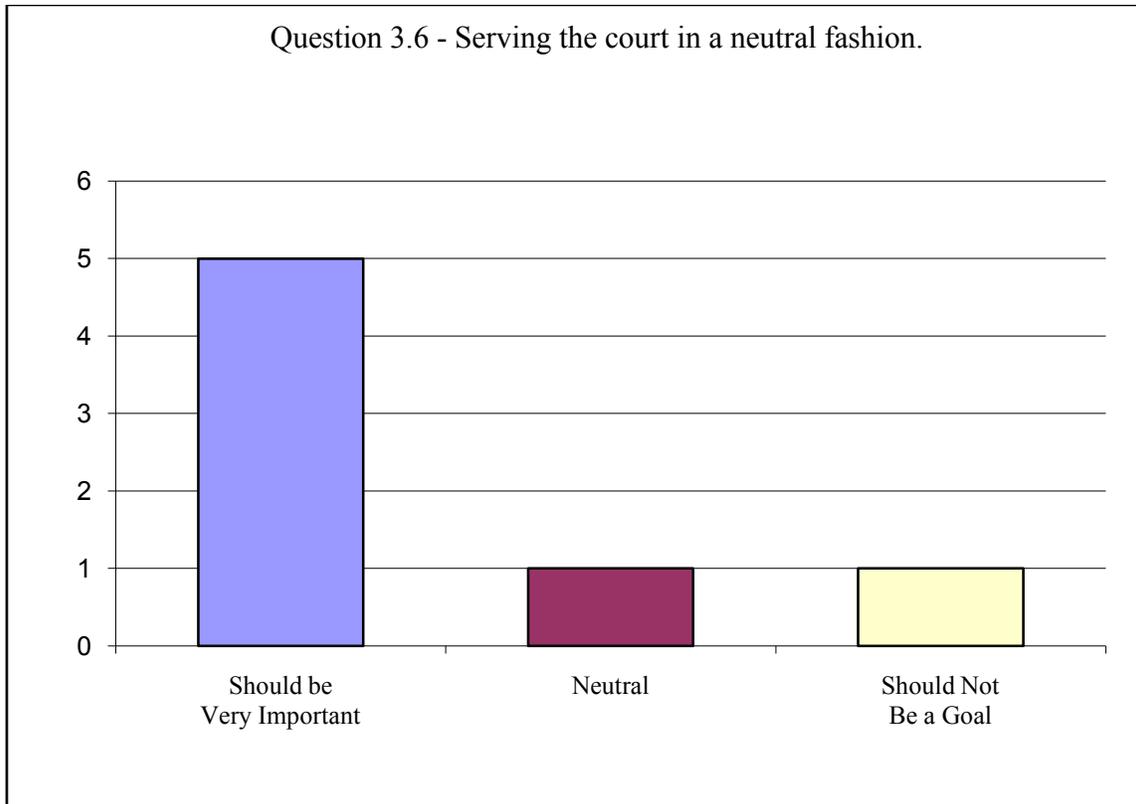
Possible goals question 3.5 identifies the judges view regarding acting as a defendants advocate for pretrial release. All of the judges agreed this should not be a goal.

Chart 7 – Defendant Advocate Regarding Pretrial Release



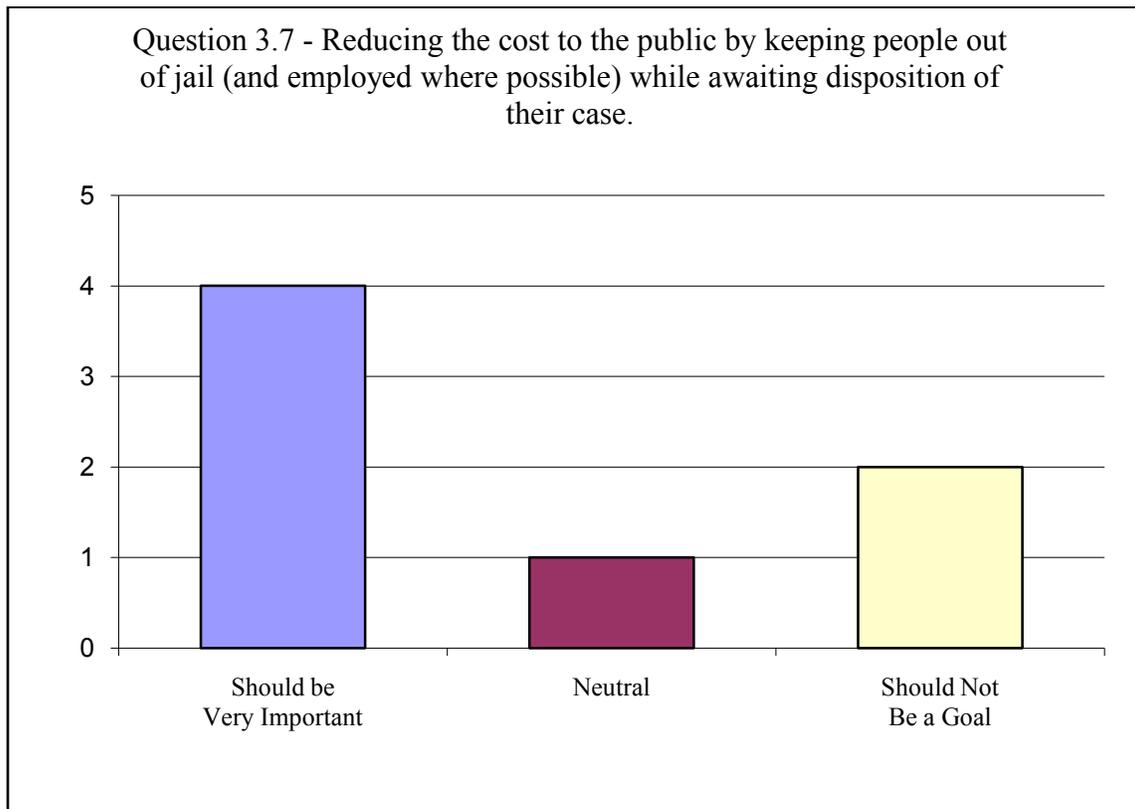
Possible goals question 3.6 identifies the judges view regarding the Court serving in a neutral fashion. The majority of the judges thought it was very important and should be a goal. One judge was neutral regarding this goal and one judge thought it should not be a goal.

Chart 8 – Serving the Court in a Neutral Fashion



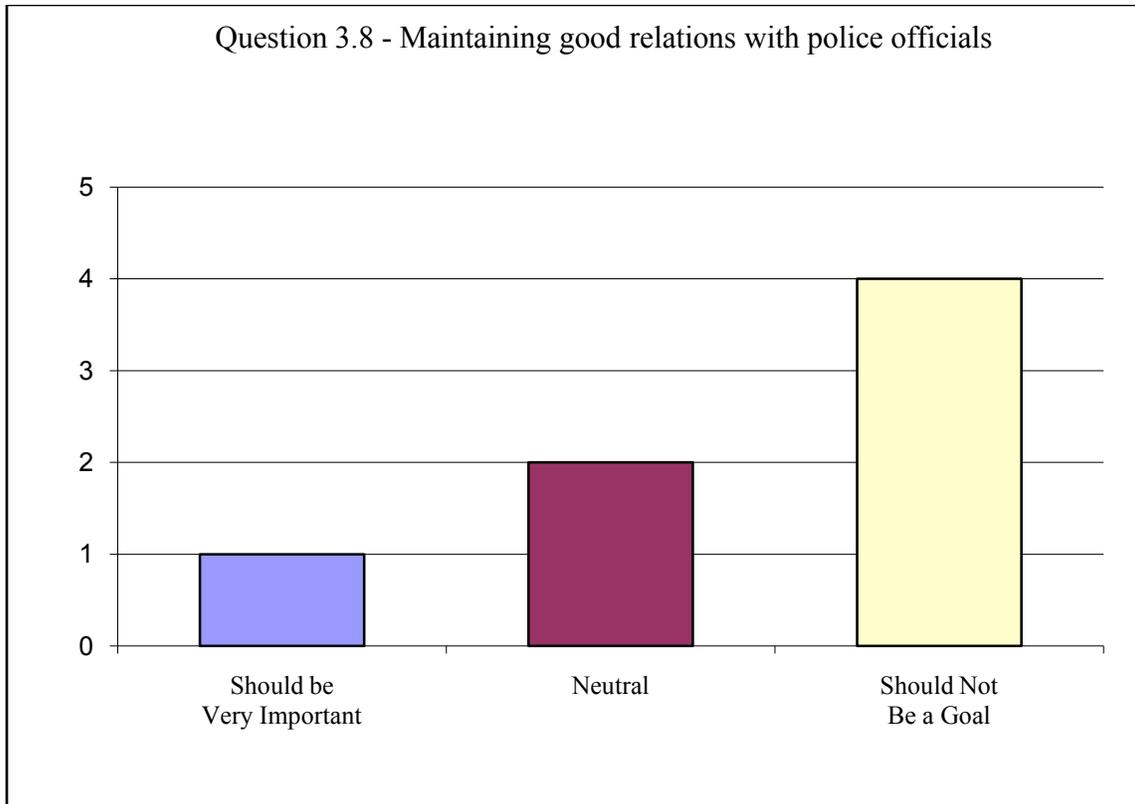
Possible goals question 3.7 identifies the judges view regarding the reduction in cost to the public by keeping people out of jail while the case is pending disposition. The majority of the judges thought it was very important and should be a goal. One judge was neutral and two judges thought this should not be a goal.

Chart 9 – Cost Reductions by Keeping People Out of Jail



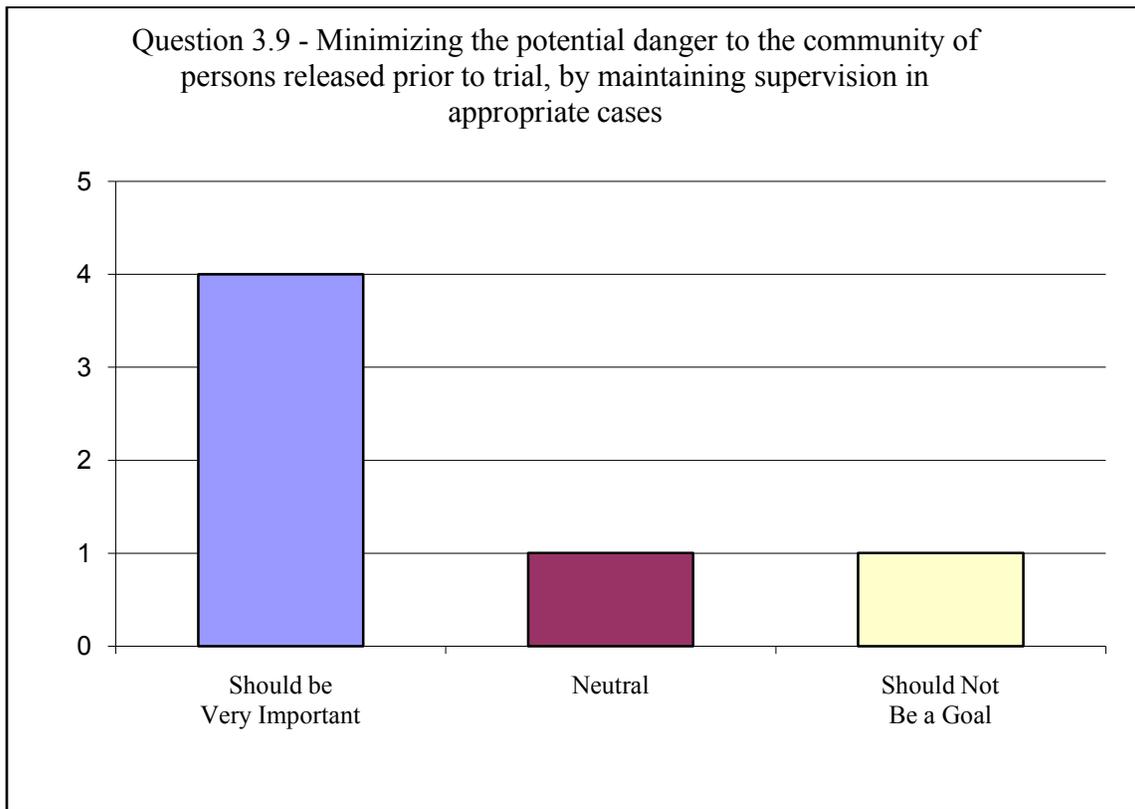
Possible goals question 3.8 identifies the judges view regarding maintaining good relations with police officials. The majority of the judges thought it should not be a goal. Two judges were neutral and one judge thought it was very important and should be a goal.

Chart 10 – Relations with Police Officials



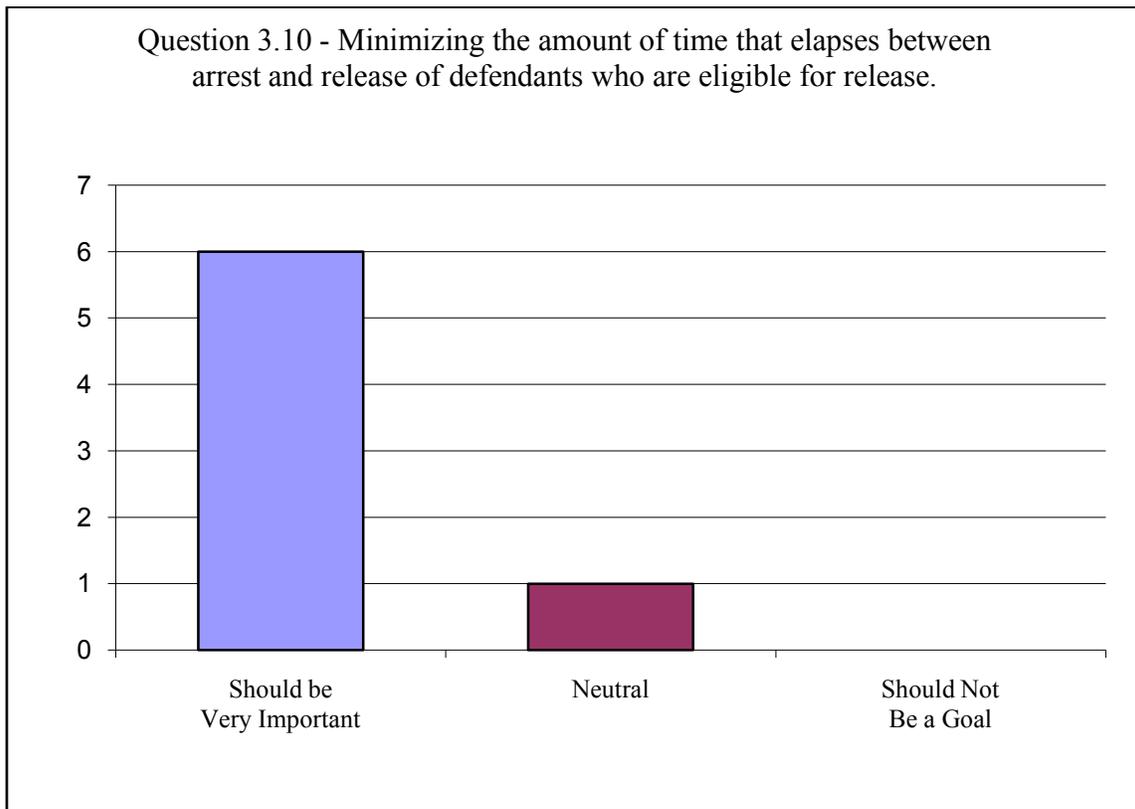
Possible goals question 3.9 identifies the judges view regarding the use of supervision of pretrial release defendants to minimize the possible threat to the community. The majority of the judges thought it was very important and should be a goal. One judge was neutral and one judge thought this should not be a goal.

Chart 11 – Supervision of Defendants to Minimize Threats to the Community



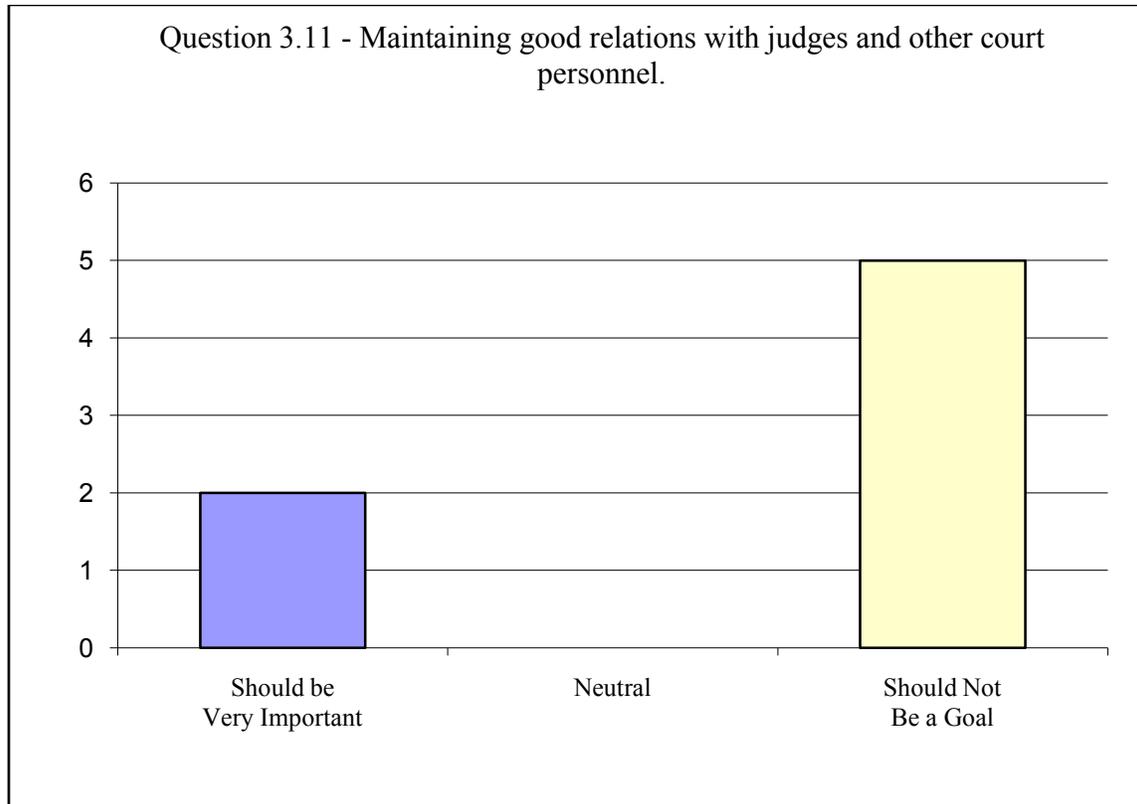
Possible goals question 3.10 identifies the judges view regarding minimizing the amount of time between arrest and release of defendants who are eligible for release. The majority of the judges thought it was very important and should be a goal. One judge was neutral regarding setting this as a goal.

Chart 12 – Minimizing Time in Custody for Eligible Release Defendants



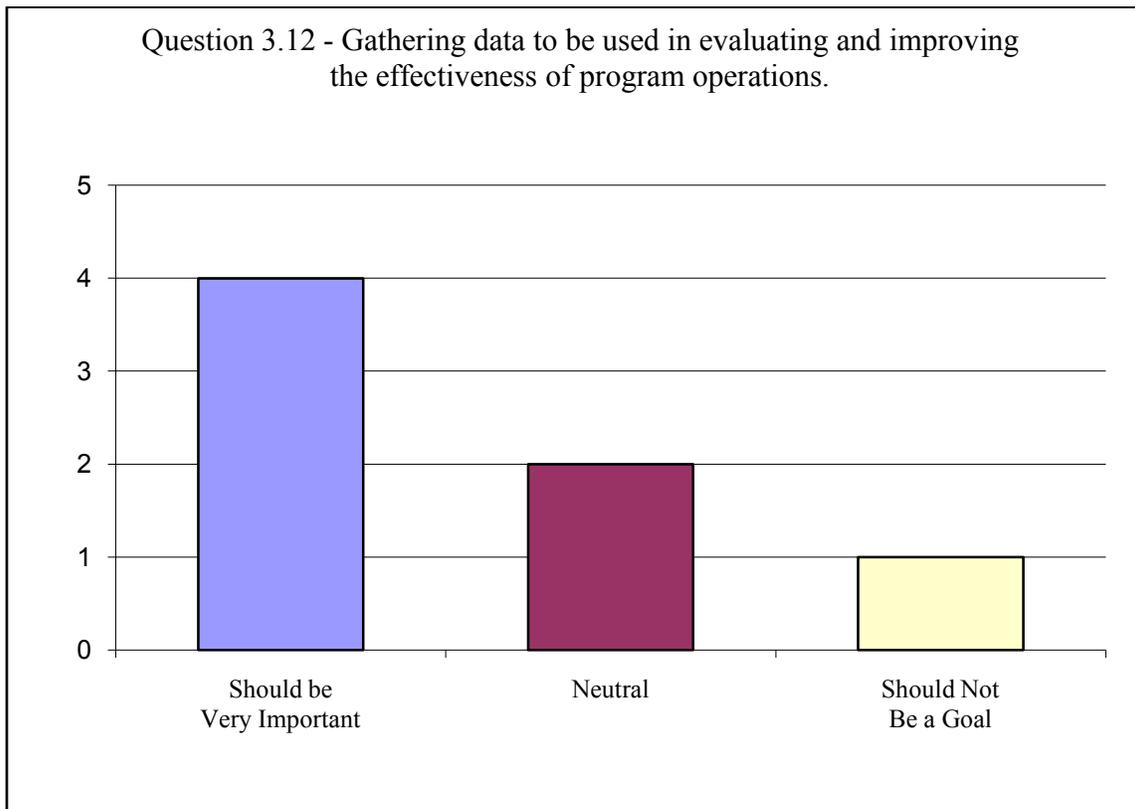
Possible goals question 3.11 identifies the judges view regarding good relations with judges and other court staff. The majority of the judges thought it should not be a goal. Two judges thought this was important and should be a goal.

Chart 13 – Relations with Judges and Court Staff



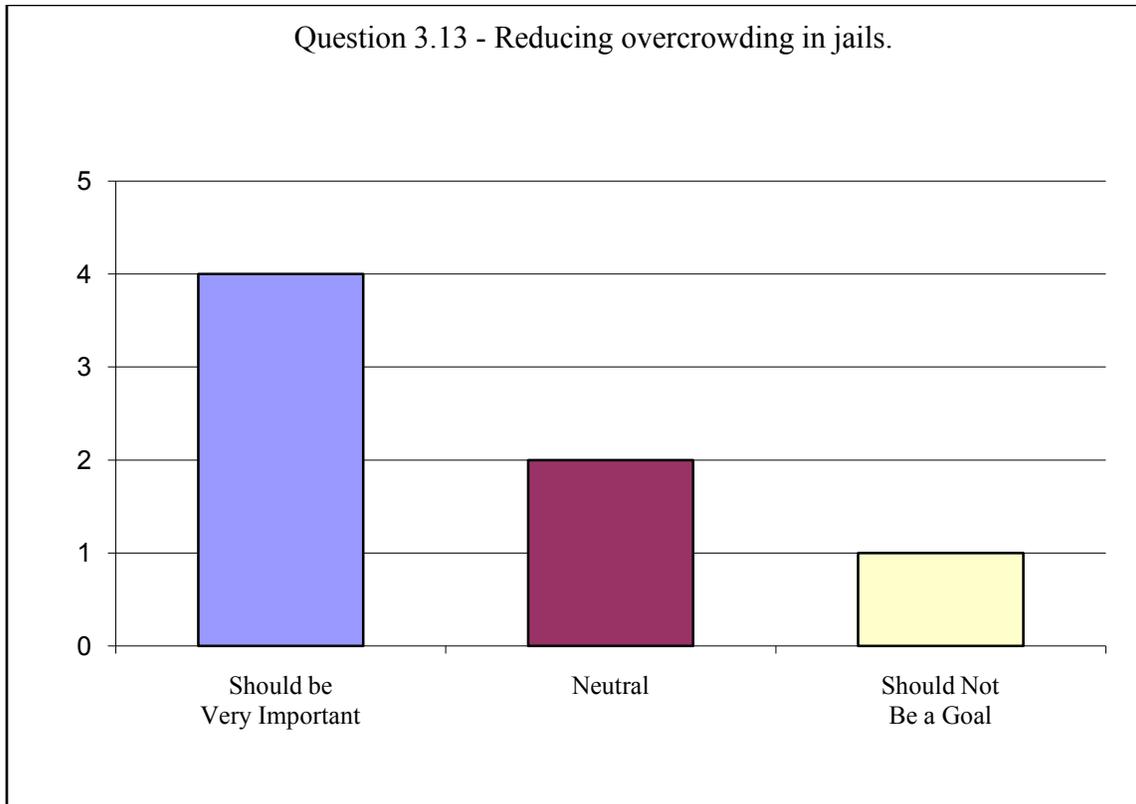
Possible goals question 3.12 identifies the judges view regarding gathering data for use in evaluating and improving pretrial release program operations. The majority of the judges thought it was very important and should be a goal. Two judges were neutral and one judge thought it should not be a goal.

Chart 14 – Evaluation and Improvement of Program Operations



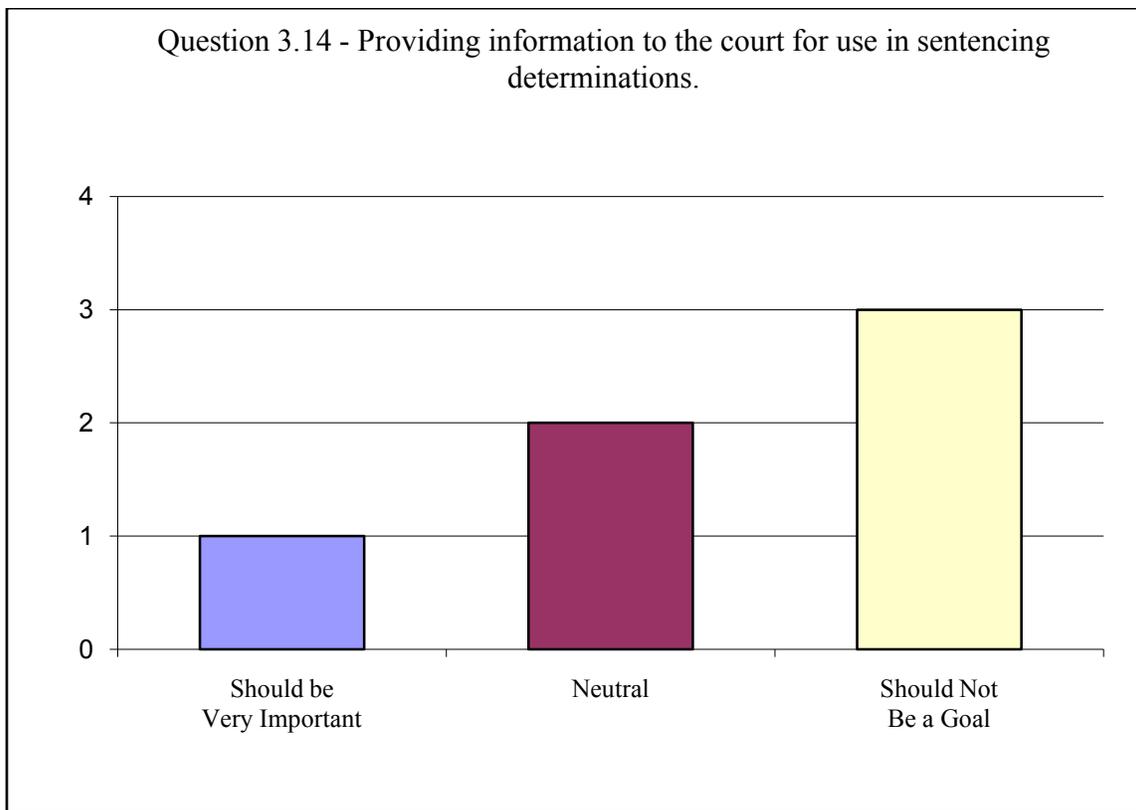
Possible goals question 3.13 identifies the judges view regarding reducing the overcrowding in jails. The majority of the judges thought it was very important and should be a goal. Two judges were neutral and one judge thought it should not be a goal.

Chart 15 – Reducing Overcrowding in Jails



Possible goals question 3.14 identifies the judges view regarding information being provided to the court for use in sentencing determinations. The majority of the judges thought it should not be a goal. Two judges were neutral and one judge thought it was very important and should be a goal. It should be noted the information provided would be limited to compliance with the electronic monitoring conditions.

Chart 16 – Information for use in Sentencing



CONCLUSIONS AND RECOMMENDATIONS

CONCLUSION 1: THE PRETRIAL RELEASE PILOT PROJECT HAS BEEN SUCCESSFUL

This pilot project has demonstrated the use of electronic monitoring in the form of a GPS enabled ankle bracelet is a viable alternative to bond under misdemeanor pretrial release conditions. The program has demonstrated many benefits including:

- Increase in the number of defendants released own recognizance
- Reduction in the number of days a defendant held on bond stays in MCSO jail awaiting transport back to the In-Custody Court
- MCSO jail cost savings associated with holding fewer defendants as the number of defendants ROR increased
- MCSO jail cost savings associated with reduced costs for holding defendants for a shorter period of time waiting for transport
- MCSO jail cost savings associated with placing 151 defendants on electronic monitoring, thereby avoiding incarceration costs
- Defendants were able to keep their jobs by not being incarcerated

RECOMMENDATION 1: IMPLEMENT PRETRIAL RELEASE AS A PERMANENT PROGRAM OFFERED BY THE MESA MUNICIPAL COURT

The Mesa Municipal Court should permanently establish a pretrial release program utilizing electronic supervision of defendants. The pilot program has demonstrated a clear benefit to the Court, the City of Mesa and defendants.

The Court has benefited by reviewing policy and procedure utilized in the In-Custody Court. This review placed emphasis on the presumption of release on the least restrictive of terms for a defendant while awaiting their next court date. An electronically monitored ankle bracelet has provided an additional option for the judges.

The City of Mesa has benefited by the cost savings associated with this program and being seen as a City that leverages technology to help its citizens through the Court process.

Defendants have benefitted by not having to spend an average of two weeks in jail while waiting for their next court date. They have been able to keep their existing jobs, which places less of a burden on their family and provides a revenue source for payment of any assessed fines.

CONCLUSION 2: USE OF ELECTRONIC MONITORING FOR PRETRIAL RELEASE REQUIRES A HUGE TIME COMMITMENT TO MONITOR AND COMMUNICATE WITH DEFENDANTS

Effective electronic monitoring of pretrial release defendants requires 24 hour a day, seven days a week supervision. It requires staff to be available throughout the day, at night, on weekends and holidays. All monitoring during the pilot project was conducted by existing court staff. The time spent performing this function during the day averaged an additional 40 hours of work each month for court staff. Daytime monitoring activities were performed by the eight In-Custody Unit staff. The time spent performing this function during the night, on weekends and holidays averaged an additional 60 hours of work each month. All night, weekend and holiday monitoring was performed by the Deputy Court Administrator who oversees the In-Custody Court. Monitoring was performed in addition to the normal weekday job requirements. Additional staff is needed to monitor nights, weekends and holidays.

RECOMMENDATION 2: ADDITIONAL STAFFING RESOURCES SHOULD BE ALLOCATED FOR PRETRIAL RELEASE SERVICES

A Pretrial Release Unit should be created to perform electronic supervision of defendants. To avoid conflict of interest, a separate pretrial release unit should be established to ensure they are “an arms length away” from the court. Existing court resources were allocated to perform the monitoring and other tasks (inventory control, sanitation of devices, device testing

and deactivation) associated with electronic monitoring. Staffing is also needed for nights, weekends and holidays. Continued use of one person to cover these times is not a reasonable business solution. Resource sharing with other Courts or entering into an agreement for services with other Pretrial Services or Probation departments should also be researched as a possible alternative.

CONCLUSION 3: COMMUNICATION WITH DEFENDANTS IS CRITICAL TO ENSURE COMPLIANCE WITH THEIR CONDITIONS OF RELEASE

Many of the defendants placed on electronic monitoring initially needed reminding of the requirements of being on an ankle bracelet. The devices need to be charged for two hours every day. Until the defendant establishes a routine where they consistently do this every day, a battery alert is usually received. This alert indicates the device needs to be charged. The majority of telephone calls placed are to notify the defendant of the need to charge the device. Having valid contact numbers is critical for this to occur. Additionally, communication in instances where a tamper or strap alert are received could prevent a warrant for the defendants arrest from being issued.

RECOMMENDATION 3: VERIFY TELEPHONE CONTACT NUMBERS

Verification of a defendant's telephone numbers should occur prior to the defendant being released. While having a telephone is not a requirement for being placed on pretrial release, if one is given the information should be verified. Telephone numbers can be transposed, forgotten and are given falsely. Knowing this information before the defendant is released provides opportunity to get the correct number or a message number. Having accurate information would save time for the person monitoring a defendant.

CONCLUSION 4: THE SURVEY RESULTS INDICATED DIFFERING VIEWS ABOUT THE PRETRIAL RELEASE PILOT PROGRAM AMONG JUDGES

As with most questions involving a legal process there will be differing opinions among judges. The results of this survey are no different. It is important to note that while it is often useful to group questions into categories to aid in analysis (in this case the degree of consensus or disagreement) it should be avoided with this survey. Any correlation between results of groups of questions would be skewed based on the arbitrary assignment of a question into a category and the lack of a base point from which to make comparisons.

Communication of a program to those it affects is always a crucial part of any project. The project team did an excellent job of communicating to the judges as indicated by six of the judges stating they are very familiar with the project and one judge reporting as neutral.

The results of the survey were interesting in the wide range of consensus, or lack thereof, to the questions. Only two questions had consensus among the judges. Question 3.2 – Making sure that individuals granted pretrial release through the program appear in court when scheduled - had consensus that it should be an important goal. Question 3.5 – Acting as an advocate for defendant regarding pretrial release when eligibility requirements are met - had consensus that it should not be a goal. Both of these results are understandable and expected given the role of the judiciary.

The most unexpected result was with question 3.3 – Helping to ensure that individuals who might be dangerous to the community are not granted pretrial release. This was a three to three split which was not expected as danger to the community is one of the factors used to determine ROR. It is possible the belief is that it's the judges responsibility to ensure this happens and it should not be a goal for this project. Follow up discussions will be needed to identify the reason(s).

There was basic agreement with one or two neutral on questions 3.4 – Lessening the inequality in treatment of rich and poor by the criminal justice system, and 3.10 – Minimizing the amount of time that elapses between arrest and release of defendants who are eligible for release. This is contrasted with basic agreement with zero or one neutral but with two judges disagreeing with the majority. This occurred on questions 3.7 – Reducing the cost to the public by keeping people out of jail (and employed where possible) while awaiting disposition of their case; and 3.11 - Maintaining good relations with judges and other court personnel. The remaining seven questions (3.1, 3.6, 3.8, 3.9, 3.12, 3.13 and 3.14) all had basic agreement with one or two neutral and one judge disagreeing with the majority. The survey results indicate a lack of judicial consensus regarding the goals and therefore the direction of the program.

RECOMMENDATION 4: PRESENT SURVEY RESULTS AND FACILITATE MEETINGS TO DISCUSS DIFFERING VIEWS AND IDENTIFY OPERATIONAL OPPORTUNITIES

For the pretrial release project to remain successful and continue to improve there needs to be clear direction and measurement of progress. While judicial consensus regarding this direction and the goals to be measured is not a requirement for continued success, the degree to which it can be obtained will benefit this project and the court overall.

This can be accomplished by giving a presentation of the survey results to the judges and court administration staff. This would provide an opportunity for discussion of differing viewpoints and a better understanding of the reason an answer was chosen, which may lead to a greater level of consensus. Based on previous group discussions, they often lead to identification of operational opportunities. Additionally, discussions provide court administration a greater

understanding of the judges views on these topics which can lead to improved utilization of resources and improved efficiencies.

CONCLUSION 5: ELECTRONIC MONITORING IS A VIABLE ALTERNATIVE FOR COURTS

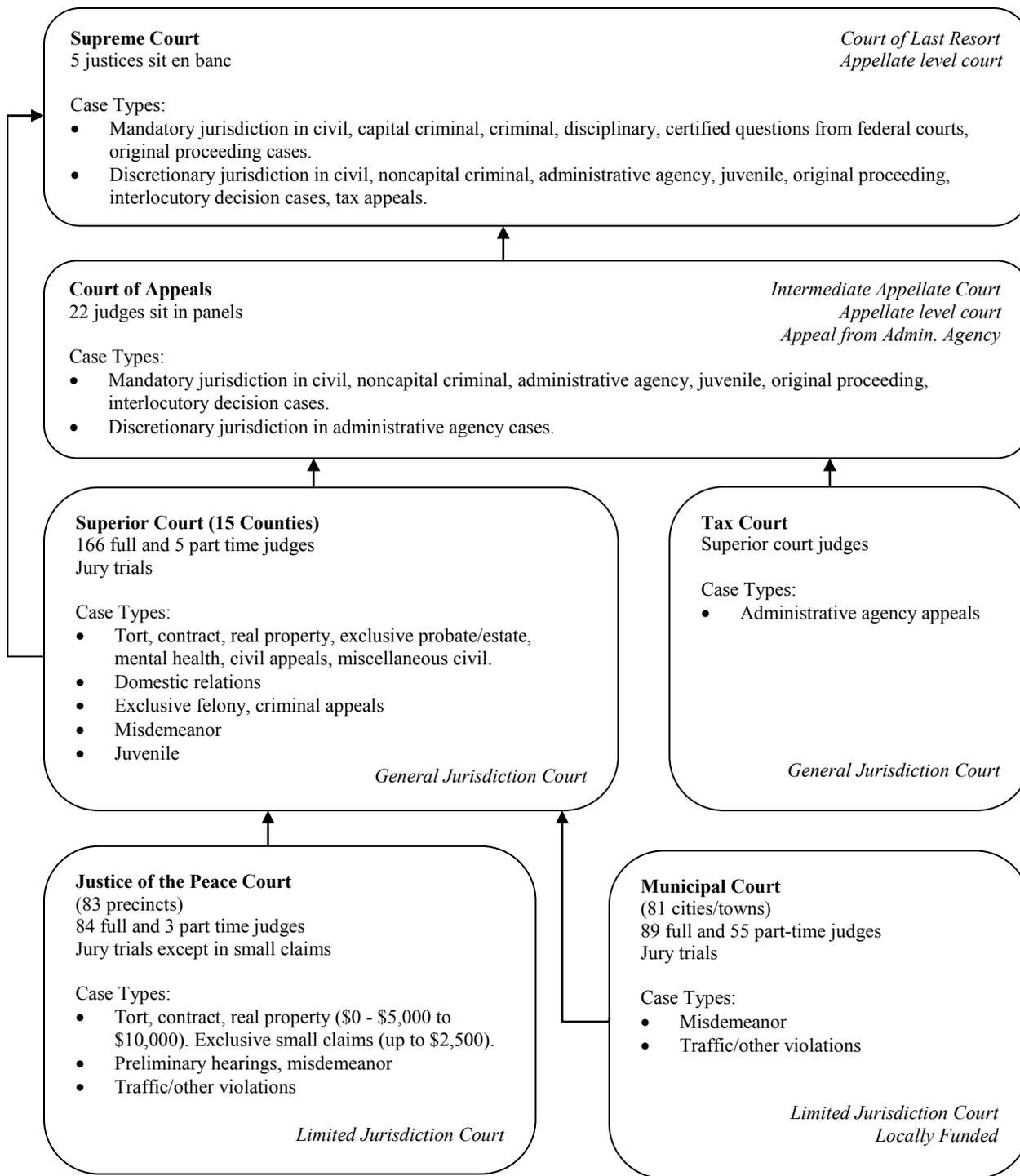
Electronic monitoring has been in use for over forty years but has been almost exclusively limited to felony crimes. With increasing caseloads, greater demand on resources, and tightening budgets, courts should consider this technology as a means to improve case processing, administer justice in a more equitable manner and save costs. While this project focused on pretrial release, it does not have to be limited to that use. Several Arizona courts have met with project members to learn about the technology and how it could be used in other areas. There are many possibilities for utilizing this technology.

RECOMMENDATION 5: PRESENT FINDINGS AND OFFER ASSISTANCE TO OTHER COURTS CONSIDERING THE USE OF ELECTRONIC MONITORING

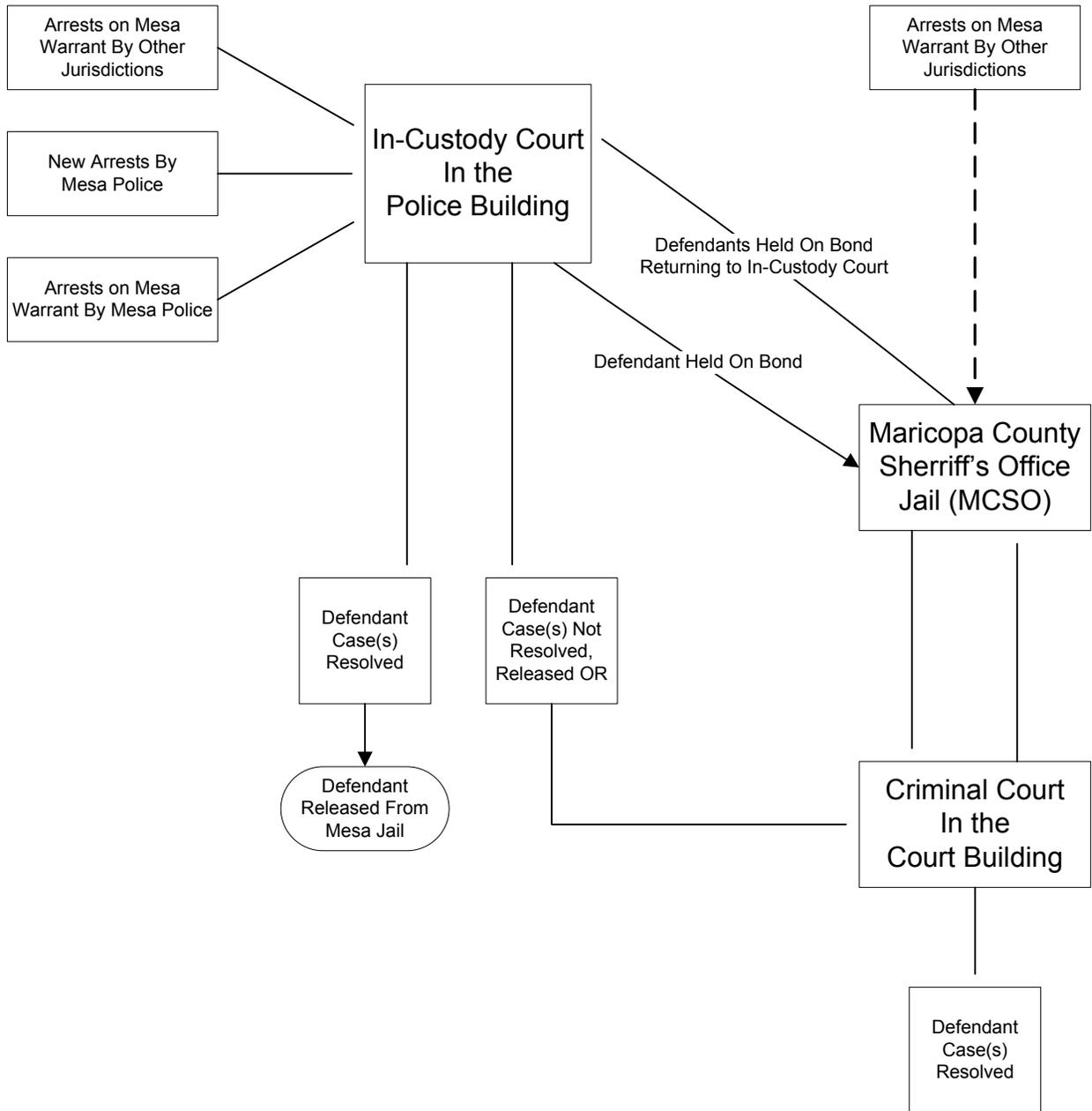
Present findings to Arizona Court groups to raise the awareness of electronic monitoring and how it was utilized in the Mesa Municipal Court. Provide real world examples of “lessons learned” and the pros and cons of using electronic monitoring to assist courts in the determination of whether this could be utilized in their court.

APPENDICES

APPENDIX A – Arizona Court Structure



Mesa Municipal Court In-Custody Court Process Flow



APPENDIX C – ARS §13-3967. Release on bailable offenses before trial; definition

ARS §13-3967. Release on bailable offenses before trial; definition

A. At his appearance before a judicial officer, any person who is charged with a public offense that is bailable as a matter of right shall be ordered released pending trial on his own recognizance or on the execution of bail in an amount specified by the judicial officer.

B. In determining the method of release or the amount of bail, the judicial officer, on the basis of available information, shall take into account all of the following:

1. The views of the victim.
2. The nature and circumstances of the offense charged.
3. The weight of evidence against the accused.
4. The accused's family ties, employment, financial resources, character and mental condition.
5. The results of any drug test submitted to the court.
6. Whether the accused is using any substance if its possession or use is illegal pursuant to chapter 34 of this title.
7. Whether the accused violated section 13-3407, subsection A, paragraph 2, 3, 4 or 7 involving methamphetamine or section 13-3407.01.
8. The length of residence in the community.
9. The accused's record of arrests and convictions.
10. The accused's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.
11. Whether the accused has entered or remained in the United States illegally.
12. Whether the accused's residence is in this state, in another state or outside the United States.

C. If a judicial officer orders the release of a defendant who is charged with a felony either on his own recognizance or on bail, the judicial officer shall condition the defendant's release on the defendant's good behavior while so released. On a showing of probable cause that the defendant committed any offense during the period of release, a judicial officer may revoke the defendant's release pursuant to section 13-3968.

D. After providing notice to the victim pursuant to section 13-4406, a judicial officer may impose any of the following conditions on a person who is released on his own recognizance or on bail:

1. Place the person in the custody of a designated person or organization agreeing to supervise him.
2. Place restrictions on the person's travel, associates or place of abode during the period of release.
3. Require the deposit with the clerk of the court of cash or other security, such deposit to be returned on the performance of the conditions of release.
4. Prohibit the person from possessing any dangerous weapon or engaging in certain described activities or indulging in intoxicating liquors or certain drugs.
5. Require the person to report regularly to and remain under the supervision of an officer of the court.
6. Impose any other conditions deemed reasonably necessary to assure appearance as required including a condition requiring that the person return to custody after specified hours.

E. In addition to any of the conditions a judicial officer may impose pursuant to subsection D of this section, the judicial officer shall impose both of the following conditions on a person who is charged with a felony violation of chapter 14 or 35.1 of this title and who is released on his own recognizance or on bail:

1. Electronic monitoring where available.
2. A condition prohibiting the person from having any contact with the victim.

F. The judicial officer who authorizes the release of the person charged on his own recognizance or on bail shall do all of the following:

1. Issue an appropriate order containing statements of the conditions imposed.
2. Inform the person of the penalties that apply to any violation of the conditions of release.
3. Advise the person that a warrant for his arrest may be issued immediately on any violation of the conditions of release, including the failure to submit to deoxyribonucleic acid testing ordered pursuant to paragraph 4 of this subsection.
4. If the person is charged with a felony or misdemeanor offense listed in section 13-610, subsection O, paragraph 3, order the person to report within five days to the law

enforcement agency that arrested the person or to the agency's designee and submit a sufficient sample of buccal cells or other bodily substances for deoxyribonucleic acid testing and extraction.

G. At any time after providing notice to the victim pursuant to section 13-4406, the judicial officer who orders the release of a person on any condition specified in this section or the court in which a prosecution is pending may amend the order to employ additional or different conditions of release, including either an increase or reduction in the amount of bail. On application, the defendant shall be entitled to have the conditions of release reviewed by the judicial officer who imposed them or by the court in which the prosecution is pending. Reasonable notice of the application shall be given to the county attorney and the victim.

H. Any information that is stated or offered in connection with any order pursuant to this section need not conform to the rules pertaining to admissibility of evidence in a court of law.

I. This section does not prevent the disposition of any case or class of cases by forfeiture of bail or collateral security if such disposition is authorized by the court.

J. A judicial officer who orders the release of a juvenile who has been transferred to the criminal division of the superior court pursuant to section 8-327 or who has been charged as an adult pursuant to section 13-501 shall notify the appropriate school district on the release of the juvenile from custody.

K. For the purposes of this section and section 13-3968, "judicial officer" means any person or court authorized pursuant to the constitution or laws of this state to bail or otherwise release a person before trial or sentencing or pending appeal.

APPENDIX D – Electronic Monitoring Requirements and Acknowledgment Form

Electronic Monitoring Requirements and Acknowledgment Form

Mesa Municipal Court 245 West 2nd Street Mesa, AZ 85201 (480) 644-2255 or www.Mesaaz.gov/Court Business Hours: Monday through Friday 7:30 - 5:00 PM		
Courtroom:		
State of Arizona vs.	Docket Number	Electronic Monitoring Requirements And Acknowledgment Form
<p>Electronic monitoring has been authorized to secure your appearance in court. If ordered, bond may be posted at the Mesa Municipal Court to have your electronic monitoring device removed during regular business hours.</p> <p>Failure to comply could result in a WARRANT for your ARREST and revocation of your release. You may be subject to FELONY prosecution pursuant to ARS 13-3725 (Interference With Electronic Monitoring Devices) and ARS 13-2502 (Escape).</p> <ol style="list-style-type: none"> 1. The device must be charged for a total of 2 hours during a 24-hour period. The Power light (which is the light on the left) will blink red if the battery needs to be charged. The device will warn you by vibrating three times. You must immediately attach the charger to the device. Once fully charged, the light will turn to green. If the battery goes dead, you will be considered to be in violation. 2. Trying to remove the device or cutting the strap is prohibited. The Court will be notified immediately of any tampering to the device or strap. 3. The electronic monitoring device is water resistant but not waterproof. The device may be worn in the shower, but should not be submerged by swimming or taking a bath. 4. Do not enter areas defined as Exclusion Zones if ordered. If you violate an Exclusion Zone, the device will vibrate three consecutive times and once every 10 minutes while you are in a zone prohibited by the Court. The Zone light (which is the light on the right) will blink red indicating a zone violation. 5. You are responsible for the care of the equipment provided to you. You will be held financially responsible for any loss or malicious damage to the equipment for up to \$1200 and you may be subject to criminal prosecution pursuant to Arizona Revised Statutes 13-1602 (Criminal Damage) and/or 13-1802 (Theft). 6. The charger must accompany the device on the day that it is removed. You must bring the charger to each court appearance. <p>PLEASE NOTE</p> <ul style="list-style-type: none"> * When there is no GPS signal, the device will vibrate three times. The GPS light (which is the light in the middle) will blink red. To reacquire the signal, you must go outside for approximately 15 minutes. Once the signal has been reacquired, the device will vibrate once. * You may call (480) 644-4762 for any questions about the electronic monitoring device. <p>ACKNOWLEDGMENT STATEMENT</p> <p>I have received a copy of this document. I fully understand what is expected of me, and the possible consequences of failing to comply.</p>		
_____ Defendant Signature	July 22, 2008 Date	_____ Electronic Monitoring Device #
_____ Officer Signature	_____ Officer ID#	July 22, 2008 Date

APPENDIX E – Electronic Monitoring Alert Matrix

Electronic Monitoring Alert Matrix

Alert	Offender Notification	Grace Period	Monitoring Center Action	Court Action
<p>Strap - The strap has been compromised or removed from the device. There will not be any notifications to the offender that this has occurred, unless the officer selects the Notify Offender with Vibrate option on this rule.</p>	No	None	1. Email notification to Court.	<ol style="list-style-type: none"> 1) In-Custody Court staff will research the alert in the software to determine if it is valid and if a warrant should be issued. 2) If address of alert is near a police station, In-Custody Court staff will place a call to determine if the police cut the strap. 3) If address of alert is elsewhere, In-Custody Court staff will contact defendant to determine reason for alert. 4) If the Defendant states they did not take any action to cause the alert , they should be told to go to the Mesa Police Department to have the device reviewed. 5) If no contact is made with defendant, complete the Petition to review conditions of release Electronic Monitoring warrant process. 6) The warrant will be sent through the normal process 7) Update the Case Management section of the software with the information.
<p>Tamper - The device has been compromised in some form. There will not be any notification to the offender that this has occurred, unless the office selects the Notify Offender with Vibrate option on this rule.</p>	No	None	1. Email notification to Court.	<ol style="list-style-type: none"> 1) In-Custody Court staff will call the defendant to determine circumstance of the alert. 2) If the Defendant admits to tampering with the device, they should be told to report to the Mesa Police Department immediately. 3) If the Defendant states they did not take any action to cause the alert, they should be told to report to the Mesa Police Department to have the device reviewed. 4) Contact Mesa Police Department Detention staff and notify them a defendant will be coming in to <ol style="list-style-type: none"> a) Be held to see the Judge if they tampered with the device. b) Have the device replaced if they did not tamper with the device.

Alert	Offender Notification	Grace Period	Monitoring Center Action	Court Action
<p>Motion No GPS - Occurs when the device has accumulated 20 minutes of motion in a 60 minute period without receiving a signal from the GPS satellites. During this time, the GPS LED will blink Red.</p>	No	10 Minutes	1. Email notification to Court.	<ol style="list-style-type: none"> 1) In-Custody Court staff will research the alert in the software to determine if additional contact and/or action should be taken. 2) If this is the first time the defendant has this alert, they will be monitored to see if the alert clears. The assumption is the defendant is indoors working. 3) If this is a subsequent alert, research the defendant's location in the software. If they are at the same location as the first alert, continue monitoring for a total of eight hours. If the alert has not cleared, call the defendant and have them go outside for 15 minutes to reacquire the signal. 4) If this is a subsequent alert and the defendant is at a different location then the first alert, monitor for four hours. If the alert has not cleared, call the defendant and have them go outside for 15 minutes to reacquire the signal.
<p>Unable To Connect - It has been over 2.5 hours since the device has contacted the computer. This is normally due to poor cellular coverage in the area. The offender is not notified of the Unable to Connect. Once the device is able to use the cellular network to call in, it will report the Alert and download all tracking data.</p>	No	10 Minutes	1. Email notification to Court.	<ol style="list-style-type: none"> 1) In-Custody Court staff will research the alert in the software to determine if additional contact and/or action should be taken. 2) If this is the first time the defendant has this alert, they will be monitored to see if the alert clears. The assumption is the defendant is indoors working. 3) If this is a subsequent alert, research the defendant's location in the software. If they are at the same location as the first alert, continue monitoring for a total of eight hours. If the alert has not cleared, call the defendant and have them go outside for 15 minutes to reacquire the signal. 4) If this is a subsequent alert and the defendant is at a different location then the first alert, monitor for four hours. If the alert has not cleared, call the defendant and have them go outside for 15 minutes to reacquire the signal.

Alert	Offender Notification	Grace Period	Monitoring Center Action	Court Action
<p>Battery - The battery is getting low and the device needs to be charged. The device must be charged for a minimum of two hours daily (the hours do not have to be consecutive). When the battery needs to be charged, the device will vibrate 3 times consecutively and then once every 10 minutes until connected to the charger. During this time, the Power LED will blink Red. The battery has about 1 hour of charge remaining once the low indicator notification is received.</p>	<p>Yes, vibration</p>	<p>10 Minutes</p>	<p>1. Email notification to Court.</p>	<ol style="list-style-type: none"> 1) In-Custody Court staff will call the defendant to determine circumstance of the alert. 2) If contact is made with the defendant they should be told to get the device on the charger immediately. If contact is not made, calls should be placed every ten minutes for the next hour and then hourly until the defendant is reached. 3) If the defendant states they forgot it at home and cannot go home at that time, tell them they need to go home at lunch to charge and continue charging the device at work if necessary 4) If the defendant cannot charge at lunch, get an exact time when they will be charging it that afternoon or night. 5) In-Custody Court staff will need to monitor defendant to ensure they charge the device as stated. If the defendant will not be able to charge it until after 5 pm, an email needs to be sent with the Subject: "Defendant Follow Up MM/DD/YYYY" Provide defendant details in the body of the email. 6) In-Custody Court staff will monitor defendant to ensure they charge the device as stated. If the device is not charging by the designated time, call the defendant to determine circumstances. <ol style="list-style-type: none"> a) Continue monitoring if defendant's response is reasonable. b) If the response is not reasonable, complete the Petition to review conditions of release - Electronic Monitoring warrant process. 7) In-Custody Court staff will update the software with this information.

APPENDIX F – Data Collection Tools

Electronic Monitoring Reconciliation Report

This was an on-demand report providing the number of Active (Defendants still on electronic monitoring) and Completed (Defendants no longer on electronic monitoring) for the time period specified. The time period could be a day, a week, or month(s).

Data fields included:

- Status – Identifies if the defendant is Active (still on electronic monitoring) or Completed (no longer on electronic monitoring)
- Docket – Case number assigned in ACIST
- Defendant Name – First, Middle and Last name of the defendant
- Days – Number of days the defendant was on the device

Mesa Municipal Court			
Electronic Monitoring Reconciliation Report			
Between MM/DD/YYYY and MM/DD/YYYY			
Status	Docket	Defendant Name	Days
Active	2008012345	Smith, John	5
Active	2008123456	Jones, Paul	19
Completed	2007083845	Woods, Tom	13
Completed	2008077396	Jane, Sarah	24

Names were changed for confidentiality.

Data Extract File

This was a comma delimited text file that was imported into Microsoft Access. Query’s were created and run to produce statistics. Some query output was copied into Microsoft Excel for additional analysis. Data Fields included:

- JudgeID – Code assigned to a specific Judge
- Docket – Case number assigned in ACIST
- FName – Defendants first name
- LName – Defendants last name
- EventDte – Date defendant was seen in the In-Custody Court
- EventType – Code for the type of courtroom event completed

Action – Code indicating the defendant In-Custody status
 Result – Code indicating the result of the In-Custody Court event
 DeftStateDte – Date the defendant was placed on bond
 Cu/COMMStat – Code indicating if the defendant was placed on bond
 EndStatReason – Code indicating if the defendant paid bond or appeared again in the In-Custody Court
 EndReasonDte – Date defendant paid bond or appeared again in the In-Custody Court

Manual Device Tracking Log

This was a Microsoft Excel workbook that was used to track data for “at a glance” purposes. Information was used to assist in inventory control and to make a reminder call to the defendant the day before their next court date. Data Fields included:

Docket – Case number assigned in ACIST
 Last Name – Defendants last name
 Date Assigned – Date defendant was assigned to electronic monitoring
 Future Court Date – Defendants next court date
 Device Number – Ankle bracelet serial number assigned by vendor
 Date Deactivated – Date defendant was removed from electronic monitoring
 Comments – Any additional information to assist in tracking. Examples include documentation if the defendant failed to appear for their next court date and if a warrant was issued

Data was captured in a Microsoft Excel workbook

	Docket Number	Last Name	Date Assigned	Future Court Date	Device Number	Date Deactivated	Comments
1	2008055501	Jones	8/11/2008	9/2/2008	34005707	9/2/2008	Plead
2	2007087424	Smith	8/12/2008	9/10/2008	34004789	8/13/2008	FTC - Warrant Issued
3	2008051147	Sarah	8/14/2008	8/29/2008	34005734	8/18/2008	Plead
4	2008037458	Williams	8/17/2008	9/2/2008	34005691	9/2/2008	Plead

Names were changed for confidentiality.

APPENDIX G – Defendants Who Posted Bond Before Their Next Court Date

Defendants who posted bond before their next court date.

A random sample of cases where the defendant posted bond before their next court date were reviewed to determine the date bond was posted. The number of days between the “Event Date” and the “Date Bond Paid” fields determines the number days the defendant stayed in the Maricopa County Jail before they were released.

Data capture tool to determine the number of days a defendant who posted bond spent in jail.

Seq#	Docket	Last Name	First Name	Event Date	CU/COMM Stat	EndStat Reason	EndReason Date	Date Bond Paid
213	2008086317	Smith	Tom	12/5/2008	COMM	BOPO	12/19/2008	12/19/2008
104	2008055493	Jones	Ben	8/10/2008	COMM	BOPO	8/22/2008	8/21/2008
4	2002043063	Williams	Sarah	8/8/2008	COMM	BOPO	8/11/2008	8/8/2008

Names were changed for confidentiality.

APPENDIX H – Pretrial Release Survey Instrument and Data Collection Tool

Pretrial Release Survey Instrument

**Mesa Municipal Court
Pretrial Release Survey**

1. How familiar are you with the manner in which the Mesa Municipal Court pretrial release program actually works?

1- **Very familiar** - have a good working knowledge of program operations.

2- **Somewhat familiar** - have a general understanding of what the program does.

3- **Only slightly familiar** - know that the program exists, but don't know much about the details of program operations.

2. In general, how significant a contribution do you feel that the pretrial release program is making to the fair and effective functioning of the criminal justice process in your jurisdiction?

1. Improves it very significantly 3. Makes little difference

2. Helps somewhat 4. Overall effect is negative

GOALS OF PRETRIAL RELEASE PROGRAMS

3. In these questions, we are interested in obtaining your views about the goals of pretrial release programs -- what these goals should be in the pretrial release program.

Some possible goals of pretrial release projects are listed below. Not all of them are of equal importance, or receive equal priority in any program. Typically, a few will be regarded as being of prime importance, a few will be regarded as relatively unimportant (or perhaps altogether outside the scope of program responsibility), and the rest will fall somewhere in between.

Please scan through the entire list of possible goals, then indicate with respect to each goal the relative importance which you think should be placed on each goal in a pretrial release program. Circle your choice.

Possible Goals

1. Maximizing the number of persons at liberty between arrest and final disposition of their case.

Should be very important Neutral Should not be a goal

2. Making sure that individuals granted pretrial release through the program appear in court when scheduled.

Should be very important Neutral Should not be a goal

3. Helping to ensure that individuals who might be dangerous to the community are not granted pretrial release.

Should be very important Neutral Should not be a goal

4. Lessening the inequality in treatment of rich and poor by the criminal justice system.

Should be very important Neutral Should not be a goal

5. Acting as an advocate for defendants regarding pretrial release when eligibility requirements are met.

Should be very important Neutral Should not be a goal

6. Serving the court in a neutral fashion.

Should be very important Neutral Should not be a goal

7. Reducing the cost to the public by keeping people out of jail (and employed where possible) while awaiting disposition of their case.

Should be very important Neutral Should not be a goal

8. Maintaining good relations with police officials.

Should be very important Neutral Should not be a goal

9. Minimizing the potential danger to the community of persons released prior to trial, by maintaining supervision in appropriate cases.

Should be very important Neutral Should not be a goal

10. Minimizing the amount of time that elapses between arrest and release of defendants who are eligible for release.

Should be very important Neutral Should not be a goal

11. Maintaining good relations with judges and other court personnel.

Should be very important Neutral Should not be a goal

12. Gathering data to be used in evaluating and improving the effectiveness of program operations.

Should be very important Neutral Should not be a goal

13. Reducing overcrowding in jails.

Should be very important Neutral Should not be a goal

14. Providing information to the court for use in sentencing determinations.

Should be very important Neutral Should not be a goal

Survey responses were captured in a Microsoft Excel Workbook. The answers for questions number 1 and 2 correspond to the numerical choice selected. The answers for the

Possible Goals questions of 1 through 14 correspond as follows:

- 1 – Should be very important
- 2 – Neutral
- 3 – Should not be a goal

Mesa Municipal Court - Pretrial Release Survey -Data Capture Tool

Question	Judge 07	Judge 06	Judge 05	Judge 04	Judge 03	Judge 02	Judge 01
How Familiar are you with the manner in which the Mesa Municipal Court Pretrial Release Program Actually Works?	1	1	2	1	1	1	1
In general, how significant a contribution do you feel that the pretrial release program is making to the fair and effective functioning of the criminal justice process in your jurisdiction?	1	2	1	1	2	1	0
Maximizing the number of persons at liberty between arrest and final disposition of their case.	1	1	2	1	1	3	1
Making sure that individuals granted pretrial release through the program appear in court when scheduled.	1	1	1	1	1	1	1
Helping to ensure that individuals who might be dangerous to the community are not granted pretrial release.	3	3	0	1	1	3	1
Lessening the inequality in treatment of rich and poor by the criminal justice system.	1	1	1	2	1	2	1
Acting as an advocate for defendants regarding pretrial release when eligibility requirements are met.	3	3	3	3	3	3	3
Serving the court in a neutral fashion.	1	1	2	1	1	3	1
Reducing the cost to the public by keeping people out of jail (and employed where possible) while awaiting disposition of their case.	1	3	2	3	1	1	1
Maintaining good relations with police officials	2	3	3	3	3	2	1
Minimizing the potential danger to the community of persons released prior to trial, by maintaining supervision in appropriate cases.	1	1	0	3	1	2	1
Minimizing the amount of time that elapses between arrest and release of defendants who are eligible for release.	1	1	2	1	1	1	1
Maintaining good relations with judges and other court personnel.	3	3	3	1	3	3	1
Gathering data to be used in evaluating and improving the effectiveness of program operations.	1	1	1	1	2	2	3
Reducing overcrowding in jails.	2	3	1	1	1	1	2
Providing information to the court for use in sentencing determinations.	3	2	3	2	1	3	0

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Amendments, Case Law and Statutes

Amendment V states: *No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*

Amendment XIV Section. 1 states: *All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

Coffin v. United States, 156 U.S. 432 (1895) at 545 cited in Marie VanNostrand, *LEGAL AND EVIDENCE BASED PRACTICES: Application of Legal Principals, Laws, and Research to the Field of Pretrial Services*, **The Crime and Justice Institute and the National Institute of Corrections, Community Corrections Division**, April 2007.

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Johnson v. Zerbst, 304 U.S. 458 (1938); Gideon v. Wainwright, 372 U.S. 335, 344 – 345 (1963); and Argersinger v. Hamlin, 407 U.S. 25 (1972) cited in Marie VanNostrand, *LEGAL AND EVIDENCE BASED PRACTICES: Application of Legal Principals, Laws, and Research to the Field of Pretrial Services*, The **Crime and Justice Institute and the National Institute of Corrections, Community Corrections Division**, April 2007.

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A.R.S. 13-3961. Offenses not bailable; purpose; preconviction; exceptions

B. The purposes of bail and any conditions of release that are set by a judicial officer include:

1. Assuring the appearance of the accused.
2. Protecting against the intimidation of witnesses.
3. Protecting the safety of the victim, any other person or the community.

ARS 13-3967. Release on bailable offenses before trial, definition, is reproduced in Appendix B.