

J-PAST TALKING POINTS

Starting September 1, 2015, the Juvenile Probation Appearance/Arrestment Screening Tool (J-PAST) is used at arraignments in the Juvenile Court as a pilot in Middlesex, Essex, Suffolk, Bristol, Hampden and Worcester counties. The tool is prepared by a probation officer and will be shared with the judge, defense attorney and the A.D.A. whenever there is a request that a juvenile be held on bail. Counsel should always request a copy of the tool prior to any arraignment.

- **The purpose of bail and detention in Massachusetts is to make sure defendants (juveniles) appear for their assigned court dates.**

The bail statute creates a presumption of personal recognizance that can only be overcome if a judge or magistrate, in her discretion, determines that such release will not “reasonably assure” your client’s appearance before the court. § 58 par. 1; *Delaney v. Commonwealth*, 415 Mass 490, 495 (1993). Issues of dangerousness or public safety are not a consideration under § 58; the only “permissible consideration is whether the defendant is reasonably likely to reappear before the court.” *Commonwealth v. King*, 429 Mass 169, 174 (1999). The bail statute is still the controlling law and the J-PAST does not change the presumption of personal recognizance.

- **Almost all kids return to court.**

The implementation of the J-PAST, if relied upon by juvenile courts, will likely reduce the occurrence of detention. The empirical study done in Massachusetts by the Risk Assessment Instrument experts concluded that the overwhelming majority of youth show up for court.

- **Of the juveniles who received the highest score (3) on the J-PAST in the study, 75%* of them still appeared in court.**

A score of (3) (More likely to fail to appear) simply means the juvenile is more likely than other arraigned youths to fail to appear for a court date. It does not mean the youth will fail to appear or even that the youth is likely to fail to appear. It is important to remember that the overwhelming majority of youth show up even among those who fall into the “More likely to fail to appear” category.

- **If your client receives the highest scores of 3, guard against the court’s possible automatic inclination to hold the child.**

Remind the court that the presumption set forth in the bail statute is that your client will return to court and that the empirical evidence shows that the vast majority of youth who score a 3 *do* return to court. Accordingly, given the data, a 3 score is not enough to rebut the presumption of personal recognizance. Argue the specific strengths of your client and his/her family and support system to emphasize that the court can expect *this particular child* to appear.

- **Detention is harmful to youth.**

“Placement into a locked detention center pending court significantly increases the odds that youth will be found delinquent and committed to corrections facilities and can seriously damage their prospects for future success. Yet many detained youth pose little or no threat to public safety.” Juvenile Detention Alternatives Initiative (JDAI). <http://www.aecf.org/work/juvenile-justice/jdai/>. See YAD’s *Courtroom Practice Guide to Bail for more information on the dangers of detention.*

*This data is directly from the J-PAST developers in a document entitled *Part II: Development of the J-PAST, p. 14.*

- **The J-PAST was created because there was a need for an objective screening tool regarding a juvenile’s likelihood to appear.**

Detention rates in Massachusetts vary greatly by county and by court. See, JDAI Data Dashboard. <http://www.mass.gov/eohhs/gov/commissions-and-initiatives/jdai/jdai-data-dashboards-.html>. By guiding recommendations about which youth are more or less likely to appear in court, a tool can standardize the process and build a more equitable system. By using an objective screening tool in making detention decisions courts:

- Are not influenced by personal feelings, opinions and bias;
- Increase the odds that all youth are treated equitably;
- Decrease the likelihood that a youth’s detention is impacted by who screened them;
- Eliminate unintended bias;
- Reduce unnecessary and harmful detention for lower risk youth; and
- Enhance public safety

- **Unlike the bail statute, the J-PAST is empirically-based and was created by national experts in the development of risk assessment instruments.**

The persons who developed the J-PAST (Dr. Thomas Grisso, Associate Professor, Dr. Gina Vincent, Associate Professor, Rachael Perrault, MA, Research Director) are national experts in the development of risk screening tools. They are from the UMass Medical School, Systems and Psychosocial Advances Research Center, SPARC and this group so researchers advise around the county on the creation of screening and assessment tools.

The J-PAST is empirically-based. The items of the tool were selected because data from juveniles in Massachusetts show they are associated with re-offending or failure to appear. The tool has acceptable predictive accuracy across gender and race/ethnicity.

- **We need to guard against excessive conditions of release.**

Some judges may feel compelled to impose conditions of release even on juveniles who receive a low failure to appear score on the J-PAST. This would be counter-productive to the purpose of the J-PAST and could lead to juveniles with a low-risk of failure to appear ending up in detention for violation of conditions of release. Additionally:

- Pre-trial conditions of release that are not reasonably related to whether the juvenile will appear in court violate the clear language of G.L. c. 276, §58.
- G.L. c. 119, § 53 mandates that the juvenile court provisions “be liberally construed so that . . . [children] shall be treated, not as criminals, but as children in need of aid, encouragement and guidance.” The immediate imposition of conditions without any adjudication of delinquency brands the juvenile and treats them as criminals before any due process occurs in contravention of the mandate set forth in § 53.
- The imposition of pre-trial conditions of release potentially criminalizes status offenses that were explicitly de-criminalized in Massachusetts. *Commonwealth v. Weston W.*, 455 Mass. 24 (2009).
- Conditions imposed without adequate time for counsel to consult with the juvenile deny the juvenile the effective assistance of counsel.
- Conditions of release that unnecessarily criminalize adolescent behavior may do more harm in the long run. *See e.g., Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice* (Lipsey and Cullen, 2007; Petrosino, Turpin-Petrosino, and Guckenburg, 2010).
- The trend is to keep low-risk offenders away from the courthouse to avoid “net widening” and the consequences therefrom. Unwarranted conditions of release pull the juvenile further into the juvenile justice system increasing the likelihood of future court involvement.