

# Measuring and Managing Pretrial Risk

## Improving Public Safety, Fairness, and Cost Effectiveness

### California Pretrial Summit



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## Measuring and Managing Pretrial Risk

- » **Pretrial Release & Detention Decision**
  - Pretrial Justice
- » **Pretrial Decisions Determine Mostly Everything**
  - Impact of these critical decisions on case disposition, sentencing, and public safety
- » **Pretrial Decision Making**
  - Strategies to make the best decisions
- » **Measuring & Managing Pretrial Risk**
  - Legal and evidence based practices – what the research shows to be most effective
- » **Benefits of Risk-Based Pretrial Decision Making**

## Pretrial Release & Detention Decision

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## Pretrial Release & Detention Decision

- » An arrest is made in the U.S. **every 3 seconds**
  - 30,000 arrests per day
  - 11 million arrests per year
- » On any given day there are nearly 750,000 people incarcerated in local jails, a majority of whom are pending trial
- » U.S. spends an estimated \$9 billion annually detaining defendants who are awaiting trial
- » Local taxpayers bear these costs

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## Pretrial Release & Detention Decision

- » Each one of the 11 million arrests initiates the pretrial stage and requires a critical decision
  - Whether to release or detain a defendant pending case disposition
  - If released, the setting of conditions
- » Release-detention decisions carry enormous consequences not only for defendants, but also
  - Safety of the community
  - Rights of victims
  - Integrity of the judicial process
  - Effective utilization of our criminal justice resources

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## Pretrial Release & Detention Decision

- » Pretrial stage of criminal justice system
  - Time between arrest and case disposition
- » Goal during the pretrial stage of the criminal justice system, and especially the release-detention decision, is **Pretrial Justice**
  - Protect public safety
  - Assure court appearance

“[I]n our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”  
~ *United States vs. Salerno*, 481 U.S. 739, 755

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## Pretrial Release & Detention Decision

- » Release-detention decisions have a substantial impact on Pretrial Justice
- » The effects of release-detention decisions are even more far-reaching than is readily apparent

Pretrial Decisions Determine Mostly  
Everything  
~ Caleb Foote, 1956

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**Pretrial Decisions Determine Mostly  
Everything**

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## Pretrial Decisions Determine Mostly Everything

- » In the nearly 60 years since Professor Foote drew this conclusion – research has shown that release/detention decisions impact
  - Case disposition
  - Likelihood of receiving a sentence to incarceration
  - Length of the sentence to incarceration
  - Public safety pretrial (short term)
  - Public safety post-disposition (long term recidivism)

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## Pretrial Decisions Determine Mostly Everything

- » 2014 national study in Federal Court System
  - When controlling for legal and extralegal factors (e.g., demographics, offense type, criminal history, risk assessment)
  - Pretrial detention was found to be related to likelihood AND length of incarceration
  - Defendants detained pretrial were more likely to receive sentences to incarceration and for longer periods of time when compared to similarly situated released defendants
    - Oleson, J.C., Lowenkamp, C.T., Wooldredge, J., VanNostrand, M. and Cadigan, T.P. (2014). "The sentencing consequences of Federal Pretrial supervision." *Crime & Delinquency*, 1-21

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## Pretrial Decisions Determine Mostly Everything

### » 2012 statewide study in New Jersey

- When controlling for legal and extralegal factors (e.g., demographics, offense type, criminal history)
- Pretrial detention was found to be related to length of incarceration
- Defendants detained pretrial received significantly longer sentences to incarceration when compared to similarly situated released defendants
  - Sacks, M. and Ackerman, A.R. (2014). "Bail and sentencing: Does pretrial detention lead to harsher punishment?" *Criminal Justice Policy Review*, 25:59-77.

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## Pretrial Decisions Determine Mostly Everything

### » 2013 statewide study in Kentucky

- Data on over 150,000 defendants booked into jails between July 2009 and June 2010
- Examined the relationship between pretrial detention and new criminal activity pretrial and post-disposition
  - Lowenkamp, C.T., VanNostrand, M. and Holsinger, A.M. (2013). "The hidden costs of pretrial detention." *Laura and John Arnold Foundation: Houston, TX*

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## Pretrial Decisions Determine Mostly Everything

### » Multivariate models were generated to control for

- Risk level from a validated risk assessment
- Charge offense type and level
- Time at risk in the community
- Probation or parole supervision status
- Demographics (age, gender, race, marital status)
- Other relevant factors

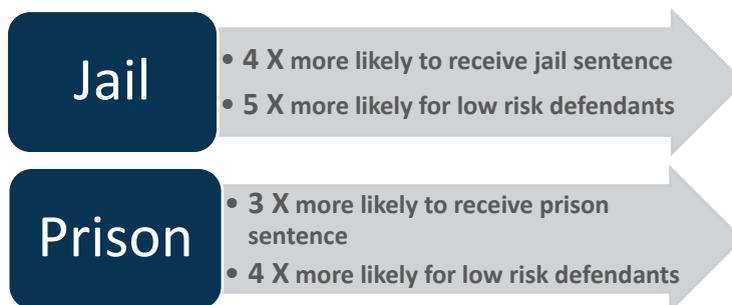
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## Pretrial Decisions Determine Mostly Everything

### » Findings – Pretrial Detention and Sentencing compared to similarly situated defendants released pending trial, detained defendants

- Likelihood of incarceration



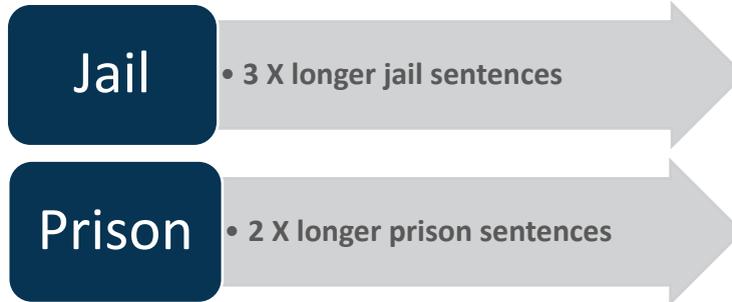
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## Pretrial Decisions Determine Mostly Everything

» Findings – Pretrial Detention and Sentencing compared to similarly situated defendants released pending trial, detained defendants

- Length of incarceration



## Pretrial Decision Making

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## Pretrial Decision Making

- » Recognizing the far reaching implications of these critical pretrial decisions

**Question: How do we make the most informed pretrial release and detention decisions that will minimize danger to the community and non-appearance in court while maximizing pretrial release?**

**Answer: Measure Risk and Manage Risk**

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## Pretrial Decision Making

- » State of Measuring and Managing Risk
  - Risk is inherent in pretrial release
  - Our system of justice *requires* that we take risk
  - The question is not “do we take risk”
  - The real question is “how do we **measure** risk and how do we **manage** it”

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## Pretrial Decision Making

### » State of Measuring and Managing Risk

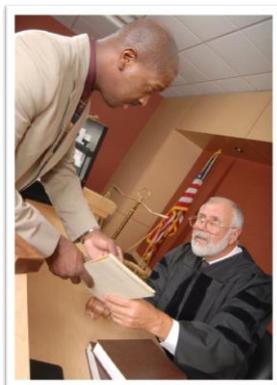
- **Measure Risk**
  - Employ objective and research-based risk assessments to identify the risk to public safety and failure to appear in court
- **Manage Risk**
  - Implement supervision and services to mitigate the risk of pretrial failure for released defendants
  - Preventive detention

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## Pretrial Decision Making

### » Role of Pretrial Services



Provide information to the Court to assist them with the pretrial release decision

Measure Risk

Provide supervision and services as ordered by the Court

Manage Risk

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## Measuring Pretrial Risk

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## Measuring Pretrial Risk

### » Pretrial Risk Assessment

- A pretrial risk assessment is an objective, research-based instrument that relies on risk factors to predict the likelihood of success or failure for a released defendant pending case disposition
  - A risk factor is a characteristic that, when present, indicates an increased risk of pretrial failure

### » A pretrial risk assessment is intended to inform release/detention decision by measuring

- Danger posed to public safety
- Likelihood of appearing in court

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## Measuring Pretrial Risk

- » A risk assessment alone should **not** be the sole consideration for pretrial decision making
- » Pretrial risk assessments are becoming more advanced but they should never replace judicial discretion and judicial decision making
- » Other relevant factors must be considered:
  - Nature and circumstances of the offense
  - Weight of the evidence
  - Relevant factors, including those required by state statute, that are not captured in the risk assessment
  - Input from prosecutor and defense attorney

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## Measuring Pretrial Risk



Andrews, D.A., Bonta, J. and Wormith, J.S. (2006). "The Recent Past and Near Future of Risk and/or Need Assessment." *Crime and Delinquency*, 52(1):7-27

Harris, P.M. (2006). "What Community Supervision Officers Need To Know About Actuarial Risk Assessment and Clinical Judgment." *Federal Probation* 70(2)

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## Measuring Pretrial Risk

### » Pretrial Risk Assessment – 40 years of research

- Seven multi-jurisdictional pretrial risk assessments
  - Virginia
  - Colorado
  - Florida
  - Ohio
  - Maine
  - Connecticut
  - Kentucky
- Federal Pretrial Risk Assessment (all 50 states)
- Public Safety Assessment – Court (national model)
- Many local pretrial risk assessments (individual locality)

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## Measuring Pretrial Risk

### » Pretrial Risk Assessment

- Common risk factors across risk assessments
  - Factors, measures and weighting vary
- Measure risk of failure to appear and danger to the community
  - Outputs vary
    - One measure representing failure generally
    - Separate measures of FTA and NCA
    - Indicator of risk of violence
    - Risk levels, numeric risk scales, flags

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## Measuring Pretrial Risk

### » Common Pretrial Risk Factors

- Current charge(s)
- Pending charges
- Prior criminal history
- History of violence
- Active community supervision (e.g. pretrial, probation, parole)
- History of failure to appear
- Residence stability
- Employment stability
- Community ties
- Substance abuse

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## Measuring Pretrial Risk

### » Example Pretrial Risk Assessment

- Virginia Pretrial Risk Assessment
- Identifies risk of failure to appear and danger to the community if released pending trial
  - Research based and adopted by counties in several states including Ohio, California, Washington, Michigan, Illinois, Pennsylvania, North Carolina
  - Virginia Model validated in Virginia and has been independently validated in Summit County, OH; Lake County, IL; and Mecklenburg, NC
    - VanNostrand, M. (2003). "Assessing risk among pretrial defendants in Virginia: The Virginia Pretrial Risk Assessment Instrument." Virginia Department of Criminal Justice Services: Richmond, VA.

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## Measuring Pretrial Risk

### » Virginia Pretrial Risk Assessment (factors & weights)

Risk Factor	Point Value
Charge Type – Misdemeanor or Felony	1 point
Pending Charges	1 point
Criminal History	1 point
History of Failures to Appear	2 points
History of Violent Convictions	1 point
Length Current Residence Less Than One YR	1 point
Not Employed or Primary Caregiver	1 point
History of Substance Dependence or Abuse	1 point

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## Measuring Pretrial Risk

### » Virginia Pretrial Risk Assessment (risk levels)

Risk Level	Risk Score
Low	0, 1
Below Average	2
Average	3
Above Average	4
High	5 – 9

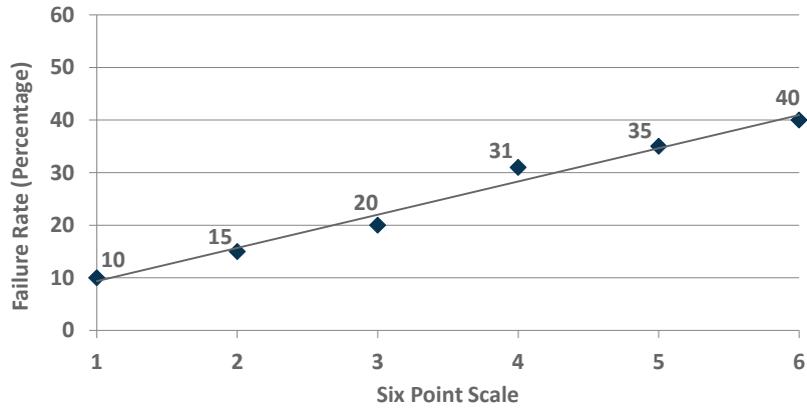
Low	Below Average	Average	<b>Above Average</b>	High
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## Measuring Pretrial Risk

### » PSA – Court Failure to Appear



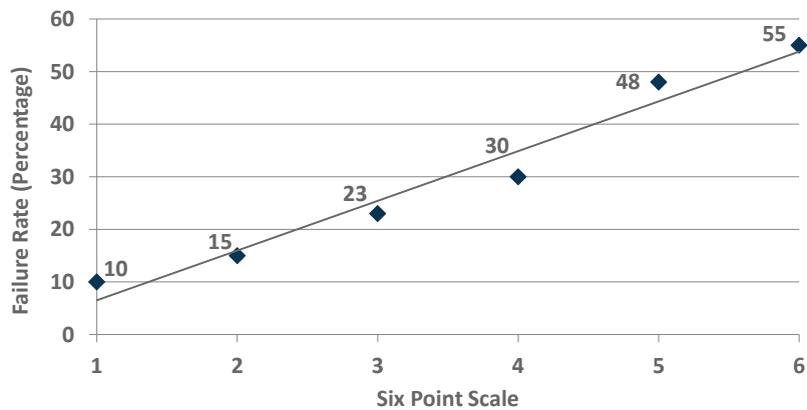
Laura and John Arnold Foundation. (2013). "Research summary: Developing a national model for pretrial risk assessment." Laura and John Arnold Foundation: Houston, TX.

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## Measuring Pretrial Risk

### » PSA – Court New Criminal Activity



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## Measuring Pretrial Risk

### » PSA – Court New Violent Criminal Activity

NVCA Flag	%	NVCA Rate
Yes	7	7.2%
No	93	2.4%
Average NVCA		2.8%

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## Measuring Pretrial Risk

- » Effectively measuring risk allows for
  - Detaining the highest risk defendants
  - Releasing moderate risk defendants with interventions and services targeted to mitigate risk
  - Releasing low risk defendants with minimal or no conditions
- » Mitigating risk requires effective risk management strategies

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## Managing Pretrial Risk

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## Managing Pretrial Risk

- » **Effective risk management strategies are found in Pretrial Legal and Evidence-Based Practices**

**Interventions and practices that are consistent with the legal and constitutional rights afforded to accused persons awaiting trial, and methods that research has proven to be effective in reducing unnecessary detention while assuring court appearance and the safety of the community during the pretrial stage**

VanNostrand, M. (2007). "Legal and evidence-based practices: Applications of legal principles, laws, and research to the field of pretrial services." National Institute of Corrections, U.S. Department of Justice: Washington, DC.

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## Managing Pretrial Risk

- » Effective risk management strategies are found in Pretrial Legal and Evidence-Based Practices

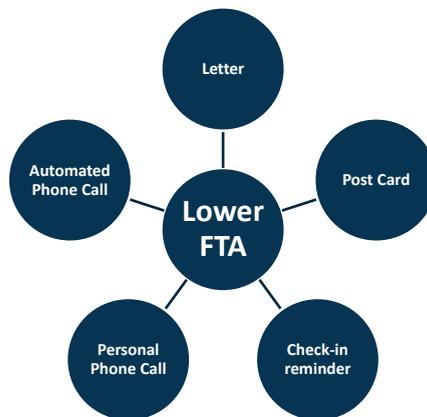
The term is intended to reinforce the uniqueness of pretrial stage and ensure that criminal justice professionals remain mindful that pretrial practices are often driven by law and when driven by research, they must be consistent with the rights afforded to defendants awaiting trial

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## Managing Pretrial Risk

- » LEBP – Court reminder impact on FTA
  - All court reminder types reduce FTA at varying levels



VanNostrand, M., Rose, K., and Weibrecht, K. (2011). "State of the Science of Pretrial Release Recommendations and Supervision." Pretrial Justice Institute: Gaithersburg, MD.

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## Managing Pretrial Risk

- » **LEBP – Pretrial supervision**
- » **2013 study in one Eastern and one Western state**
  - Investigated the relationship between pretrial supervision and FTA/NCA
    - Data comprised of 3,925 released defendants (2,437 supervised and 1,488 not supervised) were collected from one Eastern and one Western state
    - The rates of FTA and NCA were compared between the supervised and unsupervised groups
      - Lowenkamp, C.T. and VanNostrand, M. (2013). “Exploring the impact of supervision on outcomes.” Laura and John Arnold Foundation: Houston, TX.

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## Managing Pretrial Risk

- » **LEBP – Pretrial supervision**
- » **2013 study in one Eastern and one Western state**
  - Pretrial supervision was most effective for moderate to high risk defendants in ensuring court appearance
    - Moderate risk- 38% reduction in FTA
    - High risk- 33% reduction in FTA
  - Pretrial supervision of more than 180 days was statistically related to a decrease in the likelihood of NCA before case disposition
    - 12% to 46% less likely to be arrested for NCA

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## Managing Pretrial Risk

### » Risk Principle

- Risk management involves adherence to the risk principle
- Studies have shown [post-conviction]
  - Evidence-based interventions directed to moderate and high risk offenders will result in better outcomes for both offenders and the community
  - Treatment resources targeted to low risk offenders produce little, if any, positive effect
    - Crime and Justice Institute and Department of Justice, National Institute of Justice. (2004). "Implementing Evidence-Based Practices in Community Corrections: The Principle of Effective Interventions."

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## Managing Pretrial Risk

### » Risk Principle [pretrial]

- 2009 national study in Federal Court System
  - Included all persons charged with criminal offenses in the federal courts between October 1, 2001 and September 30, 2007 who were processed by the federal pretrial services system (N=565,178)
  - Identified risk predictors, created a risk scheme, and analyzed effectiveness of alternatives to detention (ATD) while controlling for risk
    - VanNostrand, M., & Keebler, G. (2009). Pretrial Risk Assessment in the Federal Court. Federal Probation, 72 (2).

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## Managing Pretrial Risk

### » Risk Principle [pretrial]

- 2009 national study in Federal Court System
  - **Moderate and higher risk** defendants who were required to participate in ATD pending trial were **more likely to succeed** pending trial (ATD are conditions of release- e.g., drug testing, treatment, electronic monitoring)
  - **Lower risk defendants** who were required to participate in ATD pending trial were **more likely to fail** pending trial

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## Managing Pretrial Risk

### » Risk Principle [pretrial]

- 2013 statewide study in Kentucky
  - Data on over 150,000 defendants booked into jails between July 2009 and June 2010
  - Examined the relationship between pretrial detention, including the **length of pretrial detention**, and new criminal activity pretrial and post-disposition
  - Pretrial detention is not an 'all or nothing proposition'
    - Defendants can be released at different times during the pretrial stage
      - Lowenkamp, C.T., VanNostrand, M. and Holsinger, A.M. (2013). "The hidden costs of pretrial detention." Laura and John Arnold Foundation: Houston, TX

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## Managing Pretrial Risk

### » Risk Principle [pretrial]

- 2013 statewide study in Kentucky
  - When compared to defendants who secure release in 1 day, defendants who spend time in jail before securing pretrial release are more likely to commit new crimes
    - Detaining low- and moderate-risk defendants, even just for a few days, is correlated with higher rates of new criminal activity pretrial and 2 years post-disposition
    - As length of pretrial detention increases up to 30 days, recidivism rates for low and moderate-risk defendants also increases significantly
    - Greatest impact for low risk defendants; no impact for high risk defendants

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## Benefits of Risk-Based Pretrial Decision Making

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## Benefits of Risk-Based Pretrial Decision Making

- » Risk-based systems minimize dual system errors found in most current pretrial systems
  - Defendants who pose a significant risk to public safety are released
  - Low risk/non-violent defendants are detained
- » Risk-based systems achieve **Pretrial Justice** by
  - Detaining the highest risk defendants
  - Releasing moderate risk defendants with interventions and services targeted to mitigate risk
  - Releasing low risk defendants with minimal or no conditions

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## Benefits of Risk-Based Pretrial Decision Making

- » Improves public safety in the short and long term
- » Enhances the fair administration of justice
- » Better protects the rights of victims
- » Better protects the rights of defendants
- » Reduces the burden on local tax payers
- » Provides for the most effective jail population management of pretrial defendants

Measuring and Managing Pretrial Risk -  
Improving Public Safety, Fairness,  
and Cost Effectiveness

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