Key Topics in Pretrial Justice

November 12, 2015
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Key Topics in Pretrial Justice

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November 12, 2015
Topics

1. New developments in pretrial risk assessment
2. Recent research in pretrial risk management and decision-making
3. Litigation for money bail
4. States’ activity
5. Smart Pretrial Demonstration Initiative
6. 3 Days Count Campaign
Who supports pretrial risk assessment?

- The system
- The public
System/Reformer Support
Trivia

• According to public polling, about what percentage of common citizens support the use of pretrial risk assessment tools instead of money bail?
  
a. 25
b. 40
c. 55
d. 70
Some have proposed using risk-based screening tools instead of cash bail bonds to determine whether defendants should be released from jail before trial. This risk assessment would take into account such factors as [drug use history, mental health, employment status, residency, and community ties] or [the charge in question, criminal history, any warrants or previous failures to appear for court]. Under this system, high-risk defendants would be held in jail until trial and low-risk defendants would be released with conditions and be monitored and supervised. Would you support or oppose this proposal to use risk assessment instead of cash bail bonds to determine whether defendants should be released from jail before trial, or are you undecided? [IF SUPPORT/Oppose] And do you feel that way strongly, or not-so strongly?
Pretrial Risk Tools

- Can develop one’s own
- Can be done at state level or a singular locality
- Measures a defendant’s likelihood for appearing in court and for engaging in new criminal activity during pretrial release
- Can be accurate
Example of Accuracy

- City and County of Denver

### Court Appearance Rates by CPAT Category

<table>
<thead>
<tr>
<th>Category</th>
<th>CPAT 1</th>
<th>CPAT 2</th>
<th>CPAT 3</th>
<th>CPAT 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPAT Proj</td>
<td>95%</td>
<td>85%</td>
<td>77%</td>
<td>51%</td>
</tr>
<tr>
<td>2013 Actual</td>
<td>93%</td>
<td>89%</td>
<td>84%</td>
<td>80%</td>
</tr>
<tr>
<td>2014 Actual</td>
<td>95%</td>
<td>86%</td>
<td>84%</td>
<td>77%</td>
</tr>
</tbody>
</table>

### Public Safety Rates by CPAT Category

<table>
<thead>
<tr>
<th>Category</th>
<th>CPAT 1</th>
<th>CPAT 2</th>
<th>CPAT 3</th>
<th>CPAT 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPAT Proj</td>
<td>91%</td>
<td>80%</td>
<td>69%</td>
<td>58%</td>
</tr>
<tr>
<td>2013 Actual</td>
<td>97%</td>
<td>92%</td>
<td>85%</td>
<td>82%</td>
</tr>
<tr>
<td>2014 Actual</td>
<td>96%</td>
<td>93%</td>
<td>86%</td>
<td>80%</td>
</tr>
</tbody>
</table>
• Currently, there are no pretrial risk tools that differentially indicate a defendant’s likelihood of the type (e.g., violent or non-violent) of new criminal activity during pretrial release?
  a. True
  b. False
PSA-Court

• Developed; being refined and validated
• Data from millions of cases; dozens of jurisdictions
• Three new features
  1. Defendant-interview is not needed
  2. Only uses administrative data
  3. Has a violence flag
• Integrated with decision-making
• Will be free
Risk Management and Decision-Making

- Decent evidence that supervision works, especially for moderate and higher risk defendants
- Very good evidence that court date reminders work for almost all defendants
- New study from Virginia
Risk-Based Supervision

- Used random assignment
- Pretrial releases are increased by using pretrial services recommendations and a praxis
- Staff using specific supervision skills achieved lower FTA rates in their clients
### Sample Praxis

#### Most Serious Charge

<table>
<thead>
<tr>
<th>Pretrial Risk Category</th>
<th>Less Serious Misdemeanor</th>
<th>More Serious Misdemeanor</th>
<th>Less Serious or Non-Violent Felony</th>
<th>Driving Under the Influence</th>
<th>Domestic Violence</th>
<th>Serious or Violent Felony</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lower</strong></td>
<td>Recognizance Release with Court Reminder</td>
<td>Recognizance Release with Court Reminder</td>
<td>Recognizance Release with Court Reminder</td>
<td>Recognizance Release with Basic Supervision</td>
<td>Recognizance Release with Basic Supervision</td>
<td>Recognizance Release with Enhanced Supervision (if Released); or Detained</td>
</tr>
<tr>
<td><strong>Medium</strong></td>
<td>Recognizance Release with Basic Supervision</td>
<td>Recognizance Release with Basic Supervision</td>
<td>Recognizance Release with Basic Supervision</td>
<td>Recognizance Release with Enhanced Supervision</td>
<td>Recognizance Release with Enhanced Supervision</td>
<td>Recognizance Release with Enhanced Supervision (if Released); or Detained</td>
</tr>
<tr>
<td><strong>Higher</strong></td>
<td>Recognizance Release with Basic Supervision</td>
<td>Recognizance Release with Enhanced Supervision</td>
<td>Recognizance Release with Enhanced Supervision</td>
<td>Recognizance Release with Enhanced Supervision (if Released); or Detained</td>
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<td>Recognizance Release with Enhanced Supervision (if Released); or Detained</td>
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</table>
Discussion Question

• Which jurisdictions in your state use an actuarial pretrial risk tool, risk-based supervision, and risk-based pretrial release/detention decision-making?

• What is it that they do?
Litigation for Money Bail

• Equal Justice Under Law
  • Class action challenges to money bail
  • Suing cities in federal court over charge-based secured money bonds
  • U.S. Constitution’s Equal Protection clause
  • Debtor’s prisons
  • Have won in AL, MO, MS, and LA
  • Recently sued San Francisco
States’ Activities

- Legislative interest
  - NJ
  - MA
  - others

- Statewide committees
  - UT
  - TX
  - ID
  - NH
  - others
Discussion Question

• Does your state’s SAC have a role in pretrial practices at the local or state level?

• What does the SAC do?
• 3 Sites (Yakima, Denver, Delaware)
• Completing baseline assessment
  • Legal assessment
  • System map and gap analysis
  • Cost-benefit analysis
  • Own data and performance measures
• Planning for implementation
• Goal is to show that LEBP is possible
3 Days Count

A national campaign to apply commonsense solutions to widespread pretrial challenges that discriminate against the poor, fail to protect individual and community safety, and squander public resources that could be better used elsewhere.

PJI’s campaign seeks to set a new standard of pretrial justice by the year 2020 by supporting 20 states to achieve three goals:

1. **reduce unnecessary arrests**, for example, by increasing the ways officers can cite and release or otherwise divert or deflect arrested people

2. **replace discriminatory cash bail** with practical, risk-based decision-making, and

3. **enable transparent detention, with full due process**, for the small number of defendants who pose a genuine threat to public safety