Policy Breakout: Reforming Pretrial Release and Bail

Background
The U.S. Department of Justice, Bureau of Justice Statistics estimates that 744,600 inmates were confined in local jails at midyear 2014\(^1\) costing the country more than $9 billion annually. More than six out of every 10 of these inmates were awaiting trial, and nine out of 10 defendants who remain in jail pretrial are there because they have not posted bail.\(^2\) Money is the primary factor that determines whether someone is held in jail prior to trial, as research shows that more than 50% of high-risk arrestees are being released before trial, simply because they have the financial means to post bail.

Additionally, being held in jail prior to trial is associated with a host of negative consequences. Defendants held in jail prior to trial receive harsher punishments than those able to post monetary bail. Even short stints in jail before trial can lead to job loss and other negative consequences that result in a higher risk of being arrested again.\(^3\)

The dynamics that characterize our pretrial detention system have led many policy makers, practitioners, and scholars to conclude that our pretrial detention system is broken, incapable of doing the job we expect from it, and in need of significant reform.\(^4\) Simply put, defendants with financial means — regardless of risk level or threat posed to the public safety — can purchase their freedom, while poor defendants remain in jail pending trial. A money based system of pretrial release compromises public safety and arguably imposes unjust burdens and consequences on many defendants simply because they are poor.\(^5\)

Presented below is a series of practices for achieving pretrial release and bail reform.

Risk Assessment
Risk assessment is an evidence-based practice widely used in the criminal justice system across the United States to develop supervision and case management plans. In some states, it is also used to aid decision making concerning institutional assignments and release from institutional custody decisions. More recently, risk assessment tools have been used to aid decision making in sentencing and pretrial detention.

While the merit and value of risk assessment has long been recognized in correctional settings, the use of risk assessment results by judges is relatively new development. In fact, the Pretrial Justice Institute estimates that only 10 percent of jurisdictions nationwide use a validated, empirically developed risk assessment to inform their pretrial release decisions. Expanding the use of risk assessment of all defendants for pretrial release decision making is an essential first step for pretrial reform.

Citation Releases by Law Enforcement
Citation releases, in lieu of custodial arrests, for non-violent offenses have been used by law enforcement for many years. The practice is most often used for disorderly conduct, theft, trespassing, driving with a suspended license, and possession of marijuana. While the full impacts of citation release in lieu of arrest have not been established through rigorous research, a variety of potential benefits may result from the practice—including reductions in jail bookings and the avoidance of possible pretrial detention as well as the negative consequences of an arrest record.

Court Date Notification
Failure to appear (FTA) in court has negative impacts on victims, witnesses, the local justice system and the integrity of the judicial process. Court date notification programs are designed to reduce FTAs and their financial and other costs. Notification programs may involve live calls, an automated calling system, mail notification or other techniques. Studies of notification programs in different states consistently show that these programs are effective at reducing FTAs.

**Electronic Monitoring**

Electronic monitoring uses systems based on radio frequency or global positioning system (GPS) technology to monitor offenders’ locations and movements in community-based settings. While studies focusing on the effectiveness of electronic monitoring with pretrial populations have been limited, and findings regarding FTA and pretrial misconduct have been mixed, the evidence suggests that EM has the potential to reduce unnecessary detention for higher-risk defendants without adversely affecting FTA or pretrial rearrest rates.

**Pre-booking Diversion and other Early Decision Making Options**

Increasingly, there are innovative and thoughtful alternatives to arrest and booking occurring around the country. These pre-booking diversion or deflection programs help avoid the deleterious effects to the individual of pretrial detention and deeper criminal justice system involvement. For example, Law Enforcement Assisted Diversion (LEAD) is a pre-booking, diversion program designed to divert those arrested for low-level drug and prostitution offenses away from jail and prosecution and into case management, legal coordination, and other supportive services. LEAD participants are connected to existing resources in the community such as legal advocacy, job training or placement, housing assistance, and counseling.

**Referral to Targeted Rehabilitation Services that are Risk, Need, Responsivity Adherent**

Research has clearly demonstrated that treatment services that adhere to the Risk, Need and Responsivity (RNR) principles of effective correctional intervention are effective at reducing recidivism. While proper targeting and implementation is essential, a variety of evidence-based programs for addressing the criminogenic needs of defendants on pretrial release can help ensure that defendants on pretrial release remain crime-free in the community. These include, but are not limited to substance abuse treatment and mental health counseling.

**Washington, D.C. Superior Court Drug Intervention Program (SCDIP)**

The Washington, D.C. Superior Court Drug Intervention Program (SCDIP) serves pretrial defendants in need of substance abuse treatment on a pre-plea basis. Relatively few drug courts nationally follow a pre-plea model. The SCDIP pre-plea model offers several benefits. Cases are adjudicated more quickly than in traditional post-plea and post adjudication models and defendants can enter treatment and other services more quickly and without relinquishing their trial rights. Faster entry into drug courts has been shown to produce better outcomes.6

**Wisconsin Treatment Alternatives and Diversion Program (TAD)**

The (TAD) is a diversion program provides support to county efforts that provide treatment and diversion programs for non-violent adult offenders for whom substance abuse was a contributing factor in their criminal activity.7 TAD projects have been established by counties and tribes using one of two models: pre-trial diversion or adult drug court. Both base treatment decisions on risk and needs assessments and using evidence-based practices that are effective at reducing recidivism. In the pre-trial diversion model, the prosecutor or court agrees not to prosecute the offender in exchange for the offender fulfilling treatment and other requirements outlined in a deferred prosecution agreement. If the offender fails to successfully complete treatment or meet required conditions, the prosecutor proceeds with charges.8 Assessments of TAD projects indicate that they reduce recidivism, incarceration and its associated costs, and that TAD projects have been effective in both urban and rural settings.9

**24/7 Sobriety Project**
The 24/7 Sobriety Project is a court-based program designed to reduce the re-offense rates of repeat Driving Under the Influence (DUI) offenders. Roughly half of the participants in 24/7 programs are pre-trial defendants. 24/7 participants must maintain full sobriety to retain driving privileges and stay out of jail. Research on the 24/7 program suggests it can significantly reduce recidivism for program participants on pretrial release.  

2 Pretrial Justice Institute.  
3 Pretrial Justice Institute.  
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7 Wisconsin Criminal Justice Coordinating Council  
8 Wisconsin Department of Justice.  
9 Wisconsin Department of Justice.  