

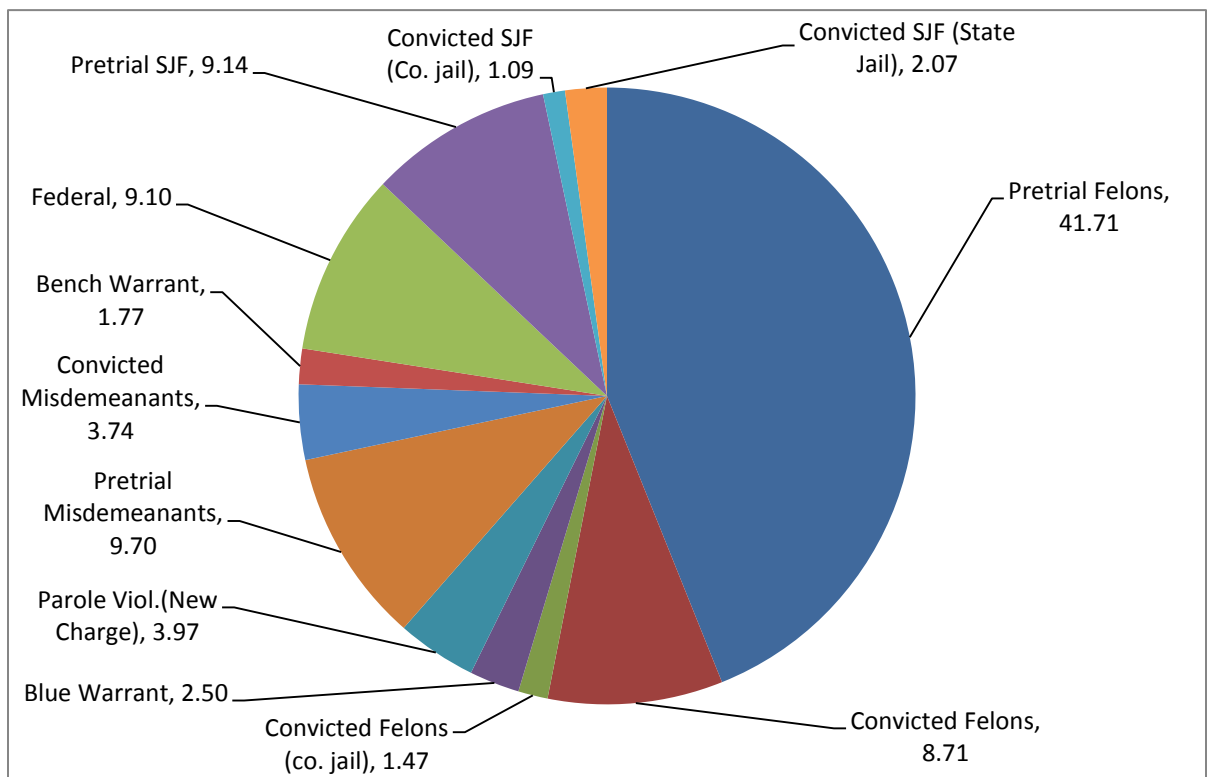
TEXAS COMMISSION ON JAIL STANDARDS - CALENDAR YEAR 2014 ANNUAL REPORT

County Jail Population by Offense Type¹

	12/2009	12/2010	12/2011	12/2012	12/2013	12/2014
Pretrial Felons	36.19%	37.47%	39.10%	39.36%	38.70%	41.71%
Convicted Felons	8.14%	8.75%	9.55%	7.42%	8.88%	8.71%
Convicted Felons (Co. jail)	2.12%	1.82%	1.66%	1.89%	1.70%	1.47%
Blue Warrant	3.51%	3.35%	3.46%	2.57%	3.41%	2.5%
Parole Viol. (New charge)	3.90%	4.21%	4.08%	3.81%	4.28%	3.97%
Pretrial Misdemeanants	10.08%	9.02%	9.40%	9.93%	9.31%	9.70%
Convicted Misdemeanants	6.33%	5.614%	5.51%	5.73%	4.60%	3.74%
Bench Warrant	1.45%	1.55%	1.70%	1.47%	1.74%	1.77%
Federal²	11.43%	13.71%	9.87%	10.56%	10.10%	9.10%
Pretrial SJF	7.48%	6.83%	6.97%	8.30%	8.42%	9.14%
Convicted SJF (Co. jail)	2.54%	1.43%	1.10%	1.26%	0.90%	1.09%
Convicted SJF (State jail)	2.01%	2.28%	2.42%	2.20%	2.13%	2.07%

¹This representation does not include all offense categories so totals may not equal 100%

²This only includes those federal inmates in facilities under purview of the Commission on Jail Standards. Under 511.0094 Government Code, facilities housing only federal inmates do not fall under Commission purview.



CONFERENCE OF CHIEF JUSTICES

Resolution 3

Endorsing the Conference of State Court Administrators Policy Paper on Evidence-Based Pretrial Release

WHEREAS, pretrial judicial decisions about release or detention of defendants before disposition of criminal charges have a significant, and sometimes determinative, impact on thousands of defendants every day; and

WHEREAS, pretrial release decisions add great financial stress to publicly funded jails holding defendants who are unable to meet financial conditions of release; and

WHEREAS, many of those incarcerated pretrial do not present a substantial risk of failure to appear or a threat to public safety, but do lack the financial means to be released; and

WHEREAS, evidence-based assessment of the risk that a defendant will fail to appear or will endanger others, if released, can increase successful pretrial release without imposing unnecessary financial conditions that many defendants are unable to meet; and

WHEREAS, defendants who are detained can suffer job loss, home loss, and disintegrated social relationships, and, according to the Bureau of Justice Assistance, “receive more severe sentences, are offered less attractive plea bargains and are more likely to become ‘reentry’ clients because of their pretrial detention regardless of charge or criminal history;” and

WHEREAS, imposing conditions on a defendant that are appropriate for that individual following a valid pretrial assessment substantially reduces pretrial detention without impairing the judicial process or threatening public safety; and

WHEREAS, in 2012 the Conference of State Court Administrators (COSCA) adopted a Policy Paper on Evidence-Based Pretrial Release, which concludes with the following recommendations to state court leaders:

- Analyze state law and work with law enforcement agencies and criminal justice partners to propose revisions that are necessary to support risk-based release decisions of those arrested and ensure that non-financial release alternatives are utilized and that financial release options are available without the requirement for a surety;

- Collaborate with experts and professionals in pretrial justice at the national and state levels;
- Take the message to additional groups and support dialogue on the issue;
- Promote the use of data including determining what state and local data exist that would demonstrate the growing problem of jail expense represented by the pretrial population, and that show the risk factors presented by that population may justify broader pretrial release; and
- Reduce reliance on bail schedules in favor of evidence-based assessment of pretrial risk of flight and threat to public safety.

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices commends and endorses the Policy Paper on Evidence-Based Pretrial Release and joins with Conference of State Court Administrators to urge that court leaders promote, collaborate, and accomplish the adoption of evidence-based assessment of risk in setting pretrial release conditions and advocate for the presumptive use of non-financial release conditions to the greatest degree consistent with evidence-based assessment of flight risk and threat to public safety and to victims of crimes.

Adopted as proposed by the CCJ/ COSCA Criminal Justice Committee at the Conference of Chief Justices 2013 Midyear Meeting on January 30, 2013.

2012-2013 Policy Paper Evidence-Based Pretrial Release

Final Paper



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Glossary of Terms

Bail – Bail refers to a deposit or pledge to the court of money or property in order to obtain the release from jail of a person accused of a crime. It is understood that when the person returns to court for adjudication of the case, the bail will be returned in exchange. If the person fails to appear, the deposit or pledge is forfeited. There is no inherent federal Constitutional right to bail; a statutory right was first created in the 1960s.

Bond – A term that is used synonymously with the term “bail” and “bail bond.” (*See above*).

Citation release – a form of nonfinancial pretrial release in which the defendant is issued a written citation, usually at the time of arrest, and signs the citation pledging to appear in court when required.

Commercial bail agent/bondsman – a third party business or person who acts as a surety on behalf of a person accused of a crime by pledging money or property to guarantee the appearance of the accused in court when required.

Compensated surety – a bond for which a defendant pays a fee to a commercial bail agent, which is nonrefundable.

Conditional release – a form of nonfinancial pretrial release in which the defendant agrees to comply with specific kinds of supervision (e.g., drug testing, regular in-person reporting) in exchange for release from jail).

Deposit bond - a bond that requires a defendant to post a deposit with the court (usually 10% of the bail amount), which is typically refunded upon disposition of the case.

Full cash bond – a bond deposited with the court, the amount of which is 100% of the bail amount. The bond can be paid by anyone, including the defendant.

Pretrial - The term “pretrial” is used throughout this paper to refer to a period of time in the life of a criminal case before it is disposed. The term is a longstanding convention in the justice field, even though the vast majority of criminal cases are ultimately disposed through plea agreement and not trial.

Property bond – a bond that requires the defendant to pledge the title of real property valued at least as high as the full bail amount.

Release on recognizance – a form of nonfinancial pretrial release in which the defendant signs a written agreement to appear in court when required and is released from jail.

Surety–a person who is liable for paying another’s debt or obligation.

Surety bond – a bond that requires the defendant to pay a fee (usually 10% of the bail amount) plus collateral if required, to a commercial bail agent, who assumes responsibility for the full bail amount should the defendant fail to appear. If the defendant does appear, the fee is retained by the commercial bail agent.

I. Introduction

Pretrial judicial decisions about release or detention of defendants before disposition of criminal charges have a significant, and sometimes determinative, impact on thousands of defendants every day while also adding great financial stress to publicly funded jails holding defendants who are unable to meet financial conditions of release. Many of those incarcerated pretrial do not present a substantial risk of failure to appear or a threat to public safety, but do lack the financial means to be released.¹ Conversely, some with financial means are released despite a risk of flight or threat to public safety, as when a bond schedule permits release upon payment of a pre-set amount without any individual determination by a judge of a defendant's flight risk or danger to the community. Finally, there are individuals who, although presumed innocent, warrant pretrial detention because of the risks of flight and threat to public safety if released.

Evidence-based assessment of the risk a defendant will fail to appear or will endanger others if released can increase successful pretrial release without financial conditions that many defendants are unable to meet. Imposing conditions on a defendant that are appropriate for that individual following a valid pretrial assessment substantially reduces pretrial detention without impairing the judicial process or threatening public safety. The Conference of State Court Administrators advocates that court leaders promote,

collaborate toward, and accomplish the adoption of evidence-based assessment of risk in setting pretrial release conditions. COSCA further advocates the presumptive use of non-financial release conditions to the greatest degree consistent with evidence-based assessment of flight risk and threat to public safety and to victims of crimes.

II. The Law

The Supreme Court of the United States has said, "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law."² The right to bail has been a part of American history in varying degrees from the beginning -- 1641 in Massachusetts and 1682 in Pennsylvania. Other state constitutions adopted the Pennsylvania provision as a model.³ Nine states and Guam follow the pattern of the United States Constitution by prohibiting "excessive bail" without explicitly guaranteeing the right to bail.⁴ Forty state constitutions, as well as the Puerto Rico Constitution and the District of Columbia Bill of Rights, expressly prohibit excessive bail.⁵ One state, Maine, had a constitutional provision prior to 1838 that expressly provided the right to bail, but by amendment that year the Maine Constitution now only prohibits bail in capital cases, without otherwise addressing the matter.⁶ However, the Maine Supreme Judicial Court held that the current language continues the guarantee of the right to bail that was express prior to 1838.⁷ The Federal

Judiciary Act of 1789 provided for the absolute right to bail in non-capital cases. The Eighth Amendment prohibition on excessive bail was adopted in 1791 as part of the Bill of Rights.⁸

Freedom before conviction permits unhampered preparation of a defense and prevents infliction of punishment before conviction. Without the right to bail, the presumption of innocence would lose its meaning.⁹ The purpose of bail is to ensure the accused will stand trial and submit to sentencing if found guilty.¹⁰ Another legitimate purpose is reasonably to assure the safety of the community and of crime victims.¹¹

Twelve states, the District of Columbia, and the federal government have enacted a statutory presumption that defendants charged with bailable offenses should be released on personal recognizance or unsecured bond unless a judicial officer makes an individual determination that the defendant poses a risk that requires more restrictive conditions or detention.¹² Six other states have adopted this presumption by court rule.¹³ However, it is common in many states to have bail schedules, adopted statewide or locally, that establish a pre-set amount of money that must be deposited at the jail in order for a defendant to obtain immediate release, without any individual assessment of risk of flight or danger to the community. In a 2009 nationwide survey of the 150 largest counties, among the 112 counties that responded, 64 percent reported using bond schedules.¹⁴

Despite the common use of bond schedules (also commonly termed “bail schedules”), they seem to contradict the notion that pretrial release conditions should reflect an assessment of an individual defendant’s risk of failure to appear and threat to public safety. Two state high courts have rejected the practice of imposing non-discretionary bail amounts based solely on the charge, as in a bail schedule. The Hawai’i Supreme Court found an abuse of discretion for a trial court to apply a bail schedule promulgated by the senior judge that ignored risk factors specific to the defendant.¹⁵ The Oklahoma Court of Criminal Appeals overturned a statutory mandate for a particular bail amount attached to a specific crime: “[The statute] sets bail at a predetermined, nondiscretionary amount and disallows oral recognizance bonds under any circumstances. We find the statute is unconstitutional because it violates the due process rights of citizens of this State to an individualized determination to bail.”¹⁶

In the United States in the twenty-first century, it is common to require the posting of a financial bond as the means to obtain pretrial release, often through procuring the services of a commercial bond company, or bail bondsman. Bonding companies typically require a non-refundable premium payment from the defendant, usually 10 percent of the bail set by the court. Many companies also require collateral sufficient to cover the full bond amount.¹⁷ In 2007 the DOJ Bureau of Justice Statistics reported that an estimated 14,000 bail agents nationwide secured the release of more than 2 million defendants annually.¹⁸ The United

States and the Philippines are the only countries that permit the widespread practice of commercial bail bonds.¹⁹ In countries other than these two, “[b]ail that is compensated in whole or in part is seen as perverting the course of justice.”²⁰

III. The Consequences of Pretrial Release versus Incarceration

From the perspective of the defendant, who is presumed innocent, pretrial release mitigates the collateral consequences of spending weeks or months awaiting trial or a plea agreement. Jail time can result in job loss, home loss, and disintegrated social relationships, which in turn increase the likelihood of re-offending upon release.²¹

In 2010 the United States had the world’s highest total number of pretrial detainees (approximately 476,000) and the fourth-highest rate of pretrial detention (158 per 100,000).²² A study of felony defendants in America’s 75 largest urban counties showed that in 1990, release on recognizance accounted for 42% of releases, compared to 25% released on surety bond. By 2006, the proportions had been reversed: surety bonds were used for 43% of releases, compared to 25% for release on recognizance.²³ Taking into account all types of financial bail (surety bond, deposit bail, unsecured bond, and full cash bond), it is clear that the majority of pretrial release requires posting of financial bail.

The same study of felony defendants showed that 42% were detained until disposition of their case.²⁴ Pretrial

incarceration imposes significant costs on taxpayer-funded jails, primarily at the local government level. In 2010, “taxpayers spent \$9 billion on pre-trial detainees.”²⁵ The increased practice of requiring financial bonds has contributed to increased jail populations, which has produced an extraordinary increase in costs to counties and municipalities from housing pretrial detainees. The most recent national data indicates that 61% of jail inmates are in an un-convicted status, up from just over half in 1996.²⁶

In addition to the financial costs from increased pretrial detention, the cost in unequal access to justice also appears to be high. The movement to financial bonds as a requirement for pretrial release, often requiring a surety bond from a commercial bond seller, makes economic status a significant factor in determining whether a defendant is released pending trial, instead of such factors as risk of flight and threat to public safety. A study of all nonfelony cases in New York City in 2008 found that for cases in which bail was set at less than \$1,000 (19,617 cases), in 87% of those cases defendants were unable to post bail at arraignment and spent an average of 15.7 days in pretrial detention, even though 71.1% of these defendants were charged with nonviolent, non-weapons-related crimes.²⁷ In short, “for the poor, bail means jail.”²⁸ The impact of financial release conditions on minority defendants reflects disparate rates of poverty among different ethnic groups. A study that sampled felony cases in 40 of the 75 largest counties nationwide found that, between 1990 and

1996, 27% of white defendants were held in jail throughout the pretrial period because they could not post bond, compared to 36% of African-American defendants and 44% of Hispanic defendants.²⁹

The practice of conditioning release on the ability to obtain a surety bond has so troubled the National Association of Pretrial Services Agencies (NAPSA) that, in its Third Edition of Standards on Pretrial Release (and in previous editions beginning in 1968), Standard 1.4(f) provides that “[c]onsistent with the processes provided in these Standards, compensated sureties should be abolished.” According to NAPSA, compensated sureties should be abolished because the ability to pay a bondsman is unrelated to the risk of flight or danger to the community; a surety bond system transfers the release decision from a judge to private party making unreviewable decisions on unknown factors; and the surety system unfairly discriminates against defendants who are unable to afford non-refundable fees required by the bondsman as a condition of posting the bond.³⁰ The American Bar Association also recommends that “compensated sureties should be abolished.”³¹ The Commonwealth of Kentucky and the State of Wisconsin have prohibited the use of compensated sureties.³² In addition, Illinois and Oregon do not allow release on surety bonds (but do permit deposit bail).³³

The ability of a defendant to obtain pretrial release has a significant correlation to criminal justice outcomes. Numerous research projects conducted over the past

half century have shown that defendants who are held in pretrial detention have less favorable outcomes than those who are not detained —regardless of charge or criminal history. In these studies, the less favorable outcomes include a greater tendency to plead guilty to secure release (a significant issue in misdemeanor cases), a greater likelihood of conviction, a greater likelihood of being sentenced to terms of incarceration, and a greater likelihood of receiving longer prison terms.³⁴ Data support the common sense proposition that pretrial detention has a coercive impact on a defendant’s amenability to a plea bargain offer and inhibits a defendant’s ability to participate in preparation for a defense. In summarizing decades of research, the federal Bureau of Justice Assistance noted that “research has demonstrated that detained defendants receive more severe sentences, are offered less attractive plea bargains and are more likely to become ‘reentry’ clients because of their pretrial detention – regardless of charge or criminal history.”³⁵

IV. Evidence-Based Risk Assessment: The Lesson of *Moneyball* and the Challenge of Adopting New Practices

Michael Lewis’s book *Moneyball* documents how Oakland A’s general manager Billy Beane used statistics and an evidence-based approach to baseball that yielded winning seasons despite severe budgetary constraints.³⁶ His approach attracted considerable antagonism in the baseball community because it deviated from long-held practices based on intuition and gut feelings, tradition, and ideology. As

persuasively set forth more recently in *Supercrunchers*, the cost of ignoring data and evidence in a broad variety of human endeavors is suboptimal decision-making.³⁷ This realization and the commensurate movement toward evidence-based practice, by now firmly ensconced in medicine and other disciplines, have finally emerged in the fields of sentencing, corrections, and pretrial release (but not without resistance, as in baseball).

In 1961, the New York City Court and the Vera Institute of Justice organized the Manhattan Bail Project, an effort to demonstrate that non-financial factors could be used to make cost-effective release decisions.³⁸ Decades later, the movement away from financial conditions and toward use of an evidence-based risk assessment in setting pretrial release conditions appears to be gathering momentum. The 2009 Survey of Pretrial Services Programs found that the majority of 112 counties responding to a survey of the 150 largest counties use a combination of objective and subjective criteria in risk assessment. Eighty-five percent of those responding counties reported having a pretrial services program to assess and screen defendants and present that information at the first court appearance.³⁹ The ongoing development of evidence-based decision-making in pretrial release decisions is demonstrated by the release in August 2011 of a monograph by the National Institute of Corrections recommending outcome and performance measures for evaluating pretrial release programs.⁴⁰ Looking forward to the type of assessments that would support evidence-

based pretrial decisions, an accumulation of empirical research strongly suggests the following points:

- Actuarial risk assessments have higher predictive validity than clinical or professional judgment alone.⁴¹
- Post-conviction risk factors (relating to recidivism) should not be applied in a pretrial setting.⁴²
- Several measures commonly gathered for pretrial were not significantly associated with pretrial failure: residency, injury to victim, weapon, and alcohol.⁴³
- The six most common validated pretrial risk factors are prior failure to appear; prior convictions; current charge a felony; being unemployed; history of drug abuse; and having a pending case.⁴⁴
- Defendants in counties that use quantitative and mixed risk assessments are less likely to fail to appear than defendants in counties that use qualitative risk assessments.⁴⁵
- Not only are subjective screening devices prone to demographic disparities, but these devices produce poor results from a public safety perspective.⁴⁶
- The statewide pretrial services program in Kentucky, begun in 1968, now uses a uniform assessment protocol that results in a failure to appear rate of only 10 percent and a re-arrest rate of only 8 percent.⁴⁷

- Pretrial programs that use quantitative and mixed quantitative-qualitative risk assessments experience lower re-arrest rates than programs that only use qualitative risk assessments.
- The number of sanctions a pretrial program can impose in response to non-compliance with supervision conditions further lowers the likelihood of a defendant's pretrial re-arrest.⁴⁸

The use of a validated pretrial risk assessment tool when making a judicial decision to release or not, and the attendant conditions on release based on that assessment, fits within a well-functioning case management regimen. While different instruments have been used with success in different jurisdictions, in general, research on pretrial assessment conducted over decades has identified these common factors as good predictors of court appearance and/or danger to the community:

- Current charges;
- Outstanding warrants at the time of arrest;
- Pending charges at the time of arrest;
- Active community supervision at the time of arrest;
- History of criminal convictions;
- History of failure to appear;
- History of violence;
- Residence stability over time;
- Employment stability;
- Community ties; and
- History of substance abuse.⁴⁹

A comprehensive guide to implementing successful evidence-based pretrial services into the pretrial release determination, with step-by-step instructions on the process from formation of a Pretrial Services Committee through program implementation, is available from the Pretrial Justice Institute.⁵⁰

Perhaps the best-known use of evidence-based risk assessment to reduce reliance on financial release conditions exists in the District of Columbia's Pretrial Services Agency (PSA).⁵¹ Paradoxically, the DC pretrial Code requires detention if no combination of conditions will reasonably assure that a defendant does not flee or pose a risk to public safety.⁵² If the prosecutor demonstrates by clear and convincing evidence that a defendant presents a serious flight risk or threat to the victim or to public safety, the defendant is detained without the option for pretrial release. However, the DC Code also provides that a judge may not impose a financial condition as a means of preventative detention.⁵³ PSA conducts a risk assessment (flight and danger) through an interview with the defendant within 24 hours of arrest that assesses points on a 38-factor instrument, assigning a defendant into a category as high risk, medium risk, and low risk.⁵⁴ In 1965, only 11% of defendants were released without a money bond, but by 2008, 80% of all defendants were released without a money bond, 15% were held without bail, and 5% were held with financial bail (none on surety bond), while at the same time 88% of released defendants made all court appearances and 88% completed pretrial release without any new arrests.⁵⁵

Another example of the impact of evidence-based pretrial risk assessment is found in the Harris County (Houston), Texas, “direct filing” system.⁵⁶ As charges are being accepted and filed, the defendant is transferred to the central jail for intake. At the jail, the pretrial screening department interviews the defendant and collects data such as family composition, employment status, housing, indigency status, education level, health problems and medications, and potential mental health issues. This process culminates in a risk classification, identifying defendants who are appropriate for release on personal recognizance bond. The process continues through appearance before a magistrate (typically within 12 hours of arrest), where defendants granted personal bond and those able to post cash or surety bonds are released from jail.⁵⁷ An estimate of net savings and revenue for Fiscal Year 2010 showed that Harris County gained \$4,420,976 in avoided detention costs and pretrial services fees collected after deducting for the costs of pretrial services.⁵⁸

Kentucky abolished commercial bail bondsmen in 1976 and implemented the statewide Pretrial Services Agency that today relies on interviews and investigations of all persons arrested on bailable offenses within 12 hours of his or her arrest. Pretrial Officers conduct a thorough criminal history check and utilize a validated risk assessment that measures flight risk and anticipated conduct to make appropriate recommendations to the court for pretrial release. Furthermore, Pretrial Services

provides supervision services for pretrial defendants, misdemeanor diversion participants and defendants in deferred prosecution programs.

In 2011 Pretrial Services processed 249,545 cases in which a full investigation was conducted on 88% of all incarcerated defendants.⁵⁹ Using a validated risk assessment tool, Pretrial Services identifies defendants as being either low, moderate, or high risk for pretrial misconduct, (i.e. failing to appear for court hearings or committing a new criminal offense while on pretrial release). Ideally, low risk defendants (those most likely to return to court and not commit a new offense) are recommended for release either on their recognizance or a non-financial bond. Statistically, about 70% of pretrial defendants are released in Kentucky; 90% of those make all future court appearances and 92% do not get re-arrested while on pretrial release.⁶⁰ When looking at release rates by risk level, the data shows that judges follow the recommendations of Pretrial Services. In 2011, judges ordered pretrial release of 81% of low risk defendants, 65% of moderate risk defendants, and 52% of high risk defendants.⁶¹

In 2011, Kentucky adopted House Bill 463, a major overhaul of the Commonwealth’s criminal laws that intended to reduce the cost of housing inmates while maintaining public safety.⁶² Since adoption of HB 463, Pretrial Services data shows a 10% decrease in the number of defendants arrested and a 5% increase in the overall release rate, with a substantial increase in non-financial

releases and in releases for low and moderate risk defendants. The non-financial release rate increased from 50% to 66%, the low risk release rate increased from 76% to 85%, and the moderate risk release rate increased from 59% to 67%. In addition, pretrial jail populations have decreased by 279 defendants, while appearance and public safety rates have remained consistent.⁶³

There are other, similar examples of successful implementation of evidence-based pretrial assessments that deliver on the promise of pretrial release without financial conditions.⁶⁴

Evidence-based pretrial risk assessment in the context of skillful and collaborative case management and data sharing should be embraced as the best practice by judges, court administrators, and court leaders. Reliance on a validated, evidence-based pretrial risk assessment in setting non-financial release conditions balances the interests of courts in both protecting public safety and safeguarding individual liberty.

V. The Way Forward

“The purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference. . . .The law favors release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support.”

ABA Criminal Justice Standards on Pretrial Release, Third Edition
Standard 10-1.1.

By adopting this paper, COSCA is not leading a parade, but joining in some very good and credible company. As noted in 2011 by a leading official of the United States Department of Justice, “Within the last year, a number of organizations have publicly highlighted the need to reform our often antiquated and sometimes dangerous pretrial practices and replace them with empirically supported, risk-based decision-making.”⁶⁵ Not surprisingly pretrial services agencies themselves support this effort,⁶⁶ but so do a wide variety of other justice-oriented interest groups: the National Association of Counties,⁶⁷ the American Jail Association,⁶⁸ the International Association of Chiefs of Police,⁶⁹ the American Council of Chief Defenders,⁷⁰ the American Bar Association,⁷¹ the Association of Prosecuting Attorneys,⁷² and the American Association of Probation and Parole.⁷³

Following the 2011 National Symposium on Pretrial Justice hosted by the U.S. Department of Justice (DOJ), the DOJ’s Office of Justice Programs collaborated with the Pretrial Justice Institute to convene in October 2011 the first meeting of the Pretrial Working Group. Information about the continuing work of the Pretrial Working Group subcommittees can be found at the Web site published by the Office of Justice Programs in association with the Pretrial Justice Institute. The stated goals of this effort are to exchange information on pretrial justice issues, develop a website to disseminate information on the work of the subcommittees, and inform evidence-based pretrial justice policy making.⁷⁴

There are two major obstacles to reform. First, there is resistance to changing the status quo from those who are comfortable with or profit from the existing system. This resistance can be overcome by a well-

executed, evidence-based protocol, as has been demonstrated in the District of Columbia and in Kentucky. Second, courts tend to be deliberate in adopting change and to require persistent presentation of well-documented advantages to new approaches, such as evidence-based practices in the pretrial release setting. In this regard, familiarity with evidence-based decision making in drug courts, at sentencing, and in evaluating court programs should help gain acceptance for evidence-based practices in the pretrial setting. Part of this shift in practice might include elimination of or decreased reliance on bail schedules, which are in use in at least two-thirds of counties across the country.⁷⁵ State court leaders should closely follow and make a topic of discussion the efforts of the Department of Justice and its Pretrial Justice Working Group discussed above, as well as continuing efforts by the American Bar Association which is supporting transition toward evidence-based pretrial practices through its Pretrial Justice Task Force.⁷⁶

State court leaders must take several steps to leverage the emerging national consensus on this issue:

- Analyze state law and work with law enforcement agencies and criminal justice partners to propose revisions that are necessary to
 - support risk-based release decisions of those arrested;
 - ensure that non-financial release alternatives are available and that financial release options are available without the requirement for a surety.
- Collaborate with experts and professionals in pretrial justice at the national and state levels.
- Take the message to additional groups and support dialogue on the issue.
- Use data to promote the use of data; determine what state and local data exist that would demonstrate the growing problem of jail expense represented by the pretrial population, and that show the risk factors presented by that population may justify broader pretrial release.
- Reduce reliance on bail schedules in favor of evidence-based assessment of pretrial risk of flight and threat to public safety.

References

¹VanNostrand, M. and Crime and Justice Institute (2007). *Legal and Evidence-Based Practices: Applications of Legal Principles, Laws, and Research to the Field of Pretrial Services*. Washington, DC: U.S. Department of Justice, National Institute of Corrections.

² Coffin v. United States, 156 U.S. 432, 453 (U.S. 1895).

³ Schnacke, T.R., and M. R.Jones, and C. M. Brooker (2010). *The History of Bail and Pretrial Release*. Washington, D.C.: Pretrial Justice Institute.

⁴ U.S. Const. amend VIII (1791); Ga. Const., art. 1, sec. 9, para. XVII; Haw.Const. art. I, sec. 12; Md. Const. Declaration of Rights, art. 25; Mass. Const. Part I, art. XXVI; N.H. Const. Part I, art. 33; N.Y. Const. art. I, sec. 5; N.C. Const. art. 1, sec. 27; Va. Const. art. 1, sec. 9; W.Va. Const. art. III, sec. 5; Guam Organic Act, 48 U.S.C. sec. 1421b (2006).

⁵ ALA. CONST. art. I, §16; ALASKA CONST. art. I, § 11; ARIZ. CONST. art. II, § 22; ARK. CONST. art. II, § 8; CAL. CONST. art. I, § 12; COLO. CONST. art. I, § 19; CONN. CONST. art. I, § 8; DEL. CONST. art. I, § 12; FLA. CONST. art. I, § 14; IDAHO CONST. art. I, § 6; ILL. CONST. art. I, § 9; IND. CONST. art. I, § 7; IOWA CONST. art. I, § 12; KAN. CONST. Bill of Rights, § 9; KY. CONST. § 16; LA. CONST. art. I, § 8; ME. CONST. art. I, § 10; MICH. CONST. art. I, § 15; MINN. CONST. art. I, § 7; MISS. CONST. art. III, § 29; MO. CONST. art. I, § 20; MONT. CONST. art. II, § 21; NEB. CONST. Art. I, § 9; NEV. CONST. art. I, § 7; N.J. CONST. art. I, § 11; N.M. CONST. art. II, § 13; N.D. CONST. art. I, § 11; OHIO CONST. art. I, § 9; OKLA. CONST. art. II, § 8; OR. CONST. art. I, § 14; PA. CONST. art. I, § 14; R.I. CONST. art. I, § 9; S.C. CONST. art. I, § 15; S.D. CONST. art. VI; Tenn. CONST. ART. I, §15; TEX. CONST. art. I, § 11; UTAH CONST. art. I, § 8; VT. CONST. ch. 2, § 40; WASH. CONST. art. I, § 20; WIS. CONST. art. I, § 8; WYO. CONST. art. I, § 14; P.R. CONST. art. II, § 11; D.C. Code, Bill of Rights, art. I, § 108.

⁶ ME. CONST. art. I, § 10.

⁷ Fredette v. State, 428 A.2d 395, 404-05 (Me. 1981).

⁸ U.S. CONST. amend. VIII (1791).

⁹ “Federal law has unequivocally provided that person arrested for noncapital offense shall be admitted to bail, since the traditional right of accused to freedom before conviction permits unhampered preparation of defense and serves to prevent infliction of punishment prior to conviction, and presumption of innocence, secured only after centuries of struggle, would lose its meaning unless such right to bail before trial were preserved.” Stack v. Boyle, 342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3 (1951).

¹⁰ *Id.*

¹¹ United States v. Salerno, 481 U.S. 739 (1987); Bail Reform Act of 1984, 18 U.S.C. §§ 3141-3150 (1984).

¹² 18 U.S.C. § 3142(c)(1)(B) (2008); D.C. Code § 23-1321(c)(B) (2003); 11 Del. Code § 2105 (2006); Iowa Code Ann. §811.2 (2012); Ky. Rev. Stat. Ann. § 431.520 (2012); Mass. Gen. Laws Ann. ch. 276 § 58A (2010); Me. Rev. Stat. Ann. tit. 15 § 1026 (2012); Neb. Rev. Stat. § 29-901 (2010); N.C. Gen. Stat. § 15A-534 (2012); Or. Rev. Stat. Ann. § 135.245(3) (2009); S.C. Code Ann. § 17-15-10 (2011) (amended by 2012 South Carolina Laws Act 286 (S.B. 45)); SDCL § 23A-43-2 (1982); Tenn. Code Ann. § 40-11-104 (2012); Wis. Stat. § 969.01 (1977).

¹³ Ariz. R. Crim. P. 7.2(a) (2008); Minn. R. Crim. P. 6.02 (2010); N.M. R. Dist. Ct. RCRP Rule 5-401(a) (2010); N. D. R. Crim. P. 46(a) (2006); D.C. Code §23-1321 (2003) ; Wyo. R. Crim. P. 46.1(a)(2) (2001).

¹⁴ Pretrial Justice Institute (2009). *Pretrial Justice in America: A Survey of County Pretrial Release Policies*, pp. 2,7. Washington, D.C.: Pretrial Justice Institute.

¹⁵ Pelekai v. White, 861 P.2d 1205 (1993).

¹⁶ Clark v. Hall, 53 P.3d 416 (2002).

¹⁷ Pretrial Justice Institute (2009), *op. cit.*, p.9.

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- ¹⁸ Cohen, T. and B. Reaves (2007) *Pretrial Release of Felony Defendants in State Courts*, p.4. Washington, D.C.: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- ¹⁹ Liptak, A. (2008). "Illegal Globally, Bail for Profit Remains in the U.S.," *New York Times* (January 29, 2008), accessed at <http://www.nytimes.com/2008/01/29/us/29bail.html?pagewanted=all>
- ²⁰ Devine, F.E. (1991). *Commercial Bail Bonding: A Comparison of Common Law Alternatives*, p 201. New York: Praeger.
- ²¹ Freiburger, T., C. Marcum, and M. Pierce (2010). "The Impact of Race on the Pretrial Decision," *American Journal of Criminal Justice*, Vol. 35 No. 1, pp76-86; Texas Criminal Justice Coalition (2010). *Costly Confinement & Sensible Solutions: Jail Overcrowding in Texas*. Austin: Texas Criminal Justice Coalition.
- ²² Open Society Justice Foundation (2010). *The Socioeconomic Impact of Pretrial Detention*, p. 11. New York: Open Society Foundation.
- ²³ Thomas H. Cohen and Kyckelhahn, T. *Felony Defendants in Large Urban Counties, 2006*, p.2. Washington D.C.: US Department of Justice, Office of Justice Planning, Bureau of Justice Statistics.
- ²⁴ Cohen and Kyckelhahn (2010), op. cit. p1.
- ²⁵ American Bar Association Criminal Justice Section (2011). *Dialogue On Strategies to Save States Money, Reform Criminal Justice & Keep the Public Safe*, p.9. Washington, D.C.: American Bar Association.
- ²⁶ Burdeen, C.F. (2009). *Jail Population Management: Elected County Officials' Guide to Pretrial Services*, p.4. Washington, D.C.: National Association of Counties.
- ²⁷ Human Rights Watch (2010). *The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City*, p.2. New York: Human Rights Watch.
- ²⁸ *Id.*, p.20.
- ²⁹ Demuth, S. (2003). "Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees," p. 41. *Criminology* Vol. 41 No. 3, pp 873-907.
- ³⁰ National Association of Pretrial Services Agencies (2002). *NAPSA Standards on Pretrial Release, Third Edition*, p.9. Rochester, NY: National Association of Pretrial Services Agencies.
- ³¹ American Bar Association (2007). *ABA Standards for Criminal Justice: Pretrial Release*, 3d ed., Standard 10-1.4f. Washington, D.C.: American Bar Association.
- ³² Ky. Rev. Stat. §431.510 (2004); Wis. Stat. §969.12 (1994).
- ³³ IL ST CH 725 §5/110-7 (2012); Or. Rev. Stat. §135.265 (2011).
- ³⁴ National Association of Pretrial Services Agencies, *NAPSA Standards on Pretrial Release*, *supra* note 30, p.9. See also Phillips, M. T. (2007). *Bail, Detention, and Nonfelony Case Outcomes, Research Brief No. 14*. New York: New York City Criminal Justice Agency, Inc. and Phillips, M. T. (2008). *Bail, Detention, and Felony Case Outcomes, Research Brief No. 18*. New York: New York City Criminal Justice Agency, Inc.
- ³⁵ Bureau of Justice Assistance (2012). "Ensuring Procedural Justice Throughout the Adjudication Process: Pretrial Reform, High Performance Prosecution, and Smarter Sentencing Practices," FY12 Competitive Grant Announcement. Washington, D.C.: US Department of Justice, Office of Justice Programs, Bureau of Justice Assistance Grant Announcement 2-12-3287, citing multiple sources, p.4. Accessed at <http://www07.grants.gov/search/search.do?oppId=162693&mode=VIEW>. Studies cited include: Anne Rankin, "The Effects of Pretrial Detention," *New York University Law Review* Vol. 39, pp 641-655 (1964); Patricia Wald, "The Right to Bail Revisited: A Decade of Promise without Fulfillment," in S. Nagel, ed. *The Rights of the Accused* (Beverly Hills, CA: Sage Publications, 1972); William M. Landes, "Legality and Reality: Some Evidence on Criminal Procedure," *Journal of Legal Studies*, Vol. 3 pp.287-337 (1974); Hans Zeisel, "Bail Revisited," *Law and Social Inquiry*, Vol. 4 No. 4, pp 769-789 (1979); John S. Goldcamp, *Two Classes of Accused: A Study of Bail and Detention in American Justice*. (Cambridge, MA:

Ballinger Pub. Co., 1979); Stevens H. Clarke and Susan T. Kurtz, "The Importance of Interim Decisions to Felony Trial Court Dispositions," *Journal of Criminal Law and Criminology*, Vol. 74, pp. 476-518; Michael R. Gottfredson and Don M. Gottfredson, *Decision Making in Criminal Justice: Toward a Rational Exercise of Discretion* (New York: Plenum Press, 1988). See also Mary T. Phillips, Bail Detention and Nonfelony Case Outcomes, CJA Research Brief No. 14 (New York City Criminal Justice Agency, 2007) and Mary T. Phillips, Bail, Detention, and Felony Case Outcomes, CJS Research Brief No. 18, (New York City Criminal Justice Agency, 2008) .

³⁶ Lewis, M. (2003). *Moneyball: The Art of Winning an Unfair Game*. New York: W.W. Norton. See generally, Cullen, F.T., Myer, A.J., and Latessa, E.J. (2009). "Eight Lessons from Moneyball: The High Cost of Ignoring Evidence-Based Corrections," *Victims and Offenders* Vol. 4 No. 2, pp. 97-213.

³⁷ Ayers, I (2007). *Supercrunchers: Why Thinking-By-Numbers is the New Way to Be Smart*. New York: Bantam Books.

³⁸ Katsive, M. C. (1968). *New Areas for Bail Reform: A Report on the Reevaluation of the Manhattan Bail Project, June 1966-August 1967*. New York: Vera Institute of Justice.

³⁹ Pretrial Justice Institute (2009) *op. cit.*

⁴⁰ National Institute of Corrections (2011). *Measuring What Matters – Outcome and Performance Measures for the Pretrial Services Field*. Washington, D.C.: U.S. Department of Justice, National Institute of Corrections.

⁴¹ Bechtel, K., Lowenkamp, C. T., and Holsinger, A. (2011). "Identifying the Predictors of Pretrial Failure: A Meta-Analysis," *Federal Probation*, Vol. 75 No. 2, accessed at <http://www.uscourts.gov/uscourts/FederalCourts/PPS/Fedprob/2011-09/identifying.html>. Authors cite the following studies in support of this statement: Latessa, E.J. & Lovins, B. (2010). The role of offender risk assessment: A policy maker guide. *Victims and Offenders*, 5 (3), 203–219; Ægisdóttir, S., White, M. J., Spengler, P. M. et al. (2006). The meta-analysis of clinical judgment project: Fifty-six years of accumulated research on clinical versus statistical prediction. *Counseling Psychologist*, 34, 341–382; Andrews, D. A., Bonta, J., & Wormith, S. J. (2006). The recent past and near future of risk and/or need assessment. *Crime and Delinquency*, 52, 7–27; Grove, W. M., Zald, D. H., Lebow, B. S., Snitz, B. E., & Nelson, C. (2000). Clinical versus mechanical prediction: A meta-analysis. *Psychological Assessment*, 12, 19–30.

⁴² Mamalian C. A. (2011). *State of the Science of Pretrial Risk Assessment*, p.19. Washington, D.C.: Pretrial Justice Institute, citing VanNostrand, M. (2007) *Legal and Evidence-based Practices: Application of Legal Principles, Laws and Research to the Field of Pretrial Services*. Washington, D.C.: National Institute of Corrections and Crime and Justice Institute.

⁴³ *Identifying the Predictors of Pretrial Failure*, *supra* note 38.

⁴⁴ Mamalian, *op. cit.* p.9.

⁴⁵ Levin, D (2007) *Examining the Efficacy of Pretrial Release Conditions, Sanctions and Screening with the State Court Processing Statistics Dataseries*. pp 9-10. Washington, D.C.: Pretrial Justice Institute.

⁴⁶ *Id.*

⁴⁷ Mahoney, B., et al. (2001). *Pretrial Services Programs: Responsibilities and Potential*. P. 13. Washington, D.C.: National Institute of Justice. Data provided August 2012 by Laurie Dudgeon, Director, Administrative Office of the Courts of Kentucky, directly from the Pretrial Services case management system, known as the Pretrial Release Information Management (PRIM). The Kentucky pretrial release statutory scheme is at K.R.S. sec. 431.066, *et. al.*

⁴⁸ Levin (2007). *supra* note 42.

⁴⁹ VanNostrand, M. (2007) *Legal and Evidence Based Practices: Application of Legal Principles, Laws, and Research to the Field of Pretrial Services*. p. 11. Washington, D.C.: Crime and Justice Institute and the National Institute of Corrections, Community Corrections Division.

⁵⁰ Muller, J. (2010). *Pretrial Services Program Implementation: A Starter Kit*. Washington, D.C.: Pretrial Justice Institute.

⁵¹ Pretrial Justice Institute (2012). *Rational and Transparent Bail Decision Making: Moving from a Cash-Based to a Risk-Based Process*, p. 33. Washington, D.C.: Pretrial Justice Institute.

⁵² D.C. Code § 23-1322 (2009).

⁵³ D.C. Code § 23-1321(c)(3) (2003).

⁵⁴ KiDeuk, K and Denver, M. (2011) *A Case Study on the Practice of Pretrial Services and Risk Assessment in Three Cities*, p.8. Washington, D.C.: The Urban Institute.

⁵⁵ Pretrial Justice Institute (n.d.). “The D.C. Pretrial Services Agency: Lessons from Five Decades of Innovation and Growth,” *Case Studies*, Vol. 2, No. 1, accessed at <http://pretrial.org/Success/Case%20Study%202%20-%20DC%20Pretrial%20Services.pdf>. Sources cited include Thomas, Jr., W.H. (1976). *Bail Reform in America*. Berkeley, CA: University of California, Berkeley, for data from 1962 through 1975; District of Columbia Pretrial Services Agency (2009). *Leading the Field: District of Columbia Pretrial Services Agency FY 2008 Annual Report*. Washington, D.C.: D.C. Pretrial Services Agency. for 2008 data.

⁵⁶ Mahoney, B. and Smith, W. (2005). *Pretrial Release and Detention in Harris County: Assessment and Recommendations*. Denver, CO: Justice Management Institute.

⁵⁷ *Id.*

⁵⁸ Nagy, G. (2012). “*Pretrial Services, Evidence Based Policy and Practices*” presentation to the Pretrial Detention in Texas: Strategies for Saving Taxpayer Money While Maintaining Public Safety meeting, Austin, Texas, March 30, 2012.

⁵⁹ Data provided August 2012 by Laurie Dudgeon, Director, Administrative Office of the Courts of Kentucky, directly from the Pretrial Services case management system, known as the Pretrial Release Information Management (PRIM).

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Kentucky legislation 11 RS HB 463/EN accessed at <http://www.lrc.ky.gov/record/11rs/hb463.htm>

⁶³ *Ibid.*

⁶⁴ *State of the Science of Pretrial Risk Assessment*, *supra*, note 42, at 30-38. See also *Rational and Transparent Bail Decision Making*, *supra* note 48 at 22-33.

⁶⁵ Laurie Robinson, Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice, remarks at the National Symposium on Pretrial Justice, Washington, D.C., May 31, 2011.

⁶⁶ National Association of Pretrial Services Agencies, *NAPSA Standards on Pretrial Release*, *supra* note 27 at p 53, Standard 3.1.

⁶⁷ National Association of Counties (2012), *The American County Platform and Resolutions*, Section on Justice and Public Safety, subsection on Courts, Resolution F, Pretrial Release.

Accessed at

<http://www.naco.org/legislation/policies/documents/american%20county%20platform%20and%20resolutions%20cover%20page%2011-12.pdf>

⁶⁸ American Jail Association (2010). “Resolution on Pretrial Justice,” adopted October 24, 2010. Accessed at <http://www.pretrial.org/OurServices/Advocacy/AdvocacyDocuments/AJA%20Resolution%20on%20Pretrial%20Justice%202011.pdf>

⁶⁹ International Association of Chiefs of Police (2011). *Law Enforcement’s Leadership Role in the Pretrial Release and Detention Process*. Washington, D.C.: International Association of Chiefs of Police.

⁷⁰ American Council of Chief Defenders (2011). *Policy Statement on Fair and Effective Pretrial Justice Practices*, Washington, D.C.: American Council of Chief Defenders. Accessed at http://nlada.net/library/document/na_accdpretrialstmt_06042011

⁷¹ American Bar Association (2002). *ABA Standards for Criminal Justice: Pretrial Release*, 3d ed. Standard 10-1.10. Accessed at http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk.html#10-1.10.

⁷² Association of Prosecuting Attorneys (2011). *Policy Statement on Pretrial Justice*. Washington, D.C.: Association of Prosecuting Attorneys. Accessed at <http://www.apainc.org/html/APA+Pretrial+Policy+Statement.pdf>

⁷³ American Probation and Parole Association (2010). *Pretrial Supervision Resolution*. Lexington, KY.: American Probation and Parole Association. Accessed at http://www.appa-net.org/eweb/Dynamicpage.aspx?site=APPA_2&webcode=IB_Resolution&wps_key=3fa8c704-5ebc-4163-9be8-ca48a106a259

⁷⁴ Pretrial Justice Working Group Web site at <http://www.pretrial.org/symposium.html>.

⁷⁵ Carlson, L. (2010). "Bail Schedules: A Violation of Judicial Discretion?," Washington, D.C.: Pretrial Justice Institute.

⁷⁶ See the American Bar Association's *ABA Criminal Justice Section Newsletter* (Winter 2012), p.3, which provides contact information about the Pretrial Justice Task Force, organized under the auspices of the ABA Crime Prevention, Pretrial and Police Practices Committee.

EXECUTIVE SUMMARY

Background

Judicial officers across the country make release-and-detention decisions for defendants on a daily basis. These decisions carry enormous consequences for both the community and those accused of committing crimes. In some jurisdictions, judicial officers are guided in these decisions by pretrial risk assessments – tools that measure the risk that a defendant, if released pending trial, will fail to appear (FTA) for a court date or will commit new criminal activity (NCA). These assessments have shown promise in identifying those defendants who need to be incarcerated because of the risks they pose, and those who can safely be released, sometimes with conditions or supervision.

Although the use of pretrial risk assessments has increased in recent years, the proportion of jurisdictions employing these instruments remains low, and is estimated to be no more than 10%. This low adoption rate is due in large part to the fact that existing risk assessments require that information be collected through interviews with defendants. Conducting these interviews and verifying the information is a time-consuming and resource-intensive process that many jurisdictions cannot afford.

As of 2012, there were eight multi-jurisdictional pretrial risk-assessment instruments being used in the United States, all of which rely on information from defendant interviews. A meta-analysis of pretrial risk assessments revealed that the strongest predictors of FTA and NCA were static factors such as prior convictions, prior misdemeanors, prior felonies, and prior failures to appear. It also revealed that the more dynamic factors, such as residence and employment, were less predictive or not predictive at all. This fact, combined with the burden imposed by conducting defendant interviews, led to the current research, which explores whether an effective pretrial risk assessment can be developed based only on data that can be gathered without an interview.

Data for this research was drawn from Kentucky, which, at the time, was using the Kentucky Pretrial Risk Assessment (KPRA), an objective

REPORT HIGHLIGHTS:

- Release-and-detention decisions made by judges carry enormous consequences for both the community and those accused of committing crimes.
- Less than 10% of judicial officers across the country use pretrial risk assessment tools to make these decisions, in part because they require costly and time-consuming defendant interviews.
- A new pretrial risk assessment tool (the KPRA-S) has been developed to accurately differentiate low-, moderate-, and high-risk defendants, *without the burden of the costly defendant interview.*

12-point risk assessment that contained interview and non-interview factors. Two samples of data were used to explore three research objectives: 1) Develop a pretrial risk assessment that can be completed without a defendant interview; 2) Determine if the non-interview-based pretrial risk assessment is predictive of FTA and NCA at the pretrial stage; and 3) Validate the non-interview-based pretrial risk assessment on a secondary dataset.

Seven of the 12 KPRA risk factors were used to create a non-interview-based risk assessment: the KPRA-S. Using bivariate and multivariate statistical techniques, the KPRA-S was shown to accurately differentiate low-, moderate-, and high-risk defendants. In addition, it was found to be able to predict both FTA and NCA as accurately as the full KPRA. These results were replicated on a secondary dataset.

Texas Select Statutes Regarding Bail

§ 11. Bail

Sec. 11. All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Tex. Const. art. I, § 11

Art. 1.07. Right to bail

All prisoners shall be bailable unless for capital offenses when the proof is evident. This provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Tex. Crim. Proc. Code Ann. § art. 1.07

Art. 17.01. Definition of “bail”

“Bail” is the security given by the accused that he will appear and answer before the proper court the accusation brought against him, and includes a bail bond or a personal bond.

Tex. Crim. Proc. Code Ann. § art. 17.01

Art. 17.02. Definition of “bail bond”

A “bail bond” is a written undertaking entered into by the defendant and the defendant's sureties for the appearance of the principal therein before a court or magistrate to answer a criminal accusation; provided, however, that the defendant on execution of the bail bond may deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the bond in lieu of having sureties signing the same. Any cash funds deposited under this article shall be receipted for by the officer receiving the funds and, on order of the court, be refunded, after the defendant complies with the conditions of the defendant's bond, to:

(1) any person in the name of whom a receipt was issued, in the amount reflected on the face of the receipt, including the defendant if a receipt was issued to the defendant; or

(2) the defendant, if no other person is able to produce a receipt for the funds.

Tex. Crim. Proc. Code Ann. § art. 17.02

Art. 17.03. Personal bond

(a) Except as provided by Subsection (b) of this article, a magistrate may, in the magistrate's discretion, release the defendant on his personal bond without sureties or other security.

(b) Only the court before whom the case is pending may release on personal bond a defendant who:

(1) is charged with an offense under the following sections of the Penal Code:

(A) Section 19.03 (Capital Murder);

(B) Section 20.04 (Aggravated Kidnapping);

(C) Section 22.021 (Aggravated Sexual Assault);

(D) Section 22.03 (Deadly Assault on Law Enforcement or Corrections Officer, Member or Employee of Board of Pardons and Paroles,¹ or Court Participant);

(E) Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual);

(F) Section 29.03 (Aggravated Robbery);

(G) Section 30.02 (Burglary);

(H) Section 71.02 (Engaging in Organized Criminal Activity);

(I) Section 21.02 (Continuous Sexual Abuse of Young Child or Children); or

(J) Section 20A.03 (Continuous Trafficking of Persons);

(2) is charged with a felony under Chapter 481, Health and Safety Code, or Section 485.033, Health and Safety Code, punishable by imprisonment for a minimum term or by a maximum fine that is more than a minimum term or maximum fine for a first degree felony; or

(3) does not submit to testing for the presence of a controlled substance in the defendant's body as requested by the court or magistrate under Subsection (c) of this article or submits to testing and the test shows evidence of the presence of a controlled substance in the defendant's body.

(c) When setting a personal bond under this chapter, on reasonable belief by the investigating or arresting law enforcement agent or magistrate of the presence of a controlled substance in the defendant's body or on the finding of drug

or alcohol abuse related to the offense for which the defendant is charged, the court or a magistrate shall require as a condition of personal bond that the defendant submit to testing for alcohol or a controlled substance in the defendant's body and participate in an alcohol or drug abuse treatment or education program if such a condition will serve to reasonably assure the appearance of the defendant for trial.

(d) The state may not use the results of any test conducted under this chapter in any criminal proceeding arising out of the offense for which the defendant is charged.

(e) Costs of testing may be assessed as court costs or ordered paid directly by the defendant as a condition of bond.

(f) In this article, "controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(g) The court may order that a personal bond fee assessed under Section 17.42 be:

- (1) paid before the defendant is released;
- (2) paid as a condition of bond;
- (3) paid as court costs;
- (4) reduced as otherwise provided for by statute; or
- (5) waived.

Tex. Crim. Proc. Code Ann. § art. 17.03

Art. 17.032. Release on personal bond of certain mentally ill defendants

(a) In this article, "violent offense" means an offense under the following sections of the Penal Code:

- (1) Section 19.02 (murder);
- (2) Section 19.03 (capital murder);
- (3) Section 20.03 (kidnapping);
- (4) Section 20.04 (aggravated kidnapping);
- (5) Section 21.11 (indecent with a child);
- (6) Section 22.01(a)(1) (assault);
- (7) Section 22.011 (sexual assault);
- (8) Section 22.02 (aggravated assault);
- (9) Section 22.021 (aggravated sexual assault);
- (10) Section 22.04 (injury to a child, elderly individual, or disabled individual);
- (11) Section 29.03 (aggravated robbery);
- (12) Section 21.02 (continuous sexual abuse of young child or children); or
- (13) Section 20A.03 (continuous trafficking of persons).

(b) A magistrate shall release a defendant on personal bond unless good cause is shown otherwise if the:

- (1) defendant is not charged with and has not been previously convicted of a violent offense ;
- (2) defendant is examined by the local mental health or mental retardation authority or another mental health expert under Article 16.22 of this code;
- (3) applicable expert, in a written assessment submitted to the magistrate under Article 16.22:
 - (A) concludes that the defendant has a mental illness or is a person with mental retardation and is nonetheless competent to stand trial; and
 - (B) recommends mental health treatment for the defendant; and
- (4) magistrate determines, in consultation with the local mental health or mental retardation authority, that appropriate community-based mental health or mental retardation services for the defendant are available through the Texas Department of Mental Health and Mental Retardation under Section 534.053, Health and Safety Code, or through another mental health or mental retardation services provider.

(c) The magistrate, unless good cause is shown for not requiring treatment, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health or mental retardation treatment as recommended by the local mental health or mental retardation authority if the defendant's:

- (1) mental illness or mental retardation is chronic in nature; or
- (2) ability to function independently will continue to deteriorate if the defendant is not treated.

(d) In addition to a condition of release imposed under Subsection (c) of this article, the magistrate may require the defendant to comply with other conditions that are reasonably necessary to protect the community.

(e) In this article, a person is considered to have been convicted of an offense if:

- (1) a sentence is imposed;
- (2) the person is placed on community supervision or receives deferred adjudication; or
- (3) the court defers final disposition of the case.

Tex. Crim. Proc. Code Ann. § art. 17.032

Art. 17.04. Requisites of a personal bond

A personal bond is sufficient if it includes the requisites of a bail bond as set out in Article 17.08, except that no sureties are required. In addition, a personal bond shall contain:

- (1) the defendant's name, address, and place of employment;
- (2) identification information, including the defendant's:
 - (A) date and place of birth;
 - (B) height, weight, and color of hair and eyes;
 - (C) driver's license number and state of issuance, if any; and
 - (D) nearest relative's name and address, if any; and
- (3) the following oath sworn and signed by the defendant:

“I swear that I will appear before (the court or magistrate) at (address, city, county) Texas, on the (date), at the hour of (time, a.m. or p.m.) or upon notice by the court, or pay to the court the principal sum of (amount) plus all necessary and reasonable expenses incurred in any arrest for failure to appear.”

Tex. Crim. Proc. Code Ann. § art. 17.04

Art. 17.08. Requisites of a bail bond

A bail bond must contain the following requisites:

1. That it be made payable to “The State of Texas”;
2. That the defendant and his sureties, if any, bind themselves that the defendant will appear before the proper court or magistrate to answer the accusation against him;
3. If the defendant is charged with a felony, that it state that he is charged with a felony. If the defendant is charged with a misdemeanor, that it state that he is charged with a misdemeanor;
4. That the bond be signed by name or mark by the principal and sureties, if any, each of whom shall write thereon his mailing address;
5. That the bond state the time and place, when and where the accused binds himself to appear, and the court or magistrate before whom he is to appear. The bond shall also bind the defendant to appear before any court or magistrate before whom the cause may thereafter be pending at any time when, and place where, his presence may be required under this Code or by any court or magistrate, but in no event shall the sureties be bound after such time as the defendant receives an order of deferred adjudication or is acquitted, sentenced, placed on community supervision, or dismissed from the charge;
6. The bond shall also be conditioned that the principal and sureties, if any, will pay all necessary and reasonable expenses incurred by any and all sheriffs or other peace officers in rearresting the principal in the event he fails to appear before the court or magistrate named in the bond at the time stated therein. The amount of such expense shall be in addition to the principal amount specified in the bond. The failure of any bail bond to contain the conditions specified in this paragraph shall in no manner affect the legality of any such bond, but it is intended that the sheriff or other peace officer shall look to the defendant and his sureties, if any, for expenses incurred by him, and not to the State for any fees earned by him in connection with the rearresting of an accused who has violated the conditions of his bond.

Tex. Crim. Proc. Code Ann. § art. 17.08

Art. 17.15. Rules for fixing amount of bail

The amount of bail to be required in any case is to be regulated by the court, judge, magistrate or officer taking the bail; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
2. The power to require bail is not to be so used as to make it an instrument of oppression.
3. The nature of the offense and the circumstances under which it was committed are to be considered.
4. The ability to make bail is to be regarded, and proof may be taken upon this point.
5. The future safety of a victim of the alleged offense and the community shall be considered.

Tex. Crim. Proc. Code Ann. § art. 17.15

Art. 17.20. Bail in misdemeanor

In cases of misdemeanor, the sheriff or other peace officer, or a jailer licensed under Chapter 1701, Occupations Code, may, whether during the term of the court or in vacation, where the officer has a defendant in custody, take of the defendant a bail bond.

Tex. Crim. Proc. Code Ann. § art. 17.20

Art. 17.21. Bail in felony

In cases of felony, when the accused is in custody of the sheriff or other officer, and the court before which the prosecution is pending is in session in the county where the accused is in custody, the court shall fix the amount of bail, if it is a bailable case and determine if the accused is eligible for a personal bond; and the sheriff or other peace officer, unless it be the police of a city, or a jailer licensed under Chapter 1701, Occupations Code, is authorized to take a bail bond of the accused in the amount as fixed by the court, to be approved by such officer taking the same, and will thereupon discharge the accused from custody. The defendant and the defendant's sureties are not required to appear in court.

Tex. Crim. Proc. Code Ann. § art. 17.21

Art. 17.42. Personal bond office

Sec. 1. Any county, or any judicial district with jurisdiction in more than one county, with the approval of the commissioners court of each county in the district, may establish a personal bond office to gather and review information about an accused that may have a bearing on whether he will comply with the conditions of a personal bond and report its findings to the court before which the case is pending.

Sec. 2. (a) The commissioners court of a county that establishes the office or the district and county judges of a judicial district that establishes the office may employ a director of the office.

(b) The director may employ the staff authorized by the commissioners court of the county or the commissioners court of each county in the judicial district.

Sec. 3. If a judicial district establishes an office, each county in the district shall pay its pro rata share of the costs of administering the office according to its population.

Sec. 4. (a) If a court releases an accused on personal bond on the recommendation of a personal bond office, the court shall assess a personal bond fee of \$20 or three percent of the amount of the bail fixed for the accused, whichever is greater. The court may waive the fee or assess a lesser fee if good cause is shown.

(b) Fees collected under this article may be used solely to defray expenses of the personal bond office, including defraying the expenses of extradition.

(c) Fees collected under this article shall be deposited in the county treasury, or if the office serves more than one county, the fees shall be apportioned to each county in the district according to each county's pro rata share of the costs of the office.

Sec. 5. (a) A personal bond pretrial release office established under this article shall:

(1) prepare a record containing information about any accused person identified by case number only who, after review by the office, is released by a court on personal bond;

(2) update the record on a monthly basis; and

(3) file a copy of the record in the office of the clerk of the county court in any county served by the office.

(b) In preparing a record under Subsection (a), the office shall include in the record a statement of:

(1) the offense with which the person is charged;

(2) the dates of any court appearances scheduled in the matter that were previously unattended by the person;

(3) whether a warrant has been issued for the person's arrest for failure to appear in accordance with the terms of the person's release;

(4) whether the person has failed to comply with conditions of release on personal bond; and

(5) the presiding judge or magistrate who authorized the personal bond.

(c) This section does not apply to a personal bond pretrial release office that on January 1, 1995, was operated by a community corrections and supervision department.

Sec. 6. (a) Not later than April 1 of each year, a personal bond office established under this article shall submit to the commissioners court or district and county judges that established the office an annual report containing information about the operations of the office during the preceding year.

(b) In preparing an annual report under Subsection (a), the office shall include in the report a statement of:

(1) the office's operating budget;

(2) the number of positions maintained for office staff;

(3) the number of accused persons who, after review by the office, were released by a court on personal bond; and

(4) the number of persons described by Subdivision (3):

(A) who were convicted of the same offense or of any felony within the six years preceding the date on which charges were filed in the matter pending during the person's release;

(B) who failed to attend a scheduled court appearance;

(C) for whom a warrant was issued for the person's arrest for failure to appear in accordance with the terms of the person's release; or

(D) who were arrested for any other offense while on the personal bond.

(c) This section does not apply to a personal bond pretrial release office that on January 1, 1995, was operated by a community corrections and supervision department.

Tex. Crim. Proc. Code Ann. § art. 17.42

Art. 17.43. Home curfew and electronic monitoring as condition

(a) A magistrate may require as a condition of release on personal bond that the defendant submit to home curfew and electronic monitoring under the supervision of an agency designated by the magistrate.

(b) Cost of monitoring may be assessed as court costs or ordered paid directly by the defendant as a condition of bond.

Tex. Crim. Proc. Code Ann. § art. 17.43

Art. 17.44. Home confinement, electronic monitoring, and drug testing as condition

(a) A magistrate may require as a condition of release on bond that the defendant submit to:

(1) home confinement and electronic monitoring under the supervision of an agency designated by the magistrate;
or

(2) testing on a weekly basis for the presence of a controlled substance in the defendant's body.

(b) In this article, "controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(c) The magistrate may revoke the bond and order the defendant arrested if the defendant:

(1) violates a condition of home confinement and electronic monitoring;

(2) refuses to submit to a test for controlled substances or submits to a test for controlled substances and the test indicates the presence of a controlled substance in the defendant's body; or

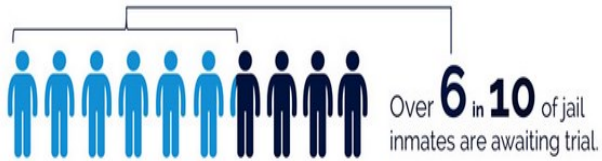
(3) fails to pay the costs of monitoring or testing for controlled substances, if payment is ordered under Subsection (e) as a condition of bond and the magistrate determines that the defendant is not indigent and is financially able to make the payments as ordered.

(d) The community justice assistance division of the Texas Department of Criminal Justice may provide grants to counties to implement electronic monitoring programs authorized by this article.

(e) The cost of electronic monitoring or testing for controlled substances under this article may be assessed as court costs or ordered paid directly by the defendant as a condition of bond.

Tex. Crim. Proc. Code Ann. § art. 17.44

Bail in America



At what cost?

One jail bed costs an average of \$60 per day - but can reach upwards of \$200 in some areas.



Pretrial incarceration is costing the country over **\$9 billion** yearly.

Why are they locked up?

53% of felony defendants can't pay their financial bond and stay in jail throughout the pretrial period.

Money is the primary factor that determines pretrial detention.

The majority of jurisdictions rely on **bond schedules** - preset money amount based on current charge.



Impact of pretrial incarceration

employment, education, family, & **crime**



- making it harder to succeed once released.

Even short stints of pretrial incarceration lead to an **increased** likelihood of **recidivism**.

Those held pretrial receive **harsher punishments** than those able to purchase pretrial freedom.



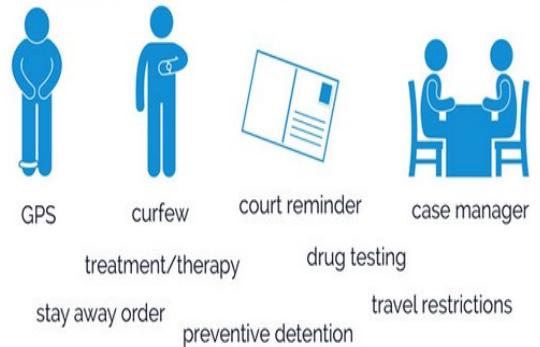
The Solution is simple:

Risk Assessment



Risk Assessments give judges the information they need to make **informed bail decisions.**

Alternatives to money bail:



Other ways of improving the pretrial system



Find out more and get involved at:

www.pretrial.org

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