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SPECIAL ISSUE ON:
PRETRIAL SERVICES: FRONT-END JUSTICE

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THIS ISSUE IN BRIEF

SPECIAL ISSUE ON Pretrial Services: Front-End Justice

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DEPARTMENTS

Examining Federal Pretrial Release Trends over the Last Decade

Thomas H. Cohen[1]
Amaryllis Austin
Probation and Pretrial Services Office
Administrative Office of the U.S. Courts

WHEN A PERSON (i.e., a defendant) is charged with committing a federal offense, judicial officials have the discretion to determine whether that defendant should be released pretrial, subject to the criteria required by the Eighth Amendment and under 18 U.S.C. §3142 of the federal statute. Under both guiding documents, the right to bail is clear and paramount, with detention reserved only for rare cases where "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community." (see 18 U.S.C. §3142). When ordering release, judicial officials are required to determine why a personal recognizance bond will not suffice and what conditions, if any, should be set to allow for federal pretrial release (18 U.S.C. §3142).

The decision to release a defendant into the community or detain the defendant until his or her case is disposed is of crucial importance. Not only can a defendant's liberty, and therefore, constitutional rights, be constrained by the detention decision, but research has shown that subsequent case outcomes

(including the likelihood of conviction, severity of sentence, and long-term recidivism) can be negatively affected when pretrial detention is mandated (Gupta, Hansman, & Frenchman, 2016; Heaton, Mayson, & Stevenson, 2017; Oleson, VanNostrand, Lowenkamp, Cadigan, & Wooldredge, 2014; Lowenkamp, VanNostrand, & Holsinger, 2013). Additionally, the pretrial release decision is often the defendant's first interaction with the federal criminal justice system and can set a positive or a negative tone that may affect his or her cooperation with the system and attitude going into post-conviction supervision, if ultimately convicted. Hence, the process by which federal defendants are released or detained pretrial represents an important component of the federal criminal justice system.

Since the early 1980s, the federal criminal justice system has undergone numerous changes that have influenced pretrial release decisions and patterns. Specifically, it has moved from a system that primarily focused on fraud, regulatory, or other offenses within the original jurisdiction of the federal government to one directed at prosecuting defendants for crimes involving drug distribution, firearms and weapon possession, and immigration violations (VanNostrand & Keebler, 2009). As the offenses charged within the federal system changed, so too did the legal structure that undergirded pretrial release and detention decisions. The advent of the Pretrial Services Act of 1982 and more

importantly the Bail Reform Act of 1984 constructed a legal framework where judges were instructed to weigh several elements when considering a defendant's flight risk; in addition, for the first time in federal law, judges were allowed to weigh potential danger to the community (AO, 2015). Moreover, the 1984 Act contained provisions involving the presumption of detention that shifted the burden of proof from the prosecution to the defendant in proving the appropriateness of pretrial release for certain offenses (Austin, 2017). How and to what extent these changes manifested themselves in federal pretrial release decisions and violation outcomes has been periodically examined, but there has been little recent research on this topic.

In this article we will update recent federal pretrial trends by examining key patterns within the federal pretrial system during a ten-year period spanning fiscal years 2008 through 2017. Initially, this paper will detail major legal/structural changes that occurred within the federal pretrial system since the 1980s that have influenced the pretrial release process. Next, a brief summary of prior studies examining federal pretrial trends will be provided for background purposes. Included in this overview will be a discussion of how rising pretrial detention rates led to the development of an actuarial tool—the federal Pretrial Risk Assessment (PTRA) instrument—meant to guide release recommendations and decisions. Afterwards, we will explicate research questions and the data used to examine federal

[1] Thomas H. Cohen, Social Science Analyst and Amaryllis Austin, Probation Administrator, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts, Washington, D.C. This publication benefited from the careful editing of Ellen W. Fielding. Direct correspondence to Administrative Office of the U.S. Courts, One Columbus Circle, NE, Washington, D.C. 20544. (email: thomas_cohen@ao.uscourts.gov or amaryllis_austin@ao.uscourts.gov).

pretrial trends. Major findings will then be presented and the report will conclude by discussing the study's implications for the federal pretrial system. It should be noted that, for the most part, illegal aliens will be omitted from the study, since most of these defendants are never released pretrial (see Table 1).

Overview of Federal Pretrial Legislation

In 1982, following the perceived success of the 10 pretrial demonstration districts, Ronald Reagan signed the Pretrial Services Act of 1982 (Byrne & Stowel, 2007). This legislation established pretrial services agencies within each federal judicial district (with the exception of the District of Columbia) and authorized federal pretrial and probation officers to collect and report on information pertaining to release decisions, make release recommendations, supervise released defendants, and report instances of noncompliance (see 18 U.S.C. §3152). The Act's primary purpose was to increase pretrial release rates by diverting defendants who would ordinarily have been detained into pretrial supervision programs (Byrne & Stowel, 2007).

Shortly after the passage of the Pretrial Services Act of 1982, Congress passed the Bail Reform Act of 1984 (see 18 U.S.C. §3141-3150). This Act marked a significant turning point in the federal pretrial system and laid the groundwork for current detention rates. The Bail Reform Act of 1984 included two major modifications: 1) the inclusion of the danger prong, in addition to flight risk, as a consideration in making the release decision, and 2) two presumptions for detention where, instead of assuming a defendant would be granted pretrial release, the assumption was that he or she would be detained (Austin, 2017). Moreover, the 1984 Act identified several factors federal judges should consider when making pretrial release/detention decisions; many of these factors became integrated into the federal bail report.[2]

[2] The factors are: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence; (3) the financial resources of the defendant; (4) the character and physical and mental condition of the defendant; (5) family ties; (6) employment status; (7) community ties and length of residency in the community; (8) record of appearances at court proceedings; (9) prior convictions; (10) whether, at the time of the current offense, the defendant was under criminal justice supervision; and (11) the nature and seriousness of the danger to the community or any person that the defendant's release would pose. (AO, 2015); see also 18 U.S.C. §3141 – 3150 for a detailed list of factors courts

Crucially, the Bail Reform Act of 1984 created two scenarios in which the assumed right to pretrial release was reversed, with the burden shifting to the defendant to prove he or she was not a risk of nonappearance or danger to the community. Creating the presumptions—before the advent of actuarial pretrial risk assessment—was Congress' effort to identify high-risk cases in which defendants would be required to overcome an assumption in favor of pretrial detention (Austin, 2017). It should be noted that the presumptions were also created in the midst of the "War on Drugs"; therefore, the cases targeted by these presumptions were largely drug offenses. At the time the presumptions were created, cases in the federal system were primarily fraud and regulatory and therefore, the presumptions did not affect a majority of cases (VanNostrand & Keebler, 2009). However, as drug prosecutions increased to the point where they became the largest case category in the federal system besides immigration, the presumption evolved into a more important component of the detention decision (Austin, 2017).

Overview of Prior Studies Examining Federal Pretrial Trends

Since the passage of the Pretrial Services Act of 1982 and the Bail Reform Act of 1984, little research has been conducted into whether the objectives of these laws were met and what potential unanticipated consequences might have arisen. The limited research conducted to date has been primarily initiated by the Administrative Office of the U.S. Courts (AO) Pretrial and Probation system itself, the Bureau of Justice Statistics (BJS) under the Department of Justice, and a few outside academic sources.

In 2007, James Byrne and Jacob Stowell published a paper in *Federal Probation* analyzing the impact of the Federal Pretrial Services Act of 1982. In their paper, they observed that the Act led to significant increases in the number of people under federal pretrial supervision. The authors concluded that this result occurred because of defendants being placed on pretrial supervision who would previously have been released on their own recognizance. Second, they concluded that the Act failed to reduce the rate of pretrial detention. In fact, between 1982 and 2004, federal pretrial detention rates rose from 38 percent to 60 percent (including illegals). In explaining

should consider.

these changes, the authors hypothesized that the risk profile for federal defendants changed significantly in the intervening years, with large increases in drug and immigration cases. However, the detention rates went up across all sub-categories, including defendants with no prior criminal record and those who were employed. The authors concluded that the rising detention rate cannot be explained by the changing risk profile, but rather by changes in how the system regarded pretrial release and those entitled to it (Byrne & Stowel, 2007).

In 2013, BJS published a special report on pretrial detention and misconduct from 1995 to 2010. The findings were similar to those reported by Byrne and Stowell. Notably, from 1995 to 2010, the federal detention rate rose from 59 percent to 75 percent (including illegals). The study concluded that the rise in detention was driven primarily by a 664 percent increase in immigration cases, from 5,103 in 1995 to 39,001, in 2010 (Cohen, 2013). Despite this increase in immigration cases, the study also found that detention rates went up across case types, with detention rates for immigration cases increasing from 86 percent to 98 percent, from 76 percent to 84 percent for drug offenses, and from 66 percent to 86 percent for weapons offenses.

Development of the Federal Pretrial Risk Assessment Instrument

As these and other similar studies emerged, various entities within the federal system became concerned with the rising federal detention rate. In response to this concern, the Office of the Federal Detention Trustee, in collaboration with the AO, embarked on a project to "identify statistically significant and policy relevant predictors of pretrial risk outcome [and] to identify federal criminal defendants who are most suited for pretrial release without jeopardizing the integrity of the judicial process or the safety of the community ..." (VanNostrand & Keebler, 2009: 3).

One of the key recommendations of this study was that the federal system create an actuarial risk assessment tool to inform pretrial release decisions (Cadigan, Johnson, & Lowenkamp, 2012; VanNostrand & Keebler, 2009). The aim of the tool was to assist officers in making their recommendations by cutting through beliefs and implicit biases and presenting an objective assessment of an individual defendant's risk of nonappearance, danger to the community, and/or committing a technical violation that resulted in

revocation (VanNostrand & Keebler, 2009). The tool also had to be short enough to be completed as part of the pretrial investigation process, which was often limited to a few hours from start to finish.

The Pretrial Risk Assessment Tool (PTRA) was created in 2009 by analyzing about 200,000 federal defendants released pretrial between fiscal years 2001 and 2007 from 93 of the 94 federal districts (Cadigan et al., 2012; Lowenkamp & Whetzel, 2009). Using a variety of multivariate models, the final tool included 11 questions measuring a defendant's criminal history, instant conviction offense, age, educational attainment, employment status, residential ownership, substance abuse problems, and citizenship status.[3] Responses to the questions generates a raw score ranging from 0-15 which then translates into five risk categories, with Category 1 being the lowest risk and Category 5 the highest. Once trained and certified, a federal pretrial services officer could complete the tool in under five minutes.

Although the PTRA was initially deployed to the field in fiscal year 2010 and both the initial and revalidation studies showed this tool to be an excellent predictor of pretrial violation outcomes (see Cadigan et al., 2012; Lowenkamp & Whetzel, 2009),[4] implementation by the districts was slow, as it was perceived to be replacing, not augmenting, officer discretion. For example, the percentage of defendants (excluding illegals) with PTRA assessments rose from 35 percent in fiscal year 2011 to 77 percent in fiscal year 2013 (data not shown in table). However, by 2014, implementation of the tool had grown sufficiently to be used for outcome measurement purposes. At present, nearly 90 percent of defendants with cases activated in federal district courts have PTRA assessments. While the PTRA is now used nearly universally in the federal pretrial system, it is unclear whether its deployment has been associated with changes in federal pretrial release patterns. We intend to explore whether previously documented trajectories of increasing detention rates have changed with the PTRA's implementation.

Present Study

The present study will detail major trends occurring within the federal pretrial system over a 10-year period encompassing fiscal years 2008 through 2017. Specifically, we will explore the following research issues about the decision to release defendants charged with federal crimes:

- What percentage of federal defendants are being released pretrial and how have federal release patterns changed over the last 10 years? To what extent are federal pretrial release decisions influenced by citizenship status? How do pretrial officer and U.S. Attorney release recommendations align with actual release decisions?
- Are defendants more or less likely to be released depending upon their most serious offense charges (e.g., drugs, weapons/firearms, financial, sex, etc.), and have release rates changed over time within the specific offense categories? Relatedly, have the types of offenses associated with higher release rates increased or decreased during the study time frame?
- Have the criminal history profiles of federal defendants (e.g., prior arrest and/or conviction history) become more or less severe since 2008? To what extent does criminal history influence release decisions, and have release rates changed or remained the same over time for defendants with similar criminal history profiles?
- Has implementation of the PTRA been associated with an increasing, decreasing, or stabilizing pretrial release rate? If national federal pretrial release rates have remained stable or continued to decline, have districts incorporating this instrument in their bail reports witnessed increases in their release rates?
- Last, this study will investigate trends in the percentage of released defendants who committed pretrial violations. Defendants are considered to have garnered a pretrial violation if they were revoked while on pretrial release, had a new criminal rearrest, or failed to make a court appearance (i.e., FTA). The next section examines the data used in the current study.

Data and Method

Data for this study were obtained from 93[5]

U.S. federal judicial districts and comprised 531,809 defendants, excluding illegals, with cases activated within the federal pretrial system between fiscal years 2008 through 2017. These pretrial activations were drawn from a larger dataset containing 1.1 million pretrial defendants with cases opened between fiscal years 2008 and 2017. From this larger dataset, all pretrial defendants classified as illegal immigrants were excluded from the analysis (*n* lost = 459,442). The illegal aliens were removed because, as will be shown, very few illegal aliens were placed on pretrial release. Non-citizen defendants considered legal aliens, however, were included in the study. Legal aliens encompass non-citizen defendants with the status of humanitarian migrant (e.g., refugee), permanent resident (e.g., green card), or temporary resident (e.g., in U.S. for travel, educational, or employment purposes). In addition, we removed all courtesy transfer cases (*n* lost = 72,183) with the exception of rule 5 cases with a full bail report. Last, we omitted cases that fell into the following classification categories: collaterals, diversions, juveniles, material witnesses, and writs (*n* lost = 41,975). The transfers and these other cases were removed because they did not involve defendants being charged with new offenses within the federal system. Rather, they encompass case events in which the defendant was transferred from another district, was serving as a material witness, was placed into a diversion program, or was currently incarcerated on a prior conviction, nullifying the bail decision on the current federal matter. Hence, the report focuses on only those defendants prosecuted by U.S. Attorneys for new offenses in the federal court system and who had a reasonable expectation of bail.[6]

Data for this study were extracted from the Probation and Pretrial Services Automated Case Tracking System (PACTS), the case management system used by federal probation and pretrial officers. PACTS provides a rich dataset containing detailed information on the most serious offense charges, criminal history profiles, release/detention decisions, and violation outcomes for released defendants. The current study primarily uses descriptive statistics to explore pretrial release and violation trends in federal district courts.

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[3] For a list of specific items in the PTRA, see Cadigan et al. (2012) and Lowenkamp and Whetzel (2009).

[4] It should be noted that the PTRA was recently revalidated off a larger sample of officer-completed PTRA assessments (n = approx. 85,000). Findings from this study are highlighted in the current *Federal Probation* issue (see Cohen, Lowenkamp & Hicks, 2018).

[5] It should be noted that although there are 94 federal judicial districts, the District of Columbia (D.C.) has its own separate pretrial system. Hence, the federal judicial district in D.C. is omitted from

this analysis.

[6] Because of the use of these filters, the pretrial release rates displayed in this report will most likely differ from those published by other federal statistical agencies.

Results

Overall Pretrial Trends

In general, the number of defendants with pretrial activations and the percentage released pretrial has declined during the 10-year period spanning fiscal years 2008 through 2017. Between fiscal years 2008 through 2017, the number of defendants with pretrial activations declined by 13 percent, from 55,578 cases in 2008 to 48,181 cases in 2017 (see Figure 1). Interestingly, most of this decline occurred between fiscal years 2013 and 2014, when budget sequestration cuts were enacted. In this report, defendants with pretrial activations include U.S. or naturalized citizens or legal aliens charged with federal offenses. Illegal aliens are omitted from most of this analysis, with the exception of Table 1.

In addition to declining caseloads, the percentage of defendants released pretrial decreased by 8 percentage points from 55 percent in 2008 to 47 percent in 2017. As will be shown, many factors can influence pretrial release trends, including defendant criminal history profiles and most serious offense charges. If the criminal history profiles of federal defendants are becoming more serious, for example, that trend could exert downward pressures on federal pretrial release rates. Hence, we calculated an adjusted pretrial release rate that accounts for changes in the criminal history profiles and most serious offense charges filed in the federal courts. When adjusted by criminal history and offense severity charges, the federal pretrial release rates declined from 54 percent in 2008 to 50 percent in 2017, representing a 4-percentage point decrease (data not shown in table).

FIGURE 1
Number of federal defendants (excluding illegals) with pretrial activations and percent released pretrial in U.S. district courts, FY 2008–2017

Note: Includes U.S./naturalized citizen defendants or legal aliens with cases opened between fiscal years 2008 - 2017.

Pretrial Release and Defendant Citizenship Status

A defendant's citizenship status, including whether they are a U.S. or naturalized citizen, legal alien, or illegal alien, is strongly associated with the release decision. As shown in Table 1, very few illegal aliens are released pretrial; the release rates for illegal aliens has remained unchanged at about 2 percent since 2011. Given their low release rates, illegal aliens are excluded from the remainder of this report. If illegal aliens were included, the overall release rate would have declined from 38 percent in 2008 to 28 percent in 2017 (see table H-14 at the Administrative Office of the U.S. Courts statistics webpage: http://www.uscourts.gov/data-table-numbers/h-14).

In comparison to illegal aliens, the release rates for legal aliens or U.S. born and naturalized citizens are substantially higher, although these release rates have also declined over the past decade. For example, over half of U.S. born or naturalized citizens were released pretrial between fiscal years 2008 through 2015, while by 2017, the release rate for these defendants had dropped to 48 percent.

TABLE 1.
Percent of U.S. or naturalized citizens, legal aliens, or illegal aliens released pretrial in cases activated within U.S. district courts, FY 2008–2017

Fiscal year	U.S. or naturalized citizen		Legal aliens		Illegal aliens	
	Number of defendants	Percent released	Number of defendants	Percent released	Number of defendants	Percent released
2008	50,366	55.9%	4,300	44.9%	38,931	--
2009	51,348	55.2%	3,887	39.9%	46,599	4.5%
2010	51,040	55.8%	4,405	37.1%	52,206	2.6%
2011	53,111	55.6%	4,769	34.6%	52,274	2.3%
2012	50,917	53.2%	4,641	35.3%	50,086	1.6%
2013	51,075	53.3%	4,311	36.5%	49,777	1.5%
2014	44,911	52.6%	3,742	37.5%	48,184	1.4%
2015	44,353	52.0%	3,436	38.0%	43,714	1.6%
2016	43,319	50.2%	3,850	36.4%	40,602	1.8%
2017	43,768	48.1%	3,380	33.8%	37,069	1.7%

Note: The release rates for illegal aliens for fiscal year 2008 not shown because of a change in the way pretrial release was coded for these cases. Prior to 2009, some border districts were coding illegal aliens released to U.S. Immigration and Customs Enforcement (ICE) as released even if they remained detained until deportation. After 2008, the coding methodology was changed so that only illegal aliens released into the community were coded as released.

Pretrial Release Recommendations

At the bail hearing, pretrial officers (PSOs) and U.S. Attorneys (AUSAs) make recommendations to release or detain defendants pretrial and these recommendations can influence release decisions. Over the past decade, PSOs

FIGURE 2

Percent of federal defendants (excluding illegals) recommended for release by PSOs and AUSAs and actually released pretrial in cases activated within U.S. district courts, 2008–2017
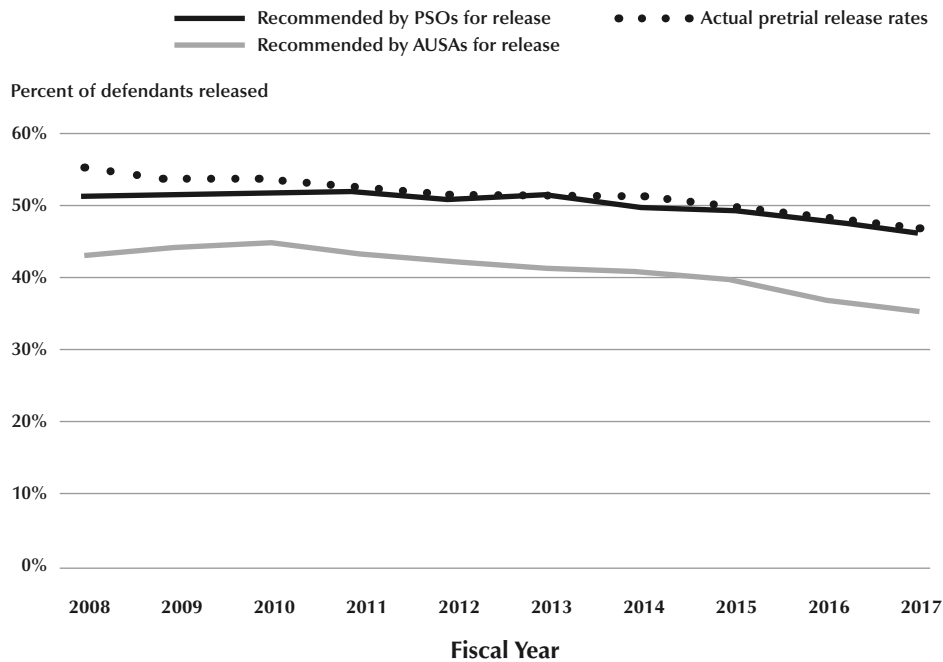
Note: Includes U.S./naturalized citizen defendants or legal aliens with cases opened between fiscal years 2008 - 2017.

have consistently recommended defendants for release at higher rates than AUSAs (see Figure 2). In 2008, PSOs recommended 51 percent of defendants for release, while the release recommendation rate for AUSAs was 43 percent. By 2017, 48 percent of defendants were recommended for release by PSOs compared to 36 percent of defendants recommended for release by AUSAs. The actual release rates have generally tracked the PSO release recommendation rates between 2008 to 2017.

Pretrial Release and Most Serious Offense Charge

The decision to release a defendant pretrial varies substantially by the most serious offense charges. For instance, about four-fifths of defendants charged with financial crimes were released pretrial, and this release rate has remained relatively stable over the past decade (see Table 2). By comparison, approximately a third or less of defendants charged with weapons/firearms or violence offenses were released pretrial during the study coverage period. While financial offenses have higher release rates than most federal offenses, it is notable that fewer of these cases are being activated within the federal pretrial system. From 2008 through 2017, the number of

pretrial activations involving financial offenses declined by 34 percent. Conversely, there were increases in pretrial activations among several offense categories with relatively low or declining release rates, including weapons/firearms and sex offenses.

Some offense categories have witnessed appreciable decreases in their pretrial release rates. For example, from 2008 through 2017, defendants charged with sex offenses saw a 15-percentage-point decline in their pretrial release rates, from 55 percent to 40 percent. In addition, defendants charged with weapons/firearms offenses have witnessed an 8-percentage-point drop in their release rates, from 36 percent to 29 percent.

While drug cases continue to remain one of the largest offense categories within the federal system, the number of pretrial activations involving these offenses has declined by 15 percent between 2008 and 2017. Interestingly, the percentage of drug defendants released pretrial decreased by 4 percentage points, from 45 percent in 2008 to 41 percent in 2016 and 2017.

Pretrial Release and Defendant Criminal History Profiles

According to the 1984 Bail Reform Act,

judges and magistrates are required to consider a defendant's criminal history when making pretrial release decisions. Following the Act's guidance, defendants with more serious criminal histories should have a lower probability of pretrial release than those with less serious criminal histories. Hence, a worsening criminal history profile for federal defendants could influence the overall federal pretrial release rates.

There is mixed evidence that the criminal history profiles of federal defendants have become more serious during the last 10 years. This is displayed by figures 3 and 4, which show changes in the arrest and conviction history of federal defendants from 2008 through 2017. The percentage of defendants with 5 or more prior felony arrests increased from 21 percent in 2008 to 26 percent in 2017 (see Figure 3). Moreover, between 2008 and 2017, the percentage of defendants with 5 or more prior felony convictions increased from 8 percent to 10 percent (see Figure 4). Although the portion of defendants with extensive criminal histories has grown in the federal system, there have been few changes in the overall percentages of defendants with any prior felony arrest or conviction history. For example, since 2012, the percentage of defendants with no prior felony arrest history has remained stable at about 45 percent to 46 percent. Similar patterns are manifested when examining trends in the percentage of defendants without any prior felony convictions.

The relationship between criminal history and pretrial release is illustrated by the federal data, which show defendants with serious or lengthy criminal histories having lower pretrial release rates than those with less serious criminal backgrounds. In 2008, 77 percent of defendants with no felony arrest history were released pretrial, 40 percent of defendants with two to four prior felony arrests were released pretrial, and 23 percent of defendants with five or more prior felony arrests were released pretrial (see Table 3). By 2017, the percentage of defendants released pretrial was 64 percent for defendants with no prior felony arrests, 54 percent released for defendants with two to four prior felony arrests, and 21 percent released for defendants with 5 or more prior felony arrests.

An interesting pattern involves the steeper declines in pretrial release rates for defendants with less severe criminal history profiles between 2008 and 2017. There was a 13-percentage-point decline in the pretrial release rates for defendants with no prior felony arrest

history, from 77 percent in 2008 to 64 percent in 2017. In comparison, the probability of being released pretrial for defendants with 5 or more prior felony arrests declined from 23 percent in 2008 to 21 percent in 2017, representing a 2-percentage-point decrease. The larger declines in pretrial release rates for defendants with less serious criminal histories also occurred among the other criminal history measures, including number of prior felony convictions, most serious conviction history, and court appearance record.

Table 4 examines pretrial release trends by the defendant's most serious offense charges and criminal history profile. In a pattern similar to that shown in the previous table, the release rates declined to a greater extent for defendants with less serious criminal histories than for their counterparts with more severe criminal histories. This finding was particularly apparent for defendants charged with weapons/firearms, sex, or drug offenses. The percentage of defendants charged with weapons/firearms offenses with no felony arrest history released pretrial decreased from 75 percent in 2008 to 49 percent in 2017. In contrast, the pretrial release rates for weapons/firearm defendants with five or more prior arrests declined from 19 percent in 2008 to 17 percent in 2017. A similar trend occurred for defendants charged with sex offenses. Sex offenders without any prior felony arrests saw their pretrial release rates decline from 70 percent in 2008 to 52 percent in 2017. In

comparison, the percentage of sex offenders with five or more prior felony arrests released pretrial decreased from 19 percent to 12 percent between 2008 and 2017. Last, the percentage of drug defendants without any record of prior felony arrests released pretrial

declined by 10 percentage points from 63 percent in 2008 to 53 percent in 2017, while their counterparts with 5 or more prior felony arrests were released at comparable rates (21 percent in 2008 vs. 20 percent in 2017) during the study coverage period.

FIGURE 3

Felony arrest history of federal defendants (excluding illegals) with cases activated in U.S. district courts, FY 2008 - 2017
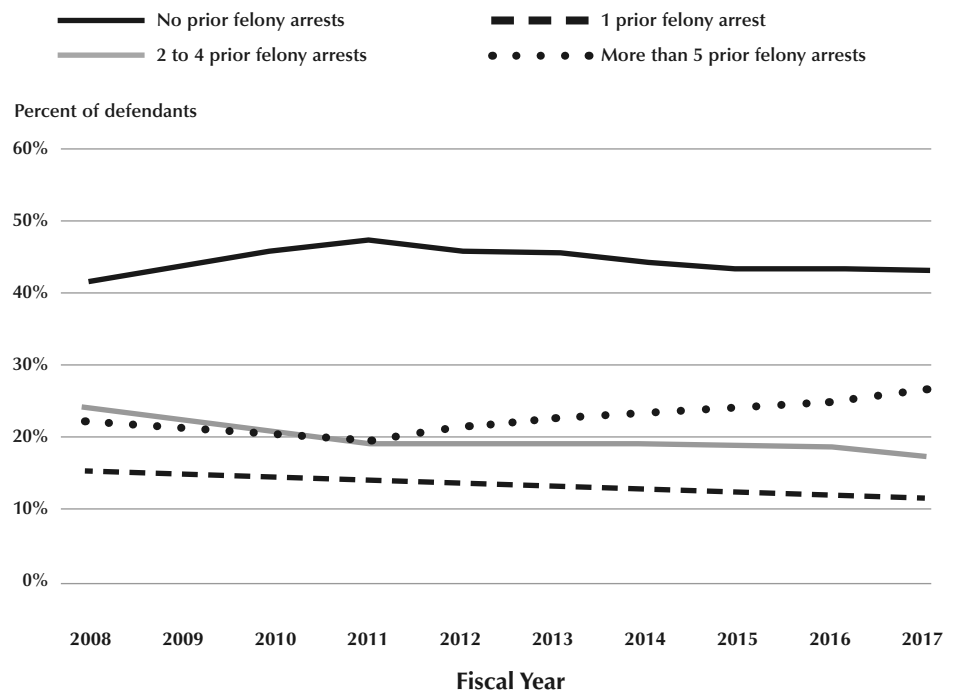
Note: Includes U.S. or naturalized citizens or legal aliens.

TABLE 2.

Percent of federal defendants (excluding illegals) released pretrial for cases activated in U.S district courts by most serious offense charge, FY 2008 - 2017

Fiscal year	Drugs		Financial		Weapons/Firearms		Violence		Immigration/a		Sex Offenses	
	Number of activations	Percent released	Number of activations	Percent released	Number of activations	Percent released	Number of activations	Percent released	Number of activations	Percent released	Number of activations	Percent released
2008	22,557	44.6%	13,419	81.6%	6,676	36.3%	--	--	2,996	48.4%	2,544	54.6%
2009	23,145	43.8%	12,334	82.0%	6,591	36.3%	3,707	34.5%	2,791	47.3%	2,559	53.7%
2010	22,522	43.6%	13,304	84.4%	6,307	33.8%	3,477	35.0%	3,092	47.8%	2,409	51.9%
2011	24,564	43.3%	13,482	83.9%	6,473	35.4%	3,519	35.3%	2,800	50.9%	2,654	53.4%
2012	23,070	42.2%	12,438	82.6%	6,911	32.5%	3,540	31.4%	2,732	52.8%	2,518	47.9%
2013	22,736	42.4%	12,739	82.9%	6,599	31.7%	3,532	36.0%	2,919	50.5%	2,847	44.8%
2014	19,287	43.2%	11,225	82.7%	5,932	29.5%	3,359	32.1%	2,853	53.7%	2,692	41.5%
2015	18,850	42.9%	10,398	83.8%	6,136	29.6%	3,285	29.7%	2,978	52.3%	3,050	42.0%
2016	18,678	40.6%	9,397	83.1%	6,455	29.1%	3,646	32.9%	3,221	50.7%	2,806	41.5%
2017	19,244	40.8%	8,820	80.3%	7,228	28.6%	3,490	30.5%	3,228	49.4%	2,799	40.0%
Percent change pretrial activations												
2008-2017	-14.7%		-34.3%		8.3%		-5.9%		7.7%		10.0%	

Note: Includes U.S. or naturalized citizens or legal aliens with cases opened between fiscal years 2008 - 2017. Obstruction, traffic/DWI, and public-order offenses not shown. Most serious offense charges sorted by most to least frequent among cases activated in FY 2017. Percent changes in violent activations covers period from 2009 to 2017.
-- Data not available.
a/ Includes only U.S. or naturalized citizens or legal aliens charged with immigration offenses. Illegal aliens not included in these rates.

Pretrial Release in Districts that Have Placed the PTRA in the Bail Report

The above documented declines in federal pretrial release took place during a period in which federal officers began using a risk assessment instrument (i.e., the PTRA) to inform pretrial release recommendations and decisions. Although the PTRA was developed to bring evidence-based practices into the federal pretrial system, federal judges or magistrates are not required to consider this instrument when making release decisions (Cadigan & Lowenkamp, 2011). In five federal districts, however, the decision was made to include the PTRA assessment score in the bail report. Bail reports are prepared by pretrial officers and provide judges with information about the risk of flight and dangerousness to the community for persons charged with federal crimes.

An examination of release rates for districts that included the PTRA in their bail reports shows a general trend of these districts initially experiencing some increases in their overall release rates, which are then followed by declines. In one district,[7] for example, the release rates increased by 12 percentage points, from 45 percent to 57 percent, during the first year this district included PTRA assessments in their bail reports; since then, the release rates in this district have trended downwards (data not shown in table). Similar trends have manifested in other districts using the PTRA in the bail reports.

FIGURE 4
Felony conviction history of federal defendants (excluding illegals) with cases activated in U.S. district courts, FY 2008 - 2017

Note: Includes U.S. or naturalized citizens or legal aliens.

Pretrial Violation Trends

Last, we explored the percent of release defendants who violated their terms of pretrial release through a revocation, new criminal arrest, or FTA. Unlike the previous analyses, this part investigates violations for defendants released pretrial with cases closed between fiscal years 2008 through 2016. We used the closed rather than activation date because that allowed for an examination of pretrial violations during a case's life course. Since the closed date anchored this component of the study, we could only report on pretrial violation activity up until 2016. Violation data were unavailable for fiscal year 2017.

From 2008 to 2015, the percentage of released defendants with any pretrial violation remained fairly stable at about 14 percent (see Figure 5). In 2016, there was a slight rise in the overall violation rates, which increased to about 16 percent. The percentage of released defendants revoked from pretrial supervision rose incrementally from 7 percent in 2008 to 9 percent in 2016. Importantly, the percent of released defendants arrested for new criminal conduct ranged from 7 percent to 8 percent during the study coverage period. Relatively few released defendants (about 2-3 percent) FTA between 2008 and 2016.

FIGURE 5
Percent of federal defendants (excluding illegals) released pretrial who committed pretrial violations for cases closed FY 2008 - 2016

Note. Includes U.S. or naturalized citizens or legal aliens released pretrial. Unlike previous tables/figures, this figure uses the closed rather than activation date as the case anchor.

*Percentages won't sum to pretrial violation totals as defendants can commit multiple types of pretrial violations..

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[7] Given that these districts are still experimenting with methods that allow for the most beneficial and informative use of the PTRA in their bail decisions, we kept their names out of this report.

Conclusions and Implications

Our examination of federal pretrial trends over the last decade revealed several key findings. Specifically, the federal pretrial release rates have declined during the period spanning 2008 through 2017, and this trend holds even adjusting for the changing composition of the federal defendant population. Generally, release rates have tracked the release recommendation decisions by PSOs; moreover, PSOs have consistently recommended defendants for release at higher rates compared to AUSAs. Another important finding involves changes in the most serious offenses filed in the U.S. court system. There are fewer cases associated with higher release rates (i.e., financial offenses) filed in federal courts at present than in the past. Conversely, several case types with low or declining pretrial release rates, including weapons/firearms and sex offenses, have increased during the ten-year timeframe.

We also examined the criminal history profiles of federal defendants and found some evidence that they have worsened over time. Interestingly, the percentage of defendants released pretrial has declined to a greater extent among defendants with less severe criminal profiles than among defendants with more substantial criminal histories. The pattern of falling pretrial release rates for defendants with "light" criminal histories mostly centers on those charged with weapons/firearms, sex, and drug offenses. Another key component involved an examination of whether districts including the PTRA in their bail reports witnessed any increases in their release rates. While these districts experienced some increases in their overall release rates, these changes were not sustaining, as release rates fell over time. Last, there has been stability in the proportion of released defendants committing pretrial violations involving revocations, new criminal arrests, and FTAs.

This article shows that the federal system has become more oriented towards pretrial detention than release over the last 10 years. Federal statutes, including the 1984 Bail Reform Act and the presumption of detention, most likely laid the groundwork for the reported increases in federal pretrial detention. While there is some evidence that the profiles of defendants have become more severe, these trends do not completely explain the downward trajectories of federal pretrial release rates.

For some offense types, particularly defendants charged with sex offenses, the decreases in pretrial release occurred concurrently with extensive media coverage of sex offenders committing violent crimes (see O'Brien, 2015). Nevertheless, even defendants charged with non-sex-related crimes have witnessed growing rates of pretrial detention, especially those with light criminal history profiles.

When the PTRA was initially deployed, there was some hope that the instrument could influence federal pretrial release decisions (Cadigan & Lowenkamp, 2011). If officers could base their decisions and release recommendations on an actuarial instrument, that might lead to an increase in release rates for defendants classified as either low (e.g., PTRA ones or twos) or moderate risk (PTRA threes) by the PTRA. While defendants placed into the lower risk categories are more likely to be released than their higher risk counterparts (Austin, 2017), the PTRA's implementation has not been associated with rising pretrial release rates. Rather, release rates have declined during the period coinciding with PTRA implementation.

There are a variety of reasons why the

TABLE 3.
Relationship between criminal history and pretrial release for federal defendants (excluding illegals) with cases activated in U.S. district courts, FY 2008, 2011, 2014, & 2017

Defendant criminal history	2008		2011		2014		2017	
	Number of activations	Percent released	Number of activations	Percent released	Number of activations	Percent released	Number of activations	Percent released
Number of prior felony arrests								
None	23,087	77.1%	27,366	71.4%	22,401	69.9%	21,657	64.4%
1	8,521	58.3%	8,163	56.0%	6,263	57.5%	5,407	53.9%
2 to 4	12,133	40.3%	11,430	40.2%	9,524	39.0%	8,814	37.3%
5 or more	11,663	23.2%	11,403	23.3%	10,889	21.3%	12,303	20.7%
Number of prior felony convictions								
None	30,932	72.3%	34,959	68.3%	28,759	66.8%	27,727	62.0%
1	8,822	45.1%	8,396	44.0%	6,608	42.4%	6,083	38.4%
2 to 4	11,224	29.0%	10,626	28.5%	9,316	27.0%	9,355	25.4%
5 or more	4,426	17.0%	4,381	17.6%	4,394	17.0%	5,016	15.9%
Most serious prior convictions								
None	21,018	74.2%	24,773	69.3%	20,745	67.2%	20,795	62.0%
Misdemeanor-only conviction	9,914	68.3%	10,186	65.7%	8,014	65.8%	6,932	61.9%
Felony conviction	24,472	32.6%	23,403	32.0%	20,318	29.9%	20,454	26.9%
Court appearance history								
None	43,416	60.1%	46,674	58.1%	38,305	55.9%	37,212	52.0%
1	4,870	40.2%	4,626	40.8%	4,046	41.5%	3,944	35.7%
2 or more	7,118	32.3%	7,062	33.3%	6,726	32.5%	7,025	27.8%

Note: Includes U.S. or naturalized citizens or legal aliens with cases opened between fiscal years 2008 - 2017.

PTRA has not been associated with rising pretrial release rates. Specifically, this instrument was developed without any judicial involvement, impeding its potential adoption (Cadigan & Lowenkamp, 2011). In addition, there is no requirement that federal judges consider PTRA assessments when making release decisions (PJI, 2018). Rather, the Bail Reform Act of 1984 and federal statutes detail specific processes and elements judges must take into consideration when making pretrial release decisions, none of which involve the PTRA. The inability to integrate the PTRA into the judicial decision-making process has resulted in this risk tool having a relatively minimal role in federal judicial release decisions (PJI, 2018). Moreover, release rates have not changed appreciably even among those

TABLE 4.
Relationship between criminal history, most serious offense charges, and pretrial release for federal defendants with cases activated in U.S. district courts, FY 2008, 2011, 2014, & 2017

Defendant criminal history and most serious offense charges	2008		2011		2014		2017	
	Number of activations	Percent released	Number of activations	Percent released	Number of activations	Percent released	Number of activations	Percent released
Drugs								
Number of prior felony arrests								
None	7,578	62.8%	9,928	56.1%	7,798	56.5%	8,067	52.7%
1	3,898	53.0%	3,830	49.4%	2,595	54.3%	2,223	51.1%
2 to 4	5,847	36.1%	5,700	36.5%	4,232	37.3%	3,771	37.0%
5 or more	5,187	21.1%	5,106	21.4%	4,662	20.2%	5,183	20.4%
Financial								
Number of prior felony arrests								
None	7,988	92.0%	8,759	91.8%	7,098	90.8%	5,476	88.6%
1	1,856	81.3%	1,675	82.5%	1,362	84.1%	1,020	82.3%
2 to 4	1,878	69.8%	1,650	73.4%	1,478	72.3%	1,157	70.5%
5 or more	1,654	45.7%	1,398	48.9%	1,287	49.0%	1,167	48.9%
Weapons/Firearms								
Number of prior felony arrests								
None	931	75.1%	1,295	65.1%	1,235	55.8%	1,588	49.0%
1	717	59.0%	649	55.5%	490	48.4%	526	47.3%
2 to 4	2,032	36.2%	1,709	34.0%	1,423	28.7%	1,604	28.8%
5 or more	2,961	18.5%	2,820	18.1%	2,784	14.9%	3,510	16.6%
Violence								
Number of prior felony arrests								
None	1,342	59.3%	1,344	57.6%	1,248	55.6%	1,311	50.1%
1	572	36.4%	531	35.4%	426	36.4%	416	37.5%
2 to 4	854	22.1%	773	24.1%	756	19.3%	758	22.0%
5 or more	935	9.1%	871	10.9%	929	8.8%	1,005	8.6%
Immigration								
Number of prior felony arrests								
None	1,506	66.8%	1,561	63.4%	1,440	70.7%	1,639	66.3%
1	526	43.0%	429	51.5%	445	53.3%	488	48.2%
2 to 4	612	28.9%	508	31.5%	594	33.3%	617	31.3%
5 or more	346	11.0%	302	18.2%	374	20.9%	484	16.9%
Sex offenses								
Number of prior felony arrests								
None	1,517	70.2%	1,690	65.1%	1,612	55.0%	1,655	52.2%
1	482	42.1%	488	44.1%	469	32.2%	424	35.1%
2 to 4	360	23.9%	305	22.6%	379	16.1%	397	17.1%
5 or more	181	18.8%	171	19.3%	232	8.2%	323	12.1%

Note: Includes U.S. or naturalized citizens or legal aliens with cases opened between fiscal years 2008 - 2017. Defendants charged with traffic/DWI, public-order, and escape/obstruction not shown.

few districts that have included the PTRA scores in their bail reports. In sum, this report shows that changing court culture is a difficult task and developing and implementing a risk assessment instrument is not sufficient when attempting to make systematic changes to complex systems such as pretrial decision processes (Stevenson, in press).

Despite the challenges inherent in reforming the federal pretrial system, more effort should be placed on attempting to reduce unnecessary pretrial detention because of the crucial role the release decision can have both for the individual defendant and for the system as a whole. Specifically, the bail decision is the opportunity for the court system to conserve financial resources, uphold the individual's constitutional right to bail and the presumption of innocence, set a positive, rehabilitative tone for the individual and his or her families, and, in low-risk cases where it is merited, divert individuals altogether from incarceration. Moreover, and perhaps even more importantly, a growing number of research studies have shown pretrial detention being associated with higher rates of failure at the post-conviction stage (Gupta et al., 2016; Heaton et al., 2017; Oleson et al., 2014). Given the resources being expended on supervising federal offenders at the post-conviction stage with the aim of reducing recidivism—including education programs, vocational training, halfway house and other transitional housing, specialized probation officers who use cognitive behavior training, and motivational interviewing—it is important to understand and accept the fact that any reentry effort meant to affect recidivism should take into consideration maximizing pretrial release rates.

Taken together, this study shows that systematic and permanent changes in the federal pretrial system can only occur if all key actors, including judges, U.S. Attorneys, federal defenders, and pretrial officers, are involved in an effort to actively and continuously integrate evidence-based practices into federal pretrial decision-making and view release as a favorable option whenever it can be established

that the risk of flight or danger to the community are not overtly present. Recently, the AO initiated the Detention Reduction Outreach Program (DROP), whose purpose is to safely reduce pretrial detention in federal districts. This effort involves outreach and collaboration with all stakeholders in the federal system, including the U.S. Attorney's Office, the Federal Defenders Office, the U.S. Marshals Service, the Probation and Pretrial Services Office, and other actors. Over the past few years, AO staff began visiting individual districts and initiating discussions with all pertinent stakeholders on the importance of integrating the PTRA into the pretrial decision and encouraging districts to use alternatives to detention (such as special conditions) as a mechanism for increasing release rates. If DROP can help bridge the gap between these various court actors, we may be able to work together to find compromises in cases that previously would have been detained and encourage a move to higher release rates. Additionally, these consultations encourage officers to make better use of their data by closely monitoring release and release recommendation rates to try to forestall any downward trends in these rates after a DROP consultation. The hope is that over time the DROP program will begin altering current release and detention trends.

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The Rising Federal Pretrial Detention Rate, in Context

Matthew G. Rowland[1]
Chief, Probation and Pretrial Services Office
Administrative Office of the United States Courts[2]

THE FEDERAL PRETRIAL detention rate has been steadily increasing. Twenty years ago, less than half of defendants were held pending trial; now the figure is nearly 75 percent (Figure 1).[3] The cost of this detention, in monetary terms, is approaching $1.5 billion a year (Department of Justice), and there are human costs as well. Researchers have connected pretrial detention to wrongful convictions, potentially longer-than-necessary prison sentences and higher recidivism rates (Gupta, Hansman & Frenchman) (Oleson, VanNostrand & Lowenkamp).[4]

between correlation and causation, and that is true in terms of the relationship between pretrial detention and subsequent outcomes in criminal cases. Clearly, one interpretation is that pretrial detention has a corrosive effect on defendants—separating them from their legal team, family, and other potentially prosocial connections in the community. Detention also forces defendants, ironically, to associate with others involved in the criminal justice system, potentially creating negative peer networks. Another argument, however, is that judges are identifying those at higher risk at the pretrial stage, observing risk not fully captured by actuarial assessment devices. Consequently, the noted detention, sentence, and recidivism issues

The demographic disparity among those detained is yet another concern. Men are detained twice as often as woman. Blacks and Native Americans are detained more often than Asians, Pacific Islanders, and whites. Hispanics are detained at substantially greater rates than non-Hispanics. Similarly, non-citizens are detained at much greater rates than U.S. citizens (Figure 2). Those differences may raise concerns regarding judges' objectivity,

may flow from defendants' preexisting level of risk rather than from the detention itself.

[2] The views expressed in this article are the author's alone and do not necessarily reflect those of the AO, the Judicial Conference of the United States, its committees, or the federal probation and pretrial services system.

[3] All AO data cited in this article, unless otherwise noted, refers to cases processed in the 12-month period ending March 31, 2018 or of the year indicated. All race demographic data excludes Hispanics as Hispanics, and non-Hispanics are reported separately.

[4] It is often difficult in research to distinguish

FIGURE 1
Federal Pretrial Detention Rate
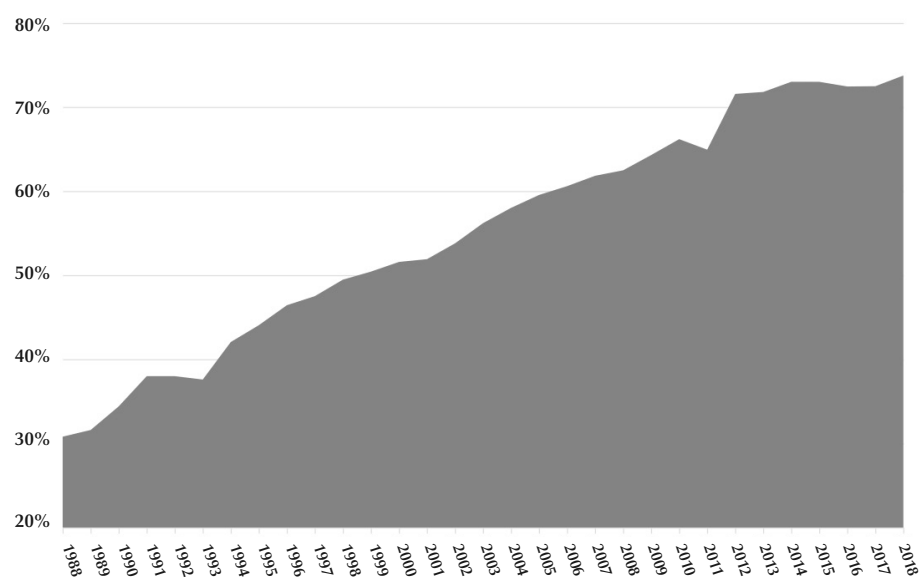
Source: *Judicial Business of the United States Courts and AOUSC Decision Support System*

but like the overall pretrial detention rate, it is important to examine judges' decisions in context.

Judges are required by statute to consider specific factors when making release and detention decisions. Those factors, on their face, objectively relate to defendants' risk of flight and danger to the community.[5] They include the nature and circumstances of the crime charged; the strength of the evidence against the defendant and likelihood of conviction; the defendant's criminal history, including prior failures to appear for court proceedings; personal history; physical and mental condition; ties to the community; financial condition and employment record. In taking these factors into account, judges are required to be impartial and are precluded from discriminating against defendants based on gender, race, or other protected classification (Judicial Conference of the United States).

The demographic disparity may, therefore, be a byproduct of the courts' objective application of statutory required factors rather than invidious discrimination. At the heart of the statutory factors is the offense charged.[6] Although there is a presumption of innocence for people accused of crimes, the Supreme Court has upheld consideration of the charges lodged for detention purposes. The Court concluded that within the federal statutory framework, pretrial detention is reasonably designed to further the legitimate goal of public safety, not to punish defendants (*United States vs. Salerno*).

Some offenses inherently produce greater concerns about risk of flight and danger to the community than do others. For example, often those charged with illegal entry into the United States have acknowledged or obvious ties to other countries. Such ties increase the defendant's flight risk. Similarly, when defendants are charged with violence, weapons, and sex offending, concerns for community safety increase, another factor relevant to pretrial

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[5] See, 18 U.S.C. § 3142. Note, not everyone considers the statutory factors to be unbiased. Some civil rights organizations argue that factors such as prior failures to appear and rearrest are more reflective of police and prosecutors' decisions than the conduct of defendants (Pretrial Justice).

[6] It should be noted that prosecutors, not judges, decide which charges are to be brought against a defendant. Prosecutors, like judges, are ethically prohibited from discriminating against defendants based on demographic characteristics (American Bar Association), and their prosecutorial decisions are subject to published guidelines (Department of Justice).

FIGURE 2
Federal Pretrial Detention Rate
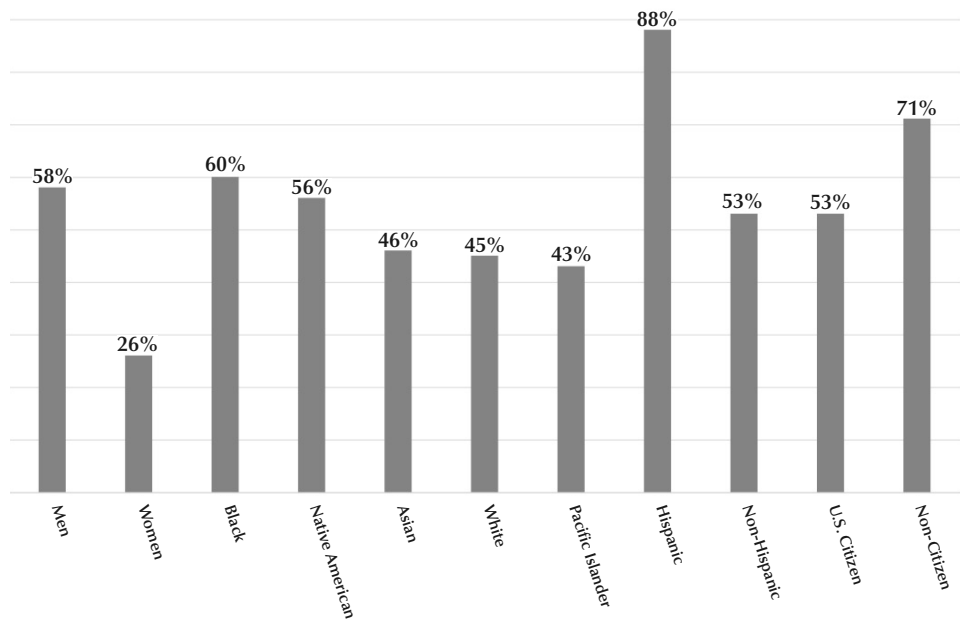
Source: AOUSC Decision Support System; race categories do not include Hispanics

FIGURE 3
Federal Detention Rate by Offense

Source: AOUSC Decision Support System

detention. Therefore, it is not surprising that defendants charged with different offenses have different release rates (Figure 3).

What may be surprising is that there are distinct demographic patterns in terms of who is charged with different types of crimes. While drug charges are the most common across the majority of demographic groups, there is substantial variation. For example, property offenses are the second

most common for women, Asian, Pacific Islander, and white defendants. In contrast, the second most common group of offenses for males and blacks relate to firearms and weapons. Native Americans are charged most frequently with violent offenses, while Hispanics and non-citizens are most frequently charged with immigration crimes (Figure 4). The unique federal jurisdiction provided by the Constitution and consistent

FIGURE 4
Prevailence of Federal Offenses Charged within Each Demographic Category

	Female	Male	Asian	Black	Pacific Islander	Native American	White	Hispanic	Non-Hispanic	U.S. Citizen	Non-Citizen
Drugs	39%	34%	21%	38%	36%	19%	33%	21%	34%	40%	13%
Escape/Obstruction	3%	3%	2%	2%	4%	6%	3%	1%	3%	2%	0%
Firearms/Weapons	5%	22%	4%	28%	16%	9%	13%	3%	19%	18%	1%
Immigration	4%	3%	7%	2%	1%	4%	4%	62%	3%	6%	75%
Other	3%	2%	21%	1%	1%	2%	1%	7%	2%	1%	9%
Property	36%	17%	33%	16%	21%	7%	24%	3%	17%	16%	2%
Public Order	3%	3%	2%	2%	6%	3%	4%	0%	3%	3%	0%
Sex Offenses	2%	8%	5%	2%	5%	13%	12%	1%	8%	6%	0%
Violence	6%	9%	4%	9%	9%	37%	6%	1%	9%	8%	0%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: AOUSC, Decision Support System

policy determinations across Presidential administrations have led to more prosecutions for illegal entry into the country, violence—particularly in "Indian Country," and weapons offenses. In turn those prosecutions have contributed to the demographic differences in release rates.

Another statutory consideration for pretrial detention release is prior criminal history. It is generally thought that minorities, blacks in particular, have more documented criminal histories than do whites (Gase, Glenn et al.). In the federal system, we do not have a uniform measure of criminal history at the pretrial stage. We can, however, derive such a measure by borrowing the criminal history scoring system used at sentencing. Developed by the United States Sentencing Commission, the scoring system relies primarily on the number of convictions and the length of custody terms imposed on defendants (United States Sentencing Commission). Looking at the current post-conviction supervision population for which we have criminal history scores, there are indeed significant demographic differences in terms of criminal histories.

Only 12 percent of women score within the most severe criminal history categories, compared to 33 percent of men.[7] There is also large variation among defendants of different races (Figure 5), with 11 percent of Asians in the most severe categories, 39 percent of Black defendants, 17 percent of the Native Americans, 15 percent of the Pacific Islanders,

and 19 percent of the whites. Hispanic and non-citizens have roughly half the criminal histories of non-Hispanics and United States citizens. Notably, however, the Commission's system does not take foreign convictions into account, so the criminal histories of defendants with ties to other countries may be understated.

Consequently, it appears that the demographic differences in the charges against, and criminal history of, defendants may explain at least some of the difference in release rates.[8] To further explore that possibility, the Administrative Office of the United States Courts (AO) examined records related to 210,000 defendants charged in the federal system between 2012 and 2016. Focusing on United States citizens, cases were matched based on most serious offense, criminal history, and other empirical risk factors for which there was available data.[9] The results were analyzed by gender, the two largest race categories (black and non-Hispanic whites), and Hispanic origin and reported in an internal PPSO memo. With the stated controls in place, release rate differences between men and woman declined by 70 percent, going from 28 to 9 percentage points. The matching process eliminated the statistically significant differences between blacks and whites altogether,

FIGURE 5
Pretrial Detention Rate

	2008	2018	Pct. Point Change
Men	48%	58%	10%
Women	19%	26%	7%
Black	55%	60%	5%
Native American	45%	56%	11%
Asian	35%	46%	11%
White	33%	45%	12%
Pacific Islander	39%	43%	4%
Hispanic	79%	88%	9%
Non-Hispanic	43%	53%	10%
U.S. Citizen	42%	53%	11%
Non-Citizen	61%	71%	10%

Source: AOUSC, Decision Support System

going from 17 percentage points to 1 percentage point. Nearly 60 percent of the difference between Hispanics and non-Hispanics could be explained by the controls, going from 11 to 7 percentage points. Of course, different models and datasets can be used to further explore the question of equity in release decisions, but the analysis already undertaken makes clear that many factors influence release rates and looking at one factor alone, such as demographics, would be incomplete.

So available data indicate that demographic disparity in detention may not stem from the release decision itself but rather from the characteristics of those being charged in federal court. That observation does not negate the fact that pretrial detention rates are at record high levels and on an upward trend for all demographic groups (Figure 5).

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[7] The United States Sentencing Commission criminal history scoring system provides six categories, I-VI. The highest referred to in this article relates to those defendants in categories III-VI. The least severe category is I and includes defendants with no criminal history.

[8] For more information about the correlation of offense charge, criminal history, and release rates in the federal system, see Cohen and Austin.

[9] There is not discrete data currently available for each of the factors specified by statute relative to pretrial release. Consequently, all research in this area is inherently limited. The additional factors are those included in the Pretrial Risk Assessment device or PTRA. See, Cadigan, Johnson & Lowenkamp, "The Re-validation of the Federal Pretrial Services Risk Assessment (PTRA)."

Countervailing Costs and Concerns

Just as there are costs and concerns related to detaining people pending trial, there are costs and concerns related to supervising defendants during court proceedings. In most cases, to reduce risk of flight and danger to the community, the court imposes a term of community supervision monitored by a pretrial services or probation officer. That supervision, and the treatment programming it often entails, costs $177 million a year (AO). Another cost to pretrial release is that defendants have a greater opportunity to abscond, intimidate witnesses, and commit other crimes compared to those defendants who are detained (Alexander). The federal government spends $450 million a year on fugitive apprehension, and a portion of that is dedicated to searching for federal pretrial defendants who abscond before trial (Department of Justice). And while there is not an exact figure for the cost of crimes committed by persons released pending trial (General Accountability Office), conservative estimates put it in the hundreds of millions of dollars.[10]

What Should Be Done?

In light of the escalating federal pretrial detention rate and related concerns, some observers have suggested the federal system should model itself after state and local systems with lower detention rates and better release outcomes. For example, a keynote speaker at a National Association of Pretrial Services Agencies (NAPSA) conference[11] suggested that the federal system adopt the practices of the District of Columbia Superior Court.[12]

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[10] Using one published method on just 10 percent of the new charges filed against released defendants in fiscal year 2017 related to violence produced a loss figure of $147 million alone (McCollister, French, & Fang, 2010).

[11] Hon. Truman Morrison, National Association of Pretrial Services Agencies 44th Annual Conference and Training Institute, Salt Lake, Utah. September 11-14, 2016.

[12] The Superior Court of the District of Columbia was created by Congress in 1970 "to assume responsibility for local jurisdiction, similar to that exercised by state courts." (Federal Judicial Center). The Pretrial Services Agency for the District of Columbia that supports the Superior Court, as well as the U.S. District Court for the District of Columbia, is a federal entity as well, but operates separate and apart from the "federal system" supporting all the U.S. district courts outside the nation's capital. In the business vernacular and for purposes of this article, the "federal system" and "federal pretrial system" refers to the operations

That court has repeatedly posted an impressive 90 percent release rate, with an equal percentage of released defendants making court appearances and remaining free from rearrest. The pretrial agency supporting the court has been praised in the media (Marimow), even being favorably satirized on the popular television show Last Week Tonight with John Oliver (Avery, Carvell & Gondelman).

Unfortunately, the differences in size and operations between the two jurisdictions makes large-scale transfer of practices difficult.[13] For example, the Superior Court deals, relatively, with a homogenous defendant population concentrated in a small geographic area. Most of the charges filed in Superior Court are misdemeanors and infractions. In contrast, the federal system deals with a highly diverse defendant population and covers the entire country plus the federal protectorates of Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. Moreover, federal prosecutions overwhelmingly involve felonies and can be based on any one of 3,000 different statutory provisions (Cali). The alleged criminal conduct is often sophisticated (Wright), and associated with multi-year prison term upon conviction (United States Sentencing Commission) (Federal Bureau of Prisons).

The Purpose of This Article

The federal system is so unique that this article seeks to better contextualize its release rate and influencing factors. Hopefully, with that context, those of us within the system and outside observers can better identify opportunities for improvement. The discussion is organized as follows: (1) the structure of the

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in the 93 United States District Courts outside the District of Columbia.

[13] Geographically, the jurisdiction of the Superior Court is a fraction of one percent of the federal system (Deloitte and Data Wheel). While the defendant population in Superior Court has historically been predominately African Americans charged with non-violent, public order-type offenses (Washington Lawyers' Committee for Civil Rights and Urban Affairs), African Americans make up less than 30 percent of the defendants charged in the federal system, and drug possession and public order offenses are extremely rare in the federal system (AO). In terms of caseload volume, the Superior Court deals with about one-fifth of the new pretrial cases handled by the federal system, and more of its cases are misdemeanors or deal with traffic offenses (76 percent) than is the case in the federal system (7 percent). Felonies constitute most of the federal system docket (DC Courts) (Probation and Pretrial Services Decision Support System).

federal pretrial system and the roles of those who are part of it; (2) the changing profile of defendants charged in federal court; (3) institutional incentives leading some defendants to acquiesce to, rather than contest, pretrial detention; and (4) the potential impact of legislative reform and judicial discretion in terms of the future of federal pretrial detention.

1. The Structure of the Federal Pretrial System

In fiscal year 2017, there were 77,000 criminal filings (AO, Judicial Business of the United States Courts). That caseload is handled by a "system" that is really more of a collaboration between the judiciary, the defense bar, prosecutors, and the United States Marshals Service. Although not often thought of as part of the system, defendants, their families, and friends greatly influence how processes work and the outcomes that are achieved. Each of the participants is independent, but their actions work interactively with the others.

Judges are responsible for pretrial release determinations under 18 U.S.C. § 3142. The judges hear from the parties and consider information and recommendations from judicial employees, specifically pretrial services officers, who are responsible for gathering, verifying, and communicating information relevant to the release decision and potential alternatives to detention under 18 U.S.C § 3154 [14]

Defense attorneys "serve as the accused's counselor and advocate" and file "motions seeking pretrial release of the accused" (American Bar Association). Prosecutors are responsible for timely and just charging decisions, and for seeking detention when needed to protect individuals and the community and ensure the return of defendants for future proceedings (American Bar Association) (Department of Justice). The U.S. Marshals Service houses defendants ordered detained and executes arrest warrants for those released who violate the conditions of their release (The United States Marshals Service).

Defendants and those who know them

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[14] Courts have the option to create a separate pretrial services office or to empower its probation office to provide pretrial services. See, 18 U.S.C. § 3152. Presently, 19 judicial districts maintain a separate pretrial office. Courts are required to periodically consider consolidation of pretrial and probation offices for economic and operational efficiency (Judicial Conference of the United States). Either way, officers are subject to the same statutes, policies, and procedures. For purposes of this article, the term "pretrial services officers" is used to refer to any officer carrying out the pretrial function.

provide information relevant to the release decision; for example, they offer details about potential third-party custodians and verify residential and employment information. Without that type of information, the courts are often left with just charge and prior record information to make release determinations.

The federal system does not operate as a monolithic whole but rather through 94 judicial districts that have autonomy and discretion to deal with local issues. Once more, the different entities involved in the system have their own priorities and objectives. Needed consistency on material issues comes from adherence to the United States Constitution, federal statutes, the Federal Rules of Criminal Procedure, applicable case-law, and the principle of comity. Another melding factor is the existence of professional standards for pretrial work and organizations.

Standards in relation to making the pretrial decision making and operations have been developed by the National Institute of Corrections, Pretrial Justice Institute, National Association of Pretrial Services Agencies, and American Bar Association (Pilnik) (Pretrial Justice Institute) (National Association of Pretrial Services Agencies) (American Bar Association). The standards basically call for (1) a legal framework that supports pretrial release based on the least restrictive conditions possible; (2) release decisions that are grounded in objective assessments of defendants' risk of flight and danger to the community; and (3) the availability of meaningful alternatives to detention, especially options that are researched and "evidence-based."

The legal framework in the federal system affords defendants procedural safeguards through the Fifth Amendment of the United States Constitution[15] and protection from excessive bail under the Eighth Amendment (Department of Justice). In addition, there are statutes favoring defendants' release. For example, 18 U.S.C. §§ 3142 requires the defendant's automatic release when he or she is not charged with a particularly serious offense and

the government does not contest or meet its burden of proof showing why the defendant should be detained. Where the government does seek detention, it has the burden of proof in many cases and must demonstrate the defendant is a risk of flight by a preponderance of the evidence and show danger to the community by an even greater standard, clear and convincing (Boss).

There is an exception, however, that is growing larger than the rule in favor of release. The exception is found in 18 U.S.C. §3142(e) and flips the burden of proof for release onto the defendant when the defendant is charged with offenses said to involve violence, drugs, and sex offending. A presumption of detention also extends to some predicate felons. The "presumption was created with the best intentions: detaining the 'worst of the worst' defendants who clearly posed a significant risk of danger to the community by clear and convincing evidence. Unfortunately, it has become an almost de facto detention order for almost half of all federal cases." (Austin 61). Unfortunately, research indicates that the enumerated offenses may not be the best predictors of risk of flight or danger to the community (Austin 60). Consequently, the Judiciary has suggested that Congress reexamine the presumption provisions (Judicial Conference of the United States).

As to the standard for effective pretrial work that calls for informed and objective assessments of defendants' risk of flight and danger to the community, pretrial release decisions are made by United States magistrate judges and United States district judges. Magistrate judges are appointed to eight-year terms by the district court and, in turn, district judges are appointed by the U.S. President for a period of "good behavior," sometimes called life tenure, with consent of the United States Senate, and often after vetting by the American Bar Association (Quality Judges Initiative). By design, federal judges are not subject to the pressures of election and campaigning. In fact, they are ethically required to refrain from political activity, just as they are required to execute their duties fairly, impartially, and diligently (Judicial Conference of the United States).

The federal system has also added an empirical component to the release decision process. Specifically, pretrial services officers calculate and consider an actuarial score when fashioning a recommendation to the court. The tool, called the Pretrial Risk Assessment or "PTRA," is based on study of more than half

a million federal cases from districts across the system. The PTRA has been statistically validated and revalidated (Cadigan, Johnson & Lowenkamp); it also continues to track release rates and release outcomes very well (Graphics 6 and 7). The officers responsible for the recommendations are particularly well qualified and trained.[16]

In regard to the third test for an effective pretrial services system, the federal system is progressively adopting innovative and evidence-based interventions as alternatives to detention. The most common alternative to detention is release conditioned on supervision in the community by pretrial services officers. It is common for the supervision term to also require substance abuse testing and treatment, as well as mental health evaluation and treatment, depending on the facts of the case. Home detention, usually enforced through electronic and GPS monitoring devices, is common in higher risk cases as well. While some services are rendered directly to defendants by pretrial services officers, over the past five years the federal judiciary spent $134 million on contract services to assist defendants with basic life necessities, needed medical and addiction treatment, and employment services. Notably, those goods and services were in addition to anything defendants could have afforded on their own or that would have been available to them as ordinary members of the public.

The approach taken by pretrial services officers is inspired by the "evidence-based" Risk, Needs and Responsivity Model (Serin & Lloyd). That model, and Judicial Conference policy, calls for officers to assess defendants' strengths and weaknesses relative to their compliance with the court-ordered conditions of release. The PTRA, mentioned earlier, is one of the factors considered by officers in the assessment stage. Once the assessment is made, officers tailor programming to maximize responsivity in the defendant, which will promote a successful outcome in the case. In undertaking these efforts, officers can only operate within the conditions of release imposed by the court, must seek to minimize the burden of the intervention, and always uphold the defendant's presumption of innocence (AO, Supervision of Federal Defendants).

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[15] U.S. Const. amend. V: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

[16] Pretrial services officers average more than a decade of professional experience and at least 400 hours of related training. More than half exceed the requirement of a bachelor's degree with a master's degree or doctorate (AO).

Officers use a variety of "evidence-based techniques" in their interactions with defendants. Most relate to helping defendants acquire and use prosocial life skills with a focus on cognitive and choice awareness, recognition of the motive and influence of others, problem solving and deductive reasoning (Miyashiro) (Cadigan, 2009). The federal pretrial system continues to leverage technology and training of its staff (train-the-trainer) to maximize positive outcomes (AO Expanding Supervision Capabilities in Probation and Pretrial Services). In addition, the system is constantly studying data and monitoring outcomes in the effort to improve.

One area where, on the surface, the federal pretrial system is not following "best practices" is in use of summons rather than arrest to secure initial appearance (Pretrial Justice Institute). Although associated with a pretrial release rate of more than 90 percent in the federal system, summons were not commonly used. Instead, they were reserved for minor property, traffic, and drug possession, which are a small part of the federal docket, and typically involve defendants presenting little or no risk of flight or danger to the community.

2. The Risk Profile of Federal Defendants

The risk of flight and criminogenic profile of defendants in the federal system has steadily worsened over the years, in part because of the focus of federal prosecutions. As acknowledged by the Department of Justice, "federal law enforcement resources are not sufficient to permit prosecution of every alleged offense over which federal jurisdiction exists. Accordingly, in the interest of allocating its limited resources to achieve an effective nationwide law enforcement program, from time to time the Attorney General may establish national investigative and prosecutorial priorities" (Department of Justice). The priorities have generally focused on repeat offenders and offenses involving drug and human trafficking, violence, weapons, sex crimes, and illegal entry into the United States (Rowland). Between 1997 and 2017, the percentage of defendants charged with the crimes most associated with pretrial detention increased from 60 percent to 79 percent.[17]

There is a correlation between the nature of the charges and the use of pretrial detention. Over the past four years, the detention rates for

those charged with immigration offenses has been about 95 percent and for those charged with drug and weapons offenses 75 percent. In contrast, the detention rate for property and financial offenses has been less than 30 percent, and for offenses such as DWI even less—13 percent. The offenses with the higher detention rates make up a greater proportion of the overall federal docket; hence they contribute to the higher overall detention rate.

The high detention rate for immigration cases is in large part because the defendants have ties outside the United States and usually no verifiable connections to the district of prosecution. Therefore, the risk of flight is escalated. Moreover, even if those defendants were released pending trial, most would simply be taken into custody by U.S. Immigration and Customs Enforcement (ICE) for deportation proceedings. The percentage

FIGURE 6
Pretrial Release Rates by PTRA Risk Category
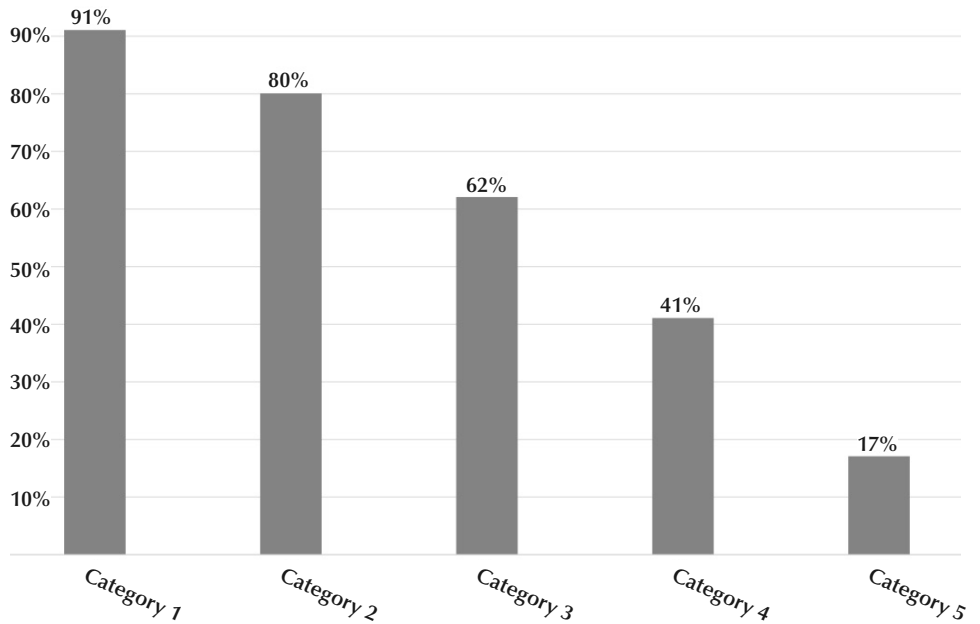
Source: AOUSC Decision Support System for Cases in the 12-Month Period Ending March 31, 2018

FIGURE 7
Pretrial Release Outcomes, Violation Rates by Type and PTRA Risk Category
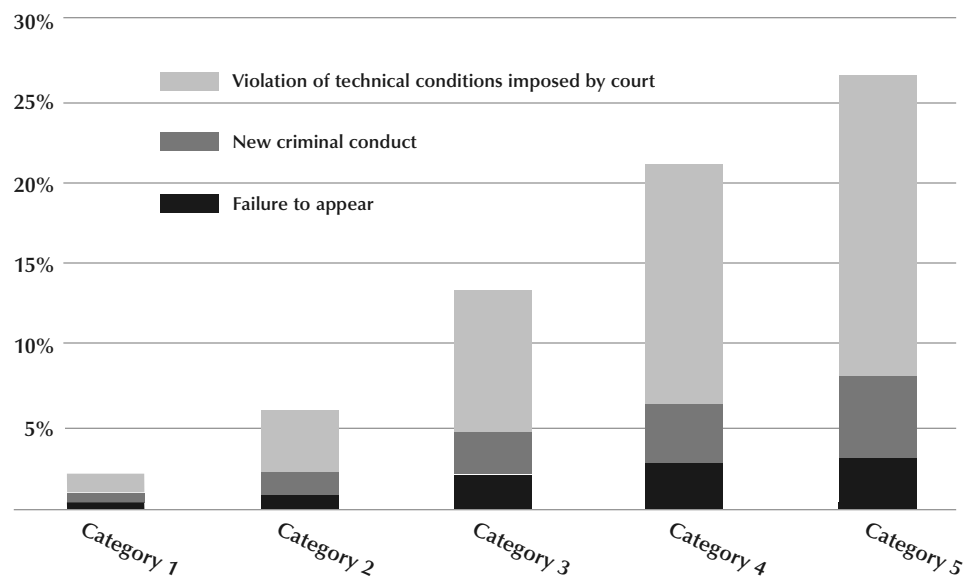
Source: AOUSC Decision Support System for Cases in the 12-Month Period Ending March 31, 2018

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[17] The offenses most associated with pretrial detention are: immigration, weapons, violence, sex offenses and drug trafficking (AO).

of defendants who are not United States citizens has increased, mirroring the overall increase in detention rate.

It is not only the type of charge brought in federal court that relates to release rates, however, but the nature of the underlying conduct. The media has expressed concern that many defendants are being incarcerated for simple possession and drug use: "[d]uring the period from 1993 to 2011, there were three million admissions into federal and state prisons for drug offenses. Over the same period, there were 30 million arrests for drug crimes, 24 million of which were for possession" (Rothwell). In the federal system, however, 91 percent of the defendants prosecuted for drug crimes in 2016 were charged with distribution-related offenses, not simple possession. Moreover, 99.5 percent of those drug offenders in federal prison were guilty of drug trafficking (Taxy, Samuels & Adams). This is not to say that federal defendants don't use or abuse drugs themselves, but it is not typically the reason they are charged federally.

In addition, the amount of drugs involved in federal offenses is usually large. Since the drug amount is a primary factor in determining the custody term under federal law, it is natural to consider it when assessing risk of flight pending trial. For every person arrested by the U.S. Drug Enforcement Administration, the agency seizes approximately 7.5 pounds of illicit drugs (Drug Enforcement Administration).

Similarly, the average loss amount in federal fraud cases is substantial. In cases where defendants are sentenced to imprisonment, the median loss is close to $800,000 (USSC, Quick Facts on Offenders in the Bureau of Prisons). Moreover, most defendants' relationship to the other contraband they are charged with, whether it be guns, child pornography, or counterfeit items, is generally substantive. Only 8 percent are considered minor or minimal participants in the offense as defined by the United States Sentencing Guidelines (USSC, Annual Sourcebook).

As noted above, immigration charges are also commonly prosecuted in federal courts. As with drug prosecutions, there are concerns that the wrong people are being targeted for immigration prosecution and treated too harshly in the process (Planas). Nonetheless, prosecutions continue, with a particular emphasis on illegal "reentry" cases, meaning people charged with repeatedly illegally entering the country (Light, Lopez &

Gonzalez-Barrera).[18] About half of the people charged with and sentenced for immigration violations have one or more prior convictions in this country countable under the sentencing guidelines (USSC, Interactive Source Book of Federal Sentencing Statistics). Of those charged with illegal reentry, prior records tend to be even more serious. Nearly three quarters of the reentry defendants received a sentencing enhancement because of the gravity of their prior criminal record. A third of those defendants had one or more prior convictions related to violence, weapons, drug trafficking, or other type of aggravated felony (USSC, Illegal Reentry Offense).

The criminal history of defendants entering the federal system globally has been worsening, in terms of prior arrests, prior convictions, and previous prison terms. This is not only because of who is increasingly targeted for criminal prosecutions but because of the nature of federal offenses themselves. Many federal crimes have as an essential element of the crime that the defendant have a prior criminal record. For example, 18 U.S.C. § 922 makes it a federal crime for convicted felons to possess a firearm, so a prior felony is a precursor to the federal crime. Similarly, the federal offense of engaging in interstate commerce after failing to register as a sex offender, a violation of 18 U.S.C. §2250, requires an existing prior sex offense conviction.

Having prior arrests is associated with higher recidivism and having prior convictions foreshadows it even more. (USSC, The Past Predicts the Future: Criminal History and Recidivism of Federal Offenders). It logically follows that it is appropriate for courts to consider the existence and nature of defendants' prior criminal record when making determinations of danger to the community at the pretrial stage. One study has found that the majority of federal defendants, 68 percent, have not just prior arrests but convictions (USSC, Quick Facts on Offenders in the Bureau of Prisons). The severity of the sentences imposed on prior criminal convictions, measured by the federal sentencing guidelines, has increased steadily over the years, going from an average of 2.82 points

per defendant in 1992 to 4.11 points in 2016. In the past 20 years, the number of defendants designated under the guidelines as "career offenders," including armed career offenders, has increased 54 percent, going from 1,368 defendants in 1997 to 2,108 defendants in 2017. The Sentencing Commission has more recently established a classification "repeat and dangerous sex offender"; in the past five years the number of defendants assigned that classification has increased 64 percent, going from 182 defendants to 298 (United States Sentencing Commission).

3. Changing Incentives for Federal Defendants in Relation to Pretrial Release

The last time sweeping criminal justice reform was enacted in the federal system was in the mid-1980s. At the time, crime rates were at record highs, concerns about the corrosive effects of cocaine epidemics were intense, and the effectiveness of rehabilitative programming was seriously in question (Harty). As a result, Congress, like many state legislatures, adopted "a tough on crime" approach. That approach included adding potential danger to the community to risk of flight as grounds for pretrial detention, presumptive pretrial detention for certain defendants perceived as particularly dangerous, increased prison time for those convicted of crimes, and limits on judicial discretion at sentencing while abolishing parole (Deaton).

The statutory provisions allowing for detention on grounds of danger to the community and the presumption of detention in certain cases had a direct impact on pretrial release rates. So too did the changes providing for increased use of imprisonment and decreased judicial discretion at sentencing. Of the defendants who reached disposition in 1980, before the "tough on crime" reform went into effect, the federal conviction rate was 78 percent, and less than half (46 percent) of those convicted were sentenced to imprisonment. The average prison term was 52 months, but with parole and more generous good behavior rules many served one-third of their custody term or 17 months on average (AO) (Sabol & McGready).

By 2000, when the tough on crime approach was in full swing, the conviction rate had climbed 11 percentage points, imprisonment was part of the sentence for 9 out of 10 those convicted, and the average prison term imposed increased by 5 months (AO); defendants had to serve at least 85 percent of

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[18] Jose Ines Garcia Zarate is one of the more well publicized cases of a repeat immigration violator. A Mexican native, he had seven drug and immigration prior felony convictions in the United States. He was deported to Mexico five times and was facing a sixth when a jury found that he possessed a stolen firearm and had accidentally shot and killed a tourist in San Francisco (Jose Ines Garcia Zarate Wiki: The Death of Kate Steinle).

their time regardless of their behavior while an inmate, and regardless of the risk they presented for recidivism.

The increased likelihood that they will be convicted and sentenced to prison and for a longer period creates a practical dilemma for federal defendants. The time spent by a defendant in pretrial detention is credited, under 18 U.S.C. § 3585(b), against any imprisonment term to be imposed in the case. Consequently, defendants can get a proverbial head start on a likely prison term and avoid the emotional trauma of having to leave their family not once but twice—staying in custody following original arrest. Another consideration for defendants is that Bureau of Prisons institutions, where most federal custody terms are served, are dispersed across the United States. This may mean that defendants will be separated from family and friends, as well as legal counsel, by hundreds of miles—if not more (Vigne) (Arons, Culver & Kaufman). Pretrial detention facilities, in contrast, tend to be closer to the district of prosecution and presumably to defendants' homes, making it easier for defendants to retain ties.

Defendants' involvement with the pretrial report process is voluntary, and they can decline to be interviewed by pretrial services officers (Criminal Justice Standards Committee). In fact, the percentage of defendants not interviewed by pretrial services has increased steadily over the years, nearly doubling to 44 percent of defendants between 1997 and 2016. In addition, it has become common for defendants who are interviewed to decline to answer specific questions that they fear may incriminate them or otherwise be detrimental to their interests.

4. Emerging Trends in the Federal Pretrial System

The federal pretrial system prides itself on upholding the presumption of innocence, despite the reality that the vast majority of defendants will ultimately plead guilty and be sentenced to imprisonment. One adjustment made in many judicial districts is the creation of voluntary pretrial programs offering defendants and their loved ones information on how the federal criminal justice system works and strategies on how to best manage the stress of prosecution (U.S. Probation Office for the District of Wyoming). Some jurisdictions, again recognizing the high conviction and imprisonment rate, have expanded to "preentry programs."

A more recent phenomenon, as judges have

been afforded more discretion at sentencing (with the guidelines now being advisory rather than binding), is for courts to support sentencing mitigation programs. In all, 24 districts now have formal judge-involved intervention and treatment programs, with even more informal programs of various sizes. For example, the pretrial services office in the Eastern of New York maintains various programs for different types of defendants in different situations and with varying needs (Pretrial Services Office, Eastern District of New York).

Conclusion

Structurally, the federal system has the hallmarks of a quality pretrial program. The system is led by qualified and independent judges who consider recommendations from talented defense attorneys and prosecutors. The court also has the support of an agency that has specific authority on pretrial matters and provides a range of detention alternatives. Why then has the federal pretrial detention rate increased? The answer seems to rest on a combination of factors, including "tough on crime" federal statutes, severity of the crimes prosecuted in federal court, the increased risk of flight and danger to the community, and strategic choices by defendants and their attorneys not to engage in the pretrial process.

Courts are innovating in light of broader sentencing discretion afforded judges, and sentencing mitigation, preentry, and preparation programs are developing in a pretrial context. Also, Congress has been considering criminal justice reform that may directly impact pretrial release rates. So is it possible that federal pretrial release trends will change, and more people will be released without compromising community safety or impeding justice? Time will tell.

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Revalidating the Federal Pretrial Risk Assessment Instrument (PTRA): A Research Summary

Thomas H. Cohen[1]
Christopher T. Lowenkamp
William E. Hicks
Probation and Pretrial Services Office
Administrative Office of the U.S. Courts

AFTER A PERSON is arrested and accused of a crime in the federal system, a judicial official must determine whether the accused person (that is, the defendant) will be released back into the community or detained until the case is disposed (American Bar Association, 2007). The decision to release or detain a defendant pretrial represents a crucial component within the criminal justice process (Eskridge, 1983; Goldkamp, 1985). In addition to curtailing a defendant's liberty, the decision to detain a defendant pretrial can potentially affect case outcomes by increasing the likelihood of conviction, the length of an imposed sentence, and the probability of future recidivism (Heaton, Mayson, & Stevenson, 2017; Lowenkamp, VanNostrand, & Holsinger, 2013; Oleson, VanNostrand, Lowenkamp, Cadigan, & Wooldredge, 2014). Given the importance of the pretrial release

decision, the process is increasingly being informed by actuarial risk instruments capable of assessing a defendant's risk of pretrial misconduct involving missed court appearances or threats to public safety (Bechtel, Lowenkamp, & Holsinger, 2011). This has particularly been the case in the federal system, which has adopted the Pretrial Risk Assessment Instrument (hereafter, PTRA) to assess a defendant's likelihood of engaging in pretrial misconduct involving missed court appearances, pretrial revocations, or rearrests for new criminal activity (Cadigan & Lowenkamp, 2011; Cadigan, Johnson, & Lowenkamp, 2012; Lowenkamp & Whetzel, 2009).

The PTRA is an actuarial risk assessment instrument used by federal officers to assess a defendant's likelihood of engaging in several forms of pretrial misconduct, including failing to make court appearances, committing criminal activity that results in a new rearrest, or having a revocation while on pretrial release (Cadigan & Lowenkamp, 2011; Cadigan et al., 2012; Lowenkamp & Whetzel, 2009). Implemented in fiscal year 2010, the PTRA has nearly universal usage rates. Since the PTRA is being extensively used in the federal pretrial system, ongoing and comprehensive research is required to ensure its validity. Although the PTRA was re-validated five years ago on a relatively small sample of released defendants (n = 5,077), with actual officer-completed PTRA assessments (Cadigan et al., 2012), a

revalidation of the PTRA is necessary to assess this instrument's predictive performance on a substantially larger population of federal defendants who received PTRA assessments during the course of their pretrial investigations. In addition, it is necessary to examine whether the PTRA predicts specific forms of pretrial violation outcomes, such as rearrests for any or violent criminal activity, pretrial revocations, or missed court appearances.

This report provides a synopsis of key findings from a longer study examining the PTRA's predictive efficacy, which has been accepted and will be published by *Criminal Justice and Behavior* (see Cohen & Lowenkamp, in press). It sought to revalidate the PTRA on a large national sample of released federal defendants with actual PTRA assessments. The revalidation component primarily assessed the PTRA's overall accuracy in predicting any forms of pretrial violations (e.g., any adverse events) as well as its capacity to predict specific pretrial violations, including new criminal rearrests for any or violent offenses, missed court appearances, and pretrial revocations. The prediction of rearrest activity is especially important because we relied on official rap sheets rather than data entered into the Administrative Office of the U.S. Courts (AO's) case management system by pretrial officers (e.g., the Probation and Pretrial Services Automated Case Management System or PACTS for short), to assess the frequency of rearrest activity among the released

[1] Thomas H. Cohen, Social Science Analyst, Christopher T. Lowenkamp, Social Science Analyst, and William E. Hicks, Probation Administrator, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts, Washington, D.C. This publication benefited from the careful editing of Ellen W. Fielding. Direct correspondence to Thomas H. Cohen, Administrative Office of the U.S. Courts, One Columbus Circle, NE, Washington, D.C. 20544. (email: thomas_cohen@ao.uscourts.gov). A longer version of this paper has been accepted by the peer-reviewed journal *Criminal Justice and Behavior* (See Cohen & Lowenkamp, in press). Readers interested in the longer version of this report should contact the authors for more information.

federal pretrial population. Last, this report will briefly address the PTRA's capacity to predict pretrial violations across racial and ethnic groups and for males and females.

Before delving into these issues, a brief overview of risk assessment in the federal pretrial system and the PTRA is provided for background purposes. Afterwards, study methods will be detailed and principal findings presented. The study will conclude by discussing implications for the federal pretrial system and for officers charged with making release/detention recommendations.

Risk Assessment in the Federal Pretrial System

In the federal system, pretrial and probation officers play a major role assisting judicial officials with the pretrial release decision under the auspices of the Pretrial Services Act of 1982 (18 U.S.C. §3152) (AO, 2015; Lowenkamp & Whetzel, 2009). This legislation established pretrial services agencies within each federal judicial district (with the exception of the District of Columbia) and authorized federal pretrial and probation officers to collect, verify, and report on information pertaining to release decisions, make recommendations on the release decision, supervise released defendants, and report instances of noncompliance to the U.S. Attorney and federal courts (Lowenkamp & Whetzel, 2009; VanNostrand & Keebler, 2009). The officer's authority to investigate a defendant's background in the bail decision was further expanded by the Bail Reform Act of 1984 (hereafter, the 1984 Act) (18 U.S.C. §3141 – 3150). This act required federal officers and the courts to consider a defendant's dangerousness or threat to the community safety, in addition to flight risk, when making pretrial release decisions (18 U.S.C. §3141 – 3150) (AO, 2015; Cadigan et al., 2012; Goldkamp, 1985; Lowenkamp & Whetzel, 2009; VanNostrand & Keebler, 2009). Last, the 1984 Act identified several factors federal courts should consider when making pretrial release/detention decisions (AO, 2015; Cadigan et al., 2012; Lowenkamp & Whetzel, 2009; VanNostrand & Keebler, 2009).[2]

The use of an actuarial pretrial risk assessment tool in the federal system was initiated when the Office of the Federal Detention Trustee (OFDT), an agency within the U.S. Department of Justice responsible for administering and controlling the cost of pretrial detention within the federal system with support from the AO, sponsored a study to "identify statistically significant and policy relevant predictors of pretrial risk outcome [and] to identify federal criminal defendants who are most suited for pretrial release without jeopardizing the integrity of the judicial process or the safety of the community …." (VanNostrand & Keebler, 2009: 1). One of the major recommendations of this study was that the federal system develop and implement an actuarial risk tool that could be used to inform pretrial release and detention decisions (Cadigan et al., 2012; VanNostrand & Keebler, 2009). As a result, the federal Probation and Pretrial Services Office (PPSO) within the AO constructed, validated, and ultimately implemented the PTRA.

The Federal Pretrial Risk Assessment (PTRA) Tool

The development and implementation of the PTRA is well documented (see Cadigan & Lowenkamp, 2011; Cadigan et al., 2012; Lowenkamp & Whetzel, 2009). In summary, the PTRA was constructed using the same archival data employed in the OFDT study (Cadigan et al., 2012). Specifically, construction and validation samples comprising about 200,000 federal defendants released pretrial from fiscal years 2001 through 2007 were used to construct a risk instrument capable of predicting a released defendant's risk of failure to appear, rearrests for new criminal activity, or pretrial revocation (Cadigan et al., 2012; Lowenkamp & Whetzel, 2009).

Using regression modeling techniques, 11 items were identified and incorporated into the PTRA risk scoring algorithm (Cadigan et al., 2012; Lowenkamp & Whetzel, 2009). These items include factors measuring a defendant's criminal history, instant conviction offense, age, educational attainment, employment status, residential ownership, substance abuse problems, and citizenship status.[3] Weights for these items were calculated based on the magnitude of the bivariate relationship between the selected factors and the pretrial violation outcomes mentioned above and ranged from zero to three points, depending upon the item being scored. Ultimately, this process resulted

in a risk-scoring algorithm that generated raw scores for each defendant ranging from 0 to 15 that were further grouped through visual inspection and confirmation of best fit into the following five risk categories: PTRA one (scores 0 – 4), PTRA two (scores 5 – 6), PTRA three (scores 7 – 8), PTRA four (scores 9 – 10), or PTRA five (scores 11 or above) (Lowenkamp & Whetzel, 2009). Both the initial validation and revalidation studies showed the PTRA successfully differentiating defendants by their risk of garnering pretrial violations involving failure to appear, new criminal rearrests, and pretrial revocations (Cadigan & Lowenkamp, 2011; Lowenkamp & Whetzel, 2009).

While these studies show the PTRA serving as an adequate predictive mechanism, as is the case with any risk assessment, ongoing validation is required, as is investigating the instrument's validity with subpopulations of interest. The last PTRA re-validation occurred five years ago and was done on a small sample of released federal defendants (n = 5,077) with actual officer-completed PTRA assessments (Cadigan et al., 2012). In addition, to date there has been no published research on the PTRA's capacity to predict violent crimes or its predictive validity across race, sex, or ethnic subpopulations. Moreover, prior research efforts relied on officer-imputed rearrest data entered into PACTS rather than on rearrest activity extracted from official rap sheets.

Present Study

In the present study we will evaluate the PTRA's predictive efficacy by primarily exploring its capacity to predict any forms of pretrial violations (e.g., any adverse events) as well as its abilities to predict specific forms of pretrial violations, including rearrests for any or violent criminal activity, missed court appearances, or pretrial revocations among a national population of federal defendants released pretrial. We will also briefly detail whether the PTRA predicts pretrial violation outcomes equally well across racial, ethnic, and sex groups.

Participants

The sample used to assess the PTRA's overall predictive validity was drawn from a larger population of 222,296 defendants who received PTRA assessments as part of their pretrial intake process between November 2009, when the PTRA was deployed in the federal system, and September 2015. This initial population included any defendants with

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[2] The factors include information relating to a defendant's (1) background; (2) residence; (3) family ties; (4) employment history; (5) substance abuse; and (6) criminal history (AO, 2015); see also 18 U.S.C. §3141 – 3150 for a detailed list of factors courts should consider.

[3] For a detailed description of the PTRA risk factors, see Lowenkamp and Whetzel (2009). Note that many of these items are used by other pretrial risk assessments (see Bechtel et al., 2011; LJAF, 2013).

TABLE 1.
Descriptive statistics of federal defendants in study sample

Variable	n	% or mean
Race		
White, not Hispanic	35,581	42.8%
Black, not Hispanic	21,228	25.6
Hispanic, any race	20,112	24.2
Other race/a	6,170	7.4
Gender		
Male	61,200	71.7%
Female	24,161	28.3
Citizenship		
U.S. citizen	73,601	86.8%
Naturalized U.S. citizen	4,802	5.7
Citizen of another country	6,406	7.6
PTRA risk categories		
One	28,033	32.8%
Two	24,017	28.1
Three	20,992	24.6
Four	9,836	11.5
Five	2,491	2.9
Average age (in years)	85,356	37.8
Average PTRA raw score	85,369	5.8
Time on pretrial release (in months)	85,335	11.3
Average number of defendants	85,369	

Note: Includes federal defendants released pretrial with PTRA assessments occurring between fiscal years 2010 - 2015.
a/Other race includes Asians, Pacific Islanders, and Native Americans.

PTRA assessments regardless of whether they were released or detained pretrial. Defendants were deemed eligible for this study if they (1) were released pretrial so that we could track their pretrial violation outcomes (n lost = 111,400 defendants); (2) no longer had a case in an opened status, ensuring a complete measure of defendant violation activity while in the release phase (n lost = 24,376 defendants); and (3) had an actual PTRA assessment date for the purpose of tracking time while on pretrial release (n lost = 1,151 defendants). Using these criteria yielded a pool of 85,369 defendants that could be used to evaluate the PTRA's predictive validity.

Table 1 provides a descriptive overview of defendants in the PTRA validation sample. About two-fifths of the study population (43 percent) comprised non-Hispanic whites,

while blacks (26 percent) and Hispanics of any race (24 percent) accounted for similar portions of defendants. Males accounted for 72 percent of the study population, and the average defendant age was about 38 years. The majority of defendants in the study population (93 percent) were either U.S. born or naturalized citizens; a fact that should not be too surprising given that nearly all non-citizens are detained pretrial. Around 61 percent of defendants were classified into the lower PTRA risk categories (e.g., PTRA ones and twos), 25 percent were deemed moderate risk (PTRA threes), and the remaining 15 percent were placed into the higher PTRA risk groups (e.g., PTRA fours or fives). Furthermore, the average PTRA score was 5.8, with a range of zero to 15 points.

Measures of Risk

The PTRA's history, development, and risk-scoring scales have been discussed in other sections of this paper and detailed in prior research (see Cadigan & Lowenkamp, 2011; Cadigan et al., 2012; Lowenkamp & Whetzel, 2009). To briefly reiterate, the scores generated from the PTRA range from 0 to 15 and are used to place defendants into five different risk categories. For purposes of this study, we assess how the total PTRA scores and five categories perform in terms of risk prediction. We do not gauge this instrument's predictive capacities at the individual item or domain level.

Measuring Pretrial Violations

For the section of this study focused on validating the PTRA's overall predictive efficacy, we examine whether this instrument effectively predicts rearrests for new offenses, rearrests for violent offenses, pretrial revocations, or failure to appears (e.g., FTAs). Pretrial revocations involve the removal of a defendant on pretrial release because of rearrests for new criminal activity or technical violations of release conditions, while FTAs imply the failure to show up to court for a designated hearing. Both violation outcomes were extracted from PPSO's internal case management database (hereafter, PACTS). Conversely, rearrests for new criminal activity were obtained from the National Crime Information Center (NCIC) and Access to Law Enforcement System (ATLAS). ATLAS is a software program used by the AO that provides an interface for performing criminal record checks through a systematic search of official state and federal rap sheets (Baber 2010). The ability to access and use official

rap sheets represents a break from previous PTRA validation studies (see Cadigan & Lowenkamp, 2011; Cadigan et al., 2012; Lowenkamp & Whetzel, 2009) where the pretrial rearrest data were entered into the federal case management system by pretrial officers.

Pretrial rearrests are defined to include arrests for either a felony or misdemeanor offenses (excluding arrests for technical violations) between the time of pretrial release and case closure. In addition to measuring any rearrests, we also identified rearrests for violent offenses committed during the pretrial release phase. For violent rearrests, we used the definitions from the NCIC, which include homicide and related offenses, kidnapping, rape and sexual assault, robbery, and assault (Lowenkamp, Holsinger, & Cohen, 2015). One issue with using rap sheet data involved our inability to distinguish events involving self-surrenders to federal officials from actual rearrests by federal officials resulting from new criminal activity. This is a problem in the federal pretrial arena, where defendants on pretrial release will often self-surrender to federal officials after case adjudication and sentence imposition. The inability to separate out these surrenders from rearrests meant that we could only count those pretrial rearrests involving state or local law enforcement entities.

In addition to modeling individual pretrial violation events, we investigated the PTRA's capacity to predict a combination of various pretrial outcomes, including outcomes involving any forms of adverse events: pretrial revocations, rearrests, or FTAs (i.e., any adverse event), or a combined outcome involving new pretrial rearrests or FTAs (i.e., new rearrest/FTA). We modeled these aggregated forms of violation activity to construct an instrument capable of predicting any form of pretrial misconduct as well as outcomes that fell outside technical violations of pretrial special conditions (Cadigan & Lowenkamp, 2011; Cadigan et al., 2012; Lowenkamp & Whetzel, 2009).

Table 2 presents information on the percentage of released federal defendants with pretrial violations between their release and case closed dates. Overall, about 14 percent of released defendants committed some form of pretrial violation—meaning they were revoked, rearrested, or had an FTA—during their time while on pretrial release. About 6 percent of released defendants garnered a new criminal arrest for any offense and 1 percent were arrested for violent offenses. Approximately 2 percent of released federal

defendants missed their court appearances, and a combined 8 percent of released defendants were either rearrested for a new offense or failed to appear.

Analytical Plan

In order to test for the PTRA's overall predictive capacities, we calculated descriptive statistics and measures of predictive validity (e.g., AUC-ROC scores). In the risk assessment literature, the Area Under the Receiver Operating Characteristic Curve (AUC-ROC) score measures the probability that a score drawn at random from one sample or population (e.g., a recidivist's score) will be higher than that drawn at random from a second sample or population (e.g., a non-recidivist score). The AUC can range from .0 to 1.0, with .5 representing the value associated with chance prediction. Minimum AUC-ROC scores of .56, .64, and .71 correspond to "small," "medium," and "large" effects, respectively (Rice & Harris, 2005). The AUC-ROC provides an accepted gauge of an instrument's predictive accuracy, in part because these scores, unlike correlations, are not influenced by low base rates (Babchishin & Helmus, 2016). This is especially important for the current study, where the base rates for certain pretrial violation outcomes such as violent rearrests or FTAs are particularly low.

Results

We examine the PTRA's overall predictive efficacy for all released defendants in the sample (n = 85,369). Figure 1 presents information on the percentage of released defendants committing pretrial violations involving any adverse events, pretrial revocations, a combined new criminal rearrest, or FTA, or new criminal rearrests for any offenses across the five PTRA risk categories. Results from Figure 1 show that the PTRA effectively predicts pretrial violations irrespective of whether the outcome of interest involves revocation from pretrial release, rearrest for any felony or misdemeanor offenses, or a combination of these outcomes. For example, the percentage of defendants with any adverse events—meaning they had a revocation, new criminal rearrest, or FTA—while on pretrial release increased in the following incremental fashion by PTRA risk category: 5 percent (PTRA ones), 11 percent (PTRA twos), 20 percent (PTRA threes), 29 percent (PTRA fours), and 36 percent (PTRA fives). These results were in the anticipated direction of higher failure rates for each increase in risk classification.

Similar patterns were revealed for the PTRA's capacities to predict specific forms of pretrial violations, including rearrests for any offenses or pretrial revocations. For instance, defendants rearrested for any offenses while on pretrial release amounted to 3 percent of PTRA ones, 5 percent of PTRA twos, 9 percent of PTRA threes, 13 percent of PTRA fours, and 17 percent of PTRA fives. The percentage of defendants with pretrial revocations or with a combined new criminal rearrest/FTA manifested similar patterns of increases by PTRA risk categorization.

Figure 2 presents information by PTRA risk category on the percentage of released defendants rearrested for violent offenses or who failed to appear. These violent rearrests and FTAs are presented separately because their base rates are relatively low. Though only 1 percent of defendants were rearrested for violent offenses while on pretrial release, the violent arrest rates climbed incrementally by risk category: Starting at 0.3 percent for PTRA ones, the violent rearrest rates increased to 0.7 percent for PTRA twos, 1.3 percent for PTRA threes, 2.1 percent for PTRA fours, and then 2.9 percent for PTRA fives. The percentage of defendants with FTAs also had similar patterns of increasing failure rates by PTRA risk categorization.

In addition to examining failure rates by risk category, an overview of the AUC-ROC scores in figures 1 and 2 shows them ranging from .67 to .73 for the FTA (.67), any rearrests (.68), violent rearrests (.69), combined rearrest/FTA (.68), any adverse events (.71), or pretrial revocations (.73) outcomes. These scores mean that the PTRA provides "good" to "excellent" predictive capacities for these specific types of pretrial violations (Desmarais & Singh, 2013).

The relationship between each raw PTRA score—rather than risk categories—and pretrial violations encompassing any adverse events, rearrests for felony or misdemeanor

TABLE 2.
Percent of released federal defendants with pretrial violations, by violation type

Violation types	Percent of released defendants with pretrial violations
Any adverse events	13.8%
Pretrial revocation	8.1
New arrest or FTA	7.8
Arrests any offense	6.4
Arrests violent offenses	1.0
Failure to appear	1.7
Number of defendants	85,369

Note: Any adverse event includes pretrial violations involving new criminal arrests, failure to make court appearances, or pretrial revocations.
Specific failure events (e.g., new criminal arrest, pretrial revocation, etc.), will not sum to any adverse event total as defendants can experience multiple violation types simultaneously.

FIGURE 1
Pretrial Risk Assessment (PTRA) failure rates involving any adverse events, pretrial revocations, new criminal arrests, or combination of new criminal arrests/failure to appear, by risk level
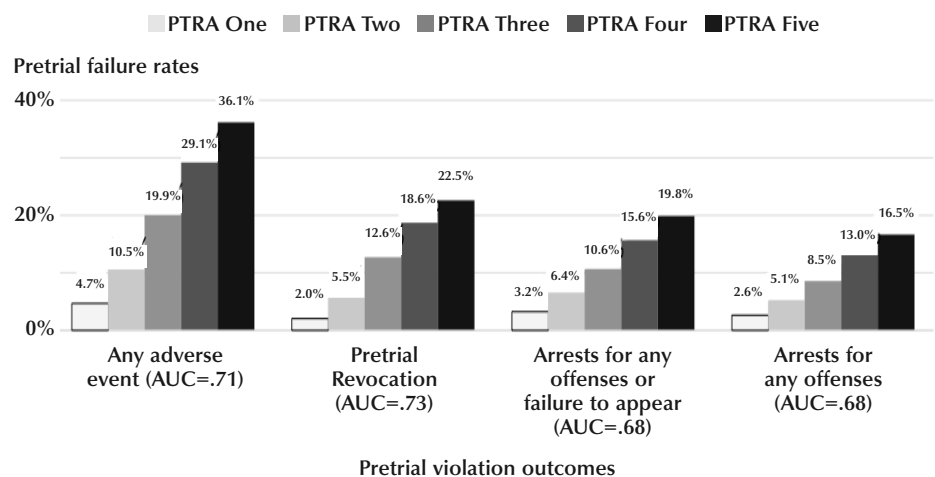
Note: PTRA = Pretrial risk assessment instrument risk classification. AUC = Area under the receiver operating characteristic curve. Any adverse event includes pretrial violations involving new criminal arrests, failure to make court appearances, or pretrial revocations. Specific failure events (e.g., new criminal arrest, pretrial revocation, etc.), will not sum to any adverse event total as defendants can experience multiple violation types simultaneously.

offenses, pretrial revocations, or a combined rearrest/FTA outcome are provided in Figure 3.[4] In this figure, the rates of pretrial failure

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[4] The FTA and rearrest rates for violent offenses are not shown in Figure 3 because of the very low base rates for these outcomes. See Figure 4 for an examination of the FTA or violent rearrest rate by raw PTRA scores.

involving these specific types of violations are shown to increase with each one-point increase in the PTRA scores. This pattern is particularly evident for pretrial outcomes involving any form of adverse events or rearrests/FTAs. While the percentage of defendants rearrested for new offenses increases gradually by each

FIGURE 2
Pretrial Risk Assessment (PTRA) failure rates involving arrests for violent offenses or failure to appear (FTA), by risk level

Note: PTRA = Pretrial risk assessment instrument risk classification. AUC = Area under the receiver operating characteristic curve.

FIGURE 3
Percentage of federal defendants with pretrial violations involving any adverse events, pretrial revocations, new criminal arrests, or combination of new criminal arrest or failure to appear, by individual Pretrial Risk Assessment (PTRA) scores

Note: Defendants with PTRA scores above 13 were recoded into a score of 13 as there were not enough released defendants with PTRA scores above 13 (N= 19) to produce statistically reliable estimates.
PTRA = Pretrial risk assessment instrument individual score. Any adverse event includes pretrial violations involving new criminal arrests, failure to make court appearances, or pretrial revocations. Specific failure events (e.g., new criminal arrest, pretrial revocation, etc.) will not sum to any adverse event total as defendants can experience multiple violation types simultaneously.

point score, it briefly flattens out between PTRA scores 11 and 12 before increasing again. For pretrial revocations, the pattern is one of increasing revocation rates until the PTRA score of 12 is reached; afterwards, the revocation rates declined slightly from 24 percent to 22 percent. It should be noted that defendants with PTRA scores of 13 or above were recoded into PTRA 13s, as there were relatively few defendants with these very high PTRA scores (n= 19) to produce statistically reliable estimates.

Given the low base rates for FTAs and rearrests for violent offenses, the relationship between these pretrial outcomes and the individual PTRA scores is shown in Figure 4. In a pattern mirroring the more common types of pretrial violations, the percentage of defendants who failed to appear or were rearrested for violent criminal behavior for the most part increases incrementally with each one-point increase in the PTRA score. There are some minor exceptions to these patterns: For instance, the FTA rate decreases slightly for defendants with PTRA scores of 0 or 1 before increasing again; moreover, the violent rearrest rates are essentially the same for defendants with PTRA scores of 1/2 and 5/6. Despite these exceptions, the general results even for these low base-rate events is one of gradual increases in the violation rates coinciding with increasing PTRA scores.

Another way of illustrating the PTRA's predictive capacities is to examine the odds of success, rather than the failure rates, for each of this instrument's risk categories. Table 3 presents information on the odds of success across the PTRA risk classification groups. In this table, only selected violation outcomes (i.e., any adverse events, combination of new criminal arrests or FTA, and new criminal arrests) are shown. The odds of success are interpreted as the odds of success occurring to the odds of success not occurring. Although the odds of success during pretrial release decline when moving from one risk category to the next, even for the highest risk category (e.g., PTRA fives), the odds of a defendant successfully completing his or her release term are either 2 to 1, 4 to 1, or 5 to 1, depending upon the violation outcome being examined. For the lowest risk defendants (PTRA ones), the odds of success range from 20 to 1 when analyzing any adverse events to 37 to 1 when focusing solely on arrests for any offenses. Even among PTRA threes, the odds of success range from 4 to 1 for any adverse event outcome to 11 to 1 for the new criminal

arrest outcome.

In addition to illustrating the PTRA's general predictive capacities, we briefly summarize the PTRA's capacity to predict pretrial violations across several demographic categories.[5] Specifically, we find that the PTRA can successfully predict pretrial violations irrespective of a defendant's race, ethnicity, or sex. This finding is demonstrated by the fact that as the PTRA risk scores increase, so too does the likelihood of pretrial rearrest, and this pattern holds for whites, blacks, Hispanics, males, and females. For example, an analysis assessing the relationship between new criminal rearrests and the PTRA across matched samples of non-Hispanic white and black defendants indicates that the PTRA operates similarly for these two groups of defendants. In other words, there were similar patterns of incremental increases in the criminal rearrest rates by PTRA risk category for both non-Hispanic white and black defendants. Comparable patterns were manifested when examining the pretrial rearrest rates for non-Hispanic whites and Hispanics and males and females across the PTRA risk categories.

Conclusion and Implications

The current study sought to examine the PTRA's capacity to predict pretrial violations among federal defendants as well as to investigate the instrument for predictive biases across defendant demographic characteristics. Findings from this research show that the PTRA performs well in predicting violations in general, including any adverse pretrial events and a combined new criminal rearrest or FTA outcome. Moreover, the current study demonstrates that the PTRA can adequately predict specific types of pretrial violations, including rearrests for any or violent offenses, FTAs, or pretrial revocations.

The importance of this risk assessment's capacity to predict new criminal rearrests should not be understated. When the PTRA was initially developed, it relied on rearrest data entered by federal officers into the AO's probation and pretrial services case management system (PACTS); rearrest data generated from official rap sheets were not used to measure pretrial recidivism activity. Unlike previous PTRA validation studies, this research used official rap sheets and,

even with changes on how rearrest activity was measured and tracked, it found that the instrument accurately predicted rearrests for new criminal behavior. Moreover, the instrument performed well in predicting violence, which had not previously been examined in the PTRA validation research.

It is remarkable and worth noting that the one score generated by the PTRA can predict these different types of pretrial outcomes. Recent developments in pretrial risk assessment have shifted towards the development of specific scales that maximize the prediction of different outcomes such as new criminal arrests or FTA (LJAF, 2016). However, it might be that the simplicity of a single score, the

relative accuracy in predicting various outcomes with a single score, and the limitations of data available for scale construction and administration make single score assessments a continued viable option. In addition to general prediction, this research demonstrates that the PTRA can predict violations irrespective of defendant's race, ethnicity, and sex. These findings are supportive of a growing literature showing that risk instruments like the PTRA can be used to assess recidivism risk and inform criminal justice decisions without exacerbating biases in the criminal justice system (Skeem & Lowenkamp, 2016; Skeem, Monahan, & Lowenkamp, 2016).

Over the past several years, the

FIGURE 4

Percentage of federal defendants with pretrial violations involving arrests for violent offenses or failure to appear, by individual Pretrial Risk Assessment (PTRA) scores

Pretrial failure rates
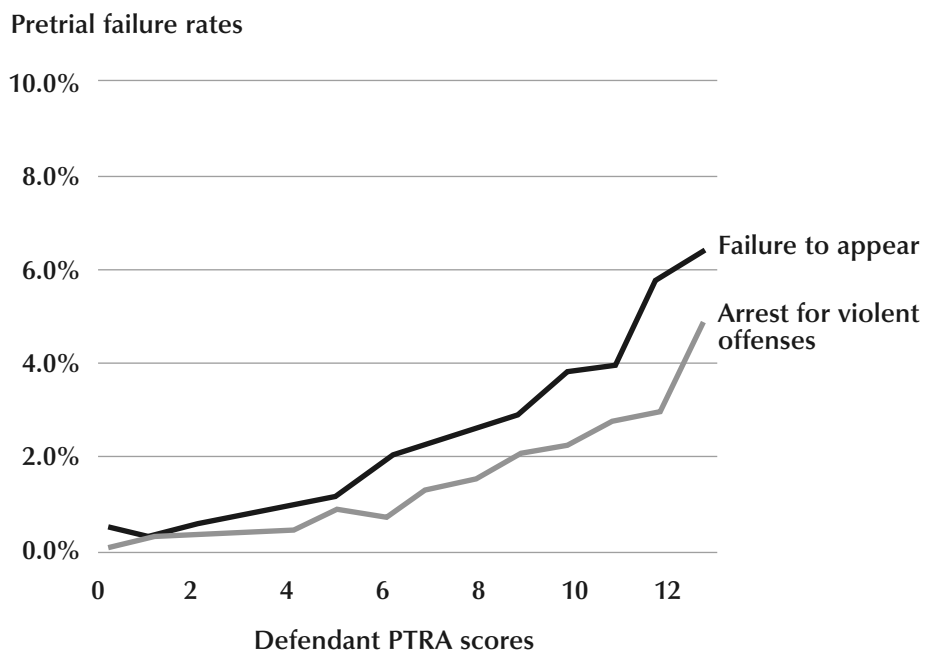
Note: Defendants with PTRA scores above 13 were recoded into a score of 13 as there were not enough released defendants with PTRA scores above 13 (N= 19) to produce statistically reliable estimates. PTRA = Pretrial risk assessment instrument individual score.

TABLE 3.

Odds of pretrial success for selected violation types by Pretrial Risk Assessment (PTRA) categories

PTRA risk categories	Number of defendants	Any adverse event	Arrests for any offenses or failure to appear	Arrests for any offenses
PTRA One	28,033	20:1	30:1	37:1
PTRA Two	24,017	9:1	15:1	18:1
PTRA Three	20,992	4:1	8:1	11:1
PTRA Four	9,836	2:1	5:1	7:1
PTRA Five	2,491	2:1	4:1	5:1

Note: Any adverse event includes pretrial violations involving new criminal arrests, failure to make court appearances, or pretrial revocations.

[5] For a more in-depth discussion of the PTRA's capacity to predict pretrial violations outcomes between non-Hispanic whites and blacks, non-Hispanic whites and Hispanics, and males and females, see Cohen and Lowenkamp (in press).

federal pretrial system has experienced steady increases in overall detention rate. The potential influence officers can have on lowering the pretrial detention rate while producing positive outcomes should not be underestimated. Under 18 USC §1354, federal pretrial officers are required to collect, verify, and report to judicial officials on information pertaining to a defendant's flight risk and potential danger to the community and include in their reports recommendations for release or detention, and the special conditions associated with release recommendations. This report clearly shows that the PTRA should be one of the key tools officers rely on when assessing risk and making recommendations on whether a defendant should be released or detained pretrial.

When the PTRA was originally introduced, there was some hesitancy among officers to accept the tool as part of the process of making informed released/detention decisions. As late as 2014, only half of PTRAs were completed prior to the initial judicial decision to release or detain a defendant. Beginning in 2014, the AO initiated a program to reduce unnecessary detention by increasing its efforts to provide education to its stakeholders regarding the appropriate use and interpretation of the PTRA. Part of this outreach involved receiving feedback from judges, officers, and other stakeholders about the PTRA's purposes and capacities. Through these efforts, more officers are now using the PTRA prior to the initial release decision; at present, about 75 percent of PTRAs are being completed before the judicial decision on pretrial release.

This revalidation study is part of the AO's continued efforts to reduce unnecessary detention by providing updated data on the PTRA's capacity to predict pretrial success and/or failures. These findings support the contention that officers can and should use the PTRA to gauge a defendant's likelihood of committing pretrial recidivism and hence apply this instrument when making release recommendations. In fact, the results of this study should empower officers to confidently rely upon the tool and use it in conjunction with a thorough pretrial investigation and their own judgment to develop informed decisions.

When Congress enacted §3142(c), it directed that federal judicial officials make pretrial release decisions in a manner that "reasonably assures" that released defendants make all future court appearances and not threaten community safety. While "reasonable assurance" can be a somewhat elastic concept, this research makes clear that the PTRA can be used to empirically assess the odds of pretrial failure and assist judicial officials in making release decisions based on evidence and data. The finding that defendants on the lower or middle end of the PTRA risk scale have a 20 to 1, 9 to 1, or even 4 to 1 probability of pretrial success supports the position that judicial officials and pretrial services officers should weigh these odds against the decision to incarcerate persons charged with but not convicted of a crime (Lowenkamp & Whetzel, 2009). Ultimately, we believe that the PTRA can be used as a mechanism to help court officials better understand these odds of pretrial success and facilitate scientifically based release/detention decisions and pretrial supervision strategies.

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Federal Statutes

Bail Reform Act of 1984, 18 U.S.C. §§ 3141-3150

Functions and Powers Relating to Pretrial Services, 18 USC §§ 1354

Pretrial Services Act of 1982, 18 U.S.C. §§ 3152.

Overview of Federal Pretrial Services Initiatives from the Vantage Point of the Criminal Law Committee

Stephen E. Vance
Chief, Criminal Law Policy Staff
Probation and Pretrial Services Office
Administrative Office of the United States Courts

THE JUDICIAL CONFERENCE of the United States was created by Congress in 1922 to make national policy for the administration of the federal courts, including the probation and pretrial services system.[1] One of its committees, the Criminal Law Committee, reviews issues relating to the administration of the criminal law and oversees the federal probation and pretrial services system. This includes, among other responsibilities, proposing policies and standards on issues affecting the probation and pretrial services system and reviewing pending legislation relating to the administration of criminal law.

There is a series of noteworthy national initiatives related to the federal pretrial services system, which can be summarized from the vantage point of the Criminal Law Committee. In particular, the Committee has monitored and made recommendations regarding: (1) pretrial diversion programs; (2) judge-involved supervision programs modeled after problem-solving courts in the states; (3) the use of data-driven strategies to reduce unnecessary pretrial detention; and (4) proposed legislation regarding the statutory

presumption of detention.

I. Pretrial Diversion Programs

Pretrial diversion is an alternative to prosecution that, at the discretion of the United States Attorney's Office, diverts certain persons from traditional criminal justice processing into a program of supervision and services administered by the probation and pretrial services system. The United States Attorney's Office may formally decline or initiate prosecution depending on whether the program requirements are satisfied. The objectives of pretrial diversion supervision are to ensure that the divertee satisfies the terms of the pretrial diversion agreement and to provide the divertee with support services to help facilitate the divertee's compliance with supervision and reduce the likelihood that the divertee will recidivate. The statutory functions and powers related to pretrial services officers include collecting, verifying, and preparing reports for the United States Attorney's Office of information pertaining to the pretrial diversion of any individual who is or may be charged with an offense.[2]

The Judicial Conference of the United States has supported alternatives to criminal prosecution for several decades.[3] More

recently, former Chair of the Criminal Law Committee Judge Irene M. Keeley of the Northern District of West Virginia testified before the Charles Colson Task Force on Federal Corrections that pretrial diversion is a potentially underutilized program in the federal criminal justice system.[4] Noting that less than one percent of activated cases are pretrial diversions, Judge Keeley expressed the Criminal Law Committee's readiness to work with the Department of Justice to discuss ways to increase the number of individuals participating in the pretrial diversion program.[5]

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[1] While national entities such as the Judicial Conference of the United States play a role in policy-making, the federal judiciary has a highly decentralized structure. Each district court in the 94 federal judicial districts also has the authority to issue and implement its own local policies and initiatives. For more information about the Judicial Conference and how it is organized and to read reports of the Judicial Conference proceedings, see: http://www.uscourts.gov/about-federal-courts/governance-judicial-conference.

[2] 18 U.S.C. § 3154 (10).

[3] In March 1980, the Judicial Conference agreed to support a bill to establish alternatives to criminal prosecution for certain persons charged with offenses against the United States and procedures for judicial involvement in pretrial diversion proceedings designed to standardize practices and

to require equal treatment of similarly situated persons selected for pretrial diversion. JCUS-MAR 80, p. 43.

[4] *See* Testimony of Hon. Irene M. Keeley Presented to the Charles Colson Task Force on Federal Corrections on January 27, 2015 (on file with the Administrative Office of the U.S. Courts). The Charles Colson Task Force on Federal Corrections was a blue-ribbon task force created by Congress to examine challenges in the federal corrections system and develop practical, data-driven solutions. The Task Force met throughout 2015 to conduct its work and presented findings and recommendations to Congress, the Department of Justice, and the President in January 2016. The final report of the Task Force is available at: https://www.urban.org/features/charles-colson-task-force-federal-corrections.

[5] For a more detailed discussion about the Judicial Conference's support for and the state of pretrial diversion programs, *see* Testimony of Hon. Irene M. Keeley, *supra* note 4. In addition to taking a position on pretrial diversion, the Judicial Conference also recently recommended legislation expanding the scope of "special probation" under 18 U.S.C. § 3607. Section 3607 of title 18, U.S. Code, offers a process

II. Judge-Involved Supervision Programs

Since 2008, as part of its continuing exploration of evidence-based practices and its commitment to using empirical data to make programmatic resource decisions, the Criminal Law Committee has been discussing judge-involved supervision programs in the federal system.[6] These programs are modeled on "problem-solving courts" used by state and local governments since the 1980s. They operate at different stages of the criminal justice process and go by many names, including "pretrial diversion court programs," "drug court programs," "alternative-to-incarceration court programs," and "reentry court programs." In 2008, one type of judge-involved supervision program—post-conviction reentry court programs—had been implemented by 21 federal districts and was under development in another 31 districts.

As the Criminal Law Committee stated in its September 2009 report to the Judicial Conference, these federal reentry court programs "reveal an energetic commitment to the betterment of federal offenders and an enthusiasm that should be commended." While it considered research demonstrating the effectiveness of some judge-involved supervision programs in the state systems, the Committee determined that further research on the effectiveness of reentry court programs was necessary before endorsing a national model policy for these programs at the federal level. Further, the Committee recognized that programs of this kind are resource intensive and, because they typically involve a relatively small number of offenders, some assessment of cost-effectiveness might be prudent.

In 2009, upon the Criminal Law Committee's recommendation, the Judicial Conference endorsed the commissioning of a study "to assess the efficacy and cost-effectiveness of reentry court programs," and it asked the Committee "to consider the results of this study in recommending any appropriate model programs." The Criminal Law Committee subsequently asked the Federal Judicial Center (FJC) to design and conduct a study of reentry court programs in the federal courts. The FJC designed a two-pronged approach for the study. The first prong involved a retrospective assessment of 20 existing reentry court programs. The second prong involved a multi-year, randomized experimental study of a federal reentry court program model policy as implemented in five districts with new or relatively new reentry court programs.[7]

In June 2016, the FJC completed the final report of its randomized experimental study. Among the report's findings were that the study districts had difficulty adhering to the requirements of the reentry court program model policy, there was a high refusal rate for study participants who were randomly assigned to a reentry court program, there was a low completion or graduation rate for program participants, and no impact on revocation or recidivism rates was found.[8] The Criminal Law Committee concluded that, while the FJC's report added to the research literature on the efficacy and cost-effectiveness of the reentry court program model used during the study, additional information should be considered before it could decide what, if any, recommendations it would make to the Judicial Conference about a national model policy.

In recent years, the Committee has reviewed a broader body of empirical research on the effectiveness of judge-involved supervision programs, not just at the back-end of the process (i.e., when an individual is released from prison), but at the front-end (i.e., at the pretrial or presentence stage). While there has been a significant amount of promising research about the effectiveness of front-end drug courts in the states, there is not a significant amount of research about their effectiveness in the federal system. Pretrial and presentence judge-involved supervision programs in the federal system are in their infancy, but the number of such programs has increased rapidly in recent years. According to a recent survey conducted by the Administrative Office of the U.S. Courts, there are approximately 25 initiatives in the federal courts that may provide alternatives to incarceration or reduced sentences for certain defendants who satisfy the requirements of these programs.[9]

In June 2017, the Committee was briefed on a paper prepared by Christine Scott-Hayward, the Supreme Court Fellow assigned

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of special probation and expungement for first-time drug offenders who are found guilty of simple possession under 21 U.S.C. § 844. Specifically, a court may, with the offender's consent, place the offender on a one-year maximum term of probation without entering a judgment of conviction, and upon successful completion of the term of probation, the proceedings are dismissed. For offenders under the age of 21 that successfully complete their terms of probation, upon application by the offender, an order of expungement is entered. A bill was introduced in Congress, H.R. 2617 (115th Congress), the RENEW Act, that would expand the age of eligibility for expungement under section 3607 of title 18 from "under the age of 21" to "under the age of 25." The Committee on Criminal Law noted that the RENEW Act's aim of expanding the scope of section 3607 is consistent with practices already occurring in many courts looking to increase alternatives to incarceration and enhance judicial discretion and is consistent with Judicial Conference policy on sealing and expunging records in that it would not limit judicial discretion in the management of cases and adoption of rules and procedures. On recommendation of the Criminal Law Committee, the Conference agreed to support amendments to 18 U.S.C. § 3607 that provide judges with alternatives to incarceration and expand sentencing discretion. JCUS-SEP 17, p. 11.

[6] For a more detailed discussion of judge-involved supervision programs in the federal system, *see* Stephen E. Vance, *Judge-Involved Supervision Programs in the Federal System: Background and Research*, 81 Federal Probation 15 (2017); Stephen E. Vance, *Federal Reentry Court Programs: A Summary of Recent Evaluations*, 75 Federal Probation 64 (2011).

[7] The experimental study design called for each study district to implement a reentry court program with offenders who began a term of supervised release after being randomly placed into one of two treatment groups (Groups A and B) or a control group (Group C). Treatment Group A had a reentry court program team consisting of a judicial officer, one or more probation officers, and representatives from the U.S. Attorney's Office and the Federal Defender's Office. Participation by a treatment provider is optional. Treatment Group B had a team similar to that of Group A, but the Group B reentry court program team did not include a judicial officer. The reentry court program model policy, which was based on the recommendations of groups like the National Association of Drug Court Professionals, guided the operations of the two program teams. The offenders assigned to Group C received standard supervision by a probation officer. Random assignments ended in April 2013, and the final participants graduated from the programs in October 2014.

[8] For a more specific summary of the findings of the FJC study, *see* Stephen E. Vance *Judge-Involved Supervision Programs in the Federal System: Background and Research*, 81 Federal Probation 15 (2017).

[9] *See also* United States District Court, Eastern District of New York, Alternatives to Incarceration in the Eastern District of New York, Second Report to the Board of Judges (August 2015) (cataloguing some of the existing diversion programs and describing the different methods of diversion from traditional criminal justice processing including by: (1) dismissal of charges, (2) reduction in charge to a lesser offense, (3) the vacatur of convictions, (4) avoiding prison through probationary sentences (agreed upon under Federal Rule of Criminal Procedure 11(c)(1)(C)), and (5) receiving a reduced sentence (e.g., a downward departure (or a variance) from the applicable Sentencing Guidelines range based on post-conviction rehabilitation)).

to the Sentencing Commission, on the emergence of pretrial diversion and front-end alternative-to-incarceration court programs in the federal system.[10] The paper explains that the evidence on the effectiveness of these programs, most of which is in the state system, is mixed. For instance, while drug courts that are properly designed and evaluated are typically found to reduce recidivism, there are minimal data on the effectiveness of other types of specialty court programs. The paper concludes by highlighting the need for program evaluation and using best practices in existing courts.

In November 2017, the Criminal Law Committee was briefed on a September 2017 report by the U.S. Sentencing Commission titled Federal Alternative-to-Incarceration Court Programs.[11] This report includes a summary of the nature of emerging front-end federal alternative-to-incarceration court programs and a discussion of relevant legal and social science issues. As discussed in the report, these programs have developed independently of both the Sentencing Commission and the Judicial Conference policy.

The report concludes that a number of questions related to the evaluation of the effectiveness of these programs are not capable of being answered at this time due to the nascent nature of the programs. As it explains, not only are the programs relatively new in the federal system, with as yet only a small number of graduates, they also have developed in a decentralized manner and differ from each other. Thus, they cannot yet be evaluated to determine whether the programs meet their articulated goals as effectively as, or more effectively than, traditional sentencing and supervision options. The report recommends that existing programs and any newly developed programs include input from social scientists so that data may be properly collected to allow for a meaningful evaluation at a later time.

The Criminal Law Committee remains aware that there are a number of judge-involved supervision programs currently operating in the federal courts, and that these programs continue to wrestle with issues related to adherence to evidence-based practices, resources, and measuring outcomes. The Committee has also recognized that

there may be factors related to the effectiveness of community corrections generally that the districts may wish to consider when operating, or determining whether to operate, a judge-involved supervision program. The Committee and the FJC intend to continue exploring how districts can consider evidence-based practices demonstrated by social science research to reduce recidivism and protect the public. The Committee will continue to evaluate these judge-involved supervision programs and consider whether any recommendations should be offered to the Judicial Conference.

III. Data-Driven Strategies to Reduce Unnecessary Pretrial Detention

The Bail Reform Act of 1966, Pub.L. No. 89-465, was enacted to "revise the practices relating to bail to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges, testify, or pending appeal, when detention serves neither the ends of justice nor the public interest." In making pretrial release or detention decisions, the courts are required to consider the least restrictive condition or combination of conditions to reasonably assure a defendant's appearance in court as required and the safety of any other person or the community.[12] Among other responsibilities, pretrial services offices are tasked with "prepar[ing] . . . such pretrial detention reports . . . relating to the supervision of detention pending trial."[13]

Despite these and other provisions designed to reduce unnecessary pretrial detention, the federal pretrial detention rate remains high.[14] The Criminal Law Committee has been briefed on and discussed data-driven strategies designed to reduce unnecessary pretrial detention and reasonably ensure that defendants will appear in court as required and will not pose a danger to the safety of any other person or the community, pending their appearance. These strategies include implementation of the Pretrial Risk Assessment Instrument (PTRA) to inform the recommendations of pretrial services officers regarding release or detention, training and outreach to stakeholders in the local districts, and the review of data reports to evaluate trends and outcomes.

In 2004, IBM Consulting Services issued a report commissioned by the Administrative Office of the U.S. Courts that highlighted several positive indicators of performance in the federal pretrial services system.[15] For instance, all respondents to a survey of magistrate judges rated the quality of bail reports and violation reports and the overall quality of pretrial supervision as either good or very good.[16] The report concluded, based on outcome data on violation rates, that the pretrial services system "appear[ed] to perform on par with or better than most state systems."[17] It noted, however, that a key outcome measure—the percentage of defendants detained prior to trial—was increasing.[18] The report's central recommendation was that the probation and pretrial services system should "become a results-driven system: to develop and maintain an infrastructure and management approach focused on collecting, analyzing and acting on outcome data."[19]

The Administrative Office subsequently developed the PTRA, which is an empirically-based actuarial risk assessment instrument that provides a consistent and scientifically valid method of predicting risk of failure-to-appear, new criminal arrest, and technical violations leading to revocation while on pretrial release. The PTRA includes five risk categories depending on whether defendants are at lower, moderate, or higher risk to fail to appear, have a new criminal arrest, or have a technical violation leading to revocation of release. In 2009, the Criminal Law Committee and a working group of pretrial services officers endorsed the national use of the PTRA. While the tool is intended to inform the release and detention recommendations of pretrial services officers, it is intended to supplement (not replace) their professional judgment and experience.

In addition to developing and implementing the PTRA, the Administrative Office has recently initiated the Detention Reduction Outreach Project (DROP), which is an on-site educational and training program in which Administrative Office and court staff visit districts interested in reducing their detention rates. During the visits, judges, probation and pretrial services staff, and

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[10]   Christine Scott-Hayward, *Rethinking Federal Diversion: The Rise of Specialized Criminal Courts* 22 Berkeley Journal of Criminal Law 47 (2017).

[11]   This report is available at: https://www.ussc.gov/research/research-reports/federal-alternative-incarceration-court-programs.

[12]   18 U.S.C. § 3142(c)(1)(B).

[13]   18 U.S.C. § 3154(8).

[14]   See Matthew G. Roland, *The Rising Federal Pretrial Detention Rate, In Context* (this issue).

[15]   *Strategic Assessment: Federal Probation and Pretrial Services* (on file with Administrative Office of U.S. Courts.).

[16]   Id. at A-2.

[17]   Id.

[18]   Id.

[19]   Id.

staff from the U.S. Attorney's Office and the federal defenders hear information about the PTRA's ability to identify low-risk defendants, review national and district-specific data related to release and detention, and focus on ways they can work together to reduce unnecessary pretrial detention.

Finally, the Administrative Office maintains databases and generates data reports to help inform release and detention decisions, including information to measure the implementation and use of the PTRA and how the PTRA may influence release outcomes. Measuring the effectiveness of recommendations regarding release or detention is complex in light of the balancing that is required between maximizing rates of pretrial release and minimizing pretrial misconduct. As one researcher put it, "There is no national benchmark that defines 'optimal' or even 'acceptable' pretrial release and misconduct rates."[20] The pretrial release decision-making process is essentially about striking a balance. It involves two potentially conflicting goals that must be reconciled: (1) to allow, to the maximum extent possible, pretrial release; but also (2) to ensure that defendants appear in court and do not pose a threat to the public or any specific individual during pretrial release.[21] Nevertheless, data reports are helpful for understanding the relevant populations and trends and making informed decisions.

IV. Proposal to Amend the Statutory Presumption of Detention

One contributing factor to the federal detention rate may be the effect of the statutory presumption favoring detention. Section 3142(e) of title 18 of the U.S. Code creates a rebuttable presumption that no condition or combination of conditions could reasonably assure the defendant's appearance or the safety of another person or the community. The presumption is triggered when the case involves certain offenses or certain penalties or when the defendant has a certain criminal history. To assess the impact of the presumption on the detention of low-risk defendants, the Administrative Office commissioned a study.[22] The study focused on the presumption

applicable to defendants charged with certain drug and firearms offenses (hereafter, "the drug and firearm presumption").[23] Once the drug and firearm presumption cases were identified, they were compared to cases where this presumption did not apply, by offense type and PTRA risk level.

The study found that the drug and firearm presumption applied in 93 percent of cases charged with drug offenses. The analysis also showed that the lowest risk defendants who were charged in drug and firearm presumption cases were released 68 percent of the time, while other low-risk defendants without this presumption were released 95 percent of the time. Additionally, the study compared the rates at which probation and pretrial services officers recommended the release of defendants charged with an offense where the drug and firearm presumption applied compared to those charged with an offense where the presumption did not apply. Despite the Judicial Conference's policy that officers not consider the presumption,[24] the results reflected a similar disparity in their release and detention recommendations. Most notably, for low-risk defendants charged with an offense where the drug and firearm presumption applies, officers recommended release in 68 percent of cases; however, they recommended release in 93 percent of cases for low-risk defendants where the presumption did not apply.

Finally, for those defendants who successfully rebutted the presumption and were released on bond, outcome data were analyzed and compared to the outcomes for

non-presumption cases in terms of rates of (1) rearrest, (2) rearrest for violent offenses, (3) failure to appear, and (4) technical violations ultimately leading to revocation of bond. Results failed to show that differences in outcomes between presumption and non-presumption cases were statistically significant. Although low-risk defendants charged with offenses where the drug and firearm presumption applies were slightly more likely to be rearrested, defendants across every other risk category who were charged in a presumption case were less likely to be rearrested for any offense, including violent offenses.[25]

In sum, overall the study suggests that there is a sizeable segment of low-risk defendants who are being detained as a result of the statutory presumption of detention. The vast majority of these defendants appear to be charged with drug trafficking offenses. Since low-risk defendants tend to be successful on pretrial supervision, regardless of whether they are charged with an offense where the presumption of detention applies, it appears that the presumption is unnecessarily increasing pretrial detention rates. In the years since the enactment of the statutory presumption in 1984, actuarial risk assessment has drastically improved and provided empirical evidence of the factors that contribute to a defendant's failure to appear or failure on pretrial supervision. These factors correlate less with the nature of the charged offense and more with the defendant's criminal history and past failures on pretrial release.

At its June 2017 meeting, the Criminal Law Committee discussed whether the study provided adequate support for a recommendation

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Statute's Relationship to Release Rates, 81 *Federal Probation* 52 (2017).

[23]   This presumption is triggered when the judicial officer finds that there is probable cause to believe that the defendant committed an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. § 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. § 951 et seq.), the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), or an offense under 18 U.S.C. § 924(c) (Use of Firearm to Commit a Felony).

[24]   *Guide to Judiciary Policy*, Vol. 8, Pt. A, Ch. 1, § 170(b)-(c) ("[T]he officer does not consider whether the rebuttable presumption applies to a defendant. . . . Determining whether a rebuttable presumption arises, whether a defendant has rebutted it, and whether the presumption is appropriately considered in the release decision requires a judicial officer to weigh evidence and make a finding. The officer has no authority to make such a finding. Although the presence of a presumption is easily identified, determining the appropriate consideration it receives is a legal issue and legal decisions are beyond the scope of an officer's functions.").

[20]   Clark, J., Pretrial Justice Institute, *A Framework for Implementing Evidence-Based Practices in Pretrial Services*. at 9 (2008).

[21]   Clark, J., Henry, A., *The Pretrial Release Decision*, 81 Judicature 76, 77 (1997).

[22]   For a detailed overview of this study, *see* Amaryllis Austin, *The Presumption for Detention*

[25]   The risk principle could explain the slightly higher rearrest rates found for lower-risk presumption defendants. The risk principle states that the level of supervision should be commensurate to a defendant's actual risk and that low-risk defendants do worse when they are grouped with and treated like higher-risk defendants. See, Andrews, D. R., Bonta, J., & Hoge, R. D., "Classification for effective rehabilitation: Rediscovering psychology," *Criminal Justice and Behavior*, 17, 19-52 (1990); Lowenkamp, C., & Latessa, E., "Increasing the effectiveness of correctional programming through the risk principle: Identifying offenders for residential placement," *Criminology and Public Policy*, 4(2): 263-290 (2004); Lowenkamp, C., Latessa, E., & Holsinger, A., "The risk principle in action: What have we learned from 13,676 offenders and 97 correctional programs?" *Crime and Delinquency*, 51(1): 1-17 (2006); Lowenkamp, C., Flores, A., Holsinger, A., Makarios, M., & Latessa, E., "Intensive supervision programs: Does program philosophy and the principles of effective interventions matter?" *Journal of Criminal Justice*, 38(4): 368-375 (2010).

to amend the presumption of detention stat-
ute. The Committee ultimately agreed to
recommend that the Judicial Conference seek
legislation that would amend the presump-
tion of detention found in 18 U.S.C. § 3142(e)
(3)(A) to limit its application to defendants
described therein whose criminal history sug-
gests that they are at a higher risk of failing to
appear or posing a danger to the community
or another person.[26] The Judicial Conference
adopted the Committee's recommendation at
its September 2017 session.[27]

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[26]   Specifically, it would limit application to those
defendants charged with an offense for which a
maximum term of imprisonment of 10 years or
more is prescribed in the Controlled Substances Act
(21 U.S.C. 801 et seq.), the Controlled Substances
Import and Export Act (21 U.S.C. 951 et seq.),
or chapter 705 of title 46 and such defendant has
previously been convicted of two or more offenses
described in subsection (f)(1) this section, or two
or more state or local offenses that would have
been offenses described in subsection (f)(1) of
this section if a circumstance giving rise to federal
jurisdiction had existed, or a combination of such
offenses.

[27]   JCUS SEP-17, p. 10.

Are Pretrial Services Officers Reliable in Rating Pretrial Risk Assessment Tools?[1]

Patrick J. Kennealy
Travis County Community Justice Services

THERE WERE OVER 10 million arrests in the United States during 2016 (Federal Bureau of Investigation, 2017). Once arrested, the decision to release or detain the accused pending trial is made by the court. This bail decision is typically made by weighing the risk of failure to appear at future court dates, the likelihood of new arrests prior to the disposition of the case, and other considerations (VanNostrand, 2007). In jurisdictions where available, pretrial services agencies assist the court throughout this process. Foremost among the responsibilities of pretrial services agencies is the collection of information to inform the bail decision and the decision on whether release conditions such as curfew, electronic monitoring, or alcohol and drug testing are necessary (VanNostrand, Rose, & Weibrecht, 2011).

The importance of the collection of information to inform the bail decision is highlighted by the consequences of pretrial detention on defendants (Farnworth & Horan, 1980; Ulmer, 2012; Bechtel, Holsinger, Lowenkamp, & Warren, 2016). For example, Demuth (2003) reported that pretrial detention harms the defendants' capacity to maintain employment, meet family obligations, and participate in the development and execution of their legal defense. Further, in a study of over 90,000 federal defendants,

Oleson and colleagues (2017) investigated the association between pretrial detention and sentencing outcomes when controlling for the seriousness of the offense and criminal history. They reported that release pending trial was associated with less serious sentences, whereas pretrial detention was linked to more serious sentences. Similar findings were reported by Oleson, Lowenkamp, Cadigan, VanNostrand, and Wooldredge (2016) in a sample of 1,723 United States federal court cases.

Even when defendants are released rather than detained, unnecessary conditions of release can be harmful (Cadigan & Lowenkamp, 2011). This is particularly true of defendants who present with a low level of risk for pretrial supervision failure. In a study of federal defendants, VanNostrand and Keebler (2009) found that requiring location monitoring as a condition of release for low-risk defendants resulted in a 112 percent increase in the likelihood of pretrial supervision failure relative to low-risk defendants without this condition. In light of these consequences, there have been growing efforts to ensure that decisions on pretrial release and detention are fair and consistent.

One of the common ways to improve the pretrial recommendation-making process has been the development and use of pretrial risk assessment instruments. These instruments are designed to assess the risk that defendants will a) fail to appear in court or b) be arrested for new criminal activity if released from custody pending trial (VanNostrand & Keebler, 2007). Pretrial risk assessment instruments typically measure a combination of static (i.e., unchanging) and dynamic (i.e., changeable)

risk factors. Static items often include the current charge, criminal history (e.g., previous arrests and incarcerations), and previous failures to appear, while the dynamic items may focus on employment, residential stability, ties to the community, and drug use (VanNostrand & Lowenkamp, 2013; Bechtel, Lowenkamp, & Holsinger, 2011). Depending on the given instrument, the tool is completed based on an interview with the defendant, a review of file information, or a combination of both.

Although the use of pretrial risk assessment instruments has been linked to more release recommendations and lower jail populations (Cooprider, 2009), the basic use of pretrial risk assessment instruments alone does not guarantee these benefits (Mamalian, 2011). The utility of the tool is dependent on implementation, as with any risk assessment instrument in criminal justice contexts (Mamalian, 2011; Latessa & Lovins, 2010). One essential aspect of the implementation of a risk assessment tool is the demonstration of inter-rater reliability (Bechtel, Holsinger, Lowenkamp, & Warren, 2016). This is the degree to which two raters agree on the rating of a given case when provided with the same information.

A lack of reliability can have devastating consequences for defendants and the broader community. When unreliably rated, the recommendation to release a defendant on bond could vary widely as a function of the pretrial services officer who performed the assessment. For example, if mistakenly rated as high risk, a low-risk defendant may not be recommended for release on bond. Alternatively, a high-risk defendant misclassified as low risk could be released on bond. This would

be a misallocation of resources in the best-case scenario, but potentially harmful for the defendant and his or her family or the community in the worst-case scenario. Therefore, inter-rater reliability is a prerequisite of the use of risk assessment instruments as an evidence-based practice (Latessa & Lovins, 2010).

Despite the demonstrated consequences of detainment on defendants (Oleson et al., 2017; Oleson et al., 2016; Ulmer, 2012), there is a dearth of published research on the inter-rater reliability of pretrial risk assessment tools. In fact, reviews of the pretrial risk assessment literature failed to find a single study that reported the inter-rater reliability of pretrial services officers in scoring such instruments (Bechtel, Holsinger, Lowenkamp, & Warren, 2016). To help address this need, the present study investigates the inter-rater reliability of pretrial services officers in rating a pretrial risk assessment tool. Specifically, we assess the inter-rater reliability of the Ohio Risk Assessment System-Pretrial Assessment Tool (ORAS-PAT; Latessa, Smith, Lemke, Makarios, & Lowenkamp, 2009) at the item-, total-, and summary risk classification-level. Findings of this study offer implications for the use of risk assessment tools in pretrial services to inform jail release decisions.

Method

Study Design

To investigate the inter-rater reliability of the ORAS-PAT, we identified all pretrial services officers who regularly rate defendants on this measure in a single county agency. Next, we ascertained a list of all cases (n = 3,445) rated by these 21 pretrial services officers during a two-month period (i.e., September and October of 2017). With this list, we randomly selected five cases rated by each of these 21 pretrial services officers, resulting in a total of 105 cases. However, one case file could not be located and another file was missing the ORAS-PAT scoring form. This left a total of 103 cases with complete information for use in this study.

In turn, two pretrial services supervisors were tasked with performing secondary ratings on the ORAS-PAT for these 103 cases. One of these supervisors was the agency's lead trainer for the ORAS-PAT and the other frequently performed audits on ORAS-PAT ratings. Additionally, both of these supervisors have regularly performed ORAS-PAT ratings in their time with the agency. These secondary ratings were performed with notes from the original semi-structured interview along

with a review of relevant information from the defendant's official file.

Participants

Primary raters were 21 pretrial services officers from a county pretrial services agency in a large southwestern state. The pretrial services officers all had at least a bachelor-level degree. This group was mostly female (66.7 percent) and Hispanic (61.9 percent; White, 23.8 percent; African-American, 9.5 percent; Other, 4.8 percent). On average, the pretrial services officers were approximately 33 years old (M = 32.8, SD = 11.3) and had worked for the agency 5.6 years (SD = 9.2). Each of these pretrial services officers rated about 37 defendants (M = 36.6, SD = 46.5) on the ORAS-PAT a month.

The ORAS-PAT ratings were completed by the pretrial services officers on 103 defendants. The defendants were mostly male (79.6 percent) and approximately 33 years old (M = 33.2, SD = 12.9). Further, this group was 35.9 percent White, 32.0 percent Hispanic, 30.1 percent African-American, and 1.9 percent Asian-Pacific Islander.

Measure

The Ohio Risk Assessment System-Pretrial Assessment Tool (ORAS-PAT; Latessa et al., 2009) is a pretrial risk assessment instrument that was developed to inform pretrial release decisions. The instrument features 7 items and is scored based on an interview with the defendant and a review of official file information. Each item is either dichotomous or rated on a 3-point Likert scale. Items assess age at first arrest, history of failure-to-appear warrants and incarcerations, employment status, residential stability, and drug use. Scores

on these items are summed to render a total score, which is then converted into a summary risk classification (i.e., low, medium, or high risk). Although there is a lack of examinations of the reliability of the ORAS-PAT, research indicates that the instrument demonstrates predictive utility for criminal justice outcomes (Latessa et al., 2009). Descriptive information, including means and standard deviations for primary and secondary ORAS-PAT ratings, is presented in Table 1.

Analyses

The inter-rater reliability between pretrial services officers and supervisors is estimated with weighted Kappa. This statistic is suitable for use on categorical items and ratings. Kappa identifies the variance in a set of ratings that is due to the cases that were rated instead of measurement error (Cohen, 2001). In other words, Kappa estimates the degree that pretrial services officers and pretrial services supervisors can reliably rate a defendant when controlling for chance agreement. All analyses in this study were performed in STATA 13.1.

To maintain consistency with other research on the reliability of risk assessment instruments (Vincent, Guy, Fusco, & Gershenson, 2012; Kennealy, Skeem, & Hernandez, 2016), we adopt the reliability standards of Cicchetti and Sparrow (1981). "Excellent" values are .75 and greater, "good" values are between .60 and .74, "fair" values are between .40 and .59, and "poor" values are less than .40 (Cicchetti & Sparrow, 1981). Rather than depending solely on these reliability standard labels, we also encourage consideration of the individual Kappa values for full information.

TABLE 1.
Descriptive Information on Primary and Secondary ORAS-PAT Ratings

ORAS-PAT	Primary Rater Mean (SD)	Secondary Rater Mean (SD)
1. Age At First Arrest	.89 (.31)	.90 (.30)
2. Number of Failure-To-Appear Warrants in Past 24 Months	.08 (.33)	.11 (.42)
3. Three or more Prior Jail Incarcerations	.37 (.49)	.38 (.49)
4. Employed at the Time of Arrest	.47 (.75)	.56 (.80)
5. Residential Stability	.37 (.49)	.37 (.49)
6. Illegal Drug Use during Past Six Months	.35 (.48)	.43 (.50)
7. Severe Drug Use Problem	.05 (.22)	.06 (.24)
Total Score	2.54 (1.58)	2.78 (1.78)
Summary Risk Level	.44 (.57)	.58 (.65)

Notes: n = 103. SD = standard deviation.

Results

To test the inter-rater reliability of the ORAS-PAT, we treated the secondary ratings of pretrial services supervisors as the criterion and compared them to the item-, total-, and summary risk classification-level scores of pretrial services officers (see Table 2). First, we assessed the inter-rater reliability of the ORAS-PAT at the item-level. Kappa values ranged from .72 to .94 on ORAS-PAT items. These values fall in the "good" to "excellent" ranges of Kappa values (Cicchetti & Sparrow, 1981). In fact, Kappa values fell in the "excellent" range for 6 of 7 ORAS-PAT items. To help contextualize these findings, we also calculated the percent agreement between raters on each of these items. The same rating was obtained by pretrial services officers and pretrial services supervisors over 90 percent of the time for each ORAS-PAT item.

Second, we assessed the inter-rater reliability of the ORAS-PAT total risk score. The sum of all 7 ORAS-PAT items, this score ranges from 0 to 9 and is used to make summary risk classifications based on the instrument's established cut-off scores. Here, a weighted Kappa of .82 (SE = .06) was found between raters, which is considered "excellent" (Cicchetti & Sparrow, 1981). Further, the same total risk score was obtained by pretrial services officers and pretrial services supervisors in 74.5 percent of cases.

Finally, we assessed inter-rater reliability at the summary risk classification. This classification as low, moderate, or high risk has the strongest impact on release recommendations. A "good" (Cicchetti & Sparrow, 1981) weighted Kappa value of .72 (SE = .08) was observed between pretrial services officers and pretrial services supervisors. Of the 21 pretrial services officers, 9 (42.9 percent) had zero disagreements, 6 (28.6 percent) had one disagreement, and 6 (28.6 percent) had two disagreements with the supervisors on the summary risk classification. The exact same summary risk classification was obtained by pretrial services officers and pretrial services supervisors in 83.3 percent of 103 cases.

Discussion

This study is one of the first investigations of the inter-rater reliability of a pretrial risk assessment tool as completed by pretrial services professionals. The key finding of this study is that pretrial services officers can reliably rate defendants on a pretrial risk assessment tool. That is, pretrial services officers generally rated defendants in the same manner as pretrial services supervisors in this study. In fact, "good" to "excellent" inter-rater reliability was observed for all 7 items, the total score, and the summary risk classification of the ORAS-PAT. These findings have important implications for the fidelity of pretrial risk assessment tools in the field of pretrial services.

Foremost, these findings limit concerns that pretrial services officers are not able to rate defendants on these instruments in a reliable manner during the course of their everyday job responsibilities. When a defendant is inaccurately rated, the risk of failure to appear in court or arrest for a new crime may be misrepresented. For example, a defendant who is misclassified as "high" risk may be detained despite presenting minimal risk of not appearing in court or of new arrests. However, the present study demonstrates that it is possible for pretrial services officers to use pretrial risk assessment tools in a reliable manner, which helps alleviate concerns about misclassification and the resulting consequences.

Although the findings are promising, the limitations of this study must be carefully considered. Of most concern, the secondary ORAS-PAT ratings provided by pretrial services supervisors were dependent on information that was collected by the pretrial services officers who performed the primary ORAS-PAT ratings. Specifically, the scoring of items on employment, residential stability, and drug use required information gathered during the semi-structured interview of the defendant. As such, any information that was not recorded in the notes of the semi-structured interview with the defendant would not be available to the pretrial services supervisor. This could potentially result in pretrial services supervisors either a) having less information available to inform their rating or b) duplicating the mistakes the pretrial services officers made during the primary rating. These concerns are somewhat mitigated by the fact that there was a general consistency in Kappa values between the items scored based on the semi-structured interview and the three criminal history items that are coded from official records.

Nonetheless, the field would benefit from additional research using different research designs that have the potential to help address the primary weakness of the present study. For example, one promising option is the development of training reliability cases that consist of either a video recording of a semi-structured interview with a defendant or a vignette, both of which would be presented with excerpts of relevant file information (for an example, see Kennealy et al., 2017). These training cases can then be systematically administered to staff members in a given agency. Although limited in ecological validity, this approach reduces the potential for bias by ensuring that all raters have the exact same information available to them when rating a case. Alternatively, another promising design would be having a secondary rater observe the primary rater's semi-structured interview with a defendant (for an example, see Vincent et al., 2012). Both the primary and secondary raters would have access to the same file information on the defendant. This approach helps avoid the ecological validity issues of training reliability cases that feature video recordings or vignettes, but introduces the possibility of an experimenter effect, because the primary rater is being observed and that may alter his or her

TABLE 2.
Inter-rater Reliability of Pretrial Services Officers on ORAS-PAT

ORAS-PAT	Percent Agreement	Weighted Kappa	Standard Error
1. Age At First Arrest	97.1%	.84	.10
2. Number of Failure-To-Appear Warrants in Past 24 Months	96.1%	.72	.08
3. Three or more Prior Jail Incarcerations	97.1%	.94	.10
4. Employed at the Time of Arrest	92.2%	.84	.08
5. Residential Stability	96.1%	.92	.10
6. Illegal Drug Use during Past Six Months	92.2%	.84	.10
7. Severe Drug Use Problem	99.0%	.90	.10
Total Score	**74.5%**	**.82**	**.06**
Summary Risk Classification	**83.3%**	**.72**	**.08**

Notes: n = 103. All weighted Kappa values are significant at p < .001.

typical actions. Together, a combination of separate studies employing different methodological designs offers the best opportunity to better understand the inter-rater reliability of pretrial risk assessment instruments.

In conclusion, the present study on reliability and previous research on validity (Latessa et al., 2009; Bechtel et al., 2016) show that pretrial risk assessment instruments can help inform bail decision making. However, the benefits of using a pretrial risk assessment instrument (e.g., increased recommendations for release on bail; Cooprider, 2009) can only be achieved when the tool is used with fidelity (Mamalian, 2011; Bechtel et al., 2016; Vincent et al., 2012). This requires a thorough implementation plan that ensures the ongoing training and support of staff members along with quality assurance (Bechtel et al., 2017). Evaluations of quality assurance should include assessments of the instrument's a) reliability and b) predictive utility for important pretrial-related outcomes (e.g., failure to appear in court and new arrests while released on bond). Any pretrial services agency either implementing or currently using a pretrial risk assessment tool should carefully consider these components of quality assurance to maximize outcomes for defendants and public safety.

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Analyzing Bond Supervision Survey Data: The Effects of Pretrial Detention on Self-Reported Outcomes

Alexander M. Holsinger
Criminal Justice Coordinator, Johnson County, KS
Kristi Holsinger
University of Missouri – Kansas City

INCREASING ATTENTION HAS been paid to the functioning and effects of pretrial practices, particularly the use of pretrial detention. Building on a growing body of research, scholars and policy makers have engaged in a number of endeavors designed to maximize the effectiveness of pretrial case processing and decision making. Some of the first large-scale quantitative examinations of pretrial decision making involved what effect pretrial detention might have on relevant justice outcomes, such as conviction and sentencing (e.g., guilt vs. innocence; sentences to incarceration vs. community; length of sentence) (Goldkamp, 1979; Goldkamp & Gottfredson, 1979; Leipold, 2005; Oleson, Lowenkamp, Wooldredge, VanNostrand, & Cadigan, 2017; Rankin, 1964; Sacks & Ackerman, 2014; Williams, 2003). The current study examines the length of pretrial detention and its potential impact on outcomes that are directly related to functionality and may be indirectly related to other justice-specific outcomes.

In recent years attention has focused on the development and implementation of actuarial risk assessment procedures. The advent of risk assessments in theory reduces subjectivity and allows for a more scientific, informed decision process that incorporates the measurement and management of risk (Lowenkamp, Lemke, & Latessa, 2008; Lowenkamp & VanNostrand, 2013). This in turn (again in theory) allows for the best, most efficient use of limited and expensive jail space. It makes sense to ensure that limited jail space is reserved for those

who pose the highest risk of either failure to appear (FTA) or new criminal activity (NCA). Actuarial risk assessment has the potential for ensuring that the highest risk individuals are most likely to be detained in jail, while lower risk defendants remain in the community (Austin, Ocker, & Bhati, 2010; Bechtel, Lowenkamp, & Holsinger, 2011; VanNostrand, 2003).

Of most recent import, the effect of relatively short pretrial detention, regardless of risk level, is being considered in terms of its potential negative effect on other outcomes besides conviction and sentencing. While the effects of long-term incarceration have been well documented (see for example Liem, 2016; Western, 2002; and Western & Pettit, 2000), less is known regarding the specific effects of pretrial detention on what may be considered less obvious outcomes. Even a short stay in jail may have a disrupting effect on the lives of individuals regarding their employment, housing, custody of minor children, and a host of other factors.

Complicating matters is a bail system that likely causes those who have been arrested for low-level crimes to be held when they are not able to post even a meager amount of bail. Because of this, jails in general and the monetary bail system in particular may represent a point at which the criminal justice system becomes "stickier" for lower socio-economic income groups. Gaining an actuarial risk-based profile of those who remain in jail can be revelatory; individuals who do not pose much if any risk, yet are unable to post bail for

any number of reasons, may end up detained in jail pretrial.

Purpose and Legal Framework of Pretrial Detention

The primary purpose of a pretrial hearing is to make decisions about an individual who has been arrested and charged, as well as about his or her case, while moving the process of justice forward. Concerns regarding public safety are also paramount at the point of the pretrial hearing. Results of the decisions made at this stage include being released on one's own recognizance, being released on one or a combination of types of bonds (e.g., cash, deposit, commercial bail, or property), being released with a variety of conditions to meet (e.g., varying types and amounts of contact with criminal justice professionals, varying types of monitoring, testing, and treatment), or detention. Since 2005, approximately 60 percent of the U.S. jail population is in pretrial or trial status (Minton & Golinelli, 2014). Given their pre-conviction status, the goals of accountability and public safety must be carefully balanced against individual rights and fairness.

Constitutional amendments have set standards for the presumption of innocence, the provision of due process, and fair and equal treatment, and have set limits on the use of pretrial detainment and excessive bail. To further guide this work, a pretrial legal framework exists based on relevant statutes, case law, and state constitutional provisions (National Institute of Corrections, 2017).

Much like the overarching presumption of innocence until guilt is proven, the presumption of nonfinancial release with the least restrictive conditions necessary is central to pretrial decision making as well, as it relates to the use of detention. Additionally, restrictions should be placed on the use of secured financial conditions, a factor unrelated to flight risk and public safety. Finally, there is the provision for detention without bail, including strong due process protections, for a clearly defined and limited population of defendants who pose an unmanageable risk to public safety (National Institute of Corrections, 2017).

While this framework is in place, courts in the United States often fall short of adhering to these principles, and often practices do not comply with these ideals. In many jurisdictions, professionals are still not using actuarial risk assessments or do not have the information they need to make informed decisions. Some jurisdictions do not have all the release, monitoring, and detention options available to respond to different levels of risk. When options are not available, often the default is to the bail bond system.

The Bail System

The bail system in the U.S. is an accepted part of the culture, and the use of financially secured releases and the dollar amount of the bond has only increased over time (Neal, 2012). Concerns regarding bail have existed for decades, and the bail bonds industry is now frequently critiqued for its profit-driven political agenda and outdated, revenue-generating practices that are damaging to pretrial justice (Gullings, 2012; Neal, 2012). As noted by Liptaki, "It's really the only place in the criminal justice system where a liberty decision is governed by a profit making businessman, who will or will not take your business" (2008, p. 1).

The central criticisms of bail revolve around the fact that the ability to post bail is unrelated to one's threat to public safety. Rather this process discriminates against those who cannot afford to pay, with the result of increased reliance on incarceration. The bail bonds industry bases its decision on an alleged offense, rather than on the decision being made by a judge using an individualized risk assessment that examines criminal history and other risk factors (Gullings, 2012). Additionally, racial bias in jailing practices is well documented, with African Americans being jailed at almost four times the rate of white Americans (Minton & Golinelli, 2014). Discriminatory practices are also seen

in the bail system (Neal, 2012; Jones, 2013). Wooldredge (2012) found harsher outcomes for African-Americans than whites on all pretrial outcomes analyzed. These disparities in both race and income have the potential for overuse of incarceration for some groups and not others, posing grave challenges both to constitutional stipulations and the integrity of justice.

Regardless of the implementation and appropriate use of actuarial risk assessments, the use of a bail system has the potential to disrupt even the best risk-based decision procedures (Ackerman & Sacks, 2012; Turner & Johnson, 2005; Schnacke, 2014). One study found that only 40 percent of jails used a validated risk assessment at booking. Further, for those that did use measures of actuarial risk, the great majority (69 percent) had pretrial populations that were over half low risk (Ortiz, 2015). Ideally, the detention decision (in vs. out of jail during the pretrial period) should be substantially informed by objective criteria. Justice systems that allow for the assignment of bail, even very modest amounts of bail, run the risk of creating undesirable outcomes. These undesirable outcomes include high-risk individuals who are able to make bail regardless of the risk they pose to the community, and likewise low-risk individuals (who may indeed have been assigned a relatively low amount of bail), who are financially unable to comply (Harmsworth, 1996; Neal, 2012; Phillips, 2007). More research is needed regarding the extent to which risk-based decision making systems are disrupted by the simultaneous use of a money bail system.

Effects of Pretrial Detention

Generally (although there are some notable exceptions) pretrial incarceration occurs for a much shorter duration than post-dispositional incarceration. Often, pretrial detention lasts for a few days, or even less. Despite the relatively short amount of time, there is strong evidence of the serious deleterious effects of this time in jail on outcomes such as the likelihood of a sentence of incarceration, the harshness of that sentence (Subramanian, Delaney, Roberts, Fishman, & McGarry, 2015), and the likelihood of recidivism (Lowenkamp, VanNostrand, & Holsinger, 2013).

However, many other effects of pretrial detention are emerging, such as negative effects on one's financial situation, residential stability, dependent children, and social support. A disproportionately high number of individuals who enter jails have existing mental health, trauma, and addiction issues, and

are more likely to be poor or from a minority community (Subramanian et al., 2015). Sixty-four percent of jail inmates in a national study had a recent history or symptoms of mental health problems. This group had higher rates of co-occurring problems compared with those not reporting mental health issues: 76 percent reported substance abuse or dependence, 62 percent reported drug use in the month prior to arrest, 17 percent reported homelessness, and 24 percent reported prior abuse (James & Glaze, 2006).

Employment and Finances

Typically, those who are working when given even a short jail sentence are in low-wage positions and are easily replaceable (Schönteich, 2010). While job loss is certainly a risk, the long-term risk of unemployment and under-employment is also concerning, particularly for individuals in their peak wage-earning years (ages 20-40) (Berry, 2011). One study of those incarcerated in jails and prisons found that those who were employed pre-incarceration experienced a decline in wages, annual employment, and annual earnings post-release (The Pew Charitable Trusts, 2010). Another factor related to earning potential is the disruption of education and job training. These negative financial consequences are only exacerbated by the potential of incurring expenses related to incarceration or the conditions of release (Zweig, 2010).

Residential Stability

It is also likely that these jailed individuals have low residential stability to begin with, but even a short jail stay or sentence can worsen this predicament. An arrest record and time in jail can result in denial from a landlord or the inability to stay with family members who live in public housing where living with a person with a criminal record is banned (Carey, 2004). Individuals with jail sentences are less likely to hold a lease or mortgage after release compared to their pre-incarceration status (Center for Poverty Solutions, 2003) and are more likely to experience homelessness after release from jail, even when charges were dismissed (Greenbergand & Rosenheck, 2008).

Dependent Children

Very little research has been done on how short stints in jail affect minor children, particularly compared to the research on long prison sentences. However, a change in custody or entry into the foster system can result from even short periods of detention,

and those parents are less likely to successfully regain custody of children who were in foster care (Christian, 2009; McCampbell, 2005). The negative effects of parental incarceration on children are extensive and well documented (Murray, Farrington, & Sekol, 2012).

Other factors further complicate life for those arrested and detained, such as a suspension or termination of benefits like Medicaid or food assistance programs (Cardwell & Gilmore, 2012) and worsening health, particularly for those with chronic health problems (Subramanian et al., 2015). On a broader scale, there are intergenerational and community impacts when parents and workers are removed from certain communities, and the exclusion of the most marginalized groups is intensified (Berry, 2011).

Current Study

The current study employs a mixture of self-report and official data to shed more light on the possible impact of pretrial detention on several outcomes not related to criminal justice, such as employment, finances, residential stability, and dependent children. It also examines individual experiences with the use and perceptions of bail. Gaining a better understanding of the effects of pretrial detention, even detention for relatively short periods (e.g., less than three days), can better inform policy regarding risk-based decisions. Likewise, there is benefit in further examining the "more than" versus "less than" three days of pretrial incarceration in light of recent research that has already influenced policy in many parts of the U.S. (Lowenkamp, VanNostrand, & Holsinger, 2013).

Methodology

The current study uses data gathered from a self-report survey. The large Midwestern county from which the data came has a dedicated bond supervision unit that functions largely like a pretrial probation department for those who are released from jail pretrial, but who have been assigned to supervision. The survey was administered when the respondents first reported to the bond supervision unit, but before they met their supervision officers for the first time. When the respondents checked in at the office for the first time, they were given a survey with an informational sheet with instructions, and assurances regarding the voluntary nature of their participation. No identifying information was gathered, and there was a dedicated collection box in the waiting area away from

where officers meet with pretrial clients. The informational sheet encouraged participation and asked respondents to place the survey in the collection box before they were called back to meet their pretrial supervision officer for the first time. Unless the respondents disclosed to the officer their participation or even shared their survey responses, there was no way for an officer to know whether someone responded, let alone what information they provided. The survey was in place for 10 months, and rendered 1,789 respondents.

The survey itself asked clients how much time they had spent in jail (less than three days versus three days or longer), and then asked them to rate several factors regarding their condition before their pretrial incarceration and afterward. For example, regarding employment, the respondent was asked four Yes/No questions: Were you working prior to your most recent time in jail? Are you employed now? If you are employed now, are you working at the same place that you were before your most recent experience in jail? If you are working now and at the same place, were there any work-related consequences due to your most recent time in jail? The responses to these four questions allowed two measures of employment disruption to be developed. The first binary measure indicates whether or not respondents experienced disruption based on the fact that they reported working before, but either are not working now or are working at a difference place. The second binary measure of employment disruption includes whether or not they reported experiencing consequences at their current place of employment if indeed they were working before, and are working now at the same place.

The survey also asked respondents to separately rate the condition of their finances and residential stability before and after their experience in jail, using a five-category Likert scale. For example, respondents were asked to rate their financial situation before jail and after jail using the following response categories: 0 = no problem at all (e.g., it's somewhat easy to meet your expenses; perhaps you have some savings); 1 = Occasional issues come up that make money tight, but you are able to get through them; 2 = Living check-to-check and hope that no unexpected expenses come up; 3 = Having fairly consistent difficulty meeting expenses; I might have to borrow money once in a while; 4 = Have a large amount of difficulty meeting expenses, I owe money or utilities might be at risk of being shut off. Different wording regarding the response

categories was tailored to reflect residential matters for the questions regarding the respondents' living situation. The responses to questions regarding the respondents' financial situation and residential setting allowed for the difference between pre-jail and post-jail to be calculated. That difference was further dichotomized into two categories: no change or change for the better versus change for the worse.

Finally, the survey asked respondents to rate what (if any) impact their most recent arrest and pretrial incarceration had on their dependent children under 18, if applicable. This question used a Likert scale similar to that detailed above (0 to 4), where 0 = No impact and 4 = Extremely negative impact. As with the examples cited above, each response category had additional wording and detail to assist the respondent in making the most applicable choice. For analysis the responses were collapsed into a binary where 0 = No impact and 1 = Some (or greater) impact (i.e., those who responded 1 or higher to this question).

The survey also asked respondents questions regarding the amount of bail that was initially assigned, and whether or not they had any other open cases in any jurisdictions. These two items were used as limited measures of risk in logistic regression analyses further examining the relationship between time in jail and jail's impact on employment, financial and residential circumstances, and dependent children under 18.

Results

Chi-square analysis was used to test for a relationship between amount of time in jail (less than three days versus three or more days) and the binary measures of employment disruption (job loss or job change; job loss, job change, or consequences at the current/lasting job). There was a statistically significant (p < .001) and substantial relationship between time spent in jail and self-reported job disruption (see Figures 1 and 2). The percentage of respondents reporting employment disruption (job loss or job change) increased from 17 to 59.1 percent for those spending less than three days in jail versus three days or more, respectively, and likewise increased from 37.9 to 76.1 percent when "consequences" were factored in as employment disruption.

A less dramatic but nonetheless statistically significant (p < .001) relationship emerged between time spent in jail and financial stability (see Figure 3). Specifically, the

percentage of respondents reporting change for the worse regarding their financial footing increased from 32 percent for those spending less than three days in jail to 44.2 percent for those spending three days or longer in jail. Similarly, change for the worse regarding the respondent's residential stability was observed for those spending three days or longer in jail pretrial. The percentage of respondents reporting disruption in their residential stability when comparing the period before their pretrial incarceration and the period afterward increased from 29.9 percent for those who spent less than three days in jail to 37.2 percent (p < .01) for those who spent three days or longer (see Figure 4). The same

statistically significant dynamic emerges when examining whether or not some negative impact occurred for dependents under age 18 (including but not limited to threats to custody). The percentage of those reporting at least some negative impact as a result of the most recent time in jail increased from 32 percent for those who spent less than three days in jail to 41 percent for those spending three days or more (p < .01; see Figure 5).

Finally, in order to further explore the relationship between the binary measure of time spent in jail pretrial and the outcomes referenced above, five logistic regression models were calculated. Three predictor variables were contained in each of the models: the

binary measure of time spent in jail (1 = 3+ days) and two proxy measures for risk that included whether the respondent reported having any open cases or warrants and the amount of bail that was initially assigned to the case (an actuarial measure of risk was not available). The three variables were used to predict each of the five outcomes (two measures of employment disruption, financial stability, residential stability, and negative impact on dependents under 18). Particular attention was paid to the odds ratios that emerged for the relationship between the binary measure of time spent in jail and each outcome.

Table 1 (next page) presents the odds ratios

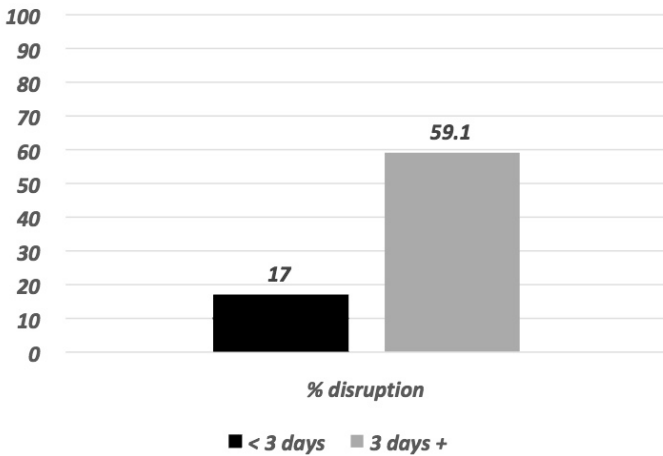**FIGURE 1**
Percent Indicating Job Loss or Job Change

FIGURE 2
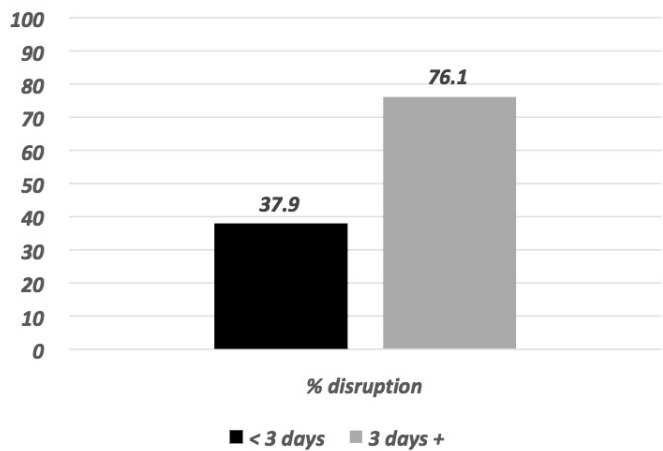**Percent Indicating Job Loss, Job Change, or Consequences**

FIGURE 3
Percent Indicating Change for Worse, re: Financial Stability*
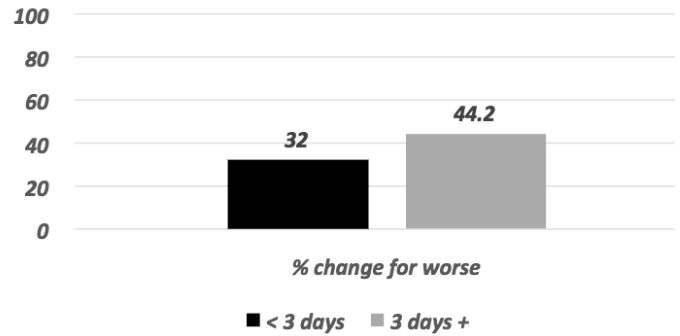

FIGURE 4
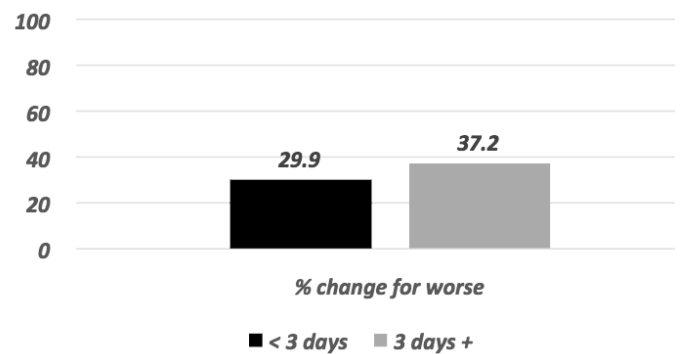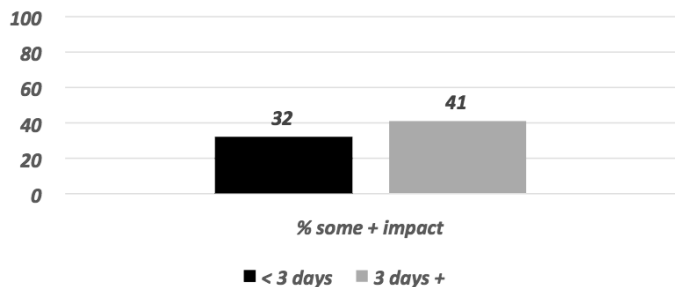**Percent Indicating Change for Worse, re: Residential Stability***

FIGURE 5
Percent Indicating Some Negative Impact

that emerged when assessing the relationship between the binary measure of time spent in jail and each of the five outcomes while controlling for whether or not there were any open cases reported, and the amount of bail (logged) initially assigned to the case. The same results as those detailed above were revealed with each analysis; however, observing the odds ratios has the added benefit of indicating the actual impact that time in jail pretrial may have had on the reported outcomes (and likewise with the benefit of controlling for the perceived risk associated with the case). The odds of experiencing employment disruption in the form of job loss or job change after jail were seven times larger for those spending three or more days in jail pretrial compared to those spending fewer than three days. For employment disruption that included job loss, job change, or consequences at a job they held onto before and after pretrial incarceration, the odds were five times larger for those spending three or more days in jail. The impact was somewhat less, but statistically significant, for financial stability, with those spending more than three days in jail being 54 percent more likely to report difficulty with financial stability, 35 percent more likely to report residential disruption, and nearly 49 percent more likely to report negative impact on dependents under 18, relative to those who spent less than three days in jail pretrial.

Implications and Limitations

The results presented above may hold some policy implications for decision making at the pretrial stage of case processing. First, the results revealed that jail is not necessarily "good" for anyone. Negative impacts were revealed for both groups—those who

TABLE 1.

Logistic regression results predicting each of five outcomes

Outcome	Exp(B)
Employment disruption measure #1	7.000***
Employment disruption measure #2	5.734***
Financial stability	1.543***
Residential disruption	1.352**
Negative impact on dependents	1.488**

*Control variables included whether or not the respondent reported having any open cases, and the amount of bail initially assigned to the case. *** p < .001; **p < .01*

reported less than three days in jail and those who reported three or more days. However, across all analyses—the bivariate chi-square analysis with no statistical controls, and the multivariate logistic regression models that incorporated at least rudimentary measures of risk—the negative impact was statistically significant and far more substantial for those who spend three or more days in jail. Assuming that these results have at least some validity, it may be that the longer someone spends in jail pretrial, the more likely the person is to experience disruption in employment, financial and residential stability, and negative impacts on dependents under age 18, although because of the binary nature of measure (< 3 days; 3+ days) a linear relationship cannot be assumed. The extent to which these impacts may increase the likelihood of continual involvement with the criminal justice system is unknown. Nonetheless, it appears safe to assume that the disruption could easily lead to additional difficulties that in turn exacerbate other problems such as substance use, the deterioration of emotional or mental health, and antisocial/criminal behavior.

It is important to bear in mind the core purpose of pretrial detention. Those who spend their entire pretrial period in jail are almost certainly going to appear for all their court dates, and likewise will not have any new charges brought against them (at least not within the public domain). In short, there is a "public safety" function to the use of pretrial detention. However, it is just as important to bear in mind the cost of this "public safety." Of course, there is the literal cost of incarceration, which can be considerable, and likewise includes liability. In addition, regardless of the cost of incarceration, jail space is a finite resource and not easily expanded. In light of the costs and the finite nature of the resource, it makes sense to reserve jail space for those from the pretrial population who cannot manage (or be managed) in the community while they await trial. This appears even more critical considering the negative impacts regarding employment, finances, residential stability, and family outlined above.

First and foremost, jurisdictions should rely heavily on the use of valid measures of actuarial risk when making decisions about pretrial release. While many jurisdictions have either created or adopted effective actuarial risk assessments, the mere incorporation of the tools is not adequate to ensure that jail space is used in the most effective ways. Aside from all the initial and difficult work that

needs to go into effectively implementing an actuarial risk tool (whether by creating one or by adopting an existing risk tool), several systemic issues often need to be addressed. For example, a quality assurance process must be in place to ensure that the instruments are being scored properly, with particular attention being paid to instances where a practitioner interview is part of the process. Likewise, clear and effective methods need to be implemented for giving the information from the risk assessment to the right people in a timely fashion. The creation of policy and procedures for the risk score/categorization is also needed, and will likely include very difficult discussions regarding the role of bail (if any). More than anything else, however, judges need to fully understand and largely abide by the risk instrument, making decisions accordingly. Encouraging good practice on the part of judges may require a large time investment and substantial effort, particularly in conveying to justice professionals the necessary information about actuarial risk. Included in the educative efforts should be the extent to which the use of bail disrupts even the most effective risk-based decision making.

Second, in the unlikely event that the use of bail is greatly reduced or even eliminated, procedures should be put in place that make it possible to identify those who are likely low risk but who remain in jail for some reason. Further, once those individuals are identified, it should be made possible for them to be released as quickly as possible to avoid some of the disruptions that are likely to result, particularly when stays in jail extend to three days or beyond. All practitioners and decision makers within the justice system should be aware of the likely disruptions to employment, finances, residence, and family. It is likely that many of those who are booked into jails pretrial are already experiencing some (perhaps a large) degree of distress, and disrupting access to core functionality staples such as employment and residence will push them further into distress. Consider for example a situation where an actuarially low-risk person is detained for seven days and then released back to the community pending the resolution of the case. Even if public safety was the primary concern (which it should not be, if this person was truly low risk), the release (at 7 days) renders that concern moot, all the while causing the individual to face the likely disruptions outlined above.

The current study has some methodological limitations that bear mention, as they

potentially affect validity. First and foremost, the measure of employment disruption could have been influenced by an individual's decision to leave a job and take up another one in a manner unrelated to the person's pretrial incarceration. In other words, the job change (if any) might have been coincidental to the individual's pretrial incarceration and not a result of it. In addition, as noted above, an actuarial risk measure was not available. The decision was made to use two admittedly imperfect factors as proxy measures of risk—amount of bail assigned, and whether the respondent reported having any open cases.

As noted above, the extent (if any) to which the disruption that appeared to occur was related to further criminal justice outcomes is beyond the scope of the data used in this study, and therefore unknown. Specifically, it is not known whether the higher probability of job loss, residential or financial disruption, or negative impact on children had a criminogenic effect, thereby increasing the likelihood of failing to appear for court dates, further arrest, charges, convictions, and/or sanctions. This is a particularly important concern for those who may be actuarially low risk when they enter jail at the pretrial stage. In other words, if it can be demonstrated with adequate consistency that even short stays in jail not only provide self-reported disruption, but also increase the likelihood of failure to appear, new arrest/charges, new convictions, and new sanctions (community or institutional), the need to ensure that low-risk people do not enter jail in the first place, or are released as quickly as possible, becomes even more urgent.

Second, the current study lacks measures of detainees' mental health. Mental health is an increasingly important concern within the realm of criminal justice. The criminal justice system's assessment of and response to those with mental health challenges may hold important implications for decision making and service delivery. While the current study did not incorporate any measures of mental health, it appears likely that longer stays in jail may lead to disruptions regarding mental health, which likewise holds implications for other areas of functionality. In addition to mental health, the survey lacked other potentially important measures, such as perceived social costs or embarrassment of the defendant.

Third, one of the study's most important measures—length of time spent in jail pretrial—is measured as a binary. Survey respondents were asked to indicate by checking a box whether they had spent fewer than three days in jail, or three days or more. As a result, it is not possible to do a more granular analysis of the amount of time spent in jail. The results presented above appear to indicate that disruption has occurred once an individual reaches or surpasses three days in jail. It would be valuable to know whether the disruption begins before that point in time (2 days, or even 1 day). If for example an individual who is being held pretrial had been working at an entry-level position in a fast food restaurant prior to being arrested, it seems at least plausible that the person could lose the job after missing just one day of work.

The survey data for the current study came from one agency within one jurisdiction. As such, the results may not be generalizable to other locations. For example, the jurisdiction from which the data came is not racially or economically representative of the broader U.S. In addition, the survey did not ask for any demographic information or any other domains (e.g., education, marital status, social capital, or support) that might be important moderating factors for employment, financial and residential stability, and relationships with dependents under 18. Finally, much like the limitation regarding actuarial risk mentioned previously, the current study does not include information about the current charge or the criminal history. Future efforts should include these and other potentially relevant measures.

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Federal Pretrial Release and the Detention Reduction Outreach Program (DROP)

Sara J. Valdez Hoffer
U.S. Probation Office, District of Kansas

IN 2015, THE Detention Reduction Outreach Program (DROP) was developed by the Probation and Pretrial Services Office (PPSO) of the Administrative Office of the U.S. Courts (AO) in response to the rising national detention rate. Specifically, Probation Administrator William E. Hicks, Jr. evolved DROP from an idea he had while working as an officer in his home district. Mr. Hicks' dream was to create a program that encouraged more interaction between the Administrative Office and the field. He calls that vision "boots on the ground."

DROP is an evidence-based program designed to reduce unnecessary pretrial detention through collaboration with stakeholders and through education regarding better use of the Pretrial Risk Assessment (PTRA). DROP, which is designed to last two days, includes one day of meetings and education with probation and pretrial services staff only. On the second day, PPSO staff and probation and pretrial services staff from the district (usually upper management team members) meet with district stakeholders, including judges, representatives from the federal public defender's office, and representatives from the U.S. Attorney's Office. Both days include discussion about the history and framework of pretrial services and the development and use of the Pretrial Risk Assessment Tool; a review of national release trends and supervision trends, and a review of release and supervision trends specific to the district hosting the program. This education and trend review allows everyone involved to analyze their district outcomes compared to national outcomes and to identify areas for improvement. By accurately

understanding the goals and statutory duties of pretrial services, each agency is better able to recognize where changes in process and/or culture may need to occur.

The training with probation and pretrial services staff concludes with a breakout group session. During this session, officers separate into small groups and answer questions concerning what their district is doing well to reduce unnecessary detention, what barriers they are facing to effectively complete their job duties, and what the district's focus should be moving forward. Through these breakout groups, officers work to develop an action plan concerning the future of the district. Often, this is the most exciting and meaningful portion of the visit. PPSO staff record the outcomes of the breakout

sessions and, following the visit, the information is summarized into a report with a recommendation on how the district should proceed in its efforts to reduce unnecessary detention. The report is provided to the chief probation and pretrial services officer, usually one month following the visit.

Since its development, DROP has been presented in 15 districts across the nation. Three additional districts have received a modified form of the program known as "DROP-like technical assists" by PPSO staff. Those districts that have hosted the program have experienced a wide range of impacts. First, all districts visited before fiscal year 2018 have shown an increase in PTRA implementation rates. In one district, timely PTRA completion rates have increased by almost 70

FIGURE 1
DROP Visit Outcomes: Release Rates Before and After DROP
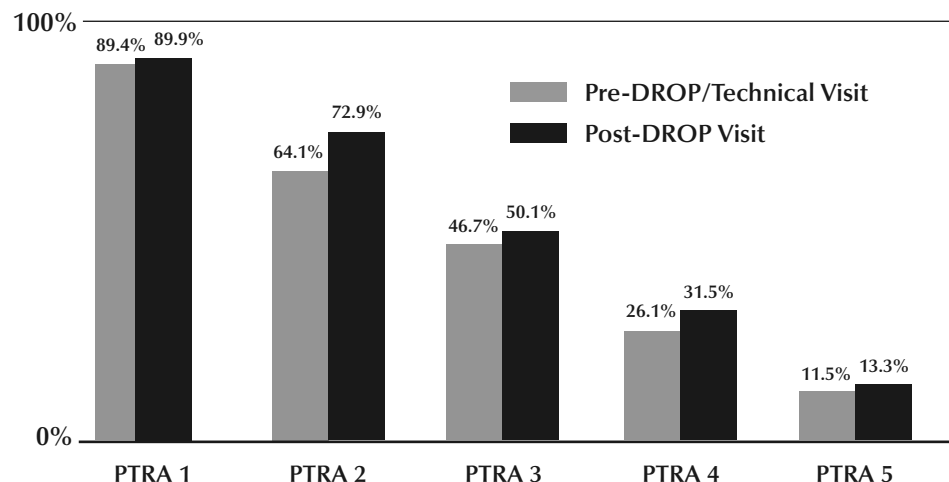
Two Districts were excluded from the sample. One was less than 6 months Post-DROP and the other was an outlier.

FIGURE 2
DROP Visit Outcomes: PTS Release Recommendations Before and After DROP
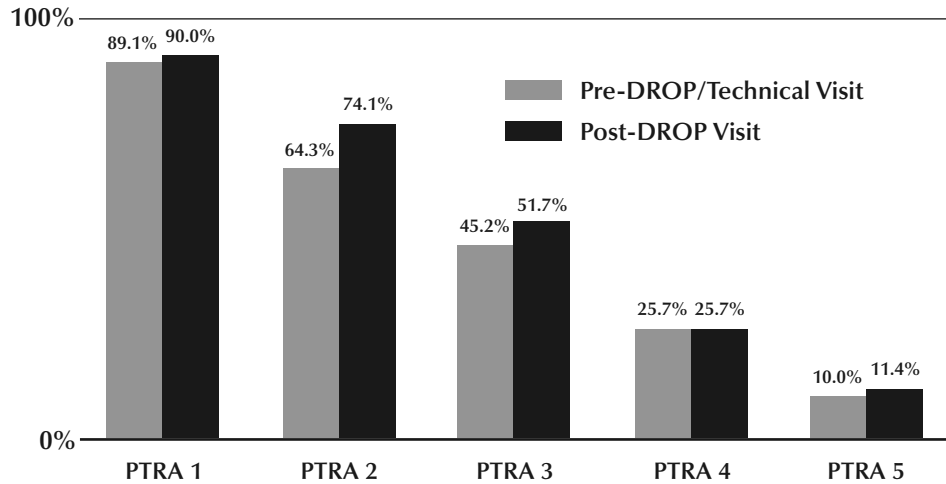
Two Districts were excluded from the sample. One was less than 6 months Post-DROP and the other was an outlier.

percent. Eight participating districts have seen increases in their release rates, ranging from 1 to 12 percent. Further, when those release rates are reviewed by individual risk categories, increases have been experienced by as much as 20 percent in target risk categories. Officer recommendations have also been positively impacted through the DROP program. Overall, officer recommendations for release have increased—and continual reviews have shown that these increased officer recommendations and actual release rates have not resulted in any statistically significant change to rates of nonappearance or rearrest.

In addition to statistical changes, districts have experienced several other internal changes following DROP visits. Several districts have formed work groups to review outcomes and address areas of improvement. In some districts, these work groups are made up solely of probation and pretrial staff, while in others, stakeholders are also involved in the work groups. Further, even in those districts where a work group has not been developed, districts have employed a variety of methods to maintain collaboration with their stakeholders, including brown bag luncheons and regular educational meetings. Finally, several local policies have been amended and new local policies have been developed based on the discussion and education generated through DROP.

One DROP Example: The District of Kansas

In May of 2015, the District of Kansas became the second district in the nation to host DROP, following the Eastern District of Louisiana.

Like most districts that have hosted the program, the District of Kansas has experienced several positive changes from the DROP visit. To begin, immediately following the DROP visit, the district experienced an increase in release rates. (See Table 1.)

In addition to an increase in the release rate, the district implemented a number of other changes following the DROP program. First, a work group was formed with the mission of advancing the district-wide goals identified at the time of the visit. In the District of Kansas, these goals included regular review of district outcomes (including officer recommendations compared to actual release rates); regular review of the number and appropriateness of conditions of pretrial release recommended by officers; and regular monitoring of district-wide supervision outcomes such as failures to appear and rearrest rates. The work group continues to meet on a quarterly basis and, in addition to reviewing the goals listed above, the group regularly discusses difficult PTRA calculation scenarios and other challenges that arise in the area of pretrial services. Another Kansas goal created at the time of the DROP

visit was to educate all stakeholders regarding the PTRA. With the approval of the court and following a district-wide education initiative, the district began including the PTRA in the bail report in March of 2016. Finally, the district adopted an aggressive approach to recommendations based on risk and instituted a requirement of supervisor approval for any detention recommendations on low- or moderate-risk defendants.

At the start of fiscal year 2018, almost three years after the initial DROP visit, the District of Kansas held an in-district follow-up meeting. At the meeting, district trends and outcomes were reviewed, goals were re-evaluated, and officers were provided with updated education that has been added to the DROP curriculum as it has evolved over the past several years. It was clear at the meeting that the district has retained its initial excitement and passion for the initiative. The statistical data reviewed also demonstrated this continued enthusiasm. The review of trends showed the district has continued to progress in the years following DROP. Specifically, while the characteristics of the defendant population have remained similar, the district's release rates were higher than the national average in fiscal year 2016 and fiscal year 2017, when they previously had been consistently below the national average; the district yielded an overall increase in release recommendations by officers of 7 percent; and the district remained among the top districts achieving PTRA timeliness. Additionally, data showed that the district previously averaged 12 conditions of release per defendant. However, as of the beginning of 2018, the district averaged closer to 10 conditions per defendant according to PACTS data and possibly as low as seven to eight conditions according to other federal data sources. Importantly, despite the increases in release recommendations and release outcomes, the district's rearrest and technical violation rates remain unaffected.

TABLE 1
District of Kansas increase in Release Rates Following DROP

	10/01/2014 – 09/30/2015	10/01/2015 – 05/03/2016
Overall	44.1%	57.2%
Category 1	88.9%	91.1%
Category 2	66.7%	81.5%
Category 3	43.0%	63.5%
Category 4	19.6%	24.5%
Category 5	10.4%	11.4%

To better understand the true impact of DROP, Kansas officers were polled on what portion of DROP had the greatest impact from the officers' perspectives. Officers identified five influencing factors. First, officers noted that understanding the actual consequences to the defendant had a large impact. These consequences to defendants of pretrial detention include impacts on defendants from the time of sentencing to the term of post-conviction supervision. Next, officers found that understanding the proper use of the PTRA was extremely helpful in moving in the right direction. Officers noted that reviewing the appropriate use of alternatives to detention and recommendations for conditions of release was an important component of the program. Extremely empowering for officers was the meeting with the judges, where they expressed their perspective and expectations regarding officer recommendations. Specifically, in the District of Kansas, the judges clarified that they are interested in receiving the officer's recommendation based on the officer's experience regardless of what the officer may believe the outcome of the court will be. Finally, the commitment by every level of staff in the district, from line officers to the chief, motivated officers to get on board with the initiative. The support and encouragement of the entire management team was especially important in reassuring officers and advancing the project. Overall, officers were challenged and inspired, two very common outcomes of the DROP program.

DROP Common Findings

Throughout the course of the DROP program several common themes have become apparent. First, it has become clear that officers struggle with risk-based recommendations and appropriate recommendations for alternatives to detention. In other words, officers struggle with making recommendations that are consistent with the statutory obligation of "least restrictive conditions" and the federal risk principle. Officers must always begin at release on personal recognizance. They then can work to identify specific risks of nonappearance and risks of danger. In order to minimize those risks, officers should recommend the least restrictive conditions necessary to address the identified risk. If there are no risk factors identified, defendants should be released on a personal recognizance bond. And finally, detention should only be recommended if there are no conditions or

combination of conditions that can reasonably assure the defendant's appearance or safety to the community. Based on the discussions occurring through DROP, it appears that officers are often recommending a "standard" set of conditions, usually based on their experience in court and their knowledge of what they believe the judge will most likely impose. Through DROP, officers review the important duty of conducting an individual assessment of each case and then making the appropriate recommendation independent of what the officer believes the court may decide. Officers are reminded of two important points: First, there are several factors the court is considering in its decision that the pretrial services officer is prohibited from considering and, therefore, pretrial services should be recommending release at a higher rate than the actual court outcomes; second, alternatives to detention are most appropriate for moderate-to high-risk defendants.

The second common finding through DROP is that PTRA timeliness is frequently misunderstood. The PTRA is an evidence-based tool developed to assist officers in making appropriate recommendations regarding release or detention. PTRA is not a stand-alone tool, and it should always be used in combination with a thorough pretrial investigation and the officer's professional judgment. Therefore, the appropriate use of the PTRA is to complete the assessment prior to the judicial decision. This means that, in preparation for the court to make a decision regarding release or detention at the initial appearance, the tool should be completed before the defendant's appearance in court. If the government or defense attorney is requesting a continuance of the hearing for a period (i.e., three or five days), then the tool can be completed by the time of that hearing. Completing the PTRA before the judicial decision allows officers to have the score and risk classification available to them before making any recommendation to the court concerning release and detention or appropriate conditions of release.

The DROP program has also proven there is tremendous value in meetings between U.S. Probation and Pretrial Services personnel and our stakeholders. As previously mentioned, several districts have amended local policies or procedures or implemented new policies or procedures as the result of the DROP visit. Many of these changes concern issues that were previously unaddressed and had lingered for a significant amount of time, resulting in

barriers to the officers' ability to complete their work, limiting the efficiency of the initial judicial process, and depriving the court from having all available information to make an informed decision. By bringing everyone together, DROP "gets the conversation going" and aids in all stakeholders understanding how each of their actions impact the pretrial phase of the judicial process. This has been shown to be extremely effective not only in achieving local policy/procedural change but in generating the educational piece necessary for everyone to implement an evidence-based approach to pretrial services.

The DROP program has shown that data quality continues to be an important concern in the federal system. Prior to the DROP presentation, a copy of the data that will be presented is forwarded to the district for review. It is not uncommon for the district to respond and note that the data being captured by an internal system called the Decision Support System (DSS) is incorrect and to recognize that certain outcomes need to be more accurately captured in the system. DROP has shown that the reduction in the number of data quality analysts employed in the districts, a reduction mostly driven by budgetary issues, has had a serious impact on the accuracy of what is recorded in the PACTS system. In the current era, when PACTS data can have so many implications for a district, this is an important issue that districts often remain unaware of until they are presented with the DROP presentation summary.

During the educational portion of the program, districts are informed of important DSS reports that can be used to monitor district outcomes and help identify areas of improvement. These reports include: DSS 1288, Officer Release Recommendations; DSS 1277, PTRA Timeliness; DSS 1273, Personal Contacts by Risk; DSS 1248, Total Release Population by Risk; DSS 1156, Latest Release Rates by PTRA; and DSS 1244, Pretrial Services Supervision Outcome Report.

Finally, the greatest area for improvement that has become clear through DROP is the need to strengthen a pretrial culture rooted in reducing unnecessary detention and being least restrictive with conditions of release. A portion of the program reviews the top ten districts with the highest release rates in the nation and the bottom ten districts with the lowest release rates in the nation. This section of the program is especially important for many DROP participants. Officers and stakeholders are shown that represented in both the

top ten districts and the bottom ten districts are districts from across the nation, including districts located within the same state; districts with similar defendant populations, including risk levels and offenses charged; and districts that are combined (that is, with both the pretrial and probation functions located in the same office) as well as districts that are bifurcated (with separate pretrial and probation offices). In order to ensure a strong pretrial culture, there are practices all districts should employ. The part of the AO's *Guide to Judiciary Policy* that focuses on pretrial services provides a list of specific practices districts must employ to ensure a strong pretrial culture. These practices include presuming release; remaining objective during the investigation; reporting in a neutral language; advocating for the least restrictive conditions; focusing on addressing risk; and developing consistent recommendations through the use of the PTRA. On the pretrial supervision side, officers must neither under-supervise nor over-supervise, and they must use strategies directly related to the identified risk factors. And, of course, officers must always maintain pretrial client confidentiality. Strengthening a pretrial culture has been shown to be the most important discussion piece that comes from the DROP program.

The Future of DROP

Shortly following the Bail Reform Act of 1984, the nation faced a detention crisis. Since that time, several initiatives have been created to combat the issue, yet the national detention rate has continued to rise despite these many efforts. Only recently has the federal system shown the first signs of a shift in direction. The DROP program is clearly one effort that can be attributed to this progress. Although the program has only been presented in a limited number of districts, numerous other districts have been made aware of the program and have initiated local-level efforts based on the same theory. These districts are unable to host a formal DROP visit for a variety of reasons, but they are still inspired by the movement and want to experience similar outcomes. In the meantime, the DROP program continues to evolve based on the lessons learned through DROP and other platforms of discussion. What began primarily as a review and discussion of statistical data and national trends has now grown into a full two-day educational curriculum that covers a tremendous amount of information not previously coordinated for officers and stakeholders. During fiscal year 2019, it is anticipated that six additional DROP visits will be conducted and an equal number is expected to be presented the following year. With each district being visited, the message continues to reach more officers and become clearer to all. Our federal system must get focused on the mission to reduce unnecessary detention. That is our job!

Any district interested in hosting a DROP visit should contact Probation Administrator William Hicks for further information.

A Rejoinder to Dressel and Farid: New Study Finds Computer Algorithm Is More Accurate Than Humans at Predicting Arrest and as Good as a Group of 20 Lay Experts[1]

Alexander M. Holsinger
Criminal Justice Coordinator, Johnson County, KS
Christopher T. Lowenkamp
Administrative Office of the U.S. Courts
Edward J. Latessa
University of Cincinnati
Ralph Serin
Carleton University, Ottawa
Thomas H. Cohen
Administrative Office of the U.S. Courts
Charles R. Robinson
Administrative Office of the U.S. Courts
Anthony W. Flores
California State University, Bakersfield
Scott W. VanBenschoten
Administrative Office of the U.S. Courts

IN A RECENT article published in *Science Advances*, Dressel & Farid (2018) presented results from their recent study that they believe call into question the accuracy and fairness of the COMPAS risk assessment tool specifically and all statistically-based prediction tools more generally. In reaching these two conclusions, Dressel and Farid made the arguments that laypeople are as accurate (or better) and as fair in their prediction of reoffending as statistically based risk assessment instruments empirically designed to predict reoffending.

It is interesting to note that Dressel and Farid came to these conclusions by analyzing the same data used by Angwin, Larson, Mattu, and Kirchner (2016) just two years earlier. Angwin et al. concluded the COMPAS was biased against African Americans—and were subsequently taken to task in several rejoinder articles for failing to understand such basic statistical concepts as base rates, percentages, and statistical significance (see Chouldelkova, 2016; Flores, Bechtel, & Lowenkamp, 2016; Spielkamp, 2017). Now, it seems Dressel and Farid are traveling a similar path.

Several of us have devoted much of our professional careers to developing and studying the use of risk assessment in the field of

criminal justice and were dismayed and disappointed when *Science Advances* published the Dressel and Farid study. While we normally applaud instances when researchers challenge accepted conventions, we also expect those offering critiques to do their homework and to offer compelling evidence. Unfortunately, we saw neither in this study.

In the following pages, we closely examine the authors' premise, methodology, and conclusions, focusing on some omissions and incorrect assumptions. In addition, while Dressel and Farid focus on the binary decision of "future crime" (yes vs. no), we also argue that risk assessment has important justice-related objectives beyond merely predicting

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new criminal conduct. We also think it is worth noting that none of us has any ties to COMPAS or its parent company Northpointe. This rebuttal is not meant as an endorsement of COMPAS.

Criminal Justice Decision Making

It is hardly an overstatement to say that criminal justice case processing is driven by decision making. At every stage of the criminal justice system decisions must be made—decisions that may have serious, lasting, and reverberating effects for criminal suspects, victims, defendants, inmates, probationers, and parolees, as well as their families and friends. From the decision to arrest (or not) at the "beginning" of the criminal justice system, to the decision whether or not to grant parole at the "end," criminal justice professionals including police officers, prosecutors, judges, parole boards, and community supervision officers make important decisions on a daily basis. These decisions obviously affect those who are justice-involved as well as their families, but they also can affect our communities.

One could argue that concerns relating to public safety, in some form, are central to professional decision making in criminal justice. Whether the central focus of the system is a suspect, a defendant pending release from pretrial detention, a prison inmate, or a person on community supervision, the prevention and suppression of crime and future criminal behavior is undoubtedly one of the primary interests of criminal justice decision making. As a result, much attention is paid—and rightly so—to decision making in justice case processing. Although ensuring public safety is an important goal, we are also concerned about ensuring fairness, justice, transparency, and due process. Indeed, the use of objectivity and evidence-based risk assessment in criminal justice decision making have been emphasized for many decades (see for example Gottfredson, 1987), including recently (see Desmarais, Johnson, & Singh, 2016) as a means of promoting a fairer and more equitable way to make decisions. Objective evidence and the influence of research can be seen clearly via the development, implementation, and testing of actuarial risk assessment instruments designed to aid criminal justice decision making.

The Development of Actuarial Risk Assessment in Criminal Justice

The development and use of actuarial assessments are perhaps most advanced in the correctional environment. Indeed, risk assessment has evolved from "gut feeling" intuition-based (and often bias-ridden) decision making to fourth-generation assessment tools that not only allow for objective risk management, but also facilitate case planning and the measurement of change in dynamic risk factors. In correctional settings (secure and/or community-based), the time investment that comprehensive risk and need assessment requires is regarded as an essential component of an evidence-based decision-making process. For example, those placed on probation are often given a sentence that can range from some months to several years, with the presumption that they will receive some interventions along the way that are designed to help them address some of their dynamic risk factors, such as substance abuse treatment or employment training. As such it makes sense that probation officers would apply their time and expertise to learn as much as they can about the individuals they will be supervising for sometimes lengthy periods (Miller & Maloney, 2013; Lowenkamp, Lovins, & Latessa, 2009). In probation and other correctional settings it is not uncommon to find assessment tools used to help make a variety of decisions, including the types of services and programming required, the intensity of supervision, or even whether the individual requires more restrictive placement. Indeed, there is a large and growing body of literature demonstrating the effectiveness and benefits of actuarial assessment in correctional environments.

The use of actuarial assessment tools is found at every stage of the court and correctional system. For example, it is not uncommon to find actuarial risk tools in place in pretrial settings—instruments designed to assist with decisions about pretrial release and community supervision for defendants (Lowenkamp, Lemke, & Latessa, 2008; Lowenkamp & Whetzel, 2009). Actuarial tools also have a long history of use in jails and prisons to help classify and make appropriate housing placements, and are used by some probation and parole agencies to help determine how best to handle violation of supervision. Recently actuarial risk assessment has also become a point of discussion at the sentencing stage (Monahan & Skeem,

2016; Scurich & Monahan, 2016).

The advent and proliferation of actuarial assessments has largely been viewed positively and with continued optimism. In fact, "assessment" in and of itself is typically regarded as an essential component of evidence-based practice (Andrews & Bonta, 2015). The incorporation and use of standardized and objective measures are seen as an improvement over purely qualitative and unstructured one-on-one clinical assessment, which may invite bias into decision making (intended and/or unintended). Given the gravity of criminal justice decision making, and the importance of pursuing justice, the constructs of objectivity and standardization are key. Further, despite the evidence supporting the effectiveness of actuarial assessment, seldom if ever has the recommendation been made to "blindly" follow the risk score; in other words, people make decisions, not the instrument alone. Yet, use of actuarial risk assessment tools should help guide those decisions, in part because they help summarize and sort large amounts of information in a systemic, objective, and standardized way (Shlonsky & Wagner, 2005).

Nonetheless, actuarial assessment in justice settings has come under renewed skepticism regarding all the potential ills it is typically designed to address, most notably inaccuracy (via "false positives" or "false negatives") and bias (circumstances where an algorithm is not as effective for, and/or over-classifies specific demographic groups). One central question has driven the controversial discussion surrounding risk assessment thus far, and yet remains in some pockets: Is a risk assessment instrument or algorithm "better at" predicting the likelihood of future criminal behavior than a human being?

The Research on Risk Assessment

For an article devoted to comparing the predictive effectiveness of risk assessments to that of human judgement, it is puzzling and somewhat surprising that the authors either omitted or ignored an entire body of literature illustrating the capacity of actuarial devices to outperform human decisions in risk prediction. The literature on the predictive capacity of risk instruments dates back to the 1920s (see Burgess, 1928) and over time, our knowledge of how actuarial risk assessments outperform clinical or professional judgments has been augmented by hundreds of individual studies and more recently by a number of meta-analytical studies. Meta-analyses essentially entail

the pooling of many studies, and these research efforts have empirically demonstrated the extent to which these instruments consistently and uniformly generate predictions of risk that surpass those of humans (see Ægisdóttir et al., 2006; Grove, Zald, Lebow, Snitz, & Nelson, 2000; Meehl, 1954). Curiously, the authors do not mention any of these seminal works, though they do briefly discuss one meta-analysis on sex offender assessments where the authors concede that these instruments provide more accurate predictions than "unstructured measures" in the task of assessing which sex offenders represent a danger to the community.

Critique of Dressel & Farid

Accuracy

Perhaps the most damning shortcoming of this study is that the authors provided laypeople with an "edge" in predicting recidivism. This edge was provided in two ways. The authors restricted the information that was presented in estimating risk to risk-relevant measures. As is discussed below, this process of restricting the information to risk-relevant factors is a known method in estimating risk that has been shown to be about as effective as actuarial approaches. The authors also provided an unfair advantage to the participants in that the participants were "trained" as they worked through the data, potentially learning what is predictive and what is not.

The description for each vignette was limited to risk-relevant information. It included the defendant's age, sex, offense type, offense severity, adult convictions, juvenile felony charges, and juvenile misdemeanor charges—virtually all of which are robust risk factors for recidivism (see, for example, Gendreau, Little, & Goggin, 1996). In real cases and real settings, decision-makers must deal with reams of (often risk-irrelevant and biasing) information. Perhaps wildly different predictions would have been made if things like residence, education, employment, family relationships, family structure, stress, depression, self-esteem, mental illness, physical well-being, veteran status, attitudes, peers, substance abuse, treatment episodes, past performance on community supervision, infractions while incarcerated, socio-economic status, financial holdings, a victim's impact statement, sentencing law, and the like were presented in the vignettes along with age, sex, and criminal history.

A large body of research indicates that structuring human judgment (by providing checklists of relevant risk factors, for example) yields much more accurate violence predications than unaided human judgment (see Skeem & Monahan, 2011). In essence, Dressel and Farid structured laypeople's decision processes—which may have scaffolded their accuracy. The authors wonder whether laypeople's predictive accuracy "would improve with the addition of guidelines that specify how much weight individual features should be given." That would amount to transforming a structured clinical decision (which is more accurate than unaided judgment) into something like an actuarial decision (which is also more accurate than unaided judgment, and akin to the COMPAS).

One of the central problems with "expertise" is that experts, like judges, rarely if ever receive feedback about the decisions made and the resulting outcomes. This feedback over time would certainly impact one's decisions. Participants in the current study were given two forms of feedback after each answer: whether the response was correct and their average accuracy. So, in essence, though the authors assumed the participants had little to no experience in criminal justice, each participant was given years of "experience" via the provision of potent and risk-relevant factors and feedback after each response. A vast literature indicates that people—like other sophisticated organisms—learn, with feedback. The process that Dressel and Farid used amounts to "human learning" rather than validation. It would be valuable to re-test the layperson after he or she had been "trained." To validate the laypersons' abilities to predict without feedback on a new set of cases would have been much more akin to statistical validation or model confirmation. In essence, the process used likely "overfitted" the model to the data. In the absence of any feedback and learning process, predictions are likely to have been much less accurate.

Dressel and Farid recruited their research subjects via Amazon's Mechanical Turk (MTurk), an online crowdsourcing marketplace that pays volunteers to complete online tasks. Once enrolled in the study, participants were given a series of vignettes with information pertaining to an actual person who had been charged with a crime. After reading the vignette, subjects were asked to indicate (yes/no) whether they thought the person would commit another crime within two years. After each answer, study subjects were told whether they were correct in their assessment. It is important to point out (see below) that study

subjects were paid $1.00 for completing the task and a $5.00 bonus if their overall accuracy was greater than 65 percent.

The authors assert that the individuals who made predictions on MTurk are "nonexpert" (page 2) and can be "assumed to have little to no expertise in criminal justice…" (pages 1 & 3). This assertion is dubious for a number of reasons. First, the title and description of the task on Amazon's Mechanical Turk (MTurk) may have had direct bearing on a person's decision to take part in the survey. The task title was "Predicting Crime" and the description given was "Read a few sentences about an actual person and predict if they will commit a crime in the future," with the following key words: "survey, research, criminal justice." Rather than assume that participants had no background or expertise, why didn't the authors explicitly ask participants? It seems reasonable to assume that people might search for tasks that fit with their training, interest, and/or expertise. Without knowing the backgrounds of the participants, it is reasonable to assume that at least some of the participants had some level of training or expertise in criminal justice prior to taking part in this study, or at least an above-average interest in the subject at hand.

Another concern is that participants had a financial incentive to make accurate predictions. As noted above, those taking part in the study were paid to read and make determinations, with a $5 bonus for achieving 65 percent accuracy or higher. While $5 is not a lot of money, it certainly increased the chances that some might consult the internet or an old textbook to learn more about the best predictors of criminal behavior. A quick internet search reveals that age, prior criminal history, and being male are all good predictors of criminal behavior (see Figure 1, next page). A little more searching on the internet leads one to know that early onset of criminal behavior (i.e., a juvenile record) is also a good predictor. Again, while $5 may not seem like much money, one must realize that the participants in the "Predicting Crime" task on MTurk were already reading 50 vignettes for $1 each. As such, it is certainly possible that some of the participants might spend a little time trying to increase their accuracy, given that an acceptably high rate of accuracy paid more than simply completing the task. It may sound like quite a leap to think that participants would go to more trouble to increase accuracy for a mere $5, but perhaps no more so than it was for the authors to assume they

were random laypersons.

In short, specifying relevant risk factors and providing feedback on the degree to which they predict recidivism "loaded the deck" for laypeople to predict more accurately than experts would in the much more complicated context of a real criminal case—with relevant and irrelevant information provided by the defense and prosecution and with no feedback about recidivism after an individual leaves the courtroom.

Fairness

In what seems to be an afterthought, the authors indicate that "…differences in the arrest rate of black and white defendants complicate the direct comparison of false-positive and false-negative rates across race (black people, for example, are almost four times as likely as white people to be arrested for drug offenses)." Stated differently, once an instrument demonstrates predictive parity (which the COMPAS does), it mathematically follows that different base rates of the criterion measure (in this case rearrest) across groups (i.e., white and black defendants) will necessarily lead to different rates of false positive and/or false negative rates. This is problematic as this issue is not resolved in the Dressel and Farid paper, and false negative and false positive rates are used as the measure of bias or figure into the calculation for bias in most of the measures reported throughout Tables 1 and 2 in the study (see pages 2 & 4 of Dressel & Farid, 2018).

Perhaps most egregiously, Dressel and Farid actually found that the COMPAS did outperform laypeople in predicting recidivism—at a statistically significant level. The authors downplay this finding—claiming that laypeople's accuracy is "just barely" lower than that of COMPAS. For justice-involved people who are the subject of recidivism predictions, "just barely" lower probably matters. Again, recall that this is really a comparison of structured judgment to fully structured/actuarial assessment—and fully structured/actuarial assessment "won." Not by much, but again how important that small margin is depends on which side of the "correctional desk" you sit on.

A Note on a Relevant Omission

In addition to omitting an entire literature on the topic of risk prediction, the authors speculate that it "remains to be seen whether the addition of dynamic risk factors would improve predictive accuracy" and then note that the integration of dynamic factors into COMPAS has not resulted in improved prediction for this instrument. First, this statement is somewhat puzzling, because although COMPAS does collect information on a large number of dynamic risk factors, relatively few of these contribute to the instrument's overall risk score; hence, it's not possible to say with certainty that "integration of dynamic factors into COMPAS" has failed to improve this instrument's predictive capacities. Moreover, these statements imply that human predictions based on a narrow range of factors that are generally not amenable to change (e.g., age, sex, and criminal history) are all that is required to assess recidivism risk. Such notions are unfortunate because they reduce the concept of risk assessment from one involving a holistic approach aimed at assessing an individual's recidivism risk and identifying crime-driving factors that, if changed, could help with the reintegration of offenders back into society into one where risk prediction is circumscribed to just a few static items. This restricted view of risk assessment has been superseded by the development and evolution of dynamic risk assessment. The topic of dynamic prediction is of crucial importance in the risk assessment and community corrections literature.

Over time, risk assessments have evolved from instruments that primarily assessed risk on static factors such as the ones used in this article (i.e., age, criminal history) to actuarial devices that can measure changeable factors

FIGURE 1
Results of Google Search for "Best Predictors of Recidivism"
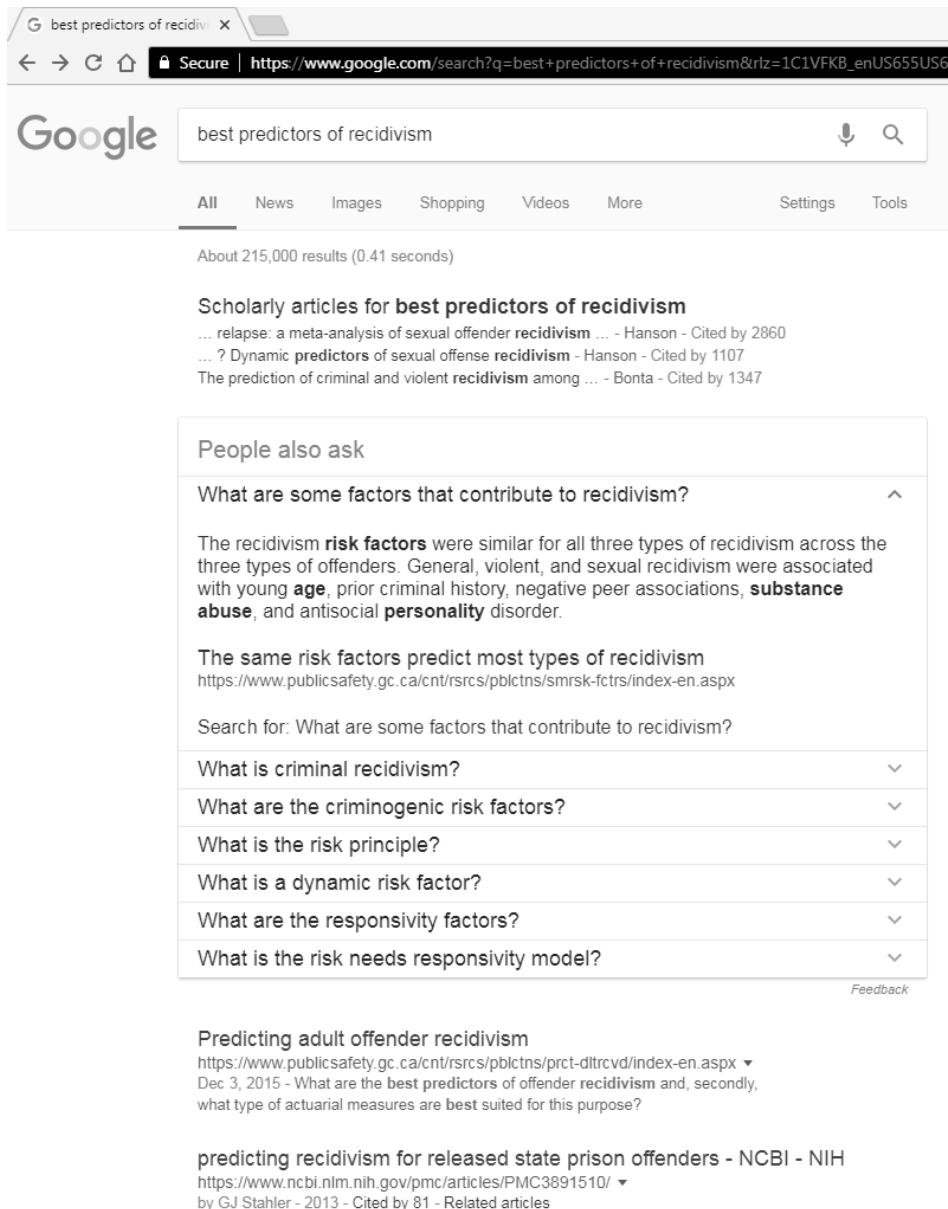
that are criminogenic, meaning that they are empirically correlated with crime such as the presence of procriminal attitudes, the lack of prosocial associates, the manifestation of antisocial personality patterns, the existence of poor family relations, the inability to find and maintain employment, and the struggle with substance abuse problems. While these dynamic factors may be more difficult to measure, assessing their presence and tracking whether they are changing over time is really important if we want to try to reduce risk and protect the community.

In fact, several studies show that if probation officers correctly identify the existence of dynamic criminogenic factors through the application of risk assessment and then attempt to ameliorate them through appropriate interventions, they can reduce an offender's likelihood of recidivating. The nexus between change in measurable risk characteristics and offender recidivism outcomes can best be understood through studies conducted using dynamic risk assessments including the Level of Service—Inventory (LSI-R) and the Post-Conviction Risk Assessment (PCRA). These studies have clearly shown that an offender's risk scores and characteristics can change over time and that changes in risk scores are associated with changes in an offender's likelihood of committing future crimes. Specifically, they show that offenders with decreasing risk scores are less likely to garner new criminal arrests after reassessment, while offenders with increasing risk scores are more likely to recidivate post reassessment (See Cohen, Lowenkamp, & VanBenschoten, 2016; Labrecque, Smith, Lovins, & Latessa, 2014; Miles & Raynor, 2004; Raynor, 2007; Schlager & Pacheco, 2011; Vose, Lowenkamp, Smith, & Cullen, 2009; Vose, Smith, & Cullen, 2013). Moreover, meta-analyses done on the predictive accuracy of dynamic risk factors have shown that these factors perform at least as well as static domains (Gendreau, Little, & Goggin, 1996). Finally, it is critical to note that when empirically constructed risk instruments capable of identifying dynamic criminogenic factors are not being used by community corrections staff, officers will often engage in supervision practices that focus on addressing issues uncorrelated with crime. It is unfortunate when officers target non-criminogenic needs, as the result is often a waste of corrections resources with no reduction in an offender's proclivity to recidivate or enhancement in community safety (see Lowenkamp, Latessa, & Holsinger,

2006; Oleson, VanBenschoten, Robinson, Lowenkamp, & Holsinger, 2012).

The bottom line is that without dynamic risk assessments, officers will be unable to assess the presence of changeable risk characteristics, devise and implement strategies to address these characteristics, and monitor in a systematic and quantifiable fashion whether offenders are improving, remaining unchanged, or worsening while under supervision.

Last, this study overlooks an entire body of literature where community corrections professionals working in the criminal justice field discard risk assessment recommendations for their own "seat of the pants" judgments. In the risk assessment field, we call these decisions "supervision overrides." Basically, an override occurs when a community corrections officer decides that the risk assessment instrument their department uses has incorrectly assessed an offender's propensity to recidivate and decides to supervise that offender at a level of intensity diverging from the risk instrument's recommendation. Most overrides involve an officer's decision to supervise offenders at levels of intensity higher than recommended by the original risk classification. Though overrides typically occur with sex offenders, this is not always the case, and not surprisingly, we find that overrides typically result in reducing the validity of the tool in predicting risk to reoffend. In other words, in criminal justice contexts where officers decide to ignore an actuarial risk recommendation and exercise their own discretion or judgment, the officer's decisions are usually not as predictive as that of the actuarial classification. We find it surprising that this literature was not acknowledged or discussed in this article (see Cohen, Pendergast, & VanBenschoten, 2016; McCafferty, 2017; Wormith, Hogg, & Guzzo, 2012).

Final Thoughts

A judicious read of the paper suggests it was primarily intended to challenge the utility of actuarial risk assessments, with purported evidence regarding the accuracy of laypersons' ability to "conduct" risk assessment, albeit using a markedly constricted range of factors. Concurrently, it seems the authors also raised issues regarding the need for transparency in risk assessment (i.e., public access to algorithms in commercialized risk scales) and extolled the merits of mechanical learning over other statistical analytic approaches for selecting and weighting risk factors. From our read of this research, mechanical learning fails to offer any particular advantage

in terms of predictive accuracy, despite its increased prominence in recent risk assessment research.

Interestingly, the field of risk assessment has previously seen debates regarding which risk assessment instrument is most effective (Baird, 2009; Gendreau, Goggin, & Smith, 2002; Hemphill & Hare, 2004). Such debates have now been replaced with the recognition that risk instruments tend to share many similarities, both in terms of accuracy (Yang, Wong, & Coid, 2010) and content (Kroner, Mills, & Reddon, 2005). Indeed, the discussion is more about which measure best fits an agency's needs (i.e., costs, training requirements, synchronization with internal datasets, time taken to complete, and accuracy) and fidelity of assessments. Moreover, as noted earlier in this paper, primarily static risk assessment scales are being augmented by more dynamic risk measures (such as the COMPAS, LSI-R, and PCRA), and also risk measures intended to assess changes in acute dynamic risks (Serin, Chadwick, & Lloyd, 2015). This evolution in risk assessment has led to incremental improvements in accuracy, as well as refinements in case planning and supervision (Serin, Lowenkamp & Lloyd, in press).

In our view, Dressel and Farid largely "rediscovered" what has been well-established in a large body of risk assessment literature: Compared to unstructured human judgment, structured human judgment and actuarial approaches are more accurate. Structuring decisions limits consideration and unnecessary emphasis on factors that are unrelated to risk of recidivism (i.e., bias).

This "rediscovery" is not apparent in Dressel & Farid's article (or news coverage of it). For example, see the *New York Times* headline "Can Software Predict Crime? Maybe So, But No Better Than A Human."[2] This oversight potentially negates the advances of past decades. A return to unstructured risk assessment, a natural conclusion from their paper, will actually increase bias and potentially lead to capricious decision-making, hindering accuracy, jeopardizing public safety, and risking fairness for clients.

As noted earlier, their own data do not support that laypersons are more accurate or that machine learning is more accurate than the COMPAS. We believe the field of risk assessment cannot advance beyond the status quo when the focus remains on minutiae

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[2] https://www.nytimes.com/2018/01/19/us/computer-software-human-decisions.html

(i.e., seeking meaning from differences of .02 gains in comparisons of AUCs resulting from different risk measures). Regardless of which validated risk assessment measure is used, more promising pursuits and discussion would include recognizing the need for fidelity in scoring risk measures, strategies for developing greater understanding regarding the merits and limits of risk scores, and using risk assessment results more specifically in case planning and supervision.

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CONTRIBUTORS
To This Issue

Amaryllis Austin

Probation Administrator, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts. Previously, Location Monitoring Specialist, U.S. Probation Office, Eastern District of California. M.A. in Criminology, University of California, Irvine. Author of "The Presumption for Detention Statute's Relationship to Release." *Federal Probation* (Sept. 2017).

Thomas H. Cohen

Social Science Analyst, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts. Previously, Statistician, Bureau of Justice Statistics. Ph.D., Rutgers University School of Criminal Justice. J.D., University of Maryland School of Law. Co-author of "Examining Overrides of Risk Classifications for Offenders on Federal Supervision" (*Federal Probation*, June 2016).

Anthony W. Flores

Assistant Professor, California State University, Bakersfield. Ph.D., University of Cincinnati. Author of "The Importance of Measuring Offender Change," *Criminology and Public Policy* (2016).

William E. Hicks

Probation Administrator, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts. Previously, Supervisory United States Probation Officer, Eastern District of Virginia. B.S., James Madison University.

Sara J. Valdez Hoffer

Supervisory U.S. Probation Officer, District of Kansas.

Alexander M. Holsinger

Criminal Justice Coordinator, Johnson County, KS. Previously, Professor of Criminal Justice and Criminology, University of Missouri—Kansas City. Ph.D., University of Cincinnati. Author of "Assessing the Effects of Court Date Notifications within Pretrial Case Processing" (2018).

Kristi Holsinger

Professor of Criminal Justice and Criminology, University of Missouri-Kansas City. Ph.D., University of Cincinnati. Co-author of Toward Justice: Broadening the Study of Criminal Justice. NY: Routledge (2017).

Patrick J. Kennealy

Research Analyst, Travis County Community Justice Services, Austin, TX. Ph.D., University of California, Irvine. Co-author of "Does Staff See What Experts See? Accuracy of Front Line Staff in Scoring Juveniles' Risk Factors," *Psychological Assessment* (2017).

Edward J. Latessa

Professor and Director, School of Criminal Justice, University of Cincinnati. Ph.D., The Ohio State University. Co-author (with H. Allen and B. Ponder) of *Corrections in America* (2019).

Christopher T. Lowenkamp

Social Science Analyst, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts. Ph.D., University of Cincinnati. Co-author of "Enhancing Community Supervision Through the Application of Dynamic Risk Assessment," *Federal Probation* (Sept. 2016).

Charles R. Robinson

Chief, National Program Development Division, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts. B.S. in Criminal Justice, Grambling State University, LA. Co-Author of "A Random (Almost) Study of Staff Training Aimed at Reducing Re-arrest (STARR): Reducing Recidivism through Intentional Design," *Federal Probation* (2011).

Matthew G. Rowland

Chief, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts. Previously, Deputy Chief U.S. Probation Officer, U.S. District Court, Eastern District of New York. J.D., Brooklyn Law School. Author of "Assessing the Case for Formal Recognition and Expansion of Federal Problem-Solving Courts," *Federal Probation* (Dec. 2016).

Ralph Serin

Professor, Carleton University, Ottawa. Ph.D., Queen's University.

Scott W. VanBenschoten

Chief, Program Development Branch, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts. M.S.W., Virginia Commonwealth University. P.P.A., The American University. Co-author of "The Real-World Application of the Risk Principle: Is It Possible in the Field of Probation?" *Federal Probation* (September 2016).

Steven E. Vance

Chief, Criminal Law Policy Division, Probation and Pretrial Services Office, Administrative Office of the U.S. Courts. Previously, Attorney Advisor, Criminal Law Policy Division.J.D., Sandra Day O'Connor College of Law, Arizona State University. Ph.D., University of Maryland, Department of Criminology and Criminal Justice. Author of "Conditions of Supervision in Federal Criminal Sentencing: A Review of Recent Changes," *Federal Probation* (June 2017).

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