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Preentry: The Key to Long-Term Criminal Justice Success?

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BRINGING EVIDENCE-BASED practices into pretrial services is in its infancy. Agencies are at best beginning the process of considering the potential issues and assessing the impact of those issues on their agencies (National Institute of Corrections, 2008). The literature on bringing evidence-based practices into pretrial services is limited or non-existent (Levin, 2006; Clark & Henry, 2003; VanNostrand & Keebler, 2007; Cadigan, 2008). The most comprehensive attempt to date was just published by the state of Virginia and offers some promise for the future of evidence-based practices in pretrial services (VanNostrand, Rose, & Weibrecht, 2011:34). Most promising is that the Bureau of Justice Assistance agreed to fund implementation of the proposed evidence-based model beginning in 2012. *In Pursuit of Legal and Evidence-Based Pretrial Release Recommendations and Supervision*, by VanNostrand, Rose and Weibrecht (March 2011) takes a significant step toward filling the need for evidence-based work in pretrial services.

One of the cornerstones of post-conviction supervision research has always been "first, do no harm." Post-conviction evidence-based practice research has borne out that mantra repeatedly, showing that implementing treatment, changes, or fixes on offenders who pose little to no risk is fraught with failure. Is the same mantra true for pretrial services supervision? What impact does over-supervising or treating low-risk defendants have on their outcomes? For the most part, we in pretrial services have operated under the assumption that "it can't hurt" to have conditions in place. Unfortunately, the research demonstrates that unnecessary alternatives to detention placed on low-risk federal defendants can in fact harm those defendants (VanNostrand & Keebler, 2009:10). For example, placing a location monitoring condition on a level-one defendant (the lowest-risk group) increased the likelihood of failure by 2.12 times, or 112 percent over a level-one defendant who did not have such a condition (VanNostrand & Keebler, 2009:32).

Given this evidence—admittedly, one study is by no means a watershed moment—the first step in implementing evidence-based practices in pretrial services is to stop doing that which we know to be harmful: specifically, placing unnecessary conditions on low-risk defendants. This is a difficult task, as the conditions in federal pretrial services are set by judicial officers, generally after receiving the report and recommendation of a pretrial services officer. However, we, as officers, can and must at least control those recommendations and not recommend unnecessary conditions on low-risk defendants.

The more difficult yet essential component is developing the extensive academic research and program evaluations on pretrial services practices that post-conviction supervision currently enjoys. In addition, researchers need to determine what components from that large existing

literature on post-conviction evidence-based practices pretrial services can utilize successfully. While the state of evidenced-based practices for pretrial services could be viewed as a "bare cupboard," we can hope that researchers in this area have a real opportunity for advancing a nascent area of the criminal justice literature. The number of launched initiatives will come together and the introduction of evidence-based practices to pretrial services will soon be commonplace and supported by a wealth of literature and research.

What outcomes do we measure and what outcomes should be measured? Outcomes that have been considered relevant to pretrial release are fairly standard: re-arrest, failure-to-appear, and technical violations by the defendant. Wice raises an interesting additional outcome that is ignored in virtually all other studies: forfeiture rate (Wice, 1973:66). Forfeiture rate is defined as the rate at which posted bonds are forfeited to the court primarily as a result of the defendant's failure-to-appear; however, forfeitures can also result from other violations of the conditions of release, particularly new criminal conduct. The State of Hawaii looked at bail forfeitures and concluded that 1) the vast majority of forfeitures were not paid and 2) existing policies and procedures were ineffective (Hawaii, 1984:30). Given the study's finding of ineffective forfeiture enforcement, the question remains open as to whether or not an effective forfeiture program could reduce failure-to-appear and new criminal activity while on pretrial release.

The outcome measure that evidence-based practice needs to re-invigorate pretrial services is the release/detention rate. More important, the release/detention rate needs to be incorporated into the more commonly used outcomes of failure-to-appear and re-arrest rates to develop a more global measure of all three concepts, since it is the interaction of the three measures that truly reflects the state or quality of pretrial services in any particular organization. Goldkamp and Gottfredson identified the need for a more complete measure of a pretrial release program that incorporates detention, release success, and release failure and described it as follows:

> Figure 10.1 [reproduced below as Figure 1] illustrates the simple measure of effective pretrial release that we have constructed to better ground performance rates in the context of release rates. Each column in figure 10.1 represents 100 percent of the defendants entering the criminal process in each system. Each column is divided into three parts: the lower section (black) represents the percentage of defendants detained (and therefore ineligible to engage in misconduct), the middle segment (white) represents the proportion of defendants released but engaging in some form of misconduct; the top portion of each column (gray) represents the percentage of all defendants achieving release and not engaging in misconduct (Goldkamp & Gottfredson, 1988:150).

Using Figure 1 they identified successful pretrial as that part of the cohort released without pretrial misconduct. The three counties studied in this research clearly demonstrated the value of the figure, because Boston released virtually everyone (detaining 4 percent) but had significant failure (31 percent); Dade detained 19 percent and also had significant failure (13 percent); and Maricopa detained 45 percent, with 9 percent failure. Thus Dade was more effective (68 percent); followed by Boston with 65 percent effective; and Maricopa last with 46 percent effective. However, the actual success of the three jurisdictions was closer than the initial release figures would lead the reader to conclude at first glance. That refinement would seem to warrant use of the measure until something even more granular is developed.

The pretrial services literature contains some excellent examples of true experimentation that effectively constitute evidence-based research. Goldkamp and White (1998) conducted some excellent experiments on pretrial services supervision, levels of pretrial services supervision, court date notification, automated call-in technology, and pretrial services orientation sessions in Philadelphia in the late 1990s. The city's jail and pretrial services office had come under federal scrutiny due to jail overcrowding, initially resulting in wholesale release of detained criminal defendants. In an effort to re-establish local control over the pretrial release system, the city hired the Crime and Justice Research Institute, which developed a response that included a number of "pretrial services experiments." In addition, the mass release of criminal defendants prior to the contract with the Crime and Justice Research Institute created a "pre-treatment" control group of defendants released without pretrial services supervision, conditions, or any pretrial services programming; this group was utilized as a baseline for comparison with the experimental groups in the research.

Goldkamp and White used the federal court oversight to develop a variety of experiments and tests for various pretrial services programming and concepts, some of which were quite novel and innovative, reaching very useful evidence-based findings. The research demonstrated that pretrial services supervision significantly reduced re-arrest and failure-to-appear when compared to the "no supervision scenario" created by jail overcrowding (Goldkamp & White, 1998:76). In addition, that research showed that level of supervision (more intensive v. less rigorous) did not have any impact on pretrial release outcomes. The research also discredited the idea that a significant number of failures-to-appear are due to non-willful forgetfulness that could easily be corrected by telephone calls reminding the defendant of upcoming court dates (Goldkamp & White, 1998:76). Call-in reporting through an automated system was not only ineffective at reducing failure-to-appear and re-arrest, but also unable to achieve any acceptable level of call-in compliance, with rate compliance rates of 61 percent in the first few weeks tailing off steadily until week 16 when those rates fell off to 19 percent (Goldkamp & White, 1998:84). The study also found that a significant portion of the total pretrial failure occurs early in the pretrial process, with 52 percent of failures-to-appear occurring in the first four weeks and 54 percent of re-arrests occurring in the first six weeks. Finally, the experiments concluded that in-person contact with a pretrial services officer reduced both failure-to-appear and re-arrest by a significant level.

The Philadelphia pretrial services research conducted by Goldkamp and Gottfredson, Goldkamp and White, and by Goldkamp with a variety of other researchers over more than 20 years truly establishes the beginnings of an evidence-based practice approach in pretrial services through pretrial services experimentation, judicial officer involvement, introduction of a systemic (in this case guidelines-based) approach, and other work done in Philadelphia. The latest article on the Philadelphia project, by Goldkamp and Vilcica (2009), shrewdly brings together the majority of work done on the initiative and skillfully presents it in an evidence-based approach. Most important, it highlights what is missing from most of the other research in the area, and the authors conclude, quite logically, that their incorporation of this element, when no one else consistently has incorporated it, raises their work to something that should be replicated in other jurisdictions. For example, federal pretrial services has implemented virtually everything the other studies require, including a risk assessment tool; full interviews and reports on all defendants; untold numbers of alternatives to detention; quality pretrial services supervision; and well-trained, educated, and compensated officers. Yet we have not achieved the success of the Philadelphia initiative. Unfortunately, even though the Philadelphia approach clearly seems the best, it has one major flaw: it has not reduced unnecessary detention in any way, and that failure has caused more than one crisis in the operation of pretrial services in the "city of brotherly love" as a result of jail overcrowding.

Given the amount of research that needs to be done to move pretrial services evidence-based practice forward, combined with the minute amount of funding and attention that pretrial services research has received to date, it seems that a new approach to assessing the value of pretrial services functions is warranted. For example, several years ago the emerging area of "reentry" caused the identification and naming of the importance of the treatment and services received while offenders are incarcerated, which in turn brought significant attention and research dollars to those practices. Subsequent research has resulted in a variety of effective practices being identified, studied, and refined into even more effective practices. If pretrial services can be demonstrated to have a statistically significant impact on the outcomes of offenders after their release from prison, increased funding would likely follow.

The current research is based on 79,064 cases released on pretrial supervision between October 1, 2000 and September 31, 2007. The pretrial services data was later merged with post-conviction supervision data where a matching record, generally FBI number and/or Social Security number, could be identified. The joined file was than processed with a follow-up rap sheet or criminal record check and subsequently analyzed.

If pretrial services is truly important to the success of the criminal justice process itself, a defendant who is detained during the pretrial period should have significantly worse outcomes than a defendant who is released. If release itself shows a positive impact, then the next level of analysis would be to look at the impact of successful pretrial release compared to defendants who were released but ultimately failed some aspect of pretrial release supervision.

This first level of analysis, shown in Table 1, demonstrates that detained defendants are at least twice as likely to fail on post-conviction supervision as defendants who are released during the pretrial period. The effect carries for all levels of risk, except for the highest-risk offenders, who fail at fairly similar rates.

Table 2 presents information on the percentage of offenders that have an arrest during supervision based on how they terminated pretrial release. The pretrial release groups include successful, rearrested, failure-to-appear, and technical violation resulting in revocation. The "n" in the table is the number of failures and the percent is the failure rate for that group. The table presents failure rates for pretrial release in the columns and risk categories for the federal post-conviction risk tool across. The failures are identified as having had a new arrest while on post-conviction supervision. It is clear that success on pretrial release leads to greater levels of success on post-conviction supervision. For example, the lowest-risk offenders fail 14 percent of the time when their pretrial supervision was revoked for technical violations; fail 14 percent of the time when their pretrial supervision was revoked for new criminal activity; fail 11 percent of the time when their pretrial supervision was revoked for failure-to-appear; and fail only 6 percent of the time when pretrial supervision ended successfully.

Even in the highest-risk offender category, offenders who successfully completed pretrial release were nearly twice as likely to succeed as pretrial defendants who were revoked: with 63 percent of offenders whose pretrial release was revoked for technical violations failing; 63 percent of offenders whose pretrial release was revoked for new criminal activity failing; 63 percent of offenders whose pretrial release was revoked for failure-to-appear failing; and only 32 percent of the pretrial releasees who successfully ended their release failing. In fact, success on pretrial release appears to be more correlated to pretrial termination than to post-conviction risk category.

This simple analysis demonstrates the tremendous capabilities that the federal system will enjoy as it brings pretrial services and post-conviction data together for the first time under this new infrastructure, known as the Decision Support System (DSS). The federal pretrial services and probation system will enjoy a distinct advantage with this infrastructure in leading the larger criminal justice community into a greater understanding of the interrelationships and impacts of the pretrial services system on the post-conviction system.

To the larger questions of the impact of pretrial release on post-conviction supervision, the first finding would seem to confirm a number of prior studies that show that defendants released pretrial do better at each later stage of the criminal justice process. The second finding that success on pretrial release seems to be a prelude to later success on post-conviction supervision does not seem to appear in prior literature that we could identify. One final word of caution seems warranted: while this analysis shows that offenders who were successful on pretrial release had higher rates of success on post-conviction supervision, we make no grand claims of causation. However, this initial result is fascinating and certainly warrants additional study.

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Figures

Figure 1

Figure 1.

FIGURE 1.
Goldkamp and Gottfredson Pretrial Services Evidence-Based Practice Measure

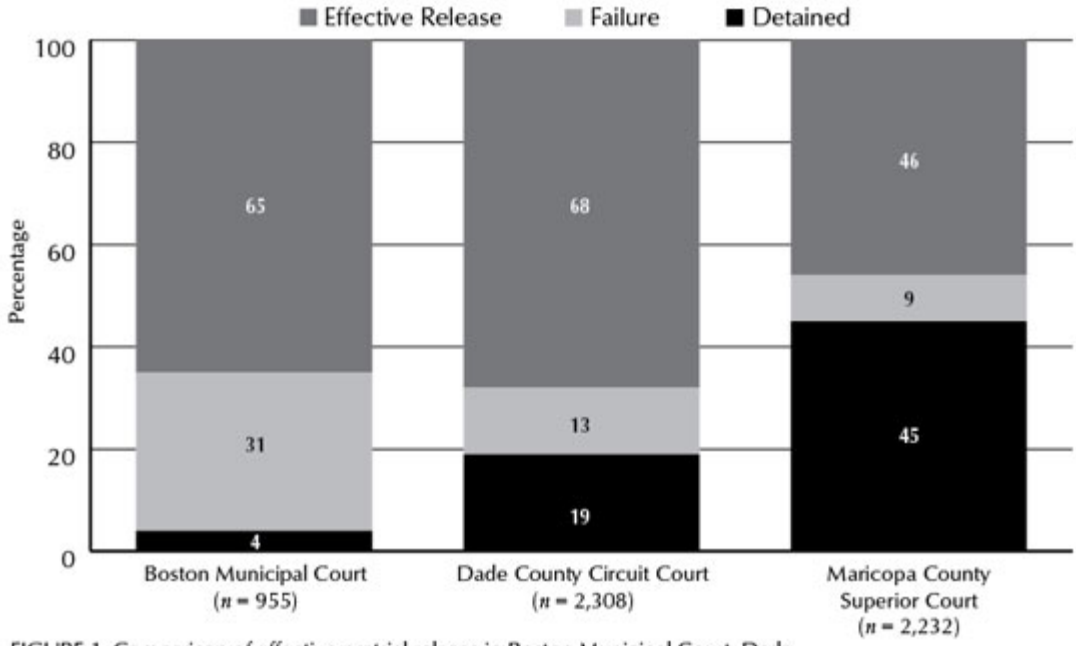

FIGURE 1. Comparison of effective pretrial release in Boston Municipal Court, Dade County Circuit Court, and Maricopa County Superior Court: Failure as FTA and/or rearreset.

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Tables

Table 1.

TSR RPI Category—No Supervision, Supervision, Detained

	Pretrial Status					
	No Supervision		Supervision		Detained	
Risk Category	**N**	**%**	**N**	**%**	**N**	**%**
Low	553/8,203	7	3,710/39,670	9	1,799/9,152	20
Moderate	550/2,017	27	6,700/27,515	24	6,420/19,293	3
High	315/649	49	3,734/9,039	41	8,644/17,290	50
All	1,604/11,520	14	15,228/79,009	20	20,529/51,513	40

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Table 2.

TSR PCRA Category—By Pretrial Termination Code

Post-Conviction	Pretrial Termination							
Risk Category	**TV**		**NCA**		**FTA**		**Success**	
	N	%	N	%	N	%	N	%
Low	103	14	43	14	16	11	1,576	6
Low/Mod	838	29	421	31	178	28	5,365	18
Moderate	814	52	451	53	195	50	2,942	40
High	524	63	227	63	140	63	1,466	32
All	2,279	38	1,142	40	529	37	11,349	16

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