

Is Pretrial Detention an Effective Deterrent? An Analysis of Failure to Appear and Rearrest Says No”

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ANY TIME A PERSON is arrested and accused of committing a crime, a decision has to be made during this “pretrial” stage about whether the individual facing charges is going to be released directly back into the community right away or is instead detained in jail to await the next stage of case processing (McIntyre & Baradaran, 2013; Oleson et al., 2016; Sacks, Sainato, & Ackerman, 2015). This decision is not, however, a strictly “either-or” proposition (Martinez, Petersen, & Omori, 2020). Some defendants, for instance, are incarcerated during the pretrial stage for a long time, some not at all, while others only spend a few days incarcerated before being released (Kim et al., 2018; Lowenkamp, Van Nostrand, & Holsinger, 2013; Sacks & Ackerman, 2014).

How this decision is handled is critical, because pretrial detention carries serious consequences “downstream” in the justice process (Martinez, Petersen, & Omori, 2020). To be sure, research indicates that being incarcerated prior to trial is associated with an increased likelihood of being convicted (Menefee, 2018; Petersen, 2020), of being sentenced to prison (and for a longer period of time) (Donnelly & MacDonald, 2018; Williams, 2003), and even of finding it harder to find a job later (Dobbie,

Goldin, & Yang, 2018; Wakefield & Anderson, 2020). It is therefore inevitable that the decision to detain someone in jail before trial—or to let them stay out on their own recognizance—is based on a complex set of factors (Dobbie, Goldin, & Yang, 2018; Viljoen et al., 2019). Concerns about community safety, the constitutional rights of justice-involved persons, and the need for individuals to appear in court all play an important role (Leslie & Pope, 2017; Oleson et al., 2016).

But when judges decide to detain someone for a stint of incarceration prior to their trial, the primary legal justification that is often invoked is rooted in the language of deterrence (D’Alessio & Stolzenberg, 1998; Pyrooz, Gartner, & Smith, 2017; Walker & Herting, 2020). To be sure, those who favor locking people up prior to their trial typically assume that pretrial detention causes those facing charges to “think twice” about failing to show up at court or committing a new crime later on, because they want to avoid being incarcerated again (Raaijmakers et al., 2017). Such a position is consistent with the long-standing belief in American jurisprudence—at least among some—that incarceration “works” as an effective deterrent (see, e.g., the discussion by Pratt, 2019). So if this is actually the

case, there may be a benefit to the practice of pretrial detention with respect to public safety.

We do, however, have good reason to believe that the deterrent power of incarceration has been grossly exaggerated. Indeed, stacks of criminological literature indicate that the threat of stiffer sanctions does little to deter people from committing crimes (Apel, 2013; Pratt & Cullen, 2005; Pratt et al., 2006); that trying to lock people up more quickly in an effort to satisfy the “swiftness” element of deterrence—the key marketing strategy for the popular-yet-empirically-unsupported “swift-certain-fair” model of punishment—fares no better (Cullen, Pratt, & Turanovic, 2016; Cullen et al., 2018; Pratt & Turanovic, 2018); and that locking up lower risk people may actually end up doing more harm than good when it comes to recidivism (Ogle & Turanovic, 2019). In the most recent comprehensive assessment of this idea, Petrich et al.’s (2021) meta-analysis of over 100 studies on the effects of custodial versus community sanctions indicated that incarceration actually makes things worse for justice-involved individuals—a finding that highlights not only the compromising of public safety when incarceration is used as a “general” crime-control strategy, but also the additional cost

of incarcerating citizens unnecessarily that the public will have to bear.

Even so, little of this research is focused on the pretrial stage. Thus, although we may think of it as “criminological fact” that incarceration is neither a consistent nor effective deterrent to criminal—or even problematic—behavior (Petrich et al., 2021:353), it is still unclear whether this fact extends to the pretrial phase of case processing. It is also possible—in line with the “deterability hypothesis”—that people vary in their response to sanctions in general and to incarceration in particular (Herman & Pogarsky, 2022; Jacobs, 2010; Maxson, Matsuda, & Henigan, 2011). Put simply, some people may be deterred by pretrial detention and “learn their lesson,” others might get worse because of it, and still others might be unaffected at all (see, e.g., Braithwaite, 1989; Sherman, 1993).

Accordingly, the present study uses data on 1,487,107 individuals booked into a jail in Kentucky between 2009 and 2018 to address two research questions: (1) does being subjected to pretrial detention reduce the likelihood of a defendant failing to appear (FTA) in court? (2) does being subjected to pretrial detention (at all, and with varying length of incarceration) reduce the likelihood of a defendant acquiring a new arrest during the pretrial phase? In answering these questions, our broader purpose is to shed light on whether—or perhaps to what extent—locking people up prior to their trial represents sound public policy.

Methods

Data

The sample used for the current study includes the 1,487,107 cases that involved arrest and booking into a Kentucky jail between the years of 2009 and 2018. Data elements included demographic characteristics (sex, race, age), the actuarial risk of failure to appear for a court hearing (FTA) and risk of new criminal activity during the pretrial stage (NCA) as assessed via the Public Safety Assessment (PSA), characteristics of the booking offense, the defendant's pretrial status, and time at risk in the community.¹

A large majority of the sample was male

(71 percent) and white (80 percent) while defendants' average age was 34.3 years. The risk profile of the entire sample for FTA was 12 percent, 22 percent, 23 percent, 20 percent, 17 percent, and 5 percent for categories one through six respectively. For NCA the distribution of actuarial risk was 10 percent, 25 percent, 23 percent, 24 percent, 11 percent, and 6 percent for categories one through six respectively. Most defendants had been arrested and booked for a misdemeanor offense (61 percent), and likewise a majority (56 percent) experienced pretrial detention for less than 24 hours. For the analyses presented below, the primary variable of interest is days spent in pretrial detention (assessed first as a binary, then as an ordinal variable), with number of charges, felony charge, misdemeanor charge, violent charge, property charge, time at risk in the community, race, and sex serving as control variables.

The two outcome measures include failure to appear for at least one court hearing during the period of pretrial release (FTA – 0 = No; 1 = Yes), and rearrest for a new offense during the period of pretrial release (NCA – 0 = No; 1 = Yes). The base rates of each outcome were low (FTA = 17%; NCA = 12%) but were high enough to allow for all necessary analyses.

Analytic Strategy

In order to assess the extent to which pretrial incarceration may serve as a deterrent to missing court hearings and/or new criminal activity while released pretrial, four binary regression models were calculated. For each respective outcome (FTA and NCA), one model was calculated using days spent in pretrial detention as a binary (less than 24 hours vs. 24 hours or more) followed by a second model that used categories of time (e.g., 1 day, 2 days, 3 days) with less than 24 hours (which also included no time spent in detention) serving as the reference category. For all four models, control variables included charge characteristics that may be related to FTA or NCA (number of charges, felony charge, misdemeanor charge, violent charge, property charge), time at risk in the community, and demographic characteristics (race and sex). Risk ratios and their statistical significance were used to assess the relationship between each covariate and outcome.

Results

Table 2 (next page) presents the results from the first model, using time spent in detention as a binary (less than 24 hours vs. 24 hours or

more) in order to predict FTA. In addition, the analyses were restricted to those defendants who were released to the community during the pretrial period and likewise had at least 21 but not more than 365 days of time at risk

TABLE 1.
Descriptive statistics, entire sample

Variable	N	%
Sex		
Male	1,056,966	70.92%
Female	418,012	28.05%
Unknown	15,408	1.03%
Race		
White	1,200,295	80.54%
Black	256,054	17.18%
Unknown	29,613	1.99%
Asian	3,470	0.23%
Indian	963	0.06%
Age	34.44 years (\bar{X})	
Risk of FTA (PSA)		
One	94,671	12%
Two	172,093	22%
Three	182,589	23%
Four	157,675	20%
Five	133,482	17%
Six	36,703	5%
Risk of NCA (PSA)		
One	78,014	10%
Two	196,654	25%
Three	176,446	23%
Four	188,521	24%
Five	87,148	11%
Six	47,440	6%
Booking offense		
Felony No	911,746	61.18%
Felony Yes	578,637	38.82%
Pretrial detention		
Under 24 hours	624,070	56.32%
24 hours+	484,050	43.68%
Failure to appear (FTA)		
No	923,149	83.22%
Yes	186,205	16.78%
New criminal activity (NCA)		
No	976,488	88.02%
Yes	132,886	11.98%

¹ The exact number of cases used in each analysis varies due to missing data. Sometimes this number is substantially different and sometimes it is not. For detail on changes in the number of cases included in each model, see the technical appendix at: https://osf.io/ykuqd/?view_only=6dad2630567e425d9c9636c03d6d0e37.

in the community. This decision was made in an attempt to limit the analyses to defendants and cases where there was enough time at risk to fail. The limit on the upper end was used given most cases (greater than 80 percent) are resolved within one year, and information from the agency providing the data indicated cases that stretched beyond that time frame were atypical. Neither time in detention nor sex met the criteria for statistical significance. In other words, there does not appear to be a relationship between time spent in pre-trial detention and the likelihood of failure to appear when controlling for number of charges, the characteristics of the charge(s), sex, and race. Every other variable in the model (save sex, as noted above) did reveal a statistically significant relationship with failure to appear. Defendants who had more charges (as opposed to fewer), a misdemeanor charge, a property charge, and who spent more time at risk in the community, were more likely to fail to appear for one or more court hearings, as were African American defendants. Defendants charged with a felony and/or those charged with a violent offense were significantly less likely to miss one or more court dates.

Table 3 presents the results from the second model that used time spent in detention as an ordinal variable, with the interval 0 to 23 hours serving as the reference category (the same case restrictions as noted above regarding release and time at risk in the community

TABLE 2.
Predicting FTA – Binary regression model predicting FTA with time in detention as a binary dummy variable. Limited to those released from pretrial detention and with at least 21 days of time at risk and not more than 365 days of time at risk

Variable	Risk Ratio
Number of charges	1.038
Felony charge	0.704
Misdemeanor charge	1.340
Against person	0.576
Property	1.380
Time at risk	1.003
Black	1.198
Male	0.997
Days in detention (under 24 hours)	0.902
Constant	0.082

Bold = p ≤ .001

were observed). While the model contained in Table 2 indicates that time spent in detention is *not* related to FTA, it is possible that a relationship could be revealed after a certain point, or after a specific amount of time is spent incarcerated. Each successive time interval represents an approximate additional day of time, with that amount of time spent in detention compared to the reference category (0 to 23 hours, or, less than 1 day in detention, labeled as category 0). For example, category

TABLE 3.
Predicting FTA – Binary regression model predicting FTA with time in detention as an ordinal variable. Limited to those released from pretrial detention and with at least 21 days of time at risk and not more than 365 days of time at risk

Variable	Risk Ratio
Number of charges	1.038
Felony charge	0.691
Misdemeanor charge	1.352
Against person	0.553
Property	1.383
Time at risk	1.003
Black	1.216
Male	1.001
Days/hours in detention (under 24 hours)	
(0/23=0)	Reference
(24/47=1)	1.061
(48/71=2)	1.060
(72/95=3)	1.108
(96/119=4)	1.124
(120/143=5)	1.137
(144/167=6)	1.118
(168/191=7)	1.092
(192/215=8)	1.114
(216/239=9)	1.110
(240/263=10)	1.186
(264/287=11)	1.259
(288/311=12)	1.185
(312/335=13)	1.128
(336/359=14)	1.044
(360/383=15)	1.212
(384/407=16)	1.131
(408/431=17)	1.165
(432/455=18)	1.157
(456/479=19)	1.179
Constant	0.071

Bold = p ≤ .001

“1” represents those defendants who spent between 24 and 47 hours in detention (i.e., between one whole day and just shy of two whole days), who are in effect compared to defendants who spent less than one whole day (less than one 24-hour period) in detention, which also includes those who spent no measurable amount of time in detention at all. Category “2” represents those defendants who spent between 48 and 71 hours in detention (i.e., between two whole days and just shy of 3 whole days), who in turn are compared to defendants who spent less than one whole day (less than one 24-hour period) in detention, and so on.

Similar results were revealed for all the control variables that were included in the model. Once again, sex does not appear to be related to FTA, while number of charges, a misdemeanor charge, property charge, time at risk, and race (African American) all significantly increase the likelihood of FTA occurring. Likewise, as before, being charged with a felony and/or a violent crime appear to be associated with a decreased likelihood of FTA. Interestingly, none of the categories of time spent in detention were significantly related to FTA, except for 10, 11, and 12 days. In short, amounts of time spent in detention that lasted between 1+ and up to 9+ days were statistically unrelated to FTA, as were amounts of time ranging from 13+ days and higher. Despite a relationship emerging for 10, 11, and 12 days, it appears that the relationship between time spent in detention and FTA is non-existent for all intents and purposes, if not inconsistent.

Table 4 (next page) presents a similar model to that which appears in Table 2, except that Table 4 uses new arrest (NCA) as the dependent variable. Once again, analyses were restricted to those defendants who were released pretrial and who also had at least 21 days but not more than 365 days of time at risk in the community before their case was resolved. In addition, the same variables as before were used as predictors in the model (charge characteristics, time at risk, race, sex), with the primary variable of interest days spent in detention measured as a binary (less than 24 hours vs. 24 hours or more). Days spent in detention measured as a dichotomy revealed a statistically significant relationship with rearrest, with those spending more time in detention (more than 23 hours) having a lower likelihood. The number of charges was also significantly related to new arrest (more charges = lower likelihood), as was having a

misdemeanor charge (higher likelihood), a charge for a property offense (higher likelihood), time at risk in the community pretrial (higher likelihood), and being male (higher likelihood). Being charged with a felony, a violent offense, and race were statistically unrelated to new arrest during the pretrial period.

Interestingly, things change dramatically when the expanded measure of time spent in detention is used. Table 5 presents a model similar to that displayed in Table 3, although the outcome variable is new arrest during the pretrial period. The same control variables were used (charge characteristics, time at risk, sex, race), and the same case restrictions were in place as well regarding release status and time at risk in the community. Once again, the primary variable of interest was the ordinal measure of time spent in detention, measured as described above, with each success interval of time compared to the reference category of 0 to 23 hours (“0”). Each category of time spent in detention revealed a statistically significant relationship with NCA, relative to spending the smallest amount of time (0 to 23 hours) in detention. Moreover, each coefficient was greater than 1.0, indicating that every interval of time (1+ day, 2+ days, 3+ days, and so on) had a significantly higher likelihood of rearrest relative to those defendants that spent the least amount of time in detention pretrial. Statistically significant relationships were also revealed for number of charges (more charges = less likely to be rearrested), being charged with a misdemeanor (more likely to be rearrested), being charged with a property offense (rearrest is more likely), time at risk in the community pretrial (more likely to be rearrested), and being a male defendant (arrest was more likely). Further, being charged with a felony, a violent offense, and race did not reveal a relationship with rearrest during the pretrial period.

Discussion

Pretrial detention—and the wide array of bail reform efforts that have come along with it in recent years—continues to be a source of contention in public policy circles. And a big part of the controversy has to do with whether keeping someone locked up prior to trial is helpful (i.e., that it serves as a deterrent, or at least yields a bit of an incapacitation effect), or if it instead makes things worse. So with that in mind, we took a closer look at the consequences of pretrial detention, and one rather significant—and unequivocal—conclusion is

warranted.

We did not find any evidence of a consistent or reliable “deterrent effect” of pretrial detention on either the failure to appear (FTA) or recidivism. This should come as no surprise. The research literature has been clear on this issue for several decades now: getting “tough” on crime (or on recidivism, or juvenile delinquency, or school violence; pick your preferred form of misbehavior), as a “general” strategy, is a bad idea (Petrich et al., 2021). The question, of course, is: why? To answer that, evidence indicates that incarceration—even if the stint is short—can cut justice-involved people off from prosocial attachments to things like their job and their social relationships, which tends to increase the likelihood of reoffending (Maroto & Sykes, 2020). In addition, while people are incarcerated, any active criminogenic needs that are not being address by detention (e.g., deviant peer influences, antisocial attitudes), may in turn increase likelihood of rearrest (Pratt et al., 2010). So if incarceration is going to make things worse for justice-involved people, then pretrial detention appears to be an effective shortcut to experiencing a host of negative consequences.

In the end, whether our findings revealed a deterrent effect or not, it is worth noting that one of our key outcomes—failure to appear at court processing (FTA)—is a problem that is worth addressing either way (Desmarais et al., 2021). Various strategies for getting people

TABLE 4.
Predicting NCA – Binary regression model predicting NCA with time in detention as a binary dummy variable. Limited to those released from pretrial detention and with at least 21 days of time at risk and not more than 365 days of time at risk

Variable	Risk Ratio
Number of charges	0.982
Felony charge	1.079
Misdemeanor charge	1.180
Against person	0.884
Property	1.258
Time at risk	1.003
Black	0.958
Male	1.185
Days in detention (under 24 hours)	0.729
Constant	0.074

Bold = $p \leq .001$

to show up—strategies that are not rooted in a thirst to punish severely those who do not—have shown promise (e.g., text reminder programs; Zottola et al., 2023). The bottom line is that locking people up while their case is being processed—a beloved move of punishment enthusiasts—tends to do more harm than good.

TABLE 5.
Predicting NCA – Binary regression model predicting NCA with time in detention as an ordinal variable. Limited to those released from pretrial detention and with at least 21 days of time at risk and not more than 365 days of time at risk

Variable	Risk Ratio
Number of charges	0.975
Felony charge	1.056
Misdemeanor charge	1.163
Against person	0.875
Property	1.270
Time at risk	1.003
Black	0.958
Male	1.188
Days/hours in detention (under 24 hours)	
(0/23=0)	Reference
(24/47=1)	1.237
(48/71=2)	1.289
(72/95=3)	1.448
(96/119=4)	1.432
(120/143=5)	1.459
(144/167=6)	1.428
(168/191=7)	1.432
(192/215=8)	1.484
(216/239=9)	1.504
(240/263=10)	1.528
(264/287=11)	1.581
(288/311=12)	1.500
(312/335=13)	1.406
(336/359=14)	1.407
(360/383=15)	1.513
(384/407=16)	1.456
(408/431=17)	1.518
(432/455=18)	1.490
(456/479=19)	1.375
Constant	0.055

Bold = $p \leq .001$

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