Sense and Nonsense About the Pretrial Period and Its Reform

By Matt DeLisi*

During the pretrial period, the defendant receives a type of bond and a monetary amount of bail attached to that bond. Almost universally, however, the terms "bail" and "bond" are synonymous and used interchangeably (e.g., the defendant is out on bond/bail). There are two main types of bond: unsecured and secured. An unsecured bond, such as personal recognizance, own recognizance, release on recognizance (ROR), or cosigned personal recognizance bond is a written promise to appear in court without paying money, property, or collateral. A secured bond, also known as cash-only, cash, surety, or property bond, occurs when the defendant must post money, collateral, or utilize a professional bondsperson to facilitate release.

To put these into perspective, a defendant with a $1,000 personal recognizance bond is released without paying money whereas a defendant with a $1,000 secured bond posts either the total amount or usually 10-15% of the total amount. Some jurisdictions employ a deposit bail system where defendants post a percentage of their bail directly to the court and the money is returned as long as the defendant complies with court appearances. The basic structure of bond/bail and the balance between ensuring public safety and honoring the rights of the accused have existed since antiquity (Duker, 1977).

For some jail detainees bail is immaterial, because the defendant is already a sentenced correctional client and/or has an active detainer from another jurisdiction. State prisoners who are in jail custody on a writ of habeas corpus, jail inmates who have parole, probation, military, or immigration detainers, or jail inmates who have a mittimus warrant where they must serve confinement are not bail eligible and must await processing by the appropriate agency.

The determination of whether a defendant receives an unsecured or secured bond is based on a variety of behavioral criteria relating to the person's criminal history, seriousness of current charges, dangerousness (as assayed by violence perpetration and use of weapons), active criminal justice status, and substance use history. Behavioral criteria relating to community ties, such as employment and residency, can demonstrate that a defendant has a local investment or stake in conformity that would facilitate appearance in court as opposed to a defendant who is transient and has no connection to the jurisdiction. The party that makes bond determinations varies by jurisdiction. Some counties employ pretrial services officers who are judicial employees that interview defendants about their criminal and social/behavioral history, gather official criminal records, and prepare bond recommendations to the court. In some cases, pretrial service officers are empowered to set bond and release defendants.

In other jurisdictions, probation officers complete a similar process involving an interview with the defendant, gathering of social and criminal history, and completion of a presentence investigation report to the court. Since bail amounts are statutorily established, still other jurisdictions have sheriff's deputies set bond based on an administrative schedule of bond amounts relating to the defendant's criminal charges. A judge must review a defendant's charges and set bond within 48 hours of arrest, otherwise the defendant is released on recognizance irrespective of the criminal charges (*McNabb v. United States*, 1943). Due to this expediency issue, many jurisdictions employ daily courts or utilize videoconferencing to guarantee bond setting.

The majority of jurisdictions in the United States employ actuarial risk assessments to assist in bond determination. Risk assessments contain legally relevant behavioral criteria and do not contain demographic information, such as race, ethnicity, or sex as proxies for risk. The only exception to this is age, which is used in risk assessment tools with younger age scored as the risk category relative to older age. The use of empirically developed pretrial risk assessment tools is consistent with the best science and is an explicit policy statement of both the National Institute of Corrections (NIC) and the National Association of Pretrial Services Agencies (NAPSA) (Pilnick, 2017; NAPSA, 2000).

A national study of judicial professionals in 30 jurisdictions including judges, prosecutors, defense counsel, and pretrial service staff showed strong support for behavioral criteria to inform pretrial decision-making. Specifically, the proportion of judicial officers who rated criminal history (91%), pending charges

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Disparities in data on serious criminal offending may or may not reflect differential, biased, or discriminatory conditions. Unfortunately, allegations of discrimination are overwhelmingly inferred from data disparities.

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(90%), prior failure to appear (81%), weapon involvement (80%), current charges (76%), and victim injury (73%) as extremely or very important in the decision to detain or release pretrial was very high (DeMichele et al., 2019).

Two substantive points are critical for understanding research findings on the pretrial phase especially in the current reform context. First is the difference between disparity and discrimination (Sowell, 2018). Behavioral data do not merely reflect demographic features of a population, such that if 50% of the population is male and 50% is female, then detention data will also reflect a 50/50 split. Instead, there are significant behavioral differences across demographic variables in terms of serious criminal offending and consequently criminal justice system involvement. Disparities in criminal justice system data make obvious these disparities in offending. It can also be the case that disparities reflect differential, biased, or discriminatory criminal justice system behavior and do not necessarily reflect underlying demographic differences in criminal conduct. Unfortunately, allegations of discrimination are overwhelmingly *inferred* from data disparities and most criminological studies lack measures of discriminatory actions that could be used to substantiate allegations of bias, or do not contain adequate control variables necessary to mediate potential demographic effects.

The other substantive point relates to statistical significance and the effect size of a statistically significant research finding. Studies that have large sample sizes increase the likelihood of Type I errors where the null hypothesis (e.g., there is not bias in pretrial processing) is rejected when it is in fact true. In large-scale studies, statistically significant findings do not necessarily mean substantively large effects. For example, Demuth (2003) analyzed nationally representative data from the State Court Processing Statistics Program of the Bureau of Justice Statistics to examine demographic and legal predictors of five pretrial outcomes: detention, denied bail, financial release, bail amount, and held on bail. The analyses used analytical samples that ranged from 19,413 to 33,315—very large data sources. Blacks were more likely than whites to be detained, denied bail, and be held on bail, and these effects ranged between 21% to 136% increased odds. No black/white differences occurred for financial release or bail amount. Hispanics were more likely than whites to be detained, denied bail, receive financial release, be held on bail, and have higher bail amounts, and these effects sizes ranged between 23% to 106% increased odds. Significant effects for age emerged in six of 10 models. Demographic factors had significant associations in 14 of 20 models and no association with pretrial outcomes in six models.

The system "bias" is toward maximizing pretrial release while ensuring court appearance and public safety, and limiting jail crowding.

In contrast, criminal history was significant in every model and its effects conferred between 65% to 245% increased odds of negative pretrial outcomes. Active criminal justice system status was also significant in every model and similarly conferred 65% to 245% increased odds of detention and related punitive outcomes. Yet all of these effects paled to offense seriousness. Defendants charged with murder had 776% higher odds of detention, 1,923% higher odds of bail denial, and 1,290% increased odds of financial release. The latter findings illustrate the sonorous effects of offense seriousness and criminal history relative to demographic characteristics in pretrial outcomes.

Against this historical and substantive backdrop, I review critical research questions that are germane to the contemporary bail reform movement.

What Are the Effects of Pretrial Detention and Cash Bail on Subsequent Outcomes?

The explicit motivation of the criminal justice system is to maximize pretrial release, ensure court appearance and public safety, and limit jail crowding. Both NAPSA and the NIC's Framework for Pretrial Justice have these considerations as their guiding principle. This means that the pretrial phase is inclined toward pretrial release. In the event that court personnel do not provide unsecured release to defendants, there are important behavioral considerations and risk indicators for doing so. Fundamentally, a defendant who remains in detention with a secured bond is a danger, flight, or recidivism risk, has an active detainer, or some combination of these risk indicia. Consequently, there is a large selection effect occurring among defendants in jail custody whose detention is a function of their underlying behavioral risk.

The problem with pretrial detention is that even when attempts to adequately control for legal factors and behavioral risks of violence, recidivism, and absconding, there is evidence that detention produces negative consequences for the defendant's subsequent legal outcomes. Pretrial detention is significantly associated with several downstream criminal justice consequences including more guilty pleas and convictions (Heaton et al., 2017), increased jail confinement (Heaton et al., 2017; Thomas et al., 2022), increased prison confinement (Williams, 2003; Oleson et al., 2017; Donnelly & MacDonald, 2018; Tartaro & Sedelmaier, 2009), increased prison sentence length (Spohn, 2008; Williams, 2003; Sacks & Ackerman, 2014; Oleson et al., 2016; Oleson et al., 2017), more recidivism (Kim et al., 2018), and more institutional misconduct in prison (Toman et al., 2018).

There is also evidence that pretrial detention has no association with conviction (St. Louis, 2022), the decision to incarcerate (Sacks & Ackerman, 2014; St. Louis, 2022), is associated with increased

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probation as opposed to remand (Petersen, 2019), and is associated with receiving credit for time served and thus release from custody (Petersen, 2019). Moreover, studies of demographic factors found that African American defendants had higher bond amounts, but there were no race differences in terms of pretrial detention, prison, and prison sentence. In fact, where there was clear evidence of demographic disparity at the pretrial phase, it centered on the sex variable where female defendants receive advantageous outcomes relative to male defendants (Goulette et al., 2015).

Despite the bevy of research findings on pretrial detention, there are significant quality concerns about pretrial research. A meta-analytic review of pretrial research was scathing and indicated that the most prominent finding of their review was the dearth of available methodologically rigorous research (Bechtel et al., 2017). Central among the methodological concerns is the inadequate statistical control for behavioral risk factors that explain detention versus release status.

Fortunately, recent research attempts to overcome limitations of prior research by employing statistical techniques that can adjust and account for propensity differences among defendants. A recent study of 3,390 defendants from nine counties in Oregon is revealing. Oregon is a state that prohibits commercial bonds by law (other states including Kentucky, Illinois, and Wisconsin do as well). Instead, defendants are either released on recognizance bonds or have the option to post 10% of their bail to the court, which is effectively a deposit bail system. The study matched defendants on 47 case, legal, and demographic variables and found that pretrial detention was significantly associated with greater likelihood of incarceration, greater likelihood of prison, and reduced likelihood of probation. Even with the propensity matching techniques, pretrial detention had no effect on jail outcomes and either probation, jail, prison, or incarceration length of sentence (Campbell et al., 2020). Thus, a critical research need is to assess pretrial detention effects with appropriate statistical control of the behavioral factors that influence pretrial outcomes.

What Do Data Suggest About Imposing Alternatives to Monetary Bail Conditions of Release?

One reason that NAPSA and NIC are sanguine about pretrial release is that an array of conditions is imposed to facilitate the defendant's behavioral functioning on bond. Pretrial release conditions are nearly universal and apply to defendants released on recognizance bonds, defendants released on secured bonds, and detained defendants who are unable to post bond. No-contact orders are applied in virtually every case involving the use of violence or the threat of the use of violence and no-contact orders can also apply toward categories of persons, such as sexual offenders receiving a no contact with children order. Other standard conditions include sobriety monitoring, driving restrictions, day reporting, counseling, and other services.

The federal criminal justice system provides nine alternatives to detention—third-party custodian, substance abuse testing, substance abuse treatment, location monitoring, halfway house, community housing or shelter, mental health treatment, sex offender treatment, and computer monitoring. A study of the entire population of federal pretrial cases processed between October 1, 2001 and September 30, 2007 found 27.7% of clients released without conditions and 72.3% of clients released with conditions/alternatives to detention. Curiously, evaluation of the effectiveness of alternatives to detention in the federal system produced counterintuitive findings. Lower risk clients were more likely to experience pretrial failure compared to defendants released without the program, but moderate and higher risk clients were less likely to experience pretrial failure compared to defendants released without the program (VanNostrand & Keebler, 2009). Consistent with the risk principle, the counterintuitive finding suggests that too many bond conditions on lower risk defendants can create iatrogenic effects.

Fortunately, the process of sequential bail review continually provides opportunities for alternatives to monetary bail release. Also in accordance with the best practices of the National Association of Pretrial Services Agencies and the National Institute of Corrections, where sequential bail review is a guiding principle, any party including defense counsel, prosecutors, or pretrial staff can revisit a defendant's bail and provide modifications to the type, monetary amount, or conditions of release as appropriate. Thus, a defendant with a secured bond due to transiency and employment (in addition to criminal history) can be released on an unsecured bond if he secures a residence or job while in custody. Here, community justice organizations can play a key role by providing housing, employment, and connections to social service providers to provide material and social supports for defendants.

Whether one feels the pretrial system is biased depends on one's role in the system. Just 17% of judges, 21% of pretrial staff, 47% of prosecutors, but 82% of defense counsel perceived that pretrial practices engendered disparities.

Do Risk Assessments Have Racial Biases When Determining an Individual's "Risk Score?"

Risk assessment instruments that use race as a proxy for risk are discriminatory. Fortunately, there is no evidence to my knowledge that any risk assessment tools use race or ethnicity to inform pretrial

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decision-making. On the contrary, risk assessment tools employ behavioral criteria that are empirically associated with offending, recidivism, and noncompliance. To illustrate, the development of the federal pretrial actuarial risk assessment tool included the following criteria: number of felony convictions, prior failures to appear, pending cases, current offense type, offense classification, age at interview, highest education, employment status, residence, and current drug problems. These criteria are correlates of antisocial behavior and do not invoke race or ethnicity. As mentioned earlier, the only demographic feature that is included—age—is incorporated into risk assessment tools because of its strong inverse association with criminal offending. The other socioeconomic factors (education, employment, and residence) are similarly empirical correlates of offending and substantiate a defendant's community ties (Lowenkamp & Whetzel, 2009).

What is the value of such an actuarial tool? A study of 181,739 federal defendants from 2001 to 2007 found that 30% of clients were lowest risk, 29% were low risk, 26% were moderate risk, 11% were moderate-high risk, and 3% were high risk. Based on these behavioral risk criteria, pretrial release recommendations varied greatly: 86% for lowest risk, 60% for low risk, 41% for moderate risk, 28% for moderate-high risk, and 13% for high risk. These estimates comport with criminological understanding of the epidemiology of the offender population: a small subgroup of serious offenders exists and the remaining population are mostly low or moderate risk. These groups fared very differently in terms of failing to appear or accruing a new criminal arrest. For the lowest risk, just 2% failed and the prevalence of failure for the more serious risk groups was 6%, 10%, 15%, and 20%, respectively. Put another way, the highest risk group failed at ten times the level of the lowest risk group, which is precisely the type of prognostic information that an empirical assessment tool can provide (Lowenkamp & Whetzel, 2009).

Since actuarial risk assessment tools are based on behavioral criteria, they operate the same across demographic categories because the risk indices are capturing behavioral differences in the offender population, not demographic features. In a validation study of the federal Pretrial Risk Assessment Instrument (PTRA), Cohen et al. (2018, p. 28, also see, Cohen & Lowenkamp, 2019) concluded:

> "[t]his 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."

Research is equivocal about the specific importance of race and pretrial and sentencing outcomes in part because more serious, violent, and extensive criminal and incarceration history is not equivalent across racial groups.

In fact, risk assessment tools were implemented *explicitly* because they are based on objective empirical criteria as opposed to subjective professional or clinical judgments of offender risk, which are less reliable and less valid (Dawes et al., 1989; Grove & Meehl, 1996; Ægisdóttir et al., 2006). To move away from risk assessment tools would be to return to a non-scientific, subjective pretrial evaluation process. For example, a study compared a group of 2,631 pretrial defendants who received a risk assessment to matched control groups of defendants who did not receive an assessment. Defendants with risk assessment, where the courts could clearly see objective behavioral criteria, were more likely to receive non-financial release from jail, had higher rates of pretrial release, and spent less time in pretrial detention. Those with risk assessment were no more or less likely to fail to appear, but had slightly higher rearrest rates (Lowder et al., 2020).

To provide a quantitative summary of the predictive validity of pretrial risk assessments, a recent meta-analysis found that actuarial tools predict pretrial outcomes similarly across sex and racial groups (Desmarais et al., 2021). For new criminal activity, risk instruments had an overall classification accuracy (area under the curve [AUC]) of .664. The respective classification accuracy for males (.665), females (.675), whites (.671), and nonwhites (.662) were similar. For new violent criminal activity, the overall classification accuracy was .673 with comparable scores for males (.668), females (.658), whites (.674), and nonwhites (.656). To conclude, I concur with Milgram et al.'s (2014, p. 220) research from the Federal Sentencing Reporter, "there is simply no need to choose between the predictive accuracy of a risk assessment and the fair treatment of all individuals, regardless of race, gender, or socioeconomic status."

Does the Cash Bail System Disproportionately Result In the Pretrial Incarceration of Poor Individuals and People of Color?

It is critical to consider the source regarding claims that pretrial outcomes are necessarily detrimental to lower socioeconomic groups and communities of color. To activist organizations and certain entities in the criminal justice system whose function is to advocate for defendants, there is solicitude for criminal defendants. To illustrate, a study of judicial officers in 30 jurisdictions found that just 27% of staff members

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perceived that pretrial decision-making contributed to racial disparities in the criminal justice system. Within the overall assessment is sharp disagreement by job classification. Just 17% of judges, 21% of pretrial staff, and 47% of prosecutors, but 82% of defense counsel perceived that pretrial practices engendered disparities (DeMichele et al., 2019). Nevertheless, pretrial and bail disparities have important downstream consequences for racial disparities in the justice system. A study of the Delaware courts from 2012 to 2014, for instance, found that pretrial detention accounted for 43.5% of the black-white disparity in convictions and 37.2% of the racial disparity in guilty pleas (Donnelly & MacDonald, 2018).

Disparities in criminal justice system outcomes by race assume parity in criminal offending by race. There is not parity. African Americans represent 12.5% of the total population of the United States, but account for 51.2% of arrests for murder and non-negligent manslaughter, 52.7% of arrests for robbery, 33.2% of arrests for aggravated assault, and 26.7% of arrests for rape. Thus, according to official data from the FBI *Uniform Crime Reports*, blacks engage in the most serious forms of criminal violence at a level that is two to four times their proportion of the population (FBI, 2020). This is substantively important because offense seriousness and violence are key considerations in criminal justice system outcomes including those at the pretrial phase.

Of course, allegations of systemic or institutional racism in the criminal justice system would impugn official arrest data due to concerns that police activity itself is biased. However, large racial differences in criminal victimization undermine that narrative. This is especially important since most criminal victimization is intraracial. According to the most recent data from the National Crime Victimization Survey (NCVS), which is a nationally representative survey of households to measure criminal victimization, African Americans accounted for 29% of nonfatal violent crime victimizations including more than half of robberies, a third of aggravated assaults, and nearly one fourth of rape or sexual assaults and simple assaults? Importantly, there are no statistically significant differences by race between offenders identified in the NCVS and offenders arrested in the UCR (Beck, 2021).

Given these large offending differentials by race, research is equivocal about the specific importance of race and pretrial and sentencing outcomes in part because more serious, violent, and extensive criminal and incarceration history is not equivalent across racial groups. For example, a study using statewide data from Kentucky found that compared to white defendants, black defendants had greater history of failing to appear in court, more felony convictions, more prior incarcerations, and more prior convictions for crimes of violence consistent with both the UCR and NCVS data sources (DeMichele et al., 2020). Other research found that main effects of race on pretrial detention, release, bail amounts, and prison sentences are rendered non-significant when legal criteria are specified (Wooldredge, 2012).

This is one of the most important substantive issues surrounding pretrial detention and policy discussions of bail reform. It is specious to assert that race differences in pretrial outcomes are *de facto* evidence of bias or discrimination. Indeed, when one considers the best data on criminal offending and criminal victimization, both of which show significant race differences in antisocial behavior, the primary reason for disparities becomes clear.

How Effective Have New Bail Reform Measures Been in Addressing Racial Disparities Among Pretrial Detainees and in Bail Decisions?

Bail reform has a long history and is not a new concept. Until the mid-20th century, ability to pay bail was the sole criterion for release and as a result, many jail inmates needlessly languished in detention. Jail detention was most pronounced among indigent defendants and racial and ethnic minorities, posed 8th and 14th Amendment concerns, and was widely criticized (Foote, 1964, 1965; Goldfarb, 1965). Bail reforms such as the Manhattan Bail Project, Manhattan Bowery Project, and related initiatives showed that using behavioral indicators such as employment, ties to community, and criminal history allowed for the release of indigent defendants without undue risk of absconding.

Across risk classifications, jurisdictions should detain the most violent criminal defendants who pose the greatest risks to public safety. Detention of the most dangerous clients will commensurately reduce victimization among low-income communities.

Bail reforms helped to motivate federal legislation including the Bail Reform Act of 1966, which required recognizance release of all non-capital federal defendants including the specification of bond conditions to facilitate appearance in court, and the Pretrial Services Act of 1982, which authorized the use of pretrial services to all 94 federal jurisdictions with the exception of Washington, D.C. This effectively created the current U.S. Probation and Pretrial Services. Another reform is the Bail Reform Act of 1984, which allowed for pretrial detention due to

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dangerousness, recidivism, and flight risk (*United States v. Salerno*, 1987).

All of these reforms helped to reduce socioeconomic and racial disparities in pretrial detention and release outcomes. A study of 31,043 offenders in U.S. Sentencing Commission data once again revealed the salience of legal criteria in determining detention status although demographic factors such as education, number of children, age, Hispanic, and African American status also showed significant associations with detention. For instance, the effect of prior record was five to seven times greater than the effects of race or ethnicity on detention status. The study authors (Reitler et al., 2013, p. 363) also advanced a caveat that is characteristic of virtually all studies of the pretrial period: "We cannot infer causation from these analyses, let along discrimination from these data."

Some states including Indiana recently adopted pretrial risk assessment tools based on legally relevant behavioral indicators and found these had good to excellent classification accuracy (Lowder et al., 2020). Other bail reforms have not been as successful. Recent bail reform measures motivated by reducing racial disparities exemplify the current zeitgeist, but are misguided because behaviorally relevant criteria are ignored in favor of putative social justice. This scenario has played out most vividly in New York. A 2020 bail reform law prohibited cash bail for nearly all misdemeanor defendants and almost all non-violent felony defendants, prohibited remand in custody for the same defendants, retained cash bail and detention for the most serious and violent charges, mandated judicial release of defendants on recognizance bonds unless the defendant posed a flight risk, and addressed release conditions. The legislation was the only one in the nation where judges are prohibited from considering public safety or dangerousness risks for pretrial release. In other words, the bail reform explicitly excised critical decision points from the pretrial process. As a result, many active, serious, and violent offenders were free to recidivate whereas in prior eras would have remained in jail custody. Not surprisingly, the reform has resulted in numerous cases where inappropriately released defendants committed new serious and violent crimes, including murder, rape, and armed robbery (Mangual, 2020).

Guided by concerns about racial disparities, Illinois has been similarly progressive in its reforms of the bail and the pretrial process. Although there are public pronouncements these reforms are successful and produce no public safety burden, careful empirical research shows otherwise. After bail reform in Cook County, Illinois, the number of released defendants charged with committing new crimes increased 45% and new violent crimes increased 33% (Cassell & Fowles, 2020). Moreover, 21 defendants were charged with homicide offenses while on bond and 80% of these defendants had significant felonious criminal history, a risk indicator that in "non-progressive" eras would have resulted in remand.

However well-intentioned these reforms are regarding racial disparities in justice system involvement, they also ignore that most crime is intraclass and intraracial; thus the populations that bear the heaviest victimization burden of recent bail reforms are the poor and communities of color.

What Policies or Practices Can Ensure Equal Administration of Justice In Pretrial and Bail Decisions?

To reiterate, the expressed position of the pretrial community at the local, state, and to a lesser extent federal levels is to maximize release, public safety, and ensuring appearance in court. Nevertheless, there are practices that can further improve the pretrial phase vis-à-vis its effects on racial and socioeconomic disparities.

In the federal system, more defendants can be successfully released at all risk levels with appropriate conditions or alternatives to detention in place. The study of the entire population of federal defendants processed by pretrial services between 2001 and 2007 provided insightful data on pretrial services recommendations for release, court decisions for release, and successful pretrial outcomes. For risk level 1 clients, 84.8% were recommended for release and 87.1% were released and 97.7% of pretrial outcomes were successful. For risk level 2, these data were 59.2% recommended, 62.3% released, and 94% successful, respectively. For risk level 3, these data were 46%, 49.4%, and 90.8% and for risk level 4, these data were 35.8%, 40%, and 88.2%, respectively. For the highest risk clients at risk level 5, 22.1% had recommended release, 27.9% were released, and 84.5% had successful pretrial outcomes. These data suggest that moderate risk (levels 3 and 4) clients could be released to a greater degree than currently.

Across risk classifications, jurisdictions should detain the most violent criminal defendants who pose the greatest risks to public safety. Due to racial and ethnic differences for the most severe forms of crime, particularly murder and armed robbery, detention of the most dangerous clients will commensurately reduce victimization among low-income communities, African Americans, and Hispanics. Moreover, the pretrial detention of defendants based on dangerousness and cognate criminological risk is already constitutionally established (*Schall v. Martin*, 1984; *United States v. Salerno*, 1987).

The Administrative Office of the United States Courts mandates the use of the federal pretrial risk assessment (PTRA) that is shown to predict pretrial success and pretrial failure outcomes in a gradient fashion whereby the lowest risk clients (risk level 1) fare best and the highest risk clients (risk level 5) fare the worst (VanNostrand & Keebler, 2009; Cadigan & Lowenkamp, 2011; Cadigan et al., 2012). The PTRA is a clear example of the value of science-based pretrial assessment, one that has strong predictive validity for pretrial success and failure. For example, a study of nearly 200,000 federal defendants found that the risk assessment tool predicted pretrial odds of

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success occurring to the odds of success not occurring. For the lowest risk clients, the ratio was 49:1. For low risk clients, the ratio was 16:1 and for moderate, moderate-high, and high-risk clients the ratios were 9:1, 6:1, and 4:1, respectively (Lowenkamp & Whetzel, 2009). Thus, the federal pretrial system should continue to employ an evidence-based approach to pretrial release, one that employs objective risk assessment.

Many states are overly punitive regarding traffic violators, including habitual traffic offenders and those who drive with a suspended, prohibited, or barred license. Many of these traffic violators are not intoxicated driver cases but reflect those with poor driving records who continue to drive primarily for employment purposes. Thus, detention of traffic violators have a disproportionate impact on lower income drivers. All traffic violators should receive unsecured release with appropriate conditions as long as their traffic history does not involve drunk driving arrests/convictions given that alcohol-related driving poses a public safety threat.

Conclusion

In the mid-20th century, there was critical need for reform of the bail and the pretrial period where defendants routinely languished in jail remand until the disposition of their case, many of whom had adequate community ties that would have facilitated their appearance in court. But those due process victories are long achieved. The current reform paradigm where bail itself is portrayed as an unconstitutional method of social control and risk assessment is turned on its head suffer from fatal misunderstanding of the pretrial period. Consequently, defendants who pose substantial risks to recidivate, endanger others, and flee the jurisdiction are freed almost immediately after arrest. Those most likely to bear the costs of these repeat offenders are disproportionately the poor and racial and ethnic minorities, community members whom the reform activists allegedly advocate for (Mangual, 2022).

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