

## **Evidence-Based Practices in Pretrial Screening and Supervision**

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Vera Institute of Justice  
January 2010

## Evidence-Based Practices in Pretrial Screening and Supervision

Research on pretrial practices focuses on (1) how to identify those who can be safely released pretrial, and (2) the supervision practices that are most likely to assure appearance in court and reduce the likelihood of new offenses by the released defendant. The most widely recommended and implemented practices include:

1. Utilize an objective, research-based risk assessment instrument to assist judicial officers in making release decisions;
2. Use the risk assessment instrument's results to set meaningful supervision conditions;
3. Gather information for risk assessments through defendant interviews but verify that information with other sources;
4. Vary the level of pretrial supervision and programming according to the specific risk of defendants, using intensive supervision only with the highest risk defendants;
5. Establish specialized programs for defendants with special needs;
6. Develop a formal system of reminders for all defendants to help ensure appearance at scheduled court dates; and
7. Create meaningful consequences for violation of pretrial release conditions.

### 1. Use a risk assessment tool to assist in the release decision

The use of a risk assessment instrument that measures the defendant's likelihood of appearing in court and his or her danger to the community if released can help judicial officers decide which defendants can be safely released pending trial. The use of such instruments is strongly recommended by the American Bar Association and the standards of the National Association of Pretrial Services Agencies. A 2009 federal study of pretrial detainees also recommended their use by federal pretrial services agencies. The instrument must be validated, however, for the jurisdiction where it is to be used to ensure it accurately predicts pretrial risk in that community.<sup>1</sup>

Pretrial risk assessment instruments have been in use in the United States since 1961, and many states and hundreds of counties have adopted them in the 50 years since, including: Maricopa County (Phoenix), Arizona; Harris County (Houston), Texas; New York City, New York; Hennepin County, Minnesota; and the state of Virginia.<sup>2</sup> Other examples include:

- *Kentucky*: Kentucky's statewide pretrial services agency uses a point-scoring system to make recommendations to the court. The system accounts for the defendant's pending charges, prior record, family and community ties, and employment or education status. The state reviews the risk assessment tool every two years, receiving input from judges and jail officials, and examining its accuracy on a sample of pretrial defendants who were released.<sup>3</sup>

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<sup>1</sup> *Ibid.*

<sup>2</sup> See Attachment C for risk assessment instruments from Harris County, Hennepin County, Philadelphia, and Virginia.

<sup>3</sup> B. Mahoney, et al., *Pretrial Services Programs: Responsibilities and Potential* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 2001).

- *Lake County, Illinois*: The Lake County Pretrial Services Program began with a subjective risk assessment tool but found this resulted in inconsistent and disparate recommendations, and, therefore, inequities in the release process. In 2006, the agency implemented an objective risk assessment tool which standardized the release decision-making process, resulted in more release recommendations, and produced fewer releases based on financial bond.<sup>4</sup> After implementation of the new assessment, pretrial failure rates improved despite decreased supervision for lower-risk offenders and an expanded definition of pretrial failure to include violations that did not result in revocation.<sup>5</sup>
- *Philadelphia, Pennsylvania*: Philadelphia developed a matrix in response to concerns about inconsistencies among judicial officers in release decisions. It categorizes defendants based on the seriousness of their crime and the risk that they will flee or be rearrested.<sup>6</sup> There are 40 categories into which a defendant may fall, each with a suggested option or range of options, including release on recognizance for low-risk defendants and money bail for high-risk defendants. Over time, the matrix has been adapted as supervision options have increased; failure to appear and re-arrest rates has fallen significantly despite the fact that its release rates are higher than other urban jurisdictions.<sup>7</sup>

## 2. Use risk assessments to set meaningful conditions of release

In addition to or instead of direct supervision by pretrial service agencies, judicial and probation officers can place a variety of conditions on individuals while on release. Using the risk assessment results to inform the setting of conditions can help judicial and probation officers to choose an appropriate level of conditions and not over-condition low-risk offenders or under-condition higher risk offenders. Pretrial services deals with defendants, not convicted offenders, so judicial officers should seek the least restrictive conditions necessary to protect public safety or reduce risk of flight.

There are a variety of conditions categories, including:

1. status quo conditions, which require the defendant to maintain certain stabilizing elements of his or her life such as employment or residence;
2. restrictive conditions, which restrict movement or contact with particular people;
3. contact conditions, which require the defendant to report to the agency by phone or email on a regular schedule; and
4. problem-oriented conditions, which require the defendant to enroll in particular social services programming, such as substance abuse treatment.<sup>8</sup>

Information from an assessment tool is used to identify the defendant's needs that are most predictive of the risk of FTA and re-arrest. Important factors that predict whether defendants are

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<sup>4</sup> K. Coopriider, "Pretrial Risk Assessment and Case Classification," *Federal Probation* 73, no. 1 (2009): 12-15.

<sup>5</sup> *Ibid.*

<sup>6</sup> See Attachment C for matrix (B. Mahoney, et al., 2001.)

<sup>7</sup> B. Mahoney, et al., 2001.

<sup>8</sup> Pretrial Services Resource Center, *Supervised Release Primer* (Washington, D.C.: Pretrial Resource Center, 1999).

more likely to show up in court include: (1) residence stability; (2) employment stability or full time activities (such as full time education); and (3) community ties.<sup>9</sup> Research also suggests that it is possible that FTA could be predicted if drugs tests were used that were able to distinguish among low, moderate, and high drug usage.<sup>10</sup> Conditions should be tailored to address these factors, depending on how the defendant scores on the assessment tool.

### **3. Gather information for risk assessments through defendant interviews and verification**

In order to answer many of the questions in the risk assessment tool, information must be gathered about the individual. The defendant is the best source for this information, and standardized, timely interviews should be conducted with each individual under the court's jurisdiction.<sup>11</sup> Pretrial service agencies must make assurances and take precautions when collecting information from defendants to protect their rights, particularly the right against self-incrimination.<sup>12</sup> Agencies should advise the defendant of his or her rights and encourage the individual to sign a copy of a rights advisement to make sure they understand.<sup>13</sup> National standards and some state laws provide for confidentiality of agency files to ensure the defendant is protected.<sup>14</sup>

Because risk assessments often rely on self-reporting, it is critical for agencies to verify the information they receive from defendants. The FBI's National Criminal Information Center or the National Law Enforcement Telecommunications System may help verify criminal records. Agencies may also have to reach out to the defendant's family members or the defendant's employer as well as consult county court records or credit bureaus for verification of some information. However, in considering who to contact, agencies should consider how damaging it may be to the defendant if the verification source learns of the defendant's arrest. Agencies should use the least intrusive measures possible to verify information.

- *District of Columbia*: Officers with the Pretrial Services Agency in the District of Columbia are trained to inform defendants of the way the information they receive during the interview will be used.<sup>15</sup> Specifically, they inform the defendant that a judicial officer will use the information solely for the pretrial release decision, not in the criminal trial to prove the defendant is guilty. The interviewers are also trained to avoid discussing current charges during the interview, to resist developing any kind of relationship with

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<sup>9</sup> M. Katzive, *New Areas for Bail Reform: A Report on the Manhattan Bail Reevaluation Project*, (Vera Institute of Justice, 1968); Pretrial Justice Institute. 2010. "Pretrial Services Program Implementation: A Starter Kit." Washington, D.C., <http://pretrial.org/Reports/PJI%20Reports/PJI%20Pretrial%20Services%20Program%20Implementation%20A%20Starter%20Kit.pdf>.

<sup>10</sup> W. Rhodes, R. Hyatt, & P. Scheiman, "Predicting pretrial misconduct with drug tests of arrestees: evidence from eight settings," *Journal of Quantitative Criminology* 12, no. 3 (1996): 315-348.

<sup>11</sup> See Attachment C for sample interview form (B. Mahoney, et al., 2001).

<sup>12</sup> B. Mahoney, et al., 2001; National Association of Pretrial Services Agencies, 2004, Standard 3.8.

<sup>13</sup> See Attachment C for sample advisement from the Southern District of New York Pretrial Services Agency (B. Mahoney, et al., 2001).

<sup>14</sup> National Association of Pretrial Services Agencies, 2004, Standard 3.8; 18 U.S.C. 3153(c); D.C. Code Ann. Section 23-1303(d).

<sup>15</sup> B. Mahoney, et al., 2001.

the defendant that goes beyond the purpose of the interview, and to disclose any prior relationship the interviewer has with the defendant.

#### **4. Focus supervised release programs on defendants with the highest risk**

Research on pretrial populations demonstrates a clear connection between the level of supervision and the likelihood of pretrial success. As discussed in the risk assessment section of this memo, studies suggest that supervision that is not commensurate with the defendant's level of risk can result in worse outcomes.<sup>16</sup> Researchers have concluded that focusing resources on higher-risk defendants increases pretrial success while an overuse on low-risk individuals produces failure.

An effective pretrial release program provides a continuum of options for defendants at all risk levels and supervision that is tailored directly to the individual's needs and release conditions. Low risk defendants may need nothing more than reminders of court appearance dates, while medium level individuals may require periodic phone or office check-ins. In some jurisdictions, higher-risk defendants are managed in the community through the use of intensive supervision programs that require frequent reporting with agency staff, regular drug tests, or participation in substance abuse treatment.<sup>17</sup> The highest-risk defendants can be supervised under even more stringent supervision, such as day reporting centers that require daily check-ins and substantive programming.

Other supervision techniques for high-risk defendants include: community observation (periodic surveillance of a defendant to ensure compliance with conditions of release); referrals to other government or community agencies to help secure treatment or social services; employment or education requirements; and restrictions on association or contact with particular individuals or groups of individuals.<sup>18</sup> These types of intensive supervision for the highest-risk defendants can reduce the likelihood of pretrial failure by serving as an early warning system of inability to comply and providing additional services that directly address the individual's risk factors.<sup>19</sup>

- *Southern District of Iowa*: A study in the federal Southern District of Iowa examined what happened when the courts increased the pretrial release rate by 15 percent and focused efforts on those defendants who posed the greatest risk.<sup>20</sup> The increase resulted in the release of 110 defendants who would not have qualified for release prior to the study. The study found that all three measures of pretrial failure—failure to appear, new criminal activity, and technical violations—showed improvement. Overall, pretrial success rates increased nearly seven percent.

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<sup>16</sup> M. VanNostrand, & K. Rose, *Pretrial Risk Assessment in the Federal Court* (Washington, D.C.: U.S. Department of Justice, Office of the Federal Detention Trustee, 2009).

<sup>17</sup> Pretrial Services Resource Center, 1999.

<sup>18</sup> Office of Probation and Pretrial Services, *The Supervision of Federal Defendants* (Washington, D.C.: United States Courts, Office of Probation and Pretrial Services, 2007).

<sup>19</sup> *Ibid.*

<sup>20</sup> M. VanNostrand, *Alternatives to Pretrial Detention: Southern District of Iowa* (St. Petersburg, FL: Luminosity, Inc. 2010).

- *Lake County, Illinois:* The Pretrial Services Program in Lake County, Illinois, adopted a new risk assessment tool in 2006 and changed its practices based on observations that some defendants need more supervision in order to succeed on pretrial release. Previously, the agency supervised defendants uniformly, regardless of risk level. The agency changed its supervision practices by developing three levels of supervision based on risk. The results were that aggregate failures for those on pretrial supervision actually decreased.<sup>21</sup> Researchers concluded that using differential levels of supervision based on risk, under the least restrictive conditions, was a more effective investment of resources and time.<sup>22</sup>
- *Broward County, Florida:* The Pretrial Services Division in the Broward County Sheriff's Office utilizes a continuum of options for defendants under supervised release.<sup>23</sup> The least restrictive option, the Standard Supervision Program, supervises defendants with telephone check-ins, home or office visits, and court reminder letters. Some defendants may also be required to undergo drug or alcohol testing or participate in counseling sessions. The Intermediate Supervision Program monitors defendants through more frequent contacts and requires that all defendants are employed full-time. The most restrictive supervision is under the Electronic Monitoring / House Arrest Program. In this program, defendants are placed on curfew and their movements are monitored by pretrial officers.
- *District of Columbia:* The District of Columbia developed the High-Intensity Supervision Program (HISP) to address the needs of the highest risk defendants in the district.<sup>24</sup> The HISP targets individuals charged with felonies or violent misdemeanors who have a high risk assessment score or have failed other supervised release programs. The HISP consists of two phases, the Community Phase and the Home Confinement Phase. The Community Phase is the less restrictive phase, requiring in-person contact with a pretrial services officer, weekly drug testing, electronic monitoring and daily curfews. If a defendant violates the conditions of this phase, he or she risks being placed in the Home Confinement Phase, in which defendants are placed on electronically monitored home confinement for 21 days. They are only allowed to leave the residence for approved education or employment obligations, or to report to the pretrial services agency in person. A violation of this phase results in a court hearing.

## 5. Establish personalized programs for individuals with special needs

Defendants with specialized problems like drug or alcohol abuse, mental illness, or disabilities can also benefit from pretrial release, especially when conditions and programs are developed to

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<sup>21</sup> K. Coopriders, "Pretrial Risk Assessment and Case Classification," *Federal Probation* 73, no. 1 (2009): 12-15.

<sup>22</sup> *Ibid.*

<sup>23</sup> Broward County Sheriff's Office, Pre-Trial Services Division, [http://sheriff.org/about\\_bso/dodcc/court/pretrail.cfm](http://sheriff.org/about_bso/dodcc/court/pretrail.cfm).

<sup>24</sup> S.W. Shaffer, *Guide to the District of Columbia Pretrial Services Agency's Programs and Services* (Washington, D.C.: District of Columbia Pretrial Services Agency, 2006); S.W. Shaffer, Pretrial Supervision: The D.C. Pretrial Services Agency's High Intensity Supervision Program, Presentation for the NIJ Pretrial Research Meeting, Charlotte, NC, 2007, <http://www.ojp.usdoj.gov/nij/topics/courts/pretrial/research-meeting/shaffer.pdf>.

address their specific needs.<sup>25</sup> Although it is sometimes difficult to identify these defendants, agencies can build screening tools into their interviewing procedures and risk assessments to ensure that special needs are identified earlier in the pretrial process.<sup>26</sup>

Many jurisdictions address special needs in their pretrial release programs. Treatment and testing for drug abuse is a common condition for release. Some agencies have developed in-house treatment programs to provide direct services. Halfway houses in particular provide structure and shelter for individuals who are either homeless or have no community ties. These facilities may also offer treatment programs or job placement services to residents. Agencies may also condition release on mental health treatment, behavior modification programming, or employment training or placement services.

- *Milwaukee, Wisconsin*: The pretrial services providers in Milwaukee, Wisconsin conduct intensive supervision and treatment programs for repeat Driving While Intoxicated (DWI) offenders. The intensive supervision program, piloted in 1993, provides outpatient therapy and self-help groups as a condition of release. Participants undergo random drug and alcohol testing, maintain in-person and telephone contacts with staff, and attend victim-impact panels. An evaluation of the program shows that 83 percent of defendants discharged from the program successfully accessed treatment and 73 percent were compliant with pretrial supervision conditions.<sup>27</sup>
- *District of Columbia*: The Specialized Supervision (Mental Health) Unit of the Washington, D.C. Pretrial Services Agency targets pretrial defendants who suffer from mild mental disabilities to severe, persistent and chronic mental illnesses. The program provides case management, referrals to mental health service providers, vocational rehabilitation and employment services, and offers a limited number of housing placements.<sup>28</sup>

## **6. Develop system of reminders for defendants to help ensure appearance at scheduled court dates**

The FTA risk is one of the biggest factors a judicial officer takes into consideration when making decisions about pretrial release. Creating a system for reminding defendants about their obligations to appear and the dates at which they are due in court is the fundamental task of a pretrial services agency. Reiterating those reminders during any check-in or contact sends the message that the system is serious about enforcing its orders and maintaining its schedule.<sup>29</sup>

- *San Mateo County, California*: Practitioners in San Mateo County's Pretrial Services Program observed that there were many reasons that defendants failed to appear,

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<sup>25</sup> B. Mahoney, et al., 2001.

<sup>26</sup> *Ibid*; see also Appendix C for sample special needs referral form from Harris County, TX.

<sup>27</sup> Wisconsin Department of Transportation, *Wisconsin's Pretrial Intoxicated Driver Intervention Grant Program Annual Report* (Madison, WI: Wisconsin Department of Transportation, Division of State Patrol, Bureau of Transportation Safety, 2009).

<sup>28</sup> S.W. Shaffer, 2006.

<sup>29</sup> B. Mahoney, et al., 2001.

including not knowing who to contact to find out where to appear, not understanding the seriousness of the charges, and believing they had a valid excuse to miss an appearance because of employment or child care obligations. An evaluation indicated that many FTAs could be averted by simply reminding defendants of their upcoming court appointments. The County established the Own Recognizance Program, a court notification system that contacts all defendants by phone or mail before every scheduled court appearance.<sup>30</sup> The program resulted in a significant reduction in failure to appear rates as well as reduced rates of subsequent incarceration on bench warrants.

## **7. Create meaningful consequences for violation of pretrial release conditions**

It is inevitable that some defendants will violate their release conditions. However, not every violation has serious implications for pretrial failure. For example, if a defendant misses a telephone check-in, he or she is not necessarily posing a risk of flight or to public safety. Developing appropriate responses to violations is necessary to maintain the integrity of the pretrial services agency and reduce the risk of pretrial failure. It requires finding the appropriate balance between reporting every small violation to the court and failing to take appropriate action when noncompliance may have serious consequences.<sup>31</sup>

The NAPSA standards suggest using discretion before contacting the court by taking into consideration “the seriousness of the violation, whether it appears to have been willful, and the extent to which the defendant’s actions resulted in impairing the effective administration of court operations or caused an increased risk to public safety.”<sup>32</sup> However, many courts will prefer to determine themselves the appropriate level of response and the procedures for reporting certain violations.<sup>33</sup>

- *Maricopa County, Arizona*: The pretrial services agency in Maricopa County, Arizona, uses a three-step process for individuals who violate pretrial release conditions. For the first violation, the agency gives the defendant a verbal warning with a reminder of possible termination from the program (a possible return to detention or money bail) for continued noncompliance. The second time, the defendant receives a sanction, such as increased contact with the agency and a switch from telephone to in-person check-ins, accompanied by a reminder that termination from the program is possible. For a third violation, the defendant is removed from the program and the agency recommends revocation of release to the court.

## **Conclusion**

The research demonstrates that in order to make an accurate determination regarding pretrial release, defendants must be assessed using a valid risk instrument to analyze the likelihood they will appear in court and whether they pose a danger to the community. If released, defendants should be monitored with the appropriate level of supervision—higher risk and needs defendants

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<sup>30</sup> *Ibid.*

<sup>31</sup> Pretrial Services Resource Center, 1999.

<sup>32</sup> National Association of Pretrial Services Agencies, 2004, Standard 4.3(a).

<sup>33</sup> B. Mahoney, et al., 2001.

benefit from structured programming and services, while low-risk defendants benefit from less oversight. An effective pretrial release program provides a wide range of services and supervision to reduce unnecessary pretrial detention, ensure that defendants appear in court, and maintain public safety.

## Pretrial Services Resources

### **General**

Mahoney B., et al. *Pretrial Services Programs: Responsibilities and Potential* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 2001).

<https://www.ncjrs.gov/pdffiles1/nij/181939.pdf>

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

<http://www.pretrial.org/PerformanceMeasuresDocuments/Measuring%20What%20Matters.pdf>

National Institute of Corrections. "Applying Evidence-Based Practices in Pretrial Services." *Topics in Community Corrections* (2008).

[http://pretrial.org/Reports/PJI%20Reports/Topics%20in%20Community%20Corrections%20Annual%20Issue%202008%20Applying%20Evidence-Based%20Practices%20in%20Pretrial%20Services%20\(NIC-2008\).pdf](http://pretrial.org/Reports/PJI%20Reports/Topics%20in%20Community%20Corrections%20Annual%20Issue%202008%20Applying%20Evidence-Based%20Practices%20in%20Pretrial%20Services%20(NIC-2008).pdf)

National Legal Aid & Defenders Association /American Council of Chief Defenders. *Policy Statement on Fair and Effective Pretrial Justice Practices*. (Washington, D.C.: National Legal Aid & Defenders Association, 2011).

<http://www.pretrial.org/Featured%20Resources%20Documents/ACCD%20Pretrial%20Release%20Policy%20Statement%20June%202011.pdf>

Pretrial Justice Institute, *Jail Population Management: Elected County Officials' Guide to Pretrial Services*. (Washington, D.C.: Pretrial Justice Institute, 2009).

[http://www.pretrial.org/Reports/PJI%20Reports/Jail%20Population%20Management%20Elected%20County%20Officials%20Guide%20to%20Pretrial%20Services%20\(2009\).pdf](http://www.pretrial.org/Reports/PJI%20Reports/Jail%20Population%20Management%20Elected%20County%20Officials%20Guide%20to%20Pretrial%20Services%20(2009).pdf)

### **Site-Specific Information**

Pretrial Justice Institute, "Pretrial Justice Institute Guides Innovative Reforms Helping Justice Trump Tradition: New Agency in Allegheny County, Pennsylvania Increases Pretrial Fairness and Safety." *Case Studies* 1, no. 1 (2008).

<http://pretrial.org/Success/Case%20Study%201%20Allegheny%20County.pdf>

Pretrial Justice Institute, "The D.C. Pretrial Services Agency: Lessons From Five Decades of Innovation and Growth." *Case Studies* 2, no. 1 (2010).

<http://pretrial.org/Success/Case%20Study%202%20-%20DC%20Pretrial%20Services.pdf>

### **Standards**

American Bar Association. *Standards on Pretrial Release* (Washington, D.C.: American Bar Association, 2002).

<http://pretrial.org/1964Present/ABA%20Standards%20on%20Pretrial%20Release%202002.pdf>

National Association of Pretrial Services Agencies. *Standards on Pretrial Release, Third Edition* (Washington, D.C.: National Association of Pretrial Services Agencies, 2004).

[http://www.vccja.org/2004\\_NAPSA\\_Standards\\_3rd.pdf](http://www.vccja.org/2004_NAPSA_Standards_3rd.pdf)

National District Attorneys Association. *National Prosecution Standards, Third Edition* (Washington, D.C.: National District Attorneys Association, 2009) – [see Part IV: Pretrial Considerations]

<http://www.ndaa.org/pdf/NDAA%20NPS%203rd%20Ed.%20w%20Revised%20Commentary.pdf>