PRETRIAL JUSTICE INSTITUTE

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OVERVIEW OF RESEARCH FINDINGS ON PRETRIAL RISK ASSESSMENT AND PRETRIAL SUPERVISION

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PRETRIAL RISK ASSESSMENT

The first pretrial risk assessment instrument can be traced back to 1961, when an experiment was launched in New York City to test the hypothesis that defendants could be categorized by the degree of risk they posed to fail to appear in court, and that such categorizations could be used in recommending pretrial release. Under a program run by the Vera Institute of Justice, a "point scale" was developed that used strength of family and community ties as the criteria for identifying defendants who were good risks of appearing in court. Evaluations of that point scale showed that the use of such objective criteria could be effective in classifying risks of FTA.

In the aftermath of the Vera experiment, many jurisdictions established pretrial services programs and implemented point scales to assess FTA risks. Many of these jurisdictions simply adopted the "Vera Model," using the same criteria and weights as used in the Vera point scale.

Studies of these early risk assessment instruments showed mixed results in terms of their effectiveness in identifying factors that help predict FTA. For example, a 1981 summary of studies that were done in the 1960s and 1970s in different jurisdictions (Eskridge, 1981) showed the following results.

Community Ties:

- Four studies showed strong community ties were significantly related to appearance in court.
- Ten studies showed that community ties were not significantly related to appearance in court.

Employment:

- Four studies showed being employed was significantly related to appearance in court.
- One study showed employment not related to appearance in court.

Having a Telephone:

- Two studies showed that defendants who had telephones in their names were more likely to appear in court.
- Two studies showed that this did not matter.

Prior Record:

- Five studies showed that having a prior record was a predictor of failure to appear in court.
- Four studies showed that the existence of a prior record was not related to appearance in court.

In the 1970s, states began changing their bail laws to make the risk of danger to the community, in addition to the risk of FTA, a consideration in the bail decision. As a result, pretrial risk assessment studies had to look at both danger to the community, as measured by rearrests, as well as FTA. A number of studies done in the 1990s and in this decade have looked at both FTA and rearrest, with each one identifying different factors relating to risks.

For example, a 1994 risk assessment study in Ramsey County, Minnesota identified two variables that were predictive of appearance in court: being charged with an offense against a person and having completed high school and some college. Four variables were found to be

predictive of failing to appear: having prior convictions for felony weapons offenses; having prior felony arrests; being 18 or 19 years of age; and being at the current address for less than three months. Three variables — having prior felony arrests; having prior misdemeanor convictions; and being 18 or 19 years of age — were predictive of being rearrested, while one variable, the current charge being for a drug offense, was predictive of not being rearrested. (Dickinson, 1994).

A 1999 evaluation of the risk assessment instrument used in Maricopa County, Arizona identified five factors associated with higher risks of both FTA and rearrest:

- Prior FTA;
- Being charged with a property or drug offense;
- Being single or separated;
- Paying child support, and
- Having prior convictions.

Two factors – having family in the area and having a verified address – lessened the likelihood of FTA and rearrest. (Henry, Clark, Austin and Naro, 1999.)

Seven localities in Virginia participated in a 2003 study on pretrial risk assessment. Nine factors were identified as being predictive of pretrial misconduct:

- Having two or more prior FTAs;
- Being charged with a felony;
- Having one or more outstanding warrants from another jurisdiction for charges unrelated to the current arrest;
- Having one or more misdemeanor or felony convictions;
- Having two or more violent convictions;
- Living at the current address for less than one year;
- Not being employed continuously for the previous two years and not the primary caregiver for a child at the time of arrest; and
- Having a history of drug abuse. (VanNostrand, 2003.)

These findings were re-examined in 2009. Researchers found that eight of the nine factors were still valid – the factor relating to outstanding warrants was found to have no predictive ability and was dropped from the revised risk assessment tool. (VanNostrand and Rose, 2009.)

In 2006, researchers in New York City identified several community-tie factors that predict likelihood of pretrial failure. Having a New York City address, having a telephone in their residence, and being employed, in school, or in a training program full-time predicted lower likelihood of pretrial misconduct. Regarding criminal history factors, defendants with prior misdemeanor convictions, having pending cases, and having a history of FTA were more likely to either FTA or be rearrested. (Siddiqi, 2006.)

At least two jurisdictions – Harris County, Texas and Hennepin County, Minnesota – conducted comprehensive validation studies in the 1990s and then repeated the studies very recently. In both cases, the variables that were found to be valid in the 1990s were, in many cases, different than those found to be valid in the most recent studies.

Six factors were identified in a 1993 study of the Harris County, Texas pretrial risk assessment instrument (Cuvelier and Potts, 1993) as being predictive of pretrial misconduct:

- Having a Harris County address;
- Having a telephone;
- Being employed full time, a student, on disability, or a homemaker;
- Having a prior FTA;
- Having prior felony convictions;
- Having prior misdemeanor convictions.

A 2008 re-validation in Harris County (Austin and Murray, 2008) of the factors found to be valid in 1993 found some variables that were different and others that were refined:

- Current charge of burglary, theft, fraud, other property, or deliver controlled substance;
- On probation and/or parole;
- One prior misdemeanor conviction (worth 1 point) as opposed to two or more prior misdemeanor convictions (worth 2 points)
- One prior felony conviction (worth 1 point) as opposed to two or more prior felony convictions (worth 2 points);
- One or more FTAs;
- No high school diploma or GED;
- Lives with someone other than spouse, children, or self;
- Does not own automobile;
- Unemployed and not in school full time, not retired, disabled or a homemaker. (Austin and Murray, 2008.)

A 1992 study of risk assessment in Hennepin County, Minnesota identified two variables (defendant lived at least five years in the area, and defendant was charged with drug offense) that were predictive of appearance in court, and one variable (prior history of FTA) that was predictive of failure to appear in court. Regarding rearrest, one variable (the defendant was employed) was found to be predictive of having no rearrest, while five variables (prior felony convictions, prior misdemeanor convictions, current charge a property offense, current charge a drug offense, and the defendant was 21 years old or younger) were predictive of being rearrested. (Goodman, 1992.)

In 2006, researchers evaluated the risk assessment instrument that was put in place after the 1992 Hennepin County study. Three factors were identified as being significant in predicting both pretrial crime and FTA: having higher number of prior convictions; having a history of failure to appear; and being unemployed or employed less than 20 hours a week. One factor – being charged with a felony against a person – decreased the odds of a defendant committing pretrial crime and of failing to appear in court. (Podkopacz, 2006.)

A study of 565,178 defendants charged in federal courts between October 1, 2001 and September 30, 2007 identified the following nine factors as being statistically significant predictors of pretrial misconduct:

- Defendants with one or more misdemeanor or felony charge pending at the time of arrest were 20 percent more likely to fail than those with no pending charges
- Defendants with one prior misdemeanor arrest were 13 percent more likely to fail, those with two priors 32 percent more likely, with three priors 45 percent more likely, with four 59 percent more likely, and with five or more 69 percent more likely to fail.
- Defendants with one prior felony offense were 22 percent more likely to fail and those with two or more were 38 percent more likely
- Defendants with one prior failure to appear were 22 percent more likely to fail and those with two or more were 35 percent more likely
- Unemployed defendants were 21 percent more likely to fail than those who were employed
- Defendants who were renting rather than buying their own homes were 65 percent more likely to fail, those making no financial contribution to their residence 74 percent more likely, and those with no residence more than twice as likely
- Defendants who abused alcohol were 21 percent more likely to fail, those who abused cannabis 23 percent more likely, and those narcotics 40 percent more likely
- Defendants charged with a felony were 61 percent more likely to fail than those charged with a misdemeanor
- When compared to defendants charged with a theft of fraud related charge, those charged with a firearm offense were 51 percent more likely to fail, a drug offense 78 percent more likely, and an immigration law violation 78 percent more likely. (VanNostrand and Keebler, 2009.)

All of these studies looked at risk assessment instruments whose structure was based upon the model that was developed by the Vera Institute in 1961 – that is, a point scale that assigns certain points (either negative or positive) to factors believed – either intuitively or from research findings – to be related to risks of pretrial misconduct. The factors included and the weights assigned have varied, but the basic structure has been the same.

There are certainly some commonalities among the findings of studies that have looked at these instruments. For example, defendants with prior histories of FTA and prior convictions are more likely to FTA in the current case and be rearrested. Still, the studies disagree on the specifics of these variables. For example, some studies show that any prior FTA raises the risk of FTA, while others show that risk is not raised until a defendant reaches at least two prior FTAs. Likewise, some show that having any prior convictions raises risk, but in others only a certain number of convictions or convictions for certain types of offenses are relevant.

Even with these commonalities, however, study after study has failed to replicate the findings of previous studies. These findings raise caution about simply borrowing a pretrial risk assessment from one jurisdiction and expecting it to work in another.

PRETRIAL SUPERVISION

Various research efforts have been undertaken over the years to show the impact of conditions of release and supervision in reducing pretrial misconduct, all with mixed results. Several studies have shown that it is not the mere imposition of conditions, but the supervision of conditions of

pretrial release that is effective in reducing risks of pretrial misconduct in defendants. (Venezia; Miller, McDonald, Rossman and Romero, 1975; Clarke, Freeman and Koch, 1976; Austin, Krisberg and Litsky, 1993.) One study found that increasing levels of supervision of pretrial release conditions improves appearance rates, but has no impact on rearrests. (Welsh, 1978) Other studies have focused on the impact of compliance on misconduct. One such study found that appearance rates were improved for defendants who complied with a condition to contact the pretrial services program on a regular basis, but it did not matter how frequently defendants were required to report. (San Mateo County Bar Association.) A study of three jurisdictions showed no significant differences in pretrial misconduct outcomes for defendants randomly assigned to supervision and control groups. (Toborg, 1981.)

In the early 1990s, several studies tested the effectiveness of particular conditions of non-financial release — in some cases drug testing and in others electronic monitoring — in reducing rates of pretrial misconduct. These too had mixed results. One study of drug testing found that defendants who reported for drug testing appointments during the pretrial supervision period, regardless of whether they tested positive or negative, had lower misconduct rates than defendants who failed to report for testing. (Toborg, Bellassai, Yezer and Trost, 1989.) Another study of the same jurisdiction, the District of Columbia, examined the impact of intensive supervision on misconduct. The study found that defendants who were placed in an intensive supervision program, in which twice-weekly drug testing was a major component, were rearrested at a rate of 7.8 percent, compared to a rearrest rate of 24 percent for those in normal supervision (Carver, 1993). Other studies of the effectiveness of drug testing as a condition of pretrial release showed different results — that it had no impact on reducing pretrial misconduct rates. (Goldkamp, Jones, Weiland and Gottfredson, 1990; Jones and Goldkamp, 1993; Britt, Gottfredson and Goldkamp, 1992; Visher, 1992.) However, each of these studies cited problems in implementing the drug testing programs, especially the scheme of sanctions for defendants who violated their drug testing conditions, as possible reasons for the lack of impact.

The research of electronic monitoring showed similarly disparate findings. One study on electronic monitoring, which compared outcomes — arrest on new charges, absconding, and technical violations — of pretrial defendants to convicted offenders, found that pretrial detainees fail at higher rates than convicted offenders – 27 percent versus 19 percent. (Maxfield and Baumer, 1990.) Another study found that "with the use of EMS [Electronic Monitoring Supervision] a riskier clientele could be released with the assurance that Pretrial Services could provide effective supervision and report noncompliance of bond conditions to the court." (Cooprider and Kerby, 1990.)

Much of this research was conducted at a time when few options were available or used. The more recent research on drug testing and electronic monitoring looked at only the one condition – drug testing or electronic monitoring. Various reasons have been ascribed to the disparity in the results of all these studies. In some cases the supervision programs were poorly implemented; in some cases the studies themselves were poorly designed or executed.

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