

Measuring and Managing Pretrial Risk
Improving Public Safety, Fairness, and Cost Effectiveness
NC Association of District Court Judges Conference

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LUMINOSITY
DATA DRIVEN JUSTICE SOLUTIONS
quantifying innovation

Agenda

- » **Pretrial Release & Detention Decision**
- » **Impact of Pretrial Decisions**
 - Impact of these critical decisions on case disposition, sentencing, and public safety
- » **Effective Pretrial Decision Making**
- » **Measuring Pretrial Risk**
- » **Managing Pretrial Risk**
 - Legal and evidence-based practices – what the research shows to be most effective
- » **Risk-based Decision Making Benefits**



Pretrial Release & Detention Decision

- » **An arrest is made in the U.S. every 3 seconds**
 - 30,000 arrests per day
 - 11 million arrests per year
- » **On any given day there are nearly 750,000 people incarcerated in local jails, a majority of whom are pending trial**
 - U.S. spends an estimated \$9 billion annually detaining defendants who are awaiting trial
- » **An arrest is made in NC nearly every minute¹**
 - 1,096 arrests per day
 - 400,034 arrests per year

¹North Carolina State Bureau of Investigation. (2014). "Crime In North Carolina – 2013: Annual Summary Report of 2013 Uniform Crime Reporting Data"



Pretrial Release & Detention Decision

- » **Each one of the 400,000 arrests initiates the pretrial stage and requires a critical decision**
 - Whether to release or detain a defendant pending case disposition
 - If released, the setting of conditions
- » **Release-detention decisions carry enormous consequences not only for defendants, but also**
 - Safety of the community
 - Rights of victims
 - Integrity of the judicial process
 - Effective utilization of criminal justice resources



Pretrial Release & Detention Decision

- » Pretrial stage of criminal justice system
 - Time between arrest and case disposition
- » Goal during the pretrial stage of the criminal justice system, and especially the release-detention decision, is **Pretrial Justice**
 - Protect public safety
 - Assure court appearance

“In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”
 ~ *United States vs. Salerno*, 481 U.S. 739, 755



Pretrial Release & Detention Decision

- » Release-detention decisions have a substantial impact on Pretrial Justice
- » The effects of release-detention decisions are even more far reaching than is readily apparent

Pretrial Decisions Determine Mostly
 Everything
 ~ Caleb Foote, 1956



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Impact of Pretrial Decisions

- » In the nearly 60 years since Professor Foote drew this conclusion – research has shown that release-detention decisions impact
 - Case disposition
 - Likelihood of receiving a sentence to incarceration
 - Length of the sentence to incarceration
 - Public safety pretrial (short-term)
 - Public safety post-disposition (long-term recidivism)



Impact of Pretrial Decisions

» 2014 National Study in Federal Court System

- When controlling for legal and extralegal factors (e.g., demographics, offense type, criminal history, risk assessment)
 - Pretrial detention was found to be related to likelihood AND length of incarceration
 - Defendants detained pretrial were more likely to receive sentences to incarceration and for longer periods of time when compared to similarly situated released defendants

Oleson, J.C., Lowenkamp, C.T., Wooldredge, J., VanNostrand, M. and Cadigan, T.P. (2014). "The Sentencing Consequences of Federal Pretrial Supervision." *Crime & Delinquency*, 1-21



Impact of Pretrial Decisions

» 2012 Statewide Study in New Jersey

- When controlling for legal and extralegal factors (e.g., demographics, offense type, criminal history)
 - Pretrial detention was found to be related to length of incarceration
 - Defendants detained pretrial received significantly longer sentences to incarceration when compared to similarly situated released defendants

Sacks, M. and Ackerman, A.R. (2014). "Bail and Sentencing: Does Pretrial Detention Lead to Harsher Punishment?" *Criminal Justice Policy Review*, 25:59-77



Impact of Pretrial Decisions

» 2013 Statewide Study in Kentucky

- Data on over 150,000 defendants booked into jails between July 2009 – June 2010
- Examined the relationship between pretrial detention and new criminal activity pretrial and post-disposition

Lowenkamp, C.T., VanNostrand, M. and Holsinger, A.M. (2013). "The Hidden Costs of Pretrial Detention." Laura and John Arnold Foundation: Houston, TX



Impact of Pretrial Decisions

» 2013 Statewide Study in Kentucky

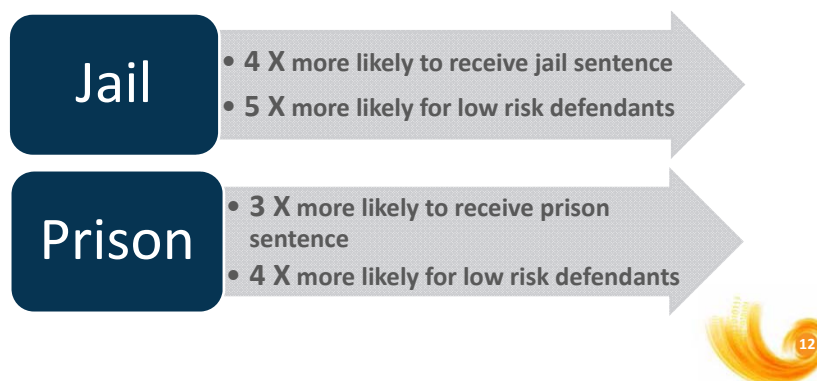
- Multivariate models were generated to control for
 - Risk level from a validated risk assessment
 - Charge offense type and level
 - Time at risk in the community
 - Probation or parole supervision status
 - Demographics (age, gender, race, marital status)
 - Other relevant factors



Impact of Pretrial Decisions

» 2013 Statewide Study in Kentucky

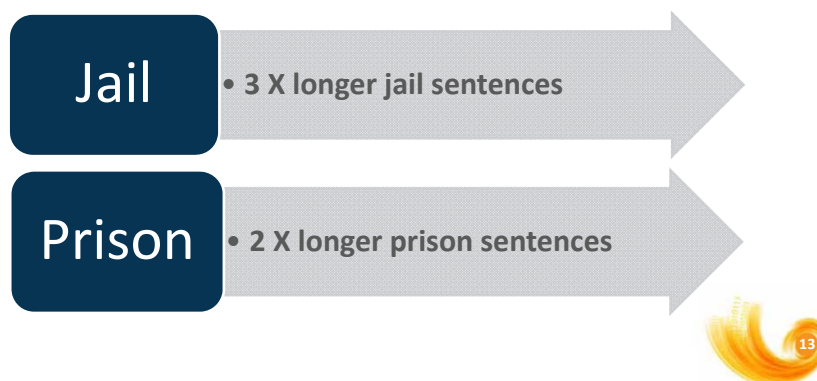
- Findings – Pretrial detention and sentencing compared to similarly situated defendants released pending trial, detained defendants
 - Likelihood of incarceration



Impact of Pretrial Decisions

» 2013 Statewide Study in Kentucky

- Findings – Pretrial detention and sentencing compared to similarly situated defendants released pending trial, detained defendants
 - Length of incarceration



Agenda

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 - Impact of these critical decisions on case disposition, sentencing, and public safety
- » **Effective Pretrial Decision Making**
- » Measuring Pretrial Risk
- » Managing Pretrial Risk
 - Legal and evidence-based practices – what the research shows to be most effective
- » Risk-based Decision Making Benefits



Effective Pretrial Decision Making

- » Recognizing the far reaching implications of these critical pretrial decisions

QUESTION

How do we make the most informed pretrial release and detention decisions that will minimize danger to the community and non-appearance in court while maximizing pretrial release?

ANSWER

Measure Risk and Manage Risk



Effective Pretrial Decision Making

» Measuring and Managing Risk

- Risk is inherent in pretrial release
- Our system of justice requires that we take risk
- The question is not “do we take risk”
- The real question is “how do we measure risk and how do we manage it”



Effective Pretrial Decision Making

» Measuring and Managing Risk

- Measure Risk
 - Employ objective and research-based risk assessments to identify the risk to public safety and failure to appear in court
- Manage Risk
 - Implement supervision and services to mitigate the risk of pretrial failure for released defendants
 - Preventive detention



Effective Pretrial Decision Making

» Role of Pretrial Services



Provide
information
to the Court
to assist
them with
the pretrial
release
decision

Measure Risk

Provide
supervision
and services
as ordered by
the Court

Manage Risk



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Measuring Pretrial Risk

» Pretrial Risk Assessment

- A pretrial risk assessment is an objective, research-based instrument that relies on risk factors to predict the likelihood of success or failure for a released defendant pending case disposition
 - A risk factor is a characteristic that, when present, indicates an increased risk of pretrial failure
- A pretrial risk assessment is intended to inform the release-detention decision by measuring
 - Danger posed to public safety
 - Likelihood of appearing in court



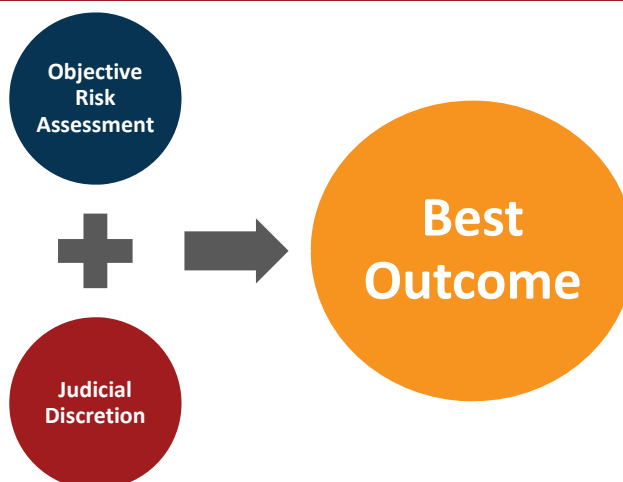
Measuring Pretrial Risk

» Pretrial Risk Assessment

- A risk assessment alone should not be the sole consideration for pretrial decision making
- Pretrial risk assessments are becoming more advanced, but they should never replace judicial discretion and judicial decision making
- Other relevant factors must be considered
 - Nature and circumstances of the offense
 - Weight of the evidence
 - Relevant factors, including those required by state statute, that are not captured in the risk assessment
 - Input from prosecutor and defense attorney



Measuring Pretrial Risk



Andrews, D.A., Bonta, J. and Wormith, J.S. (2006). "The Recent Past and Near Future of Risk and/or Need Assessment." *Crime and Delinquency*, 52(1):7–27
 Harris, P.M. (2006). "What Community Supervision Officers Need to Know About Actuarial Risk Assessment and Clinical Judgment." *Federal Probation* 70(2)



Measuring Pretrial Risk

» Pretrial Risk Assessment

- 50+ years of research
 - Seven research-based multi-jurisdictional pretrial risk assessments – *Colorado, Connecticut, Florida, Kentucky, Maine, Ohio, Virginia*
 - Federal pretrial risk assessment (all 50 states)
 - Many local pretrial risk assessments (individual locality)
 - Public Safety Assessment (national model)



Measuring Pretrial Risk

» Pretrial Risk Assessment

- Common risk factors across risk assessments
 - Factors, measures, and weighting vary
- Measures risk of failure to appear and danger to the community
 - Outputs vary
 - One measure representing failure generally
 - Separate measures of failure to appear and new criminal activity
 - Indicator of risk of violence
 - Risk levels, numeric risk scales, flags



Measuring Pretrial Risk

» Pretrial Risk Assessment

- Common Factors

<ul style="list-style-type: none"> ▪ Current charge(s) ▪ Pending charges ▪ Prior criminal history ▪ History of violence ▪ History of failure to appear 	<ul style="list-style-type: none"> ▪ Community supervision ▪ Residence stability ▪ Employment stability ▪ Community ties ▪ Substance abuse
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Bechtel, K., Lowenkamp, C., Holsinger, A. (2011). "Identifying the Predictors of Pretrial Failure: A Meta-Analysis." Federal Probation, 75 (2)



Measuring Pretrial Risk

» Pretrial Risk Assessment – Public Safety Assessment

- **Goals of the Public Safety Assessment (PSA)**
 - Provide separate indicators of risk of failure to appear (FTA) and new criminal activity (NCA)
 - For the first time, identify risk of new violent criminal activity (NVCA)
 - Use common non-interview dependent factors that equally predict risk across diverse jurisdictions
 - Optimize use of existing human and financial resources needed to administer risk assessment
- **Mecklenburg County implemented PSA in July 2014**

Laura and John Arnold Foundation. (2013). "Research Summary: Developing a National Model for Pretrial Risk Assessment"



Measuring Pretrial Risk

» Pretrial Risk Assessment – Public Safety Assessment

- **Development Sample**
 - Largest most comprehensive multi-jurisdictional dataset of pretrial information
 - 1.5M cases – from approximately 300 different cities, counties, and federal judicial districts
 - 7 state court systems: CO, CT, FL, KY, ME, OH, VA
 - Federal pretrial system (all 50 states)
 - Washington, D.C.



Measuring Pretrial Risk

» Pretrial Risk Assessment – Public Safety Assessment

- PSA – Validation studies on over 500,000 cases (retrospective)
 - Locality in Northeast
 - Locality in Southwest
 - Locality in Midwest
 - Two states
- PSA – Validation studies in process for first round of pilot sites (prospective)



Measuring Pretrial Risk

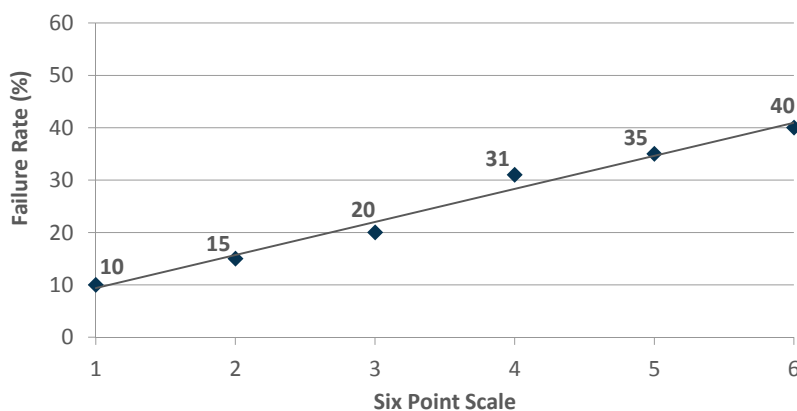
» Pretrial Risk Assessment – Public Safety Assessment

- Contains nine (9) risk factors drawn from administrative data (charge, criminal history, court appearance history, and criminal justice status) to provide three pretrial failure risk indicators
 - Failure to Appear using a 6 point scale
 - New Criminal Activity using a 6 point scale
 - New Violent Criminal Activity using a flag to identify an elevated risk of violence
- PSA is race and gender neutral – it accurately classifies defendants' risk levels regardless of their race or gender, it does not have a discriminatory impact



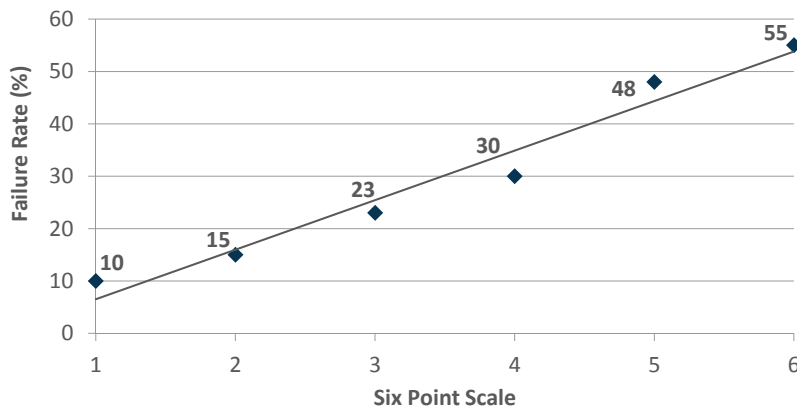
Measuring Pretrial Risk

» PSA – Failure to Appear



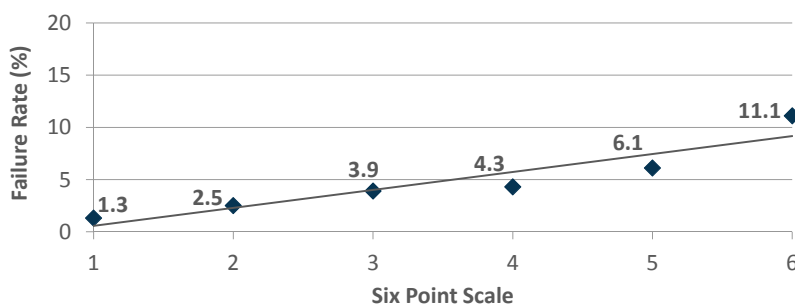
Measuring Pretrial Risk

» PSA – New Criminal Activity



Measuring Pretrial Risk

» PSA – New Violent Criminal Activity



Flag	%	Rate
Yes	7	7.2%
No	93	2.4%
Average NVCA		2.8%



Measuring Pretrial Risk

» Pretrial Risk Measurement

- Effectively measuring risk allows for
 - Detaining the highest risk defendants
 - Releasing moderate risk defendants with interventions and services targeted to mitigate risk
 - Releasing low risk defendants with minimal or no conditions
- Mitigating risk requires effective risk management strategies



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Managing Pretrial Risk

- » Effective Risk Management Strategies
 - Found in pretrial legal and evidence-based practices (LEBP)

“Interventions and practices that are consistent with the legal and constitutional rights afforded to accused persons awaiting trial, and methods that research has proven to be effective in reducing unnecessary detention while assuring court appearance and the safety of the community during the pretrial stage”

VanNostrand, M. (2007). “Legal and Evidence-based Practices: Applications of Legal Principles, Laws, and Research to the Field of Pretrial Services.” National Institute of Corrections, U.S. Department of Justice: Washington, DC



Managing Pretrial Risk

» Effective Risk Management Strategies

- Found in pretrial legal and evidence-based practices (LEBP)

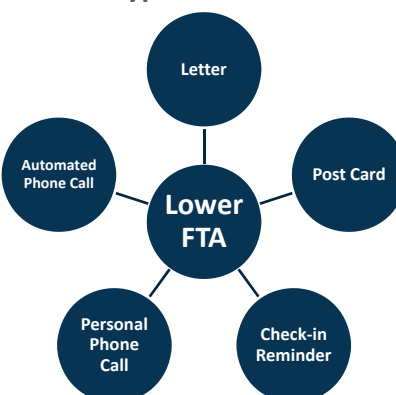
“The term is intended to reinforce the uniqueness of pretrial stage and ensure that criminal justice professionals remain mindful that pretrial practices are often driven by law and when driven by research, they must be consistent with the rights afforded to defendants awaiting trial”



Managing Pretrial Risk

» LEBP – Court Reminder Impact on FTA

- All court reminder types reduce FTA at varying levels



VanNostrand, M., Rose, K., and Weibrecht, K. (2011). "State of the Science of Pretrial Release Recommendations and Supervision." Pretrial Justice Institute: Gaithersburg, MD



Managing Pretrial Risk

» LEBP – Pretrial Supervision

- 2013 study in one Eastern and one Western state
 - Investigated the relationship between pretrial supervision and FTA/NCA
 - Data comprised of 3,925 released defendants were collected from one Eastern and one Western state (2,437 supervised and 1,488 unsupervised)
 - The rates of FTA and NCA were compared between the supervised and unsupervised groups

Lowenkamp, C.T. and VanNostrand, M. (2013). "Exploring the Impact of Supervision on Outcomes."
Laura and John Arnold Foundation: Houston, TX



Managing Pretrial Risk

» LEBP – Pretrial Supervision

- 2013 study in one Eastern and one Western state
 - Pretrial supervision was most effective for moderate to high risk defendants in ensuring court appearance
 - Moderate risk – 38% reduction in FTA
 - High risk – 33% reduction in FTA
 - Pretrial supervision of more than 180 days was statistically related to a decrease in the likelihood of NCA before case disposition
 - 12% to 46% less likely to be arrested for NCA

NOTE: Study had one significant limitation – what constituted pretrial supervision varied by state and often varied within the same state



Managing Pretrial Risk

» LEBP – Risk Principle

- Risk management involves adherence to the risk principle
- Studies have shown post-conviction
 - Evidence-based interventions directed to moderate and high risk offenders will result in better outcomes for both offenders and the community
 - Treatment resources targeted to low risk offenders produce little, if any, positive effect

Crime and Justice Institute and Department of Justice, National Institute of Justice. (2004). "Implementing Evidence-Based Practices in Community Corrections: The Principle of Effective Interventions"



Managing Pretrial Risk

» LEBP – Risk Principle Pretrial

- 2009 national study in Federal court system
 - Included all persons charged with criminal offenses in the federal courts between October 1, 2001 – September 30, 2007 who were processed by the federal pretrial services system (N = 565,178)
 - Identified risk predictors, created a risk scheme, and analyzed effectiveness of alternatives to detention (ATD) while controlling for risk

VanNostrand, M., & Keebler, G. (2009). Pretrial Risk Assessment in the Federal Court. Federal Probation, 72 (2)



Managing Pretrial Risk

» LEBP – Risk Principle Pretrial

- 2009 national study in Federal court system
 - **Moderate** and **higher risk defendants** who were required to participate in ATD pending trial were **more likely to succeed** pending trial
 - ATD are conditions of release (e.g., drug testing, treatment, electronic monitoring)
 - **Lower risk defendants** who were required to participate in ATD pending trial were **more likely to fail** pending trial



Managing Pretrial Risk

» LEBP – Risk Principle Pretrial

- 2013 statewide study in Kentucky
 - Data on over 150,000 defendants booked into jails between July 2009 – June 2010
 - Examined the relationship between pretrial detention – including the length of pretrial detention, and new criminal activity pretrial and post-disposition
 - Pretrial detention is not an ‘all or nothing proposition’
 - Defendants can be released at different times during the pretrial stage

Lowenkamp, C.T., VanNostrand, M. and Holsinger, A.M. (2013). “The Hidden Costs of Pretrial Detention.” Laura and John Arnold Foundation: Houston, TX



Managing Pretrial Risk

» LEBP – Risk Principle Pretrial

- 2013 statewide study in Kentucky
 - When compared to defendants who secure release in one day, defendants who spend time in jail before securing pretrial release are more likely to commit new crimes
 - Detaining low and moderate risk defendants, even just for a few days, is correlated with higher rates of NCA pretrial and two years post-disposition
 - As length of pretrial detention increases up to 30 days, recidivism rates for low and moderate risk defendants also increases significantly
 - Greatest impact for low risk defendants; no impact for high risk defendants



Managing Pretrial Risk

» LEBP – Risk Principle Pretrial

- 2015 statewide study in Virginia
 - “Risk-Based Pretrial Release Recommendation and Supervision Guidelines: Exploring the Effect on Officer Recommendations, Judicial Decision-Making, and Pretrial Outcome”
 - October 2012 – June 2015

Danner, M., VanNostrand, M. and Spruance, L. (2015). “Risk-Based Pretrial Release Recommendation and Supervision Guidelines: Exploring the Effect on Officer Recommendations, Judicial Decision-Making, and Pretrial Outcome.” Bureau of Justice Assistance and Laura and John Arnold Foundation: Houston, TX



Managing Pretrial Risk

» LEBP – Risk Principle Pretrial

- 2015 statewide study in Virginia
 - **Praxis** – Guidelines that utilize the Virginia Pretrial Risk Assessment Instrument (VPRAI) to guide pretrial release recommendations & differential supervision
 - Explore the effect of “STrategies for Effective Pretrial Supervision” (**STEPS**) on supervision outcomes – supervision techniques focused on criminogenic needs and eliciting prosocial behavior
 - 29 pretrial services agencies were randomly assigned to one of four groups: 1) Control, 2) Praxis only, 3) STEPS only or 4) Praxis + STEPS



Managing Pretrial Risk

» LEBP – Risk Principle Pretrial

- 2015 statewide study in Virginia
 - Study samples
 - Supervision sample – 14,382 cases supervised with risk assessment completed and outcomes
 - Recommendation sample – 32,760 cases investigated with risk assessment completed, officer recommendation regarding release, and judicial decision



Managing Pretrial Risk

» LEBP – Risk Principle Pretrial

- 2015 statewide study in Virginia
 - In programs using the Praxis, when controlling for risk level, charge category, and demographic characteristics
 - Judges are **1.9** times more likely to release defendants on PR or UA bonds at first appearance
 - Judges' decisions to release defendants on PR or UA bonds increases **8.8** times when officers recommend release



Managing Pretrial Risk

» LEBP – Risk Principle Pretrial

- 2015 statewide study in Virginia
 - Defendants supervised in the Praxis programs, when controlling for risk level, charge category, and demographic characteristics
 - **1.2** times less likely to experience any pretrial failure
 - **1.3** times less likely to fail to appear
 - **1.3** times less likely to experience a new arrest



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Risk-based Decision Making Benefits

- » Risk-based systems minimize dual system errors found in most current pretrial systems
 - Defendants who pose a significant risk to public safety are released
 - Low risk/non-violent defendants are detained
- » Risk-based systems achieve **Pretrial Justice** by
 - Detaining the highest risk defendants
 - Releasing moderate risk defendants with interventions and services targeted to mitigate risk
 - Releasing low risk defendants with minimal or no conditions



Risk-based Decision Making Benefits

» Risk-based System

- Improves public safety in the short and long-term
- Enhances the fair administration of justice
- Better protects the rights of victims
- Better protects the rights of defendants
- Reduces the burden on local tax payers
- Provides for the most effective jail population management of pretrial defendants

MEASURING AND MANAGING PRETRIAL RISK
Improving Public Safety, Fairness,
and Cost Effectiveness



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