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Before the Disposition: A Review of Pretrial Literature

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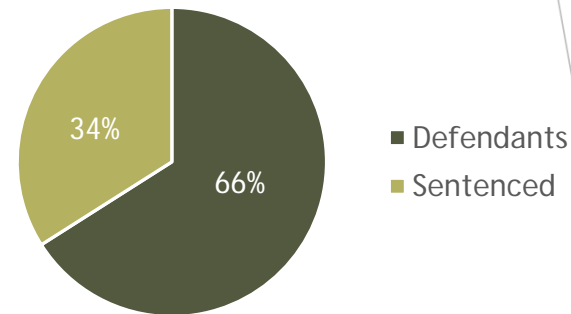
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Overview

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4. Pretrial Release: Statistics, Conditional Supervision Options and Benefits, Pretrial Services Roles and Elements
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6. Disparities in Pretrial Decision-Making: Detention and Release Decisions, Monetary Bail Amounts, and Cumulative Disadvantage
7. Risk Assessment: Purpose, Common Factors and Tools, Benefits, and Remaining Issues
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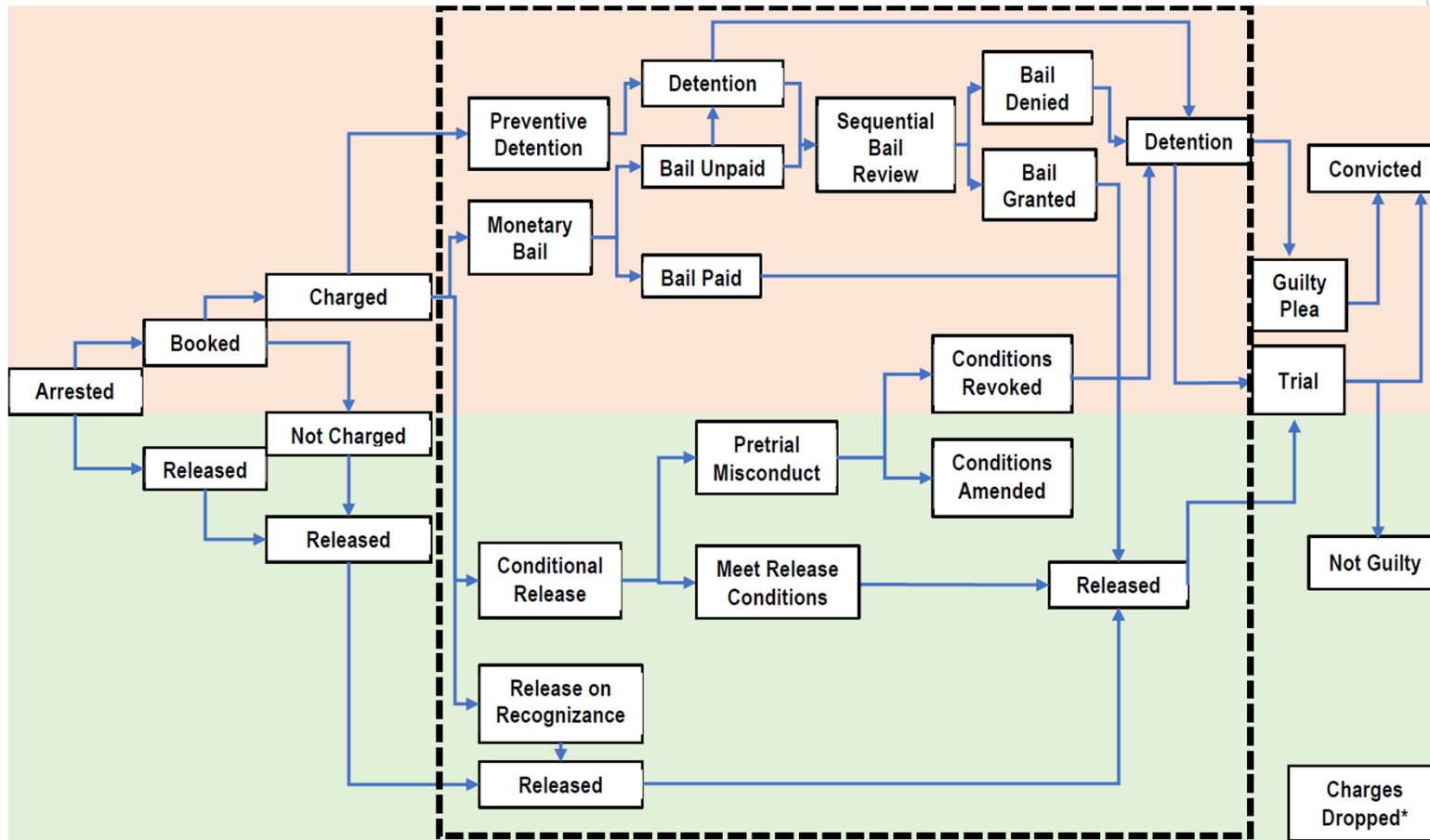
Introduction

- ▶ **Pretrial** refers to the time between an individual's arrest and case disposition
 - ▶ Disposition may occur through:
 - Dismissal
 - Acquittal
 - Conviction (trial or plea bargain)
- ▶ **66 percent** of United States jail populations (490,000 defendants) are awaiting court action on a current charge¹
- ▶ Pretrial processes aim to accurately predict defendant risk and assign appropriate levels of supervision to^{2,3}:
 1. Maximize release of defendants
 2. Minimize failure to appear (FTA) in court
 3. Reduce the threat of released individuals to public safety



United States Jail Populations, Midyear 2018¹

The Pretrial Process



The pretrial process varies for each defendant, as each decision-making point is associated with different outcomes

Pretrial Detention

► Goals of Pretrial Detention

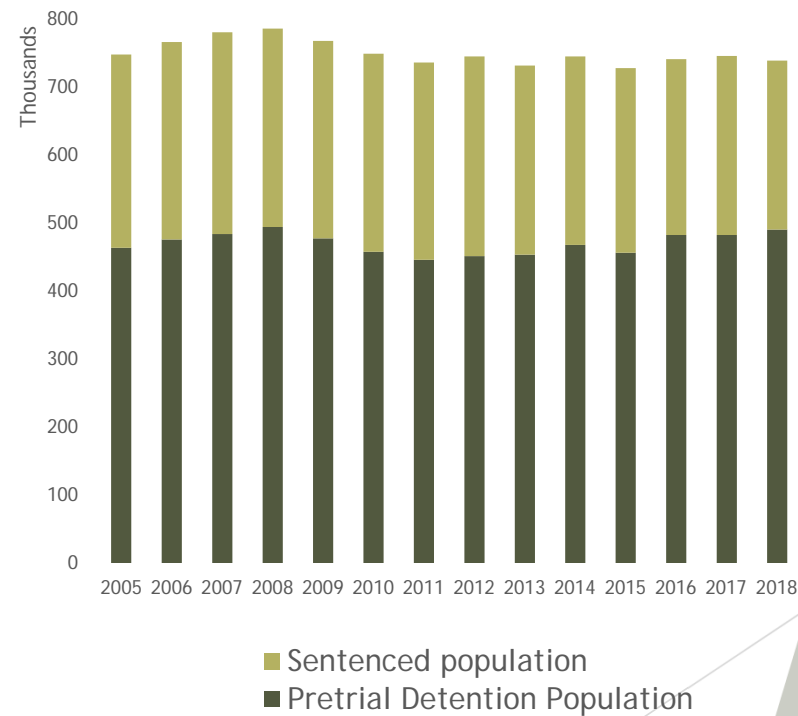
1. Reduce risk to public safety
2. Ensure appearance in court

► Reasons for Detention¹

1. Unable to post monetary bail amount
2. Denied any type of bail or release conditions
3. Fail to comply with release conditions

- From 2005 to 2018, between 60.6 and 66.4 percent of local jail populations were pretrial detainees each year^{1,4}

U.S. Jail Populations 2005-2018, by Conviction Status^{1,4}



Impacts of Pretrial Detention

- ▶ Pretrial detention can have negative impacts on defendant's⁵

Employment



Finances



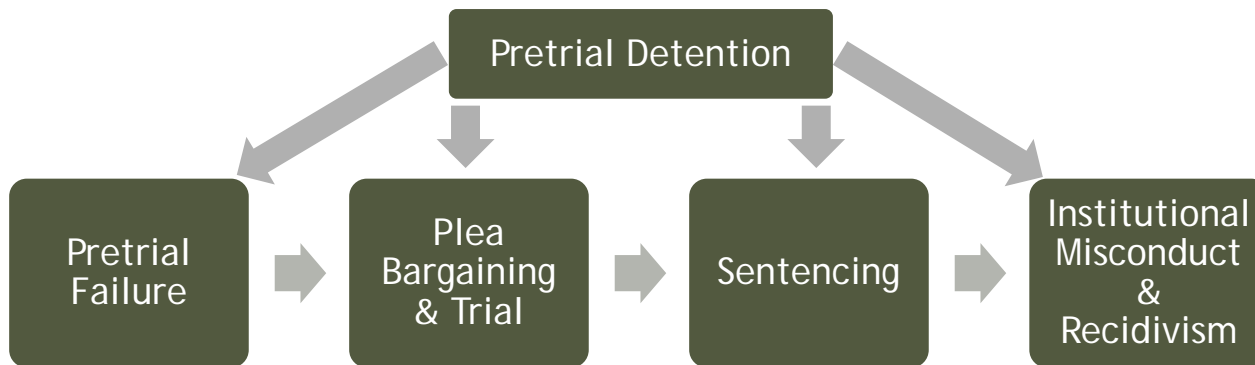
Housing Situation



Family Situation



- ▶ Longer periods of detention can worsen negative impacts⁵
- ▶ Pretrial detention is related to negative outcomes in case processing decisions including:⁶⁻¹¹



Pretrial Release Statistics¹²

62% of felony defendants are released prior to case disposition

- ▶ Release on Personal Recognizance (ROR): No conditions, released and expected to appear in court based on their own character (23% of releases)
- ▶ Conditional Release: Released pending trial given certain non-monetary conditions (10% of releases)
- ▶ Release on Financial Conditions: Exchange of money for a defendant's release
 - ▶ Commercial surety bonds (49% of releases)
 - ▶ Deposit bonds (7% of releases)
 - ▶ Full cash bonds (5% of releases)
 - ▶ Unsecured financial release (5% of releases)

Pretrial Release: Conditional Supervision

► Advantages of Conditional Release for Defendants¹³

- â Maintain established community ties
- â Continue employment or educational efforts without disruption
- â Engage in community-based counseling services (e.g., substance abuse or mental health services)

Conditional Release Options^{13,14}

- Electronic monitoring
- Court date reminder systems
- Substance abuse counseling
- Urinalysis screening
- Face-to-face contact with case manager (varying frequency based on risk)
- Curfew
- Maintaining or seeking employment/education
- Refrain from possessing a firearm or other dangerous weapon
- No contact with victims or potential witnesses

Pretrial Services

Roles of Pretrial Services Agencies¹⁵

- Gather information for judicial officers to consider when making pretrial release and detention decisions
- Conduct screening of defendants before initial appearance
- Conduct risk assessments (when available)
- Supervise released defendants until their court appearance

Elements of a High-Functioning Pretrial Services Agency¹⁶

- Have an operationalized mission
- Universal screening of defendants
- Conduct a pretrial risk assessment
- Sequential bail review
- Risk-based supervision
- Performance measurement and feedback

Monetary Bail

- ▶ The exchange of money for a defendant's release from jail prior to trial
- ▶ Common Criticisms
 - ▶ Linked to increased pretrial detention, which is associated with negative outcomes (e.g., higher likelihood of conviction and longer sentence length)^{7,8,17,18}
 - ▶ This disproportionately impacts poorer defendants who cannot afford their bail
 - ▶ Financial conditions play no role in reducing a defendant's risk to public safety²
- ▶ Reduction and Abolition
 - ▶ Jurisdictions which abolished or significantly reduced the use of monetary bail have^{18,19}
 - ▶ Lower pretrial detention rates
 - ▶ Court appearance and rearrest rates at or more successful than the national average

Disparities in Pretrial Decision-Making: Race, Ethnicity, and Gender

- ▶ Pretrial demographic data is limited, and when available, outdated^a
- ▶ Most recent data shows²⁰:
 - ▶ Male and minority defendants are disproportionately represented in pretrial detention populations
 - Approximately 90% male
 - Approximately 70% racial and ethnic minorities
- ▶ Research seeks to determine if pretrial decision-making structures contribute to unwarranted disparities after controlling for case characteristics

Racial and Ethnic Representation, 2002

UNITED STATES POPULATION ²¹		PRETRIAL DETENTION POPULATION ²⁰	
White	75%	↓	31%
Black	12%	↑	43%
Hispanic	12%	↑	20%
Male	49%	↑	90%
Female	51%	↓	10%

^a The most recent national-level data collected on the demographics of pretrial detainees was in 2002²⁰. The measure of national-level demographic data at the time was the 2000 United States Census.²¹

Disparities in Pretrial Decision-Making: Race, Ethnicity, and Gender

▶ Monetary Bail Amount²²⁻²⁵

- ▶ Evidence suggests black and Hispanic defendants receive **higher average bail amounts** than white defendants when controlling for legal and extralegal factors
 - ▶ The intersection of race and gender further increases disparity
- ▶ Other studies have found no significant effect of race, ethnicity, or gender on bail amounts²⁶

▶ Ability to Secure Release²⁴

- ▶ Black and Hispanic defendants are **less likely to secure release** than white defendants even when judges assigned similar bail amounts

Example Legal Factors

- ▶ Criminal history
- ▶ Offense seriousness
- ▶ Offense type
- ▶ Evidence against defendant

Example Extralegal Factors

- ▶ Race
- ▶ Ethnicity
- ▶ Gender
- ▶ Socioeconomic Status
- ▶ Age

Example Contextual Factors

- ▶ Crime rate
- ▶ Available bail practices

Disparities in Pretrial Decision-Making: Race, Ethnicity, and Gender

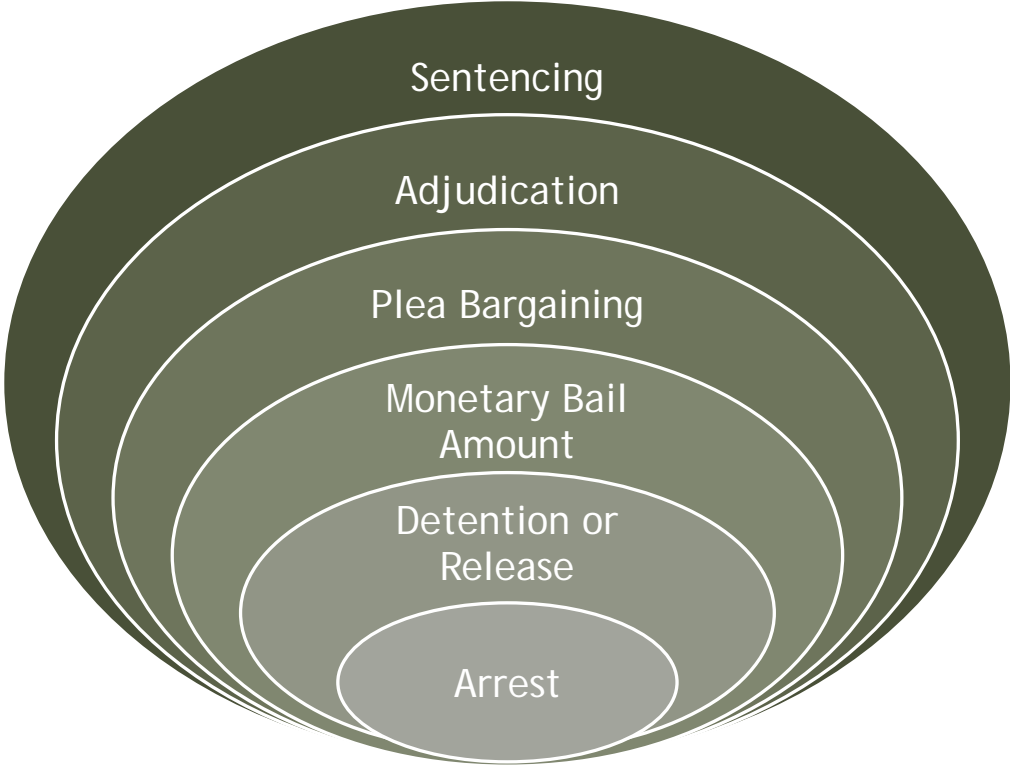
▶ Detention and Release Type

- ▶ After controlling for legal, extralegal, and contextual factors,
 - ▶ Black and Hispanic defendants are more likely to be held on preventive detention than white defendants²⁴
 - ▶ Hispanic defendants are more likely to be denied bail and to receive financial conditions of release than other similarly situated defendants²⁴
- ▶ However, other studies have found no statistically significant relationship between race and ethnicity and detention/release decisions²⁶

Drivers of Pretrial Disparities^{18,27,28}

- ▶ May be partially attributed to legal factors (e.g., criminal history and offense seriousness)
- ▶ Reliance on monetary bail and a defendant's ability to afford freedom
- ▶ Judicial discretion and implicit bias
- ▶ Inaccurate risk determinations

Cumulative Disadvantage in Pretrial Decision-Making



Disadvantage in earlier case processing decisions can accumulate and amplify disparities in later decisions²⁹⁻³³

Risk Assessment

- ▶ Designed to predict one's likelihood of failing to appear in court or commit a new crime while on pretrial release
- ▶ **Goals^{3,34}:**
 1. Standardize decision-making to reduce variability among similar defendants
 2. Detain only the highest-risk defendants
 3. Apply appropriate conditions to released defendants based on risk-level
- ▶ Factors are intentionally weighted, and defined to predict defendant risk³⁵

Common Risk and Protective Factors

- ▶ Current charge type
- ▶ Criminal history
- ▶ Prior adult arrests
- ▶ Prior convictions
- ▶ Prior felonies/misdemeanors
- ▶ Prior FTA
- ▶ Juvenile arrests
- ▶ Other pending charges
- ▶ Prior incarceration
- ▶ History of substance abuse
- ▶ Defendant age
- ▶ Housing/Residential stability
- ▶ Education
- ▶ Family/Peer relationships
- ▶ Cell phone ownership
- ▶ Mental health problem

Successful Risk Assessment

- ▶ Risk assessment tools' ability to predict defendant outcomes depends on:

<u>Validity</u> ³⁶	<ul style="list-style-type: none">▪ The tool must be evaluated on the population in the jurisdiction (including subgroups like race and gender)▪ Successfully predicts risk outcomes for defendants▪ Low rates of false positives and false negatives
<u>Reliability</u> ^{37,38}	<ul style="list-style-type: none">▪ There should be consistency between risk calculation for similar defendants, no matter who administers the tool
<u>Fidelity</u> ^{35,39}	<ul style="list-style-type: none">▪ Tools should be implemented as intended by the developer▪ Continuous training and monitoring should occur to ensure intended use over time

Benefits of Risk Assessment Tools

- ▶ Regulate decision making and account for judicial variation
 - ▶ Promote fair and consistent decision-making
- ▶ Identify risk category of the defendant and, when applicable, make a detention or release condition recommendation based on an actuarial calculation of risk⁴⁰
- ▶ Save jurisdictions time and money by collecting information on defendants from administrative records to make decisions^{41,42}

Common Validated Tools⁴³

- ▶ Public Safety Assessment (PSA)
- ▶ Virginia Pretrial Risk Assessment Instrument (VPRAI)
- ▶ Ohio Risk Assessment Tool (ORAS-PAT)
- ▶ Colorado Pretrial Assessment Tool (CPAT)
- ▶ Correctional Offender Management Profiling For Alternative Sanctions (COMPAS) Pretrial Release Risk Scale (PRRS-II)

Remaining Issues in Risk Assessment: Validation

- ▶ Few jurisdictions have validated their risk assessment tools on local populations⁴³
 - ▶ Tools must be validated on the population in which they are used since risk and protective factors, criminal justice supports (such as supervision options available), and operations may vary by jurisdiction
- ▶ Revalidations must occur as policies, crime rates, and populations change⁴⁴
- ▶ Overreliance on certain factors may exacerbate current trends of overrepresentation of subpopulations⁴⁵

Remaining Issues in Risk Assessment: Ethical Considerations

- ▶ Risk assessment tools may perpetuate disparities^{27,46}
 - ▶ Tools rely on factors innately related to inequality in society
 - ▶ Overreliance on criminal history factors inherently disadvantages those with increased criminal justice contact, which is linked to race
- ▶ High rates of false positives²⁷
 - ▶ Inaccurate determinations of risk result in over-detention of individuals that are not actually high-risk

Directions for Future Work: Policy and Practice

Eliminate Monetary Bail

- ▶ Supplement enhanced pretrial services or court notification systems to promote court appearance without reliance on monetary bail

Mitigate Disparities in Pretrial Decision Making

- ▶ Adapt policies and procedures to ensure fair and consistent decision-making
- ▶ Make accurate determinations of risk without relying on factors that exacerbate disparities

Implementation Fidelity for Risk Assessment

- ▶ Train staff prior to implementation, and provide ongoing training
- ▶ Rely on static factors to limit unclear decision-making structures
- ▶ Implement continuous monitoring processes to track fidelity

Directions for Future Work: Research



Improve data collection across jurisdictions and states

- ▶ Understand jurisdictional needs and allow future research to evaluate the impact of reforms
- ▶ Collect national-level data to compare effectiveness of pretrial practices and policies across jurisdictions



Understand the cumulative impact of pretrial decisions

- ▶ Examine the cumulative impact of pretrial detention and supervision on:
 1. Case outcomes
 2. Subsequent criminal justice trajectories
 3. Economic and social outcomes

Directions for Future Work: Research



Evaluate conditions of release on multiple types of outcomes

- ▶ Determine which conditions, the overall number of conditions, or their combination, are most effective for each pretrial outcome



Critically assess the efficacy & fairness of risk assessment tools

- ▶ Examine the differential predictive ability of risk assessment tools and their impact on disadvantaged populations
- ▶ Validation studies must be explicit about rates of false positives and false negatives
- ▶ Evaluate tools at minimum on different gender, race, and ethnic groups
- ▶ Understand the intersection between judicial decision making and risk assessment

Thank you!

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