

January 23, 2017

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# Whatcom County Incarceration Prevention and Reduction Task Force

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# Agenda

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Site Visit Debrief

System Map and Data Updates

Pretrial Risk Assessment and Supervision

# Site Visit Debrief

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- Individual Meetings
  - Public Defender Komorowski & Angela Anderson
  - Task Force Co-Chair Jill Bernstein
  - Bellingham Police Chief Cook
  - County Executive Louws & Deputy Schroeder
  - Superior Court Judge Garrett
  - Prosecutor McEachran & Kathy Walker
  - Mayor Linville
  - Anne Deacon, Perry Mowery & Jackie Mitchell, Health Department
  - District Court Judges Grant & Elich & Bruce van Glubt
  - Sheriff Elfo & Chief Jones
  - City Attorney Ruffatto & Ryan Anderson
  - City Council Members Hammill & Lilliquist

# Site Visit Debrief

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- Group Meetings
  - November Incarceration Prevention & Reduction Task Force Meeting
  - System Mapping
- Tours & Observations
  - Jail
  - Crisis Triage Facility
  - Work Center
  - Superior Court First Appearances
  - District Court First Appearances
  - Municipal Court First Appearances

# Site Visit Debrief

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- Themes
  - Cross-systems collaboration
  - Focus on behavioral health
  - Excitement about bail reform
  - Support for pretrial services
- Challenges
  - Sending defendants to Yakima
  - Charge-based decision-making
  - Large percentage of jail on lockdown
  - Continuances
  - Overlapping charges
  - Housing

# System Map & Data Updates

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- System Map Reviews
  - Municipal Court, District Court, Superior Court
  - County Public Defenders
  - City Attorney
  - Health Department
  - Upcoming: Jail, WA DOC, Municipal Public Defender, & Version 2
- Data Requests & MOUs
  - City/Bellingham Police
  - County/Jail
  - State/Courts
  - Lummi Tribal Court
- Thank you!

# Pretrial Risk Assessment & Supervision

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Measurement and Management of Risk

# Pretrial Risk

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- Risk is inherent in pretrial release, but our justice system requires us to take risks.
  - *“In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” United States v. Salerno, 481 U.S. 739 (1987).*
  - Jails are designed only to hold those who present a risk of flight or danger to public safety.
- The real question is how to measure risk & how to manage risk.



# Pretrial Risk

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- To make the most informed pretrial release decisions that will minimize danger to the community & failure to appear in court while maximizing pretrial release & significant cost-savings:
  - Use an objective & research-based pretrial risk assessment tool to identify:
    - Likelihood of Failure to Appear (FTA)
    - Likelihood of New Criminal Activity (NCA)
  - Establish supervision & services to mitigate the risk of pretrial failure for released defendants

# Pretrial Services

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- The role pretrial officers serve in jurisdictions across the country is to provide information to judicial decision-makers & supervision & services as ordered by the court
  - Gather & update information relevant to assessing risk & initiate follow-up action if necessary
  - Use monitoring & reminder techniques to anticipate & avoid nonappearance problems
  - Immediately contact a defendant who misses an appearance to resolve the problem & minimize disruption of court processes
  - Monitor compliance with court-imposed conditions designed to minimize risk of new criminal activity
  - Respond promptly to violations of conditions

# Pretrial Risk Assessment

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- An objective, research-based tool that relies on **risk factors** to predict the likelihood of success or failure for a defendant who is released pretrial
  - **Risk factor:** a characteristic that, when present, indicates an increased risk of pretrial failure
- Actuarial risk assessments have higher predictive validity than professional judgment alone, but assessments should not replace judicial discretion & decision-making—other relevant factors should be considered
  - Nature & circumstances of the offense, if relevant
  - Factors required by state statute that are not captured by the tool
  - Input from defense counsel & prosecution
- Post-conviction risk factors should not be applied in a pretrial setting

# Pretrial Risk Assessment

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- There are risk factors that are common across pretrial risk assessment tools, such as
  - Prior FTA
  - Prior convictions
  - Current charge is a felony
  - A pending case
- But factors, measures, & weighting do vary across tools, as do outputs
  - Overall measure representing failure generally
  - Separate measures of FTA & NCA
  - Indicators of risk of violence

# Pretrial Risk Assessment

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- Picking a tool or certain factors off the shelf does not guarantee a tool that has predictive accuracy
- A risk assessment tool should always be validated—or tested—for accuracy with the local population

# Pretrial Risk Assessment

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- Effectively measuring risk allows for:
  - Detaining the highest risk defendants
  - Releasing moderate risk defendants with interventions & services targeted to mitigate risk
  - Releasing low risk defendants with minimal or no conditions—over-supervising these defendants can actually make them more likely to fail pretrial
  - Using the jail & scarce resources to focus on those who pose most risk to the community
  - Enhancing public safety in the short- & long-term

# Pretrial Supervision

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- Effective risk management strategies include
  - Court reminders—all types reduce FTA at varying levels
  - Pretrial supervision—most effective for defendants who pose moderate to high risk
    - Moderate: nearly 40% reduction in FTA
    - High: 33% reduction in FTA

# Pretrial Supervision

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- When compared to defendants who secure release in 1 day, defendants who spend time in jail before pretrial release are more likely to commit new offenses
  - Detaining low & moderate risk defendants, even just 2-3 days, is correlated with higher rates of new criminal activity pretrial & during 2 years post-disposition
  - As length of pretrial detention increases up to 30 days, recidivism rates for low & moderate risk defendants also increases significantly—greatest impact for low risk defendants



# Pretrial Supervision

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- If public safety is truly the aim of the justice system, risk-based processes must be implemented:
  - Minimize dual errors of releasing defendants who pose significant risk to public safety & detaining low-risk defendants
- There is no proven relationship between a particular charge & risk of flight or new offenses
- Release pursuant to bail schedule depends simply on defendant's ability to post the amount of the bond
- When a defendant is released by posting bond pursuant to a schedule, there is generally no capacity for supervision to minimize risk

# True Cost of Justice

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- Study in Harris County, TX
  - If all misdemeanor defendants assigned bonds of \$500 between 2008-2013 had been released on recognizance
    - +40k people released pretrial
    - - 5,900 criminal convictions (mostly wrongful guilty pleas)
    - - 400k jail bed-days (admissions x ALOS)
    - - 1,600 felonies &
    - - 2,400 misdemeanors committed within 18 months of release
    - + \$20 million in saved costs

# Legal Considerations

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- Washington is unique, & there is the potential for liability, but this does not mean pretrial supervision must be avoided altogether.
- As liability is based on a mix of case law & statutes, there is no clear, single standard for when a duty to 3<sup>rd</sup> parties exists or level of culpability required.
  - Judicial decision-makers have immunity for release decisions.
  - By statute, misdemeanor pretrial & probation programs are not liable for inadequate supervision unless it constitutes “gross negligence.”

# Legal Considerations

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- Defenses – Lack of duty to prevent harm
  - Scope of “take charge” relationship is determined by conditions in the order creating supervision – if conditions do not relate to harm, no duty.
  - There is no duty when a crime is not foreseeable because the supervisor has no knowledge of dangerous propensities.
- Exposure can be reduced if the court directs the reporting process—on a regular schedule or at hearings scheduled by the court—& requests recommendations & supporting data
- Conditions being overseen should be limited to court’s order & supervisor’s role to stating whether defendant reports on schedule, has been arrested, etc. Home visits & field investigation should be avoided.

# Steps Toward Pretrial Justice

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- Convene multidisciplinary work group—cross-agency buy-in is needed
- Review existing objective, research-based tools & risk factors that are validated for use in the pretrial context
  - Many jurisdictions end up creating tools specific to their local population by identifying the factors most predictive of pretrial failure through statistical analysis
- Partner with data scientist to validate the tool

# Steps Toward Pretrial Justice

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- Create a supervision matrix – tailor supervision to risk level in order to mitigate risk of pretrial failure
  - OR: court reminder
  - Low risk: call-in weekly
  - Moderate: in person 1/mo.
  - High: in person 2/mo.
- Establish a pretrial supervision unit
  - Be cautious with probation officers supervising pretrial – this is not a convicted population
- Specialist to refer to services & channel to diversion programs