

# **BAIL REFORM**

**Evidence-Based Practices, Programs,  
and National Recommendations**

Jacqueline van Wormer, Ph.D.  
Chyla Aguiar, Ph.D. Candidate

# TODAY'S DISCUSSION

- Data-driven bail practices: examples from other jurisdictions
- The Pretrial Justice Institute's bail reform recommendations
- Evidence in support of utilizing unsecured bonds
- Bail Assistance Funds
- Utilizing risk assessment to predict release
  - Additional research from the Conference of State Court Administrators
- The Laura and John Arnold Foundation risk assessment tool
- Sources of more information

# DATA-DRIVEN BAIL PRACTICES

- **Mesa County, Colorado**
- Implemented the Colorado Pretrial Assessment tool (CPAT) in 2012
- Shifted to data-driven bond guidelines that included no money ranges or amounts.
- Resulted in decrease in the pretrial jail population without a negative effect on public safety rates.
- While higher risk defendants (80% of the jail population) were still likely to be held in jail, lower risk defendants were rarely held

# DATA-DRIVEN BAIL PRACTICES

- **Jefferson County, Colorado**
- **Bail Impact Study**
  - Would better adherence to the national standards on bail and pretrial release impact ability to manage risk to public safety and failure to appear? Fourteen judges participated?
- Over 300 variables of data was collected for 1,200 cases during the 14-week study period.
- **Results**
  - Movement toward more legal and evidence-based practices could lead to higher release rates (and thus fewer pretrial jail beds used) with no measurable negative detriments to public safety or court appearance rates.

# DATA-DRIVEN BAIL PRACTICES

- **District of Columbia**

- Created a Pretrial Services Agency
- 38-item risk assessment and interview to assign risk designation

- **Risk level informs the release decision**

- Unless clear and convincing evidence that the defendant presents a serious flight risk or threat to the victim or public safety

- **In 2008, 80 percent of defendants were released without bond**

- **88 percent of released defendants made all court appearances**

- **88 percent completed pretrial release without any new arrests**

# DATA-DRIVEN BAIL PRACTICES

- **Kentucky**
- **Abolished commercial bail in 1976**
  - Pretrial Services Agency (PSA) established in 1968
  - Interview with validated risk instrument within 12 hours of arrest
- **In 2012, 70% of pretrial defendants were released in Kentucky.**
  - 90% of those made all future court appearances
  - 92% did not get rearrested while on pretrial release.
- **Pretrial jail populations have decreased by 279 defendants, while appearance and public safety rates have remained consistent.**

# PRETRIAL JUSTICE INSTITUTE'S BAIL REFORM RECOMMENDATIONS

- Have a pretrial services conduct a locally validated risk assessment at first appearance. Review pretrial detainees routinely for changes to release eligibility.
- Pretrial services supervises defendants and reminds them of upcoming court dates.
- Provide law enforcement with a screening risk tool to identify more suitable cite and release opportunities.
- Replace bond schedules with risk assessments.
- An experienced prosecutor should screen every case early in the process.

# PRETRIAL JUSTICE INSTITUTE'S BAIL REFORM RECOMMENDATIONS

- Defense council should be engaged prior to first appearance and be prepared to represent the client on the issue of bail.
- States should ensure that bond statutes include a risk-based option for detention.
- Collect and analyze performance measures (many suggested, see page 6).
- Bonus item #1: consider unsecured bonds
- Bonus item #2: Nine promising practices in Pretrial Diversion



# EVIDENCE IN SUPPORT OF UNSECURED BONDS

- Study conducted by Pretrial Justice Institute
  - 10 counties in Colorado
- Utilized Colorado Pretrial Assessment tool
  - 12 items
- 1,900 defendants
  - 16 month study period (February 2008-December 2010)

# EVIDENCE IN SUPPORT OF UNSECURED BONDS

- Analyzed influence of unsecured bonds and secured bonds on the three most important pretrial outcomes:
  - Public safety
  - Court appearance
  - Jail bed use
- Rigorous methods
  - Random allocation, statistical significance tests

# EVIDENCE IN SUPPORT OF UNSECURED BONDS

- Unsecured bonds
  - Personal recognizance bonds with monetary amount set
- Secured bonds
  - Surety and cash bonds
- 12 Items:

<u>Item</u>	<u>Range</u>
1. Having a Home or Cell Phone	0 to 5 points
2. Owning or Renting One's Residence	0 to 4 points
3. Contributing to Residential Payments	0 to 9 points
4. Past or Current Problems with Alcohol	0 to 4 points
5. Past or Current Mental Health Treatment	0 to 4 points
6. Age at First Arrest	0 to 15 points
7. Past Jail Sentence	0 to 4 points
8. Past Prison Sentence	0 to 10 points
9. Having Active Warrants	0 to 5 points
10. Having Other Pending Cases	0 to 13 points
11. Currently on Supervision	0 to 5 points
12. History of Revoked Bond or Supervision	0 to 4 points

# EVIDENCE IN SUPPORT OF UNSECURED BONDS

- Unsecured bonds are as effective at achieving public safety as are secured bonds.
- Unsecured bonds are as effective at achieving court appearance as are secured bonds.
- Unsecured bonds free up more jail beds than do secured bonds because: (a) more defendants with unsecured bonds post their bonds; and (b) defendants with unsecured bonds have faster release-from-jail times.
- Higher monetary amounts of secured bonds are associated with more pretrial jail bed use but not increased court appearance rates.

# EVIDENCE IN SUPPORT OF UNSECURED BONDS

- Unsecured bonds are as effective at “fugitive return” for defendants who have failed to appear as are secured bonds.
- Many defendants are incarcerated for the pre-trial duration of their case and then released to the community upon case disposition.
- Jurisdictions can make data-guided changes to local pretrial case processing that would achieve their desired public safety and court appearance results while reserving more jail beds for un- manageably high risk defendants and sentenced offenders.
- Judicial officers now have data and law to support changing their bail setting practices to maintain their effectiveness while increasing their efficiency.

# EVIDENCE IN SUPPORT OF UNSECURED BONDS

- Summary:
- This study provides empirical evidence about the effectiveness of secured and unsecured bonds. Findings support judicial officers changing their practices to use more unsecured releases, to include unsecured bonds if currently permitted by law, to achieve the same public safety and court appearance rates while using far fewer jail beds. These unsecured bonds could be used in conjunction with an individualized bond setting hearing.

# BAIL ASSISTANCE FUNDS

- Publicly funded 501(c)(3) tax-exempt charitable bail organization
- Posts bail for indigent defendants who cannot afford to pay the fees on their own

# BAIL ASSISTANCE FUNDS

- Governor Cuomo proposed The Charitable Bail Organization Law in 2012 to create the Bronx Freedom Fund (BFF).
- Created a new class of charitable organizations in New York
  - Capable of posting up to \$2,000 bail for low-income defendants accused of misdemeanors



# THE BRONX FREEDOM FUND

- The Bronx Freedom Fund was the only bail assistance fund in the nation as of mid 2014
- Funded by grants from foundations and individual donors
- Additional services
  - Court reminders
  - Transportation faire
  - Coordination with services and other courts

# THE BRONX FREEDOM FUND

- Between October 2013 and October 2014
  - \$116,759 loaned to 140 clients
  - 40% loaned at least once before
  - Average bail amount loaned \$768 (\$250-\$2000)
- 95% return rate
- Success also measured by:
  - Impact on client's case outcomes
  - Impact on client's lives
  - Long-term sustainability through high rates of return on bail

# PRETRIAL RISK ASSESSMENT: ADDITIONAL RESEARCH

- 2012-2013 Policy Paper from the Conference of State Court Administrators
  - *Evidence-Based Pretrial Release*

# ADDITIONAL RESEARCH: PRETRIAL RISK ASSESSMENT

- Actuarial risk assessments have higher predictive validity than clinical or professional judgment alone.
- Post-conviction risk factors (relating to recidivism) should not be applied in a pretrial setting.
- Several measures commonly gathered for pretrial were not significantly associated with pretrial failure: residency, injury to victim, weapon, and alcohol.
- The six most common validated pretrial risk factors are prior failure to appear; prior convictions; current charge a felony; being unemployed; history of drug abuse; and having a pending case.

# ADDITIONAL RESEARCH: PRETRIAL RISK ASSESSMENT

- Defendants in counties that use quantitative and mixed risk assessments are less likely to fail to appear than defendants in counties that use qualitative risk assessments.
- Not only are subjective screening devices prone to demographic disparities, but these devices produce poor results from a public safety perspective.
- The statewide pretrial services program in Kentucky, begun in 1968, now uses a uniform assessment protocol that results in a failure to appear rate of only 10 percent and a re-arrest rate of only 8 percent.

# ADDITIONAL RESEARCH: PRETRIAL RISK ASSESSMENT

- Pretrial programs that use quantitative and mixed quantitative-qualitative risk assessments experience lower re-arrest rates than programs that only use qualitative risk assessments.
- The number of sanctions a pretrial program can impose in response to non-compliance with supervision conditions further lowers the likelihood of a defendant's pretrial re-arrest

# LJAF RISK ASSESSMENT TOOL

- Laura and John Arnold Foundation
  - Public Safety Assessment
    - Risk assessment tool for judges to inform pretrial detention
- 29 jurisdictions implementing
  - Three states: Arizona, Kentucky, New Jersey
- Early results indicate tool is helping judges increase public safety while reducing jail populations
  - Mecklenburg County, NC
    - Jail population dropped nearly 20 percent

# MORE INFORMATION

- Allegheny Casualty International Fidelity Associated Bond (national surety bond company), *Bail Laws by State*: <https://www.aiasurety.com/home/news/BailLaw.aspx>
- Conference of State Court Administrators, *2012-2013 Policy Paper Evidence Based Pretrial Release*:  
[http://www.americanbar.org/content/dam/aba/administrative/criminal\\_justice/evidencebased\\_pretrialrelease.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/criminal_justice/evidencebased_pretrialrelease.authcheckdam.pdf)
- Harris County Pretrial Services, *2014 Annual Report*:<http://www.harriscountytexas.gov/CmpDocuments/59/Annual%20Reports/2014%20Annual%20Report.pdf>
- Kentucky House Bill 463: <http://www.lrc.ky.gov/record/11rs/hb463.htm>
- Laura and John Arnold Foundation Public Safety Assessment:  
<http://www.arnoldfoundation.org/more-than-20-cities-and-states-adopt-risk-assessment-tool-to-help-judges-decide-which-defendants-to-detain-prior-to-trial/>
- Pretrial Justice Institute: <http://www.pretrial.org>
- Mesa County Evidence-Based Pretrial Reform, Innovations in Criminal Justice Summit III, from BJA, APA, and CCI: <http://www.apainc.org/wp-content/uploads/Mesa-County-Evidence-Based-Pretrial-Reform.pdf>



# ADDITIONAL INFORMATION

- *Recommendations for Improving Washington State Bail Practices*, Report to the Legislator, from the Bail Practices Work Group, December 1, 2010:  
<http://leg.wa.gov/JointCommittees/Archive/BPWG/Documents/BailPracticesWorkGroupReport.pdf>
- The Bronx Defenders: <http://www.bronxdefenders.org>
- The Bronx Freedom Fund, *One Year Report November 2014*:  
[http://www.bronxdefenders.org/wp-content/uploads/2014/12/One-Year-Report\\_FINAL.pdf](http://www.bronxdefenders.org/wp-content/uploads/2014/12/One-Year-Report_FINAL.pdf)
- *The Jefferson County Bail Project: Lessons Learned from a Process of Pretrial Change at the Local Level*, from the Pretrial Justice Institute  
<http://www.pretrial.org/download/pji-reports/Jefferson%20County%20Bail%20Project-%20Lessons%20Learned%20-%20PJI%202014.pdf>
- *The Colorado Pretrial Assessment Tool (CPAT)*, a Joint Partnership among Ten Colorado Counties, the Pretrial Justice INstitute, and the JFA Institute, 2012:  
<http://www.pretrial.org/download/risk-assessment/CO%20Pretrial%20Assessment%20Tool%20Report%20Rev%20-%20PJI%202012.pdf>
- *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option*, from the Pretrial Justice Institute, Michael R. Jones, 2013:  
<http://www.pretrial.org/download/research/Unsecured%20Bonds,%20The%20As%20Effective%20and%20Most%20Efficient%20Pretrial%20Release%20Option%20-%20Jones%202013.pdf>