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Whatcom County Incarceration Prevention and Reduction Task Force

Liz Swavola and Vedan Anthony-North, Vera Institute of Justice

Pretrial Risk Assessment & Supervision

Measurement and Management of Risk

Pretrial Risk

- 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

- 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

- 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 Supervision

- 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

- 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

- 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

- 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

- 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 3rd 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

- 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

- 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

- 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

IPRTF: Law and Justice Systems Committee - November 14, 2016
Whiteboard Notes

Best Practices Pretrial Supervision Unit: Justice / cost / capacity / safety

1. Cost
2. Staffing - Duties
3. Cost benefit analysis - system cost savings
Including hidden costs like software, etc. Opportunity for capacity building
4. Jail population reduction
Feasible goals? Affect future needs
5. Recidivism Reduction
6. Services (??) Success
7. Data re: success
Change or empty beds? Demographics
8. How to evaluate
Risk assessment tools; return to court; safety to community
9. Liability due to supervision
WA-specific
Risk management
Expense of exposure
10. Specific tasks doing (?)
11. Who best to supervise?
Sheriff, prosecutor, court, probation?
Role of automation
12. Supervision or Supervision + Diversion programs
Screening for
13. What are the questions not yet asked?