



**A CLOSER LOOK AT PRETRIAL SUPERVISION ON  
PUBLIC SAFETY OUTCOMES: A SUMMARY**

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**Staying Close and Looking Back: An Examination of Desistance in a  
Maryland Community Corrections Population Project**

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The pretrial stage of a criminal case process is the time between an individual’s arrest and case disposition. Three main goals characterize today’s pretrial systems: maximize the release of defendants, minimize failure to appear (FTA) in court, and reduce the threat of released individuals to public safety (American Bar Association [ABA], 2007; Lowenkamp, VanNostrand, & Holsinger, 2013; National Association of Pretrial Services Agencies [NAPSA], 2020). To maximize efficiency, the system aims to detain only the highest-risk defendants prior to trial and release others under the lowest level of supervision required to ensure their appearance in court and prevent new criminal activity prior to trial. For this system to be successful, judges and pretrial officers must determine a defendant’s risk to reoffend prior to trial and/or abscond from court, and apply the appropriate level of supervision to prevent potential negative consequences to the defendant and the community. To date there is a dearth of literature examining the effectiveness of pretrial detention and supervision in meeting the main goals of reducing failure to appear and reducing recidivism.

This brief review provides a summary of the state of research in the following three domains as they relate to these two primary outcomes of interest: (1) pretrial detention (2) supervised release, and (3) conditions of supervision.

**PRETRIAL DETENTION**

One of the primary goals of pretrial detention and release decisions is to ensure public safety by reducing the likelihood of new criminal activity of defendants. Research suggests that pretrial detention increases risk of recidivism compared to those released pretrial. Although pretrial detention may provide an incapacitation effect, immediately reducing the likelihood of offending, this impact is offset by subsequent increased criminal activity. A study of all felony and misdemeanor criminal cases in New York City between 2009 and 2013 found that being detained reduces the probability of being rearrested before disposition by 10.6 and 12.2 percentage points for misdemeanor and felony defendants, respectively. However, this short-lasting effect is reversed as pretrial detention increases the likelihood of rearrest by 7.5 to 11.8 percentage points within two years (Leslie & Pope, 2017). Similar effects were found by research in both Philadelphia, Pennsylvania and Miami-Dade, Florida for all defendants arrested between 2007 and 2014. Initial pretrial releases increase the



likelihood of rearrest by 18.9 percentage points prior to case disposition, but it also decreases the likelihood of rearrest following case disposition by 12.1 percentage points. These effects almost perfectly cancel each other out, resulting in an overall null effect of pretrial detention compared to release (Dobbie, Golding, & Yang, 2018). Another study using 380,689 misdemeanor cases filed between 2008 and 2013 in Harris County, Texas found that detained individuals only had a lower incidence of misdemeanor offending in the 13 days following the bail hearing, compared to released defendants with comparable risk and bail amounts. At one month, one year, and eighteen months following the bail hearings, pretrial detention increased the incidence of misdemeanor offending by 9.6 to 13.7 percent. For felony offending, the impact of pretrial detention was even larger long term, with defendants detained pretrial 31.5 and 32.2 percent more likely to have a felony offense one year and eighteen months following the bail hearing compared to those released, respectively (Heaton, Mayson, & Stevenson, 2017). The criminogenic impact of pretrial detention has also been demonstrated in studies using juvenile populations (Walker & Herting, 2020).



Even among those detained, longer detention periods are associated with increased new criminal activity in the year following disposition. A study of 153,407 defendants booked into a Kentucky jail between 2009 and 2010 found that defendants detained 2 to 3 days are 1.39 times more likely, and those detained for 31 or more days are 1.74 times more likely to have new criminal activity than those released within a day. These results hold both a year and two years following disposition (Lowenkamp, VanNostrand, & Holsinger, 2013). Another study using 2011 and 2012 arrest and booking data from a large suburban county jail near Kansas City, Missouri found that compared to those who spent one day in jail, defendants detained for 4 to 7 days were 1.408 times more likely to have new criminal activity in the 12 months following disposition after controlling for age, race, sex, number of children, prior cases, whether they were under supervision, case disposition, and whether the current charge was violent. The likelihood of new criminal activity was even greater for those detained 15 to 30 days—1.830 times relative to those who only spent one day in jail. However, when followed up for 24 months, individuals detained for up to 14 days were no different in their likelihood of new criminal activity than those detained for one day. Only those detained 15 to 30 days were still almost 1.5 times more likely to have new criminal activity (Holsinger, 2016).

Although outside the scope of this review, it is important to note that pretrial detention may impact recidivism both directly and indirectly. Studies suggest that pretrial detention increases the likelihood of pleading guilty, to be sentenced to incarceration, and be sentenced to longer terms of incarceration (Ulmer, 2012; Heaton, Mayson, & Stevenson, 2017; Dobby, Goldin, & Yang, 2018). These effects are even stronger from minorities, exacerbating racial disparities in court dispositions and outcomes (Donnelly & MacDonald, 2018). For a more detailed overview of these impacts see *Before the Disposition: A Review of Pretrial Literature* (Doelger, Kimchi, & Flower, 2020).

## **SUPERVISED RELEASE**

Unlike detained individuals who are transported to court directly from jail and are incapacitated prior to their disposition, released defendants in the community are responsible for appearing in court and maintaining law abiding behavior. Individuals released prior to trial represent a diverse population which may be supervised by pretrial service agencies or released on their own recognizance. Supervision varies widely by jurisdiction in both frequency and type of contact with defendants (VanNostrand, Rose, Weibrecht, 2011). Limited research from a study of 3,925 defendants from two states in 2005 and 2008-2009 matched on state, gender, race, and risk level suggests that supervision may reduce the likelihood of failing to appear, but has no impact on new criminal activity compared to no supervision (Lowenkamp & VanNostrand, 2013). This study also found that this supervision is most effective at ensuring court appearance for moderate-to-high-risk defendants (Lowenkamp & VanNostrand, 2013). A recent evaluation of Orange County's pretrial assessment and release supervision program found that defendants released on cash bond were almost twice as likely to fail to appear than similar defendants who participated in the program (Barno, Martinez, & Williams, 2020). Research suggests that court date reminder systems may be a more efficient and cost effective way to reduce failure to appear. Several randomized trials from New York, Nebraska, Arizona, and Colorado suggest that court date reminder calls and written reminders can increase the likelihood of defendants appearing in court (Ferri, 2020; Bornstein et al., 2013; White, 2006; Schnacke et al. 2012; Cooke et al., 2018).<sup>1</sup>

To date, research has been inconclusive and rare about whether the level or intensity of supervision impacts outcomes such as failure to appear to court and subsequent recidivism outcomes (Hatton & Smith, 2020). Several randomized trials have found no impact of two face-to-face contacts per week versus one face-to-face contact on either failure to appear or rearrests (Austin, Krisberg, & Litsky, 1985), or in-person meetings relative to phone reporting prior to every court date (Goldkamp & White, 2006). However, an evaluation in Summit County, Ohio suggests that increased levels of supervision for low-risk defendants are associated with increased failure to appear rates but were no different for medium risk defendants (Lowenkamp & Bechtel, 2009).

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<sup>1</sup> One randomized trial in Kentucky found no effect of phone or text message reminders (Lowenkamp et al. 2018).

**CONDITIONS OF SUPERVISION**

Pretrial release is often accompanied by a variety of conditions of supervision which range by jurisdiction and/or the risk level of the defendant. Some examples of conditions include: electronic monitoring, substance abuse counseling, urinalysis screening, maintaining or seeking employment or education, refraining from possessing a firearm or other dangerous weapon, and no contact with victims or potential witnesses (Lowenkamp & VanNostrand, 2013; Payne & Gainey, 2004). One of the advantages of conditional release through a pretrial services agency is that defendants have the opportunity to utilize treatment and services in the community that may not be available to detained individuals in jails (Lowenkamp & VanNostrand, 2013). Although these conditions and service referrals are used to increase the likelihood of court appearances and reduce the likelihood of rearrest, there has been relatively little research examining their efficacy.

<b>Conditional Supervision Examples</b> (Lowenkamp & VanNostrand, 2013; Payne & Gainey, 2004)
• Electronic monitoring
• Substance abuse counseling
• Urinalysis screening
• Maintaining or seeking employment or education
• Refraining from possessing a firearm or other dangerous weapon
• No contact with victims or potential witnesses

One area which has received attention despite a lack of conclusive results is the use of drug testing. Drug testing of pretrial defendants has become one of the most widely used conditions by pretrial service agencies. Between 2001 and 2009 pretrial drug testing increased from 75 to 90 percent (VanNostrand, Rose, & Welbrecht, 2011). Several randomized trials of arrested defendants in Maricopa County, Arizona, Milwaukee County, Wisconsin, and Prince George’s County, Maryland, assigned to either periodic drug testing or control conditions suggest a null impact of drug testing for both failure to appear and rearrest (VanNostrand, Rose, & Welbrecht, 2011; Britt, Gottfredson, and Goldkamp 1992; Goldkamp and Jones 1992; Hatton & Smith, 2020). An early study from Washington DC found that defendants who completed drug testing had a slightly lower likelihood of rearrest pretrial or fail to appear, but those who did not show up for their tests had higher rates of both. Those assigned to drug treatment had slightly lower rates of pretrial arrests but higher rates of failure to appear (Toborg, National Institute of Justice, and Toborg Associates Inc. 1989). However, most of the research examining the impact of drug testing on failure to appear and recidivism was conducted in the late 1980s and early 1990s. As both arrest and pretrial release and detention practices changed in the last several decades, it remains unknown whether these findings apply to current populations of pretrial defendants.

Some evidence suggests that drug testing in conjunction with treatment referrals and swift consistent sanctions may be effective. An experimental evaluation of Hawaii’s Opportunity Probation with Enforcement (HOPE) pretrial program between 2014 and 2016 in Hawaii randomly assigned released defendants to either standard pretrial services or to the HOPE

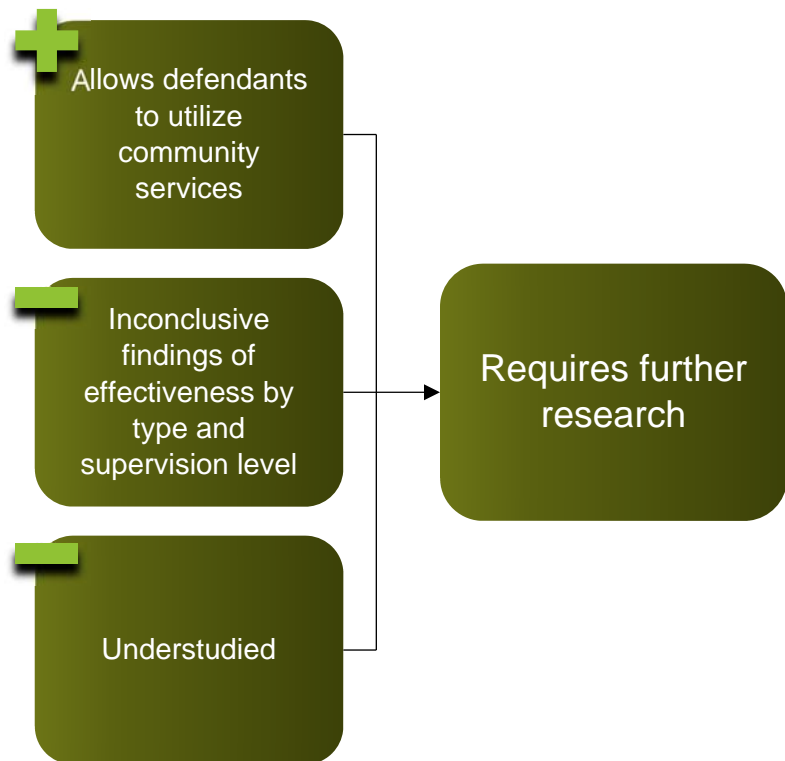
pretrial treatment program which includes both consistent sanctions for violations as well as treatment referrals for those who need them. Defendants in the HOPE group had 21 to 30 percent lower likelihood of failing a drug test, and a 40 percent lower rate of arrest for a new offense (Davidson, King, Ludwig, Raphael, 2019). However, HOPE participants were also more likely to experience a temporary revocation of supervision, likely due to the sanctions utilized by the program.

Electronic monitoring is similarly associated with an increased likelihood of violations, but does not seem to have support in reducing failure to appear or rearrest (VanNostrand, Rose, & Welbrecht, 2011). Recent work in New Jersey and California presents mixed findings regarding the impact of electronic monitoring on failure to appear with null findings from New Jersey (Wolff et al., 2017) but lower likelihood of FTA for defendants on electronic monitoring in Santa Clara County, CA (Sainju et al., 2018). In both jurisdictions electronic monitoring defendants was associated with a slightly reduced likelihood of rearrest but an increased likelihood of technical violations.

Conditions of supervision may differentially impact the likelihood of failure for defendants of various risk levels, suggesting that conditions should not be implemented universally regardless of risk level. A study of over 500,000 federal defendants between 2001 and 2007 found that

other than mental health treatment, release conditions are generally harmful for lower-risk defendants. However, for moderate to high risk defendants who may be otherwise detained, conditions tailored to the individual's specific risk may be more beneficial (VanNostrand, Rose, & Welbrecht, 2011). Recent work suggests that standardized release recommendations and supervision guidelines may improve outcomes in conjunction with risk assessments. A randomized trial of 29 Virginia Pretrial Services agencies assigned to one of four conditions found that the use of a decision grid that suggests

release type and level of supervision based on the Virginal Pretrial Risk Assessment Instrument score (Praxis) decreased the likelihood of rearrest prior to trial or failing to appear for defendants by 1.3 times compared to the use of the risk assessment instrument alone (Danner, VanNostrand, & Spruance, 2015).



## **CONCLUSION**

The purpose of this brief review was to illustrate the major gaps in our current state of knowledge regarding best pretrial practices. The pretrial stage represents a consequential and diverse array of release and detention decisions with little empirical support to guide practices for minimizing defendants' failure to appear and recidivism rates. Although research generally does not support the use of pretrial detention, several critical questions remain regarding the use of pretrial supervision, release conditions and treatment referrals, and their relationship with risk and pretrial assessment instruments. Studies which have examined these topics have been scarce and often inconclusive. More research is needed examining outcomes of pretrial supervision sensitive to level and intensity of supervision as well as pretrial assessment scores, urinalysis results, court conditions, and referrals to substance abuse and mental health services.

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