

THE CRIME AND JUSTICE INSTITUTE AT COMMUNITY RESOURCES FOR JUSTICE

<http://cjinstitute.org/projects/webinars>

WEDNESDAY SERIES IV: JUNE 9, 2010

EVIDENCE-BASED PRACTICES IN PRETRIAL SERVICES: APPLICATIONS OF PRINCIPLES, LAWS,
AND RESEARCH

FREQUENTLY ASKED QUESTIONS

We were unable to respond to all audience questions during the webinar due to time constraint. The Crime and Justice Institute (CJI) at Community Resources for Justice (CRJ) is pleased to post responses to those questions in this document. These responses have been provided by the Wednesday Series IV panelists.

Please visit <http://cjinstitute.org/projects/webinars/seriesIV> for the audio and visual recording of the webinar, including answers to questions asked during the webinar.

Q. When using the risk assessment as a tool for release would the present offense be factored into the assessment?

A. Barbara Darbey, Executive Director, Pre-trial Services Cooperation

It should—if the current charge is sufficiently predictive of future failure to appear or rearrest. The Federal risk validation study found current charge correlative to risk and includes it as an assessment factor. However, other validated studies such those in Ohio, Virginia, New York City and Harris County, Texas found other factors such as prior convictions and the defendant’s current status with the criminal justice system (usually current probation or parole status or an existing pending case) better indicators. Give current charge the weight it deserves in your assessment but, unless your bail law mandates it, do not use it as an exclusion factor.

Q. Regarding the first step toward being evidence-based (i.e. consistently using a validated risk assessment), how is the pretrial field doing so far?

A: Daniel Peterca, Manager, Pretrial Services, Court of Common Pleas, Cuyahoga County, Ohio

Like most evolving fields, there is a broad range of programs and approaches to this very critical piece of evidence-based practice. Many jurisdictions are working hard to establish and validate objective risk assessment instruments. Development, implementation and validation of statewide Pretrial Risk Instruments in Virginia and Ohio represent significant opportunities for the field’s implementation of the EBP principle. Individual jurisdictions often struggle with the implementation of validated risk tools, so validated state risk instruments represent a marshalling of resources to achieve the goal. With the implementation of a validated risk assessment instrument at the federal pretrial services level, that represents a major step forward for the field. There are technical assistance grants available to pretrial programs across the country and many established programs are taking advantage of these opportunities.

Q. Are there any specific assessment tools for pre-trial?

A. Spurgeon Kennedy, Director of Research, Analysis and Development, DC Pretrial Services Agency

The types of assessment tools used pretrial are a mixed bag. According to PJI's 2009 national pretrial program survey, 42 percent of those surveyed developed their risk assessment criteria through local research. Other respondents "borrowed" assessments from other jurisdictions. From conversations with directors of pretrial release and diversion programs, there also is frequent use of universal assessment tools such as the LSI-R and ASI.

Q. What success and how have you gotten the judges in Cleveland to buy-in to the ORAS?

A. Daniel Peterca, Manager, Pretrial Services, Court of Common Pleas, Cuyahoga County, Ohio

Introducing judges to the science, implementation and benefits of EBP has been ongoing in the Greater Cleveland court jurisdiction for the past five years. The Ohio Supreme Court Judicial College, judicial professional associations in the state and the Ohio Department of Rehabilitation and Correction have prioritized judicial education in evidence-based practices. Having national EBP researchers such as Drs. Edward Latessa and Chris Lowenkamp regularly participating in judicial education opportunities has benefited the efforts tremendously.

Judges in Cleveland and across Ohio have embraced the principals of EBP, particularly that of risk assessment relating to sentencing decisions and probation management responses. In addition, in Cleveland and across Ohio the process of expanding the EBP principal of individualized risk analysis to bond decisions, including use of a validated pretrial risk instrument, has begun.

Q. Is there an approved and recommended Risk Assessment tool that the panel would recommend for use in an evolving district interested in moving towards an Evidence-Based Practice foundation? If we're only looking at factors related to risk of FTA or new offense, it seems like those would be pretty standard. If Ohio has a screen they are piloting, or if the feds have one, can it simply be borrowed and applied in another jurisdiction?

A. Spurgeon Kennedy, Director of Research, Analysis and Development, DC Pretrial Services Agency

There isn't a single universal risk assessment we would recommend. In fact, one of the reasons for the recent push in risk assessment evaluation was the over use of "borrowed" risk assessments (particularly the "Vera point scale," which was the first pretrial risk assessment) without the proper validation to the new locality. Research in pretrial risk assessment has identified several similar risk factors: for example, a review of research performed in 10 jurisdictions nationwide found the most commonly identified predictors of pretrial failure were: current charge type, status with the criminal justice at the time of arrest, criminal history, employment status, length of residence at a current address, relationship to persons with whom

a defendant lives, age, education, and substance abuse. (VanNostrand, M. and Keebler, G. (2009). Pretrial Risk Assessment in the Federal Court. Washington, D.C.: Office of the Federal Detention Trustee and Administrative Office of the U.S. Courts). However, these factors vary in their correlation to failure and the weights they receive on the scales.

That these factors are similar in validated assessments doesn't guarantee that they apply in other locations or be the only or even most important factors in other jurisdictions. While it's certainly "safer" than in years past to borrow risk schemes and factors from other jurisdictions, validation against a local defendant population still is the gold standard in risk assessment.

Q. How do you manage to thoroughly complete the LSI-R prior to arraignment?

A. Timothy Murray, Executive Director, Pretrial Justice Institute

The LSI-R is not used in pretrial risk assessment before the initial appearance, at least not in the overwhelming number of pretrial services programs. One reason is due to what this question is getting at – it takes more time to administer the LSI-R than pretrial officers have available. More importantly, though, the LSI-R is not used because it was not been designed for, or tested on, the pretrial population. It was designed to assess the likelihood of recidivism in convicted offenders, and has been found, through testing, to be effective at doing so. Since courts must consider the likelihood of failure to appear as well as recidivism in the pretrial release decision, and the LSI-R was not designed to test for risks of failure to appear, most pretrial services programs do not use it. It may, however, be a useful tool for pretrial diversion programs – since the goal of those programs is to reduce recidivism.

Q. Have they ever used money as a set of bail in Washington, DC?

A. Spurgeon Kennedy, Director of Research, Analysis and Development, DC Pretrial Services Agency

Financial bond was common in the District of Columbia up until the mid 1990's. Around that time, the District City Council added the following language to the city's bail law: "A person for whom conditions of release are imposed and who, after 24 hours from the time of the release hearing, continues to be detained as a result of inability to meet the conditions of release, shall upon application be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, on another condition or conditions, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed." This change encouraged judicial officers to consider nonfinancial release options and challenged our pretrial programs to offer supervision strategies (such as drug testing, curfews, and treatment services) to meet the demands of a higher-risk defendant population.

Q. BJA Special Report 11/2007 table on page 10 charts types of pretrial release and the FTA and re-arrest for type of release. Seems to say offenders on surety bond, deposit bond do better than Recognizance or Conditional Release. Reactions?

A. Timothy Murray, Executive Director, Pretrial Justice Institute

This was a BJS (Bureau of Justice Statistics) report, not BJA. As part of the State Court Processing Statistics Project (SCPS), BJS tracks felony case processing in 40 of the 75 largest jurisdictions in the country every two years. The BJS report has caused confusion about whether the findings from SCPS can be used to draw conclusions about the effectiveness of one type of pretrial release over others. To clear up this confusion, earlier this year BJS issued an Advisory on the SCPS findings. That Advisory provides the answer to this question: “BJS reports and analyses describe patterns associated with case processing, such as misconduct during pretrial release. However, the data are insufficient to explain causal associations between the patterns reported, such as the efficacy of one form of pretrial release over another. To understand whether one form of pretrial release is more effective than others, it would be necessary to collect information relevant to the pretrial release decision and factors associated with individual misconduct. Some of the relevant factors include a defendant’s community ties, employment status, income, educational background, drug abuse history, and mental health status. For reasons related to costs and data availability, these measures are not currently collected in SCSPS.” The Advisory goes on to note: “Any evaluative statement about the effectiveness of a particular program in preventing pretrial misconduct based on SCPS is misleading. BJS does not support such use of these data.”

Q. In pretrial services is there a difference in predicting reappearance before the court and risk of re-offending?

A. Spurgeon Kennedy, Director of Research, Analysis and Development, DC Pretrial Services Agency

Risk validation studies done in jurisdictions whose bail laws allow consideration of FTA and rearrest (for example, the Federal Courts and Ohio) have found both of these outcomes to be very distinct. For example, the Federal Court risk validation found that defendants in the highest risk category had a 9.8 percent rate of rearrest compared to a 5.7 percent chance of FTA. Each outcome can either have completely different associated risk factors or similar factors that are related more to one outcome than the other. Missing a scheduled court date and committing a new offense while on supervision are very different outcomes, and should be assessed separately, if your local law permits.

Q. How is this research being implemented in the Federal Probation System?

A. Timothy Murray, Executive Director, Pretrial Justice Institute

In 2009, a study of all defendants charged in federal court and processed through pretrial services between 2001 and 2007 was released. (VanNostrand, M. and Keebler, G. (2009). Pretrial Risk Assessment in the Federal Court. Washington, D.C.: Office of the Federal Detention Trustee and Administrative Office of the U.S. Courts). That study identified several factors that were related to higher risks of pretrial misconduct in the federal system. The results of that study are currently being used to develop a standardized research-based assessment instrument for all federal pretrial services programs.

Q. Is drug testing common practice utilized in Pretrial Services agencies that practice EBP?

A. Barbara Darbey, Executive Director, Pre-trial Services Cooperation

Drug testing of defendants is common practice in nearly all pretrial release programs. Most of the validated risk assessment schemes do include drug use as a factor. According to Pretrial Justice Institute's 2009 national survey of pretrial services programs, 84% of the respondents stated that drug testing was a condition available for supervision and nearly 75% inquired about drug use during the assessment interview. One of the challenges in balancing risk and need in evidence-based practice is to use the drug testing condition judiciously and only when indicated. This particular requirement is one that can easily fall into the "over-conditioning" category.

Q. How many people does a supervision officer take care of?

A. Daniel Peterca, Manager, Pretrial Services, Court of Common Pleas, Cuyahoga County, Ohio

Pretrial supervision caseload sizes are as varied as jurisdictions represented (the last survey indicated a range between 0 and 650). Supervision officers in Pretrial Services agencies in Ohio typically have caseloads of 60 to 150 defendants.

Implementation of EBP principles challenges Pretrial Services agencies to revisit their supervision strategies. Based on EBP research, low-risk defendants need the least restrictive supervision or none at all. Developing bulk caseloads that utilize an automated court notification system and call-in reporting has shown to be effective and cost saving methods. Medium and high-risk defendants should have individualized supervision responses that address their individual risk/need issues. Whether it includes weekly reporting, electronic monitoring, curfews or drug testing, the PTS field has to progress from a "one response" supervision model for all defendants to one tailored to address individual risk factors.

Additional Resources Mentioned:

- NYC Criminal Justice Agency www.nycja.org, DC Pretrial Services www.dcpsa.gov, Virginia DCJS <http://www.dcjs.virginia.gov/corrections/riskAssessment/>
- National Institute of Corrections www.nicic.gov
- National Association of Pretrial Service Agencies www.napsa.org
- Roadmap for Evidence-Based Practices in Community Corrections <http://cjinstitute.org/publications/ebroadmap>