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DISPELLING THE MYTHS: WHAT POLICY MAKERS NEED TO KNOW ABOUT PRETRIAL RESEARCH

Kristin Bechtel, M.S.
John Clark
Michael R. Jones, Ph.D.
and
David J. Levin, Ph.D.

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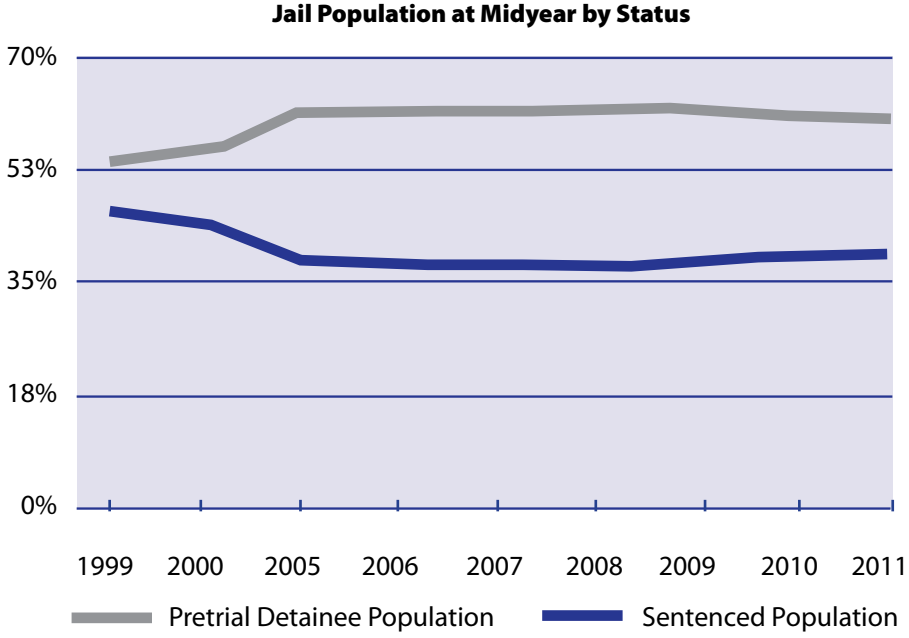
INTRODUCTION

The for-profit bail bonding industry has relied upon several recent studies to make the claim that commercial surety bonds are the most effective type of pretrial release. This paper provides an overview of those studies and explains why they cannot be used for this purpose because they do not answer questions about the effectiveness of any one type of pretrial release over that of others. This paper also cautions policy makers when the for-profit bail bonding industry presents them with these studies, and concludes that researchers should engage in objective and methodologically sound research that informs cost-effective and evidence-based pretrial public policy.

BACKGROUND

Historically, jail populations in this country were evenly divided between pretrial and sentenced inmates. Beginning in 1996, however, the number of pretrial inmates in local jails started growing at a much faster pace than sentenced inmates, despite falling crime rates. Currently, 61% of inmates have not been convicted, compared to 39% who are serving sentences (Minton, 2012). This shift has resulted in a dramatic change in how jails are being used today.



One major policy shift corresponding with the rise in the pretrial detainee population has been the increase in the use of secured money bonds. When a person is arrested, the court can release the defendant with non-financial conditions or set a secured money bond that must be posted before the defendant can be released. Existing laws in most states establish a presumption of release on the least restrictive conditions necessary to reasonably assure the safety of the community and a defendant's appearance in court. Those laws also identify non-financial release options as being the least restrictive and secured money bonds being more restrictive. Despite these presumptions, historically secured money bonds have been used in the majority of cases, and its use has been on the rise. In 1990, money bonds were set in 53% of felony cases. By 2006, that figure had jumped to 70%. As the use of secured money bonds has

increased, pretrial release rates have gone down. In 1990, 65% of felony defendants were released while awaiting trial compared to 58% in 2006 (Cohen & Reaves, 2007; Cohen & Kyckelhahn, 2010).

The practice of using money to decide which defendants are released pretrial has played a significant role in contributing to the mass incarceration phenomena that has swept the nation for the past three decades. Research dating back 50 years has consistently shown that pretrial detention increases post-conviction incarceration (Rankin, 1964; Wald, 1972; Landes, 1974; Zeisel, 1979; Goldkamp, 1979; Clarke & Kurtz, 1983; Gottfredson & Gottfredson, 1988; Phillips, 2007; Phillips, 2008). These studies show that defendants detained in jail while awaiting trial plead guilty more often, are convicted more often, are sentenced to prison more often, and receive harsher prison sentences than those who are released during the pretrial period. These findings hold true when controlling for other factors, such as current charge, prior criminal history, and ties to the community. As one of these studies noted, "Although no statistical study can prove causality, the findings of this research are fully consistent with the argument that something about detention (awaiting trial) itself leads to harsher outcomes" (Phillips, 2007).

Since the early 2000s, stakeholders who work in or with the criminal justice system have increased their attention to the pretrial part of the system.[1] Judges, prosecutors, defense attorneys, law enforcement, jail officials, victims' advocates, pretrial services programs, researchers, grantors, foundations, and national professional organizations have been working to determine the most legal, research-based, and cost-effective way to further the purpose of bail: to maximize the release of defendants on the least restrictive conditions that reasonably assure the safety of the public and defendants' appearance in court (American Bar Association, 2007).

In the quest for such improvement, one question frequently arises: What data and research exist to show which type of pretrial release is the most cost effective for government? That is, which release type maximizes the probability of both public safety (as measured by defendants not picking up new charges during pretrial release) and defendants making their court appearances while maximizing pretrial release?[2] Indeed, long-time experts in the pretrial field developed a simple but comprehensive "effectiveness" formula to assess jurisdictions' pretrial release practices. An effective pretrial release occurs when a defendant is released from jail, does not commit a new crime, and makes all court appearances (Goldkamp et al., 1995). Thus, this formula evaluates the effectiveness of the pretrial process by

1 Schnacke et al. make the case that the American criminal justice system began a third wave of bail reform beginning in the early 2000s. The first wave began in the 1960s and the second wave began in the 1980s. For a description of these reform efforts, refer to two publications: Goldkamp, J. S. (1993). *Judicial Responsibility for Pretrial Release Decisionmaking and the Information Role of Pretrial Services*, 57 Fed. Probation 28, 34 n.3; and Schnacke, T. R., Jones, M. R., & Brooker, C. M. B., & (2011). *The Third Generation of Bail Reform. DULR Online, the Online Supplement to the Denver University Law Review*. Denver, CO: University of Denver Sturm College of Law.

2 Similar research limitations have been noted for other important criminal justice topics, such as the death penalty. Apart from the moral arguments, top criminal justice researchers have concluded that the science shows no evidence that the death penalty deters homicide more than other penalties (e.g., life in prison) do, even though some death penalty proponents continue to make this claim. See Nagin, D. S., & Pepper, J. V. (Eds.). (2012). *Deterrence and the Death Penalty*. Washington, DC: The National Academies Press.

including metrics for all three important factors: release from custody, public safety, and court appearance. This formula is more valid for evaluating the effectiveness of any type of pretrial release than are formulas that consider only one or two of these factors, because this formula includes both cost and effectiveness components and it comports closely with U.S. Supreme Court case law[3] and the American Bar Association's national pretrial standards.[4]

A few researchers (e.g., Helland and Tabarrok, 2004; Block, 2005; Krahl, 2009) have published studies in recent years in an attempt to determine the most effective pretrial release types. For-profit bail bondsmen and/or insurance company lobbyists have distributed copies of these studies, often accompanied with their own interpretations, to policy-makers involved in local or state pretrial improvement efforts. They have claimed that these studies provide empirical evidence that for-profit bail bonding is more cost-effective than other types of pretrial release, such as recognizance or supervision by a pretrial services agency.[5]

THE BUREAU OF JUSTICE STATISTICS' DATA ADVISORY

Several of the studies that the for-profit bail bonding industry has been citing as evidence of the surety bonds' effectiveness are based on the State Court Processing Statistics (SCPS) Project of the Bureau of Justice Statistics (BJS) of the U.S. Department of Justice (Cohen & Reaves, 2007). The SCPS project has collected data on felony case processing in 40 of the 75 largest counties in the country every other year since 1988. Included in the data are whether the defendant was released during the pretrial period and by what type (e.g., personal recognizance, surety bond), and whether the defendant was arrested on a new charge or failed to appear in court.

The bonding industry's claims based on the SCPS data became so widespread that BJS was compelled to take the unusual and unprecedented step of issuing a "Data Advisory" (Cohen & Kyckelhahn, 2010). The Advisory states that the following three limitations must be considered when using the SCPS data in research, drawing conclusions from studies that use these data, and in citing BJS reports:

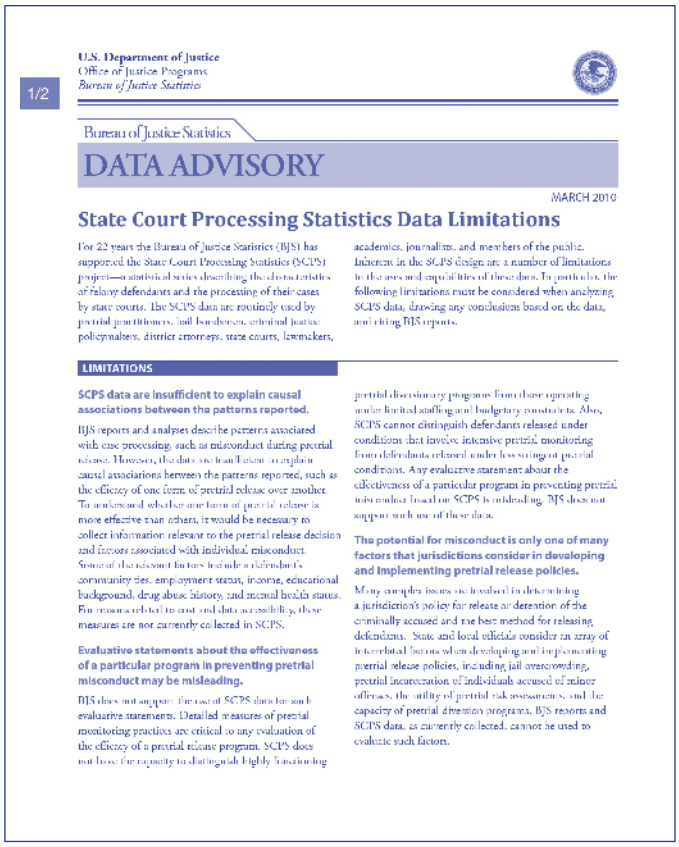
3 See, for example, Chief Justice Rehnquist's statement in *U.S. v. Salerno* that "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." 481 U.S. at 755 (1987).

4 See American Bar Association Standards for Criminal Justice, Third Edition, Pretrial Release, (2007), Standards 10-1.1 and 10-1.6.

5 Courts have a range of legally permissible pretrial release or bonding options, such as release on recognizance or citation, unsecured bond, full cash bond, property bond, deposit bond, surety bond, conditional bond, and emergency releases. For definitions of these release types, see Cohen & Reaves, 2007, p. 3.

Limitation 1

- SCPS data are insufficient to explain causal associations between the patterns reported.



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U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

Bureau of Justice Statistics

DATA ADVISORY

MARCH 2010

State Court Processing Statistics Data Limitations

For 22 years the Bureau of Justice Statistics (BJS) has supported the State Court Processing Statistics (SCPS) project—a statistical series describing the characteristics of felony defendants and the processing of their cases by state courts. The SCPS data are routinely used by pretrial practitioners, jail bookkeepers, criminal justice policymakers, district attorneys, state courts, lawmakers, academics, journalists, and members of the public. Inherent in the SCPS design are a number of limitations in the uses and capabilities of these data. To that end, the following limitations must be considered when analyzing SCPS data, drawing any conclusions based on the data, and citing BJS reports.

LIMITATIONS

SCPS data are insufficient to explain causal associations between the patterns reported.

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 cost and data accessibility, these measures are not currently collected in SCPS.

Evaluative statements about the effectiveness of a particular program in preventing pretrial misconduct may be misleading.

BJS does not support the use of SCPS data for such evaluative statements. Detailed measures of pretrial monitoring practices are critical to any evaluation of the efficacy of a pretrial release program. SCPS does not have the capacity to distinguish highly functioning pretrial diversionary programs from those operating under limited staffing and budgetary constraints. Also, SCPS cannot distinguish defendants released under conditions that involve intensive pretrial monitoring from defendants released under less stringent pretrial conditions. 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.

The potential for misconduct is only one of many factors that jurisdictions consider in developing and implementing pretrial release policies.

Many complex issues are involved in determining a jurisdiction's policy for release or detention of the criminally accused and the best method for releasing defendants. State and local officials consider an array of interrelated factors when developing and implementing pretrial release policies, including jail overcrowding, pretrial incarceration of individuals accused of minor offenses, the utility of pretrial risk assessments, and the capacity of pretrial diversion programs. BJS reports and SCPS data, as currently collected, cannot be used to evaluate such factors.

> In explaining this statement, the Data Advisory states:
>
> 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 cost and data accessibility, these measures are not currently collected in SCPS.

That is, readers must be cautious when assuming research shows causation when it does not. For example, a study may find that defendants released on surety bond may indeed fail to appear less often than do defendants released on their own recognizance. However, this finding may not have occurred because a surety bond is more effective than release on recognizance, but because defendants released on surety bond in the study may have had certain characteristics (e.g., more financial resources to hire a private attorney or to get to court), and it is these characteristics and not the release type that affects their court appearance. The limitation with prior research based on the SCPS data is that these other characteristics are not available in the data. Therefore, the causal relationship between the release type and failure to appear cannot be concluded.

Limitation 2

- Evaluative statements about the effectiveness of a particular program in preventing pretrial misconduct may be misleading.

In explaining this statement, the Data Advisory states:

> BJS does not support the use of SCPS data for such evaluative statements. Detailed measures of pretrial monitoring practices are critical to any evaluation of the efficacy of a pretrial release program. SCPS does not have the capacity to distinguish highly functioning pretrial diversionary programs from those operating under limited staffing and budgetary constraints. Also, SCPS cannot distinguish defendants released under conditions that involve intensive pretrial monitoring from defendants released under less stringent pretrial conditions. 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.

Limitation 3

- The potential for misconduct is only one of many factors that jurisdictions consider in developing and implementing pretrial release policies.

In explaining this statement, the Data Advisory states;

> Many complex issues are involved in determining a jurisdiction's policy for release or detention of the criminally accused and the best method for releasing defendants. State and local officials consider an array of interrelated factors when developing and implementing pretrial release policies, including jail overcrowding, pretrial incarceration of individuals accused of minor offenses, the utility of pretrial risk assessments, and the capacity of pretrial diversion programs. BJS reports and SCPS data, as currently collected, cannot be used to evaluate such factors.

REVIEW OF STUDIES CITED BY THE BONDING INDUSTRY THAT USE SCPS DATA

The Bureau of Justice Statistics' "Pretrial Release of Felony Defendants in State Courts" (Cohen and Reaves, 2007)

Purpose

The purpose of this Department of Justice report was to describe the volume, similarities, and differences in factors associated with pretrial release in large jurisdictions across the United States.

Method

Data relevant to pretrial release were selected from the Bureau of Justice Statistics' State Court Processing Statistics series, which at that time covered felony cases filed in May of even-numbered years from 1990 through 2006 in a sample of 40 of the United States' 75 most populous counties. The counties participating in the SCPS varied somewhat each year because of changing national population patterns. Data were collected on defendants' demographics, criminal history, and court processing characteristics from pretrial release through sentencing.

Findings

This report does not examine the effectiveness of various types of pretrial release. Rather, it summarizes various case processing characteristics, such as the frequency of and associations among different types of release, bond amounts, offense types, demographics, criminal history factors, case processing times, and pretrial misconduct.[6]

Authors' Interpretation

The analyses showed many statistically significant relationships among multiple variables. These relationships are based on correlations and do not include any causation or explanation of why the relationships might have been observed.[7]

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6 The various descriptive analyses are too numerous to summarize here. The reader is encouraged to read the brief report, as it contains many illustrations and explanations of the findings.

7 Correlation refers to the situation when there is a linear relationship between two variables, such that there is some degree of predictable increase or decrease in the scores on one variable as the scores on the other variable change. Causation, in contrast, involves two variables that are correlated, with the additional requirement that one occurs temporarily after the other and that other plausible explanations are ruled out. To illustrate the difference between correlation and causation, an example occurs when an increase in the amount of crime is observed in conjunction with an increase in the amount of ice cream consumed (both tend to occur more frequently in summer months). They can be positively correlated. However, there is no research or theory from which one can conclude that the amount of ice cream consumed *causes* an increase in crime. Indeed, the occurrences of either higher temperatures or longer daylight hours during summer months are possible alternate explanations for increases in crime.

Limitations

The authors state that the analyses are limited because they reflect variables only available in the SCPS data and that other factors not in the data could affect both pretrial release rates and pretrial misconduct. In addition, only approximately 20% of the jurisdictions that contributed data did so every year of the program, so the variance observed as trends over time may be partially caused by the unique characteristics of the 80% of jurisdictions that rotate in and out of the sample over time. Finally, it may appear that the for-profit bail bonding industry's message regarding research supporting the superior performance of surety release is credible because several different studies (summarized below) that used different analytical methods still arrived at similar conclusions. However, these similar findings occur not because the studies are measuring reality despite the various research methods used, but because these studies all use the same limited data (see the Bureau of Justice Statistics' advisory above). That is, any number of studies could use different analyses, but they would still arrive at very similar conclusions because they use the same limited data. The studies simply replicate the problem of using these limited data in the first place.

"The Fugitive: Evidence on Public versus Private Law Enforcement from Bail Jumping" (Helland and Tabarrok, 2004)

Purpose

The authors' purpose was to compare the effectiveness of surety bond releases to own recognizance, unsecured bond, cash bond, and deposit bond releases. The three outcomes of failure to appear, fugitive/recapture, and new arrest were used.

Method

The study used data from the 1990-1996 SCPS, supplemented by 1988 data from the SCPS's predecessor project, the National Pretrial Reporting Program. A statistical technique of propensity score matching[8] to pair defendants released on surety bond with those released through the other non-surety methods was used. Defendants in the surety and non-surety groups were matched on demographics (sex and age), current criminal justice involvement, current felony charge, prior felony arrests, and past failure to appear.

Findings

The study found that surety bonding had lower failure to appear rates than did own recognizance/unsecured bonds and deposit bonds but was equal to cash bonding. Surety bonding also had lower fugitive and higher recapture rates after one year than did the other types of bonds. For new arrests, the public safety measure, the study found no differences among pretrial release types.

8 Propensity score matching is a method for statistically reducing the existing differences in members of two groups, so that any outcome differences in the two groups can be attributed to the treatment one group received that the other did not. In this study, treatment was surety bonding.

Authors' Interpretation

The authors concluded that defendants released on surety bond are less likely to fail to appear than similar defendants released on their own recognizance, and if defendants do fail to appear, they are more likely to be captured. They state that "bond dealers" and bounty hunters are effective at discouraging flight and at recapturing defendants, and that bounty hunters, and not government-funded law enforcement, "appear to be the true long arms of the law" (pg. 118).

Limitations

This study was based on the SCPS data which, for the reasons described above, are inappropriate for drawing causal conclusions about pretrial release options (i.e., inferring that the type of release is the determining factor in defendants' pretrial performance). Moreover, this study does not account for release rates, which on the average are much lower and take longer to occur for surety bonds than they are for non-financial methods, thus increasing the amount of pretrial detention and its associated costs caused by surety bonds. Indeed, Cohen & Reaves (2007) showed that financial forms of pretrial release (which includes surety bonds) take several days to weeks longer to occur than do non-financial forms of pretrial release (pg. 5), and that financial bonds result in fewer defendants bonding out than do non-financial bonds (i.e., 49% compared to close to 100%; pg. 2). Finally, surety bonds showed no increase in public safety compared to non-financial bonding methods. In sum, although this study used more advanced statistical methods, the findings do not account for differences among the various types of pretrial release in release rates, which are necessary for determining the most effective pretrial release type.

"The Effectiveness and Cost of Secured and Unsecured Pretrial Release in California's Large Urban Counties: 1990-2000" (Block, 2005)

Purpose

The author's purpose was to compare the characteristics and performance of California defendants released on surety bond to defendants released on recognizance or conditional/supervised release.

Method

The study used SCPS data on over 20,000 cases from 12 large urban California counties for the years 1990 through 2000. No controls for a defendant's propensity to engage in pretrial misconduct were utilized.

Findings

The study found that defendants released on surety bond were less likely to have failed to appear and remain a fugitive than were defendants who were released on recognizance or conditional/supervised release. The monetary costs of a failure to appear were estimated.

Author's Interpretation

After presenting the above findings, the author presented different scenarios showing the estimated reduction in failures to appear and monetary cost savings that would have occurred over the study's time period had surety bonds been more frequently used than release on recognizance or conditional/supervised release.

Limitations

Similar to the limitations in the Helland and Tabarrok (2004) study, this study used SCPS data to infer the greater effectiveness of surety bonds over and above that of non-surety bonds. In addition, this study did not attempt to match defendants in the two groups on other relevant characteristics, which further allows for the possibility that these other characteristics, and not necessarily the type of release, account for the observed findings. Finally, any findings from this study would only generalizable to jurisdictions within California given the sometimes high degree of variability between states in pretrial laws and case processing.

"Commercial Surety Bail and the Problem of Missed Court Appearances and Pretrial Detention" (Cohen, 2009)

Purpose

The author conducted this study to measure the impact of selection effects and monitoring practices on pretrial outcomes. Specifically, the author examined whether surety bond defendants were released at lower rates than were non-surety bond defendants, and whether surety bond defendants had lower instances of flight than did non-surety bond defendants.

Method

Data from the 2000-2004 SCPS were used from jurisdictions that either predominantly used surety bond releases (Dallas, El Paso, Harris, and Tarrant Counties, TX; and Shelby County, TN) or that used them minimally (Philadelphia, PA; Montgomery County, MD; Wayne County MI; Pima County, AZ; and Cook County, IL). Data were analyzed using the statistical technique of binary logistic regression.[9]

9 Binary logistic regression is a statistical procedure used to determine which set of factors most efficiently and comprehensively predicts an outcome of interest while accounting for the influence the various factors might have on one another. For example, it helps determine the unique contribution that several simultaneously considered factors (e.g., criminal history, ties to the community, drug use) have in predicting the likelihood of failure to appear in court.

Findings

The study found that the likelihood of pretrial release in the high-surety-use counties was statistically significantly less than that in the counties that used surety bonds less frequently. Bail bondsmen in surety counties were more likely to post a surety bond for defendants with a history of failure to appear than in minimal-surety-release counties. The study also found that surety bond defendants were less likely to fail to appear or remain a fugitive than were non-surety defendants, when the effects of demographics, charge severity, and failure to appear history were accounted for.

Author's Interpretation

The author concludes that the study provides support for two possible explanations for the observation that surety bond defendants have fewer failures to appear than do non-surety defendants. One possible explanation is that bail bondsmen select defendants who have a lower risk of failure to appear by not posting bond for higher risk defendants, and the other explanation is that some characteristic unique to the bondsman-defendant relationship (e.g., bondsmen's monitoring services, defendants' financial incentive to appear) results in more court appearances. The author stated that the data does not allow for a determination of which of the two explanations is superior over the other.

Limitations

The author cautions that any conclusions about the effectiveness of surety bonds from this study can only apply to the five counties analyzed, and even then, it is not possible to determine the extent which surety bonds are affecting court appearance over and above other factors, such as the defendant being supervised by a pretrial services program. Because factors that can affect both the pretrial release decision and defendants' performance on pretrial release, such as residence status, employment, substance use/abuse, mental health issues, and supervision conditions are not included in the SCPS, the SCPS data cannot be used to definitively determine whether bail bondsmen are selecting lower risk defendants or whether they utilize more effective monitoring techniques than that which is associated with non-surety defendants.

REVIEW OF STUDIES CITED BY THE BONDING INDUSTRY THAT DO NOT USE SCPS DATA

"An Analysis of the Financial Impact of Surety Bonding on Aggregate and Average Detention Costs and Cost Savings in the State of Florida for 2008 by a Single Florida Insurance Company: A Follow-Up Study to Earlier Research" (Krahl, 2009)

Purpose

The author's purpose was to assess the estimated financial savings to Florida counties by one insurance company writing surety bonds.

Method

This study used data from Roche Surety and Casualty, Inc. on the length of time on pretrial release of over 36,000 cases that had surety bonds written by bail agents in 60 of Florida's 67 counties. Data on most counties' jail population and costs were also obtained.

Findings

The study reports that the use of for-profit bail bonding by this one insurance company saved Florida county governments hundreds of millions of dollars by releasing defendants on surety bonds instead of the defendants remaining in detention during the pretrial period of their case. In addition, the study also estimated the added jail construction costs to house these defendants if surety bonds were not used.

Author's Interpretation

The author interpreted the findings to indicate that for-profit bail bonding is a "financially pragmatic alternative to pretrial detention as well as other types of pretrial release mechanisms"[10] because of the savings to both jail per diem and construction costs.

Limitations

This study includes several limitations or methodologically faulty assumptions that render this study's findings not evaluable or not useful for informing public policy. First, the study compares estimated cost savings of for-profit bail bonding versus detention. Not surprisingly, surety bonding costs less than continuous detention; however, *any* form of pretrial release costs less than detention. Second, the study assumes that surety bond defendants would have had the same length of stay in detention that they would have had if they remained in detention for the duration of their case. This assumption cannot be supported because, as Cohen & Reaves (2007; pg. 7) showed, released defendants' cases took nearly three times as long to reach disposition as did detained defendants' cases. Third, in calculating potential cost savings realized by surety bond releases, the estimated costs of detaining these defendants were used. However, this calculation necessarily assumes that if surety

10 The inclusion of the phrase, "as well as other types of pretrial release mechanisms" in the study's findings is misleading because no method of pretrial release other than surety bonding was evaluated in this study.

bonding were not available, the defendants would have been detained. This assumption is likely false because in jurisdictions in which surety bonding is not used, other forms of both financial and non-financial release are used in lieu of detention. So, it is likely that many of the defendants who were released on surety bonds in this study would have been released by another method. Thus, the argument that there would have been additional costs for these defendants if they were detained instead of released on surety bonds is not supported. Fourth, the study does not address the effectiveness of surety bonds in either preventing failures to appear or in returning defendants to court after a failure to appear, both of which would be necessary for assessing cost-effectiveness (see, for example, Helland and Tabarrok, 2004, and Cohen, 2009).

"An Analysis of the Financial Impact of Surety Bonding on Aggregate and Average Detention Costs and Cost Savings in the State of Florida for 2010 by a Single Florida Insurance Company: Continuities From Earlier Research and Extensions in the Development and Utilization of Statistical Models to Determine the Utility and Effectiveness of Surety Bonding" Krahl and New Direction Strategies (2011)[11]

Purpose

The author's purpose was to update the author's written report and findings from his 2009 study (summarized above), and additionally assess the strength and nature of the differences between counties that release defendants on unsecured bonds and under the supervision of a pretrial services program and counties that do not have such programs.

Method

Similar to the 2009 study, this study used data on length of time on pretrial release from over 52,000 cases that had surety bonds written by bail agents from Roche Surety and Casualty, Inc., in 66 of Florida's 67 counties. Data on most counties' jail population and costs were also obtained. The statistical techniques of t-tests, regression, and discriminant analysis were used to compare characteristics of counties with pretrial services programs to those without such a program.

11 New Direction Strategies is a Florida-based marketing and strategy organization whose mission includes "We'll help you develop a sound legislative strategy that makes sense. After that, we'll walk you through step-by-step the process that will help get you to your desired result. We'll put you and your message front and center with key government decision makers - in Washington, your state legislature, or your local government leaders. We'll position you and your message to be successful." See http://www.newdirectionstrategies.org.

Findings

Similar to the 2009 study, this study again reports that the use of for-profit bonding by the one insurance company saved Florida county governments hundreds of millions of dollars by releasing defendants on surety bonds instead of the defendants remaining in detention. In addition, the study also again estimated the added construction costs to house these defendants if surety bonds were not used. The dollar amounts were higher than those reported in the 2009 study. The additional statistical tests showed that most of the counties with larger resident populations had pretrial services programs while most of the less populated counties did not.

Authors' Interpretation

Similar to the interpretations stated in the 2009 study, the author interpreted the findings to indicate that "one surety bonding company in the state of Florida saved Florida taxpayers and Florida counties over 404 million dollars in detention costs through the use of surety bonding as a mechanism of secured pretrial release for criminal defendants." The author stated that counties that have pretrial services programs fund them using tax revenues and counties that do not have the programs do not use tax revenues for this purpose.

Limitations

The problems present in one of the author's 2009 study remain uncorrected in this study (see discussion above). Furthermore, the inclusion of a marketing firm as an author on a seemingly scientific paper is uncommon in the scientific community. This raises questions about the scientific purposes for which the research was conducted. Finally, the authors do not state the rationale and significance of the additional analyses showing larger counties are more likely to have pretrial services programs compared to smaller counties.

MORE COMPLETE RESEARCH IS NEEDED

The research comparing forms of financial to non-financial pretrial release is clearly limited. No study to date has effectively separated out individual defendant characteristics that lead to a pretrial release decision (whether the type of release or the simple "yes/no" of any form of pretrial release at all) from the outcomes of a release decision (i.e., the probability of pretrial misconduct). In addition, no study to date has controlled for differences in the timing and events that different courts use to process cases, the types of supervision conditions imposed on a released defendant, the ability of a pretrial program to implement supervision conditions, or the activities employed by bail bondsmen.

The time has come for researchers to conduct such studies in order to properly inform pretrial public policy. This research needs to have the methodological rigor needed to make causal inferences about various types of pretrial release and the conditions under which defendants' performance on pretrial release can be maximized. Future evaluation designs should implement a quasi-experimental design to the extent possible.[12] Quasi-experimental designs can make use of known differences in release types, as well as the degree of implementation of conditions available in multiple jurisdictions that are similar to parse out the effects of supervision conditions and the effects of poor, good, and excellent degrees of implementation. Quasi-experimental designs can also help determine the impact of selection rules on pretrial release outcomes. For example, some jurisdictions do not release defendants charged with violent crimes or drug trafficking while others do. By comparing similar jurisdictions, research can begin to separate out the impact of various laws or policies on pretrial release outcomes.

Unlike most of the studies this paper reviewed, the public safety outcome must be included. The purpose of bail, again, is to assure court appearance and public safety, and to do so while maximizing releases. However, only one study included a public safety outcome measure.[13] Many government officials argue that a defendant's appearance in court is important, but that it pales in comparison to the public's safety. Thus, researchers must begin including public safety in evaluating the role of surety bonding, cash bonding, own recognizance bonding, and pretrial services programs in improving *both* public safety and court appearance outcomes, and doing so while maximizing pretrial release.

Additionally, and as importantly, any research that compares the effectiveness of financial versus non-financial bonds has to include the release rates to be valid. To date, only the Cohen and Reaves (2007) study included pretrial release rates by the various types of pretrial release. That study showed that over half of all defendants who have a financial bond set are not likely to post it and thus remain in jail until their case is adjudicated. In contrast, defendants who are given a non-financial bond are not likely to remain in jail because of the inability to post the bond (pg. 2). Without a full understanding of the nature of the denominator (defendants under pretrial release type X), any evaluations of the numerator (e.g., failure to appear, fugitive status, arrest for a new offense) will not be sufficiently grounded to make assertions about the applicability of the findings to other jurisdictions.

Studies of the costs of various types of pretrial release need to account for all financial and social costs. These costs include, but are not limited to, those arising from prolonged detention caused by certain types of release or when defendants are never released, as well as the costs associated with return to detention after failures to appear. Costs associated with additional court hearings, law enforcement arrests, and returning fugitives to custody should also be included. The realization of a cost-effective justice system can only be achieved when several quality studies are completed and made available to policy-makers.

12 See, for example, Austin, J., Krisberg, B., & Litsky, P. (1985). The effectiveness of supervised pretrial release. *Crime and Delinquency*, 31(4), 519-537.

13 Helland and Tabarrok (2004) included the public safety outcome of defendants' new arrests while on pretrial release, and found no differences between surety bonds and non-surety bonds.

Finally, researchers should convene themselves and decide together which kinds of studies are needed and which kinds of research methods and statistical tests meet accepted scientific standards. They then can conduct a research program that produces research that can inform pretrial policy-making.

SUMMARY

Policy-makers are cautioned about accepting at face value statements about the cost-effectiveness of financial, including surety, forms of pretrial release when presented with interpretations from any of the six studies reviewed in this paper. Because the Helland and Tabarrok (2004), Block (2005), Cohen and Reaves (2007), and Cohen (2009) studies rely on SCPS data, the findings from these studies cannot be scientifically used to make causal statements about the effectiveness of one type of pretrial release over that of another. The two studies reviewed that do not use SCPS data (Krahl, 2009; Krahl and New Direction Strategies, 2011) do not directly address this question. By neglecting release options other than surety bonding, the Krahl studies draw comparisons that have no public policy application.

Because financial bonds, including surety bonds, cannot be legally forfeited because of an arrest for a new crime allegedly committed while a defendant is on pretrial release, there is no legal link between financial types of release and public safety. Therefore, all financial types of release, both secured and unsecured, are inadequate to fulfilling the legal purposes of bail (see previous discussion). Even if surety bonds were to increase court appearance rates or decrease fugitive rates more than non-financial forms of pretrial release do for certain kinds of defendants, research has shown that the maximization of release would not be realized and the law states that public safety is not considered compared to non-financial forms of release, where the potential for the maximization of public safety, court appearance, and release are simultaneously present.

Finally, additional research is needed to continue to inform policies regarding the most cost-effective forms of pretrial release. Although a few instances of this research are being planned, studies are needed to address the many complex issues around pretrial release and to increase the research's applicability to many jurisdictions nationwide. Research that compares the impact of different types and conditions of release with defendants whose risk scores are known would be the most informative. Careful methodology is needed because many jurisdictions order blanket release conditions and money bonds for nearly all defendants. Policy makers are encouraged to support research that uses the methods necessary to allow the question of which type and conditions of pretrial release are most cost-effective in achieving all three purposes of the bail decision: (1) maximizing public safety and (2) maximizing court appearance while (3) maximizing pretrial release.

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ABOUT THE AUTHORS

Kristin Bechtel serves as a Senior Research Associate at the Crime and Justice Institute at Community Resources for Justice. Her research background focuses on risk and needs assessment including pretrial, special offender populations and screening tools, and program and policy development and evaluation. She has authored several publications in the areas of juvenile, adult, and pretrial risk assessment, juvenile justice programming, domestic violence, implementation evaluation, the risk principle and managing low risk offenders. She has written numerous research and technical assistance reports on a variety of subjects, including program evaluation, risk and needs assessment instruments, domestic violence, and program evaluation.

John Clark serves as a senior project associate for PJI. He has worked closely with officials in hundreds of jurisdictions to gain support for and implement pretrial justice reforms. He has extensive experience in conducting system assessments, gathering and analyzing data, and presenting findings both orally and in writing, as well as in training judges, prosecutors, defense attorneys, pretrial services program administrators, and others on pretrial justice-related topics. His expertise includes identifying causes of jail crowding, implementing validated pretrial risk assessment instruments, identifying alternatives to detention, and pretrial services program development. Prior to joining PJI in 1987, John worked at the D.C. Pretrial Services Agency for eight years. He has a Master's Degree in the Administration of Justice from American University.

Michael R. Jones serves as a Senior Project Associate for PJI, staffing PJI's Colorado office. Mike assists states and local jurisdictions in understanding and implementing more legal and empirically-based pretrial policies and practices by providing technical assistance, writing publications, and designing strategic initiatives. He has extensive criminal justice experience both within Colorado and nationally through his work as a private consultant and technical resource provider for the National Institute of Corrections. Prior to joining PJI, Mike worked as the Criminal Justice Planning Manager for Jefferson County, Colorado, where he and his team of criminal justice planners worked for the local criminal justice coordinating committee. Mike has a Ph.D. in Clinical Psychology.

David Levin is a Senior Consultant at LMI Government Consulting. Prior to LMI he was the Chief of the Drug Enforcement Administration (DEA) Headquarters Statistical Analysis Unit. Before the DEA, he was a senior research associate at the Pretrial Justice Institute, an Assistant Professor of Political Science and Criminal Justice at the University of Texas at El Paso, and a Social Science Statistician at the Bureau of Justice Statistics, USDOJ. He has a BA in political science from the University of Illinois, Urbana-Champaign, and a Ph.D. in government from American University.