

The Role of Research and Bail Reform's Unfinished Agenda

John S. Goldkamp



Temple University
Department of Criminal Justice

Key Issues

- ◆ Judicial discretion in pretrial release/detention
 - ◆ Legitimate aims (flight, crime/danger and?)
 - ◆ Information/substance, relevance, how to use it
 - ◆ Options: use/availability of release conditions?
- ◆ Fairness/Equity of Pretrial Release and Detention Decisions
 - ◆ Visibility and Due Process
 - ◆ Access to Range of Options
 - ◆ Disparate Treatment of Similar Defendants
 - ◆ Discriminatory Economics of Financial Bail



Key Issues (II)

- ◆ Effectiveness of Release and Detention
 - ◆ Release with misconduct
versus
 - ◆ Detention
 - ◆ *versus*
 - ◆ Misconduct-free (safe) release of greatest number
- ◆ The jail overcrowding symptom
 - ◆ Estimates of current prevalence of jail crowding litigation under PLRA?
- ◆ “Wrongful” detention and wrongful conviction (conceptual and empirical connection)



Current Problems: a Research Agenda

- ◆ Context and method of research to inform practice
 - ◆ Necessity of judicial/research partnership
 - ◆ The main responsibility and prospects for improvements are centrally tied to the judicial role
- ◆ Need framework for overall assessment and improvement of practices
 - ◆ The example of pretrial release guidelines
 - ◆ The goal of category-specific problem-solving
 - ◆ Drugs, domestic violence, gender-specific issues, guns
 - ◆ Feedback on impact, adjustment, feedback



Current Problems (II):

- ◆ The message from several generations of overcrowded jails including the current one (PLRA aside):

Develop an effective capacity to safely manage greater numbers of higher risk defendants in the community or be prepared to live with the consequences

- ◆ Need for development of an evidence-based repertoire of release options per categories of defendants
 - ◆ **Need coherent, supported program of “clinical trials”**



Current problems (III)

- ◆ Risk is only part of the information problem
 - ◆ Judges need other informational resources as well (not only risks, but “costs” or risks/stakes)
 - ◆ Risk assessment is now more common but still very approximate (but see data mining and neural networks approaches)
 - ◆ Beware of the magic risk instrument (one-size fits all) across jurisdictions
 - ◆ Despite common themes important jurisdictional differences
 - ◆ Category-specific risk approaches
 - ◆ How should reasonable risk information be used?



Current problems (IV):

After nearly a half century of reform,
where is the science of release options?

- ◆ Classification of defendants (based on risk, problems, other concerns)
- ◆ Classification of field tested release options
- ◆ Linkage of release options to defendant types
 - ◆ Role of empirical research in developing and measuring safe and credible release options per types of defendants to improve:
 - ◆ Judicial choices
 - ◆ Release effectiveness



Current Problems (V)

- ♦ The negative role of the dollar
 - ♦ Lack of empirical basis showing general relation between manipulation of dollar amounts and defendant misconduct
 - ♦ Empirical research mainly shows that it is the main vehicle for detention (with the exception of DC, Federal jurisdictions)
 - ♦ It allows state jurisdictions to avoid addressing pretrial release decisionmaking problems and impact
 - ♦ [the connection between dollar and discretion]
- See ABA, DC, Federal Bail Reform Act on this topic*

