Why Sheriffs Should Champion Pretrial Services

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In 2009, Maurice Clemmons shot and killed four Lakewood, Washington police officers as they sat in a coffee shop one morning at the beginning of their shift. At 37 years old, Clemmons had a long history of violence that began when he committed his first violent felony at the age of 16. In and out of prison his entire adult life, Clemmons was arrested several times prior to that fateful day in 2009, including two arrests for separate violent crimes earlier that year. He was able to pay his money bond in each of those two cases, and he was released for the last time on November 23, 2009.

On November 26, he told family members that he planned to kill cops – and three days later he did. If an effective pretrial services program had been in place, Clemmons would have undergone a comprehensive risk assessment and Officers Mark Renninger, Tina Griswold, Ronald Owens, and Greg Richards would probably be alive today.

Who Supports Pretrial Justice?

Acknowledging that the majority of inmates in jails nationwide – 60 percent according to the most recent data[1] – have a pretrial status, the National Sheriffs' Association (NSA) passed a resolution in 2012 that "supports and recognizes the value of high-functioning pretrial services agencies to enhance public safety; promote a fair and efficient justice system; provide assistance to sheriffs in the administering of a safe jail and reducing jail crowding; and help relieve the financial burden on taxpayers."

In passing the resolution, the NSA signified their understanding that most pretrial inmates "are incarcerated not because of their risk to public safety or of not appearing in court, but because of their inability to afford the amount of their bail bond." The resolution also noted that "pretrial risk assessment of all defendants with a validated instrument and pretrial supervision of some defendants released to the community pending trial help to maximize court appearances while maintaining public safety." (NSA Resolution 2012-6, *National Sheriffs' Association Supports and Recognizes the Contributions of Pretrial Services Agencies to Enhance Public Safety*.)

NSA has not been alone in voicing support for pretrial services. In just the past two years, the National Association of Counties, the International Association of Chiefs of Police, the Association of Prosecuting Attorneys, the American Probation and Parole Association, the American Council of Chief Defenders, the National Association of Criminal Defense Lawyers, and, most recently, the Conference of State Court Administrators and the Conference of Chief Justices have all issued strong statements that call for more informed, and more fair, pretrial release decision making made possible through pretrial services' use of validated pretrial risk assessment procedures and effective supervision strategies.

The general public also supports the work of pretrial services. In a national public opinion survey conducted in 2012 by Lake Research Partners, seventy-seven percent of participants said they would support a proposal for "using risk-based screening tools instead of cash bail bonds to determine whether defendants should be released from jail before trial." Only nine percent said that they would not. Moreover, pretrial services' popularity cuts across all demographics of race, class, gender, region, political party and education.

How Do Pretrial Services Function?

What are these pretrial services that are receiving so much attention and support?

To understand their role, it is important to consider the wider context in which they operate. Under the law in most jurisdictions, when a court makes a pretrial release or detention decision, it can only consider the likelihood of the defendant failing to appear in court and of presenting a danger to the community or to any specific individual in the community. The laws in most jurisdictions list the factors that the court must weigh, including the nature of the charged offense, the defendant's prior criminal record and history of appearances in court, and the defendant's community and family ties, residential and employment status, and substance abuse and mental health history.

1 Cohen, T. H. & Reaves, B. A. (2007). *Pretrial release of felony defendants in state courts.* Washington, DC: U.S. Department of Justice.

Most laws also establish a presumption for release of the defendant on personal recognizance. That presumption must be overcome before the court can impose conditions of release, such as supervision, drug testing, and financial bond requirements. When the court does impose conditions, most laws require that they are least restrictive and reasonably calculated to assure community safety and court appearances. For those defendants with unmanageable risks, the laws in many jurisdictions allow the court to hold the defendant in jail without bond.

As part of this process, pretrial services perform several key functions:

- Screening all defendants in custody awaiting an initial bail-setting appearance in court;
- Assessing each defendant's risk to fail to appear in court or to commit a crime;
- Regularly reviewing the pretrial detention population in the jail to identify defendants who could be safely released;
- Providing accountable and appropriate supervision of defendants released with non-financial conditions; and
- Reminding defendants of their upcoming court dates.

These functions are designed to assure that those defendants who need to be incarcerated pending adjudication of their charges remain in jail, and those who do not need to take up a jail bed are released – with supervision when needed and only at the appropriate level to promote court appearances and community safety.

Best Practices in Pretrial Services

The pretrial justice community can draw on many years of practical experience and thoughtful research to support and inform their work. One of the most significant advances in pretrial services in recent years has been in the area of risk assessment. For decades, many fields, including health care, have been successfully using empirically-based risk assessment to triage cases in order to quickly identify those that can be dealt with in the least restrictive and least expensive, and still effective, ways. Unfortunately, when it comes to risk assessment of people who have been arrested, the default approach has often been to treat them in the *most* restrictive and *most* expensive way (i.e., put them in jail) and then determine later if it might be possible to deal with them differently.

Over the past decade, though, numerous studies have conclusively demonstrated that it is possible to use empirically-derived risk assessment instruments to sort defendants into different groups based on the probability of endangering the public or failing to appear in court. More and more pretrial services are using these actuarial-based risk assessment tools and providing the court with the defendant's risk assessment at the initial bail-setting hearing in court, shortly after arrest, with good results. For example, after Allegheny County, Pennsylvania, introduced its new validated risk assessment tool in 2007, the number of admissions to the jail after the initial court appearance dropped by 30 percent without decreasing public safety.

Recent research released by the Laura and John Arnold Foundation (LJAF) confirmed what many practitioners have believed for years: pretrial detention has a harmful effect on defendants. By controlling for all other factors, the LJAF studies showed that detention, even for periods as short as two to three days, actually increases the likelihood of a new criminal arrest during the pretrial period and increases recidivism among defendants for many years to come. As the pretrial detention period increases, so do these negative outcomes. For this reason alone, jurisdictions should strive to minimize pretrial jail populations as a public safety strategy.

Another advancement in pretrial services is in the area of supervision, which involves actively monitoring the conditions of pretrial release imposed by the court. These conditions can include requiring defendants to stay away from certain individuals or areas and to report in on a regular basis, either by phone or in person; drug or alcohol testing; and electronic monitoring. As part of a thoughtful pretrial services strategy, defendants can, in these ways, be supervised in the community at a fraction of the cost of keeping them in jail. For example, in a 2007 study in North Carolina, the average daily cost for those on pretrial supervision was found to be $6.04 compared to $57.30 for those in jail. Another economic benefit of supervision is that employed defendants who are in the community awaiting trial can continue to work, pay taxes, and support their families.

However, like all interventions and tools, supervision needs to be used in the most effective and efficient way. While research shows that higher risk defendants have better outcomes when they receive supervision that is matched to their identified risk levels, imposing supervision on lower risk defendants does not reduce their failure to appear and re-arrest rates, and may actually make these rates slightly worse.

A third advance has to do with the simple act of reminding defendants of their upcoming court dates by telephone, or even by just sending them a postcard through the mail, much like the long-standing practice of reminding patients about upcoming dentist or doctor appointments. Research shows that these reminders dramatically reduce failure to appear rates, and they save money. In Multnomah County, Oregon, the pretrial services program purchased an automated telephone robo-call system to remind defendants of their court dates, which reduced the failure to appear rate in that jurisdiction by 45 percent. Furthermore, a study of the impact of the system found that it saved $14.21 for every $1 spent on the automated system.

What Can Sheriffs Do to Enhance Pretrial Services?

As a counter to the NSA resolution supporting pretrial services, the commercial surety industry (e.g., bail bondsmen) has presented its own resolution to NSA's Jail, Detention and Corrections Committee for passage. The resolution asks NSA to acknowledge the contributions of surety bonds to the criminal justice system.

Beyond the perennial debate over efficacy and efficiency between commercial surety and pretrial services, passage of

such a resolution would endanger Sheriffs working in jurisdictions that operate without commercial surety. With NSA's endorsement, the surety industry will attempt to reenter these jurisdictions and exert influence over the pretrial release decision, shifting it away from risk and toward a defendant's ability to pay. Passage of the resolution would also put the NSA on the wrong side of history at a time when, nationally, criminal justice systems are recognizing and adopting evidence-based practices.

The 2012 NSA pretrial resolution makes clear that sheriffs should support "high-functioning pretrial services." If you are fortunate enough to have a high-functioning pretrial services agency in your jurisdiction, you probably already recognize its value and you do whatever you can to support its evidence-based practices. If, however, the pretrial services program in your jurisdiction is not functioning at a high level, you are not alone.

If the pretrial services agency is not functioning as well as it should in your jurisdiction, try to find out why. If the program falls administratively under the sheriff's office, as 16 percent do nationally, then this will be much easier to do. But even for pretrial services that are administratively located elsewhere, the sheriff, as an important leader in the local criminal justice system, can raise the following questions:

- Is the pretrial services agency using a validated risk assessment tool?
- What population is being targeted for risk assessment?
- How successful is the program in reaching that target population?
- If the program is not reaching 100 percent of its target population, what is preventing it from doing so?
- What population, if any, is it excluding from risk assessment?
- What is the rationale for the exclusions?
- How are the risk assessment findings presented to the court?
- Does the pretrial services agency make recommendations to the court?
- How are the recommendations tied to the risk assessment findings?
- What kinds of recommendations is it making?
- What are the most common recommendations?
- How often does the court follow the recommendations?
- Does the pretrial services agency provide supervision of defendants released with conditions?
- What supervision options does it provide?
- How are supervision levels matched to risk assessment levels?
- How are violations of pretrial release conditions handled?
- Does the pretrial services program review the detention population in the jail to identify defendants who did not get released at initial appearance (perhaps because of missing information) but who might be able to be safely released?
- Does the pretrial services agency remind defendants of their upcoming court dates?
- Does the pretrial services program track key performance and outcome data, such as pretrial release, failure to appear, and pretrial arrest rates?
- If so, what do the data show?
- Does the pretrial services agency continually integrate into its practices the latest from research and best practice standards?

By raising such questions at meetings of the criminal justice coordinating council or a similar community or professional setting, you can draw attention to what the pretrial services program is doing, and to areas where improvements are needed.

If you have no formal pretrial services in your jurisdiction, find out if any of the key functions are currently being performed by another entity (or could be). In some jurisdictions, the jail itself can perform some of the functions, such as gathering information during the booking process that can be used in formulating a risk assessment. In addition, the local probation department may be able to provide supervision services for defendants released with conditions. Finally, serve as an advocate at the state level with other sheriffs, other justice system stakeholders, and legislators for risk-based pretrial decision-making.

Conclusion

Placing a pretrial defendant in a jail bed is the most expensive way of making sure that he/she appears in court when required and is not arrested for a new offense while the case is pending. But it is rarely necessary or the most effective way. Unfortunately, in many jurisdictions, detention is the first option that is chosen, and in the case of defendants who remain in jail throughout the pretrial period, it is the only option that is provided.

The health care industry learned long ago that patients do not always need the most expensive option – being admitted to a hospital bed – to receive good medical care. Today, many tests or treatments that once required hospitalization are done on an outpatient basis or dealt with in less intrusive, and less expensive, ways. In the criminal justice system, pretrial services, when functioning at a high level, can help assure that the most expensive option – jail – is always available for those who need to be there, like Maurice Clemmons, by not incarcerating those who can be effectively managed in the community. Sheriffs can be crucial to empowering pretrial services to meet our shared goals of public safety and a fair and effective criminal justice system. ✪