

Minutes  
Feb. 12, 2016 Committee Meeting  
Prepared by: Jessica Smith, Committee Reporter

Present: Adams, Buck, Coleman, Davis, Holcombe, Kemp, McLaurin, Seigle, Smith (Reporter), Wagoner

Absent: Byrd, Huffman, Jordan, Murray, Webb

Judge Holcombe, serving as acting Chair, welcomed participants and introduced meeting's topic: pretrial release reform. The minutes from the last meeting were approved.

Reporter Smith gave an overview of NC pretrial law, using factual scenarios to highlight several aspects of NC law including:

- The twin purposes of pretrial release: mitigating the risk of the defendant's failure to appear in court and of doing harm while on release
- The procedure for the magistrate's pretrial release decision, pretrial release options, and the factors to be considered when setting conditions
- Procedure for review of bond amounts for in-custody felony defendants and the lack of statutory procedure for the same for in-custody misdemeanor defendants
- That each district has its own pretrial release policy, resulting in different outcomes depending on where a defendant is arrested
- Bond tables with recommended bond amounts are a core part of pretrial release policy and secured bonds are common
- Secured bonds have the effect of allowing those with means to secure release while similarly situated defendants with less means remain jailed
- Secured bonds only are forfeited for failure to appear, not for doing harm while on release
- The practical implications for defendants of even a few days in jail, including job loss.
- The lack of a procedure for preventative detention for the most dangerous defendants
- Lack of empirical measures to assess pretrial release risk
- Statutory provisions enacted in response to current events but without empirical data to support effectiveness

The Pretrial Justice Institute's Rachel Sottile Logvin, Deputy Director, Programs & Strategy, introduced the next session, noting that PJI has worked with states and territories facing similar issues. Logvin noted that the PJI session would focus on (1) pretrial risk assessment tools and (2) effective risk management once risk has been assessed.

Brian Taylor, PJI Digital Media Manager, clarified that risk assessment refers to data driven tools allowing users to make predictions and determine probabilities regarding pretrial risk to aid decision making. He noted that similar tools have been used for decades in industry (motor vehicle insurance, for example, where teen drivers pay higher rates because of their higher probability for claims). Taylor clarified that risk assessments function by assessing an individual and determining that the person falls into a certain risk category because he or she has certain characteristics. The tools are not intended to replace judicial discretion.

Logvin and Taylor emphasized that pretrial risk assessment is not designed to ensure that no defendant fails on pretrial release. That would be impossible and only achieved if we didn't release anyone. They suggested that a better way to think about pretrial release is to focus on

reasonable assurance that a defendant will not fail on pretrial release. Both speakers emphasized that assessment tools cannot predict behavior with 100% certainty.

Taylor put risk assessments in historical context by discussing the Manhattan Bail Project, the first attempt at pretrial risk assessment. He noted that Virginia was the first state to adopt an *empirically based* assessment tool. Since then other jurisdictions have adopted validated pretrial risk assessment tools.

Taylor explained that the ultimate goal of these tools is to use jails for high risk defendants and allow low risk defendants to be released into the community. The reason for this goal is that just a few days in jail can have a huge impact on someone's life. Research shows a huge destabilizing effect of even keeping someone in jail for 24 hours. People who stay in jail longer experience an increase in pretrial risk and worse outcomes in the criminal justice system. For those who spend the entire pretrial period in jail, they are sentenced to jail or prison at higher rates than those who are released and their sentences are longer than those who are released.

Taylor turned to Virginia's pretrial risk assessment tool, explaining that it looks at a series of defined factors such as prior failure to appear, prior violent convictions, history of drug use, and defendant's employment history. Defendants are assigned to a risk level based on the number of points assigned for each factor.

Taylor noted that many justice system stakeholders and reformers as well as the public support pretrial risk assessment. Justice system stakeholders include, The International Association of Chiefs of Police, the Association of Prosecuting Attorneys, the National Sheriffs Association, the Conference of Chief Justices, the National Association of Criminal Defense Lawyers, the Conference of State Court Administrators, the Department of Justice, the National Criminal Justice Association, and the National Association for Public Defense. Taylor also indicated that a recent national public opinion poll of voters and likely voters shows strong support for risk assessment tools over pure cash bail systems (See Slide 14).

States currently using pretrial risk assessments include: Colorado, Delaware, Hawaii, Kentucky, New Jersey, and West Virginia. Taylor noted that a number of the relevant statutes were passed in the last 5 years or so.

Taylor then turned to a discussion of the accuracy of pretrial risk assessment tools, discussing data from Denver, Colorado. The data presented strongly supported the accuracy of the tool (See Slide 16). Taylor also presented data showing that the Arnold foundation tool guards against decisions based on race (See Slide 17). Logvin noted the importance of using a tool that has been validated for racial neutrality.

Taylor explained that the Arnold Foundation's PSA-Court tool, one of the most widely used tools, developed data from millions of cases from dozens of jurisdictions, both state and federal. Key features include: 1) an interview of the defendant is not needed; 2) it only uses administrative data; and 3) it has a flag for risk of violent conduct while on release. He noted that the violence flag is incredibly important because decision-makers may be able to accept some types of failures and criminal activity, but a failure because of new violent behavior can be unacceptable. Taylor noted that Arnold intends to release this tool for free.

Taylor discussed some common concerns asserted with regard to pretrial risk assessments. First, some say that the tools don't have enough detail. He noted however that the detail is in the backend of the statistical analysis used to derive the limited set of relevant factors that

inform the pretrial release decision. He also noted that sometimes adding additional detail decreases the tools' predictability. Second, some suggest that the tools replace discretion. Taylor explained that the tools are meant to inform discretion. Third, some assert that the tools are inherently biased. In fact, data proves otherwise. Fourth, some assert that the tools undervalue the current offense. Taylor noted that the current system simply puts a money value on the classification of the new offense. Risk assessment research shows that the actual charge doesn't accurately affect pretrial risk. And finally some argue that the tools are too expensive. This argument has lost traction given that the Arnold Foundation intends to release its PSA-Court tool for free.

PJI's John Clark then spoke about risk management and supervision. Clark explained that the next logical step after assessing risk is to employ evidence-based risk management. In this respect, he noted a common misconception that imposing conditions of release on low risk defendants can help increase their already high rates of success. In fact, research shows that it is counterproductive to impose conditions on low risk defendants. On the other hand, the research suggests that putting conditions on moderate risk defendants works.

Presenting statistics (See Slide 25) Clark explained that only 8% of defendants fall in the highest risk category. He suggested that this is an important statistic to remember when we think about our jail populations. And we should ask: if the number of high-risk defendants is so low, why are there so many people in jail? Also, it is important to know that under our current system nearly half of the highest risk defendants obtain release pretrial by buying their way out of jail. Thus, when we look at our overall jail populations, high-risk individuals are bonding out while low risk individuals sit in jail.

Clark presented data showing that when we keep low risk defendants in jail during the whole pretrial period, we increase their risk of recidivism (See Slide 28). He presented data showing the same holds true for other defendants.

Turning to different types of supervision and monitoring, Clark noted that it can range from court reminders for low risk level defendants to preventative detention for high risk level defendants. In between are prescribed contact, travel restrictions, curfew, stay away orders, and GPS. He further noted that the choice of supervision and monitoring should be an individualized decision; a bond table based on offense classification is not such a decision. With respect to court reminders for low level defendants, Clark noted that research shows this is the single most effective tool.

Regarding the most appropriate conditions, Clark proffered an example of a risk matrix chart:

Pretrial Risk Category	Most Serious Charge					
	Less Serious Misdemeanor	More Serious Misdemeanor	Less Serious or Non-Violent Felony	Driving Under the Influence	Domestic Violence	Serious or Violent Felony
Lower	Recognizance Release with Court Reminder	Recognizance Release with Court Reminder	Recognizance Release with Court Reminder	Recognizance Release with Basic Supervision	Recognizance Release with Basic Supervision	Recognizance Release with Enhanced Supervision (if Released); or Detained
Medium	Recognizance Release with Basic Supervision	Recognizance Release with Basic Supervision	Recognizance Release with Basic Supervision	Recognizance Release with Enhanced Supervision	Recognizance Release with Enhanced Supervision	Recognizance Release with Enhanced Supervision (if Released); or Detained
Higher	Recognizance Release with Basic Supervision	Recognizance Release with Enhanced Supervision	Recognizance Release with Enhanced Supervision	Recognizance Release with Enhanced Supervision (if Released); or Detained	Recognizance Release with Enhanced Supervision (if Released); or Detained	Recognizance Release with Enhanced Supervision (if Released); or Detained

He describe what was involved with the different supervision levels.

No active supervision: Court date reminders.

Basic supervision: Add weekly reporting by telephone.

Enhanced supervision: Add monthly in person reporting to case manager or kiosk, and drug and/or alcohol assessment and placement in monitoring or treatment if indicated

Intensive supervision: Add GPS monitoring.

Next, Clark presented data from a county in Colorado showing that after implementation of pretrial reform, jail population didn't go down but the data shows the jail is being used for high risk defendants, not low risk ones. Additional data presented showed that when that county doubled the rate of personal recognizance release, there was no impact on pretrial failures. With respect to the ability of a secured bond to achieve the purposes of pretrial release, Clark explained that one study in Colorado showed that for all defendants except high risk ones, there were higher rates of appearance with unsecured bonds than with secured bonds. The data was similar with respect to public safety, showing that secured bonds do not result in any statistically significant increase in public safety. Clark then discussed pretrial outcomes in other jurisdictions, such as Kentucky and the District of Columbia which similarly show successful release on non-financial conditions.

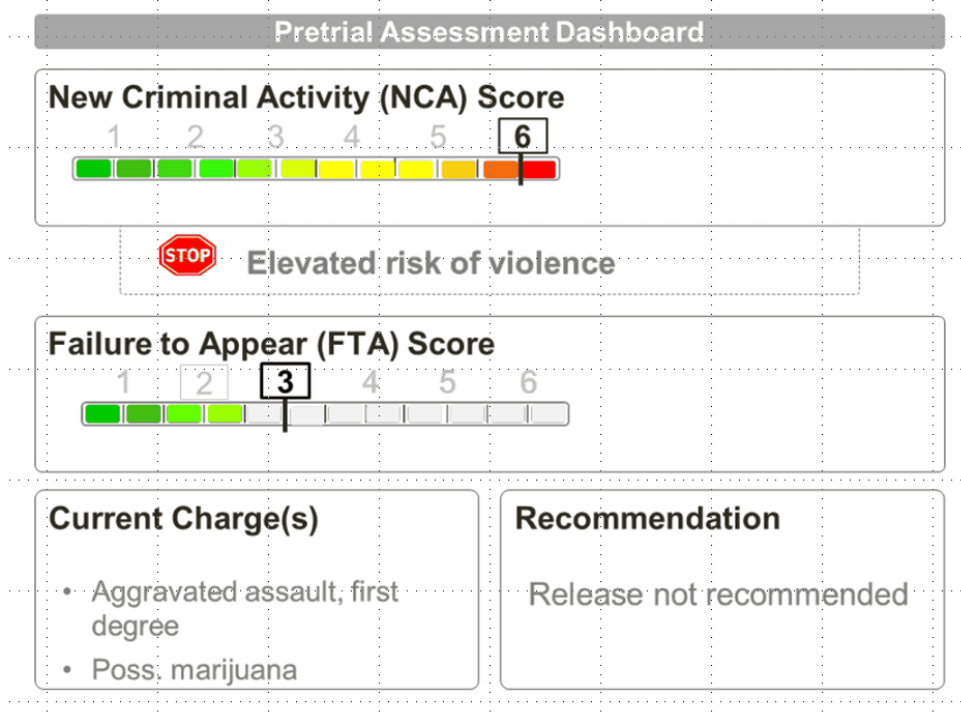
Other than the conditions imposed, Clark noted that other risk management strategies include reducing the number of required court appearances and the time to disposition.

He concluded with some benefits of evidence-based pretrial release practices, including: conserving supervision resources for those who most need them, less need for bail review hearings and the ability to address racial and ethnic biases.

The Committee next heard about Mecklenburg County's experience with the Arnold foundation's PSA-Court tool. The first speaker was Virginia Bersch, from the Arnold Foundation. Bersch described the research and development of PSA-Court. From their analysis of data from multiple jurisdictions, Arnold was able to identify 9 risk factors that were strongest predictors of failure to appear. They also found that interview-dependent factors didn't add to the power of the tool. PSA-Court predicts failure to appear and new criminal activity and has a flag for new

violent criminal activity. It is the first tool to have such a flag. The tool was developed to be race and gender neutral.

Bersch then reviewed use, including showing an image of the risk assessment dashboard that is generated for decision makers:



She went on to explain a decision making framework for using the risk assessment to set appropriate conditions, where green boxes suggest least restrictive conditions and red boxes suggest the most restrictive:

# Decision Making Framework

## » DMF Matrix

	NFA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6
FTA 1	Green	Green		Blue		
FTA 2	Green	Green	Green	Green	Yellow	
FTA 3		Green	Yellow	Green	Orange	Red
FTA 4	Blue	Green	Green	Orange Release with Conditions Level III	Red	Red
FTA 5		Yellow	Orange	Red	Red	Red
FTA 6				Red	Red	Red

Finally, she noted that neither risk assessment nor judicial discretion alone yield the most predictive results; rather the best results are obtained when risk assessment informs judicial discretion.

Next, Jessica Ireland from Mecklenburg County pretrial services spoke. Mecklenburg started looking at this issue in response to jail overcrowding problems. They began to look at who was being detained in jail and the results were shocking. They found that the 5 most common charges resulting in jail were: driving while license revoked, driving while intoxicated, paraphernalia, resisting, and possessing marijuana. In virtually all of these cases, secured bonds were imposed. The county began to ask: Is this how we want to use our jail space? Do these defendants pose such a great risk to the community that they should be detained? It became apparent that we were housing defendants simply because they couldn't pay bonds; meanwhile, risky defendants were buying release.

Analysis led to a decision to use risk-based decision-making for pretrial release and Mecklenburg County began by implementing the Virginia model in 2010. They switched to the Arnold tool in 2014. Implementation was done in collaboration with the district attorney, judges, and defense lawyers. Currently, pretrial staff do the risk assessment for the 1<sup>st</sup> appearance. Staff access relevant information through computer systems. Because a face-to-face interview is not required, the assessments can be done quickly. Assessments are done for everyone, those charged with felonies and with misdemeanors. Although magistrates are not currently using the assessment, they are trying to fix that. Once risk is assessed, decisions are made using a decision-making matrix, similar to that described by Clark and Bersch:

Release Decision-Making Matrix							
New Criminal Activity (NCA) Score							
		NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6
Risk of Failure to Appear (FTA) Score	FTA 1	WPA or UNSECURED	WPA or UNSECURED				
	FTA 2	WPA or UNSECURED	WPA or UNSECURED	UNSECURED or ADMINISTRATIVE CDPO	SECURED STANDARD / CDPO	SECURED/INTENSIVE / CDPO	
	FTA 3		UNSECURED or ADMINISTRATIVE CDPO	SECURED STANDARD / CDPO	SECURED STANDARD / CDPO	SECURED/INTENSIVE / CDPO	SECURED/DETAIN
	FTA 4		SECURED STANDARD / CDPO	SECURED STANDARD / CDPO	SECURED/INTENSIVE / CDPO	SECURED/DETAIN	SECURED/DETAIN
	FTA 5		SECURED STANDARD / CDPO	SECURED INTENSIVE / CDPO	SECURED/INTENSIVE / CDPO	SECURED/DETAIN	SECURED/DETAIN
	FTA 6				SECURED/DETAIN	SECURED/DETAIN	SECURED/DETAIN

Ireland noted that the option of detaining a defendant is not available under current North Carolina law.

In summary, Mecklenburg uses PSA-Court to assess risk and the decision-making matrix for managing risk. Ireland then reviewed the statistics establishing the program’s effectiveness (See graphs in PowerPoint Presentation). Overall, Mecklenburg has seen a significant shift away from monetary requirements to secure release to non-financial release options, with no negative implications on public safety. Specifically, in 2000 93% of released defendants did not commit another offense and 98% showed up for their court dates. Meanwhile, they have experienced a 45% decrease in the jail population. Another major implication is that the county has canceled plans to build a new jail.

When asked about the difficulty of implementing change, Ireland indicated that the issue was initially contentious. However, now that hard data shows the success of the program, things have changed.

Ken Rose, Pretrial Coordinator from the Virginia Department of Criminal Justice Services spoke about Virginia’s experiences with pretrial release reform, the VPRAI tool. Rose noted that like North Carolina, not all Virginia counties have pretrial services staff. Rose noted that in 2005, Virginia was the 1<sup>st</sup> state to adopt an evidence-based risk assessment tool. The Virginia tool looks at 8 factors and assigns points accordingly: primary charge type a felony (one point); pending charge (1 point); criminal history (1 point); 2 or more failures to appear (2 points); 2 or more violent convictions (1 point); length of residence less than one year (1 point); not employed 2 years/not primary caregiver (1 point); and history of drug abuse (1 point). He noted that most of these are static factors (things in the past that you can’t change) but some are dynamic, such as substance abuse. Other emerging tools are seeking to remove dynamic factors because incorporating them requires a face-to-face interview. Rose explained that risk levels are assigned based on the total numerical risk score.

Rose discussed lessons learned with the initial rollout of their tool. 1<sup>st</sup>, it would have been better to include all stakeholders in the process. 2<sup>nd</sup>, they did not do a good job of educating stakeholders about the tool. And 3<sup>rd</sup>, they did not help decision-makers understand how to best

use the risk assessment tool in their decision-making. And finally, there was an issue of quality assurance and fidelity.

Virginia's next step is to implement risk management guidelines. In this respect, they learned that when you load a person up with conditions you actually get worse outcomes. They are now looking at ways to avoid these results, and moving away from using charge category as a guide to the appropriate conditions of release. In response to a question about pushback on planned reforms, Rose noted that the bail bondsmen have been opposed to some changes. Another questioner asked if Virginia had experienced a bad high-profile case that called the reforms into question. Rose said that the state had not experienced that and that in fact empirically based decisions can make decision-making easier in high-profile cases.

Acting Chair Holcombe reminded the group that was not a stakeholders meeting. However, he granted time to 2 people in attendance.

Brian Shipwash, elected Clerk of Court from Davidson County asserted that the bail bond system works throughout North Carolina. He indicated that he had analyzed pretrial release programs and was eager to present his data to the Committee. He also asserted that PJI is focused on the total elimination of cash bail and that PJI had not allowed him to attend one of its conferences in San Diego. He advocated that instead of additional taxpayer-funded resources or executive branch intrusion, we should implement common sense solutions to pretrial release issues. Shipwash stressed that there was currently a "battle" between pretrial release and bail. He asserted that pretrial programs cannot insure lower jail populations.

Jeff Clayton, Policy Director for the American Bail Coalition, located in Maryland and Colorado, spoke on behalf of the bail agents. He suggested that a pretrial risk management matrix was akin to federal sentencing guidelines. He suggested that there is a role for secure conditions of pretrial release and that he advocated for that during the Colorado reform. He suggested that in Jefferson County, Colorado things were done wrong and pretrial confinement rates went up. He concluded by remarking that research shows that surety agents have a positive impact on pretrial release.

At the conclusion of the meeting, the Commissioners unanimously agreed that the Committee should continue to examine this issue.