Enhancing Pretrial Justice While Reducing Criminal Court Caseloads
The Purpose of Bail

1. Protect the integrity of the court process
2. Protect the public
3. Protect against punishment prior to conviction
Defining “Effective” Bail Decisions

“Effective bail decisions would foster the release of as many defendants as possible before trial, while maintaining suitably low failure to appear and rearrest rates.”

(John Goldkamp and Michael Gottfredson, Policy Guidelines for Bail: An Experiment in Court Reform.)
Bond Schedules

• Sometimes called “standard bond”

• The predominant mechanism for assigning bail according to the National Pretrial Justice Survey
Type of Release

![Graph showing Type of Release over time.](image-url)
## Length of Stay

<table>
<thead>
<tr>
<th>Bond Status</th>
<th>Avg. LOS in Jail</th>
</tr>
</thead>
<tbody>
<tr>
<td>Posted</td>
<td>12 days</td>
</tr>
<tr>
<td>Not-Posted</td>
<td>121 days</td>
</tr>
</tbody>
</table>

- For felony defendants in 40 of the nation’s 75 largest jurisdictions. Source: Bureau of Justice Statistics, State Court Processing Statistics, 2006
COSCA White Paper (2012)

• “...Economic status (is) a significant factor in determining whether a defendant is released pending trial, instead of such factors as risk of flight and threat to public safety.”

• “In short, ‘for the poor, bail means jail.’”
Implications of Bail

• Maintain employment, family ties, residence, etc.
• Assist Counsel
• Access to treatment/services
• Protection of victim/public
• Public costs of detention
• Disruption of case process
• Harsher dispositions
Actuarial Risk Assessment

- Evidence-based
- Data Driven
- Used for decades in commerce
  - Health, education, national security, etc.
Risk Assessment
Auto Insurance

- **Age**
- Distracted driving
- Peer(s) in vehicle with driver
- Low driving skills
- Low compliance with traffic laws
Risk Mitigation

Auto Insurance

- Drivers education
- Restrict nighttime driving
- Prohibit peers as passengers
- Strict enforcement
  - Seat belts, texting, etc.
Risk Assessment
Health

Heart Attack
• Age
• Smoking
• Family history
• Obesity
• Sedentary lifestyle
• Diabetes
• Hypertension

Cancer
• Age
• Smoking
• Family history
• Obesity
• Sedentary lifestyle
• Sunlight
• Diet
Risk Mitigation

Health

- Exercise
- Medication
- Smoking cessation
- Improved diet
Risk Assessment
Pretrial Justice

- Statistically measures probability of success/failure of the two factors to consider for bail:
  - Appearance in court
  - Community safety
How Does it Work?

• Data sample is drawn and examined
• Shared characteristics measured for predictive strength
• Risk level assigned according to probabilities (low, medium, high)
• Model is tested to prevent unintended bias
Pretrial Risk Factors

- Other pending cases
- Criminal history
- Failure to appear history
- Residence
- Employment
- History of substance abuse or mental illness
Pretrial Risk Mitigation

- Case manager supervision
- GPS supervision
- Drug testing
- Stay away orders
- Curfew
- Treatment/therapy
- Preventive Detention
Probability of Failure by Risk Level

- **High**
  - Probability of Rearrest
  - Probability of FTA

- **Above Average**
  - Probability of Rearrest
  - Probability of FTA

- **Below Average**
  - Probability of Rearrest
  - Probability of FTA

- **Low**
  - Probability of Rearrest
  - Probability of FTA

Legend:
- Red: Probability of Rearrest
- Blue: Probability of FTA
Improving Pretrial Justice (COSCA)

- Analyze state law and work with law enforcement agencies and criminal justice partners to propose revisions that are necessary to
  - Support risk-based release decisions of those arrested;
  - Ensure that non-financial release alternatives are available and that financial release options are available without the requirement for a surety

Improving Pretrial Justice (COSCA)

• Collaborate with experts and professionals in pretrial justice at the national and state levels

• Take the message to additional groups and support dialogue on the issue

Improving Pretrial Justice (COSCA)

• Use data to promote the use of data; determine what state and local data exist that would demonstrate the growing problem of jail expense represented by the pretrial population, and that show the risk factors presented by that population may justify broader pretrial release.

Improving Pretrial Justice (COSCA)

- Reduce reliance on bail schedules in favor of evidence-based assessment of pretrial risk of flight and threat to public safety.

National Symposium Recommendations

• Expand the use of citation releases
• Risk assessment in place of bond schedules
• Prosecutorial review of all cases prior to initial appearance
• Defense counsel at initial appearance
• Trained Judicial officers presiding at the initial
• Existence of pretrial services program
• Preventive detention
Call for Pretrial Reform
Since 2010
Multi-Jurisdiction Pretrial Risk Assessment Studies

- Virginia – 2003, 2009
- Federal - 2009
- Ohio – 2009
- Connecticut – 2009
- Kentucky – 2010
- Colorado – 2012
- Florida – 2012
- Michigan – in progress