

PRETRIAL JUSTICE 101: IT'S MORE THAN AN ASSESSMENT TOOL!

Michelle Butts

Sue Ferrere

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LEGAL AND EVIDENCE-BASED PRETRIAL JUSTICE

What is the legal framework?

How does research inform practice within that framework?

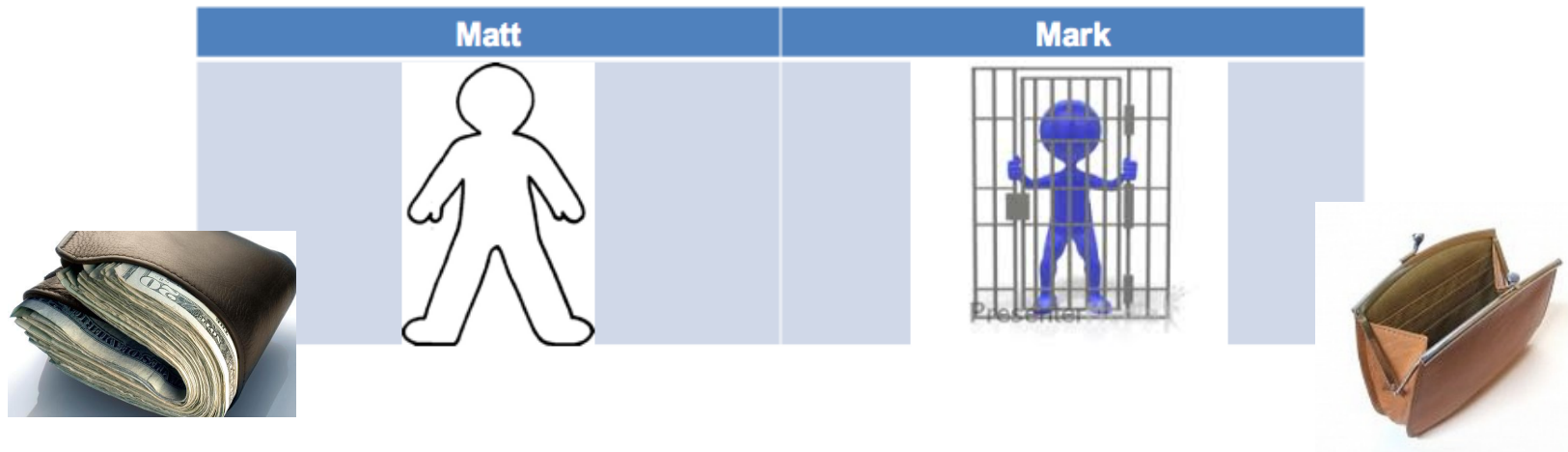
History

- Statute of Westminster (1275)
- Bail – process of release
- *Bailable* – release
 - Personal sureties
 - Unsecured bonds
- *Not bailable* – detain
- Judiciary Act of 1789 - bail/no bail scheme
- 1898 First commercial surety opens in U.S.

See *Fundamentals of Bail* (Tim Schnacke, 2014)

Money Distorts Bail

Past	Present
Bailable = out of custody	Bailable = should be out of custody, but many are in
Un-bailable = in custody	Un-bailable = should be in custody, but many are out



Central Legal Principles

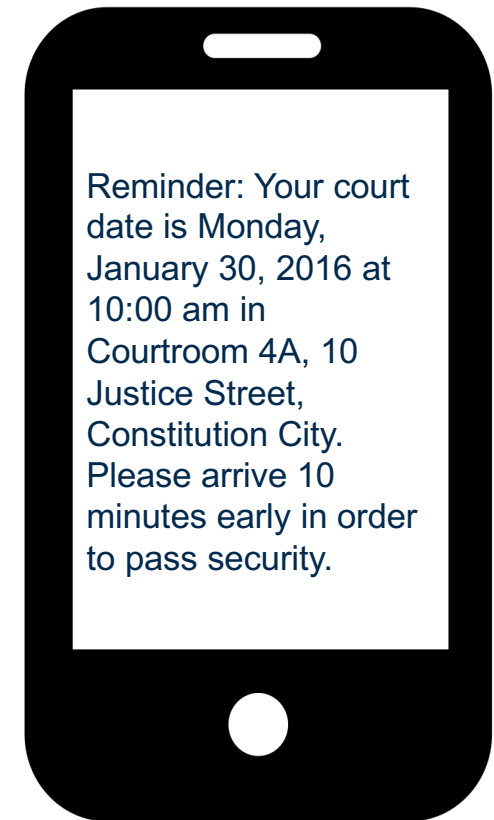
- Limited purposes of bail decision
 - Flight/Court appearance
 - Public safety
- Individualized decision making
- Release is the norm
- Excessiveness/Least restrictive conditions
- Presumption of innocence
- Equal protection

RESEARCH

Promoting successful pretrial outcomes

Supporting Release: Court Date Notification

- Multiple studies of effectiveness in improving court appearance rates by 30-50%
- Live caller, recording or text messaging



Supporting Release

- Even brief pretrial incarceration does harm
- Case management of pretrial conditions
 - Increases court appearance rates
 - Research shows that:
 - Likely to succeed: little benefit or made worse by conditions
 - Moderate likelihood of success: benefits somewhat from support
 - Lower likelihood of success: *benefits the most from support*
- More research needed on dosage/frequency

Monetary Bail Bonds

- *Unsecured* bonds as effective as *secured* bonds for court appearance
- Increases jail bed usage
- Only legal obligation is to court appearance

See *Unsecured bonds: The as effective and most efficient pretrial release option*.
Pretrial Justice Institute, 2013.

PRETRIAL ASSESSMENT

In context

Pretrial Assessment

An Actuarial Tool

It gives probability of success/failure for a *group of like defendants* and not any one defendant. It is limited to information relevant to pretrial decision making.



"In this case, a new high score is not a good thing."

Example: VPRAI-R

Virginia Pretrial Risk Assessment-Revised

Factor	Points (Weight)
Charge is felony drug, theft or fraud	3
Pending charge(s)	2
Criminal history	2
Active community supervision	2
Two or more Failures to Appear	1
Two or more violent convictions	1
Unemployed at time of arrest	1
History of drug abuse	2

Level (Score)
1 (0-2)
2 (3-4)
3 (5-6)
4 (7-8)
5 (9-10)
6 (11-14)

Example: VPRAI-R

VPRAI-R Score	Pretrial Success Rate	Court Appearance Rate	Public safety Rate	Technical Compliance Rate
0-2	94%			
3-4	90%			
5-6	85%			
7-8	79%			
9-10	71%			
11-14	63%			

WHAT'S POSSIBLE?

An intentional pretrial system

Pretrial Justice – 3M's

- Maximize court appearance
- Maximize public safety
- Maximize pretrial liberty

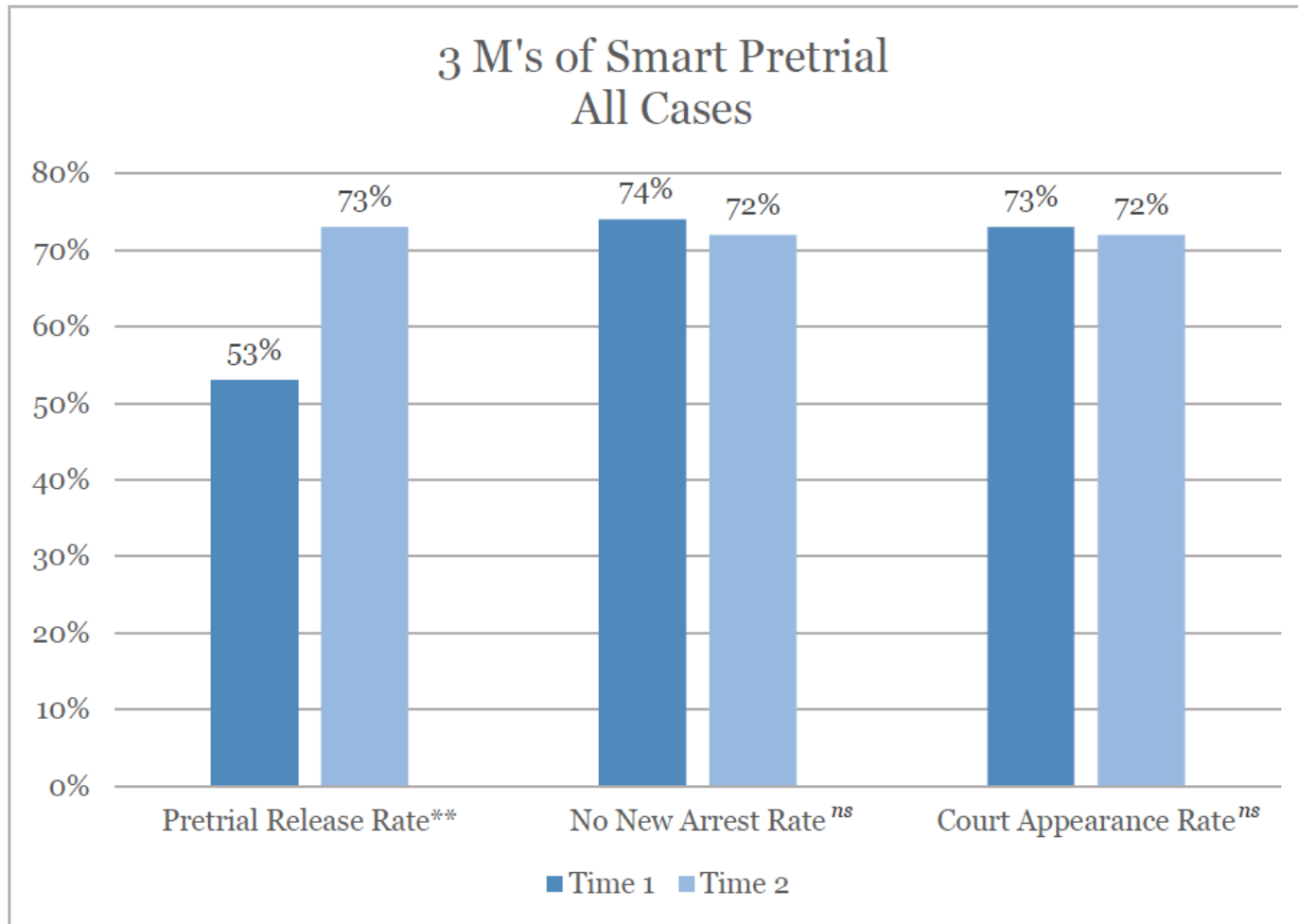


...simultaneously

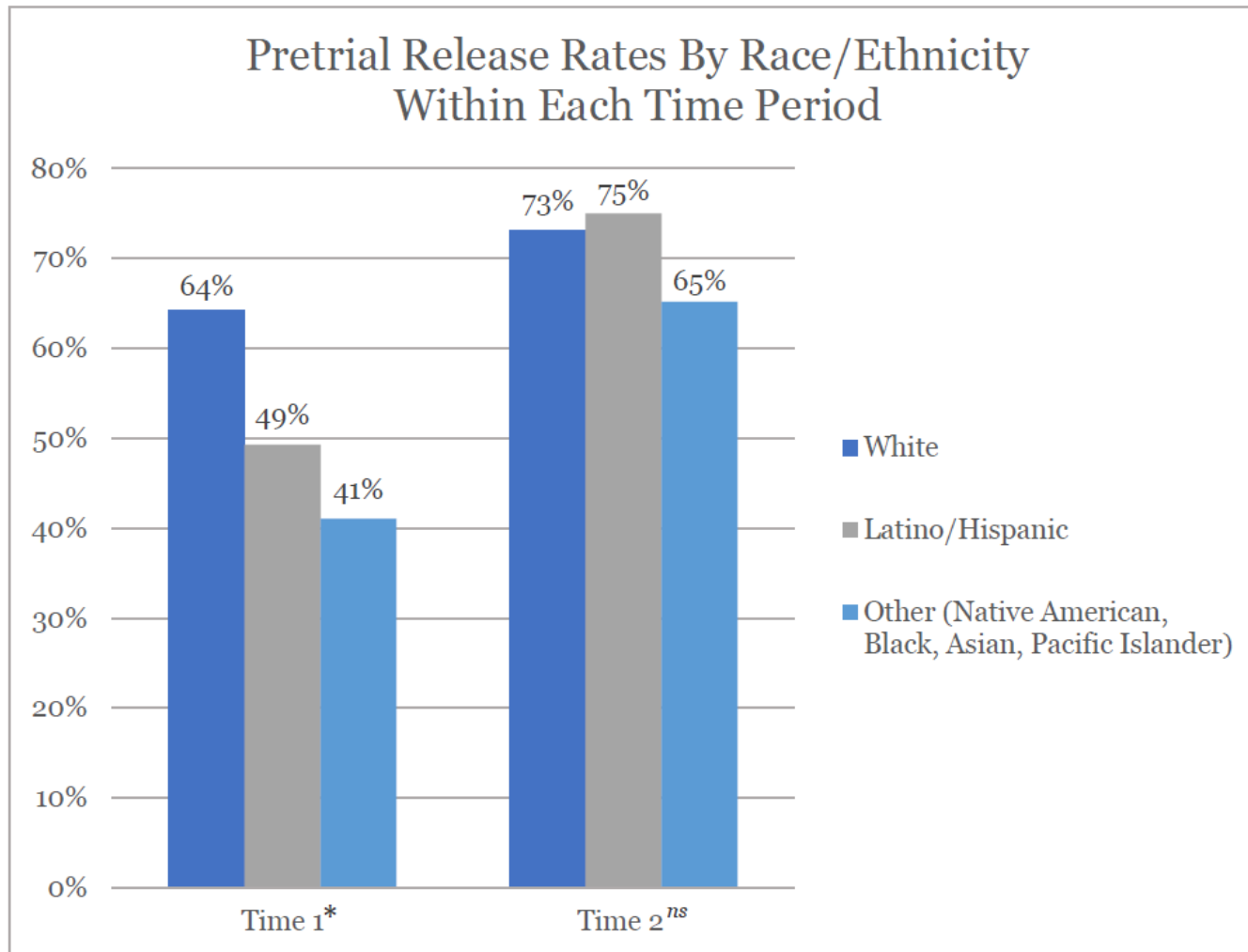
Be Smarter on Pretrial

- The **immediate release** of eligible persons on citations.
- **Actuarial pretrial assessment** for likelihood of flight and danger to the community.
- The **early review of charges** by a seasoned prosecutor.
- The **presence of defense counsel** at the earliest hearing that could result in pretrial detention.
- Detention occurs through an adversarial hearing where the individual is provided **full due process**.
- Court reminder protocols, community-based supports, and/or diversion for released individuals.

More effective pretrial system: Yakima Co., WA



More equitable release: Yakima Co., WA



New Jersey

- Effectively eliminated money bail in 2017
 - Pretrial assessment
 - Preventive detention with due process protections
 - Statewide pretrial services
- Of 44,000 cases in 2017, only **44** were required to post money
- Pretrial jail population *down* 26%
- Crime rate (incl. violent) *down*

GETTING STARTED

Know your local legal framework

Where to look

- Constitution
- Statutes
- Court rules
- Case law

Concepts to look for

- Right to bail
- Preventive detention
- Pretrial assessment
- Money bail

Assess your system: is it smart?

Know your numbers

- 3 M's
 - Release rate
 - Public safety rate
 - Court appearance rate
- Pretrial jail population
 - Proportion of total
 - Length of stay
 - Role of money

See Measuring what Matters (NIC, 2011)

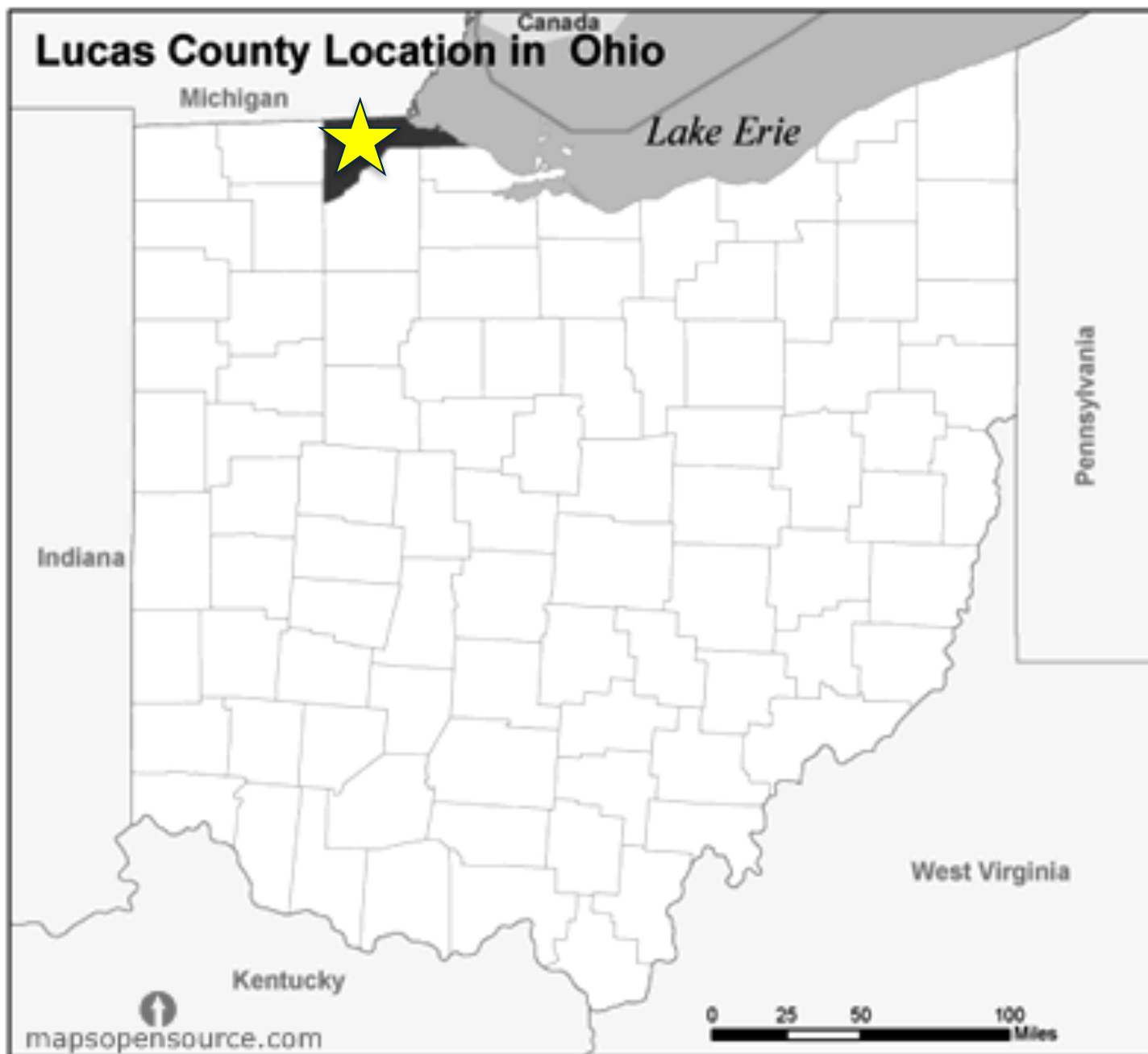
Common pitfalls

- Uneven stakeholder involvement
- Over-conditioning/supervising
- Mis-application of assessment

LUCAS COUNTY, OHIO

Practical use of pretrial evidence-based practices





How did we get there?

- Need for a new jail
 - Dealt with overcrowding for decades
 - Subject to a Federal Court Order since 1978
 - In need of costly repairs
 - Inefficient

First Steps Toward Reform

Study about feasibility of new jail



Who was in our jail



Why were they in our jail

Risk Assessment Implementation

- Implemented an objective, evidence-based risk assessment on January 12, 2015
 - Laura and John Arnold Foundation's Public Safety Assessment (PSA)

Public Safety Assessment

- Relies on common factors (charge, court appearance history, CJ status, age) to predict three pretrial failure types
 - Failure to Appear (FTA)
 - New Criminal Activity (NCA)
 - New Violent Criminal Activity (NVCA)
- Generates two 6 point scales (FTA & NCA) and flag for elevated risk of violence

Public Safety Assessment

- Completed on nearly all defendants booked

≈ 14,000
per year

- No interview needed
- Include juvenile record for those under 21 years of age

Public Safety Assessment

- PSA *measures* risk, use a Decision Making Framework (DMF) to *manage* risk
- Customized to be consistent with Ohio bail rules and statutes and local practices and preferences
- Three recommendation types:
 - Release
 - Release with Conditions
 - Release Not Recommended

Public Safety Assessment

- DMF guides recommendations intended to:
 - Detain, when allowable, highest risk defendants
 - Release moderate and high risk defendants with interventions and services targeted to mitigate risk
 - Release low risk defendants with minimal or no conditions

Public Safety Assessment

- Not sole consideration
- Should not replace judicial discretion
- Integrated into Federal Court Order to guide FCO releases

How often do Judges follow the PSA recommendation?

- Unusually high risk population due to past poor practices

49.69%

- Judges have taken more risk and released more people

13.8%

PRETRIAL BOND SUPERVISION

Risk-based supervision

Electronic Monitoring

Graduated Responses

Pretrial Bond Supervision

- Began supervision by risk level on 12/14/15
 - Low
 - Moderate
 - High
- Court date reminder phone calls
- More meaningful office visits with High risk defendants

55 – 60%
supervised are
High risk

Pretrial Bond Supervision

- **SJC Strategy:** Created and implemented Intensive Supervision Unit



Pretrial Bond Supervision
+ Electronic Monitoring

- Implemented supervision by risk level in EM 4/19/17

Pretrial Bond Supervision

- Awarded SMART Pretrial Grant through PJI and the Bureau of Justice Assistance
 - Reduce unnecessary detention caused by technical violations
 - Graduated Responses

Findings of a Study Done by PJI on Pretrial Supervision

- PSA successfully differentiates risk levels
 - As supervision level , success rates 
- Compliance with conditions of release is correlated with outcomes of success and failure
- Violations and failure occur early in the life of the case
- Most prominent failure type = Failure to Appear

WHAT DID WE LEARN?

Challenges & Lessons Learned

Challenges to Implementation of Pretrial EBP

- Educating pretrial justice system about changes
- Judicial resistance
- Overwhelmed pretrial staff
- Collection and analysis of data

Lessons Learned from Implementation of Pretrial EBP

- Need system-wide pretrial justice reform for greatest results
- Commitment from stakeholders
- Be patient; change doesn't happen overnight
- Repeat opportunities to educate and train

NOW WHAT?

Next Steps

- Evaluate effectiveness of pretrial program
- Case processing
- Continuous evaluation of pretrial jail population
- Front end of the system

Contact

sue@pretrial.org

MButts@co.lucas.oh.us

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