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*