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Home

Pretrial Risk Assessment and Case Classification: A Case Study Control [1]

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THE PRIMARY RESPONSIBILITIES of the Lake County Pretrial Services Program are to provide defendant information to the court relevant to the purposes of the bond decision and to supervise a defendant's compliance with any and all conditions of bond as so ordered by the court. Given these duties, assessing pretrial failure risk is an essential part of both the bond recommendation process and the supervision classification of the defendant. Indeed we are to some extent obligated to determine—as accurately and consistently as possible—pretrial risk and, in the case of supervising defendants in the community, classify according to that risk. One method of achieving a reliable and impartial assessment is to introduce into the recommendation and classification procedure an objective, independent measure of risk. The intent of the current article is to describe our experience in the development and application of such a measure.

back to top

Pretrial Services in Lake County, IL: A Brief History

The Pretrial Services Program of the 19th Judicial Circuit, Lake County Adult Probation Department began operation in October 1983 in response to the County's jail crowding problem. The initial function of Pretrial Services was to provide the court with verified information regarding the defendant's personal, social, and criminal background as it pertains to the issue of bond. These "bond reports" assisted the judge in making a more informed bond decision; in short, to identify and recommend to the court those defendants who could be considered for a personal recognizance bond.

At the time, bond recommendations were based on a "subjective" method, i.e., they were predicated on the experience, knowledge, and perceptions of the bond report investigator. One of the inherent problems of subjective risk assessments is that they can lead to inconsistent and disparate bond recommendations. In a very real sense, a group of six pretrial officers could come up with six dissimilar bond recommendations for the same defendant when using a subjective approach. What you have then is not a uniformed bond recommendation process, but one that is uneven at best. [2]

In February 1986 the Pretrial Bond Supervision (PTBS) component was added to the overall responsibilities of Pretrial Services. Pretrial Bond Supervision is an alternative to the traditional release mechanisms of personal recognizance and cash bonds; it provides for the court a "supervised release" option that involves monitoring defendants in the community to assure court appearance and minimize the risk of pretrial misconduct.

In the earlier years of PTBS, *all* defendants were seen several times a week at their residence. However, our experience with PTBS suggests defendants do not all need the same level of supervision in order to get them back to court and remain arrest-free: some need more intense supervision and others less. Enter the premise of case classification: since some defendants are more "at-risk" than others, not all defendants demand the same degree of supervision in order to accomplish Pretrial's objectives. In addition, the continued overall growth in the number of defendants placed on PTBS affected our ability to maintain maximum supervision standards on all clientele. Accordingly, not only would a case classification system help create differential levels of supervision, helping to alleviate the apparent "over-supervision" of clients at the pretrial release stage, but it would also more prudently allocate Pretrial's resources. To deal with an expanding PTBS population and recognizing that not all defendants need to be supervised at the same level or intensity, an in-house case classification system was developed in 1990.

The most immediate and direct impact of our self-devised case classification system was to reduce the number of required field contacts, which, of course, addressed the ever-increasing size of the PTBS workload. [3] However, it did not fully actualize the underlying principle for this reduction—that defendants do not all have the same degree of risk and therefore do not need to be seen at the same rate. We had no idea if our levels of supervision were in any way empirically associated with differential levels of pretrial risk. Without an independent reference, differential levels of supervision were predominantly *decided* upon by the "current charge." [4] Thus, for example, any defendant charged with a "violent" crime or a "Class X" felony would be automatically classified as a "maximum-level" case for the purposes of supervision regardless of actual level of risk.

This somewhat speculative and *a priori* method of constructing a case classification method has its faults: classifying defendants not according to an objective measure of pretrial risk but based upon the legal classification and nomenclature of the current charge. In a sense, we were supervising the charge and not the person. Moreover, there was the potential to over-supervise low-risk defendants and under-supervise high-risk defendants. What we felt we needed to do was come up with an empirical instrument to objectively measure pretrial failure risk and classify accordingly.

back to top

Why Objective Risk Assessment?

Besides allowing for a more rational allocation of our program's resources and matching supervision strategies to the degree of risk, the objective risk assessment approach allows us to ask the question: Are we truly measuring what we say we are measuring? In other words, objective methods can be empirically validated.

Objective risk assessment also is associated with below-capacity jail populations and to fewer "cash bond" recommendations being made (Bureau of Justice Assistance 2003). For example, pretrial programs that assess the risk of pretrial failure with a subjective method are twice as likely to operate in a court system that has an over-capacity jail population than those programs that only use an objective risk assessment instrument or "point scale." [5] In addition, when compared with objective methods, subjective risk assessments result in a greater proportion of "cash bond" recommendations, which would most likely have the effect of increasing the size of jail populations. [6] A comparison of the type of bond recommendations made pre- and post-implementation of Lake County's point scale reveals a similar observation. As Table 1 illustrates, the proportion of non-financial release recommendations being made since the introduction of the objective risk assessment instrument has been continuously greater than before its implementation. These data suggest that objective risk assessment produces more release recommendations.

Another potential benefit of objective risk assessment is that more defendants may be released on bond with non-financial conditions rather than with financial conditions of release. Table 2 illustrates that since the implementation of the point scale, the proportion of defendants released without having to post money bail has persistently gotten greater. Given at- and over-capacity jail populations and economic constraints—from both the "system's" perspective as well as the defendant's— a pretrial program that objectively assesses risk may be more effective in maximizing non-financial release options.

Perhaps one of the most important reasons to practice objective risk assessment is that it standardizes and makes transparent the risk assessment decision-making process. Uniformed and consistent bond recommendations are made by applying the same set of objective criteria, thus minimizing arbitrariness, individual bias, and systemic disparity. The pretrial practitioner is taking into consideration the same factors that everyone else is taking into consideration and coming up with a similar bond recommendation. This quality of sameness or likeness would seem to be related to at least an operational definition of justice: persons with similar backgrounds who have been charged with similar crimes should receive similar bonds, regardless of who is making the recommendation.

Finally, the practice of objective risk assessment is a basic principle of the Evidence-Based Practice (EBP) initiative, which is beginning to emerge as a conceptual and practical framework in which pretrial services' programs can more effectively and efficiently operate. The utilization of procedures and interventions that are supported by empirical research and driven by a strong commitment to the legal precepts that define "pretrial justice" has been referred to as "legal and evidence based practices" (see VanNostrand 2007). With the Lake County Adult Probation Department being an EBP site for the National Institute of Corrections since 2004, the application of evidence-based practices at Pretrial Services seemed to be a logical extension of what was being practiced in the Department. By applying relevant principles of EBP—assessing actuarial risk and prioritizing supervision based on level of risk—the nature of pretrial decision-making shifts from one based on opinion and subjectivity to one grounded in research and objectivity.

back to top

The Lake County Pretrial Risk Assessment Instrument

The Lake County Pretrial Risk Assessment Instrument (LCPRAI) was adapted from the Virginia Pretrial Risk Assessment Instrument (VanNostrand 2003). In March 2004, official contact was made with the author of the "Virginia Model," Marie VanNostrand, Ph.D., of Luminosity, Inc.

Generally speaking, the Virginia Model is a research-based, statistically-validated pretrial-specific risk assessment tool that provides a standardized foundation for making consistent and uniform bond recommendations; *the scale does not make a recommendation per se but identifies the degree or level of pretrial failure risk that can then be factored into the bond recommendation decision*.

Officially implemented in March 2006, the first objective of the Lake County Pretrial Risk Assessment Instrument (LCPRAI) was to bring consistent uniformity in bond recommendations. The introduction of a research-based and empirically-validated pretrial risk assessment instrument helped to standardize the process of making a bond recommendation *by factoring into this process the same critical variables, thereby generating more consistent and uniform bond recommendations*. The second aim of risk assessment was to establish a case classification system that would prioritize bond supervision in conjunction with the measured level of risk: high-risk defendants get high-risk supervision; low-risk defendants get low-risk supervision. [7] The LCPRAI provided the empirical foundation for such a case classification system.

back to top

The Training Experience

Training in the appropriate use of the Lake County Pretrial Risk Assessment Instrument is an indispensable condition for its successful application. Proper scoring, utilization, and interpretation of the risk instrument scores are essential and without these procedures in place, the validity and reliability of the instrument is compromised.

Generally speaking, Lake County staff had no previous training on the use of an objective risk assessment instrument, let alone specifically on the Virginia model. Risk factors carry precise meanings and must be understood and applied in an exact and consistent manner, but pre-training observations indicated that officers differed in their interpretations and definitions of the risk factors. What does failure-to-appear risk mean? How does one define “active” community supervision? What constitutes a “history of drug abuse?” One officer might consider a “pending charge” as part of the current charge or score the pending charge as an “outstanding warrant.” Definitions of the risk factors had to be clarified and demonstrated using examples.

Officers also had varied interpretations of the “additional risk considerations.” For example, clarification was necessary for the operational definition of “juvenile criminal record.” Moreover, even though additional risk considerations are *not* part of the objective point scale, some officers would *add* point(s) to the risk factor score if one or some of the additional risk considerations were marked. On the other hand, if there were mitigating risk considerations indicated, some officers would *subtract* points from the objective risk factor score.

Our training experience clarified to us the difficult nature of making *consistent and uniform* bond recommendations. Perhaps the most important pre-training observation was that the group was “all over the map” when it came to making bond recommendations. Pre-training exercises revealed an excessive amount of disparity in recommendations for the same case. In one scenario, 12 staff members were presented with the same defendant case information yet they came up with 12 different bond recommendations. Earlier group discussion revealed our dichotomous leanings: half the staff of 12 was perceived as having a conservative, “cash-bond” orientation while the other half was perceived as having a liberal, “pro-defendant” orientation, thus most likely helping to contribute to disparate recommendations.

The goals of the training exercises were to (1) standardize the process of making a bond recommendation by considering the same risk factors and (2) reduce the observed disparity in order

to make consistent and uniform recommendations: defendants with similar risk factors charged with similar crimes should receive similar bond recommendations. Staff training also included a comprehensive discussion of the State's bail statutes, the Illinois Pretrial Services Act, NAPSA Release Standards, and pretrial risk assessment research, all of which provided a necessary foundation for successful implementation. Basic bond report investigation skills—information gathering, verification—were reviewed given the presumption that risk assessment is only as good as your investigation.

Post-training observations indicated that once officers were trained in the proper definitions and use of the nine objective risk factors, the additional risk considerations, and the mitigating factors, the overall result was a reduction in bond recommendation disparity; a consensus emerged regarding what factors are the "critical" ones to take into consideration when making a bond recommendation. In short, the use of an objective risk assessment instrument helped to standardize the bond recommendation process and ultimately produced more objective, uniform, and consistent bond recommendations.

back to top

Levels of Supervision: Old and New

Prior to implementation of the new case classification system based on the risk assessment instrument, supervision consisted of (1) home visits, (2) phone contacts, and (3) office contacts. The supervision caseload was divided into two categories: Level I and Level II. The "old" contact standards are described in Table 3.

The proposed system includes three levels of supervision described in Table 4.

Field Visit—a field visit means a visit to the defendant's residence by a Pretrial Officer when contact is made with the defendant. Attempts to complete a home visit should be documented; however, an attempt alone does not satisfy the field visit requirement. For minimum supervision a field visit for residence verification is required within the first 2 weeks of supervision and within 2 weeks of a defendant reporting a change of residence.

Office Visit—an office visit means a face-to-face contact between the Pretrial Officer and the defendant at the pretrial office, courtroom, or surrounding area. Office visits scheduled by the supervising Pretrial Officer must be at a time when the supervising Officer can complete a face-to-face visit with the defendant.

Phone Call—a phone call is a call placed by the defendant to the Pretrial Officer supervising the case. The defendant may speak with the Pretrial Officer or leave a message indicating their name and, at a minimum, their next court date.

Court Reminder Call—a court reminder call is a call placed by the Pretrial Officer to the defendant to remind him or her of their next court date. This call may be waived if the defendant was reminded in person during a recent field visit or defendant initiated phone call.

Comparing "old" levels of field supervision with "new" levels of field supervision, we can calculate the following: under the old standards and assuming 300 Level I's and 50 Level II's, a total of 1,250 field contacts would be expected. Under the proposed system and assuming 200 maximum, 100 medium, and 50 minimum cases, a total of 550 field contacts would be expected. [8] This change results in a *fifty-six percent reduction* in the number of field contacts when compared to the former subjective case classification system, thus allowing for a more efficient strategy of

monitoring defendants in the community.

One question that could be raised at this time is the impact that this change may have on violation rates; specifically, would a reduction in supervision levels increase violation rates? From the inception of bond supervision, "pretrial failure" has been defined as a defendant's termination from supervision as a direct consequence of either (1) failing to appear for a court appearance which resulted in a bench warrant being issued, (2) obtaining a new arrest resulting in the defendant's jail incarceration for the new charge, or (3) committing a "technical" or rule violation (positive drug test; curfew violation) which resulted in a bond revocation and a return to jail custody. The problem with this definition is that it doesn't capture pretrial misconduct *occurring while the defendant was being supervised but did not result in the defendant's termination from PTBS*. For example, some defendants would fail-to-appear, surrender on the bench warrant, and be returned to PTBS; others might "pick up" a new arrest while under supervision, and some would get remanded on technical violations only to be returned to PTBS after their jail admonishment. These violations were not factored into the original operational definition of pretrial failure.

In order to get a more accurate measure of violating behavior by PTBS defendants, starting in July 2007 these "process" violations were included in the measurement of pretrial failure. [9] It was thought that this moreinclusive redefinition of pretrial failure might increase violation rates. However, despite officers cutting field supervision contacts in half and enlarging the measure of pretrial failure, Table 5 illustrates that this has not been the case. Since the implementation of the "new" levels of supervision, aggregate violation rates have actually *declined* and, with the exception of the new-arrest category, violation-specific rates have been almost *identical to or slightly lower* than the 2005 violation rates. What this suggests is that intensive and identical supervision on all PTBS clients is not an effective use of resources; that differential levels of supervision based on pretrial failure risk, least restrictive conditions, and individualization of bail will produce similar, if not the same, pretrial failure outcomes.

back to top

Summary and Conclusions

Lake County's example of introducing objective risk assessment into the bond report investigation and recommendation process illustrates some important points. If one of the goals of a pretrial services program is to maximize pretrial release with non-financial conditions of bond, our experience supports the 2003 Pretrial Survey finding: objective risk assessment produces more non-cash release recommendations as well as a greater proportion of defendants being released without having to post a cash bond.

Pre-training exercises revealed the disparity and inconsistency in bond recommendations made by staff when using subjective assessment. However, when utilizing the same objective risk factors, disparity was reduced and more consistent bond recommendations were made. Besides exposing the personal biases and inadequacies of subjective assessment, the training experience was essential to understanding objective risk assessment in general and its specific application. Without proper training from a qualified source, the integrity and credibility of the instrument is compromised.

The Lake County Pretrial Risk Assessment Instrument also formed the basis for a more resourceful case classification system. Rather than supervising all defendants as if they had the same degree of risk, supervision varies in relation to the defendant's risk level: low-risk defendants get low-risk supervision and highrisk defendants get high-risk supervision. In a sense, we are doing more with less while still maintaining another important goal of pretrial services: minimizing pretrial misconduct. Notwithstanding a broader definition of "pretrial failure" and cutting field contacts in

half, violation rates declined or remained stable since the implementation of objective risk assessment.

The scope of this paper has been to describe the pre- and post-implementation experience of incorporating an objective risk assessment system into a pretrial services program that has been operating for over 20 years. Clearly, there have been some encouraging observations, but just as clear is the next step: *validation* of the instrument. Whether a measure of pretrial failure risk is accurately measuring what it intends to measure is a necessary step in the risk model's acceptance. As noted earlier in this paper, if risk assessment is only as good as your investigation, we can add the following: risk assessment is only as good as your validation.

back to top

References