15.8072.01000

# FISCAL NOTE
**Requested by Legislative Council**
**12/22/2014**

Revised
Bill/Resolution No.: SB 2116

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2013-2015 Biennium | | 2015-2017 Biennium | | 2017-2019 Biennium | |
|---|---|---|---|---|---|---|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | $530,000 | | $530,000 | |
| Appropriations | | | $530,000 | | $530,000 | |

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2013-2015 Biennium | 2015-2017 Biennium | 2017-2019 Biennium |
|---|---|---|---|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Measure will allow the DOCR, in collaboration with the judiciary and state and local law enforcement, to extend community supervision resources to individuals on pretrial release who are charged with felonies and Class A misdemeanors involving violence or intimidation.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

DOCR participation in this pilot program is dependent upon adequate staffing and existing parole and probation officer caseloads. The DOCR would like to locate this pilot project in Williams, Burleigh, and Cass Counties. The 2015-17 DOCR executive recommendation includes 3 FTE that would be assigned (one FTE per county) to the pilot project. The material fiscal impact is the cost of the 3 FTE's which are budgeted at a total of $530,000. NOTE: Funding and FTE required to implement this measure is included in HB 1015 (15-17 DOCR Executive Recommendation)

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

n/a

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Material fiscal impact to the DOCR is the estimated cost of the requested 3.O FTE (salary and fringe, and associated operating costs).

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The appropriation necessary to implement this measure is included in the 15-17 DOCR Executive Recommendation (HB1015)

**Name:** Dave Krabbenhoft

**Agency:** DOCR

**Telephone:** 328-6135

**Date Prepared:** 04/03/2015

15.8072.01000

# FISCAL NOTE
**Requested by Legislative Council**
**12/22/2014**

Bill/Resolution No.: SB 2116

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2013-2015 Biennium | | 2015-2017 Biennium | | 2017-2019 Biennium | |
|---|---|---|---|---|---|---|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | | | | |
| Appropriations | | | | | | |

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2013-2015 Biennium | 2015-2017 Biennium | 2017-2019 Biennium |
|---|---|---|---|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Measure will allow the DOCR, in collaboration with the judiciary and state and local law enforcement, to extend community supervision resources to individuals on pretrial release who are charged with felonies and Class A misdemeanors involving violence or intimidation.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

DOCR participation in this pilot program is dependent upon adequate staffing and existing parole and probation officer caseloads. The DOCR would like to locate this pilot project in Williams, Burleigh, and Cass Counties. The 2015-17 DOCR executive recommendation includes 3 FTE that would be assigned (one FTE per county) to the pilot project. The material fiscal impact is the cost of the 3 FTE's which are budgeted at a total of $411,786. NOTE: Funding and FTE required to implement this measure is included in HB 1015 (15-17 DOCR Executive Recommendation)

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

n/a

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Material fiscal impact to the DOCR is the estimated cost of the requested 3.O FTE (salary and fringe, and associated operating costs).

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The appropriation necessary to implement this measure is included in the 15-17 DOCR Executive Recommendation (HB1015)

**Name:** Dave Krabbenhoft

**Agency:** DOCR

**Telephone:** 328-6135

**Date Prepared:** 01/02/2015

**2015 SENATE JUDICIARY**

**SB 2116**

# 2015 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**
Fort Lincoln Room, State Capitol

SB 2116
1/20/2015
22196

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

**Minutes:** 1, 2

Ch. Hogue: We will open the hearing on SB 2116.

Barney Tomanek, Director, ND Parole & Probation, ND DOCR: Support (see attached 1 and 2).

Sen. Casper: When it comes to defining a low risk offender, is there a clear definition, or left up to the discretion of the judge at that time.

Barney Tomanek: That's correct. They don't have any assessments that are done before the judge sees them; that's why we assessments.

Sen. Casper: You're saying that an individual who is in jail for 24 hours as opposed to 72 hours or 31 days is less likely to reoffend. Is there any correlation between the facts that the person is in jail longer is maybe in jail for having committed a more violent crime, or because they were already a repeat offender. That would make them a person who is likely to reoffend, other than the fact that they were just merely in jail longer.

Barney Tomanek: I understand. I thought the same thing as I looked at the results of the study. I haven't had an opportunity to really dig in depth, I believe what they did was try to take into account those behaviors so that they were comparing apples to apples, so that they were looking at people, that based on their assessments, their scores would have been the same and that brings into account their backgrounds and criminal history, etc.

Sen. C. Nelson: There isn't a fiscal note, but yet there is an amount in the bill of $411,000 for Cass, Williams and Burleigh Counties. Is this more of a permission bill because you already have it in your major budget.

Barney Tomanek: The three positions that we would be looking for are included in our executive recommendation budget. They are not in this bill.

Sen. C. Nelson: But basically this is giving you permission to have that program.

Barney Tomanek: That's correct. Just the opportunity to look and develop and we would have to really dig in and work with these towns, the local judges and prosecutors, states' attorneys, law enforcement to develop the program. This would just give us the authority to do that.

Sen. Armstrong: The feds. have a program like this.

Barney Tomanek: Yes, the federal system has been using pre-trial services for as long as I can remember.

Sen. Armstrong: It is a pretty successful program and user friendly for all involved. The federal system takes a little different tack on what pre-trial release is than our state court. In the state court pre-trial release is supposed to be based on two factors: safety to the community and likelihood of appearance at trial. In western ND, when you are seeing high rates of pre-trial offenders locked up until their trial and we've heard testimony that Williston or Williams County, sometimes they are 18 months before they go to trial. Do you have any sense of what is the reasoning; is it because it is a transient population and have no roots to the community and is that why bonds are being set higher or is it more than they are being found as a safety risk in the community?

Barney Tomanek: I believe it is probably because when you have that transient population; it's even more difficult to get information on who you actually have before you. When you start looking at public safety concerns and will someone show up for court, I think if you are going to err, a lot of times I think the courts have erred on the side of caution. I think in those cases, having a good assessment where someone could actually sit down with these people and find out if they do have roots in the community, what kind of risk they actually pose. I think a pretrial assessment, in those kinds of cases, could be critical.

Sen. Armstrong: Even though this is costing money, if you can free up jail space through these pretrial assessments, I think they would appreciate it very much.

Barney Tomanek: I think you're right. When I look at the bill, there are a lot of issues that are clear. First of all, keeping people in jail who are low risk is detrimental to what we're trying to do. It's actually counter effective for public safety. We do have our jail issues; they are overpopulated, so it could help with that. Lastly, if we get people plugged into the right services earlier in the process, because county jail time a lot of times is dead time. There aren't a lot of services that are available as they are sitting in county jail facilities. That's one of the reasons I think the risk actually goes up on those people, the longer they sit.

Sen. Armstrong: Are a lot of people serving more time pretrial than they actually get sentenced to once their case is disposed of.

Barney Tomanek: I do believe so. I think we frequently see people that once their court cases are completed, they are placed on supervision. Many times those people have sat in jail for months waiting to get through that process. I don't think that this was productive time for anybody.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing.

# 2015 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**
Fort Lincoln Room, State Capitol

SB 2116
2/3/2015
23101

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature D Penrose

**Minutes:**

Ch. Hogue: We will take a look at SB 2116. What are the committee's wishes.

Sen. Armstrong: I move a Do Pass.

Sen. Grabinger: Second the motion.

**6 YES 0 NO 0 ABSENT DO PASS CARRIER: Sen. Armstrong**

Date: 2/3/2015

Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE**
**ROLL CALL VOTE**

**BILL/RESOLUTION NO.** 2116

Senate **JUDICIARY** Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation:
☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Armstrong Seconded By Sen. Grabinger

| Senators | Yes | No | Senators | Yes | No |
|---|---|---|---|---|---|
| Chairman Hogue | ✓ | | Sen. Grabinger | ✓ | |
| Sen. Armstrong | ✓ | | Sen. C. Nelson | ✓ | |
| Sen. Casper | ✓ | | | | |
| Sen. Luick | ✓ | | | | |
| | | | | | |

Total (Yes) 6 No Ø

Absent Ø

Floor Assignment Sen. Armstrong

## REPORT OF STANDING COMMITTEE

**SB 2116: Judiciary Committee (Sen. Hogue, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2116 was placed on the Eleventh order on the calendar.

**2015 HOUSE JUDICIARY**

**SB 2116**

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**
Prairie Room, State Capitol

SB 2116
3/4/2015
24338

☐ Subcommittee
☐ Conference Committee

| Committee Clerk Signature | Reed Christiansen |
|---|---|

**Explanation or reason for introduction of bill/resolution:**

A BILL for an Act to provide for the creation of a pretrial services program pilot project within the department of corrections and rehabilitation.

**Minutes:** Testimony #1

Chairman K. Koppelman: Called for support of SB 2116.

Patrick Bohm: Director, Transitional Planning Service, ND Dept. of Corrections and Rehabilitation. (See testimony #1)

Rep. G. Paur: Presently the number of offenders exceeds 6,600 is that the number you are proposing?

Partick Bohm: That is a population that is already post-conviction either on probation or parole.

Rep. G. Paur: How many individuals are you looking at in the three counties?

Partick Bohm: There needs to be more research done. We know that these jails in these areas are busting at the seams.

Rep. D. Larson: We were told the reason Cass County was included in Section 6 was they already have pre-trial investigation that are the model. Why are we looking at Fargo if they are already doing something touted as the model?

Patrick Bohm: This would give us the ability to do some pretrial so we can build upon that.

Chairman K. Koppelman: Are those pre-sentence or pre-trial?

Patrick Bohm: The thing that is going on in Fargo is a pre-sentence it's not a bond or a trial. We would apply that same assessment to an arrest determining the risk to re-offend and appear before their court proceedings.

Rep. L. Klemin: This bill is for these pilot projects, but you say it is highly doubtful that the DOCR will have the necessary resources to implement the pre-trail services pilot during this next biennium. What does the statement mean and where are we in the appropriations process.

Patrick Bohm: What came out of the budget was adding 13 additional parole officers to the state. The house cut that back to 7 parole officers. A year ago we had about 6,000 people on supervision. With the same number of officers, the number has increased to 6,643 people. Research supports that a regular case-load should be about 45-60 once you start tipping over 60, officers aren't able to work as effectively trying to work on behavior change. You are looking at 8-10 new officers to help cover the growth.

Rep. D. Larson: If someone violates their parole, what happens?

Patrick Bohm: We have probation and we have parole. Probation is under the authority of the court, and parole being under the authority of the ND parole board. They are similar but not the same. If people violate patrol, depending on the nature & frequency of the violation, some people go back to treatment programs some, but there is some sanction. You don't have to take step 1, 2, and 3 to get to violation. You can go from step 1 to violation. Every violation is addressed.

Rep. K. Wallman: If this bill was passed out of this committee, as is, would the groups coordinate and come up with a risk assessment putting all the pieces in place until there were FTE's that could implement something like this?

Patrick Bohm: That would be an option. To work with the courts and with the local law enforcement to do the planning.

Chairman K. Koppelman: Walk us through how you see this working? Someone is arrested and charged, what would happen next?

Patrick Bohm: We would have an officer who is assigned to monitor those arrests who would then go into the jail and do the assessment, including background work, and using the assessment before the state's attorney and the courts to make other decisions.

Chairman K. Koppelman: What is the timeframe for that process?

Patrick Bohm: According to the research it has to happen quickly. Within 48 hours.

Chairman K. Koppelman: I looked at your research, if they are detained for more than 24 hours; they are more likely to commit new crimes.

Rep. D. Larson: When you were talking about the process in jail would you also be talking to the prosecuting attorney to know what kind of risk the prosecutor thinks that the person is?

Patrick Bohm: I think some of those logistical things would have to be organized for flow. There would have to be work between the prosecutor and the court for that information.

Rep. D. Larson: So you don't have a model to do this? You are trying to figure this out as you go?

Patrick Bohm: Actually it is called a pre-trial service kit that lays out the processes needed. What is the wish of the local folks on how they want it to operate? Here is the model and you make it flexible to the different systems.

Rep. K. Wallman: If we are not incarcerating these individuals is there any data where you could save money?

Patrick Bohm: I am not familiar with any comparisons. Certainly outcomes would be important.

Rep. L. Klemin: I am not sure how this is going to work out when the House and Senate are looking at this each in the same chamber and they should have been together?

Patrick Bohm: I am not familiar how it works within the appropriations and why it was moved.

Chairman K. Koppelman: On your fiscal note, did that survive the Senate? What is the status of that funding? Could you check on that?

Patrick Bohm: I am not positive about that one. Yes, I will be able to check on it.

Chairman K. Koppelman: If they saw the number in the budget bill, they didn't see this policy piece. It is hard to make a judgment on the financing if you don't know what it is for.

Rep. G. Paur: If this bill did not pass you would still need those 13 parole officers in the Governor's budget? Is that true?

Patrick Bohm: That was the recommendation from the governor. It was to support the pre-trial services and the growth in our existing caseload. And try to address growth in our projected caseload as we move into 2015 - 2017.

Rep. G. Paur: So if that would have passed as presented, there would be no fiscal note for this bill because you already have the parole officers.

Patrick Bohm: I am not sure. I will have to check on that.

Opposition: None

Netural: None

Recessed the hearing on SB 2116

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**
Prairie Room, State Capitol

SB 2116
3/10/2015
24583

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

**Minutes:**

**Chairman K. Koppelman**: Reopened the meeting on SB 2116. We wanted to be sure the fiscal note was dealt with and I visited with Rep. Delzer and Rep. Pollert and I have been assured the money for pilot programs for this type of thing is in the budget and it remains.

**Do Pass by Rep. K. Wallman: Seconded by Rep. Maragos**

Discussion:

**Rep. Mary Johnson**: Probation and parole officers shall perform pretrial services so this all goes on and in no way stalls any sort of arraignment or bail hearings or anything like that.

**Chairman K. Koppelman**: Yes. The testimony we heard from the DOCR indicated the desire to do these pilot projects. Presentence investigations are common but this would be a pre-trail investigation and statistics are showing the incarcerating people who maybe should be incardinated for any length of time it leads to bad outcomes.
Rep. G. Paur: So we are assuming with this bill that the probation officers are equipped to make a judicial judgment for releasing this person from jail.

**Rep. G. Paur**: So we are assuming with this bill the probation officers are equipped to make a judicial judgment about releasing this person from jail.

**Chairman K. Koppelman**: Yes that is essentially true. It says the department and judiciary shall collaborate to develop guidelines and procedures for the administration of pretrial services for the district courts.

**Rep. K. Wallman**: Mr. Bohn said the timeframe for this would be a collaborate effort and then they would assess it.

**Rep. P. Anderson**: I have a note Fargo is also already doing this.

**Chairman K. Koppelman:** We are not going to reopen the hearing but Judge Irby we are interested in what your observation is on this.

**Judge John Irby, East Central Judicial District**: The idea is before somebody actually comes to trial they come up with a one page matrix to try and assess the risks and also the danger for the individual who is charged. It is a tool by which somebody would be inclined to plead guilty if they know what kind of services that they are going to be getting and a hint on what the sentence is going to be. Good question on who is going to be doing the sentencing here. It is still a judge. The judge can reject this.

**Rep. G. Paur**: You see this working the judge actually releases them within 24 hours.

**Judge Irby**: I am not sure of the timeframe. We try to get everybody that comes before us right away on a schedule. The whole idea is to have some incentive so that you could intelligently assess what we need to do and get some services here and be able to move on. We have the problem of pre-trail detainees; what kind of bail should be set for these people. We often rely on the state's attorney for information so we set an appropriate bail. They have a drug detecting patch affixed to them and they have to show up at the jail every two weeks to have this patch read which is just a wonderful thing to keep track of them and if they are using their crimes are subject to a use issues you know that so then what do you do revoke their bail so that has been a very good program. 24/7 programs on alcohol where you have to come in and blow every day you don't lose those folks. They will show up so that is working well. The trade-off is that they will plead guilty and get some services here and be able to move on.

**Chairman K. Koppelman**: I am not seeing that whether DOCR is making this decision alone versus the judges. The idea is this would advise or inform the court.

**Rep. G. Paur**: I was just assuming since DOCR said they would make a determination within 24 hours, that that was probably excluding the judicial system.

**Rep. L. Klemin**: It is still up to the court to decide. DOCR would do the supervision of these people while they are out rather than having these people set in jail for four weeks when they might have been let out under supervision and then come back in four weeks.

**Chairman K. Koppelman**: I am looking at Mr. Bohn's testimony here on page 2 says that low risk offenders actually increase the likely hood that they will reoffend. Results of the study shows low risk offenders who were detained for more than 24 hours were more likely to committee new crimes while their cases were pending but also years later. The key to effective pre-trial criminal justice services is to utilize objective data driven risk assessments that will more accurately identify the low moderate and high risk offenders. Judges have done their best to identify who they think are the high risk and violent offenders, but without proper assessments to help that is an impossible task. The idea is to give good information to the judge rapidly so that the court can decide whether to release them before the trail or not.

**Rep. Mary Joh**nson: If I am a misdemeanor and I am arrested on a Friday I am going to be released?

**Judge Irby**: There are a number of misdemeanors where the court is allowed to set a bail schedule.

**Rep. Mary Johnson**: if I am arraigned and I can come up with bail and I am let out and then subsequently they do not get a chance to do a risk assessment and I am out on bail; do I go back to the jail?

**Judge Irby**: I haven't seen that happen yet? We are trying to use those 24/7 tools. Bail is cash and conditions.

**Rep. Mary Johnson**: My point was that if I am released on bail by a judge at arraignment I shouldn't have to go back because now I am a high risk and maybe they have to reimburse my bail or something like that. On a felony what is the timeline between arrests to initial appearance.

**Judge Irby**: It depends. There are some felonies where the person is actually summoned into court. The state's attorney just decides it is not such a bad crime that they have to go out and get them. They just contact them and schedule them in.

**Rep. Mary Johnson**: My point is the turnaround time and getting the risk assessment done? Can they do that before I am released? This is just geared toward folks who are in jail in pre-trail because they cannot make bail.

**Chairman K. Koppelman**: I think part of the purpose of the pilot program is to work out some of the details of how it would work.

**Rep. D. Larson**: This seems like an idea for another session. One of the things Mr. Bohn said is they need 13 patrol officers and the Senate pared it down to 7; but one of the concerns I have on this is when they were saying even 24 hours in lockup is going to expediential increase your possibility of reoffending. This specifically says that the probation and parole officers shall preform pre-trail services for the supervision of individuals who are charged with felonies. So it seems like this group is high risk and we want to keep them locked up for the safety of people on the outside.

**Judge Irby**: I haven't seen it work with a misdemeanor yet. The felonies we know it works with I believe most of them are already out on bail. How are we going to move them forward on a trial or no trial? I would hope this one page matrix will take the place of what Rep. Koppelman was talking about as a pre-sentence investigation after an adjudication of guilt.

Rep. L. Klemin: On line 17 there looks like there is a coma missing after the word misconduct.

Chairman K. Koppelman: We will ask our intern to note that and make a grammatically can be corrected.

**Roll Call Vote: 10 Yes 2 No 1 Absent Carrier: Rep. G. Paur**

Date: 3-10-15
Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE**
**ROLL CALL VOTES**
**BILL/RESOLUTION NO.** SB 2116

House **JUDICIARY** Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☒ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Wallman Seconded By Rep. Maragos

| Representative | Yes | No | Representative | Yes | No |
|---|---|---|---|---|---|
| Chairman K. Koppelman | ✓ | | Rep. Pamela Anderson | ✓ | |
| Vice Chairman Karls | ✓ | | Rep. Delmore | ✓ | |
| Rep. Brabandt | ✓ | | Rep. K. Wallman | ✓ | |
| Rep. Hawken | — | | | | |
| Rep. Mary Johnson | | ✓ | | | |
| Rep. Klemin | ✓ | | | | |
| Rep. Kretschmar | ✓ | | | | |
| Rep. D. Larson | | ✓ | | | |
| Rep. Maragos | ✓ | | | | |
| Rep. Paur | ✓ | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) 10 No 2

Absent 1

Floor Assignment Rep. Paur

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2116: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2116 was rereferred to the **Appropriations Committee**.

**2015 HOUSE APPROPRIATIONS**

**SB 2116**

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Appropriations Committee**
Roughrider Room, State Capitol

SB 2116
4/2/2015
25788

☐ Subcommittee
☐ Conference Committee

| Committee Clerk Signature | Mary Brucker |
|---|---|

**Explanation or reason for introduction of bill/resolution:**
A bill to provide for the creation of a pretrial services program pilot project within the department of corrections and rehabilitation.

**Minutes:** No attachments

**Chairman Jeff Delzer**: Opened the meeting.

**Representative Kim Koppelman** spoke on the bill. This bill was put forward at the request of the Department of Corrections and Rehabilitation. It establishes a pilot project for three locations for pretrial investigations. Now in court systems we do presentence investigations. This is when a defendant is convicted of a crime and before the sentence is pronounced and there is an investigation looking at that person's background before the sentence is handed down by the judge. There's a growing body of evidence that indicates anytime behind bars, for some offenders, it increases the likelihood for recidivisms. We are innocent until proven guilty in this country so when we're arrested before we go to trial that if we do a pre-trial investigation it can reduce the number of folks in our jails and bare some good results in their circumstance.

**Chairman Jeff Delzer**: How do you have DOCR do anything on the pretrial side? I don't see how that's legal because they're innocent until they're proven guilty yet you're having the entity that will handle them if they are proven guilty doing something with them before they are on trial. Did your committee discuss the legality of doing this?

**Representative Koppelman**: All they would be doing for the pretrial investigations is helping the court to determine those sentences. All they would be doing differently is the Department of Parole and Probation is advising the court.

**Chairman Jeff Delzer**: But in the end it's a big difference between a presentence and pretrial because you have not been proven guilty and with the presentence you would have went through your day in court and they would have said you were guilty.

**Representative Koppelman**: That's precisely the point; we're putting people behind bars awaiting trial that maybe shouldn't be there. If we can discover who those people are that

have a higher risk and then set a higher bail so those who are innocent are more likely to be freed before trial.

**Representative Pollert**: In the DOCR budget 1015 the quota system was defeated on the floor that had something to do with the Adult Recidivism Reduction Pilot Program and that has to be this. It had a fiscal note of $1.3 million including ten FTE's for parole officers; we allowed six or seven hoping that three would go to pretrial services. I had a discussion with DOCR today and because the quota system wasn't done there's a question on whether we need the recidivism because we need more parole officers so there's a little work to be done yet on this. But on the other side they said if we don't give then enough parole officers they are not going to do the pretrial and if we don't do the pretrial then we don't need SB 2116.

**Representative Koppelman**: I would encourage you to visit with DOCR about that point because I was not aware of the connection between those two.

**Chairman Jeff Delzer**: That's part of the problem. Why is this in the senate with that high of a number if it didn't follow the budget bill for the Department of Corrections?

**Representative Koppelman**: I've always favored the idea that agencies should not introduce bills anyway, legislators should.

**Chairman Jeff Delzer**: That's an argument that goes both ways because if you have a legislator do it then you don't know who it's from either.

**Representative Pollert**: Should Legislative Council get a hold of DOCR to see if it's a double-up?

**Chairman Jeff Delzer**: The fiscal note certainly says three FTEs; one in each county.

**Representative Nelson**: The recidivism pilot program had a pretrial service component but there was more to it. There are several judicial districts that use pretrial services more extensively than others. The outcomes show some evidence based results. I'm not so sure this was part of the interim work that talked about some aspect of pretrial services. That is a need we should look at very seriously in the state. I think we can get to the bottom of how that works within the DOCR budget. I'm thinking this is outside of that program we funded.

**Chairman Jeff Delzer**: Brady, didn't we pass a pretrial bill earlier on? Could you check on that?

**Representative Silbernagel**: Is there another program that is presentencing and pretrial? Are these the same things?

**Representative Koppelman**: No, they are not the same thing. Presentence investigations go on in probably every one of our courts. When someone is convicted and before sentencing there is an investigation that helps the court decide what kind of a sentence to hand out. This would be before the trial.

**Representative Skarphol**: Will the pretrial investigation be done to check criminal records?

**Representative Koppelman**: I'm sure that would be part of it but there's probably a lot more involved. It doesn't only look at their criminal background but also their standing in the community.

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Appropriations Committee**
Roughrider Room, State Capitol

SB 2116
4/9/2015
25972

☐ Subcommittee
☐ Conference Committee

**Explanation or reason for introduction of bill/resolution:**

Provide for the creation of a pretrial services program pilot project within the department of corrections and rehabilitation.

**Minutes:**

**Chairman Jeff Delzer:** The pilot program out of the DOCR. It deals with Cass, Burleigh and Williams county. After looking at what happened on the floor with 2015 and the way 2015 is I'm not so sure the DOCR is wild about this anymore.

**Representative Pollert:** This is in the DOCR 1015 but it seems to have cooled off since debate on the house floor. What I have been told is that with the FTE situations and the parole officers and the ratios of what's going on and all the incarcerations and those going on parole there telling me as of now they are going to need those FTEs to take care of all the people coming on parole. My concern is I am not in approval of 2116 right now.

**Chairman Jeff Delzer:** I see when we look at the bill it says may it doesn't say shall. Then on the same token if there is very little or no chance of them doing it is a question of whether or not we want to pass it.

**Representative Pollert:** With our discussion with the DOCR Cass County is doing this already if I am correct.

**Chairman Jeff Delzer:** If you read the bill further along if they establish the service than a parole and probation officer shall perform pretrial services for individuals who are charged with felonies and class A misdemeanors. How can the DOCR get involved before someone has been found guilty?

**Representative Nelson:** This is a very complex part of where we are going into in the study with DOCR but I think it is important to note that in our discussion with DOCR I believe it was 50 percent of the people that they see are have a mental health diagnosis and somewhere in the high 70's have an addiction. What they are trying to do is from the time of arrest to the time of sentencing there is a gap in time there that nothing is happen as far as rehabilitation or any service. They are either out on bond, sitting in county jails

which there is a cost too and they can't post bail so they are stuck getting no service. There are some judicial districts that are taking a more aggressive handle on people that are in the system but they are not convicted yet and continue to the same life style that got them there in the first place. That is what the DOCR is looking at is an alternative to the current situation of sentencing.

**Chairman Jeff Delzer:** The reason we got it is because it shows to have a 530,000 dollar fiscal note. It says they need one FTE in each of those areas out of the DOCR budget. Now if we think we should pass it not worry about it that is fine because it does say may establish. It doesn't say that we are giving them any FTE's so they would have to be able to do it with what they have.

**Representative Nelson:** Obviously if they don't have the FTE's they don't have the ability to do that.

**Chairman Jeff Delzer:** If they don't go for it. It does say may establish. It would give them the authority to if they wanted to.

**Vice Chairman Keith Kempenich:** If that's part of the conditioning but how can you hold anyone to this.

**Chairman Jeff Delzer:** I would guess that even with the bond they might try to civily commit somebody for short period of time. Quite often with those it doesn't do any good because people aren't ready

**Representative Skarphol:** Isn't this the role of the judge to make a determination as to whether the person charged is considered a flight risk. To me if we want to do something lets expedite justice and get them to trial as quick as possible.

**Chairman Jeff Delzer:** I don't know that there is anything that would more that would prohibit them from doing it even without the bill.

**Representative Skarphol:** I move a Do Not Pass

**Representative Thoreson:** Second.

Motion for a Do Not Pass.
Motion made by Representative Skarphol.
Seconded by Representative Thoreson.
Total yes 17. No 5. Absent 1.
Floor assignment Representative Pollert.

Date: 4/9/15

Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE**
**ROLL CALL VOTES**

**BILL/RESOLUTION NO.** 2116

House: **Appropriations Committee**

☐ Subcommittee

Amendment LC# or Description:

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☑ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By: Skarphol Seconded By: Thoreson

| Representatives | Yes | No | Absent |
|---|---|---|---|
| Chairman Jeff Delzer | ✓ | | |
| Vice Chairman Keith Kempenich | ✓ | | |
| Representative Bellew | ✓ | | |
| Representative Brandenburg | | | A-B |
| Representative Boehning | ✓ | | |
| Representative Dosch | ✓ | | |
| Representative Kreidt | ✓ | | |
| Representative Martinson | ✓ | | |
| Representative Monson | ✓ | | |
| Representative Nelson | | ✓ | |
| Representative Pollert | ✓ | | |
| Representative Sanford | ✓ | | |
| Representative Schmidt | ✓ | | |
| Representative Silbernagel | ✓ | | |
| Representative Skarphol | ✓ | | |
| Representative Streyle | ✓ | | |
| Representative Thoreson | ✓ | | |
| Representative Vigesaa | ✓ | | |
| Representative Boe | ✓ | | |
| Representative Glassheim | | ✓ | |
| Representative Guggisberg | | ✓ | |
| Representative Hogan | | ✓ | |
| Representative Holman | | ✓ | |
| TOTALS | 17 | 5 | 1 |

**Floor Assignment:** Pollert

**If the vote is on an amendment, briefly indicate intent:**

**REPORT OF STANDING COMMITTEE**

**SB 2116: Appropriations Committee (Rep. Delzer, Chairman)** recommends **DO NOT PASS** (17 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). SB 2116 was placed on the Fourteenth order on the calendar.

**2015 TESTIMONY**

**SB 2116**

#11

# Senate Judiciary Committee

**Senator David Hogue, Chairman**

**Les (Barney) Tomanek**
**Director, North Dakota Parole and Probation**
**North Dakota Department of Corrections and Rehabilitation**
**Presenting Testimony on Senate Bill 2116**
**Tuesday, January 20, 2015**

Good morning Chairman Hogue and members of the Senate Judiciary Committee. My name is Barney Tomanek, Director of the North Dakota Parole and Probation Department. I am here on behalf of the Department of Corrections and Rehabilitation (DOCR) to provide testimony in support of Senate Bill 2116.

The DOCR does not currently provide pretrial services, and SB 2116 would simply provide the authority to establish a pretrial pilot project in one or more of the judicial districts during the next biennium. These pilot projects would be cooperative efforts between the DOCR, judiciary, and local law enforcement agencies. The pre-trial supervision services would focus on felony and higher risk offender populations.

Attached as part of my testimony you will see a research report that was done by the Laura and John Arnold Foundation (LJAF) focusing on pretrial criminal justice. Although I would encourage everyone to review the research summary in its entirety, please allow me to summarize some of the information contained in the report.

Nationally, pretrial detainees account for more than 60% of the inmate populations in our jails. In North Dakota, that percentage is considerably higher in several of our county jail facilities. Many of these pretrial detainees are lower risk offenders, who if released from custody, would be highly unlikely to commit another crime, and would be very likely to return to court for their criminal

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proceedings. Some of these offenders are moderate risks, that if properly assessed could be managed by Parole and Probation Officers on pretrial community supervision. Lastly, some of these offenders are high risk and should be detained as they pose significant risk to commit additional crimes, commit acts of violence, and not show up for court when required. Although our prosecutors and judges share the common goal to detain those who pose risk to public safety, and release those who don't, that is generally not how the system works. Information on the defendants, assessments on risk they pose in the community, and the opportunity for supervision and management are simply not available.

Research in Corrections is clear and consistent; incarcerating low risk offenders actually increases the likelihood they will reoffend. Results of this study showed that low risk offenders who were detained for more than 24 hours were more likely to commit new crimes while their cases were pending, but also years later. They were also more likely to not show up for their court proceedings. The results were actually quite staggering and showed that low risk offenders held for just 2-3 days in jail were 40% more likely to commit new crimes before trial than those held for less than 24 hours. Those figures escalated to indicate those held for 31 days or more offended 74% more frequently. High risk offenders on the other hand, showed no increase in the likelihood of increased criminal activity if held in pretrial detention. This study supports that public safety can most effectively be achieved by holding the high risk offenders in detention, and releasing the lower risk.

The key to effective pretrial criminal justice is to utilize objective, data-driven risk assessments that will accurately identify the low, moderate, and high risk offenders. Judges have done their best to identify who they feel are the high risk and violent offenders, but without proper assessments to help, that is an impossible task. Given that these decisions in the pretrial phase will have a tremendous impact on the likelihood of someone being sent to prison or jail, the length of time they will be sentenced, and the risk that someone will re-offend, we have to do everything possible to make the right decision. With our ever

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increasing populations in the state prison system, as well as local county jail facilities, these decisions become even more important.

The goal of the DOCR is to look at starting three pilot projects in Bismarck, Fargo, and Williston. We would work closely with the Judiciary, Prosecutors, and Law Enforcement in those cities to develop an effective pretrial program. Of course, developing a pretrial program requires resources as staff would need to provide assessments, recommendations, and pretrial supervision services. With our current number of offenders on supervision having exceeded 6500, additional staff would be needed to accomplish this goal.

The DOCR is focused on providing evidence-based, cost effective, management for offenders in North Dakota. A significant step in improving services is develop a pretrial program where assessment and management of offenders can begin at the time they enter the criminal justice system. Early and proper interventions are critical to keep our communities safe, and that is why we are requesting a "Do Pass" on SB 2116.

This concludes my testimony and I would be happy to answer any questions you may have.

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SB 2116

Pretrial criminal justice research commissioned by the Laura and John Arnold Foundation (LJAF) has thrown new light on how critical the earliest decisions made in the criminal justice system may be for public safety, fairness, and cost effectiveness.

# PRETRIAL CRIMINAL JUSTICE RESEARCH

Together, federal, state, and local corrections costs in the United States today exceed $80 billion per year. Pretrial detainees account for more than 60 percent of the inmate population in our jails. The cost to incarcerate defendants pretrial has been estimated at over $9 billion per year. Many pretrial detainees are low-risk defendants, who, if released before trial, are highly unlikely to commit other crimes and very likely to return to court. Others present moderate risks that can often be managed in the community through supervision, monitoring, or other interventions. There is, of course, a small but important group of defendants who should most often be detained because they pose significant risks of committing acts of violence, committing additional crimes, or skipping court.

The key, then, is to make sure that we accurately distinguish among the low-, moderate-, and high-risk defendants – and identify those who are at an elevated risk for violence. Moreover, it is important that, when we determine how to deal with defendants during the pretrial period, we appropriately assess what risk individual defendants pose. By making decisions in this manner, we can reduce crime, make wise use of public resources, and make our system more just.

Although police, prosecutors, and judges share the same objectives – to detain those who pose a risk to public safety and to release those who do not – this is not how our criminal justice system currently operates. Criminal justice decisionmakers do their best to achieve these goals, but they typically do not have sufficient information about defendants, the risks they pose, or the best methods to reduce these risks. Instead, key decisions are often made in a subjective manner, based on experience and instinct, rather than on an objective, data-driven assessment of a defendant's risk level and the most effective approach to protecting public safety in each case.

For two years, LJAF has been working to improve how decisions are made during the earliest part of the criminal justice process, from the time a defendant is arrested until the case is resolved. Our strategy has been to use data, analytics, and technology to promote a transition from subjective to more objective decision-making. To that end, we are developing easy-to-use, data-driven risk assessments

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for judges and prosecutors and are exploring tools to assist police in determining when to arrest an individual and when to issue a citation instead. In addition, we are pursuing research into key criminal justice issues, including the impacts of pretrial release and detention; and we are investigating the long-unanswered question of what approaches are successful at reducing future crime – and for whom they are most effective. The LJAF research released today – which was conducted in partnership with two of the nation's leading pretrial justice researchers, Dr. Marie VanNostrand and Dr. Christopher Lowenkamp – is a key part of this effort. The central findings of these three studies are summarized below:

## The Effect of Pretrial Detention on Sentencing:

A study, using data from state courts, found that defendants who were detained for the entire pretrial period were over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial. And their sentences were significantly longer – almost three times as long for defendants sentenced to jail, and more than twice as long for those sentenced to prison. A separate study found similar results in the federal system.

## The Hidden Costs of Pretrial Detention:

Using statewide data from Kentucky, this study uncovered strong correlations between the length of time low- and moderate-risk defendants were detained before trial, and the likelihood that they would reoffend in both the short- and long-term. Even for relatively short periods behind bars, low- and moderate-risk defendants who were detained for more days were more likely to commit additional crimes in the pretrial period – and were also more likely to do so during the two years after their cases ended.

## The Impact of Pretrial Supervision:

This study drew on data from two states, one eastern and one western, and found that moderate- and high-risk defendants who received pretrial supervision were significantly more likely to appear for their day in court than those who were unsupervised. In addition, long periods of supervision (more than 180 days) were related to a decrease in new criminal activity; however, no such effect was evident for supervision of 180 days or less.

These studies raise significant questions about the way our pretrial system currently works. They also demonstrate the tremendous need for additional research in this area. As part of our commitment to using data, analytics, and technology to transform the front end of the criminal justice system – what we call *Moneyballing* criminal justice – LJAF stands committed to pursuing a robust research agenda to answer these pressing questions and to make sure the system is as safe, fair, and cost-effective as possible.

Key decisions are often made in a subjective manner, based on experience and instinct, rather than on an objective, data-driven assessment of a defendant's risk level and the most effective approach to protecting public safety in each case.

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## I. THE EFFECT OF PRETRIAL DETENTION ON SENTENCING

Two recent studies funded by LJAF shed new light on the impact that a defendant's release or detention before trial can have on the eventual sentence in the case. These studies – one using data from federal courts and the other using data from state courts – demonstrate that pretrial detention is associated with an increase in the likelihood a defendant will be sentenced to jail or prison, as well as the length of incarceration.[1] The findings serve to underscore just how important judges' decisions regarding pretrial release and detention truly are.

The state study analyzed records of over 60,000 defendants arrested in Kentucky in 2009 and 2010. It found that defendants detained for the entire pretrial period were over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial. Sentences were also significantly longer – nearly three times as long for defendants sentenced to jail and more than twice as long for those sentenced to prison.

The analysis focused on the relationship between detention and sentencing. The study controlled for the other variables in the data set, meaning that defendants who were compared to one another were similar in terms of age, gender, race, marital status, risk level, offense type, incarceration history and other factors. In other words, defendants who were similar in every known way – except for their pretrial release status – had different outcomes at sentencing.

Studies demonstrate that pretrial detention is associated with an increase in the likelihood a defendant will be sentenced to jail or prison, as well as the length of incarceration.

1 Jails are usually locally operated and are used to detain individuals prior to trial or can be used to incarcerated individuals who have been sentenced, typically for one year or less. Prisons are state or federally run and are used to incarcerate sentenced individuals typically for one year or more, and often for much longer.

### Impact of Pretrial Detention on State Sentencing

Compared to defendants released at some point prior to trial, defendants held for the entire pretrial detention period had:

The second study examined similar questions in the context of federal courts. The study, which is currently under review by a peer-reviewed journal, was conducted by Dr. Lowenkamp, Dr. VanNostrand, Dr. James Oleson of the University of Auckland, Timothy Cadigan of the Administrative Office of the United States Courts (retired), and Dr. John Wooldredge of the University of Cincinnati. Drawing on 1,798 cases from two United States District Courts, the research found that pretrial release reduces sentence length for all defendants, even if release is ultimately revoked due to a defendant's failure to adhere to conditions of release. Indeed, detained defendants' sentences are, on average, nearly two times longer than those of released defendants. And while defendants who were released and later revoked received longer sentences than defendants who completed pretrial release without incident, their sentences were still shorter than defendants who were never released at all. These findings were obtained while controlling for known factors.

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The importance of these findings is clear when considering the state of our federal prison system. More than 110,000 defendants went through the federal court system in 2011, 86 percent of whom were sentenced to federal prison for an average sentence of almost 5½ years. Since 1980, the Bureau of Prison population has grown tenfold. The fiscal costs of this increase are staggering: Each prisoner in the system costs taxpayers between $21,006 (minimum security) and $33,930 (high security) annually.

## II. THE HIDDEN COSTS OF PRETRIAL DETENTION

The primary goal of the American criminal justice system is to protect the public. But what if, rather than protecting society, the pretrial phase of the system is actually helping to create new repeat offenders?

That is the question raised by an LJAF-funded study that analyzed data on over 153,000 defendants booked into jail in Kentucky in 2009 and 2010. The analysis showed that low-risk defendants who were detained pretrial for more than 24 hours were more likely to commit new crimes not only while their cases were pending, but also years later. In addition, they were more likely to miss their day in court. Conversely, for high-risk defendants, there was no relationship between pretrial incarceration and increased crime. This suggests that high-risk defendants can be detained before trial without compromising, and in fact enhancing, public safety and the fair administration of justice.

Judges, of course, do their best to sort violent, high-risk defendants from nonviolent, low-risk ones, but they have almost no reliable, data-driven risk assessment tools at their disposal to help them make these decisions. Fewer than 10 percent of U.S. jurisdictions use any sort of risk-assessment tools at the pretrial stage, and many of the tools that are in use are neither data-driven nor validated. Kentucky provided a unique research opportunity because it used a validated tool that provided us with an understanding of the level of risk that individual defendants posed. While risk assessments could not be completed on approximately 30 percent of defendants, we were able to study whether, for the remaining 70 percent, the impact of pretrial detention varied depending on their risk levels.

This study indicates that effectively distinguishing between low-, moderate-, and high-risk defendants at the pretrial stage could potentially enhance community safety.

The research findings are summarized below.

### A. PRETRIAL DETENTION AND PRETRIAL OUTCOMES

This study explored whether there is a link between time spent in pretrial detention and the commission of new criminal activity or failure to appear in court. The study looked at 66,014 cases in which the defendants were released at some point before trial, and found that even very small increases in detention time are correlated with worse pretrial outcomes. The research controlled for other known variables. The study found that, when held 2-3 days, low-risk defendants were almost 40 percent more likely to commit new crimes before trial than equivalent defendants held no more than 24 hours. The study indicates that the correlation generally escalates as the time behind bars increases: low-risk defendants who were detained for 31 days or more offended 74 percent more frequently than those who were released within 24 hours. A similar pattern held for moderate-risk defendants, though the percentage increase in rates of new criminal activity is smaller.

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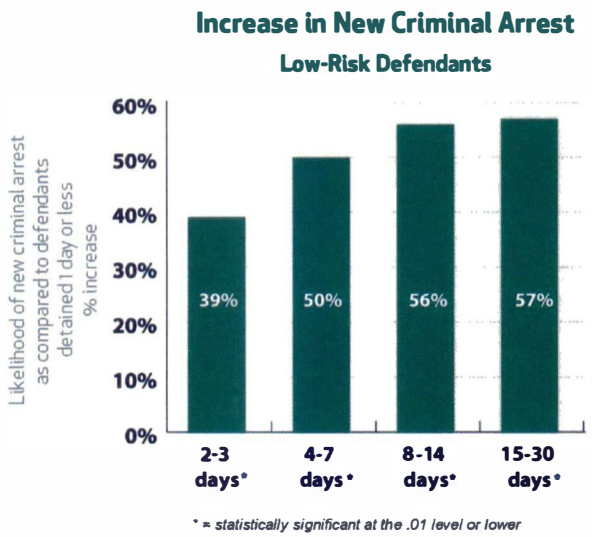
Interestingly, for high-risk defendants, the study found no relationship between pretrial detention and increased new criminal activity. In other words, there is no indication that detaining high-risk defendants for longer periods before trial will lead to a greater likelihood of pretrial criminal activity.

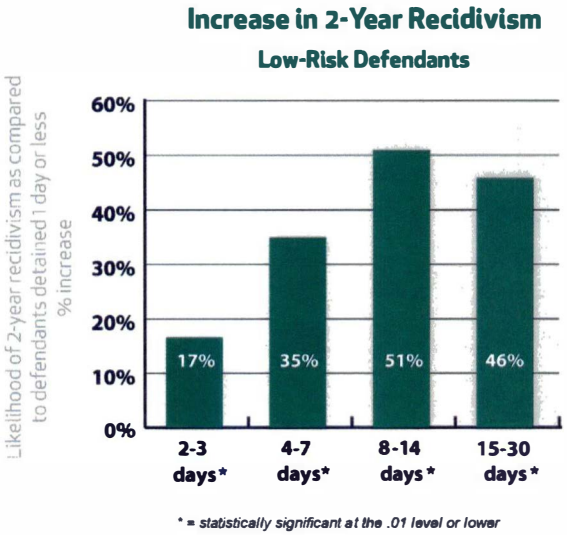



This same pattern emerged for failure to appear. Low-risk defendants held for 2-3 days were 22 percent more likely to fail to appear than similar defendants (in terms of criminal history, charge, background, and demographics) held for less than 24 hours. The number jumped to 41 percent for defendants held 15-30 days. For low-risk defendants held for more than 30 days, the study found a 31 percent increase in failure to appear. Again, however, detention was found to have no impact on high-risk defendants' rates of missing court, and for moderate-risk defendants, the effect was minimal.

## B. PRETRIAL DETENTION AND LONG-TERM RECIDIVISM

Even for relatively short periods of detention, according to the study, the longer a low-risk defendant was detained before trial, the more likely he was to commit a new crime within two years of case disposition. Specifically, controlling for other known variables, the study found that pretrial detention is associated with long-term recidivism, particularly for low-risk defendants.

For detention periods of up to 14 days, according to the study, the longer a low-risk defendant was detained before trial, the more likely he was to commit a new crime within two years of case disposition. Compared to individuals released within 24 hours of arrest, low-risk defendants held 2-3 days were 17 percent more likely to commit another crime within two years. Detention periods of 4-7 days yielded a 35 percent increase in re-offense rates. And defendants held for 8-14 days were 51 percent more likely to recidivate than defendants who were detained less than 24 hours. Although the effects began to diminish slightly beyond 14 days, low-risk defendants remained significantly more likely to reoffend in the long run as compared to defendants released within 24 hours. Again, these effects were observed among defendants who were matched on all the other measurable variables. For high-risk defendants, however, more days spent in pretrial detention were not associated with an increase in recidivism.




## C. POLICY IMPLICATIONS

In our criminal justice system today, judges frequently do not have an objective, scientific, and data-driven risk assessment to assist them in understanding the amount of risk that an individual defendant poses. Moreover, length of detention is frequently determined by factors totally unrelated to a defendant's risk level – for instance, the administrative speed with which a

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given court system can process defendants. In some jurisdictions, defendants may be held up to three days before their first opportunity to go before a judge who will determine whether they are detained or released. What we see from this research is that the costs of these delays may potentially result in increased crime. The study finding regarding high-risk defendants is equally important: There appears to be no tradeoff between protecting the public during the pretrial period and improving public safety years later.

Although these studies do not demonstrate causation, they show correlations between length of detention and negative outcomes for low- and moderate-risk defendants. Additional studies are needed to further research these and other questions.

## III. THE IMPACT OF PRETRIAL SUPERVISION

Although one of the most important decisions made before a criminal trial is whether to release or detain a defendant, the need for more data-driven tools does not end there. Judges frequently assign conditions to defendants they release, which may include pretrial supervision. There are many different models of pretrial supervision, some of which include periodic calls or meetings with a pretrial services officer, drug testing or treatment, or electronic monitoring. Currently, however, judges have very little data to help them determine who to assign to supervision, and what type of supervision works best for whom. With this in mind, LJAF is pursuing a number of studies of conditions of release including pretrial supervision.

In its initial study of pretrial supervision, LJAF researchers looked at 3,925 defendants from two states, one eastern and one western, and compared 2,437 defendants who were released without supervision with 1,488 who were released with supervision. In order to determine whether the effects of supervision varied based on defendants' risk levels, researchers used an existing validated risk assessment to assign defendants to risk categories.

The study found that moderate- and high-risk defendants who received pretrial supervision were significantly more likely to appear for their day in court. When controlling for state, gender, race, and risk, moderate-risk defendants who were supervised missed court dates 38 percent less frequently than unsupervised defendants. For high-risk defendants, the reduction was 33 percent. Analysis of various samples of the low-risk population generated inconsistent findings about the impacts of supervision on failure-to-appear rates – suggesting that the relationship between supervision for low-risk defendants and failure to appear is minimal or nonexistent.

In addition, pretrial supervision of more than 180 days was statistically related to a decrease in the likelihood of new criminal activity before case disposition. Defendants supervised pretrial for six months or more were 22 percent less likely to be arrested for new crimes before case disposition. While this finding is intriguing, the data set was not specific enough with regard to type of supervision to draw definite conclusions about the impact of supervision on new criminal activity pending case disposition.

This study is significant because it tells us that pretrial supervision may be effective in reducing failure to appear rates and, after a time, new criminal activity. However, while it appears that supervision generally helps prevent negative pretrial outcomes, details are scarce. For instance, in this study, no information was provided as to what type of supervision (minimal, moderate, or intensive) defendants received. And what types of supervision work for which defendants is something the field does not yet know. LJAF is committed to pursuing additional research in these important areas.

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## IV. CONCLUSION

This research demonstrates how critical it is to focus on the pretrial phase of the criminal justice system. Pretrial decisions made by judges, police, and prosecutors determine, as Caleb Foote stated in 1956, "mostly everything." These studies demonstrate that pretrial decisions may impact whether or not a defendant gets sentenced to jail or prison, and for how long; that an increased length of pretrial detention for low- and moderate-risk defendants is associated with an increased likelihood that they will reoffend both during the pretrial period and two years after the conclusion of their case; and that supervision may reduce failure to appear rates and, when done for 180 days or more, new criminal activity.

As important as these findings are, however, there remains an acute need for more research in this area. Moreover, for ethical and practical reasons, it would be difficult in many instances to conduct randomized controlled trials where judges would be asked to make detention, release, and supervision decisions based on research objectives. As a result, studies such as these do not prove causation. Although the findings noted above are observational, and not causal, the correlations are so striking that they merit further research.

LJAF is committed to researching questions that have arisen in these studies, and many others. This reflects our commitment to leveraging research, data, and technology to help jurisdictions improve public safety, reduce crime, make the best use of limited resources, and ensure that the justice system is working as fairly and efficiently as possible.

The full research reports for the studies can be accessed at:
**www.arnoldfoundation.org/research/criminaljustice.**

### About Laura and John Arnold Foundation

Laura and John Arnold Foundation is a private foundation that currently focuses its strategic investments on criminal justice, education, public accountability, and research integrity.

LJAF has offices in Houston and New York City.

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3-4-15

# House Judiciary Committee

**Representative Kim Koppelman, Chairman**

**Patrick N. Bohn**
**Director, Transitional Planning Services**
**North Dakota Department of Corrections and Rehabilitation**
**Presenting Testimony on Senate Bill 2116**
**March 4, 2015**

My name is Pat Bohn, Director of Transitional Planning Services. I am here on behalf of the Department of Corrections and Rehabilitation (DOCR) to provide testimony in support of Senate Bill 2116.

The DOCR does not currently provide pretrial services and SB 2116 would simply provide the authority to establish a pretrial pilot project in one or more of the judicial districts during the next biennium. These pilot projects would be cooperative efforts between the DOCR, judiciary, and local law enforcement agencies. The pretrial supervision services would focus on felony and higher risk offender populations.

Attached as part of my testimony you will see a research report that was done by the Laura and John Arnold Foundation (LJAF) focusing on pretrial criminal justice. Although I would encourage everyone to review the research summary in its entirety, please allow me to summarize some of the information contained in the report.

Nationally, pretrial detainees account for more than 60% of the inmate populations in our jails. In North Dakota, that percentage is considerably higher in several of our county jail facilities. Many of these pretrial detainees are lower risk offenders, who if released from custody, would be highly unlikely to commit another crime and would be very likely to return to court for their criminal proceedings. Some of these offenders are moderate risk, that if properly

assessed could be managed by parole and probation officers on pretrial community supervision. Lastly, some of these offenders are high risk and should be detained as they pose a more significant risk to commit additional crimes, commit acts of violence and not appear for court proceedings. Although our prosecutors and judges share the common goal to detain those who pose risk to public safety and release those who don't, that is generally not how the system works. Information on the defendants' assessments of actuarial risk they pose in the community and the opportunity for supervision and management are simply not available.

Research in corrections is consistent; incarcerating low risk offenders actually increases the likelihood they will reoffend. Results of this study showed that low risk offenders who were detained for more than 24 hours were more likely to commit new crimes while their cases were pending, but also years later. They were also more likely to not show up for their court proceedings. The results were actually quite staggering and showed that low risk offenders held for just 2-3 days in jail were 40% more likely to commit new crimes before trial than those held for less than 24 hours. Those figures escalated to indicate those held for 31 days or more offended 74% more frequently. High risk offenders on the other hand, showed no increase in the likelihood of increased criminal activity if held in pretrial detention. This study supports that concept that public safety can most effectively be achieved by holding the high risk offenders in detention and releasing the lower risk.

The key to effective pretrial criminal justice services is to utilize objective data-driven risk assessments that will more accurately identify the low, moderate, and high risk offenders. Judges have done their best to identify who they believe are the high risk and violent offenders but without proper assessments to help, that is an impossible task. Given these decisions in the pretrial phase will have a tremendous impact on the likelihood of someone being sent to prison or jail, the length of time they will be sentenced, and the risk that someone will re-offend, we must do more to arrive at more informed decisions that utilize evidence-based actuarial assessments. With our ever increasing populations in the state prison

system, as well as local county jail facilities, these decisions become even more important.

The goal of the DOCR is to explore starting three pilot projects in Bismarck, Fargo, and Williston. Of course, developing a pretrial program requires resources. Additional staff is needed to provide assessments, recommendations, and pretrial supervision services. Presently, our number of offenders on supervision exceeds 6600. At this juncture in the appropriations process, it is highly doubtful the DOCR will have the necessary resources to implement a pretrial services pilot during the 2015-2017 biennium.

In closing, the DOCR is focused on providing evidence-based and cost effective management for offenders in North Dakota. A significant step in improving services is to develop a pretrial program where assessment and management of offenders can begin at the time they enter the criminal justice system. Early and proper interventions are critical to keep our communities safe and more effectively using public safety resources and that is why we are recommending a "Do Pass" on SB 2116.

This concludes my testimony and I would be happy to answer any questions.

Pretrial criminal justice research commissioned by the Laura and John Arnold Foundation (LJAF) has thrown new light on how critical the earliest decisions made in the criminal justice system may be for public safety, fairness, and cost effectiveness.

# PRETRIAL CRIMINAL JUSTICE RESEARCH

Together, federal, state, and local corrections costs in the United States today exceed $80 billion per year. Pretrial detainees account for more than 60 percent of the inmate population in our jails. The cost to incarcerate defendants pretrial has been estimated at over $9 billion per year. Many pretrial detainees are low-risk defendants, who, if released before trial, are highly unlikely to commit other crimes and very likely to return to court. Others present moderate risks that can often be managed in the community through supervision, monitoring, or other interventions. There is, of course, a small but important group of defendants who should most often be detained because they pose significant risks of committing acts of violence, committing additional crimes, or skipping court.

The key, then, is to make sure that we accurately distinguish among the low-, moderate-, and high-risk defendants – and identify those who are at an elevated risk for violence. Moreover, it is important that, when we determine how to deal with defendants during the pretrial period, we appropriately assess what risk individual defendants pose. By making decisions in this manner, we can reduce crime, make wise use of public resources, and make our system more just.

Although police, prosecutors, and judges share the same objectives – to detain those who pose a risk to public safety and to release those who do not – this is not how our criminal justice system currently operates. Criminal justice decisionmakers do their best to achieve these goals, but they typically do not have sufficient information about defendants, the risks they pose, or the best methods to reduce these risks. Instead, key decisions are often made in a subjective manner, based on experience and instinct, rather than on an objective, data-driven assessment of a defendant's risk level and the most effective approach to protecting public safety in each case.

For two years, LJAF has been working to improve how decisions are made during the earliest part of the criminal justice process, from the time a defendant is arrested until the case is resolved. Our strategy has been to use data, analytics, and technology to promote a transition from subjective to more objective decision-making. To that end, we are developing easy-to-use, data-driven risk assessments

for judges and prosecutors and are exploring tools to assist police in determining when to arrest an individual and when to issue a citation instead. In addition, we are pursuing research into key criminal justice issues, including the impacts of pretrial release and detention; and we are investigating the long-unanswered question of what approaches are successful at reducing future crime – and for whom they are most effective. The LJAF research released today – which was conducted in partnership with two of the nation's leading pretrial justice researchers, Dr. Marie VanNostrand and Dr. Christopher Lowenkamp – is a key part of this effort. The central findings of these three studies are summarized below:

### The Effect of Pretrial Detention on Sentencing:

A study, using data from state courts, found that defendants who were detained for the entire pretrial period were over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial. And their sentences were significantly longer – almost three times as long for defendants sentenced to jail, and more than twice as long for those sentenced to prison. A separate study found similar results in the federal system.

### The Hidden Costs of Pretrial Detention:

Using statewide data from Kentucky, this study uncovered strong correlations between the length of time low- and moderate-risk defendants were detained before trial, and the likelihood that they would reoffend in both the short- and long-term. Even for relatively short periods behind bars, low- and moderate-risk defendants who were detained for more days were more likely to commit additional crimes in the pretrial period – and were also more likely to do so during the two years after their cases ended.

### The Impact of Pretrial Supervision:

This study drew on data from two states, one eastern and one western, and found that moderate- and high-risk defendants who received pretrial supervision were significantly more likely to appear for their day in court than those who were unsupervised. In addition, long periods of supervision (more than 180 days) were related to a decrease in new criminal activity; however, no such effect was evident for supervision of 180 days or less.

These studies raise significant questions about the way our pretrial system currently works. They also demonstrate the tremendous need for additional research in this area. As part of our commitment to using data, analytics, and technology to transform the front end of the criminal justice system – what we call *Moneyballing* criminal justice – LJAF stands committed to pursuing a robust research agenda to answer these pressing questions and to make sure the system is as safe, fair, and cost-effective as possible.

Key decisions are often made in a subjective manner, based on experience and instinct, rather than on an objective, data-driven assessment of a defendant's risk level and the most effective approach to protecting public safety in each case.

## I. THE EFFECT OF PRETRIAL DETENTION ON SENTENCING

Two recent studies funded by LJAF shed new light on the impact that a defendant's release or detention before trial can have on the eventual sentence in the case. These studies – one using data from federal courts and the other using data from state courts – demonstrate that pretrial detention is associated with an increase in the likelihood a defendant will be sentenced to jail or prison, as well as the length of incarceration.[1] The findings serve to underscore just how important judges' decisions regarding pretrial release and detention truly are.

The state study analyzed records of over 60,000 defendants arrested in Kentucky in 2009 and 2010. It found that defendants detained for the entire pretrial period were over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial. Sentences were also significantly longer – nearly three times as long for defendants sentenced to jail and more than twice as long for those sentenced to prison.

The analysis focused on the relationship between detention and sentencing. The study controlled for the other variables in the data set, meaning that defendants who were compared to one another were similar in terms of age, gender, race, marital status, risk level, offense type, incarceration history and other factors. In other words, defendants who were similar in every known way – except for their pretrial release status – had different outcomes at sentencing.

Studies demonstrate that pretrial detention is associated with an increase in the likelihood a defendant will be sentenced to jail or prison, as well as the length of incarceration.

1 Jails are usually locally operated and are used to detain individuals prior to trial or can be used to incarcerated individuals who have been sentenced, typically for one year or less. Prisons are state or federally run and are used to incarcerate sentenced individuals typically for one year or more, and often for much longer.

### Impact of Pretrial Detention on State Sentencing

Compared to defendants released at some point prior to trial, defendants held for the entire pretrial detention period had:

The second study examined similar questions in the context of federal courts. The study, which is currently under review by a peer-reviewed journal, was conducted by Dr. Lowenkamp, Dr. VanNostrand, Dr. James Oleson of the University of Auckland, Timothy Cadigan of the Administrative Office of the United States Courts (retired), and Dr. John Wooldredge of the University of Cincinnati. Drawing on 1,798 cases from two United States District Courts, the research found that pretrial release reduces sentence length for all defendants, even if release is ultimately revoked due to a defendant's failure to adhere to conditions of release. Indeed, detained defendants' sentences are, on average, nearly two times longer than those of released defendants. And while defendants who were released and later revoked received longer sentences than defendants who completed pretrial release without incident, their sentences were still shorter than defendants who were never released at all. These findings were obtained while controlling for known factors.

The importance of these findings is clear when considering the state of our federal prison system. More than 110,000 defendants went through the federal court system in 2011, 86 percent of whom were sentenced to federal prison for an average sentence of almost 5½ years. Since 1980, the Bureau of Prison population has grown tenfold. The fiscal costs of this increase are staggering: Each prisoner in the system costs taxpayers between $21,006 (minimum security) and $33,930 (high security) annually.

## II. THE HIDDEN COSTS OF PRETRIAL DETENTION

The primary goal of the American criminal justice system is to protect the public. But what if, rather than protecting society, the pretrial phase of the system is actually helping to create new repeat offenders?

That is the question raised by an LJAF-funded study that analyzed data on over 153,000 defendants booked into jail in Kentucky in 2009 and 2010. The analysis showed that low-risk defendants who were detained pretrial for more than 24 hours were more likely to commit new crimes not only while their cases were pending, but also years later. In addition, they were more likely to miss their day in court. Conversely, for high-risk defendants, there was no relationship between pretrial incarceration and increased crime. This suggests that high-risk defendants can be detained before trial without compromising, and in fact enhancing, public safety and the fair administration of justice.

Judges, of course, do their best to sort violent, high-risk defendants from nonviolent, low-risk ones, but they have almost no reliable, data-driven risk assessment tools at their disposal to help them make these decisions. Fewer than 10 percent of U.S. jurisdictions use any sort of risk-assessment tools at the pretrial stage, and many of the tools that are in use are neither data-driven nor validated. Kentucky provided a unique research opportunity because it used a validated tool that provided us with an understanding of the level of risk that individual defendants posed. While risk assessments could not be completed on approximately 30 percent of defendants, we were able to study whether, for the remaining 70 percent, the impact of pretrial detention varied depending on their risk levels.

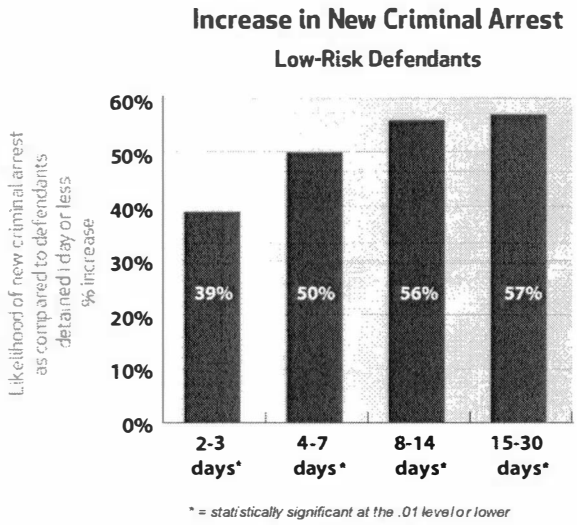
This study indicates that effectively distinguishing between low-, moderate-, and high-risk defendants at the pretrial stage could potentially enhance community safety.

The research findings are summarized below.

### A. PRETRIAL DETENTION AND PRETRIAL OUTCOMES

This study explored whether there is a link between time spent in pretrial detention and the commission of new criminal activity or failure to appear in court. The study looked at 66,014 cases in which the defendants were released at some point before trial, and found that even very small increases in detention time are correlated with worse pretrial outcomes. The research controlled for other known variables. The study found that, when held 2-3 days, low-risk defendants were almost 40 percent more likely to commit new crimes before trial than equivalent defendants held no more than 24 hours. The study indicates that the correlation generally escalates as the time behind bars increases: low-risk defendants who were detained for 31 days or more offended 74 percent more frequently than those who were released within 24 hours. A similar pattern held for moderate-risk defendants, though the percentage increase in rates of new criminal activity is smaller.

Interestingly, for high-risk defendants, the study found no relationship between pretrial detention and increased new criminal activity. In other words, there is no indication that detaining high-risk defendants for longer periods before trial will lead to a greater likelihood of pretrial criminal activity.

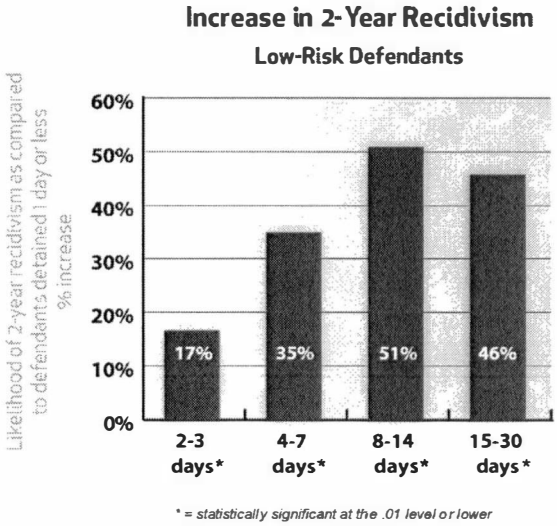



This same pattern emerged for failure to appear. Low-risk defendants held for 2-3 days were 22 percent more likely to fail to appear than similar defendants (in terms of criminal history, charge, background, and demographics) held for less than 24 hours. The number jumped to 41 percent for defendants held 15-30 days. For low-risk defendants held for more than 30 days, the study found a 31 percent increase in failure to appear. Again, however, detention was found to have no impact on high-risk defendants' rates of missing court, and for moderate-risk defendants, the effect was minimal.

## B. PRETRIAL DETENTION AND LONG-TERM RECIDIVISM

Even for relatively short periods of detention, according to the study, the longer a low-risk defendant was detained before trial, the more likely he was to commit a new crime within two years of case disposition. Specifically, controlling for other known variables, the study found that pretrial detention is associated with long-term recidivism, particularly for low-risk defendants.

For detention periods of up to 14 days, according to the study, the longer a low-risk defendant was detained before trial, the more likely he was to commit a new crime within two years of case disposition. Compared to individuals released within 24 hours of arrest, low-risk defendants held 2-3 days were 17 percent more likely to commit another crime within two years. Detention periods of 4-7 days yielded a 35 percent increase in re-offense rates. And defendants held for 8-14 days were 51 percent more likely to recidivate than defendants who were detained less than 24 hours. Although the effects began to diminish slightly beyond 14 days, low-risk defendants remained significantly more likely to reoffend in the long run as compared to defendants released within 24 hours. Again, these effects were observed among defendants who were matched on all the other measurable variables. For high-risk defendants, however, more days spent in pretrial detention were not associated with an increase in recidivism.




## C. POLICY IMPLICATIONS

In our criminal justice system today, judges frequently do not have an objective, scientific, and data-driven risk assessment to assist them in understanding the amount of risk that an individual defendant poses. Moreover, length of detention is frequently determined by factors totally unrelated to a defendant's risk level – for instance, the administrative speed with which a

given court system can process defendants. In some jurisdictions, defendants may be held up to three days before their first opportunity to go before a judge who will determine whether they are detained or released. What we see from this research is that the costs of these delays may potentially result in increased crime. The study finding regarding high-risk defendants is equally important: There appears to be no tradeoff between protecting the public during the pretrial period and improving public safety years later.

Although these studies do not demonstrate causation, they show correlations between length of detention and negative outcomes for low- and moderate-risk defendants. Additional studies are needed to further research these and other questions.

## III. THE IMPACT OF PRETRIAL SUPERVISION

Although one of the most important decisions made before a criminal trial is whether to release or detain a defendant, the need for more data-driven tools does not end there. Judges frequently assign conditions to defendants they release, which may include pretrial supervision. There are many different models of pretrial supervision, some of which include periodic calls or meetings with a pretrial services officer, drug testing or treatment, or electronic monitoring. Currently, however, judges have very little data to help them determine who to assign to supervision, and what type of supervision works best for whom. With this in mind, LJAF is pursuing a number of studies of conditions of release including pretrial supervision.

In its initial study of pretrial supervision, LJAF researchers looked at 3,925 defendants from two states, one eastern and one western, and compared 2,437 defendants who were released without supervision with 1,488 who were released with supervision. In order to determine whether the effects of supervision varied based on defendants' risk levels, researchers used an existing validated risk assessment to assign defendants to risk categories.

The study found that moderate- and high-risk defendants who received pretrial supervision were significantly more likely to appear for their day in court. When controlling for state, gender, race, and risk, moderate-risk defendants who were supervised missed court dates 38 percent less frequently than unsupervised defendants. For high-risk defendants, the reduction was 33 percent. Analysis of various samples of the low-risk population generated inconsistent findings about the impacts of supervision on failure-to-appear rates – suggesting that the relationship between supervision for low-risk defendants and failure to appear is minimal or nonexistent.

In addition, pretrial supervision of more than 180 days was statistically related to a decrease in the likelihood of new criminal activity before case disposition. Defendants supervised pretrial for six months or more were 22 percent less likely to be arrested for new crimes before case disposition. While this finding is intriguing, the data set was not specific enough with regard to type of supervision to draw definite conclusions about the impact of supervision on new criminal activity pending case disposition.

This study is significant because it tells us that pretrial supervision may be effective in reducing failure to appear rates and, after a time, new criminal activity. However, while it appears that supervision generally helps prevent negative pretrial outcomes, details are scarce. For instance, in this study, no information was provided as to what type of supervision (minimal, moderate, or intensive) defendants received. And what types of supervision work for which defendants is something the field does not yet know. LJAF is committed to pursuing additional research in these important areas.

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## IV. CONCLUSION

This research demonstrates how critical it is to focus on the pretrial phase of the criminal justice system. Pretrial decisions made by judges, police, and prosecutors determine, as Caleb Foote stated in 1956, "mostly everything." These studies demonstrate that pretrial decisions may impact whether or not a defendant gets sentenced to jail or prison, and for how long; that an increased length of pretrial detention for low- and moderate-risk defendants is associated with an increased likelihood that they will reoffend both during the pretrial period and two years after the conclusion of their case; and that supervision may reduce failure to appear rates and, when done for 180 days or more, new criminal activity.

As important as these findings are, however, there remains an acute need for more research in this area. Moreover, for ethical and practical reasons, it would be difficult in many instances to conduct randomized controlled trials where judges would be asked to make detention, release, and supervision decisions based on research objectives. As a result, studies such as these do not prove causation. Although the findings noted above are observational, and not causal, the correlations are so striking that they merit further research.

LJAF is committed to researching questions that have arisen in these studies, and many others. This reflects our commitment to leveraging research, data, and technology to help jurisdictions improve public safety, reduce crime, make the best use of limited resources, and ensure that the justice system is working as fairly and efficiently as possible.

The full research reports for the studies can be accessed at:
**www.arnoldfoundation.org/research/criminaljustice.**

### About Laura and John Arnold Foundation

Laura and John Arnold Foundation is a private foundation that currently focuses its strategic investments on criminal justice, education, public accountability, and research integrity. LJAF has offices in Houston and New York City.

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