

EBDM Decision Point: Pretrial

Why this Decision Point is Important:

- An individual's ability to remain free prior to a determination of guilt is made at this decision point.
- The consequences of being held pretrial can be significant and may include, among others: loss of benefits, employment, and/or housing; removal of children from their home and placement in foster care; and jeopardizing one's prosocial influences.
- At the same time, the release of individuals at high risk for pretrial misconduct jeopardizes public safety.
- Local jails typically hold a significant number of pretrial defendants (individuals who have not yet been convicted of a crime). Pretrial custody rates have a direct fiscal impact on jail staffing levels, facility needs, and operating costs.
- Perceptions of bail and pretrial release are important to the public's trust and confidence in the justice system.

What Should Happen at this Decision Point:

1. Pretrial policies and practices reflect that individuals are presumed innocent until proven guilty.
2. The opportunity for pretrial release is equally afforded to all persons, regardless of race, gender, socio-economic status and related factors.
3. Pretrial release decisions are informed by evidence-based risk assessment tools and processes that support the accurate identification of those who are at risk of pretrial misconduct, but also allow for professional discretion and consideration of victim and community concerns.
4. A prosecutor and defense attorney are present and actively engaged in pretrial hearings of detained individuals.
5. Evidence-based pretrial release conditions are developed and tailored to individual needs, and, where necessary, appropriately applied to mitigate risk of pretrial failure, consistent with assessed risk. Such conditions may include, among others, pretrial supervision and court appearance reminder systems.
6. Pretrial supervision, if so required, shall be determined based upon the defendant's assessed level of risk.
7. An effective preventative detention statute is available to provide the ability to detain those (limited number of persons) who pose such a high risk that appropriate safeguards for pretrial release cannot reasonably be imposed.
8. Policies and practices are guided by ABA and NAPSA Standards.
9. Conditions should be the least restrictive necessary.
10. Pretrial programs are not limited to those with the ability to pay for them.

Selected Research:

- Use of standardized risk assessment tools is recommended at the pretrial stage to appropriately gauge a defendant's risk level and to subsequently guide release decisions. Use of structured protocols serves to minimize the decisionmaker's biases, appropriately place offenders based on their actual level of risk, and improve the allocation of scarce criminal justice resources. *Primary Citation:* Cadigan & Lowenkamp (2011a)
- Structured and empirically validated risk assessment protocols should be incorporated into the pretrial decision making process. Risk assessment tools should be validated on the specific population being served. *Primary Citation:* Lowenkamp, Lemke, & Latessa (2011)
- By assessing risk, decisionmakers are able to base the use of pretrial detention and release conditions on level of risk. *Primary Citations:* VanNostrand (2003); VanNostrand & Keebler (2009)
- Defendants released at the pretrial stage experience more desirable outcomes at later stages of criminal justice processing (i.e., lower recidivism rates) compared with those who are detained in custody. *Primary Citation:* Cadigan & Lowenkamp (2011b)
- Identifying and addressing gender-responsive needs at the pretrial stage via structured assessments and interventions may contribute to more successful outcomes for women. *Primary Citation:* Gehring & Van Voorhis (2014)

Resources:

Further resources on the topic

