

# PURPOSE OF BAIL

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Dane County Criminal Justice Council  
October 2017

# BAIL

- 969.001 (1) “Bail means monetary conditions of release.
- 969.01 Eligibility **for release**. (1) Before conviction. A defendant arrested for a criminal offense is eligible for release under ***reasonable conditions*** designed to assure his or her appearance in court, protect members of the community from serious bodily harm, or prevent the intimidation of witnesses. ***Bail may be imposed at or after the initial appearance only upon a finding by the court that there is a reasonable basis to believe that bail is necessary to assure appearance in court.***

- 969.01(1) .....the judge shall first consider the likelihood of the defendant appearing for trial if released on his or her own recognizance.
- 969.01(4) Considerations in setting conditions of release  
*If bail is imposed, it shall be only in the amount found necessary to assure appearance of the defendant. Conditions of release other than monetary conditions may be imposed for the purpose of protecting members of the community from serious bodily harm or preventing intimidation of witnesses*

## **969.02 Release of defendants charged with misdemeanors.**

The Judge may:

(d) Impose any other condition deemed reasonably necessary to assure appearance as required *or any nonmonetary condition deemed reasonably necessary to protect members of the community from serious bodily harm or prevent intimidation of witnesses*

## **969.03 Release of defendants charged with felonies.**

The Judge may:

(e) Impose any other condition deemed reasonably necessary to assure appearance as required *or any nonmonetary condition deemed reasonably necessary to protect members of the community from serious bodily harm or prevent intimidation of witnesses,*

- **American Bar Association Standard 10-1.1** “The law favors release of defendants pending adjudication of charges.”
- **National District Attorneys Association Standards on Pretrial Release 45.2.1** “Whenever possible, release before trial should be on the recognizance of the accused”... “Reliance on money bail should be discouraged and be required only in those cases in which less restrictive conditions will not reasonably ensure the defendant’s appearance.”

- **American Bar Association Pretrial Release Standards 10-1.10(a)** “Every jurisdiction should establish a pretrial services agency or program to collect and present the necessary information, present risk assessments, and, consistent with court policy, make release recommendations required by the judicial officer in making release decisions, including the defendant’s eligibility for diversion, treatment, or other alternative adjudication programs, such as drug or other treatment courts. Pretrial services should also monitor, supervise, and assist defendants release prior to trial, and review the status and release eligibility of detained defendants for the court on an ongoing basis”.

# PRETRIAL CONCEPTS

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# PRINCIPLES OF EBDM

- Professional judgment is enhanced when informed by evidence based knowledge
- Every interaction offers opportunity for harm reduction
- Collaboration at all levels fosters better outcomes
- System will learn and improve when decisions are based on collection, analysis, and use of data



# Foundational Concepts

- Pretrial Justice
  - The need to balance competing goals
    - Protect the public
    - Assure court appearance
    - Preserve legal and constitutional rights afforded persons awaiting trial

***“In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception” U.S. v. Salerno (1987)***

# Foundational Concepts

- Pretrial Legal and Evidence-Based Practices

- If we conducted research to determine the most effective way to assure public safety and court appearance, what would the research show

## DETAIN EVERYONE

- Goal

- Assure public safety and court appearance
  - Detain highest risk defendants
  - Release moderate risk defendants with interventions and services targeted to mitigate risk
  - Release low risk defendants with minimal or no conditions

# Foundational Concepts

- Pretrial Justice
  - Release/Detention Decision
    - Reflection of pretrial justice
    - Risk is inherent in pretrial release
    - Our system of justice **DEMANDS** that we take risk for most pretrial defendants

***“In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception” U.S. v. Salerno (1987)***

# Applying EBDM to Pretrial Release & Detention

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## Measuring & Managing Risk – What the Evidence Tells Us

### ♦ Risk is Inherent in Pretrial Release

- ❑ Our system of justice **DEMANDS** that we take risk for most pretrial defendants
- ❑ Question is not **IF** we take risk – Question is “How well do we **MEASURE** risk and how well do we **MANAGE** it”
- ❑ Release and detention decisions focus primarily on the charge not the risk posed
- ❑ Pretrial release and detention is often determined by resources not risk
- ❑ Enhancing public safety and being good stewards of public funds requires us to manage release and detention based on **RISK**



# Foundational Concepts

- Risk-Based Approach
  - Measuring Risk
    - Objective and research-based risk assessment to identify
      - **Risk of danger to public**
      - **Risk of pretrial failure to appear in court**
  - Managing Risk
    - Highest risk defendants detained
    - Moderate risk defendants released with interventions and services targeted to mitigate risk
    - Low risk defendants released with minimal or no conditions

# Applying EBDM to Pretrial Release & Detention

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## Measuring & Managing Risk – What the Evidence Tells Us

- ♦ Monetary bail does improve court appearance rates for higher risk defendants
- ♦ Monetary bail does not improve court appearance rates for low risk defendants and can have negative consequences
- ♦ Monetary bail does not improve community safety
- ♦ Implementing differential pretrial supervision strategies based on pretrial risk does improve pretrial outcomes
- ♦ Jurisdictions that employ court reminder notification procedures have significantly reduced FTA rates

# PSA & DMF

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Public Safety Assessment & Decision Making  
Framework

Laura & John Arnold Foundation



# Background

- Pretrial Risk Assessment
  - A pretrial risk assessment is an objective, research-based instrument that relies on risk factors to predict the likelihood of success or failure for a released defendant pending case disposition
    - A risk factor is a characteristic that, when present, indicates an increased risk of pretrial failure
  - A pretrial risk assessment is intended to inform the decision to release/detain a defendant by measuring
    - **Danger posed to public safety**
    - **Likelihood of appearing in court**



# Background

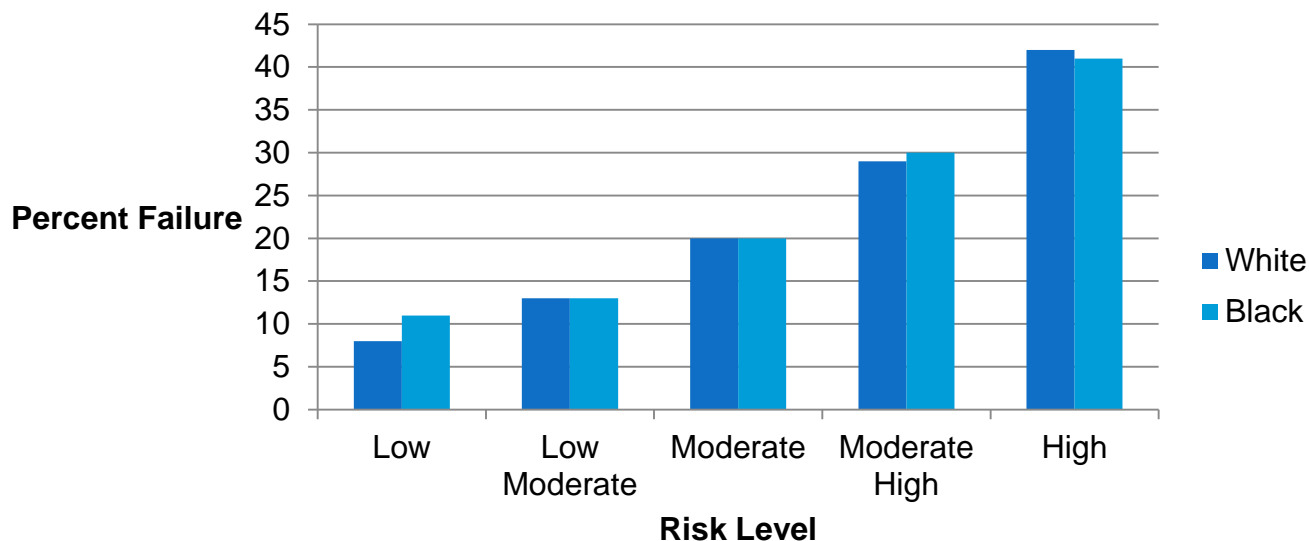
- Pretrial Outcome Measures
  - Success or failure for defendants released pending case disposition
- Two primary types of pretrial failure – FTA and NCA
  - In addition, whether the NCA is violent is also measured (NVCA)
- Defendants who do not experience either type of pretrial failure are considered successful

# Research & Development

- 1.5 million cases from across the US
  - Including cases from Milwaukee
- 750,000 cases used for analysis and development
  - Defendants released pretrial with risk factors and outcome information

# Race, Gender, Socio-Economic Status

- Study conducted in Kentucky found the tool “accurately classifies defendants’ risk levels regardless of their race or gender, meaning it does not have a discriminatory impact.”



Results from the First Six Months of the Public Safety Assessment –  
Court in Kentucky (2014). Houston, TX: Laura and John Arnold  
Foundation.



# PSA Risk Factors

1. Age at current arrest
2. Current violent offense
  - 2a. *Current violent offense & 20 years old or younger*
3. Pending charge at the time of the offense
4. Prior misdemeanor conviction
5. Prior felony conviction
  - 5a. *Prior conviction*
6. Prior violent conviction
7. Prior pretrial failure to appear in past two years
8. Prior pretrial failure to appear older than two years
9. Prior sentence to incarceration

# Violence Definition

- Person to person
- Causes or attempts to cause physical injury
- Attempt or accessory before the fact is counted
- Conspiracy or accessory after the fact not counted
- Threats, intimidation, and harassment are not considered violent

# Milwaukee DMF

	NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6	
FTA 1	Level 1 & ROR	Level 1 & ROR					
FTA 2	Level 1 & ROR	Level 1 & ROR	Level 2 & ROR	Level 3 & ROR	Level 4 & ROR		
FTA 3		Level 2 & ROR	Level 2 & ROR	Level 3 & ROR	Level 4 & ROR	Level 5 & Financial	
FTA 4		Level 2 & ROR	Level 3 & ROR	Level 4 & ROR	Misd. - Level 5 & ROR Fel. - Level 5 & Financial	Level 5 & Financial	
FTA 5		Level 3 & ROR	Level 3 & ROR	Misd. - Level 4 & ROR Fel. - Level 5 & ROR	Level 5 & Financial	Level 5 & Financial	
FTA 6				Level 5 & Financial	Level 5 & Financial	Level 5 & Financial	
		Level 1	Level 2	Level 3 (Standard)	Level 4 (Enhanced)	Level 5 (Intensive)	Level 5 (Intensive)
Bail		ROR	ROR	ROR	ROR	ROR	Cash
TOT		No	No	Yes	Yes	Yes	Yes
Face to Face Contact		No	No	1x/month	Every other week	Weekly	Weekly
Alternative Contact		No	1x/month	1x/month	Every other week	No	No
Supervised Conditions		No	No	As Authorized	As Authorized	As Authorized	As Authorized
Court Date Reminder		No	Yes	Yes	Yes	Yes	Yes
Criminal History/CJIS		No	Yes	Yes	Yes	Yes	Yes

# Milwaukee Co. EBDM outcomes in 2017

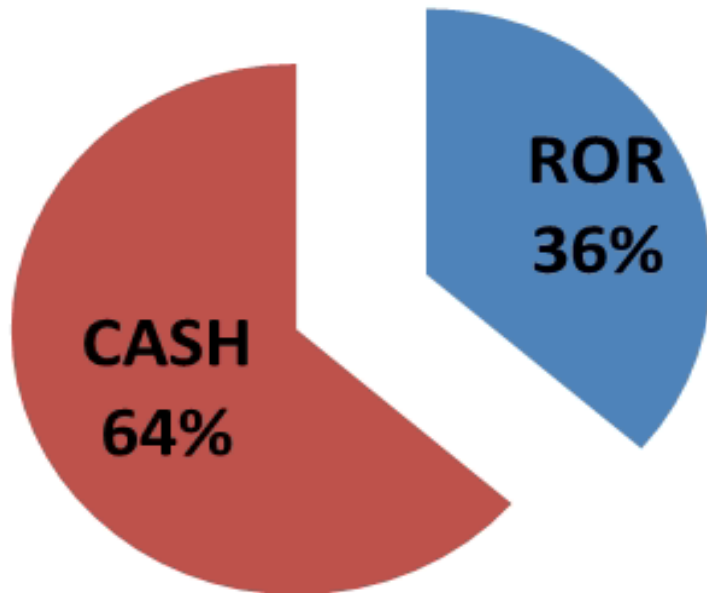
## **Universal Screening:**

14,109 individuals screened through 10/13/17

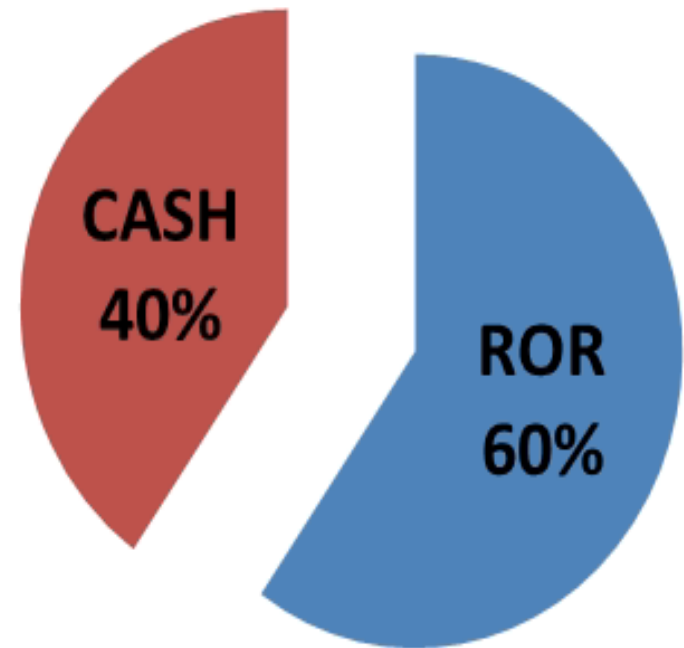
- 82% Adherence Rate with bail type recommendation (5,608 cases through Intake Court)
- 65% Pretrial release rate, 76% appearance rate, >95% safety rate, NVCA <1%

# BOND TYPE COMPARISON PRE & POST SYSTEM CHANGES

2009 BOND TYPE  
PRE-PT SCREENING



2012 BOND TYPE  
POST PT SCREENING





# RISK PRINCIPLE

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# Pretrial Detention Impact on Public Safety

- Findings – Length of Pretrial Detention and New Crime
  - When compared to defendants who secured release in 1 day, defendants who spent time in jail before securing pretrial release were more likely to commit new crimes
  - This is not true for **HIGH** risk defendants
  - When held 2-3 days, low-risk defendants are almost 40 percent more likely to commit new crimes before trial than equivalent defendants held no more than 24 hours.