

October 20, 2020

To: Members of the Public Protection and Judiciary Committee of the Dane County Board of Supervisors

From: Clark J. Rodgers and Maggie E. Thomas
Dane County Pretrial Assessors

Members of the Public Protection and Judiciary Committee:

We, Clark J. Rodgers and Maggie E. Thomas, are the two incumbent Dane County Pretrial Assessors affected by the planned cuts in the Dane County Clerk of Courts budget. These cuts eliminate funding for a program which is vital to the interests of the Dane County Circuit Court and interests of pretrial justice in Dane County. We ask that funding for our positions be restored. Pretrial justice is an important resource which lends focus on system efforts to reduce unnecessary pretrial detention and by extension take steps to reducing systemic racism in the criminal justice system.

In the Dane County, the Courts, the District Attorney, and the Office of the Public Defender are attempting to address unnecessary pretrial detention through the use of a Public Safety Assessment and a Decision Making Framework developed under a grant from Arnold Ventures (AV); formerly known as the Laura and John Arnold Foundation.(LJAF). A review of the PSA-DMF is an ongoing process being conducted by the Access to Justice Lab (A2J Lab) at Harvard University. The assessment of data derived from the Dane County Public Safety Assessment will not be completed until the spring of 2022. The Pretrial Assessors in Dane County conducted the Public Safety Assessments which make up the core of the data for the Access to Justice Lab project.

The PSA is a risk assessment instrument. It was developed through review of criminal history data, demographic data, new crimes, failures to appear (“FTA”), and other potential risk factors. The goal of the PSA is to use criminal history information (age is also used, but not race or gender) to produce scores ranking the level of risk an individual who has been arrested and held in custody will fail to appear, be re-arrested for a new crime, or be re-arrested for a new violent crime after being released before trial.

The Public Safety Assessment (PSA) scores are applied to the Decision Making Framework (DMF), which brings together the information from the PSA with local policies and values, its laws, and its resources to provide a recommendation regarding pretrial release and, if release is obtained, a supervision level. Judicial officers use the PSA-DMF System in deciding whether to release an individual before trial, and this decision rests always with the judicial officer. The PSA-DMF System is one tool in the toolbox that the judicial officer can draw upon in the exercise of their professional discretion.

As the two pretrial assessors in the Dane County Clerk of Courts, Maggie Thomas and I (Clark Rodgers) complete reviews of all new arrestees who have been coded as New Arrests (01); New Arrests with holds for other jurisdictions (01H) and New Arrests with probation holds (01P). The Public Safety Assessment was validated on these types of “New Arrest Cases.” To complete a PSA-DMF assessment, we review data of new arrests from the Dane County Jail database (Spillman), run and analyze automated criminal records through statewide and national criminal records databases through PS Portal, review statewide and local Circuit Court Access Programs records, and insert this data into the PSA tool which generates the PSA scores. As part of this process, we also assess whether the charges should result in step increases under the Decision Making Framework. Step 2 or Step 4 increases in pretrial supervision recommendations apply in specific types of cases involving crimes of violence, use of firearms, stalking, violation of temporary restraining orders, kidnapping, and arson.

The Court Commissioners, Circuit Court Judges, Assistant District Attorneys, the Office of the Public Defender, and the defense bar all use the Public Safety Assessment to help guide their decision-making during court appearances. The Public Safety Assessment represents a rational approach to decision-making that attempts to reduce unnecessary detention by recommending pretrial release for individuals who present the lowest risk for non-appearance at future court appearances.

The elimination of our two positions would negatively impact the ability of the Court and the parties to have information that supports them in making rational, objective, evidence-based decisions about a defendant, reduce unnecessary detention, and will result in low risk defendants remaining in pretrial detention for longer periods of time thereby creating an exponentially larger drain on limited county funds through higher detention costs. We believe this program also has a part to play in reducing systemic racism in the court system.

Research has shown that defendants detained for the entirety of the pretrial stage were four times more likely to be sentenced to jail and three times more likely to be sent to prison than defendants who were released on pretrial release. Often, defendants are sentenced to prison for terms three-times longer than defendants who were sentenced to a jail. [See LJAF Research Summary- Pretrial Criminal Justice Research November 2013]

We know that pretrial detention is expensive. On a daily average, there are nearly 750,000 persons incarcerated in local jails across the United States. In Dane County on October 19, 2020; there were 595 persons housed in the Dane County Jail. Nationwide about 62 percent of the daily jail population are defendants detained pending trial. Many of these detainees are low risk defendants who if released are highly unlikely to commit other crimes and are likely to return to future court hearings. Federal, State, and Local corrections costs in the United States exceed \$80 billion USD a year.

The use of Data, Analytics and Technology can transform the front-end of the criminal justice system by rationalizing decision-making and putting a focus on risk of non-appearance and risk of violence. Dane County is one of fewer than 10 percent of U.S. Jurisdictions that use any sort of pretrial risk assessment tool at the pretrial stage. In the almost four years that two Pretrial Assessors have been completing the Public Safety Assessments, we have generated 11,882 individual PSA reports for the Dane County Courts.

In conclusion, we believe that the role of the Public Safety Assessors is vital to the Dane County Courts and to the criminal justice system in Dane County and the State of Wisconsin. We are a small team with many years of experience in the criminal justice and pretrial justice systems. What we do is important to the court and to the justice system. We strongly request that funding of our two positions be returned to the Dane County Clerk of Courts budget so that we may continue our role in supporting the operations of the court system and reduce unnecessary detention.

Maggie Thomas and I will be available by telephone and by Zoom during your session if anyone has questions about our work.

Thank you for your time and attention.

Sincerely,

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