

FROM THE CELL TO SOCIETY: THE INFLUENCE OF PRETRIAL DETENTION ON RECIDIVISM

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ABSTRACT

This paper examines the dynamics that exist among a proposed correlation between pretrial detention and criminal reoffending. Academic literature is consulted to pinpoint key variables that impact the nuances of pre-trial detention, which can thereafter be connected to explaining not only the correlation to recidivism, but furthermore why such a correlation can exist. This research focuses on studying personal observations from internship experience at the New Jersey Courts' pretrial services unit, in addition to monetary bail implications, juvenile detention, bail reform, mental health, and legal case analysis. This paper's findings accumulated through qualitative analysis allow for a greater understanding of the United States' criminal justice system, and thereafter where reform serves crucial.

INTRODUCTION

In the realm of criminal justice, the intricate relationship between pretrial detention and recidivism remains a complex and critical area of inquiry. As an intern within the pretrial services unit at the Mercer County criminal courthouse for the past eleven months, my experiences have prompted a deep curiosity about the potential linkages between pretrial detention and the subsequent return to criminal activity. This qualitative analysis aims to unravel the multifaceted dynamics surrounding pretrial detention and its impact on recidivism.

To begin, it is imperative to define the key terms at the heart of this analysis. Pretrial detention refers to the incarceration of individuals awaiting trial, a period during which defendants are held in custody after their arrest, but before a court determines their guilt or innocence. Recidivism, on the other hand, is the relapse into criminal behavior by individuals who have previously been arrested or charged. My interest in this topic stems from firsthand observations and interactions with defendants during their pretrial detention. Conducting interviews with these individuals has provided unique insights into their perspectives on the conditions of their detainment. My experience in noticing many repeat offenders returning to the criminal justice system in Mercer County has fueled my desire to dive deeper into the possibility of systemic practices being an underlying factor to contribute towards recidivism. In my time spent as an intern, I believe that there exists a correlation between pre-trial detention and increased recidivism. In this research, I am to explain why such a correlation exists.

This qualitative analysis seeks to address several research questions to shed light on the intricacies of the relationship between pretrial detention and recidivism. Key inquiries include: Does bail influence recidivism? How does pretrial detention impact recidivism? Is it a combination of both factors that contribute to higher rates of criminal relapse? What negative consequences of pretrial detention may serve as potential causes for recidivism, and why might this relationship exist? Furthermore, exploring interventions and their effectiveness is crucial to understanding if and how this issue has been addressed in the past.

The importance of this study lies in the broader context of criminal justice reform and its potential to inform policy changes. By comprehensively understanding the variables at play, I aim to contribute to the growing realm of knowledge surrounding pretrial detention and recidivism. Moreover, this research seeks to identify gaps in the existing literature, emphasizing the need for a more nuanced understanding of the variables under examination.

Intricately woven into the foundation of our criminal justice system, the impact of recidivism is far-reaching. Addressing these questions is not only academically intriguing but also holds real-world implications for policy reform and reintegration into society following an arrest. This analysis is driven by a commitment to unraveling the relationship between pretrial detention and recidivism, ultimately contributing to a more informed understanding of the criminal justice system.

LITERATURE REVIEW

In exploring the adverse effects of pretrial detention and its potential correlation with increased recidivism, I reviewed multiple pieces of literature with the aim of identifying gaps in knowledge. The framework for this literature review involves thematic grouping, categorizing seven pieces into three main classifications: understanding recidivism and its impacts, bail practices, and the negative consequences of pretrial detention within the criminal justice system. This approach ensures a nuanced examination of the subject matter.

Dynamics of Recidivism. Previous research on recidivism has identified factors like criminal history, age, social relationships, and drug use as key predictors that can influence the likelihood of reoffending. Other factors like the setting in which an offender is released and institutional misconduct also impact the risk for recidivism (Huebner & Berg 2011). Literature has also advocated that the study of recidivism needs to be done via a comprehensive approach that accounts for consistent data and risk-adjusted analyses (Elder Broom & Kind 2014). Essentially, there are a multitude of factors that are available to study which influence an offender's risk of recidivism. Yet, a deeper analysis of each of these variables has not been conducted.

Bail Practices. Additionally, bail practices and bail reform have been outlined as important factors regarding the systems of pretrial detention. It is apparent that there is limited systematic research on pretrial release practices. However, there are issues regarding racial disproportionality among defenders that receive pretrial detention. Additionally, offenders that cannot afford paying bail also must remain in pretrial detention. Bail practices are correlated to political, socioeconomic, and demographic factors (Hood & Schneider 2019, 126). In terms of bail reform, activists are trying to shift away from money-based pretrial systems and focus release practices and conditions to reflect the severity of an offense. These reform proposals aim to diminish and prevent unfair bail practices (Hopkins, Bains, & Doyle, 2018, 4). Collectively, the variables of monetary bail and unfair bail practices contribute to pretrial detention, serving as an explanatory variable for the causes of recidivism for the scope of this study.

Consequences of Pre-Trial Detention. Lastly, I consulted research that examined the negative effects of the current criminal justice system as well as the impacts created by pretrial detention. Some research found that the US criminal justice system poorly impacts mental health, specifically due to arrests and incarceration, by which minorities' mental health is impacted at a greater rate (Sugie & Turney 2017). In addition, literature states that pretrial services have created a loss in employment and government benefits, resulting in economic harms. These outlined societal and economic harms that result are also racially disproportionate (Dobbie, Will & Yang 2021). These various negative impacts of pretrial detention are of interest in regard to how they influence the risk of recidivism. Understanding this literature prior to conducting research is imperative to find key variables that negatively result from pre-trial detention.

In summary, this literature review highlights a critical gap in understanding how societal, economic, and institutional factors, exacerbated by pretrial detention, contribute to increased recidivism. Past literature has demonstrated the main negative consequences of pre-trial detention and bail practices, as well as the societal factors that are current predictors of recidivism. However, these consequences and variables have not been connected to both pre-trial detention and increased recidivism. There exists an interconnected dynamic among these factors that the remainder of this research analysis seeks to address. By addressing this gap, research can inform targeted strategies and systemic reforms to break the cycle of recidivism and promote fairness within the pretrial process.

METHODOLOGY

This qualitative research takes a thorough approach to investigate the complex connection between recidivism and pretrial detention. The process includes evaluating empirical data from studies, such as those conducted by the American Civil Liberties Union of Pennsylvania and the US Government Accountability Office, synthesizing findings from existing research, and deriving conclusions from an eleven-month internship at the pretrial services unit in Mercer County.

The literature review groups research under thematic categories, emphasizing the effects of pretrial custody on recidivism, bail procedures, and unwanted outcomes. A comprehensive analysis of the literature reveals a noteworthy association between pretrial detention and elevated rates of recidivism, taking a wide array of possible variables into consideration. The lack of research into the variables that pretrial detention contributes to provides motivation for a deeper analysis of such variables.

Internship experiences will provide firsthand perspectives through interviews with detained defendants, shedding light on emotional responses and the conditions of detainment. Personal experiences will be compared to existing data regarding the mental health consequences from pretrial detention and bail practices. These variables will be considered as a catalyst to increased recidivism. The examination of bail practices and reform considers monetary implications, racial disparities, and a case study on juvenile pretrial detention. Ethical evaluations through historical cases underscore how pretrial detention can compromise the presumption of innocence, contributing to institutional problems. The investigation looks into effective bail reforms and explores possible solutions, focusing on the effects on appearance rates and recidivism reduction. To reduce recidivism, suggested reintegration processes to normalize in society are researched.

To sum up, the utilization of a triangulated technique that incorporates human experiences, empirical information, and literature advances an analysis and understanding of pretrial detention and recidivism. The combined results highlight the need for criminal justice reform and provide guidance for future legislative initiatives aimed at creating a more fair system.

DATA ANALYSIS

Pre-Trial Detention & Recidivism: A Relationship. First, when consulting evidence produced by studies conducted by the American Civil Liberties Union of Pennsylvania, it became apparent and proven that a relationship does exist between the institution of pre-trial detention and increased recidivism. Pretrial incarceration was linked to a 30 percent increase in crimes and a 20 percent increase in misdemeanors within 18 months after the initial bail hearing, according to a 2016 research of individuals charged with misdemeanors in Harris County, Texas. According to a different study, low-risk prisoners detained for eight to fourteen days had a 51% higher chance of committing a new offense than comparable defendants detained for less than twenty-four hours. Low risk criminals were 40% more likely to commit new offenses while kept on bail for even two to three days than when they were held for no more than 24 hours (ACLU Pennsylvania 2022). It is unclear whether or not these findings controlled for a third variable such as crime severity or socio-economic status. However, these findings do suggest a strong correlation between pre-trial detention and higher recidivism, which should be explored further. From here, I may investigate in more detail how particular mechanisms of pretrial detention are causes for heightened recidivism.

Detention: Personal Observations. My personal experiences interning at the Mercer County Criminal Courthouse in the pretrial services unit provide insightful takeaways based on my hands-on experience. For eleven months, I've spent my intern hours interviewing defendants that are currently being detained prior to their first hearing. Upon conversing with them, I've encountered a wide array of emotional responses to being detained, which I believe serve beneficial to the analysis of pretrial detention. Many defendants are confused about why they are in jail, emotional because they don't know when they can go

home and are anxious about the status of their case that they have not been updated on. They only talk to a public defender for a few minutes, making it difficult for them to have ample time to discuss their case. Additionally, I was trained to understand the different conditions of release that defendants face. In New Jersey courts, the more severe the crime and higher the flight risk, the more conditions that must be met. This requires video calls to court services officers to check in, refraining from committing new offenses, home detention, and often abiding by family court or drug court recommendations. From my experience, the release recommendations by the court are adequate for public safety as they coincide with the severity of the committed crime. However, based on my observations, pretrial detention causes emotional distress to defendants, before being found guilty.

Mental Health Implications. After accounting for my personal observations, studies regarding the impacts of mental health on defendants were examined. According to the findings, pretrial detention in jails poses severe risks to the mental health of individuals, with alarming consequences. Statistics reveal that a significant proportion of jail deaths, approximately three-quarters nationwide, occur among individuals in pretrial detention, and more than one-third of these deaths transpire within the initial seven days of incarceration. The mortality rate among those in jail without convictions is twice as high as those with convictions, while the suicide rate among pretrial detainees can be 9 to 14 times higher than the general population, constituting 82 percent of all jail suicides (ACLU Pennsylvania 2022). According to the US Government Accountability, research has underscored that prisoners with serious mental illness face an elevated risk of returning to prison, indicating a higher recidivism rate. Post-release, these individuals encounter challenges such as finding housing, employment, and accessing mental health treatment (U.S. GAO 2023). In essence, it can be concluded that mitigating the impacts of pretrial detention on mental health not only diminishes the severity of mental health issues but also contributes to a reduction in recidivism rates, emphasizing the need for comprehensive treatment as an integral part of the reintegration process.

Bail Implications. With bail issues being a variable of interest, further research examined the deeper effects and implications of monetary bail. According to the American Progress Organization, cash bail was originally instituted to ensure that defendant's show up for court. However, research found this to prove "not necessary or effective." Instead, monetary bail results in unnecessary jailing of people who are safe to stay in their community pretrial. Additionally, cash bail undermines the presumption of innocence that the United States promotes through due process protection. Instead, it was found that cash bail leads to a 6-9% increase in recidivism. Within this rate, racial and ethnic minorities are disproportionately placed in pre-trial detention due to the inability to pay bail. (Center for American Progress 2022). Moreover, it is essential to understand why cash bail may lead to greater recidivism. According to the ACLU Pennsylvania, cash bail induces people to plead guilty and therefore give up their liberty to make a deal for release. A guilty plea is found to be more likely from defendants who are in custody, and this thereafter hinders conviction and recidivism rates (ACLU Pennsylvania 2022). In proving a relationship between pretrial detention and recidivism, it is equally important to understand the causes of pretrial detention. Essentially, there is a greater relationship within this chain of events, where cash bail is found to be a leading factor to increase the risk of recidivism. However, this chain of events brought by the institution of monetary bail targets minorities at a societal and economic level.

Juvenile Detention. A case study on pretrial detention entitled "The Impact of Pretrial Juvenile Detention on 12-Month Recidivism: A Matched Comparison Study", looked at the relationship between juvenile pretrial detention and likelihood of recidivism within the same year of arrest. This study found that among 27, 283 cases, there was a "1.08 higher odds of felony recidivism linked to pretrial detention". Additionally, a larger sample of 44,971 cases found similar results, which strengthens the findings' reliability. In terms of misdemeanors, an analysis of 27,276 cases demonstrated a 1.14 higher change of recidivism, also with these findings holding consistent when applied to a larger sample (Herting & Walker 2020). This study is interesting because youth should be the most deterred from future crime, but

pretrial detention does not break the cycle. Instead, it makes prospects for future crime worse. Additionally, the increased chances of recidivism were constant among crime severity.

Case Analysis. Analyzing monumental court cases proved essential when evaluating the ethics of pretrial detention. In specific, John Washington in the Catholic University Law Review shared his stance on pretrial detention through the analysis of historical court cases. Washington argues that pretrial detention twists an Americanized ‘innocent until proven guilty’ phrase into “dangerous until proven innocent”. In doing so, he refers to how the criminal justice system in America has historically prioritized meeting a greater good for society at the sacrifice of disproportionately assuming defendants are dangerous and having them detained pretrial. Referencing *US v Salerno* and *Ludecke v Watkins*, it’s noted that the state has the ability to loosely interpret how the word “dangerous” applies to a defendant. As a result, this means that innocent people are sometimes detained for a greater good by assuming that they would compromise public safety (Washington 1988). In a broader application, there is an institutional problem that exists. In an effort to enhance public safety, pretrial detention is increased. However, this detention in turn increases repeat offenders, which actually lowers prospects for public safety.

Encountering Solutions. Accounting for the overwhelming data that demonstrates the various variables that impact recidivism, and the resulting struggles that defendants face, it became apparent to indulge in research that proposes solutions to these problems. First, bail reform success stories shed light on how the criminal justice system might be better off without pretrial detention, monetary bail, or both. For instance, New Jersey's constitutional Amendment and bail reform from 2017 that essentially removed cash bail, led to a decrease in pretrial jail population by 20%, and only 1.2% of those on pretrial release were rearrested for a serious crime. Similarly, Washington D.C. took early steps to pretrial reform, that can be seen through statistics where in 2019 more than 90% of those arrested were released without cash bail, 88% of those appeared for court, 87% remained arrest free for any charge, and 99% were arrest free for violent crimes. Finally, Illinois’ General Order issued in 2017 provided monetary bail reform to be affordable, which resulted in 97% of people free from rearrest for violent crimes (Center for American Progress 2022). These results are notable from two aspects: pretrial detentions intended to improve court appearance, however removing bail increased appearance rates, and the various reforms instituted actually reduced the rate of recidivism. Additionally, there are several proposed reintegration steps that are believed to prevent recidivism as well. These reintegration strategies focus on abstaining from crime by emphasizing factors like skill acquisition and employment for offenders. Recognizing human and social capital, tailored intervention programs address specific challenges and offender categories. Acknowledging personal challenges, institutional and community-based programs target dynamic risk factors through motivation, education, skill development, and various interventions all while accounting for personal challenges that previous offenders face as they reintegrate into a part of their communities (UNODC 2018). Thus, removing monetary bail and relaxing pretrial detention, all while improving social institutions to aid in reintegration serve essential to reducing recidivism rates.

Data Summary. In summary, a clear picture of the negative effects of pretrial confinement is painted by the combination of research, firsthand accounts, and case studies. The criminal justice system urgently needs reform due to the risks to mental health, increased possibility of reoffending, institutional inequality, and emotional suffering. The evidence demands a thorough expansion, citing problems ranging from the detrimental effects of cash bail to the deterioration of the presumption of innocence and institutional problems that disproportionately affect minorities. While there are encouraging instances of successful bail reform, these results highlight the necessity of systemic adjustments for a more equitable, just, and restorative criminal justice system.

EVALUATION

The study effectively combines evidence from the various journals, personal internship experiences, and various data sources, providing a strong foundation for the correlation between pretrial detention and increased recidivism. Quantitative data like such from Harris County, Texas, and qualitative insights

from personal interviews enhance the study's comprehensiveness. The exploration of mental health impacts and the critique of monetary bail systems contribute to a compelling argument for comprehensive treatment and bail reform. The inclusion of a juvenile detention case study adds depth to the analysis for considering age disparities among statistics.

While the evidence is strong and numerous, the study could benefit from an even further exploration of specific mechanisms within pretrial detention contributing to heightened recidivism. Greater research, diversifying the geographic scope, and considering longitudinal studies would enhance the study's completeness.

Additionally, while it is essential to acknowledge that correlation exists between pretrial detention and recidivism, this does not immediately justify causation. There may be other variables at play, including criminal history, background, and crime severity that contribute to recidivism as well. However, the multitude of case studies utilized aids in considering possible variables at play in conjunction with numerous crime statistics.

While my analysis focuses on the negative effects of pretrial detention and the potential for reform, it is still crucial to acknowledge alternative perspectives. Some stakeholders, such as law enforcement, may argue for the necessity of pretrial detention to ensure public safety from dangerous individuals, particularly for severe crimes where there may be a significant risk to the community. Understanding these perspectives is crucial for developing comprehensive and effective reform practices that addresses the concerns of all members of society involved. Albeit, this research aims to examine the application of pretrial detention where necessary, with a focus on mitigating its adverse effects while still prioritizing public safety. The relationship between this study's variables of interest is multifaceted, with social, economic, and individual factors. Proposing effective reform requires a comprehensive understanding of these interacting factors.

In conclusion, the evidence underscores the need for criminal justice reform. Further research into specific mechanisms and a broader scope would strengthen the study's impact, contributing more comprehensively to ongoing discussions on reforming the criminal justice system. Additionally, datasets that allow for linear regression would better aid in understanding the strength of the correlation among the variables that were studied in this paper.

CONCLUSION

The comprehensive evidence presented establishes a compelling case for the adverse impact of pretrial detention on recidivism. Studies, including those conducted by the ACLU, consistently demonstrate a significant correlation between pretrial incarceration and increased reoffending rates. These findings are substantiated by firsthand observations during an internship at the Mercer County Criminal Courthouse, revealing the emotional distress and confusion experienced by defendants, particularly regarding their inability to access sufficient legal counsel. Moreover, the disproportionate effect on minorities, exacerbated challenges in obtaining employment post-detention, and the financial strain of cash bail contribute to the complexities of this issue.

The detrimental effects extend to mental health, with alarming statistics on jail deaths and suicide rates among pretrial detainees. Notably, the US GAO underscores the heightened risk of recidivism among prisoners with serious mental illnesses, emphasizing the challenges they face post-release, such as securing housing and employment.

Analysis of monetary bail reveals its counterproductive role, leading to increased recidivism rates and disproportionately affecting racial and ethnic minorities. The erosion of the presumption of innocence, as highlighted by Washington in the *Catholic University Law Review*, adds an ethical dimension to the discussion. The institutional problem, where pretrial detention intended for public safety compromises it by contributing to a cycle of repeat offenders, becomes evident through historical court cases and ethical evaluations.

Significantly, successful bail reform stories from New Jersey, Washington D.C., and Illinois underscores the potential positive impact of eliminating cash bail and easing pretrial detention practices. These reforms not only improve court appearances but also reduce recidivism rates, emphasizing the need for systemic changes.

In conclusion, the findings highlight the multifaceted negative consequences of pretrial detention: impacting emotional well-being, mental health, societal equity, and the likelihood of reoffending. This evidence is crucial to answering the research question of how pretrial detention impacts recidivism, in a multi-variable relationship that extends socially, economically, and institutionally. Lastly, the synthesized evidence highlights the urgency to institute nationwide comprehensive reforms to create a fairer and more effective criminal justice system, without continuing to rely on pre-trial detention as it increases recidivism, and consequently public safety.

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