

A Summary of Findings

One of the principal arguments that undergirds the opposition to surety-based pretrial release is that people are languishing away in pretrial detention because they cannot afford the cost of a surety bond in order to secure their pretrial release. A related assumption is that since defendants are locked up because they are poor, they are being systematically deprived of their due process rights because of their financial status. As a consequence of this supposition, it has been proposed that an alternative method of unsecured pretrial release be implemented as policy that would allow defendants to remain free without any type of surety to secure their appearance in court. As an alternative to being admitted to bail through a private surety bonding company on a “pay-as-you-go” basis, defendants are placed in government-sponsored and government-run unsecured pretrial release programs that are funded by taxpayers.

Certainly, there are people in jail who are actually supposed to be there for a lawful purpose and legitimate reason: there are offenders serving sentences; there are those persons that are on “hold” for a probation, parole, pretrial violation or transfer to another county or another state; there are those persons that are being held in protective custody; there are individuals who are being deported and awaiting transfer to Immigration and Customs Enforcement; there are those persons who are in detention because they are awaiting trial on federal charges; and there are those convicted offenders who are awaiting transfer to state correctional facilities from their original jurisdiction of conviction. Finally, there are those persons in pretrial detention who are there because the judge has determined that the nature and the gravity of the alleged offense(s) are of sufficient severity so as to preclude any type of pretrial release, whether secured or unsecured. Fundamentally, people end up in jail for a myriad of reasons *other* than just pretrial detention. Associated with these different reasons for being in jail are differential lengths of time associated with the confinement.

Thus, the purpose of this research is to determine, based upon available data from those counties in the state of Florida that have online databases with search and query capabilities, the average length of stay in pretrial detention following arrest prior to being released from pretrial custody.

Discussion and Conclusions

This study was originally undertaken to determine if there was any truth to the contention that defendants were languishing away in Florida jails because they could not afford the cost of a surety bond. In addition, this research attempted to determine whether there were any statistically significant predictors associated with the number of days in detention, and if so, whether these predictors were legal- or extra-legal criteria.

There were several conclusions that were derived from the analysis of over 9,000 cases across the state of Florida during a one-year time period from October 1, 2017 through September 30, 2018. These data were compiled from twenty-nine counties in the state of Florida that had online search engines wherein it could be determined how long the defendant was in detention and the mechanism by which the defendants were released or continued in some type of confinement status.

Release mechanisms included unsecured pretrial release or secured pretrial release in the form of some type of financial surety. Confinement statuses included defendants being placed on some type of hold, remaining in detention for a prolonged period of time after the amount of bond had been set by the judge or the magistrate, and being sentenced to confinement subsequent to adjudication and conviction.

Of these 9,300 detainees, just over forty percent of the sample had been released on some type of surety bonding mechanism in conjunction with their secured pretrial release. Another fifteen percent (14.5%) were released on some type of *unsecured* pretrial release mechanism. Another seventeen percent (16.8%) were on some type of “hold” status while just under twenty-five percent (23.3%) were in jail because they were serving a sentence following the adjudication of their case. Just under two percent of detainees were in detention because they could not meet the financial requirements associated with a obtaining a surety bond.

Overall, two-thirds of the overall spent from between one and seven days in jail, while 56 percent of the sample spent between one and three days in pretrial confinement. The data also showed that defendants in unsecured pretrial release status spent statistically significant longer time in pretrial detention than did defendants released on a surety bond. This finding was observed across the entire sample of detainees, along with those snapshot samples that contained 20 percent, 10 percent, and 5 percent samples of the larger overall sample.

In addition, there were some significant variations by counties regarding the time differences spent in detention when comparing those defendants in unsecured pretrial release status with those released on some type of secured pretrial release mechanism. These included Flagler, Hernando, Hillsborough, Indian River, Lake, Lee, Nassau, Palm Beach, and Santa Rosa counties.

However, when it comes to the question of defendants languishing away in detention facilities because they cannot afford the cost associated with surety bonding, the data showed that less than two percent of all detainees were in a prolonged state of detention regarding their confinement. Ironically, of the six different counties that had a disproportionate share of defendants with prolonged stays in detention on a pretrial basis, five of the six counties (Brevard, Manatee, Palm Beach, Pinellas, and Polk) have unsecured pretrial release programs currently in place. Moreover, 108 of the 153 detainees (68.6 percent) who were determined to be in

prolonged detention status were *from those counties in the sample with operational unsecured pretrial release programs*. The question becomes this - if these defendants were truly languishing in jail simply and solely because of a lack of financial resources for obtaining a bond, why weren't they simply accepted by the unsecured pretrial release program for release from pretrial detention? In point of fact, the argument that vast numbers of defendants are locked up in pretrial detention on the basis of a single criterion – because they cannot financially afford a surety bond – is grossly overstated and has no systematic evidence to substantiate the claim.

There was one and only one variable in the model that was predictive of the number of days in detention across all the different 'snapshot' samples: the total number of charges against the detainee. The total bond amount had no predictive value whatsoever when it came to determining the sources of variation in the number of days spent in detention.

Finally, data from the state of Florida Office of Program Policy Analysis and Government Accountability indicated that the operating budgets of twenty-nine unsecured pretrial release programs across the state of Florida over a three-year period (2015, 2016, and 2017) exceed 95 million dollars. This corresponds roughly to 31.7 million dollars per year, or \$87,000 per day. The costs of operating these *unsecured* pretrial release programs are paid for, in one way or another, by Florida taxpayers. However, the cost to taxpayers to implement a system of *secured* pretrial release costs Florida's taxpayers absolutely *nothing*.

Overall, the results that were obtained as a result of this research are certainly not groundbreaking. In fact, these results are 'remarkably unremarkable' to the extent that they have confirmed that which we already knew, especially when it comes to the issue of the 'prolonged languishing in detention' hypothesis allegedly being experienced by large numbers of defendants. The data from this research simply do not support that contention.

In an ideal sense, it would have been preferable to have data from all Florida counties, and not just those with online search engines that may be routinely used by the general public. A widespread study from across the state from all of the counties in Florida using a more expansive data set would go an even further distance in resolving this public policy question within the realm of the criminal justice arena.