Centre for Criminology & Sociolegal Studies
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Bail, Pretrial Detention, and Evidence

Research Summaries Compiled from *Criminological Highlights*[1]

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Criminological Highlights. As of September 2025, we have written and released 1040 *Criminological Highlights* summaries of papers that we believe are examples of high-quality research that might be of value to people who have an interest in criminal justice policy.[2]

We have also occasionally produced collections (or "special issues") on specific topics of current public interest. Although we have never felt that *Criminological Highlights* provides a complete review of the literature on any particular topic, we are confident that a review of *Criminological Highlights* papers on certain themes can provide an overview of what we know about that topic.

Pretrial Detention. Pretrial detention is an issue that is important in Canadian criminal justice for various reasons. The most recent Statistics Canada data (2022) suggest that in provincial/territorial prisons 72% of prisoners in prison on an average day have not yet been found guilty and are awaiting trial.[3] More dramatic, perhaps, is the finding that in Canada's provincial/territorial prisons, the number of prisoners who are in remand (unsentenced, awaiting trial) has increased in the past 10 years by about 18%. The number of sentenced prisoners in these provincial prisons, on the other hand, has decreased by about 46%. Despite what some politicians are saying – amplified during the 2025 federal election – these figures suggest that Canada is quite comfortable detaining large numbers of accused persons prior to trial. The idea that "catch and release" describes the manner in which people accused of serious crimes are normally treated in Canada is challenged by the existing publicly available data.

And yet, the Liberal government in its 2025 election platform promised that the government will "Make it harder to get bail for those charged with violent car theft, car theft for a criminal organization, home invasion, and certain human trafficking and smuggling offences by establishing a reverse onus for these

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[1] *Criminological Highlights* is produced by a group of faculty (at the University of Toronto and Toronto Metropolitan University), criminology doctoral students, and the Centre's librarian. We routinely scan approximately 70 criminology and related journals. For each 8-article issue of *Criminological Highlights*, a short list of possible papers (typically consisting of about 16-24 articles) is chosen and the group reads and discusses each of these papers. For a paper to be included in *Criminological Highlights* it must be methodologically sound and it must have some (general) policy relevance. Since 1997, *Criminological Highlights* has received support from a number of different sources: the Department of Justice Canada, Correctional Service Canada, and the Ministry of the Attorney General, Ontario. Most recently it has received generous support from the Geoffrey Hinton Criminology Fund. Views – expressed or implied – in this publication (and in the commentary that follows) are not necessarily those of any its funders. *Criminological Highlights* is available without charge from our website: https://www.crimhighlights.ca/ Subscriptions (for email delivery of *Highlights*) are accepted on the website. Subscription requests and general questions about *Highlights* can also be sent to either of the directors of the project: anthony.doob@utoronto.ca rosemary.gartner@utoronto.ca

[2] Available on our website: https://www.crimhighlights.ca/

[3] This figure excludes Newfoundland & Labrador because of missing data.

crimes." No credible evidence has been provided that pretrial release has contributed to these problems, or that its increased use could solve them.[4] It is easier to make an assertion that "change" is needed than to actually demonstrate that need. The assumption seems to be that imprisoning more people while awaiting trial would, unambiguously, be good policy.

This collection of summaries of research papers addresses a number of topics related to pretrial release. In the text that follows, we have attempted to provide an accessible (and brief) overview of the findings. This is followed by the one-page summaries of individual research papers that are the empirical basis of our conclusions. Our purpose in providing all of this information is very simple: many of the issues related to pretrial release and remand are based on empirical assumptions. This collection is an attempt to make these empirical findings easily available for people to judge for themselves.

The overview of the research findings should be interpreted as being exactly that: an overview. The details that are contained in the *Criminological Highlights* summaries is the evidence that is necessary to understand the details of what is known. We would suggest that this introductory overview should be used primarily to identify those *Highlights* summaries most relevant to each person's interests.[5]

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Bail, Pretrial Detention, and Evidence

Anthony N. Doob and Tyler J. King

In most areas of life – whether it be medicine, finance, the environment, or anything else – when one is trying to develop policy to improve the situation or to "fix" something, one normally starts with an attempt to understand exactly what the problem is one is trying to fix. In criminal justice, however, this starting point often seems to be skipped. The discussion around bail appears, unfortunately, to be a good example of how those most vocal about the problems appear to be least interested in understanding what the current situation really is. This compendium of *Criminological Highlights* research summaries, combined with some additional statistics and knowledge about the operation of bail in Canada, is an attempt to render some systematic information about what is happening in this area of the criminal justice more easily accessible. Said differently, this "special issue" represents an attempt to take the blindfolds off of those who are looking at bail issues. We think it is important to examine a more complete picture of bail and pretrial detention.

In Canada, as is the case elsewhere, people are routinely imprisoned as punishment for their criminal acts. Pretrial detention is quite different: it is *preventive* detention. The starting point in the *Criminal Code* provisions on bail is, first of all, that people are innocent unless proven guilty in a court. Hence "primary consideration [is to be given to] the release of the accused at the earliest reasonable opportunity and on the least onerous conditions that are appropriate in the circumstances, including conditions that are reasonably practicable for the accused to comply with…" (*Criminal Code*, s. 493.1) unless specific conditions are met justifying the detention of the accused.

For the most part, pretrial detention can be justified not because of an accused person's past action. Rather, it is justified because a prediction has been made about future behaviour: that the accused will not show up for court and/or will commit a criminal offence or interfere with the administration of justice while awaiting trial.[6] The most important point, however, is that the inquiry relates *not* to what the accused might have

[4] https://liberal.ca/wp-content/uploads/sites/292/2025/04/Canada-Strong.pdf p.18

[5] References to the *Highlights* summaries are provided throughout this summary. The original *Highlights* reference and the page number in the second part of this collection (bottom right of each page) – is contained in the text.

[6] A third justification for detention – that detention is necessary to maintain confidence in the administration of justice – has been restricted, to some extent, by court decisions. [see *Criminal Code of Canada*, s. 515(10)].

already done, but rather what the accused *might do* in the future (and possibly how ordinary citizens in the future might respond to the accused person's release).

We note that this special issue focuses on empirical problems related to the use and administration of pretrial detention. We do not touch on the separate yet very real moral issue of imprisoning *any* person who is technically legally innocent, as are all persons given pretrial detention (with the word *pre*trial literally meaning their charges have not yet been proven in court). We believe people will have to make their own judgments on whether the potential costs of imprisoning people without a finding guilt can be justified.

Relatedly, however, what we can and do comment on below is the fact that many of those held in pretrial detention are, in fact, never found guilty of anything. Taking one year and one province as an example, in the most recent set of Ontario data that were available to us in September 2025, there were 41,052 cases in which the accused had been detained while awaiting trial. Of these, 13,768 had all charges withdrawn or stayed before trial.[7] In other words, during this one year, in Ontario there were 13,768 cases where the accused person was imprisoned but never found guilty as a result of a decision by a Crown Attorney not to proceed. At the very least, then, and in contrast to what some politicians have been saying, we do not think this represents a "lenient" bail system.

With this in mind, we believe the evidence contained in the *Criminological Highlights* summaries that follow this introduction support the following conclusions:

A. We are not very good at predicting which accused are likely to commit new criminal offences if they await trial in the community.
B. Detaining people in custody while awaiting trial is likely to *increase* the likelihood that they will commit new offences after the case (and sentence) is completed.
C. Detention *before* trial is, in reality, punishment *without* trial.
D. Canada has a large number of people in pretrial detention. It is within the power of governments to use pretrial detention more selectively.
E. Many unnecessary conditions of release are imposed on innocent people who are awaiting their trials in the community. Unnecessary conditions of release are both punishing (without a prior finding of guilt) and they place the accused person in jeopardy of being charged with a new criminal act for behaviour that is not normally considered to be criminal. There is no evidence that conditions of release actually reduce offending by those awaiting trial in the community.
F. There are known techniques available to government that, for little or no cost, can be used to increase the likelihood that people will show up for court appearances on time.
G. There is evidence that racialized groups are treated differently in pretrial release decisions. Given the various challenges created by the overuse of pretrial detention, this issue should not be ignored.

A. *Prediction.* The focus of decisions on pretrial detention is prediction. The problem with predictions about what an accused person will do if released into the community is that they are almost always imperfect. There are two kinds of errors: (1) predicting a person is "safe" when, in fact, they actually violate some condition of release, and (2) predicting that a person would not be safe to release and detaining them when, in fact, they would not have violated a condition of release had they been released. In the context of bail, the first type of error is likely to be identified and publicized as an error; the second type of error

[7] These were data from 2019 (prior to Covid). For inexplicable reasons, our attempts to get access to more recent data (from the Ontario Court of Justice website) resulted in a "404 Error" – "Page not found." A few months ago we were able to get data for 2022 in which our records suggested that there were 33,574 cases where the accused was held in custody until their case was disposed of. That year the Ontario data suggested that in 12,985 cases all charges were withdrawn or stayed.

is, by definition, hidden from view. We do not and cannot know whether a person who was imprisoned before their trial would have committed an offence if released.

Predictions in the area of pretrial release often have added complexities.

1. Courts are never evaluated on how accurate their decisions are. However, in one study of actual bail decision makers, it was discovered – by giving 61 decision makers the *same* set of 27 cases to decide – that judges profoundly disagree with one another and with how they should go about making decisions (CH 7-5-5, p. 1). Said differently, different judges decide on the release of accused people in different ways.
2. It is important to remember that the usefulness of any predictor is likely to be low when the base rate of the behaviour (in this case, future crime) is low. (CH 5-1-5, p. 2). In other words, when a crime is relatively rare (like serious violent crime), our ability to accurately predict gets worse.
3. Detaining people in custody while awaiting trial is, of course, a form of pretrial 'selective incapacitation.' The difficulty is that we are not good at identifying prisoners likely to commit many offences even when we have better data than are usually available at a bail hearing (CH 3-1-1, p.3).
4. In one study of domestic violence, a commonly used predictive instrument had high rates of both false positives (people predicted to be dangerous who weren't) and false negatives (people predicted to be safe who turned out not to be). (CH 18-4-4, p. 4).
5. But even when risk assessment tools have *some* validity, it is clear that predictive instruments developed largely on the basis of one group are likely to be inferior for other groups – e.g., Hispanic accused in one study (CH 17-6-7, p. 5) and Indigenous people in another study (CH 22-2-7, p 6).
6. Even though "risk assessments" almost certainly have serious flaws, their use in *certain* circumstances may be useful if they are calibrated in a manner that can be used to give comfort to those making decisions to release accused people. In one study, a risk assessment instrument was developed for use with youths. It focused on "objective" matters such as the current charge, criminal record, and previous compliance with court orders. Though other changes occurred around the same time, it would seem that by focusing decision makers' attention on "objective" features of the case like these, the detention rate of youths declined considerably. The effect (greater accuracy) was largely a result of the increased release of "average risk" youths. (CH 15-5-6, p. 7)

B. *The effect on crime*. It is often (incorrectly) assumed that if a person is detained in pretrial custody, crime will decrease. This may seem logical, since it is assumed that the incapacitation of someone who might commit a crime will be the only effect on crime. What such thinking ignores is the longer-term impact of imprisonment on future offending. We suggest that governments like Canada's should carefully review their thinking and legislation on pretrial release and remand in custody: it is almost certain that crime is *increased*, not decreased, by laws and procedures that increase the likelihood of pretrial detention. Simply put: unnecessary pretrial detention increases crime. This may seem counterintuitive, but it shouldn't be.

If a person is detained in custody for a few weeks or months, they obviously are not committing offences in the community during this time. However, if, after they have been released into the community at the completion of their case or their sentence, the effect of the pretrial detention is that the person has an *increased* likelihood of committing offences, then it is important to evaluate the tradeoff: a short-term reduction of offending while the person is in pretrial custody against what may be a long-term increase in offending. Fortunately, data on this tradeoff exists.

One finding is very clear: pretrial detention does not reduce overall crime in the community. There is also substantial evidence that pretrial detention can increase the likelihood of long-term (or lifetime) offending for an individual.

1. An examination of a large number of separate studies showed that those detained for trial were more likely to plead guilty than were those released into the community, even when various factors were controlled. Those detained may well have been seen as being more serious offenders simply because they had been detained (CH 21-5-7, p. 8). More generally, conviction and imprisonment appear to flow directly from pretrial detention (CH 21-5-8, p. 9). Negative effects of the finding of guilt (and incarceration) can be expected from other research (See the *Criminological Highlights* Special Issue on the impact of imprisonment on our website: https://irp.cdn-website.com/63cb20a6/files/uploaded/DoobWebsterGartner-ImprisonmentEffects-Full(9Aug23).pdf
2. The data that are perhaps most important for those who advocate the increased use of pretrial detention as a technique of addressing the problems of crime are those studies that look at the relationship between pretrial detention and crime soon after a case is completed. For example, one study showed that 3 months after a person's bail hearing – some of which was spent in pretrial detention - those who were detained were more likely to be charged with another felony than those who were released (CH 17-3-1, p. 10). Another study demonstrated that those detained in pretrial detention were more likely to be arrested for a new criminal offence and, more specifically, a new violent criminal offence (CH 22-2-1, p. 11).
3. Some of the most convincing research on the harmful impact of pretrial detention are studies that take advantage of the fact that those making decisions on pretrial release vary considerably in their decisions (see section A-1, above). Those accused unlucky enough to be ordered to appear before a "tough" decision maker (and therefore being more likely to be detained) are more likely than others (who lucked out and got a decision maker who was more favourable to release) to commit offences in the future (CH 17-5-3, p. 12). In the bail process, then, one can argue that the decisions of "tough" judges are likely to *increase* crime in the community.
4. The harmful – and ultimately crime-creating – effects of detaining an accused person can be seen quite clearly by tracking the behaviour of accused people who were placed, as a result of a near-random basis, before judges who varied in their likelihood of releasing accused people. The study points out that "the adverse labour market outcomes and criminogenic effects [of being processed in the criminal justice system] begin at the pretrial stage prior to any finding of guilt, highlighting the long-term costs of weakening a defendant's negotiating position before trial and the importance of bail in the criminal justice process." (CH 17-2-7, p. 13).

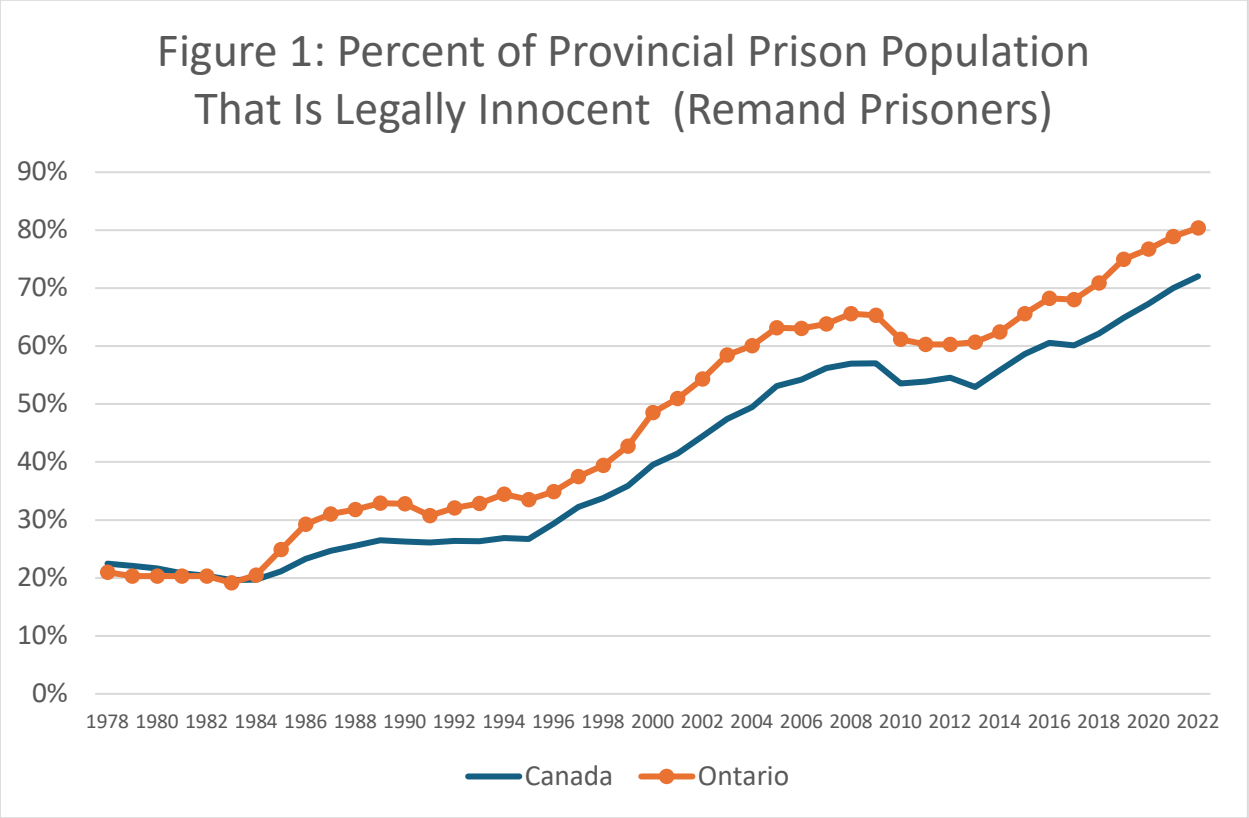
C. *Punishment without trial.* In a formal sense, the "punishing" part of the criminal justice system occurs after sentencing. The reality is, of course, that punishment *as experienced* typically occurs throughout the criminal justice process.

1. As one Canadian study pointed out, focusing on sentencing "neglects the fact that many people who enter remand imprisonment return to their community without a conviction." Accused people also describe arrest and the required court appearances as painful. The "remand process imposes harms on individuals that can have substantial and negative consequences on their lives in the short and long term" (CH 17-6-1, p. 14). In short, pretrial detention is experienced in much the same way as is sentenced imprisonment (CH 22-1-8, p. 15).
2. These punishments do not only occur immediately (while the accused is in the remand process). Those detained prior to trial are more likely to be found guilty in court (CH 18-4-1, p. 16).
3. Additionally, it is not just the accused person who is punished by the pretrial detention system: friends and families of accused people also experience the punishing effects of the bail/remand system. Court-ordered living arrangements and various other required actions (e.g., appearing in

court regularly with the accused) also have punishing effects on others associated with the accused (CH 20-3-7, p. 17).

D. *The size of the "remand problem."* As noted above, remand counts (the number of people currently imprisoned at a given time) in Canada have increased in recent years.

1. Remand counts have increased even during periods of time when crime was not increasing (CH 11-1-6, p. 18). See Figure 1, below, showing a gradual increase in the remand population in Ontario and Canada as a whole since the mid-1980s.
2. One problem with the bail process is that studies of the court process suggest court personnel do not put much value on completing cases in a timely fashion (CH 15-2-1, p. 19). Existing research also suggests that one way to reduce pretrial detention would be to have efficient ways of dealing with those who are arrested (e.g., courts that are always available to hear bail cases). (CH-9-4-4, p. 20)
3. Attempts to reduce the use of sentenced custody for youths in Canada were more successful than was reducing the use of remand custody. In Ontario in the year 2000, for example, there were, on an average day, 1494.1 youths in sentenced custody. In 2022, this had declined to 45.8 – a 97% reduction. For remand custody, the decline was substantial (356.9 to 191.7 – a reduction of 46%), but obviously the remand population now exceeds the sentenced population. One possible explanation for the *relative* failure in reducing remand custody for youths is that youths are being released with large numbers of required conditions and they are subsequently being charged with administrative of justice offences for apparently breaking one or more of these conditions (CH 13-1-1, p. 21).
4. Governments *can* exert some control of the size of the remand population if they wish to do so. This occurred in England in the early part of this century (CH 11-1-7, p. 22).
5. An interesting example of how the size of the pretrial population can be controlled comes from a study carried out in one US county in which the court had ordered that the jail population should be reduced. Police were 'ordered' by judges to issue summons, but not formally arrest and detain, certain types of suspects. The police were not perfectly compliant with the court order, but the number of people detained in custody did decrease substantially. Interestingly, the increased use of pretrial release did not affect failures to appear in court (CH 8-5-6, p. 23).



E. *Conditions of release*. Canada's *Criminal Code* implies (S. 515) that people should be released without conditions unless there is a good reason for doing otherwise. Obviously, there are restrictions on this principle (e.g., legislated conditions requiring, in certain cases, the accused to demonstrate why release is necessary).

1. Courts appear to like placing conditions on accused people who are requesting pretrial release. However, by placing many conditions on an accused (youths in this study) and by requiring compliance with these conditions for a long time (6 months or more), courts create situations where youths are likely to be charged with a new offence – failure to comply with these conditions of release (CH 12-5-3, p. 24). Said differently, courts set up youths to fail by ordering pretrial detention and imposing conditions (CH-15-3-1, p. 25).
2. Given the potentially harmful effects of adding large numbers of conditions to a pretrial release order, it is interesting that Canada's youth courts are especially likely to load "treatment" conditions onto girls rather than boys (CH 16-4-1, p. 26).
3. The conditions of pretrial release are often vague – e.g., "being amenable to the rules and discipline of the home." They are usually agreed to by the accused and their lawyer because to do otherwise may delay the processing of the case or it may lead to the accused being detained. The fact that conditions are experienced as punishment results in "a blurring of the lines between the presumed innocent and the proven guilty" (CH 16-6-4, p. 27). "Bail at all costs" is the priority (CH 22-1-7, p. 28).
4. Other conditions simply do not make sense: a youth charged with shoplifting from one drug store in Ontario was prohibited from visiting *any* of this chain's 622 stores in the province, though apparently the youth was allowed to visit this chain's competitors (CH 13-5-5, p. 29).

5. One important reason to consider carefully whether "conditions of release" are necessary is that the addition of conditions does not appear to affect the likelihood of the accused committing new (substantive as opposed to administrative) criminal offences or failing to appear in court (CH 21-3-7, p. 30).

F. *Ensuring appearance in court.* As mentioned above, the first justification for pretrial detention is the understandable value of ensuring that the accused show up for court as required.

1. Ordinary business offices – e.g., dentists and doctors – are aware of the challenge of getting people to appear as scheduled: they often send (telephone, email, text) reminders. Courts that have copied these techniques have found that they also increase the likelihood of accused showing up in court (CH 13-4-1, p. 31; CH 20-3-8, p. 32).
2. An alternative – and easier approach – can also be used: designing the court summons form so as to simplify and highlight the relevant information or providing suggestions on how to "plan" for the appearance (CH 19-1-3, p. 33).

G. *Pretrial release and racialized people.* The pretrial release system is not immune to the problem of treating different groups of people differently.

1. In one study it was found that Blacks are more likely than Whites to be disadvantaged by the recommendations being made about pretrial detention (CH 21-1-4, p. 34).
2. There is some evidence that different groups of racialized people are treated differently in the bail process and may, themselves, react to the pressure put on them in different ways. One study in Ontario showed that Black accused people in custody were less likely to plead guilty than White accused people (CH 4-6-7, p. 35).

Judges' decisions about bail are not reliable: when deciding on the pretrial detention or release of identical cases, different judges arrive at different decisions.

Disparity of judicial decisions has largely been examined in the context of sentencing. In Canada, for example, there are studies demonstrating that judges faced with written descriptions of cases vary dramatically in their recommended sentences (for both adult and young offenders). In England, where this study was carried out, lay judges (equivalent in background to Justices of the Peace in Canada) decide most cases involving questions of pretrial release. The accused is generally supposed to be released unless it is believed that he or she will not appear in court as required, will offend while on bail, or will interfere with the administration of justice.

In this study, 61 lay judges from 47 different adult courts were presented with written descriptions of 27 cases. These cases varied according to the gender, race, age, and criminal history (convictions and bail record) of the accused person; the seriousness of the offence; the relationship of the accused to the victim; strength of community ties; and strength of the prosecution's case. The judges rated the risk that the offender would abscond (i.e., not appear in court as required), would offend on bail, or would obstruct justice. Finally, they indicated their overall decision whether to detain or release them pending trial.

Decision models – essentially the judge's "theory" of the factors that were related to each of the outcome variables – were constructed. Judges used different factors in arriving at their assessments of the cases. For example, when deciding on whether the accused would appear in court, 60% of the judges took account of the accused person's ties to the community, 49% used previous criminal history, and 20% used the seriousness of offence in arriving at their decision. In attempting to determine whether the accused would offend if released on bail, previous criminal history was important for 85% of the judges. In assessing whether the accused would obstruct justice if released, 61% used offence in making this assessment, and 22% used the relationship to the victim and criminal history.

There were three possible decisions for each of the 27 cases: unconditional release, conditional release, and remand in custody. For each case, the modal (most common) decision was used as the standard. Between 8% and 59% of the judges disagreed with the modal decision, with an average disagreement of 28%. On the individual ratings of the likelihood of absconding, offending on bail, and obstructing justice, "there was less variability among judges on those cases where the mean risk posed by the defendant was judged as relatively low" (p. 377). Generally speaking, as one would expect, "judges' bail risk judgments were predictive of their subsequent bail decisions, and for the majority of judges the decision was driven by only one of the three risk judgements" (p. 381).

Conclusion. The results suggest that not only is there disagreement on what is perceived to be the appropriate outcome of the bail hearing among lay judges, but these same judges disagree on how the judgement should be arrived at. However, certain things were predictable: greater disagreement was observed in cases that were judged to pose a greater risk of absconding, offending or obstructing justice while on bail. The reduction of disparity might be addressed through the use of "well defined and structured guidelines" (p. 282) that "more precisely specify the factors judges should use when making their bail risk judgements, how each factor should be weighted, and how risk judgements should inform bail decisions" (p. 383).

Reference: : Dhami, Mandeep K. (2005) From Discretion to Disagreement: Explaining Disparities in Judges' Pretrial Decisions. *Behavioural Sciences and the Law*, 23, 367-386.

Intuitive profiling – the assertion that the accused fits the informal stereotype of the type of person likely to commit the crime in question – is liable to be deceptive, even though courts have deemed it to be probative evidence.

Background. A man is charged with the killing of his wife. It is argued that the fact that he had been unfaithful to her constitutes evidence that he killed her, rather than, as argued by the defence, she died accidentally. Intuitively, the court decides that unfaithful husbands are more likely to kill their wives than faithful husbands and subsequently admits the evidence on that ground. What's wrong with this? Lots, it turns out.

This paper examines the issue of intuitive profiling and notes that sensible ways of evaluating this evidence exist but are rarely understood. A simple example is presented using the above-mentioned scenario. Imagine that we are looking at the behaviour of 1 million men. US data would suggest that we might expect 26% of them to be unfaithful to their wives. Independently, the maximum probability that a man would kill his wife at some point during the marriage might be estimated as 240 per million married men. If one further assumes the *maximum* relationship between these two variables, one would assert that all 240 married men who killed their spouses had been unfaithful (see table).

	Faithful	Unfaithful	Total
Killed wife	0	240	240
Did not kill wife	740,000	259,760	999,760
Total	740,000	260,000	1,000,000

These data lead to the following outcome: the probability of murder if faithful is (hypothetically) zero. The probability of murder if unfaithful is 240/260,000 or .09%. Said differently, 99.91% of the unfaithful men did not kill their wives. Thus, "one can conclude that *at maximum* it is… less than 1/10 of 1% more likely that an unfaithful man will murder his wife at some point in their marriage than it is that a faithful man will murder his wife" (p.138).

In general, it turns out that the usefulness of a predictor is smallest when the base rate of the behaviour (the crime) is low and the base rate of the predictor is relatively high. "Unfortunately, for many (if not most) of the profiling predictors in the legal system, the base rate of the predictor far exceeds the base rate of the crime. Thus the predictor will not be probative – either at all, or sufficiently to outweigh its potential prejudicial value" (p.139). For example, it is shown that "intention to dissolve [a] marriage [on the part of a man] is not meaningfully more probative [of killing one's wife] than infidelity" (p.144). Multiple predictors improve matters somewhat as long as they are largely unrelated and the predictor itself has a low base rate. Further, base rates themselves clearly have to be established for relevant populations. In the table above, the base rate of wife-killing varies with certain population characteristics.

Conclusion. Information such as the unfaithfulness of a man accused of killing his wife is often admitted in court without the analysis showing that it only improves the accuracy of a judgment by 1/10 of 1%. It appears that decision makers (*i.e.* judges, juries, parole boards) may well be "falling prey to the tendency to assume that if an item of evidence… fits their intuitive stereotype or causal theory of those associated with a specific criminal behavior, the evidence is usefully probative of guilt" (p.150). The problem becomes more acute with multiple examples of high rate evidence. It is suggested that estimating the actual value of this evidence – as done in the example above – may reduce the prejudicial value of the evidence.

Reference: Davis, Deborah and William C. Follette (2002). Rethinking the Probative Value of Evidence: Base Rates, Intuitive Profiling, and the "*Post*diction" of Behavior. *Law and Human Behavior, 26,* 133-158.

Can crime be reduced effectively by identifying offenders likely to re-offend and incarcerating them? The answer is simple: No.

Background. The "new penology" represents a shift from the treatment of offenders to "the efficient management of dangerous groups. The [penal] task is managerial, not transformative" (p.704). The terms "protection of society" or "protection of the public" now appear to mean "making it impossible for people to offend by placing them in prison." This is one of the justifications used for "three strikes" legislation. There are, however, serious problems with incapacitation models of sentencing, including the following:

- "the frequency of offending declines with age...
- there is no evidence of a progression of increasing severity of the offences committed over the length of a criminal career,
- there is little evidence of specialization on the part of high rate criminals" (p.707-8).

But the most serious problem is that even the most careful (and optimistic) selective incapacitation model (Greenwood and Abrahamse's 1982 Rand Corporation report) shows high rates of false positives (around 50%). Furthermore, in the construction of its sentencing model, the Greenwood and Abrahamse study used "items that are unrelated to either the offence or the blameworthiness of the offender" (such as employment history, juvenile and adult drug use, and juvenile criminal history, p.719-720).

The study described in this article replicated the Greenwood (Rand) study. The results of this "new and improved" study are simple to summarize: Using California prison data, only 36% of those who were predicted to be high rate offenders actually turn out to be high rate offenders. Moreover, about one third of the high rate offenders were not identified as such.

Conclusion. "Proposals for selective incapacitation are predicated on the idea that we can prospectively identify high-rate offenders sufficiently early in their careers to reap the incapacitative benefit of crime reduction. The major obstacle to the successful implementation of such proposals is that no convincing evidence exists that this is possible" (p. 726). There is a "tremendous appeal of selective incapacitation as an idea. Given that we have every reason to believe that a small subset of criminal offenders contribute disproportionately to the total volume of crime in a society, a strategy that promises to locate and incapacitate this group is almost irresistible in its elegance. The seductive simplicity of selective incapacitation leads otherwise conscientious researchers to conclude that it works, despite the total lack of evidence to support such a conclusion.... The obstacle to realizing this seemingly perfect solution to crime prevention lies in the prospective identification of this offender pool. We simply cannot do it with any reliable accuracy" (p. 727). [The criminologist Frank Zimring once remarked, "The wonderful thing about incapacitation as a method of crime control is that it has no moving parts."] As another writer noted, "the criminal justice system has been burdened with unrealistic expectations of solving social problems that have [proven to be] insoluble elsewhere" (p. 728).

Reference. Auerhahn, Kathleen. Selective incapacitation and the problem of prediction. *Criminology*, 1999, *37* (4), 703-734.

The prediction tool used most frequently by British police forces in domestic violence cases to assess the risk for future domestic violence is found to have failed to give substantial assistance to police officers in identifying high-risk re-victimization or recidivism cases.

"One of the most notable reforms on policing domestic abuse internationally has been the introduction of standardized risk assessment" (p. 1013). The purpose in using these instruments, obviously, is to identify perpetrators who are likely to reoffend and to focus interventions (e.g., pretrial detention or special conditions of release) on them.

Though logically such an approach makes sense, the success of such instruments has not been great. Although they may show statistically significant effects larger than chance, the overall accuracy of many of these measures is weak. Said differently, there are many false negatives (recidivism that is not identified by the test) and false positives (people who are predicted to commit offences, but, in fact, do not). A separate question, of course, is what these 'objective' tests should be compared to. An earlier study (*Criminological Highlights 3*(2)#7) found that domestic violence victims were at least as accurate in predicting future violence as were the 'objective' measures.

In this study, data from 41,570 intimate partner violence (IPV) incidents were examined in which a British standardized risk assessment tool – the Domestic Abuse, Stalking, and Honour Based Violence (DASH) form – was administered. Data from 19,510 non-IPV cases were also included in some analyses. DASH uses data from 27 questions that are asked of the victim and is described as a "structured professional judgement scale" in which final judgements are made either by a frontline officer or a police specialist, on the basis of the data collected by the officer. Risks are described as high (victim at risk of serious harm), medium (serious harm unlikely unless the circumstances change) and standard (no evidence of the likelihood of serious future harm).

5.6% of the original victims reported being revictimized by the same person within one year of the occurrence in which DASH data were collected. For every 100 people who, in fact, were revictimized, about 6 were initially given a 'high risk' rating, 27 were given a medium risk rating, and 67 were given a 'standard' (low risk) rating. Of those initially given "high risk" ratings, only about 10% actually reoffended. This was a higher rate than those initially assessed as having a 'standard' risk where only about 5% reoffended. But to say that 'twice the percentage' of high risk people reoffended in the 'high risk' group ignores the fact that 90% of this 'high risk' group did not reoffend.

Even if the 'medium risk' people were considered 'high risk', it turns out that the instrument would only have identified about 33% of those who reoffended. More dramatic is the fact that, using this cutoff of people predicted to reoffend (high and medium risk), only about 8% of those predicted to reoffend actually did. Said differently, if coercive interventions had been used on all of those predicted to be "medium" or "high" likelihood of reoffending solely to stop reoffending, the intervention would not have been justified for 92% of the people.

Other approaches – logistic regression and various machine learning methods – were used with the IPV and non-IPV data to see if more accurate predictions were possible using more sophisticated approaches. These more sophisticated approaches did not improve predictions, possibly because of unmeasured differences in the incidents (above and beyond the IPV/non-IPV distinction) or because of low reliability of the initial measures.

Conclusion: This highly used prediction instrument clearly has relatively low validity – leading to high rates of false positives and false negatives in the prediction of intimate partner violence as well as other types of violence. Hence the results underline the more general conclusion that the use of comprehensive measures (27 separate questions in this measure) or sophisticated looking measures (as in various high-tech approaches – see *Criminological Highlights 17*(2)#1, *17*(6)#7) are unlikely to predict future violence adequately.

Reference: Turner, Emily, Juanjo Medina, and Gavin Brown (2019). Dashing Hopes? The Predictive Accuracy of Domestic Abuse Risk Assessment by Police. *British Journal of Criminology, 59,* 1013-1034.

A commercially available algorithmic pretrial risk assessment system, COMPAS, disadvantages accused people who are Hispanic.

"Automated risk assessment is all the rage in the criminal justice system" (p. 1). Previous research (*Criminological Highlights 17*(2)#1) has suggested that these instruments aren't better than ordinary people's intuitive risk assessments and that they disadvantage Black people.

One problem with these risk assessment programs is that the manner in which predictions are made is proprietary knowledge and therefore cannot be directly assessed. Hence if a risk assessment tool does not take into account the unique characteristics of a group (e.g., women, Indigenous people, Hispanics), it may unfairly disadvantage members of that group because factors that lead to increased risk scores for groups on which the instrument was originally validated (often white men) may not be at all relevant for members of other groups.

The prediction algorithm that is the focus of this study – COMPAS – uses about two dozen measures to predict general and violent recidivism. The study analyzes Florida data on 6,172 cases in which COMPAS was used to predict general recidivism and 4,020 cases in which predictions of violent recidivism were made. Recidivism was defined as re-arrest within 2 years. The study examines the recidivism rates of Hispanic and non-Hispanic accused people arrested in Broward County, Florida.

There are two ways in which a scale can disadvantage a particular group, in this case Hispanics. First, the test may not discriminate as well for those in the minority group as it does for those in the majority group on which it was developed. Second, members of a minority group with the same scores as members of the majority group may, in fact, be less likely to re-offend.

COMPAS, it would appear, has both of these problems. For example, for non-Hispanics, the group on which the measure was developed, the higher the score, the more likely it was that a person would reoffend. This was true for both general recidivism and violent recidivism. For Hispanic accused, on the other hand, the likelihood of general recidivism was the same for those with medium and high COMPAS scores. For violent recidivism, the actual recidivism rates were essentially the same for those with low and moderate COMPAS scores.

More dramatic, perhaps, are the comparisons between Hispanic and non-Hispanic accused people. Hispanics and non-Hispanics who were predicted to have high general recidivism differed dramatically in their actual recidivism rates: Hispanic accused were considerably *less* likely to reoffend than non-Hispanic accused with the *same* scores. In a similar vein, Hispanic accused who were predicted by the algorithm to have a moderate likelihood of violent recidivism were considerably *less* likely to reoffend than non-Hispanics with similar COMPAS scores. Other analyses resulted in essentially the same findings: For general and violent recidivism, the COMPAS score was less effective at predicting recidivism for Hispanics as it was for non-Hispanics.

Conclusion: The overall data are very clear. Though the algorithms do not explicitly consider cultural groups, the algorithm is considerably less accurate in predicting recidivism for Hispanics. The data demonstrate that an ethnicity-neutral algorithm over-predicts recidivism for Hispanics. Said differently, the algorithm systematically makes certain Hispanic accused people look more dangerous than, in fact, they are. Clearly "greater care should be taken to ensure that proper validation studies should be undertaken to confirm that any algorithmic risk is fair for its intended population and subpopulations" (p.29).

Reference: Hamilton, Melissa (2019). The Biased Algorithm: Evidence of Disparate Impact on Hispanics. *American Criminal Law Review, 56,* (in press).

Risk assessments are often carried out on people who are charged with a crime to determine whether they would appear for their required court appearances if they were to be released. A standardized scale that had often been shown to be "valid" for "Americans" was, in this study, shown to be worthless for this purpose when applied to Native American accused people.

When a person is arrested, they are presumed to be innocent and should, therefore, be released until their trial unless it can be shown that they are likely not to appear in court or they are likely to commit a new offence. This paper examines whether a standardized scale (the "Public Safety Assessment") is as effective for Native Americans as it is for Whites.

There is "no universal threshold of acceptability for the predictive validity of pretrial risk assessments, in terms of strength or practical significance" (p. 399). Hence, the question of whether a risk assessment "works" is often reduced to a relative one: Does it work better than an intuitive guess? Alternatively, does it work as well for one group (e.g., Indigenous people) as for another (White residents of the community).

The Public Safety Assessment uses easily available information (e.g., age, current offence, criminal record, previous failures to appear) to predict whether a person will appear for trial and/or be arrested for a new criminal offence if they are released. In previous research, this scale has been shown to predict both new criminal arrests and failures to appear. However, most of the previous research has been carried out in urban settings, and little of it has compared the value of the scale for predicting the behavior of Indigenous and non-Indigenous samples.

This study was conducted in a largely rural South Dakota (US) county, where Native Americans make up about 10% of the general population and about 50% of the jail population. It examined cases involving 4,570 people who were booked on new charges between 2018 and 2021. Notably, 63% of these individuals were Native American. The study examined two outcome variables: whether the accused person failed to appear in court during the pretrial period and whether the accused person was charged with a new criminal offence.

The measure of accuracy – the AUC ("area under the curve") – can be thought of as the likelihood that a randomly chosen positive instance (e.g., in this study, a person who actually did fail to appear) would have a higher score than a randomly chosen negative instance (a person who appeared as required). If the scale predicted perfectly, the AUC would be 1.0, whereas if the scale had no predictive value, the AUC would be 0.5 (the likelihood of a positive instance having a higher score being 50%). As shown elsewhere (this issue, Item 2), AUC scores have an important weakness: They can obscure the type of error that is made. Hence, the AUC, like many single measures, is not a fully adequate indicator on its own.

In this study, when looking at "failure to appear," the overall AUC – pooling all groups – was better than chance (AUC = .55) but not by much. More important was the fact that the AUC for Whites was .64 and for Native Americans was slightly worse than it would be if one flipped a coin (AUC = .48). Given that 8 of the 11 items on the scale related to prior justice system involvement, it is not surprising that the AUCs were slightly higher when "new criminal arrest" was the outcome measure examined. For this measure, the AUC for Native Americans was higher, but still below that for Whites.

Conclusion: The predictions were not very accurate for any group and were clearly worse for Native Americans. Said differently, if this scale were used with Native Americans, they would be more likely to be misclassified than would Whites. These results are not surprising: What they show is that the determinants of a "fail to appear" are different for Indigenous people than are the determinants for White Americans. The lesson is clear: Predictive instruments like this one need to be tested regularly on any group they are used for.

Reference: Zottola, Samantha A., K. Stewart, V. Cloud, L. Hassett & S.L. Desmarais (2024). Predictive Bias in Pretrial Risk Assessment: Application of the Public Safety Assessment in a Native American Population. *Law & Human Behavior, 48,* 398-414.

The use of risk assessment instruments for youths in determining pretrial release has an unanticipated effect: it reduces the use of pretrial detention.

The usefulness of risk assessment instruments in the criminal justice system is usually measured by whether or not they predict future misbehaviour. This study suggests that they may serve another function: reducing the use of pretrial detention.

Typically, decisions about whether to release someone who has been arrested are based on subjective judgements. A 'risk' analysis of these decisions suggests that decision makers are likely to be 'risk averse' and, as a result, detain people who, in fact, are unlikely to misbehave in any important way (*Criminological Highlights 11*(1)#6). An 'objective' risk assessment tool, then, may improve the decision-making process by giving comfort to decision makers that a decision to release is justified.

When making pretrial release decisions, it is often impossible to obtain the full range of information that might be useful for a risk assessment. The result is that risk assessment instruments (RAI) at this stage of the process are often developed 'by consensus' rather than as a result of an empirical investigation. They may, therefore, include factors that do not in fact predict whether or not an accused will appear in court when required or commit an offence while on release.

In 2004, New Jersey developed a RAI for those making decisions on pretrial release for youths. It included 7 items related to the current charge, criminal record, and previous compliance with court orders. The goal of the study was to see whether the use of the RAI affected the proportion of youths who were detained. Cases before and after the introduction of the RAI were matched so that equivalent samples of accused people could be compared on whether or not the accused was released. The "after" cases came from a period when the decision making tool had become standard practice. The before and after cases were equivalent, then, on past and current offences, history of noncompliance with court orders, age, gender, race/ethnicity, and the time of day when the decision on detention was made.

Prior to the implementation of the RAI, the detention rate had been 67%. After the RAI was in place, the detention rate dropped to 40%. The size of this effect could have been influenced by other initiatives implemented at the same time including the provision of new alternatives to detention. When using the risk assessment tool, decision makers appeared to give more weight to various 'objective' factors in the detention decision, including the number and nature of the charges, and previous failures to appear. Whether the effect was purely the result of the RAI or was due to other policy-based interactions, the results do demonstrate that rates of pretrial detention can be reduced considerably.

The largest impact appeared to be on the 'average risk' juveniles. They were considerably more likely to be released after the RAI was implemented than before, unless they were charged with very serious offences. There was little impact of the RAI on low risk youths who, in both periods, tended to be released unless they committed a very serious offence. There was little impact on high risk youths who were typically detained.

Conclusion: It would appear that providing pretrial release decision makers with an 'objective' risk assessment increased the likelihood of pretrial release, especially for those who were of average risk. The use of risk assessment instruments, then, can be seen as having at least two separate goals: to provide decision makers with an objective assessment of risk but also to reduce the detention of those who are not objectively high risk.

Reference: Maloney, Carrie and Joel Miller (2015). The Impact of a Risk Assessment Instrument on Juvenile Detention Decision-making: A Check on "Perceptual Shorthand" and "Going Rates"? *Justice Quarterly, 32*(5), 900-927.

Pretrial detention has significant negative effects on the outcome of criminal cases, even when the characteristics of the offence and the criminal history of the accused are controlled for.

With substantial numbers of people being held in pretrial detention in many countries, the impact of pretrial detention is clearly important. In Canada, for example, data for 2022 show that 46% of the total custodial population in the country consisted of people awaiting trial. This paper reviews the impact of pretrial detention on decisions to plead guilty, and conviction and incarceration rates (see also *Criminological Highlights 17*(2)#7, *17*(3)#1, *17*(5)#3, *21*(3)#7, *21*(4)#4 and this issue, #8).

Pretrial detention is clearly a controversial issue with many people, including politicians who often suggest that we need to "tighten up" on pretrial release. Aside from the fact that those in pretrial detention are legally innocent, those detained may well be disadvantaged simply because they have been detained. They may be seen as being more likely to be guilty than those who have been released into the community.

This paper reviews the research on the impact of pretrial detention on those who were subject to it. A total of 898 studies was examined carefully. Most were not included in the present analysis in large part because they did not adequately control for relevant confounding factors. In the end, 57 different studies were included in the analyses in this paper. These studies looked at the effects of detention in many different US jurisdictions in the three decades since the 1990s. Each study controlled for offence type and/or severity as well as the criminal history of the accused person.

Defendants who were detained in custody while awaiting trial were more likely to plead guilty. Given that finding, it is not surprising that they were also more likely to be convicted than those who did not experience pretrial detention. In the analysis of the effect of pretrial detention on conviction, every study that examined this found a significant effect. The largest effects, however, appeared to be whether the accused person ultimately was incarcerated. All 33 studies examining this relationship showed an effect of pretrial detention on subsequent incarceration with 29 of the 33 studies showing a statistically significant effect. The effects of pretrial detention on charge reduction and sentence length were smaller and/or not significant.

There was variation across studies in the size of the effects of pretrial detention on the various outcomes. This variation is hard to interpret since the measures used in the different studies varied in how sensitive they were (e.g., continuous vs. binary measures). The range and the nature of the cases may well have varied across studies.

Conclusion: "These findings support the argument that pretrial detainees are at a disadvantage in their case processing compared to their released counterparts. Detained defendants may struggle to prepare their defense and meet their attorneys, as well as lose their jobs and harm their relationships, making them appear a risk if released on probation. As such, detained defendants may be perceived as more blameworthy and dangerous than released defendants and face these more severe outcomes" (p. 363). It is hardly surprising, therefore, that those who are detained while awaiting trial are more likely to be found guilty and incarcerated than their counterparts who are released.

Reference: St. Louis, Stacie (2024). The Pretrial Detention Penalty: A Systematic Review and Meta-Analysis of Pretrial Detention and Case Outcomes. *Justice Quarterly, 41*(3), 347-370.

By detaining accused people who are awaiting trial rather than releasing them immediately back into the community, judges increase the likelihood of a conviction as well as the likelihood that the accused person will eventually receive a prison sentence.

There is substantial evidence that being detained in custody while awaiting trial has harmful effects on accused people and their families. This study takes advantage of the fact that in New York City, cases are assigned to judges for the purpose of decisions on pretrial detention on what is essentially a random basis. Given that judges vary in their propensity to impose pretrial detention, it is possible to draw strong causal conclusions about the impact of the detention decisions on subsequent decisions in the criminal process.

Previous research (e.g., *Criminological Highlights 17*(3)#1 and #7 this issue) has shown that the decision to detain an accused person has negative effects on decisions about the case. Detention decisions also are linked to increases in subsequent offending (see *Criminological Highlights 21*(4)#4). This paper looks at the impact of being assigned to judges who differ dramatically in their pretrial detention decisions. It looked at cases assigned to 63 New York City judges, each of whom had made at least 500 detention decisions in one year. Cases in New York City were assigned by a court official in a manner that workloads were balanced across judges. In other words, the nature of the case did not enter into the decision on which judge should hear the case. Hence there is no reason to believe that, overall, the judges got different types of cases. Essentially it seems reasonable to assume that cases were effectively randomly assigned to judges.

A key initial finding was that judges vary dramatically in their propensities to detain accused people who are awaiting trial. Among these 63 judges, the rates of detention varied from a low of 17.7% to a high of 50.6%. One can, therefore, examine the impact of the *judge's* propensity to detain on subsequent criminal justice outcomes.

The findings suggest that the assignment of a case to a judge was an important determinant of the ultimate outcome of the case. Cases that were heard by judges who detained a high proportion of those appearing before them were more likely to result in a guilty plea. Given that about 98% of convictions were secured by a guilty plea, the results were similar when the ultimate outcome of the case (conviction or not) was examined. Finally, being assigned to a judge who had a propensity to detain a large portion of their caseload increased the likelihood that the accused person would, eventually be given an carceral sentence. These findings held for cases involving felonies and misdemeanors as well as for both Black and non-Black accused people.

Conclusion: In theory, decisions on pretrial release are independent of decisions on guilt and sentence. These data suggest that this view is not empirically accurate even though the law may suggest it is. Since most convictions are obtained by way of a guilty plea, these findings can be seen as demonstrating that judicial officials who make pretrial release decisions are, in effect, having a large impact on who is convicted and imprisoned. Hence political figures who suggest that we need to "toughen up" on the pretrial release process are indirectly suggesting that we need to convict and incarcerate more people.

Reference: Koppel, Stephen, Tiffany Bergin, René Ropac, Imani Randolph and Hanna Joseph (2024). Examining the Causal Effect of Pretrial Detention on Case Outcomes: A Judge Fixed Effect Instrumental Variable Approach. *Journal of Experimental Criminology, 20,* 439-456.

Pretrial detention for minor offences is risky both for the accused person and for society. In comparison to being released while awaiting trial, detention in custody prior to trial for misdemeanour offences appears to be a cause of increased rates of pleading guilty, being sentenced to prison, and committing further crimes when released.

There is no doubt that in many jurisdictions those detained are more likely than those released while awaiting trial to be found guilty, receive longer sentences, and, when released, commit more offences. This is, of course, what one might expect if those who were detained are more serious offenders. This article, however, presents evidence that these effects are due to pre-trial detention, not to the nature of the defendant (consistent with *Criminological Highlights 17*(2)#7). In other words, pretrial detention *causes* negative outcomes and a higher likelihood of committing more offences.

There are a number of reasons why detained defendants might experience worse outcomes than equivalent defendants who achieve pretrial release. They may plead guilty (whether guilty or not) simply to end their pretrial detention; it is more difficult or impossible for them to prepare a defence or prepare a sentencing plan that would be acceptable to the prosecutor and the court; and they cannot demonstrate positive behaviour in the community. In terms of reoffending, there is a fair amount of evidence that imprisonment has harmful effects.

This study uses data from Harris County, Texas (the third largest county in the US) on 380,689 cases filed between 2008 and 2013. Data on the accused (charges, criminal history, etc.) were combined with information about bail (dollar amount set and whether the accused was released). These data were linked with data on the defendant's neighbourhood. Not surprisingly, accused from poor neighbourhoods were much more likely to be detained, even when looking at those with no previous records. The seriousness of the offence was unrelated to the wealth of the neighbourhood.

A regression analysis was carried out to test the effects of pretrial detention on conviction. Controls were included for the offence, demographics, neighbourhood of residence, criminal history, whether the accused made a claim that they could not afford a lawyer, and the bail amount. Even with all of these controls, those who were detained in pretrial custody were more likely to be convicted.

Similar analyses were carried out on other outcomes: whether the accused pleaded guilty, whether the accused received a prison sentence, and the length of the prison sentence. In all cases, those who were detained were disadvantaged. Separate analyses were carried out for various sub-groups: those with and without prior charges, citizens and non-citizens, whites and non-whites, the most serious current offence broken down into 5 categories, three different bail amounts, and the accused's neighbourhood divided into 4 groups by income level. The disadvantages (conviction, incarceration sentence) showed up for all subgroups. A separate set of analyses, taking advantage of the fact that people are more likely to be released on certain days of the week demonstrated, once again, that those accused people who were detained were disadvantaged.

Conclusion: Those who are not released after arrest are dealt with more harshly by the system. But in addition, looking at the *cumulative* effect of being detained on new misdemeanour charges, it is clear that the short term incapacitative impact of being detained is short lived. Only for the first 19 days *after the bail hearing* (during which many of the accused who were detained were in jail) is the incidence of misdemeanours for detainees below that of those who obtained release. After 19 days, those accused who were detained are *more* likely to have been charged with a misdemeanour (during the period after their bail hearings) than those who were released immediately after their bail hearings. For new felonies, the incapacitative impact of detention lasts longer. But three months after their bail hearing, those detained are more likely to have been charged with a felony.

Reference: Heaton, Paul, Sandra G. Mayson, and Megan Stevenson (2017). The Downstream Consequences of Misdemeanor Pretrial Detention. *Stanford Law Review, 69,* 711-794.

Compared to similar people who are released back into the community almost immediately after being arrested, accused people who are held in pretrial detention for more than a week before they are released have a higher likelihood of missed court appearances, new arrests, and new arrests for violent crimes.

Detaining people – even for relatively short periods of time – is an important part of criminal justice punishment. In Canada, for example, 46.3% of federal and provincial/territorial prisoners were awaiting trial on an average night in 2022.

There is a fair amount of evidence that pretrial detention itself is harmful and does not appear to reduce overall offending (e.g., *Criminological Highlights* *17*(2)#7, *17*(3)#1, *17*(5)#3, *18*(4)#1, *21*(4)#4), *21*(5)#7, #8).

In some jurisdictions, such as the three US counties contributing data to this study, people are often arrested and imprisoned, but released very quickly (i.e., within one day or less). But many accused people are held for at least a week before being released. This study examines the impact of a stay of more than 7 days in remand custody before being released into the community. One group of people charged with an offence were released almost immediately or the day after being arrested. They were compared to a group of people who were charged with an offence and remained in custody for at least 7 days before eventually being released into the community. Clearly, these two groups (released in less than 1 day vs. released after more than 7 days) are different. Therefore, in all analyses, various factors (e.g., previous criminal justice outcomes, previous incarcerations, number of charges, type of offences, race, age) were controlled statistically. The study looked at how these accused people behaved during the roughly 6-month window when they were at risk of misbehaving after release into the community.

Expressed as estimates of what would happen with these two outcomes (controlling for other factors), the results suggest that about 25% of those who were detained for more than 7 days would fail to appear in court at least once, compared to 18% of those detained one day or less. Those detained for more than 7 days were also more likely than those released almost immediately to be arrested for a new criminal offence (28% vs. 21%) and a new violent criminal offence (9% vs 6%). Finally, consistent with a substantial amount of research, being detained for longer is associated with a higher conviction rate (50% vs. 41%).

The findings are a reminder that pretrial detention is, indeed, a punishment (in terms of what it does to the accused person) and is also a cause of crime.

Conclusion: "Pretrial detention is unlikely to achieve the crime prevention goals set out for jails. Rather, being detained pretrial for more than 7 days (compared to 1 day or less) appears to increase missed court appearances, arrests, and convictions" (p. 115). When people suggest that their community has a soft bail system and that pretrial release, therefore, is an important cause of crime, they are probably focusing on two things. First, they are only thinking about the short-term impact of being incapacitated. Second, they may be drawing attention to the inherent imperfections of the criminal justice system: *some* people who are released on bail do, of course, commit new offences. The question is not *whether* people released on bail sometimes commit new offences. The question is whether, *in the long run,* those released from pretrial detention commit more crime than those detained for a long period while awaiting trial. This paper suggests that pretrial detention for over 7 days is likely to lead to an increase in crime when compared to the alternative (release).

Reference: DeMichele, Matthew, Ian A. Silver, and Ryan M. Labrecque (2025). Locked up and Awaiting Trial: Testing the Criminogenic and Punitive Effects of Spending a Week or More in Pretrial Detention. *Criminology & Public Policy, 24,* 99-121.

Pretrial detention has harmful effects for both the defendant and society more generally: it increases the likelihood that a person will plead guilty to a felony and, in the long run, increases reoffending after the case is completed.

In the United States, one out of every 550 adults is currently in pretrial detention and, in recent years, the rate is growing (in contrast to sentenced imprisonment). This study follows 245,060 felony cases in New York City to examine the impact of pretrial detention on case outcome and reoffending.

Numerous studies have examined the relationship between being detained pre-trial and being convicted. The problem is that there may be unobserved or unmeasured differences between cases in which the defendant is detained and those in which they are released. Although it is hard to argue, normally, that society benefits from the large variation across judges in decisions which result in accused people being detained or released, one advantage of this variation is that the assignment of cases to judges is typically unsystematic. Thus whether the case is being handled by a 'tough' or 'lenient' judge is unlikely to be related to case characteristics. If, then, cases assigned to judges who are likely to detain have different *case* outcomes from cases assigned to judges who are more likely to release accused people, it is likely to be the result of whether, overall, the accused was detained or released.

This study looks at cases heard by 212 judges, each of whom heard at least 500 arraignment (pre-trial detention) cases between 2009 and 2013. If a judge decides that a person can be released, cash bail is usually set, though in many cases the accused is unable to come up with the bail amount. A case was defined as 'detained' if the accused was formally detained or not released because they were not able to come up with the required cash. Case characteristics, for felony cases, were clearly unrelated to the average severity of the judge who dealt with the case. For misdemeanour cases, there was some suggestion that certain cases were somewhat more likely to go to 'tough' judges. Hence inferences about the impact of detention for misdemeanors are somewhat more problematic than inferences concerning felonies. Nevertheless, the results for the 728,750 misdemeanor cases are largely similar to those described below for the felony cases.

The results for felonies demonstrate that "being detained increases the probability of conviction by 13 percentage points and the probability of pleading guilty by 10 percentage points… [suggesting] that detention primarily affects conviction by inducing some individuals who would not have pled guilty if released to plead guilty after they are detained" (p. 543). This effect was more pronounced in felony cases in which the accused has no criminal record. Compared to those who receive pretrial release, those who are detained are also less likely to receive a reduction in the class of offence that they plead to.

Obviously, those who are detained for the period before their cases are disposed of are less likely to be re-arrested before the disposition of the original case. However, these 'benefits' are lost when one considers the fact that those detained are, within two years of the final decision on the case, more likely to be re-arrested even though, for those who were initially detained, some of the study participants spent time in sentenced custody. Hence, the short-term incapacitation effect of pretrial detention is largely lost by what happens within two years of the end of the case.

Conclusion: The results are clear. Those who have the misfortune to be arraigned before a 'tough' judicial officer are not only more likely to be detained. They are more likely to plead guilty, they are less likely to be offered attractive plea deals, and they are more likely, after the case is disposed of, to commit future offences. "Tough" decisions at the pretrial detention stage then are "effective" both in getting accused to plead guilty and in increasing the likelihood of future offending.

Reference: Leslie, Emily and Nolan G. Pope (2017). The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignment. *Journal of Law and Economics, 60,* 529-557.

Pretrial detention of ordinary offenders appears to have some long-term negative impacts on those detained while not providing any long term public safety.

Many countries, including the US and Canada, have large numbers of people who are detained prior to trial. In the US, it is estimated that about 23% of those imprisoned on an average night are awaiting trial. In Canada, the figure is 37%. This paper examines what the impact of detention is on those being detained.

It is safe to assume that those held in pretrial detention are different from those who are released. Similarly, it is safe to assume that the charges that detainees face, and the evidence against them, also differ from those who are released. The challenge, then, is to find comparable groups of people who are either released or held prior to trial. This paper exploits a well-established criminal justice fact: judicial officers vary in the leniency of their decisions. Furthermore, in the two counties in which this study was carried out, cases were effectively randomly assigned to judges. Judges at the bail stage in these jurisdictions have limited information on which to decide on release or detention. For cases in the middle of a 'seriousness' dimension – where it is plausible for the accused either to be detained or release – the essentially random assignment of cases to judges means, effectively, that accused people are randomly assigned to have either a high probability of release or a high probability of being held. There were substantial differences in the tendency to release accused people across judges in each jurisdiction. This study focuses on those cases in the middle where judges disagree on whether an accused should be released or detained. The judges doing bail were different from those making other decisions about the accused.

Those who were lucky enough to get a lenient bail judge (i.e., they were released pre-trial) were less likely to be found guilty (and less likely to plead guilty). Not surprisingly, in comparison to those not released (or released after being held for more than 3 days) those released within three days were more likely to fail to appear in court before trial. More importantly, however, there was no overall impact of being detained or not on the likelihood of committing an offence within 2 years of the bail hearing. This pattern reflects two separate findings. First, those released prior to trial were, not surprisingly, more likely than those detained to commit a new crime prior to disposition. Second, however, those released were less likely to commit a new crime after the original case was disposed compared to those who were detained. Overall, then, the community receives short term benefits of pre-trial detention. But the short-term benefit is wiped out by the fact that those detained are more likely to offend within 2 years of the bail hearing.

The researchers were able to link these defendants to federal tax returns. The tax data showed that defendants who were initially released at their bail hearings had higher formal employment and earnings 3-4 years after the bail hearing than those who were detained. This effect probably comes about in part because those not subjected to pretrial detention are less likely to be found guilty and, as a result, are able to obtain employment. This may also subsequently reduce the likelihood of offending.

Conclusion: The results of this study – in which criminal defendants on the basis of a near-random decision were detained or released at their bail hearing – suggest that "the adverse labour market outcomes and criminogenic effects [of being processed in the criminal justice system] begin at the pretrial stage prior to any finding of guilt, highlighting the long-term costs of weakening a defendant's negotiating position before trial and the importance of bail in the criminal justice process" (p. 236).

Reference: Dobbie, Will, Jacob Goldin, and Crystal S. Yang (2018). The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges. *American Economic Review, 108*(2), 201-240.

Punishment in the criminal justice system starts long before anyone is found guilty and sentenced. Those arrested and detained in prison prior to trial – a larger number in Canada than those receiving prison sentences after conviction – often receive serious punishments as a consequence of their arrest, their experience in courts, and their time in prison, even if they are eventually not convicted or sentenced to prison.

In Ontario, Canada, in 2015, over 91 thousand people were arrested and held for a bail hearing. Although more than a third of them were, ultimately, *not* found guilty of any offence, it would be wrong to suggest that they – as well as those ultimately found guilty – were not punished prior to the disposition of their cases.

"The hidden nature of the *process* of arrest, court appearances, and detention obscures the ways in which people may experience important consequences and even punishment on remand, without ever being formally 'marked' by a criminal conviction" (p. 2). This paper uses data from interviews (1-3 hours in length) with 120 people (60 men and 60 women) held in pretrial custody in four large correctional institutions in Ontario.

When people were arrested, it was typically unexpected. Although people had a legal right to consult a lawyer following their arrest (typically a phone call to a legal aid lawyer), the vast majority (84%) were not given an opportunity to notify family or kinship networks upon their arrest, making it difficult for people to get personal assistance in responding to their detention. Even when there was no active mistreatment by the police, other punishments (e.g., not having access to prescription medications) followed automatically from the accused person's removal from daily routines and isolation from normal contacts and supports.

If an accused's bail decision was not made at the first court appearance, they would be transported to a provincial prison. Court days – often more than one before bail was resolved – typically meant starting the day at 5 a.m. and being transported to court while handcuffed (sometimes also with ankle shackles) and often chained to at least one other prisoner. The conditions of the court's holding facilities, waiting for the case, and the uncertainty of what would occur, were each seen as stressful. Lunch typically consisted of a single granola bar. The logistics of transportation were such that when the accused were returned to prison, they were too late for dinner. Some prisoners were required to appear in court in whatever clothing they had on when arrested (e.g., a bikini covered by a paper jumpsuit in the case of one woman arrested at a hotel swimming pool). Not surprisingly, 71% of those interviewed preferred, if possible, to appear in court by video link rather than in person.

Prisoners were held in 'basic' cells in maximum security institutions. New technologies have made communication with the outside world *more* difficult. Communication is important because remand prisoners often need to talk to friends and relatives to create a plan for release that will satisfy a court. Prisoners could only call a land line because all calls were "collect" and cellular phones do not accept collect calls. Lockdowns, when visitors were not permitted into the institutions, occurred frequently. These barriers made ordinary visits with those outside difficult, but also made preparation of a bail release plan that could be presented to court an extra challenge.

Conclusion: In recent years, the calculation of credit off one's sentence for pretrial custody has been a contentious issue in Canada. However, the focus on credit off a sentence "neglects the fact that many people who enter remand imprisonment return to their communities without a conviction…. Participants in this study described the harms of arrest and making court appearances as the most visceral and painful aspects of remand imprisonment…. Each [part of the system – police, courts, and corrections] plays a separate but related role in forming the experience of punishment for remand prisoners" (p. 15). With the common focus on the sentence as the punishment, it is important to remember that "the collective weight of the cross-institutional remand process imposes harms on individuals that can have substantial and negative consequences on their lives in the short and long term" (p. 16).

Reference: Pelvin, Holly (2019). Remand as a Cross-Institutional System: Examining the Process of Punishment before Conviction. *Canadian Journal of Criminology and Criminal Justice* (online pre-publication).

Pretrial detention is typically justified as a procedure to ensure that the accused person appears in court as required and does not commit offences. Its stated purpose is not to punish the accused, since a finding of guilt has, by definition, not been made. This paper finds that pretrial detention is experienced as being just as punitive as incarceration in a jail or prison.

In the US, 65% of those incarcerated in local jails are in pretrial detention. In Canada, 72% of those in provincial/territorial prisons, and 46% of those in any Canadian prison (federal and provincial/territorial) are in pretrial detention. Previous research (e.g., see *Criminological Highlights 17*(6)#1) has demonstrated that pretrial detention is quite clearly part of the justice system's punishment process. This paper takes these findings one step further by comparing the experience of pretrial detention to the experiences of those serving sentences.

"Pretrial detention is linked to long-term harms for people that are similar to the established harms of legal punishment" (p. 792). These punishments include family disruption, loss of employment, financial stress, and worsened health. Furthermore, "the consequences of pretrial detention are racially and ethnically disparate" (p. 792-3). These harmful effects are, of course, similar to those that might be expected from post-conviction imprisonment. Hence the question that should be asked is not whether pretrial detention is punishing, but rather how the degree of punishment might differ between pre- and post-conviction imprisonment. This study provided an answer to this question by comparing prisoners' experiences with pretrial detention to prisoners' experiences with post-conviction imprisonment on four dimensions: the experience of security, victimization, perceptions of legitimacy of correctional staff, and social support.

Data were used from the (US) National Inmate Survey (2011-12) which sampled prisons and jails across the country. A sample of prisoners within each chosen institution was interviewed. For this study, prisoners in pretrial detention were matched (on a number of dimensions) with prisoners serving sentences in (state) prisons or local jails. The variables on which they were matched included such factors as time in the institution, offence type, and prior arrests, as well as personal characteristics (e.g., whether they suffered a mental illness, whether they were married, and their race and age). The matching process was designed to ensure that any differences that might be found could not be attributed to background characteristics of the pre- vs. post-conviction samples.

Looking first at the comparison of people who were in jail on pretrial detention and those serving sentences in jails, it was clear "that many aspects of jail life are similar irrespective of conviction status" (p. 803). There were differences in only two out of 19 comparisons that were made: those in pretrial detention were more likely to report the presence of gangs and less likely to report that staff made them feel safe and secure. Said differently, the pre- and post-conviction prisoners in jails experienced very similar degrees of punishment.

When comparing pre-trial detention prisoners (who were in jail) with post-conviction prisoners in state prisons, the findings show that on 5 of 11 measures of institutional social order and victimization, those in pretrial detention reported more disorder and victimization. On some dimensions (e.g., whether staff protected them, contact with outside people), those in pretrial detention gave more favourable reports than did those serving sentences.

Conclusion: In general, "individuals in pretrial detention reported similar perceptions and experiences as individuals serving a sentence in jail…. Individuals in jail who are not convicted of an offence… are generally not simply being held; they are experiencing pains and conditions that look much like punishment" (p. 805). Clearly there were some differences between those in jail vs. those in state prisons. However, no matter how one looks at the data, it is clear that "pretrial detention exposes people to some of the most consequential pains of imprisonment" (p. 807) that are not reliably different from the experiences of those serving sentences in jails or prisons.

Reference: Anderson, Claudia N., Joshua C. Cochran & Andrea N. Montes (2024). How Punitive is Pretrial? Measuring the Relative Pains of Pretrial Detention. *Punishment & Society, 26*(5), 790-812.

People who are detained prior to trial are more likely to be found guilty than are equivalent people who are released into the community while awaiting trial.

Nobody is likely to be surprised by findings suggesting that those who are detained prior to trial are more likely to be found guilty than are people who are released prior to trial. Some of the factors that lead to detention (e.g., criminal record) are also factors that may increase the likelihood of findings of guilt and/or of harsh punishments.

In order to determine whether it is detention *per se* that increases the likelihood of a finding of guilt, this study compares those who are detained with accused people who have an equal probability of being detained but, for unpredictable reasons, happen to be released.

Cases from six large urban counties in Florida in which an accused was detained were matched with cases in which the accused was released. This was done using a technique called 'propensity score matching' in which the likelihood of release was predicted for each person using such variables as offence severity, prior criminal record, age, race, offence, number of charges, whether a cash bail had been offered (but not necessarily met), prior arrests, and type of lawyer. People who were released were then matched (on their 'propensity score') with people who were detained. The main outcome variable that was examined for these two groups was the likelihood of being convicted.

The comparison of the matched accused (released vs. detained) showed that about 63% of the accused people who were released were found guilty whereas 71% of the accused people who were detained prior to trial were found guilty. It is also worth noting that many people were offered a chance at putting up cash bail, but were not able to and, as a result, were detained. What is not clear from these results is why those who were detained were more likely to be convicted. It could be that individuals who were detained were less able to prepare a defence or that detained individuals simply pleaded guilty at a higher rate in order to speed up the process.

Conclusion: Detention before trial increases the likelihood that an accused will be convicted. Although 41% of the original sample were in fact detained, 93% were offered some form of release, but were unable to meet the conditions of release (the deposit of cash bail). In other words, much of the impact of pretrial detention can be traced to monetary bail terms that inherently disadvantage the already disadvantaged part of the community. To the extent that other conditions often required for release (e.g., stable housing away from those with criminal records or an acceptable surety) also restrict release of members of disadvantaged groups, it would seem that even justice systems that do not rely on cash bail may end up convicting people in part for who they are as well as what they might have done.

Reference: Lee, Jacqueline G. (2019). To Detain or Not to Detain? Using Propensity Scores to Examine the Relationship Between Pretrial Detention and Conviction. *Criminal Justice Policy Review, 30*(1), 128-152.

As soon as a person is charged with a criminal offence and comes in contact with the criminal justice system, their friends and family experience punishment. This is particularly clear with respect to "bond" or "bail" court.

When a person is arrested, they are often required to appear in a court in order to be released. Whether the legal question is whether the person should be released, or how much money needs to be posted in order for them to be released, their friends and family – who may need to attend this court for the accused to have a chance at being released – begin a process whereby they are punished. In other words, the breadth of criminal justice punishment extends beyond the person actually charged.

Previous research (see *Criminological Highlights 17*(6)#1) has demonstrated that accused people are punished in a number of important ways in addition to any formal sentence they may, in the end, receive. This paper looks at the experiences of friends and family of an accused in trying to help the accused person be released. In this study of the "bond court" in Chicago, the punishments experienced by an accused person's "supporter" may not be intentional, but they are real. Obviously one way in which family and friends of an accused are punished is through the extraction by the court of the funds that need to be deposited in order for the accused to be released. Similarly, there are legal costs – often borne by a supporter of the accused – related to mounting a defence. In addition, accused persons often have to appear in court regularly until their case is disposed of. Often such appearances involve supporters who not only offer moral support to the accused but may be necessary in providing transportation to the court.

Criminal courts – perhaps most notably bail or bond courts – operate in a manner demonstrating that they do not give any value to the time of an accused person or their supporters. People may wait in court all day for a hearing that may last only a few minutes. In addition, often supporters experience embarrassment at being associated with a person accused of a crime, as well as degradation by court officials in part because they do not necessarily know "the rules" by which courts operate.

In this study, courts were systematically observed and supporters of the accused were interviewed. If supporters needed to post money to achieve release, this could have a dramatic impact on them if they were poor, especially since the money would be tied up for months or years. Transportation costs to get to the court may be non-trivial. And, in the case of the central Chicago court, parking costs were not only high, but limited to a period of 2 hours. If a case was not completed within 2 hours of the supporter's arrival, the parking fee had to be renewed, requiring the supporter to leave the court to renew the parking fee. Because of the uncertainty of when a case might be called, supporters often faced expensive parking tickets. Even though mobile phone payment of parking was available, this was not available to supporters of the accused because cell phones were not allowed in court. This restriction also meant that those who might be able to be productive using silent features of their cell phones were not able to do so. Supporters who had jobs often lost income – often a full day's income – because of the unpredictability of when a case would be heard. Supporters suffered because of the unpredictability of the court (it seldom started on time) and the lack of information about how things work. Often it was impossible for supporters to hear or understand court proceedings.

Conclusion: Courts extracted resources from supporters of an accused (explicitly or as unintended consequences). Courts ordered changes to living arrangements (requiring an accused to live with or avoid certain people) and frequently created fear and shame, in effect "punishing [supporters] by degrading them and their relationships with people charged with crime. The experience of attending court as a supporter "should be understood as being punitive" (p. 603) even though the actions of the court are not normally described as punishments. Most of these effects disproportionately punished the poor.

Reference: Eife, Erin and Richie, Beth E. (2022). Punishment by Association: The Burden of Attending Court for Legal Bystanders. *Law & Social Inquiry, 47*(2), 584-606.

The size of Canada's remand population is increasing rapidly even though reported crime is decreasing and the overall imprisonment rate is relatively stable.

Canada's overall imprisonment rate has been relatively stable for more than 50 years (*Criminological Highlights*, V8N2#6) varying between about 82 and 116 per hundred thousand residents. However, the remand rate (counts of prisoners on an average day which is included within the overall imprisonment rate) has risen steadily in the past 20 years from 15 per hundred thousand residents in 1987 to 39 in 2007. In 1987 remand prisoners represented 15% of Canada's total prison population. By 2007, 35% of all Canada's adult prisoners had not yet been sentenced. These figures, however, obscure one other paradox: although criminal law is a federal responsibility, there are huge differences across provinces in the remand prisoner rate. For example, in Manitoba in 2007 there were about 90 remand prisoners per 100,000 residents. In Prince Edward Island there were 12 remand prisoners per 100,000 residents.

Canada's remand population has been increasing in recent years at the same time that overall reported crime and violent crime have both been decreasing. It appears – at least for the one province for which data are available (Ontario, Canada's largest province) – that the increase in the remand population is occurring for both men and women, suggesting that the increase is not likely to be a simple response to concerns about gangs, guns, or domestic violence.

In Ontario there appear to be a number of reasons for the increase in the remand population, including the following:

- There is an increase in the number of cases (per 1000 residents) going to court, even though crime in the province is decreasing.
- More importantly, the number of cases (per 1000 residents) that are ending up in bail court has increased substantially in recent years (an increase of 38% between 2001 and 2007).
- The cases being brought to bail court appear to be somewhat more complex than they were a few years ago. On average they had 14% more charges associated with them in 2007 than in 2001. Charging practice, therefore, may contribute to the belief by the courts that accused people should be detained.
- Perhaps the most important changes in the nature of the charges going to court involved administration of justice charges (e.g., failure to comply with a court order such as a bail condition). Cases including one or more administration of justice charge were dramatically more likely to result in a police decision to detain the accused for a bail hearing (54% of such cases were detained for a bail hearing in 2007) compared to cases without an administration of justice charge (26%).
- Once it was determined that an accused person should be remanded in custody awaiting trial, they were likely to remain in this state for a longer period of time than they were 6 years earlier.

It would also appear that bail courts are becoming less efficient. Data from 1974 indicated that most bail decisions were made in a single appearance. In 2007, it was taking, on average about 2.5 bail appearances for a decision to be made, an increase of about 20% from 6 years earlier.

Conclusion: Given that Canada's overall imprisonment rate has not shown the same increase as the rate of imprisonment of unsentenced prisoners, it is simplistic to suggest that the 'remand problem' is a result of simple 'new punitiveness.' Instead, it is argued that the institutional risks of the release of an accused are high and public. In contrast, the benefits to criminal justice institutions of releasing an accused are hidden. Similarly, the benefits to the institution of detaining an accused are visible. Said differently, criminal justice decision makers are seldom criticized for being 'tough' but are subject to criticism if they are seen as responsible for the release of an accused who might, or does, commit an offence.

Reference: Webster, Cheryl Marie, Anthony N. Doob, and Nicole M. Myers (2009). The Parable of Ms. Baker: Understanding Pre-trial Detention in Canada. *Current Issues in Criminal Justice, 21*(1), 79-102.

Ontario bail courts are efficient at doing one thing: adjourning cases to be heard on a later date even though a "full days' work" for these courts typically adds up to less than half a day.

For most cases in which an accused is brought to court to determine if they should be released on bail, the law says that the onus is on the Crown to demonstrate the need to detain an accused person. This observational study of 142 days of operation of 11 of Ontario's bail courts demonstrates that almost half of those people who are brought to bail court do not get a decision at that hearing, notwithstanding the fact that courts are actively hearing cases for an average of only 3 hours and 15 minutes in a full court day.

Part of the reason for this is that "There is no management structure or system of accountability in place to monitor the daily performance of the court" (p. 129). The court can best be thought of as an organization of different people (prosecutors, defence counsel, justices of the peace) with different interests. What they hold in common is a desire to 'get through the list' of cases on the docket, not necessarily to make decisions.

An average of about 30 cases are 'heard' each day but 53% of the 3376 cases that were observed as part of this study ended the day simply being adjourned to another day (and often to different prosecutors and justices). Most (81%) of the adjournments were requested – directly or indirectly – by defence counsel. The remaining cases were equally likely to be initiated by the Crown and the Justice. Remarkably, however, since staff rotated into and out of the bail court "on a regular, if not daily basis", there was nobody who seemed interested in "having the business of each appearance build on that of the previous appearance" (p. 137). The result was that the likelihood of a decision being made concerning whether the accused should be detained or released was about 50% whether it was the first appearance in court for the accused or any subsequent appearance.

Cases that were ready to proceed, however, did not always get heard. Some courts would not allow contested hearings to be started after about 3 p.m. even though various people necessary for release had been waiting in court all day. One day, for example, a justice refused to allow a contested hearing even though the court had actively used only 3 hours and 12 minutes of a full court day (p. 140). On an average day, there were only 1.6 contested matters that were heard.

Asking for adjournments was seldom controversial and was seldom challenged by anyone. The reasons for adjournments were coded for the 2008 cases (of the 3376 cases that were observed). 17% occurred because defence counsel was not available. In 16% of the cases a surety – a person willing to take responsibility for the accused person and to pay the court a specified sum if the accused person did not follow the terms of release – was not available on that day. There is no legal requirement for sureties though they are almost always required as a condition for release. There is also no legal requirement that they be examined in court though that is common practice. In 20% of the adjournment requests, the justification that was offered was the need for some court service or further information. 7% were adjourned because the court said it didn't have the time to deal with the matter, and 16% were for other reasons (e.g., to plead guilty). The acceptance of adjournments as a legitimate "outcome" is demonstrated by the fact that for the remaining 24% of cases, no reason was offered or requested.

Conclusion: Large numbers of unproductive adjournments are common in many courts and are seen as a problem in some (see *Criminological Highlights* *4*(6)#1, *9*(4)#1). However, "bail court is unique in that all accused appearing in this court are in custody and will remain there until a bail decision is made" (p. 144). It appears that there is "a 'culture of adjournment' in which an adjournment is not only the most common way to deal with a case but is also the most accepted…. While court actors are certainly aware of issues of backlog and delay, there appears to be considerable ambivalence toward ensuring the bail decision is made expeditiously" (p. 145).

Reference: Myers, Nicole Marie (2015). Who Said Anything About Justice? Bail Court and the Culture of Adjournment. *Canadian Journal of Law and Society, 30*(1), 127-146.

There are ways to control pretrial detention populations. A separate processing centre with around-the-clock, seven-day-a-week processing of cases reduced processing times dramatically for most of those who were arrested for offences.

Jail populations (those in pretrial detention and those serving 'short' sentences) in the U.S. have increased from about 182 thousand in 1980 to about 748 thousand in 2005. "The most commonly adopted [American] response [to this increase] was to expand jail capacity" (p. 273).

This study reports on one U.S. county's efforts to control jail and police lock-up populations in a mid-size midwestern city. A new facility was created in which arrestee processing, case screening, contact with defence counsel, and initial court hearings were to be conducted on a 24-hour-a-day, 7-day-a-week basis for misdemeanours and minor nonviolent felony offences. The idea was that these matters would be dealt with immediately rather than over a period of days or weeks. Prior to the opening of this special centre, cases had been processed much as they are elsewhere: screening, initial hearings, etc., only happened periodically during normal court hours. Since accused people are unable to schedule their arrests to occur only during normal court hours, there is obviously a mismatch between efficient court processing and the time of arrest. On the assumption that it would be easier to change the court schedule than the timing of arrests, this project was created to deal more effectively with initial court processing.

The changed system involved around-the-clock screening of cases such that a decision could be made almost instantly about whether a case should be prosecuted. Rather than scheduling all cases for one or two times a day (on weekdays), initial court hearings were scheduled for approximately 20 different times a day. Police officers were required to file all paperwork within four hours of arrest. Prior to the implementation, this process took an average of 27 hours with a great deal of variation; after implementation it required an average of about 4 hours with relatively little variation. Prior to starting the new program, about 71 hours (approximately 3 days) would elapse between the time that case screening took place and the initial court appearance. Some cases took much longer. Under the new program, this process took only four hours (with little variation). When one looks at the time spent in custody by those for whom no charges were ultimately filed, the average person spent a total of 24 hours in custody prior to the new program. After the program, the average time was reduced to about 9 hours. For those released on recognizance, people spent an average of 24 hours in custody prior to the program and 10 hours after. Those who had bond set by the court and who had to meet this bond to be released spent about the same amount of time in custody under the new program as they had under the earlier system.

Conclusion: Under the new procedure, initial processing times for those who are arrested and brought to court were reduced considerably. While there are large numbers of such people, they do not, because of fast turnover, consume a proportionately large portion of jail space. Nevertheless, the most important factor may be that a large portion of those arrested were released quickly on a recognizance or did not have charges filed against them, dramatically reducing their time in pretrial detention.

Reference: Baumer, Terry L. (2007). Reducing Lockup Crowding with Expedited Initial Processing of Minor Offenders. *Journal of Criminal Justice, 35*, 273-281.

The 2003 *Canadian Youth Criminal Justice Act* may have been generally successful in two of its explicit goals (reducing the use of youth court and youth custody) but has not been successful in addressing two status-like offences (failing to comply with bail orders or with sentences).

From 1984 onward, youths in Canada could not be brought to youth court for behaviour that was not also an offence if committed by an adult. In other words, 'status offences' were officially eliminated. However, what is normally non-criminal behaviour could be criminalized in two different ways: by prohibitions that were part of a bail order or conditions imposed as part of a sentence (e.g., as part of a probation order). Hence, for example, 'staying out late' could be criminalized if a youth had a curfew imposed as part of a bail or probation order. Similarly, a youth could be detained in custody for not going to school if attending school was part of a bail order.

Generally speaking, Canada's 2003 youth justice law has accomplished its central goals of diverting minor cases from the youth court and reducing dramatically the use of custody (*Criminological Highlights*, V10N1#1, V10N3#1). However, one exception to its success involves the two offences of failure to comply with an order (largely the violation of conditions of release on bail) and failure to comply with a disposition (or sentence). These two offences together currently (2011) account for over 20% of all youths charged with criminal offences. Furthermore, although the rate (per 10,000 youths) of bringing youths to court from 1998 onwards declined for all offences and for minor property and minor assaults in particular, the rates of bringing youths to court for failing to comply with bail conditions or dispositions increased during this same period.

Since 2003, under *Canada's Youth Criminal Justice Act*, the number of guilty findings for all offences as well as minor property offences and minor assaults continued to decline. This was not the case for failure to comply with bail conditions or dispositions. These have stayed the same or increased slightly. The picture is very similar for custodial sentences: the rate (per 10,000 youths) of the imposition of custodial sentences for all offences and for minor property crimes or minor assaults has continued to decline in recent years, but this is not the case for these two administration of justice offences.

Data from one large Toronto court may help explain part of the problem. The number of conditions placed on youths released on bail has steadily increased since 2005. In addition, youths have increasingly been required – if they want to be released on bail – to sign documents allowing the police or others to monitor whether they are complying with 'treatment' orders or orders to attend school while on bail. Hence courts have not only 'criminalized' an increasing amount of normal behaviour, but they have increasingly required youths to make it easy for police to determine whether they are committing these 'status offences.'

Girls' youth court caseload is more likely than boys' caseload to involve failure to comply with a disposition. It also appears that girls are more likely than boys to fail to comply with their non-custodial sentences. Similarly, girls are more likely (per 100 releases from pretrial detention) to be charged with failing to comply with bail orders than are boys.

Conclusion: These two offences (failing to comply with bail orders or with dispositions) appear to be the exception – but a very large exception – to the general decline in the use of youth court and youth custody for minor offences. It is also noteworthy that the reduction in the use of youth court for minor offences *other than* these two administration of justice offences can be traced directly to legislative provisions that explicitly encourage the use of non-court approaches for minor offences. It would appear that a lesson can be learned from the relative success of other parts of the youth justice legislation: change is unlikely to occur unless legislation is enacted that addresses this growing part of the youth court caseload in Canada.

Reference: Sprott, Jane B. (2012). The Persistence of Status Offences in the Youth Justice System. *Canadian Journal of Criminology and Criminal Justice, 54*(3), 309-332.

Even though the laws concerning the granting of bail in England & Wales have been 'tightened up,' the size of the remand population has not increased.

In 1976, laws in England & Wales were changed to a system in which it was presumed that defendants should be released while awaiting trial, unless it was believed that they would abscond, commit further offences, or interfere with witnesses. However, since that time, the laws have been toughened up. For example, detention is now presumed to be appropriate for those charged with certain offences and for those alleged to have committed offences while on bail.

The overall prison population in England & Wales increased dramatically from 1980 to 2008. Most of this increase, however, was due to an increase in sentenced prisoners. The remand population nearly doubled in the 1980s, but since that time has not increased appreciably. Indeed, in the past 10 years, the size of the remand population has been relatively steady. This stability stands in contrast to that of Canada and Australia each of which has shown large increases in remand populations.

It is difficult to know exactly why England & Wales have managed to stabilize the size of their remand populations. Systematic research on this topic has not been carried out. However, it is likely that the stability in the size of the remand population is the result of one or more of the following factors:

- There has been a decline of about 14% in the number of individual cases going to court, probably as a result of programs to deal with certain cases outside of the court process. Formal cautions now account for about 20% of all case disposals. In addition, since 2003, conditions can be added to cautions making it more attractive than it had been for police to dispose of cases in this way.
- Penalty notices, which are, in effect, 'on-the-spot' fines issued by police (for offences such as minor thefts and vandalism) reduce the number of criminal cases (although failure to pay the fine can result in criminal processes being initiated). Because penalty notices are not recorded as being 'criminal' offences, repeat offenders can repeatedly be given penalty notices as if they were continually first offenders. Hence repeat offenders (including those who, in the absence of such programs might be detained because they would be seen as offending while on bail) may not appear to be worthy of detention.
- Many fewer accused people are detained in police custody for a bail hearing than they were in the 1980s. Indeed, between 2003 and 2007, the number of accused detained for a bail hearing dropped by 28%.
- The shift of the authority for the decision to charge from the police to the Crown Prosecution Service (in 2004) may have decreased the number of cases involving weak evidence and may have reduced the seriousness of the charges that accused were, at that early stage, facing. Weeding out weak cases early and possibly limiting 'over-charging' could have reduced the perception that pretrial detention was appropriate.
- Time awaiting trial has decreased for all cases in England and Wales, unlike the situation in Canada and Australia.

Conclusion: It is clear that there is no one 'silver bullet' that has kept the remand population in England & Wales from increasing. Furthermore, official policy from the government appears to favour controls on the remand population. The government wrote to courts "asking decision makers to think carefully before remanding defendants in custody" (p. 18). It would appear that the tightening up on bail laws were "largely presentational rather than operational" (p. 19).

Reference: Hucklesby, Anthea (2009). Keeping the Lid on the Prison Remand Population: The Experience of England & Wales. *Current Issues in Criminal Justice, 21*(1), 3-23.

Can pretrial detention populations be reduced by changing the rules for the police?

Policy makers in a number of jurisdictions have expressed concern about rates of pretrial detention. In Canada, for example, although overall imprisonment rates have been steady for the past 45 years (see *Criminological Highlights, 8*(2)#6), pretrial detention rates have been increasing for at least the past decade. Controlling prison populations of any type is difficult. The argument with pretrial detention, however, is that statutory changes are not necessarily required since whether a person is held in pretrial detention is largely a function of arrest policies and bail standards which are likely to be under local control.

The county in the U.S. in which the current study was carried out had been under (Federal) court order to control its jail population. In order to do this, the county court executive committee decided to require that, for certain non-violent offences, police issue a summons rather than arrest the suspect. The "policy" then was that there should be no arrests. Furthermore, the county court executive committee ordered the county sheriff's department to cease accepting those accused brought to the lockup facility who were charged (only) with one of these offences. This study examines the manner in which this policy was implemented and, to some extent, its effects on the operation of the justice system.

The first, rather predictable, finding was that compliance with the new policy – even though it came from the court – was not complete. Prior to the policy 60% of accused were arrested and taken to the county jail. During the period when the policy was in place, pretrial detention on these cases dropped dramatically, but 20% of the cases that fell within the "no arrest" policy still resulted in an arrest and detention. Prior to the implementation of the policy, 63% of those who had been issued summons rather than being arrested showed up as required without the need for an arrest warrant. After the implementation of the policy, with a considerably higher proportion (and number) of accused being issued summons, the figure was about the same (61%). However, because the numbers of those issued summons under the new policy was so much higher, this translated into a larger number of the accused people not showing up to court as required. Said differently, 31.5% of those who came into contact with the police for one of these offences after the policy period had warrants issued for their arrest compared to only 15.1% prior to the new policy.

The net effect of the policy was that there were fewer people brought to the jail, but some of them arrived there as a result of warrants being issued. Hence, the initial apparent decrease in the use of pretrial detention was moderated, to some extent, by the fact that accused people were brought into custody as a result of a charge of failure to appear in court. The final dispositions of these (minor) cases did not, in the end, change very much: in about half of the cases, all charges were dismissed.

Conclusion. Compliance with court-ordered reduction in pretrial detention was implemented *relatively* – but not completely – successfully. Part of the reason for the success, however, may have been that there were explicit rules from a legitimate authority (the county court) that could be enforced (in this case by the jail officials who could refuse to accept a prisoner who should not have been arrested). Because a larger number of people were issued a summons rather than being brought to jail to await trial, more people did not appear, as required, in court. However, even though many more people were released who, prior to the implementation of the policy, would not have been released, the *proportion* who did not appear in court as required did not increase appreciably. In the end, about half of these cases were dismissed suggesting, perhaps, either that they were not very serious to begin with or that the police did not have the evidence on which to convict the accused.

Reference: Baumer, Terry L. and Kenneth Adams. (2006). Controlling a Jail Population by Partially Closing the Front Door: An Evaluation of a "Summons in Lieu of Arrest" policy. *Prison Journal, 86* (3) 386-402.

Courts create the conditions for youths to commit the criminal offence of 'failure to comply with court orders' by imposing large numbers of conditions on youths when they are released on bail and then delaying the resolution of the case.

Although Canada's 2003 *Youth Criminal Justice Act* has succeeded in reducing the number of youths brought to youth court (see *Criminological Highlights, 10*(1)#1, *10*(3)#1), the number and rate of cases in which the most serious charge is the failure to comply with a court order (largely failure to comply with conditions of release on bail) has not decreased. In 2009, this one administration of justice offence represented about 7% of all cases brought to youth court in Canada. This paper describes how youth courts 'set youths up' to fail and be charged criminally for non-compliance with their terms of release.

Conditions of release on bail are not supposed to serve as punishments, though obviously restrictions on youths' (or adults') daily activities are almost certainly experienced as punishment. Instead, conditions of release on bail (e.g., curfews, non-association orders, reporting conditions) are supposed to be designed to help ensure that the youth will appear in court as required and not engage in criminal activity while awaiting trial. Some police services have 'bail compliance units' designed to "conduct bail compliance checks any hour of the day or night" (p. 407). The justification for these bail compliance checks is, officially, to ensure that conditions are adhered to.

This study followed the court careers of a representative sample of youths who were detained by the police, taken to bail court, and then released on bail (between 2003 and 2008) from one of Toronto's large youth courts. Youths were then tracked through the court system by examining records of their court appearances from the original bail hearing to the disposition of the original charges. Youths in the Toronto courts had varying numbers of conditions imposed on them: 45% of the youths received seven or more separate bail conditions. About half of the cases (47%) took less than 6 months to be completed, but 53% took 6 months or more to be resolved. While the original case was being processed, 32% of the youths returned to court with a new charge of failure to comply with a court order (the bail order). This charge was, sometimes, combined with other substantive charges.

The data are clear, however, on the role of the court in contributing to these new 'failure to comply' charges. New charges of 'failure to comply with a court order' were especially likely to be laid in those cases that took more than 6 months to be resolved and where the youth was required, during this period, to comply with large numbers of conditions (7 or more). In fact, in 60% of such cases, youths acquired new charges of 'failure to comply with a court order.'

In contrast, for cases resolved in less than 6 months, the number of bail conditions had no impact on the likelihood of a 'failure to comply with a court order' charge being laid: 17% of those with 1-6 conditions and 22% of those with 7 or more bail conditions had new charges laid for 'failure to comply.' For those whose cases took more than 6 months but who had few (6 or fewer) bail conditions, only 34% had charges laid for failure to comply with a court order.

Conclusion: It would appear that courts can increase the likelihood of a youth being brought back to court for a new criminal offence of failure to comply with a court order by imposing large numbers of bail conditions and then by being inefficient in disposing of the case. When one considers that some of these conditions involve quite serious intrusions into a youth's life – e.g., curfews, restrictions on where they can go, prohibitions on meeting with or communicating with named other youths – it is not surprising that the likelihood of a violation of the condition would go up in time. In addition, of course, more time and more conditions increases the probability that police officers would discover that a youth had violated a condition of release.

Reference: Sprott, Jane B. and Nicole M. Myers (2011). Set Up to Fail: The Unintended Consequences of Multiple Bail Conditions. *Canadian Journal of Criminology & Criminal Justice, 53* (4), 404-423.

Bail conditions placed on youths released pending trial do not have their intended effects.

Canada's 2003 Youth Criminal Justice Act is credited with reducing the number of youths sent to youth court as well as reducing the number of custodial sentences imposed on young people who commit offences (*Criminological Highlights 10*(1)#1, *10*(3)#1). Nevertheless, concerns about the operation of the Act remain.

Specifically, it appears that there are problems with the operation of pretrial release (*Criminological Highlights 13*(1)#1, *12*(5)#3, *13*(5)#5). This paper addresses a straightforward question: Do multiple bail conditions imposed on youths awaiting trial accomplish the goals that justify their imposition: appearing for court as required and refraining from committing additional offences while awaiting trial.

When Canadian bail courts release youths into the community prior to their trial, they often place large numbers of conditions on them, some of which bear almost no relationship to the current charge (*Criminological Highlights 13*(5)#5). Ontario justices of the peace appear to subscribe to the theory that more conditions will lead to better behaviour.

Using data from one of the largest youth courts in Ontario (Canada), this paper examined court records from a representative sample of 358 cases from 2009-2011 in which the youth was released on bail awaiting trial. Justices imposed a median of 8 (mean = 7.6 conditions) separate distinct bail conditions on these youths. The impact of the number of these conditions was examined on three outcome measures. The first was whether the youth was charged with "failure to appear" in court. Youths had many opportunities not to appear: cases generally consumed between 2 and 37 court appearances (mean 12.4) with one outlying case in which the youth was required to appear in court 65 times. 63% of the youths were required to appear at least 10 times (typically on school days). The second outcome measure was whether there were new substantive charges laid against the youth. Finally, the number of "failure to comply with a court order" charges were examined.

The main independent variable of interest was the number of conditions placed on the youth who was awaiting trial. Only 3 of the youths were charged with failure to appear in court. Hence, there was no evidence that large numbers of conditions served to ensure court appearance, since those with relatively few conditions also appeared.

Two background factors predicted whether the youth was returned to court for new substantive offences (i.e., offences other than 'administration of justice' offences): their current charge and whether they had been facing charges before the bail hearing in which the conditions were imposed. In addition, boys were more likely than girls to be returned for new offences. However, there was absolutely no evidence that the number of bail conditions had any impact on subsequent substantive charges.

However, consistent with previous research, those with large numbers of bail conditions were more likely to be returned to court with new charges for 'failure to comply with a court order.' In other words, by placing large numbers of conditions on their release, the court was successful in ensuring that youths would fail, even when gender and previous charges before the court were taken into account.

Conclusion: Youth bail conditions are not accomplishing the goals that justify their imposition. Placing large numbers of conditions on youths does not have an impact on attending court or on whether a youth commits new substantive offenses. It does, however, increase the likelihood of administration of justice charges. "What release conditions can end up doing, then, is criminalizing the risks or vulnerabilities youths have, under the [false] assumption that simple criminalization is sufficient to produce behavioural change" (p. 74).

Reference: Sprott, Jane B. and Jessica Sutherland (2015). Unintended Consequences of Multiple Bail Conditions for Youth. *Canadian Journal of Criminology and Criminal Justice*, 57(1), 59-81.

Girls in Canada's youth courts are much more likely than boys to have broad treatment conditions imposed on them as a condition of pretrial release.

Although there has been a substantial decline in the rate that youths are brought to youth courts in Canada, the rate for one offence – failure to comply with a court order (typically the charge of failing to comply with a condition of pretrial release imposed in bail court) — has not shown a similar decline. Currently these charges are the most serious charge in 17% of youth court cases.

To some extent, the courts themselves are responsible for this large number of 'status offences' in Canadian youth courts: previous research (*Criminological Highlights 12*(5)#3, *13*(1)#1, *13*(5)#5, *15*(3)#1) has demonstrated that imposing large numbers of conditions – many of which have little relationship to the offence – on youths who are released, especially when combined with long waits until their cases are disposed of, increases the likelihood of youths failing to comply with their bail conditions.

This paper looks carefully at the bail conditions imposed on boys and girls in one of Canada's largest youth courts. Although the *Youth Criminal Justice Act* states that youths cannot be detained in custody as a substitute for social welfare purposes (s. 29(1)), there is nothing in the *Act* that explicitly prohibits courts from imposing treatment or welfare-based bail release conditions. Although higher courts have decided that it is not sufficient simply to impose conditions on a youth just because someone in the courtroom at the time the decision is made thinks it might be a good idea, it would appear that there are few restrictions on conditions imposed on youths.

This paper looks at whether or not treatment orders were included in the bail conditions imposed on a random sample of youths – 425 boys and 75 girls – who were released by a Toronto court between 2009 and 2013. Girls were significantly more likely, overall, to have treatment orders imposed on them (70% of girls and 45% of boys received treatment conditions). Typically if a youth received a treatment order it was rather broadly defined. For example, it might require a youth to be assessed by a doctor or to "follow a doctor's orders" or to attend a program such as counselling, anger management, or substance abuse. Usually the conditions included both attending a treatment program and "being amenable" to treatment.

For boys, treatment orders were significantly more likely to be imposed if the most serious offence involved violence, if the youth was facing more than one charge and if the youth had a previous charge. Girls, for each category of each of these variables (e.g., cases involving violence and cases without violence), were more likely to receive treatment orders than boys. More importantly, however, *none* of these three variables was significantly related to whether a girl received a treatment order.

Conclusion: Simply being a girl, it would seem, was sufficient for the court to require a treatment order in 70% of the cases, quite independent of the number and nature of current charges and whether or not there had been previous charges. Boys not only were less likely than girls to receive treatment orders, but the likelihood of receiving a treatment order for boys appeared to relate to features of the case. Since youths when they appear in bail court have not been assessed to see if there is a need for treatment and they have obviously not been convicted of anything, it is curious that girls in bail court appear to the court almost automatically to 'need' treatment. "Are we observing anachronistic vestiges of the view that females in conflict with the law must be either 'mad' or 'bad'?" (p. 94)

Reference: Sprott, Jane B. and Allan Manson (2017) YCJA Bail Conditions: "Treating" Girls and Boys Differently. *Canadian Criminal Law Review, 22*, 77-94.

Canadian courts attempt to control the behaviour of people who are awaiting trial by placing conditions on their release on bail that restrict their freedom in a manner not contemplated by current bail laws.

On an average night, about 35% of Canadian prisoners are 'remand' prisoners – typically awaiting trial. Said differently, about a third of Canadian prisoners are legally innocent. The rate of remand imprisonment has been increasing slowly since the early 1980s and cannot be attributed to any single change in legislation. The increase also cannot be attributed to increases in crime: Crime, including violent crime has been decreasing since the early 1990s.

The 1972 Bail Reform Act suggested that release on bail should be presumed and that the prosecution must demonstrate a need for an accused person to be detained. Since then, successive governments first created and then added to the list of offences or circumstances in which an accused must demonstrate that release on bail is warranted. The problem that has, until recently, not received much attention is the setting of conditions on those released on bail.

This paper uses data from 152 days of observations of bail proceedings in 11 adult Ontario courts between 2006 and 2013. Most accused were released with the consent of the Crown. However, most (76%) of those released required a surety to guarantee their appearance in court and adherence to an average of 7.8 conditions of release. Most (64%) accused persons released on bail were prohibited from possessing any weapons; 63% were required to live with their sureties; 20% were required to abstain from drugs; 18% were required to abstain from alcohol. Other conditions included not being within certain areas of the city (27%), house arrest (7%), and curfews (19%). There were some conditions that appeared to flow from the allegations against the accused (e.g., no contact with witness/victim (50%)). On the other hand, there were some conditions such as "being amenable to the rules and discipline of the home" (71%) that were both vague and apparently unrelated to the offence.

The problem is simple: accused (and their lawyers) will agree to almost anything to obtain release especially since the bail process is itself remarkably inefficient (*Criminological Highlights, 15*(2)#1). But then once the conditions are imposed, violating them puts an accused person in jeopardy of a new criminal charge (failure to comply with a court order). The law indicates that "conditions are supposed to address the grounds upon which the accused would have otherwise been detained and be rationally connected to addressing these grounds" (p. 677). Instead, what we see are conditions being placed on accused people that do not relate to the offence (see also, *Criminological Highlights, 13*(5)#5). Given that legally innocent accused may be living with these restrictions for many months, it is not surprising that conditions are sometimes violated. In about 10% of criminal cases in Canada, a bail violation is the most serious charge in the case.

Conclusion: Accused people are clearly being punished by courts that place restrictions on them which often have little or no bearing on the offence that was the basis of the original charge. These conditions are obviously experienced as punishment. "The result is a blurring of the lines between the presumed innocent and the proven guilty" (p. 682). At around the time that this paper was published, the Supreme Court of Canada in R. *v.* Antic (2017 SCC 27) noted that "It is time to ensure that the bail provisions are applied consistently and fairly. The stakes are too high for anything less. Pre-trial custody 'affects the mental, social, and physical life of the accused and his family' and may also have a 'substantial impact on the result of the trial itself'" (para 66). The Supreme Court then restated, in plain language, Canada's law. This paper demonstrates that such a restatement was clearly necessary.

Reference: Myers, Nicole Marie (2017). Eroding the Presumption of Innocence: Pre-trial Detention and the Use of Conditional Release on Bail. *British Journal of Criminology, 57*, 664-683.

The goal of getting a detained client released on bail can easily lead defence lawyers and their clients to accept unreasonable bail conditions that may set the accused person up to fail.

For the accused person and their lawyer, success at bail hearings is defined as getting the accused released. The conditions that the accused person must obey while in the community are seen as being of secondary importance. Although the Supreme Court of Canada has made it clear that it is the responsibility of the court to ensure that "bail provisions are applied consistently and fairly," the strong preference of the accused – and their lawyer – is to present the court with an agreement to release the accused. The conditions of that release are seen as of secondary importance.

Most cases are resolved as a result of discussions between the Crown and the defence prior to a court appearance. The Supreme Court of Canada has emphasized the importance of using the least onerous conditions possible. It has also made it clear that any form of release more intrusive than a release of the accused on their own recognizance must be justified. However, courts seldom are placed in a position where they have to examine the true meaning of the details of release conditions because they are presented as an agreement between the Crown and the accused. There are good reasons why accused people do not challenge conditions of release when these are offered. In the first place, doing so is almost certain to require the case to be adjourned to a later date. The accused can avoid delay by agreeing to release conditions that the Crown proposes. Second, a challenge could result in the accused being detained.

In this study defence lawyers who have recently represented accused people at bail hearings were interviewed about the bail process. Three broad themes emerged from these discussions. Although preparation and negotiations with Crown attorneys were not described by them as being complex, they were often described as being hectic and disorganized. If the case were to be decided in court, the Crown would, in theory in most cases, have to justify any conditions that were requested. Unless an outcome was successfully negotiated between the Crown and the defence, the Crown would typically argue for detention before trial. In light of the fact that "the client's overwhelming desire [is] to avoid additional pretrial detention," (p. 54), defence counsel reported that "Clients end up agreeing to [onerous] conditions [that the Crown suggests as part of a] proposed consent release" (p. 54). As one defence counsel put it, "The Crown can pick whatever terms they want… If they say it, and we agree to it, then that's what it's going to be. You're almost never going to opt for a contested bail hearing to challenge a condition or two" (p. 56). "Arguing matters before a justice [comes with] an uncertain outcome compared with securing a [release based on] a joint submission" (p. 56). Another theme that emerged was that justices vary, and if the defence knew that the justice might by sympathetic to the case, they might be willing to suggest a hearing. On the other hand, defence counsel suggested that "certain justices make unreasonable bail decisions" (p. 59) and are to be avoided.

Conclusion: Defence counsel are risk averse not only in terms of acting in a manner consistent with their client's desire for release, but they will sometimes accept conditions "they know their client is unlikely to be able to follow" simply to avoid the possibility of detention before trial. "Bail at all costs is the overwhelming priority" (p. 61). Hence "Counting on defence counsel alone to resist onerous bail conditions is unlikely to bring bail practices into conformity with the law on bail…. Defence lawyers are not as incentivized to push against the conditions [of release] as the formal adversarial model would suggest. Instead, they adopt strategies that make onerous conditions more likely" (p. 62).

Reference: Nixon, Jenaya, Carolyn Yule, and Dennis Baker. Reasonable Bail or Bail at All Costs? (2024). Defence Counsel Perspectives on a Coercive Environment. *Canadian Journal of Law & Society, 39,* 44-64.

Many conditions of release on bail imposed on Canadian youths bear no relationship either to their alleged offences or to plausible concerns about those who remain in the community awaiting trial.

Many Canadian youths, instead of being released by the police when they are arrested are detained in custody for a bail hearing. Most of these youths are eventually released on conditions set by a judge or a justice of the peace. Previous research (*Criminological Highlights 12*(5)#3) has shown that if the court imposes large numbers of conditions on youths released on bail and the case is not disposed of relatively quickly, the youth is likely to be charged with a new offence – "failure to comply with a court order." In Canada in 2011/12, 3508 youths (or 7.3% of the cases disposed of that year) had 'failure to comply with a court order' (most often related to conditions of bail) as the most serious offence in the case.

This study examines the conditions that are imposed on youths in four Toronto-area courts. Youths can be detained if it is thought that they would not appear in court when required or that they would commit a criminal offence that would threaten public safety. The principle specified in Canadian bail laws is that, in general, the least onerous form of release is presumed to be appropriate unless the prosecutor can demonstrate to the court why a more onerous form of release is justified. The manner in which the law is written, then, implies that conditions should not be imposed on youths unless they can be shown to be necessary.

This court observation study recorded the conditions imposed on youths, noting, as well, the information about the offence that was available to the presiding justice. More conditions were imposed on youths who had committed more serious offences and youths facing large numbers of charges. Many conditions showed no logical relationship to ensuring that the youth appeared in court as required and did not threaten public safety (the justification for conditions).

The most common conditions were that the youth should reside with the youth's surety (76% of cases), "be amenable to the rules of the home" (84% of cases), not possess any weapons or a firearms acquisition certificate (79% of cases) and attend school (39% of cases). 31% of the youths were put under house arrest, and 30% were required to attend counselling.

Conditions were then evaluated by the authors as having a "clear connection" or "no apparent connection" or an "ambiguous connection" with the concerns related to release. Residing with one's surety, for example, was seen as having an ambiguous relationship since its connection with reoffending and appearing in court is possible, but not clear. "Not communicating with the victim" (or co-accused) on the other hand, was always rated as having a 'clear connection.' Curfews, on the other hand, often had no apparent connection (e.g., when the offence didn't take place during the curfew hours) but sometimes did. Some conditions – such as attending school – almost never had a connection with concerns about bail. None of the counselling orders had any relationship to the offence.

In one rather ordinary case a youth had taken the contents of the pockets of another youth – 20 cents and some membership cards – at 11:15 in the morning The youth was charged with robbery and released on bail with 8 separate conditions including attending counselling and house arrest (except when accompanied by mother or father to attend school or counselling).

Conclusion: In order to be released, youths consented to, or had imposed on them, an average of 9.3 separate conditions, the violation of any one of which could – and often did – result in additional criminal charges. In other words, almost all of the conditions criminalized ordinary behaviour. In the case referred to in the title of the article, a youth charged with shoplifting from one store in Ontario's largest chain of drug stores was prohibited from entering this store and any of their other 622 stores in the province (but not, apparently, the stores of its competitors).

Reference: Myers, Nicole M. and Sunny Dhillon (2013). The Criminal Offence of Entering Any Shoppers Drug Mart in Ontario: Criminalizing Ordinary Behaviour with Youth Bail Conditions. *Canadian Journal of Criminology & Criminal Justice, 55*, 187-214.

Adding conditions to an accused person's pretrial release after that person was charged with a federal offence in the US "generally had no significant relationship with reductions in the likelihood of pretrial crime or missed court appearances" (p. 1868-9).

The decision to release or detain an accused person in custody after they are charged is typically supposed to reflect the risk that they will not appear in court as required or the risk that they will commit a new offence. Some people are obviously more likely to be good candidates for release than others. The question that this paper addresses is whether adding conditions of release affects the likelihood – above and beyond their risk score – that the accused will fail to appear in court as required and/or commit a new offence.

Conditions imposed on those released prior to trial often bear no relationship to the offence (*Criminological Highlights* 13(5)#5), are experienced as punishment (16(6)#4), can easily lead to new charges of failure to comply with the conditions of release (12(5)#3), and do not reduce crime (15(3)#1).

In this study the re-offending rates of 223,260 people charged with US federal offences and released into the community were examined. Accused people's "risk" of violating the conditions of release were assessed with a scale developed for this purpose. The scale had modest accuracy in predicting bail violations. The effect of the number of conditions imposed on an accused person was examined independent of their score on the "risk scale". Other factors such as age, sex, race/ethnicity, charges, etc., were controlled statistically.

Overall, judicial officers making decisions on bail imposed an average of nine special conditions on each accused person. Not surprisingly, these judicial officers seemed to work on the assumption that increasing the number of conditions would reduce risk: More conditions were imposed when risk was assessed to be moderate or high compared to cases where risk was assessed to be low. Equally unsurprising was the fact that many conditions (an average of 10 or more) were likely to be imposed on serious offences (sex offences, drugs, weapons/firearms offences) than when the most serious charge was a property or technical/ public order offence (an average of 4.8 – 7.5 conditions).

The effect of the number of conditions – above and beyond the 'risk score' – on three measures was examined: pretrial arrest for any offence, failure to appear, and the pretrial revocation of release. In all cases, the accused person's risk score predicted, to some extent, the outcome: those with high-risk scores were more likely, not surprisingly, to have poor outcomes. But the impact of conditions – above and beyond the risk score – was negligible. When there was a small effect – for example in the case of pretrial revocation – it would appear that the number of conditions was associated with *increased* odds of revocation. This isn't terribly surprising, given that adding conditions to a release order provides more opportunities for revocation.

Conclusion: The findings make it clear that adding conditions to a pretrial release order can increase slightly the probability of revocations for technical violations but generally has no effect on rearrests for a new offence or failure to appear (p. 1866). From an efficiency and fairness perspective, then, it would appear that conditions should normally be imposed very selectively and only in those circumstances where there are compelling reasons for the condition to be imposed on the particular suspect before the court.

Reference: Cohen, Thomas H. and William Hicks, Jr. (2023) The Imposition of Pretrial Conditions on Released Federal Defendants. *Criminal Justice and Behavior, 50*(12), 1852-1873.

Those who invoke criminal sanctions for accused people who don't show up on time for court might take a lesson from North American dentists and send out reminder cards.

Many North American dentists, who often make regular dental appointments weeks or months in advance of the scheduled appointment, send out postcards reminding their patients to show up for their appointments. Some even mention that there will be penalties for those who don't show up. This study examines whether courts could learn from the experience of dentists. It examines whether sending out reminder cards to those required to come to court reduces the 'failure to appear' rate.

Accused people are punished for not appearing, when required, for court appearances on the assumption that – like most criminal offences – the act of not appearing for court is a motivated one. The alternative perspective is that people may simply forget, or do not realize that showing up for court is seen, by courts, to be a serious matter. If either of these is the case, then reminding them of their obligation to appear and explaining the consequences of failing to appear in court might be a way of reducing the number of failures to appear. Studies suggest that many defendants "lead disorganized lives, forget, lose the citation [the written notice they receive from the police] and do not know whom to contact to find out when to appear, fear the justice system and/or its consequences, do not understand the seriousness of missing court, have transportation difficulties, language barriers, are scheduled to work, have childcare responsibilities, or other reasons…" (p. 178).

This study, carried out in 14 counties in Nebraska, randomly assigned 7,865 accused adults who were charged with non-traffic misdemeanour offences to one of four experimental conditions. One group was treated normally (and not given a reminder). A second group was sent a post-card simply reminding them of their hearing date, time, and place. The third group was given the reminder and was told that there could be serious criminal consequences of not appearing. The fourth group got the reminder and the explanation of sanctions but was also told that the courts try to treat people fairly.

The results were simple. All reminders worked, but explaining the sanctions that could be imposed for a failure to appear (with or without the 'justice' message) worked better. The proportion of failures to appear were as follows:

No reminder:	12.6%
Reminder only:	10.9%
Reminder & sanction:	9.1%

These findings would suggest that there could be substantially fewer failures to appear if simple reminders were sent out that included the time and place of the court hearing and warnings about the criminal consequences of failing to appear. For example, if 1000 reminders were sent out in these jurisdictions, a reminder containing an explanation of the penalties for failure to appear in court would reduce the number of these 'failures' from 126 (with no reminder) to 91 (with this reminder and message). Whether this is cost effective depends on how various cost estimates are made. For example, using the actual data on the effect of the reminder, one could compare the cost of mailing 1000 reminders to the savings (criminal justice and social) from having 35 fewer failures to appear within this group of 1000 people.

Conclusion: It appears that simple reminders to those charged with criminal offences combined with educational material about the consequences of failing to appear for court can significantly reduce the rate of failures to appear. The benefits, of course, accrue not only to the police and court system but also to accused people who otherwise might not appear in court. The results suggest, therefore, that courts can contribute to 'crime control' by simply adopting the business model of some dentists.

Reference: Rosenbaum, David I., Nicole Hutsell, Alan J. Tomkins, Brian H. Bornstein, Mitchel N. Herian and Elizabeth M. Neeley. (2012) Court Date Reminder Cards. *Judicature, 95*(4), 177-187.

Reminding people that they have a required upcoming court appearance can reduce substantially the rate at which people fail to appear in court.

In Canada in 2019, there were 39,341 cases in which a person failed to appear, as required, in a criminal court. In most (83%) of these incidents, the person was charged with the criminal offence of "failure to appear" (FTA). This paper, building on another study in which people were sent post-card reminders of their required appearance (*Criminological Highlights 13*(4)#1), examines the effect of a simple telephone reminder on the rate that people show up for required court appearances.

The failure of an accused person to appear, as required, in court is expensive in a number of different ways. First, time in criminal court is very expensive given the number of people who are necessary to run a criminal court. Second, a failure to appear in court can land the accused in custody awaiting trial. This has obvious costs both to the accused person but also to the community given the high cost of incarcerating someone. Third, a conviction for FTA can increase the likelihood of pretrial detention in the future and can lead to harsher sentences in the future.

In New York City, after the bankruptcy of a private vendor who had the responsibility to remind people of their court dates, the city found that it could not, immediately, remind everyone of their court dates. Instead, it set up a study where people were randomly assigned to one of four conditions: (1) No reminder. (2) A reminder telephone call three days before the scheduled court date. An attempt was made to speak to someone, but if, on the second attempt, this was not accomplished, a voice message was left, if that was possible. (3) A call the same day as the required court appearance. Calling began at 6 am and ceased at 9 am. Court started at 9:30 am. (4) Both a 3-days in advance call and a same-day call. The caller was reasonably successful (62% to 76%) in at least leaving a message for the accused person. The main data analysis looks at the original (randomized) assignment to condition, regardless of whether the attempt was successful.

In the control group, 19.3% of the accused people failed to appear for their scheduled court appearance. The three groups that received reminders did not differ in their appearance rates. Their average failure rate was 12.1%, a 37% reduction in the rate of FTAs. The effect of the reminders was greater for Black, Hispanic, and Asian accused people than it was for White accused people. Furthermore, the effect of the reminders was greatest for those facing multiple charges. For multiple-charge cases, the FTA rate for those who did not get reminders was 22.4%. Reminders reduced this to 11.4% (a 49% reduction in the FTA rate). Finally, the effect was largest for those who had long wait times between their initial police contact and their appearance in court.

Obviously, it was necessary to get a phone number for each accused person. But the cost of the telephone calls was not high. In this study, attempts were made to contact 1202 people. Attributing all of the costs of the calls to the cases in which the accused showed up but, without the call, probably wouldn't, it was estimated that each FTA that was avoided cost the city about $34. Unfortunately, no data were provided on the court costs associated with a FTA, but rough estimates would suggest that Ontario courts cost at least $20 per minute to run. But in addition, the policing, detention, and additional court appearances required to process a new charge suggest that a simple phone call pays for itself. These results are similar to findings showing that a virtually cost-free re-design of court appearance documents can reduce FTAs (*Criminological Highlights 19*(1)#3).

Conclusion: The data are clear: Telephoning accused people prior to their court appearances can reduce dramatically the number and costs associated with failures to appear. But in addition, the benefits are greatest for members of racialized groups and those facing larger numbers of charges.

Reference: Ferri, Russell (2022). The Benefits of Live Court Date Reminder Phone Calls During Pretrial Case Processing. *Journal of Experimental Criminology, 18,* 149-169.

Governments can, with *no* extra cost, easily increase the likelihood that people will show up on time for court appearances. They need only to expend a very small amount of effort redesigning the summons that police give to accused people. In addition, with a very small expenditure, they can further reduce failures to appear by sending accused people a reminder by text message.

Thousands of people in many countries fail to show up for scheduled court appearances. Even though the original charge may be minor, those found guilty of failure to appear in court may be punished quite severely. In Canada, 43% of those found guilty of this offence are imprisoned – a slightly higher rate than for criminal offences overall (39%).

This study suggests that there are some very simple solutions to the problem of failure to appear in court that are consistent with previous work (see *Criminological Highlights 13*(4)#1). The authors started with the assumption that for many people, failing to appear in court is a simple human error (perhaps because missing a court appearance may not be seen as a 'big deal' given that courts, themselves, force people to wait for hours for an 'appointment' that may only take a few minutes.) If not showing up at court is, in many cases, simply a human error, then the challenge is straightforward: make it less likely that people make mistakes.

The first study, carried out in New York City, redesigned the court summons form to simplify and highlight the relevant information. The original summons prioritized information about the offence, description of the accused and the police officer, with the court date at the bottom. On the back of the form, accused people were told that arrest warrants could be issued for those who failed to comply. The first experiment simply redesigned the summons to make relevant information (date and location of the appearance) more salient. Then, in bold print, it points out that a failure to appear would lead to a warrant being issued. Police started using the newly designed summons when they ran out of the old ones, meaning that different police officers started using the new forms at different times – constituting a very strong quasi-experimental design. The new form, which cost essentially nothing to implement, reduced failure to appear from about 47% to 42%.

In the second study, another inexpensive intervention was used: a text message to those who had received summons. Those who were willing to give police officers their cell phone number were randomly assigned to one of four groups. The control group received no messages. All text messages groups were messaged 7, 3, and 1 day(s) before the scheduled court date. All messages included information about the date, time, and place of the court appearance. But in addition, some people received suggestions to "plan" for the appearance (by marking calendars, etc.). Another group received information about the consequences of failing to appear. A third group got both sets of information. Receiving any of the three types of messages reduced the failure rate from about 38% to 30%.

Other experiments carried out on people not facing charges suggested that the new summons form did, indeed, make it easier to see the court date/time information and to recall this information as well as information about the consequences of a failure to appear. Interestingly, ordinary members of the community thought that failures to appear were intentional, not unintentional, consequences of forgetting.

Conclusion: Many people miss court dates for a very simple reason: they forget about them and may not think that the consequences are more serious than forgetting a dentist appointment. Making the information about court appearance time/dates and legal consequences of a failure to appear salient and reminding people by text message of an approaching court date reduces the rate of failures to appear substantially.

Reference: Fishbane, Alissa, Aurelie Ouss, and Anuj K. Shah (2020). Behavioural nudges reduce failure to appear in Court. *Science* 10.1126/science.abb6591 (2020).

Black defendants in US federal courts are more likely to receive detention recommendations than are White defendants. The racial disparity in probation officers' recommendations operates largely as a result of one factor: the criminal history of the accused.

The use of pretrial detention is a concern for at least two simple reasons: it can be harmful to an accused who has not been convicted of an offence and it is, inherently, a punishment that is imposed by a court on a legally innocent person.

Although ultimately pretrial detention decisions are made by judges, other people typically give advice or suggestions to the judge. In US federal courts probation officers are required to provide information and recommendations to the judge. They are instructed to consider both the offence and the defendant's criminal record in their recommendations as well as more social factors, such as community ties. In addition to descriptions of the accused on various specific measures, the probation officers complete a pretrial risk assessment (PTRA) measure which is given to the judge.

This paper compares the recommendations made by 3123 probation officers in 84 federal districts on the likelihood of a recommendation for pretrial detention for Black and White (non-Hispanic) defendants. Overall, Blacks were 34% more likely to receive a recommendation for detention.

Racial disparities that disadvantage Black defendants were the smallest in districts that tended to detain lots of people (of either race) and where the PTRA suggested that the defendant was high risk. These obviously are cases in which there would appear to be little discretion for the probation officer: a recommendation for detention was "natural" if people were generally detained in that district and the accused person was rated as being of high risk.

However, in both the districts with high and low detention rates, Blacks with low criminal history scores were more likely to be disadvantaged by the recommendations of probation officers. For those with serious criminal records, Blacks and Whites tended to be treated in a more similar fashion. "Racial disparities generally are greater when the situation provides greater room for discretion. These 'gray area' cases require officers to exercise personal judgement to make a detention recommendation and, therefore, may provide greater room for personally mediated disparities" (p. 251). However, about 60% of the racial disparities could be explained by criminal history alone.

But in addition, "a simple combination of defendants' criminal history (a policy-centric factor) and socio-economic status (a policy-peripheral factor) explains nearly as much of the racial disparity in officers' detention recommendations as the best summary of policy-centric factors" (p. 254). The criminal history of the accused person appeared to be a central factor in the probation officer's recommendation.

Conclusion: In sum, there is evidence of racial disparity in recommendations regarding pretrial detention, especially in the 'gray area' cases. This disparity appears to operate "through policy-centric factors rather than personally mediated bias" (p. 254). The focus of the decision appears largely to be the criminal history of Black accused people. If, ultimately, the goal is to reduce the racial disparity in recommendations concerning pretrial detention, this might be done by restricting the weight given to criminal history to ensure that its effect does not go beyond what might predict serious offending and failure to appear.

Reference: Skeem, Jennifer, Lina Montoya and Christopher Lowenkamp (2023). Understanding Racial Disparities in Pretrial Detention Recommendations to Shape Policy Reform. *Criminology & Public Policy, 22,* 233-262.

Police assessments of suspects' character and the race of the accused are important in understanding who is detained in custody awaiting trial in Toronto.

Background. Bail laws can be conceptualized as theoretical tools used to assess risk (e.g. of the accused not appearing for trial or committing another offence). However, they may also have more concrete consequences for the detainee which extend beyond the simple reduction of his/her risk level. For example, an accused who is detained in custody awaiting trial is not only being punished for an offence that has not yet been proven, but is also put at a disadvantage in later proceedings. In particular, there is evidence from previous research suggesting that those in pre-trial detention are more likely to be found guilty and incarcerated than those who are allowed to remain in the community before their trial.

This study looks at the more than 1800 bail decisions in Toronto courts in 1993-4. It examines hypotheses related to the notion that bail decisions relate to moral assessments made about the accused person. The researchers had access not only to data describing court proceedings, but also to information about the case that the Crown received from the police.

The findings demonstrate that even after legally relevant factors were controlled for (e.g., the accused having a permanent address, the number of charges, the presence of certain types of criminal record), race contributed significantly to the decision of whether an accused person received a pre-trial detention order: black accused are more likely to be detained than those from other racial backgrounds. However, the effect of race is indirect: "The more negative the police moral assessment of an accused person, the more likely they are to be held in custody" (p. 196) above and beyond legally relevant variables. This factor – negative moral assessments by the police – explains the race effect since "police provide more negative character assessments of black accused than white accused or accused from other racial groups" (p. 196). This appears to be the mechanism by which black accused are more likely to be detained.

In general, accused who are remanded in custody are considerably more likely to plead guilty to one or more charges that they are facing. Additionally, accused who have been released into the community are more likely to have all charges against them withdrawn. In contrast, black accused persons *who are detained in custody* are less likely to plead guilty than white accused persons who are in pre-trial detention. If released, blacks and others are equally likely to plead guilty. Although black people being detained are less likely to plead guilty than other groups, blacks in custody are *more* likely than accused from other groups to have *all* of their charges eventually withdrawn (17% vs. 8%). Those accused who were held in pre-trial detention but did, in the end, have all charges withdrawn spent an average of 103 days in custody before release.

Conclusion: By defining what kind of person an accused is (independent of legal factors), the police have a direct impact on whether an accused is released on bail. Through this mechanism, black accused are more likely to be detained. Blacks who are detained are, compared to accused from other racial groups, less likely to plead guilty but are more likely to have all charges eventually withdrawn. The added difficulty is that "the informality of certain bail practices combines with the confidentiality of police documents to render invisible the way in which personal identity [of the accused] influences the outcomes of both bail decisions and plea bargaining" (p. 205).

Reference: Kellough, Gail and Scot Wortley. (2002). Remand for Bail: Bail Decisions and Plea Bargaining as Commensurate Decisions. *British Journal of Criminology, 42,* 186-210.