

ETHNIC/RACIAL DISPARITY IN PRETRIAL RELEASE DECISIONS IN WASHINGTON STATE COURTS

PROBLEM

Whether an individual who is charged with a crime will be released pending trial has a significant influence on the outcome of the case. Although court rules specify factors courts must consider when determining whether to release a defendant, judges have significant discretion in making this determination. Research suggests that extra-legal factors, including race and ethnicity, significantly impact pre-trial release decisions. In particular, Blacks and Latinos are detained pretrial at higher rates than white defendants.

KEY POINTS

- **Pretrial release significantly impacts the outcome of a case.** The Bureau of Justice Statistics found that 78% of defendants held on bail while awaiting trial were convicted, but just 60% of defendants who were released pending trial were convicted. In addition, defendants held on bail receive more severe sentences, are offered less attractive plea bargains and are more likely to become "reentry" clients for no other reason than their pretrial detention.¹ According to one scholar, "There is no more powerful predictor of post-conviction incarceration than pretrial detention."² Studies suggest that this correlation is not solely a function of case characteristics. Rather, detention itself affects case outcomes.³
- **Statistical analysis indicates that a number of extra-legal factors influence the imposition of bail after controlling for criminal history. In particular, minority defendants are held on bail at higher rates than other defendants.** A 1997 University of Washington study found that "minority defendants and men were less likely to be released on their own recognizance than others even after controlling for differences among defendants in the severity of their crimes, prior criminal records, ties to the community and the prosecuting attorney's recommendation" (Bridges, 1997).
- **Judges' consideration of seemingly race-neutral factors may result in disparate pre-trial detention of minority defendants.** Judges often consider the defendant's employment status, length and character of the defendant's residence in the community, and the defendant's family ties and relationships when determining whether to release a

¹ Cohen, Thomas H. and Brian A. Reaves, *Pretrial Release of Felony Defendants in State Courts*. Washington D.C.: Bureau of Justice Statistics, NCJ 214994. November 2007.

² John S. Goldkamp. *Two Classes of the Accused: A Study of Bail and Detention in American Justice*. Cambridge, Massachusetts: Ballinger Publishing Co, 1979.

³ Phillips, Mary T. *Bail, Detention and Non-Felony Case Outcomes*, Research Briefs Series No. 14, May 2007 (New York: New York City Criminal Justice Agency, Inc.); Phillips, Mary T., *Bail, Detention and Felony Case Outcomes*, Research Briefs Series No. 18, September 2008 (New York City Criminal Justice Agency, Inc.).

defendant or to impose bail. Though presumably not designed to disadvantage minorities, consideration of these factors has that consequence. African Americans, Native Americans, and Latinos are more likely to be economically disadvantaged, have unstable employment, experience more family disruptions, and have more residential mobility. Judicial focus on such factors means that people from these ethnic groups are less likely to be released on their own recognizance than whites.

- **When making pretrial detention decisions, including whether to set bail and the amount of bail, courts should consider factors that are not only race-neutral on face, but also race-neutral in practice and effects.**

LIST OF ENCLOSED MATERIALS

- Bridges, George S. 1997. *A Study on Racial and Ethnic Disparities in Superior Court Bail and Pre-Trial Detention Practices in Washington*. Washington State Minority and Justice Commission, Olympia WA.