

# Pretrial Justice: Costs and Benefits for Local Government

The costs of crime are wide-ranging, including the financial burden on victims, the cost of the legal process, and the high price of incarceration. At the pretrial stage, much of the fiscal burden falls on counties, and county jails are a major consumer of taxpayer resources. On average, over 60 percent of jail detainees nationwide are awaiting trial, at an annual cost of \$9 billion.<sup>1</sup>

Local pretrial policy can have a substantial impact on the community, both in terms of finances and public safety. However, many counties lack the data needed to measure the impact of pretrial policy decisions, and they are unable to predict which options are likely to yield the greatest social benefit and return on investment. To provide counties with an additional tool for data-driven policy making, the Public Welfare Foundation and the Crime and Justice Institute at CRJ have developed a model for pretrial cost-benefit analysis.

## What is Cost-Benefit Analysis?

Cost-benefit analysis has become an increasingly important tool for criminal justice decision makers to evaluate programmatic and policy options. It is a systematic approach for

monetizing decisions and determining what will achieve the best results at the lowest cost.

The term cost-benefit is frequently used, sometimes incorrectly, to describe an analysis that estimates the monetary impacts of a program or policy. Cost-analysis, cost-effective analysis, and cost-benefit analysis are often used interchangeably but have different meanings. Cost-analysis provides an accounting of the expenses associated with a program or policy but does not attempt to measure the outcome of that program or policy. Cost-effective analysis estimates the cost of the program or policy and the outcome (such as an increase in court appearance rates or a reduction in drug use) but does not monetize the impact. Finally, cost-benefit analysis estimates the cost of the program or policy and monetizes the impact of that program or policy. Cost-benefit analysis can be used to compare the monetary impact of different outcomes and allows policy makers to assess programs or policies based on the estimated return on investment.

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<sup>1</sup> Holder, E. (2011). *Attorney General Eric Holder speaks at the National Symposium on Pretrial Justice*. June 1, 2011, US Department of Justice. Retrieved from

<http://www.pretrial.org/download/infostop/AG%20Holder%20Remarks%20at%20NSPJ%20June%201%202011.pdf>.

Two primary benefits of effective criminal justice interventions are reduced system resource use and reduced crime. Reducing the use of system resources, such as substance abuse treatment or

increasing social productivity of the individual and the community (employment, education, housing values, etc.), among others.<sup>2</sup>

### **Cost-Benefit Model for Pretrial: Monetized Outcomes**

#### **1. Public Safety**

The likelihood of new crime can be estimated based on a validated risk tool. Standard analytical techniques can be used to estimate the cost of crime.

#### **2. Success in the Community**

A validated risk tool can also be used to estimate the likelihood of successful returns to court. Each jurisdiction must then estimate local resources associated with failures to appear.

#### **3. Jail Utilization**

The marginal costs of decreased jail bed usage are measurable and the cost of reduced admissions and lengths of stay can be calculated.

Cost-benefit analysis should be based on marginal, not average, costs. Average costs are calculated by dividing the total budget of a program or intervention by the number of participants. While average cost calculations are appropriate for some programs, they are likely to overstate potential savings in a county jail context. Marginal cost calculations take into account staffing, utilities, and facility costs that will not change with a small population reduction; therefore, they provide a more reliable estimate of potential cost savings. For example, the average cost of operating a jail may be \$30,000 per inmate annually. A small reduction in population, however, may yield savings of only \$6,000 per inmate for costs such as linens, food and medical care.

#### **Predicting the Impact of Local Policy**

Cost-benefit analysis at the local level presents unique challenges due to the dynamic nature of criminal justice populations and numerous contact points with the criminal justice system. However, a limited pool of foundational research is available.

financial assistance programs, may result in cost savings or cost avoidance. Reducing new crime may result in a number of benefits: avoiding taxpayer costs (e.g., cost of arrest, conviction, incarceration, probation, and post-prison supervision); avoiding costs to victims; and

The Washington State Institute for Public Policy (WSIPP) has been identifying evidenced-based policies and programs since the mid-1990s. In a recent update<sup>3</sup>, WSIPP described its three-step process to evaluate outcomes for criminal and juvenile justice programs. Initially, WSIPP conducts a review of all credible evaluations—a

<sup>2</sup> Wilson, M. (2011). Cost-benefit methodology. Oregon: Criminal Justice Commission; Roman, J. (2013). Cost benefit analysis of criminal justice reforms. Retrieved from: <http://nij.gov/journals/272/cost-benefit.htm>

<sup>3</sup> Lee, S., Aos, S., Drake, E., Pennucci, A., Miller, M., & Anderson, L. (2012). *Return on investment: Evidence-based options to improve state-wide outcomes, April 2012* (Document No. 12-04-1201). Olympia: Washington State Institute for Public Policy

meta-analysis—on a specific outcome to determine the program’s effectiveness. From this meta-analysis, WSIPP estimates how much an intervention, such as drug treatment, is expected to reduce re-offending. Next, the researchers developed an economic model that examines three sources of costs and benefits: costs and benefits that program participants accrue; costs and benefits received by taxpayers; and costs and benefits received by others in society (such as crime victims). Finally, researchers calculate the level of risk (i.e., the odds a program will at least break even) to determine how reliably the program will produce a net benefit. WSIPP then produces two figures: the expected cost-benefit results and the odds the program will have benefits greater than its costs.

There are few cost-benefit analyses of pretrial programs, but the Department for International Development and the Open Society for Justice Initiative attempts to create a model simulating the benefits of various release decisions.<sup>4</sup> Researchers used national data on costs including pretrial detention, new arrests while on bail, re-apprehending absconders, and of lost freedom to model a series of equations that replicate the movement within the pretrial system. Different choices lead to different costs (e.g., the cost of holding someone in pretrial detention will be different than the cost of releasing a defendant on bail and then apprehending the defendant after he fails to appear in court). In the end, the researchers concluded that, based on risk, there is a “sweet spot” where the proportion of defendants held pretrial versus released minimizes costs. If there is a significant increase in the number of

defendants held pretrial, the costs of incarceration and loss of freedom (e.g., employment, education, family) exceed the benefits of freedom and the averted costs of new crimes and failure to appear while on pretrial release. Conversely, if there is a significant increase in the number of defendants released pretrial, the costs of new crimes, victimization, and failure to appear in court exceed the benefits of freedom and the averted cost of imprisonment. The article’s theoretical base is helpful for thinking through cost-benefit analysis in a pretrial setting, but it does not offer any insight into the process of collecting data and conducting an analysis at the local level.

There are important steps to be taken in any rigorous cost-benefit analysis. The first step is to identify the desired outcome of the program or policy and estimate its impact. For example, does the program reduce crime, increase employment, or increase family reunification, and if so, by how much? The next step is to estimate how much the program or policy costs. The third, and possibly most crucial, step for a rigorous cost-benefit analysis is to estimate the monetary benefits of the impact of the policy or program. The final step is putting all of this information together to calculate the overall economic impact and net benefit of a given program or policy.

### **CJI’s Pretrial Cost Benefit Model**

A cost-benefit analysis for pretrial systems is complex. Many variables are involved, ranging from arrest decision making to pretrial risk assessment policies to case processing times. While some costs associated with pretrial are easy to monetize, like marginal jail costs, others

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<sup>4</sup> Bowles, R. and Cohen, M. (2008). *Pre-trial detention: A cost-benefit approach*. London:

Department for International Development & Open Society Justice Initiative.

are more uncertain, such as the cost of re-offending.

Despite the need for estimates and assumptions, a pretrial cost-benefit model offers previously unavailable analysis to local policymakers who are rethinking their approach to pretrial decision making. With support from the Public Welfare Foundation, the Crime and Justice Institute at CRJ is taking on the challenge of building a pretrial cost benefit model based on the existing cost-benefit literature and data from local counties.

In 2013, CJI convened a meeting of experts, including economist Michael Wilson, the developer of the model, and pretrial specialists from the Pretrial Justice Institute, the federal Bureau of Justice Assistance, and the Laura and John Arnold Foundation. The group was charged with identifying the key questions that a cost-benefit model must address, and the decision points that are requisite for the model. The group outlined the complex web of pretrial decisions and associated costs, but then focused on the fundamental questions facing pretrial decision makers: what are the costs and benefits of a traditional, money-based system versus one in which release decisions are based on actuarial risk? When is the high cost of incarceration outweighed by the cost of new crime committed by defendants awaiting trial? To offer an example, under a money bond system, a bail amount is often set based on the severity of the charge against a person, rather than his actual risk of re-offending or failing to appear. In that scenario, a low risk individual who is unlikely to commit a new crime may remain in jail because he is unable to post bond. This increases jail costs, whereas if that person had been released, it is unlikely he would have created additional crime costs. Conversely, a high risk defendant

might be able to post bond, saving the jail costs but posing a larger threat to the community and incurring more costs in the long term.

Under a risk-based system, a low risk defendant would be released, a moderate risk defendant supervised in the community, and a high risk defendant held. Theoretically, this system puts resources where they will yield the most benefit, but that theory has not previously been tested with cost-benefit analysis. The pretrial cost-benefit model will help to determine which types of interventions (or lack thereof) yield the most benefit to the community based on a defendant's assessed risk.

The model takes into consideration jail population, average length of stay in jail, defendant risk profile, and length of stay before release on monetary bond or after pretrial screening. It also considers length of pretrial supervision. Outcomes include costs of new crime, costs of failures to appear in court, and overall system costs. A jurisdiction applying the model can use data from existing literature (e.g., the cost of new crime) or calculate actual local costs.

For policymakers, the model offers the opportunity to see the impact of pretrial release decisions, such as applying a risk tool, offering pretrial supervision, and expediting case processing. Though there are always inherent limitations when applying models to real life, this cost-benefit analysis will promote more informed decision making and more effective pretrial system operations.

*For more information about the model, contact Michael Wilson at [mike.wilson.inc@gmail.com](mailto:mike.wilson.inc@gmail.com) or visit CJI's website at [www.crj.org/cji](http://www.crj.org/cji).*