



Pretrial Research Agenda Summary

Approach

This document is an overview of Arnold Ventures' (AV) pretrial justice research agenda and is guided by our values and [principles of pretrial justice](#); AVs' research philosophy; and our mission of [maximizing opportunity and minimizing injustice](#) for all. This agenda is deeply informed by the vigorous debates around money bail, risk assessment, and pretrial detention; and the corresponding need for the research community, including AV, to be transparent and inclusive in the development and articulation of our research priorities, interests, and values. AVs' philanthropic strategy prioritizes rigorous and transparent research to advance community safety and the values of equity, fairness, effectiveness, and racial justice in the criminal justice system. Our research work supports our investments in policy, advocacy, technical assistance, and litigation.¹

Outcomes of interest: a holistic understanding of safety. Advancing public safety is an essential priority, but we define it more broadly than the typical and varying definitions of recidivism (e.g., rearrest, reincarceration, or reconviction), which may reflect biased and unfair practices in the criminal justice system. Exclusively focusing on recidivism overlooks other important measures of public safety, such as community and family stability; housing and employment; health and well-being. We are very interested in research that considers these outcomes.

Research Methods. We invest in studies that (1) demonstrate the causal impact of policies or programs aimed at improving outcomes for defendants and the working of the justice system, ideally through randomization, but also by rigorous comparisons across jurisdictions; (2) analyze pilot policies or programs and how to implement them effectively (with a clear path to a future causal impact study); or (3) produce descriptive work in areas where the justice system alarmingly lacks information and where that knowledge is generalizable and plants the seeds of reform.

Data quality. Too much criminal justice research is inadequate: affected by publication bias; limited or biased in research design or use of statistics; and rarely replicated. For every priority area and research objective described below, we are also interested in meta-research efforts, replication studies, and sustainable ways to improve data collection and data quality. Such projects may include literature reviews that examine the quality and reproducibility of existing research; replication studies of well-known findings in different jurisdictions and settings; development of data systems and policy reforms to improve data collection; and projects that make key datasets publicly available for further research.

¹ AV intends to issue Requests for Proposals (RFPs) related to each pretrial policy and research area described in this agenda. Since this agenda will continue to be informed by research in the field and to ensure transparency in our process, we will not accept unsolicited research-related proposals or concept papers without a direct invitation from AV to submit on a specific topic.

Areas of Interest, Policy Goals, and Research Subjects²

Booking. We know little about what happens to people after they are arrested and booked into jail. The research that does exist highlights racial disparities in release, community safety post-release, and specialty diversion courts.³ The decision to book people into jail may have lasting impacts on them and the outcome of their cases.⁴

- Policy goal: After someone is arrested, ensure that initial booking process and decisions are transparent, humane, and do not result in lengthy pre-arraignment detention.
- Research subjects may include: Evaluating booking procedures and data systems; points where key decisions may be changed; initial booking versus pre-arraignment release.

Charging and Diversion. There is a robust and growing body of literature on how bail, charging, and plea decisions impact case outcomes,⁵ but prosecutorial decision-making around charging, diversion, and deferred prosecution remain under-studied. The research that does exist on prosecutor-led drug, DUI, and mental health courts and programs have mostly mixed results or small sample sizes. We also want to see more research on rural areas and counties with significant jail growth.

- Policy goal: Diversion at its essence should mean diverting people *out* of the criminal justice system. Court diversion programs should use evidence-based policies, maximize defendant success, employ fair and effective responses to missteps, and not impose fees.
- Research subjects may include: Assessing prosecutors' charging policies and practices; impact of diversion programs; court stakeholders decisions around pretrial diversion.

Pretrial Detention. The vast majority of the 740,000 people in our nation's jails are defendants awaiting trial.⁶ Beyond that, we lack critical information about the picture of pretrial detention

² The research subjects we identify are meant to be explanatory and inclusive. These are subjects we know we are interested in. We welcome discussion with our research partners that bring to our attention issues and problems not covered within these areas of interest.

³ Vasquez-Noriega, C., Duane, M., Reginal, T. and Jannetta, J. (2018). Supporting individual agency in the pretrial release process: An Innovation Fund case study from Durham and Santa Clara Counties. Urban Institute. Retrieved from: https://www.urban.org/sites/default/files/publication/99166/supporting_individual_agency_in_the_pretrial_release_process.pdf; Collins, S. E., Lonczak, H. S., Clifasefi, S. L. (2017). Seattle's Law Enforcement Assisted Diversion (LEAD): Program effects on recidivism outcomes, Evaluation and Program Planning, 64, 49-56.

⁴ Dobbie, W., Goldin, J., and Yang, C. S. (2018). The Effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *American Economic Review*, 108, 201-240. The work of the CJI's pretrial team on arrest and booking practices will be coordinated with the CJI's policing team and its Alternatives to Arrest portfolio.

⁵ Stevenson, M. (2018). Distortion of justice: How the inability to pay bail affects case outcomes. *Journal of Law, Economics, and Organization*, 34, 511-542. Rehavi, M. Marit and Starr, Sonja B. (2012). Racial disparity in federal criminal charging and its sentencing consequences. U of Michigan Law & Econ, Empirical Legal Studies Center Paper No. 12-002. Retrieved from: <https://ssrn.com/abstract=1985377>

⁶ Aiken, J. (2017). Era of Mass Expansion: Why State Officials Should Fight Jail Growth. Prison Policy Initiative, Table 1 available at https://www.prisonpolicy.org/reports/jailovertime_table_1.html.

nationally. Research demonstrating the great human and financial costs associated with detaining individuals pretrial should be further and more rigorously developed.

- Policy goal: End unjust and unnecessary pretrial detention by ensuring that people are not detained simply because they cannot afford bail. Ensure that pretrial detention decisions comport with due process and that detention itself is as short and harmless as possible.
- Research subjects may include: Pretrial release options; prosecutors' role in bail decisions; bail hearings; fairness, bias, and disparities in pretrial risk assessment; charge-specific risk assessments; implementation, measurement, data improvement, and predictive accuracy of risk assessments; the pretrial detention population, particularly its racial, ethnic, gender, age and mental health composition; economic, social, and health effects of pretrial detention.

Pretrial Release, Release Conditions, and Court Appearance. Pretrial release decisions hinge significantly on judges' concerns about court appearance, risk of reoffending, and public safety. To incentivize return to court, judges set release conditions, such as money bail, pretrial supervision, or electronic monitoring. Previous studies have shown that court date notifications improve court appearance, yet much remains to be learned about effective pretrial conditions and supervision.⁷

- Policy goal: People charged with criminal offenses should be released with the least restrictive conditions as is safely possible. Ensure pretrial conditions are sensible and designed to promote success, and that responses to failure are fair and effective.
- Research subjects include: Policies and practices intended to increase court appearance rates; to measure court appearance and pretrial success; and to assess stakeholder roles in the pretrial release decision making process.

Access to Effective Defense Services. Broad, methodologically-sound studies to assess and improve defense counsel, particularly court-appointed defense counsel, can improve the equal application of justice at all levels of the criminal process. The current research in the field is outdated, and tends toward policy review rather than empirical study.

- Policy goal: Ensure that all defendants have access to effective defense counsel at the earliest stages of cases.
- Research subjects include: Differences in outcomes between appointed and retained counsel; the effectiveness of counsel at bail hearings, plea offerings, trial, and sentencing, and of

⁷ Cooke, B., et al. (2018). Using behavioral science to improve criminal justice outcomes: Preventing failure to appear in court. Chicago: University of Chicago Crime Lab. Retrieved from: https://urbanlabs.uchicago.edu/attachments/store/9c86b123e3b00a5da58318f438a6e787dd01d66d0efad54d66aa232a6473/I42-954_NYCSummonsPaper_Final_Mar2018.pdf; Bornstein, B., et al. (2012). Reducing courts' failure-to-appear rate by written reminders. *Psychology, Public Policy, and Law*, 19, 70-80; Rosenbaum, D., et al. (2012). Court date reminder postcards: A benefit-cost analysis of using reminder cards to reduce failure to appear rates. *Judicature*, 95, 177-187.; Schnacke, T., Jones, M., and Wilderman, D. (2012). Increasing court-appearance rates and other benefits of live-caller telephone court-date reminders: The Jefferson County, Colorado, FTA pilot project and resulting court date notification program. *Court Review*, 48, 86-95; Van Nostrand, M., Rose, K., and Weibrecht, K. (2011). State of the science of pretrial release recommendations and supervision. *Pretrial Justice Institute*. Retrieved from: <http://www.ajc.state.ak.us/acjc/bail%20pretrial%20release/sciencepretrial.pdf>

various types of defense (e.g. holistic defense) at these stages; and methods of appointment, funding, and management of indigent defense within and between states and counties.

Plea Bargaining, Case Disposition, and Sentence Outcomes. Nearly all criminal cases end in pleas.⁸ Research in this area has focused primarily on differential sentencing outcomes between pleas and trials, concluding that those who go to trial are likely to receive harsher sentences than those who accept a plea; the inverse is also true: those who take a plea receive lighter sentences.⁹ Research on case disposition and sentence outcomes has focused on how the race and gender of victims and defendants impact sentencing.¹⁰

- **Policy goal.** Ensure that due process and speedy trial rights are meaningful and that plea offers are not coercive or biased. When someone is convicted of a crime, sentences should be guided by values of mercy, proportionality, community safety, and rehabilitation.
- **Research subjects include:** The use and impact of plea bargaining on case outcomes; how the plea bargaining process differs depending on the charges and/or individuals involved; sentencing laws and practices, and their impact, particularly for violent and sex offenses; the effectiveness of alternative plea bargaining practices, e.g., limitations on offenses and prosecutorial discretion, transparency requirements.

⁸ Bureau of Justice Statistics. (2005). *State Court Sentencing of Convicted Felons*. Washington, DC: US Department of Justice; Bar-Gill, O., and Ben-Shahar, O. (2009). The prisoners' (plea bargain) dilemma. *Journal of Legal Analysis* 1, 737-773; Devers, L. (2011). US Department of Justice, Plea and Charge Bargaining: Research Summary. <https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf>

⁹ Albonetti, C. A. (1991). An integration of theories to explain judicial discretion. *Social Problems*, 38(2), 247-66; Britt, C. (2000). Social context and racial disparities in punishment decisions. *Justice Quarterly*, 17, 707-32; Dixon, J. (1995). The organizational context of criminal sentencing. *American Journal of Sociology*, 100, 1157-198; Engen, R. and Gainey, R. (2000). Modeling the effects of legally relevant and extralegal factors under sentencing guidelines: The rules have changed. *Criminology*, 38, 207-230; King, N., et al. (2005). When process affects punishment: Differences in sentences after guilty plea, bench trial, and jury trial in five guideline states. *Columbia Law Review*, 105, 960-1009; Kurlychek, M. and Johnson, B. (2004). The juvenile penalty: A comparison of juvenile and young adult sentencing outcomes in criminal court. *Criminology*, 42, 485-515; Piehl, A. and Bushway, S. (2007). Measuring and explaining charge bargaining. *Journal of Quantitative Criminology*, 23, 105-25; Steffensmeier, D. and DeMuth, S. (2000). Ethnicity and sentencing outcomes in US federal courts: Who is punished more harshly? *American Sociological Review*, 65, 705-29; Steffensmeier, D. and DeMuth, S. (2001). Ethnicity and judges' sentencing decisions: Hispanic-Black-White comparisons. *Criminology*, 39, 145-78; Steffensmeier, D. and Hebert, C. (1999). Women and men policymakers: Does the judge's gender affect the sentencing of criminal defendants? *Social Forces*, 77, 1163-196; Steffensmeier, D. et al., (1993). Gender and imprisonment decisions. *Criminology*, 31, 411-46; Steffensmeier, D., et al. (1998). The interaction of race, gender, and age in criminal sentencing: The punishment cost of being young, Black, and male. *Criminology*, 36, 763-98; Ulmer, J. and Bradley, M. (2006). Variation in trial penalties among serious violent offenses. *Criminology*, 44, 631-670.

¹⁰ Boritch, H. (1992). Gender and criminal court outcomes: An historical analysis. *Criminology*, 30, 293-326; Farnworth, M., and Teske, R. (1995). Gender differences in felony court processing: Three hypotheses of disparity. *Women and Criminal Justice*, 6, 23-44; Kellough, G., and Wortley, S. (2002). Remand for plea: Bail decisions and plea bargaining as commensurate decisions. *British Journal of Criminology*, 42, 186-210. Johnson, B. (2003). Racial and ethnic disparities in sentencing departures across modes of conviction. *Criminology*, 41, 449-490; Ulmer, J., and Bradley, M. (2006). Variation in trial penalties among serious violent offenses. *Criminology*, 44, 631-670; Mauer, M. (2011). Addressing Racial Disparities in Incarceration. *The Prison Journal*, 91(3_suppl), 87S-101S. <https://doi.org/10.1177/0032885511415227>; Rehavi, M. Marit and Starr, Sonja B. (2012). Racial disparity in federal criminal charging and its sentencing consequences. U of Michigan Law & Econ, Empirical Legal Studies Center Paper No. 12-002. Retrieved from: <https://ssrn.com/abstract=1985377>