



Milwaukee County's new pretrial release system takes hit

DA had rushed to demand bail for homicide suspect already freed

By [Bruce Vielmetti](#) of the Journal Sentinel

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It took only 10 days for Milwaukee County's new pretrial release system for criminal defendants to draw a little unwanted attention.

Derrick Byrd, 21, charged last week with felony murder in an October fatal robbery, was released without posting a cash bail. It wasn't a mistake; Court Commissioner Kevin Costello was following the recommendation of Justice 2000, the agency contracted to assess tens of thousands of people brought into the county's jail.

It's all part of "evidence-based decision making" meant to bring more effective management of law enforcement and justice system resources. Justice 2000 began using the new protocol and assessment tool Jan. 17 after years of research and development.

But missing among the many factors considered in assessing risk and recommending bail or conditions of pretrial release is "public reaction." [In Byrd's case](#), prosecutors had asked for \$150,000 cash bail. They immediately appealed Costello's ruling to Milwaukee County Circuit Judge David Borowski, who set a \$50,000 bail hours after Byrd left jail.

"There will always be some outside factors," said Chief Judge Jeffrey Kremers, noting that both Costello and Borowski had followed the program.

"No victim is ever going to accept an evidence-based decision that conflicts with their emotion-based decision" about bail, Kremers said. "That's valid, but as a system we can't make decisions totally emotion-based, though it always plays some role."

The pretrial assessment tries to measure two main risks: whether the defendant will return for the next court hearing and will he or she commit another crime while awaiting trial. The system gathered data from two years' worth of pretrial releases to come up with a better profile of who presents higher and lower risks.

Now, the Justice 2000 staff compiles the type of crime charged, criminal background, and whether the person has failed to appear or been arrested while on bail or supervision in the past. Then they interview the arrestee to gather information about living arrangements, employment or school, alcohol, drug or mental health issues, and other risk factors. Lastly, they try to confirm the interview data with other sources.

After the information is entered and applied against one of six offense categories, the "praxis" produces a recommendation that court commissioners and lawyers can see at the initial appearance, when release conditions are set.

"We're neutral, just supplying information and applying the tool," said Ed Gordon, pretrial services program director for Justice 2000.

The recommendation, the actuarial-science half of the equation, is just a starting point, Kremers said. To that is added the professional judgment of the commissioner or judge, and a bail decision results.

"Studies around the country show that's the best way," he said.

The old approach of relying entirely on experience and local custom often leads to institutional biases that leave disproportionately more poor and minority defendants awaiting trial in jail, Kremers said.

After about 200 cases, he said, the recommended release was overridden fewer than a dozen times, and about equally in both directions, he said. And as more cases produce more data, the process will continually be tweaked, he said.

In Charlotte, N.C., effective pretrial screening has dramatically cut jail space needs, he said, so much that officials there tore up plans for a new jail and closed a jail annex, all without a spike in crime.

Tailoring needs

Traditionally, a lot of the pretrial services and conditions of release were applied automatically to anyone, whether they really needed them or not, like drug screening or a certain level of supervision, which not only cost more on the front end, but also often led to more unnecessary violations that left the defendant with more or bigger problems.

With the new approach, Kremers said, the services, supervision and confinement are more closely tailored to where they're needed, and away from those - sometimes jailed for months on bails as low as \$1,000 or less - who don't need the controls.

But examples like Byrd make the system a hard sell with some in law enforcement.

"There's a use for pretrial screening, but obviously this tool needs to be recalibrated, maybe by me," said Milwaukee County Sheriff David A. Clarke, who said the program is being financed with money taken from his jail booking and intake budget.

Clarke called "evidence-based decision making" a phrase liberals hope will resonate when paired with claims of cost savings for law enforcement. He fears that those implementing the program are just too lenient and inclined toward letting people out of jail instead of toward public safety.

He doubts the system will get tweaked much, and thinks only the publicity about the Bryd case prevented another accused killer from being released without bail a couple of days later.

Chasity Lewis, 18, was [charged last week](#) with reckless homicide in the fatal shooting of a 16-year-old boy she told police was among a group of boys who tried to rob her as she sold marijuana. She, too, scored a recommendation of release on a personal recognizance bond. But at her initial appearance Saturday, Costello instead ordered a \$20,000 cash bail.

Lewis' attorney, Bridget Boyle, said she assumed her client would get a good recommendation for release because she's in school, has a stable home and has no prior record. But she also warned Lewis' family that Costello likely wouldn't allow that after getting overruled in the Byrd case.

Costello declined to discuss the cases this week, but the outcome in the Byrd case suggests the matrix may in fact be a pretty accurate tool.

Byrd was released on a personal recognizance bond, meaning he agreed to return to court or pay \$2,500. After his bond was changed to a \$50,000 cash bail, Byrd turned himself in after getting a call about the change from Justice 2000 staff. He remains jailed in lieu of \$30,000 cash bail that Borowski set after a full hearing on Friday.