

Opening the “Back Door” to Control a Local Jail Population: Emergency Release¹



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Abstract

This research investigates the public safety aspects of a jail emergency release (ER) cohort by following this group of inmates for one year after release. Overall, the ER inmates have a slightly higher rate of post release arrest (23.1%) compared to other inmates (18.9%), owing to warrant arrests which may pre-date incarceration. In terms of outright arrest (on the spot), ER inmates (5.9%) have a comparable re-arrest rate as other inmates (5.3%). The ER group also has noticeably higher failure to appear (FTA) rate (29.5%) compared to other releases (11.1%). Overall, the ER inmates do not greatly increase the risk of serious harm to the community, suggesting that pre-trial release policies could be more liberal without posing sizeable risk to the community. Expanded release policies also would bring a substantial savings in pre-trial jail detention costs. Differences in FTA rates, however, present considerable costs in terms of court administration and judicial integrity. More sophisticated and aggressive follow-up notifications could reduce these costs, perhaps to the point that differences in FTA rates become a minor problem.

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Introduction

Over the past few decades, an increased emphasis on crime-control, which manifests itself as a “get-tough” on crime posture, has rippled throughout the criminal justice system creating many stresses and strains. Perhaps the most widely recognized consequence of the get-tough movement has been a series of record-breaking increases in prison populations, leading to a cumulative increase of 500% over the last 40 years (The Sentencing Project, 2017). Less well publicized, however, are the facts that local jail populations also have increased dramatically and that many jails throughout the country are severely overcrowded. Jail overcrowding is so widespread and severe that courts have had to intervene by placing limits on the inmate population (Lawrence, 2014).

Severe overcrowding, particularly when legal intervention is involved, puts jail administrators in a position of scrambling to find solutions to a problem whose causes are mostly beyond their control. After the obvious actions are taken, such as expedited offender processing, increased use of community supervision programs, double and triple bunking, and conversion of non-essential jail space to dormitories, jail administrators often find that overcrowding persists straining the limits of their creativity as they continue to search for solutions.

Fundamental solutions to the overcrowding problem involve building or contracting for more jail space, or using available jail space more strategically, which means finding alternatives to incarceration for some offenders. Capacity increasing solutions are expensive, and often are frowned upon by taxpayers, especially those who advocate for frugal government. Demand reduction solutions (i.e., changes in arrest or bail policies) are thriftier, but these strategies are criticized by law and order advocates as increasing risk of harm to the community and as watering down the deterrent effect of punishment (Baumer and Adams, 2006).

Faced with a difficult problem having complex political, economic and legal dimensions, government officials in Indianapolis have made uneven progress on resolving a court order entered in 1975 to eliminate jail overcrowding. In response to the situation, judicial intervention in the form of fines for exceeding a court established jail population limit started to be imposed. This action quickly led to implementation of an emergency release program (ERP) in which selected offenders are released early, either from detention prior to adjudication or from confinement prior to serving out their full sentence. In the short term, ERP thus appears to be a quick and inexpensive way to deal with a problem that has evaded solution to the point of seeming intractability.

Emergency Release Program - Marion County, IN

For over three decades, the Marion County (Indiana) jail was operating under a federal court order to reduce overcrowding. The facility, which at the time of this study had a court-established capacity of 1,135 offenders, has housed as many as 1,686 offenders. In 2002, with the installment of a new sheriff, the court adopted a more aggressive posture towards the overcrowding problem. U.S. District Judge Sarah Evans Barker imposed a population cap and threatened to fine the county \$40 per day per inmate if the cap is exceeded (*Marion County Inmates vs. Anderson* 2003). In response, local administrators took several actions, among which was implementation of the Emergency Release Program (ERP). Under the ERP, certain inmates are eligible for early release from jail as the number of inmates in confinement approaches capacity. The purpose of the program is to keep the jail population at a level that avoids court fines, ostensibly while other solutions to the overcrowding problem are implemented. In the first three years of operation, 3,531 inmates were released through the ERP program.

Balancing Risk in Pre-Trial Release

The ERP program in Marion County has been very controversial. Those who favor a crime-control perspective argue that the program represents judicial interference with the executive branch of government that puts the community at greater risk for harm. They also argue that the program weakens the deterrent effect of police operations and reduces respect for law enforcement functions. Others, however, argue that the program demonstrates respect for the rule of law, which has a positive effect on the citizenry, and that offenders released to the community through the ERP present a negligible increase in risk, since many offenders with similar characteristics are released regularly and routinely through other procedures.

Concern over increased risk to the community probably is the most controversial aspect of the ERP program. The debate centers on the ability of the criminal justice system to assess risk accurately and the incapacitation benefit of relatively short-term confinement. In this context, it is important to recognize that jails contain two major categories of offenders: (1) arrestees who are being detained pending disposition of their case (unsentenced offenders) and (2) convicted offenders who are serving a short term of incarceration (sentenced offenders). Nearly three-quarters of the jailed offenders in Marion County are not sentenced.

Most arrested persons are released back to the community relatively quickly through a variety of mechanisms. The two most common mechanisms are release on bond and release on recognizance, both part of the bail process. In bail proceedings, the judge assesses the defendant's risk of flight, or the risk of not showing up for future court proceedings. In order to mitigate this risk, the judge sets a bond, which is a dollar amount that the defendant must leave with the court. The bond serves as an incentive for the defendant to show up, since it can be forfeited for non-appearance. If the defendant does not have the resources to post bond or to hire a bail bondsman to post bond on his or her behalf, the defendant is detained.

Release on recognizance, or ROR, occurs when the defendant is released based on his or her promise to return without any cash bond posted. ROR is reserved for the lowest risk offenders. It is a relatively new development, having been introduced to the criminal justice system in the mid 1960's as a result of the Manhattan Bail Project (Vera Institute of Justice, 1968). ROR was developed to address concerns that people are kept in custody because they do not have the financial resources to post bond. The ROR strategy is to identify offenders with strong ties to the community, since this group presumptively has a low risk of flight. The Manhattan Bail Project was seen as a successful experiment, and court systems across the country adopted release on recognizance programs (McElroy, 2011). The results of this research are widely cited as supporting two main conclusions about the bail process: (1) criminal justice officials tend to over predict the risk of releasing arrested offenders and (2) many good risk offenders are detained because they lack financial resources to post bond.

It is important to keep in mind that risk of flight is the foremost legal consideration, historically speaking, in the bail process (American Council of Chief Defenders, 2011). Nonetheless, risk of future criminality routinely enters as a consideration. It is widely recognized that the bail system sometimes is manipulated in the interests of preventive detention to keep in custody offenders who are thought to be at high risk for future crime (Robinson, 2001).

The practice of preventive detention in the bail process is also controversial because subjective predictions of risk tend to be notoriously inaccurate. It is an open question for some groups of detained offenders as to whether they are more at risk for failure to appear or for criminal behavior than their released counterparts. Nonetheless, the crime-control perspective argues that subjective predictions, although imperfect, are grounded in cumulative experience, and therefore there is justification in detaining offenders who appear to be high risk, since the liabilities of detention, both economic and political, are offset by increased

safety to the community. However, if detained offenders do not in fact present greater risks to the community, then the criminal justice system is paying to detain them with little to no benefit, and these detainees are being treated unfairly and perhaps subject to a form of economic discrimination.

The ERP program in Indianapolis affords an opportunity to investigate the relative risk that detained offenders present to the community. By following these offenders into the community and comparing their behavior with that of offenders released through other means, we can determine whether the relative risk of ERP offenders warranted detention from a public safety point of view. We also can ask how much or how little safety is gained by detaining these offenders and weigh this fact against associated costs of detention in terms of economic, political and social factors.

Research Design

The research design used in this investigation falls into the category of a “natural experiment” (Dunning, 2011). This type of design occurs when circumstances in the physical or social realm cause something to happen that otherwise could not be caused or manipulated by researchers. Investigating the psychological consequences of living through an earthquake is an example of a natural experiment. This research design is not as strong as a regular experiment, because the investigator does not have full control over the situation, especially in the selection of subjects and in the administration of the experimental stimulus. However, natural experiments are important because they allow us to investigate important research questions that otherwise could not be investigated directly.

In the case of the ERP program, a research opportunity is created by the mandated early release of detained offenders as brought about by the courts. Absent court intervention, these offenders would remain in detention, and there would be no way to compare their behavior on pre-trial release with that of other offenders. The working hypotheses of this research are that the court-ordered emergency releases pose a greater risk of flight and of harmful criminal behavior than offenders released through ROR and other methods. Thus, the two outcome variables of interest are: criminal arrest and failure to appear at subsequent court proceedings. Criminal arrest will be subdivided into various types, so that categories of special interest, such as violent crime, can be examined.

Data Sources

The data for the investigation come from the JUSTIS information management system used by the Marion County courts. The JUSTIS system is designed to track cases as they are processed through the criminal justice system. The system contains various data files dealing with different aspects of a case. For example, there are separate files to describe the offender, case processing, booking, criminal charges, release conditions and sentence. As a case moves through the system, information is entered and updated in relevant files. Each file not only contains different information but has a different unit of observation (e.g., person, case, charge, etc.). Thus, a considerable amount of file merging and manipulation is needed to extract composite information.

The sample consists of all arrestees with a jail booking arrival date between January 1, 2002 and June 30, 2002. This period was chosen to allow for a one-year follow-up in the community for all offenders after release. Specifically, 7.2% (1,166) of offenders were released under the ERP Program, 15.1% (2,455) of offenders were released on bond, 24.0% (3,896) of offenders were released on recognizance, 42.7% (6,931) were released by court order and 11.0% (1,788) were sentenced to time served.

Data collected by a court system, such as that used here, has several limitations. As with any secondary data, the researchers do not have direct control over the accuracy, completeness and comprehensiveness of the data. These key attributes depend on the activities of those who generated the data, usually for purposes other than research. One might argue that court administrators have an interest in keeping good quality records. While this may be true, it also is the case that administrative records usually are not subject to cross-checking and other forms of validation which researchers routinely use as quality control measures when collecting primary data. Furthermore, it is widely recognized that arrest records, for example, are not a complete record of criminal activity when used in follow-up research and are subject to various selection biases based on characteristics of the offense and offender. However, use of administrative data in evaluation research is widespread and generally accepted, because the strategy offers a useful and economical way to investigate various issues with acceptable levels of reliability and validity.

Research Findings

Comparisons will focus on five major groups of offenders: emergency releases (ER), those released on recognizance (ROR), those released by court order, those

released on bond (bail), and those sentenced to time served. Emergency release, release on recognizance and release on bond have been discussed previously. In this jurisdiction, many offenders are released by court order, which is a general category that covers a variety of circumstances. For the most part, offenders who have their arrest charges dismissed at initial appearance comprise this category. The time-served group refers to offenders who are detained, convicted, credited with their detention time as their full sentence, and then released.

Demographic Characteristics by Release Type

Several demographic characteristics were examined (table not shown). For race, the data indicate that the emergency release group has the largest proportion of blacks (69.0%) and the smallest proportion of whites (29.1%). Similarly, the court release group has a large proportion of blacks (60.4%) and a relatively small proportion of whites (37.9%). In contrast, the release on recognizance group has the smallest proportion of blacks (48.5%) and the largest proportion of whites (47.8%). Finally, the time-served group falls in the middle, having the third largest groups of blacks (56.8%) and whites (41.9%).

Regarding gender, the release on recognizance group has the largest proportion of females (21.2%), followed by the emergency release group (20.8%), the release on bond group (18.4%), and the court release group (16.8%). The time-served group has the smallest proportion (13.9%) of females. Finally, we see that all the release groups are relatively close in terms of age, although the emergency release group (mean = 31.4 years) tends to be older than other groups, while the release on bond group tends to be younger (mean = 28.1 years) than other groups.

Criminal Justice Characteristics by Release Type

Data on criminal justice processing characteristics also were examined (table not shown). These data describe criminal charges brought against each release group, with multiple charges included in the count. The data indicate that the release on bond group was charged with more serious crimes. More than half (55.6%) of these offenders were charged with a felony, compared to one-fifth (20.3%) of ROR group, which has the lowest proportion of charged felonies. The court release group (45.1%), the emergency release group (44.5%), and the time-served group (40.1%), all have roughly similar proportions of felony charges. Interestingly, the emergency release group is least likely to have multiple charges filed (60% had only one charge), although differences across groups are not great.

Differences in case outcome variables among groups of offenders are not large. The emergency release group is most likely to be found guilty (58.8%), while the release on bond group is least likely (48.9%) to be found guilty. The time-served group is least likely to have their charges dismissed (21.3%), and the release on recognizance group is most likely (34.2%). Offenders released to the community (release on recognizance and release on bond) are least likely to be found guilty and most likely to have their charges dismissed.

A majority of guilty offenders for each group are sentenced to 365 days. When we look at variation around this modal category, we see that the time served group is most likely to be sentenced to less time (36.3%), while the court release group is most likely (32.2%) to be sentenced to more time. The emergency release group appears to fare better than the court release group and worse than the release on recognizance, release on bond and time-served groups. The release on recognizance and the release on bond groups are most likely to receive a fine (45.7% and 45.7% respectively). Variations across groups in terms of assessment of court costs is not great, although the time served group is least likely (11.4%) to be assessed. Finally, the emergency release group on average received the greatest credit (60 days) for time served followed by the court release group (50 days). In contrast, release on recognizance and release on bond groups received the least credit (4 and 4 days respectively).

Overall, the emergency release offenders are more likely to be black and female. Insofar as these demographic characteristics are associated with low economic resources or with weak ties to the community, the findings help to explain why these offenders were detained pending trial. With regard to criminal behavior, the emergency releases are most likely to be charged with a felony offense, a finding that again helps to explain why they were detained. Past criminal behavior is predictive of future criminal behavior, so one might infer that the emergency release group poses a greater threat to the community than other groups. However, this consideration should be weighed against older age of the emergency release group, age being inversely related to criminality. In terms of case outcomes, the picture is somewhat mixed for the emergency release group. They are most likely to be found guilty, but they tend to receive lighter sentences.

Demographic and Criminal Justice Characteristics by Type of Emergency Release

Here, we examine differences within the emergency release group (table not shown). We compare offenders who were released pending adjudication of criminal

charges (35%) to offenders who were released while serving a term of incarceration in jail (65%). The two groups are comparable in terms of race and gender, although the pending adjudication group is slightly older (33.8 versus 32.2 mean years). Offense information indicates that the pending adjudication group is more likely to be charged with a felony (51.4% versus 36.0%).

In terms of case outcomes, the pending adjudication group is likely to receive a longer sentence (50.0% greater than one year compared to 15.5%) and less likely to be assessed court costs (7.2% versus 23.8%). The likelihood of receiving a fine is roughly the same for the two groups, while the pending adjudication groups has on average four times as many days credited towards their eventual sentence as the group serving a sentence (120 days versus 30 days). This finding reflects the fact that the pending adjudication group was detained prior to their emergency release.

Overall, the two groups of emergency releases, released pending adjudication and released while serving a sentence, are similar in most ways. Key differences are that the pending adjudication group is more likely to be charged with a felony and has on average many more days credited towards their sentence. These differences reflect the fact that the offenders pending adjudication were detained in jail prior to their emergency release, given that detention is tied to more serious offense behavior and builds up more credit towards subsequent sentencing.

Post-release Arrest by Release Type

We now turn to the criminal behavior of the offenders after release. First, we examine the overall pattern of arrests, and then we look at outright arrests and warrant arrests separately. Outright arrests are those made by a law enforcement officer based on criminal behavior he or she observed. Warrant arrests, however, are based on issuance of a warrant for criminal behavior that preceded both the warrant and the arrest. Although all arrests reported occurred after release, warrant arrests may well involve behavior that occurred prior to the emergency release. Thus, outright arrests provide a less ambiguous picture of post-release criminal activity, since all of these arrests are based on behavior that occurred after release.

Table 1 displays the distribution of arrests, both outright and warrant, for one year following release by release group. The data indicate that the emergency release group has the highest percentage of arrests. Overall, 23.1% of this group was arrested subsequent to release compared to 18.9% of the released inmates, for an overall difference of 4.2%. Arrest percentages for categories of non-emergency release inmates are 20.8% for the release on bond, 19.7% for the court-

ordered release, and 18.9% for the ROR and 13.6% for time served. With the exception of the time served group, differences among the groups are not large, all being five percent or less. When we look at the number of arrests charges per incident, we find that the average ranges from 2.2 to 2.5, with little variation across groups.

Table 1. Outright and warrant arrests within one year of release for Marion Co. jail intake cohort 1/1/2002 to 6/30/2002, by type of release

	Emergency release (n=1,166)	ROR (n=3,896)	Released on bond (n=2,455)	Court ordered (n=6,931)	Time served (n=1,788)
Offenders arrested					
Percent	23.1%	18.6%	20.8%	19.7%	13.6%
Total	269	724	511	1364	243
Arrest charges	871	2,046	1,406	4,302	676
Arrest incidents	348	935	603	1,823	293
Arrest charges per incident (mean)	2.5	2.2	2.3	2.4	2.3
Annual rate of arrest incidents per 100 releases	29.8	24.0	24.6	26.3	16.4
Arrest charge level					
Felony	54.0% (470)	33.6% (688)	49.5% (696)	39.7% (1,703)	50.3% (340)
Misdemeanor	44.9% (391)	64.2% (1,315)	49.5% (696)	58.6% (2,514)	49.7% (336)
Infraction	1.1% (10)	1.9% (39)	1.0% (14)	1.7% (75)	0.0% (0)

Another way to examine the post-release behavior is to look at the rate of arrest incidents per 100 offenders. If offenders are arrested more than once, this statistic will capture that information unlike percentages of offenders who are arrested. In general, the rate of arrests gives a better picture of risk to the community, because it focuses more squarely on criminal behaviors rather than criminal actors. Looking again at Table 1, differences in rates of arrest incidents are not large across groups, with the exception of the time served group. The emergency release group shows an annual rate per 100 individuals of 29.8 incidents compared to 18.9% for other released inmates. To put this difference in perspective, a group of 1,000 emergency releases over the course of a year will show 109 more arrests than a group of inmates released otherwise. Arrest rates for non-emergency release inmates are

26.3 incidents for the court-ordered group, 24.6 incidents for the release on bond group and 24.0 incidents for the ROR group. Again, the time-served group has the lowest rate of arrests at 16.4.

Type of arrest charge indicates that the emergency release group has the greatest percentage of felony arrests at 54.0%. Interestingly, the time-served group has the next highest percentage at 50.3%, followed closely by the release on bond group at 49.5%. The two groups with lowest percentage of felony arrests are the court order release and the ROR groups at 39.7% and 33.6% respectively.

Thus, the data indicate that the emergency release group has a higher frequency of arrest in the community than other release groups. However, as indicated previously, the arrest data include warrant arrests, which may involve behavior that occurred prior to the emergency release.

Outright Arrests by Release Group

We now examine outright arrests, which are a clearer indicator of criminal activity subsequent to release because these arrests are contemporaneous with the criminal behavior. The data in Table 2 indicate that the emergency release inmates has an arrest percentage of 5.9% compared to 5.3% for other released inmates. Furthermore, the court ordered group has a nearly identical to the emergency release group, while bond group has the highest arrest percentage of all at 6.8%.

The same pattern of differences among release groups is reflected in the annual arrest rate per 100 persons. In fact, the percent of offenders arrested and the rates of arrests per 100 offenders are almost identical, indicating that very few offenders are involved in multiple outright arrests within one year of release.

Table 2. Outright arrests within one year of release for Marion Co. jail intake cohort 1/1/2002 to 6/30/2002, by type of release

	Emergency release (n=1,166)	ROR (n=3,896)	Released on bond (n=2,455)	Court ordered (n=6,931)	Time served (n=1,788)
Offenders arrested					
Percent	5.9%	6.8%	4.4%	5.7%	1.8%
Total	69	264	107	397	33
Arrest charges	138	483	211	749	65
Arrest incidents	69	270	108	416	34

Arrest charges per incident (mean)	2.0	1.8	2.0	1.8	1.9
Annual rate of arrest incidents per 100 releases	5.9	6.8	4.4	5.7	1.9
Arrest charge level					
Felony	39.1% (54)	28.2% (136)	31.3% (66)	29.0% (217)	54.0% (34)
Misdemeanor	59.4% (82)	68.1% (329)	65.9% (139)	66.8% (500)	46.0% (29)
Infraction	1.4% (2)	3.5% (17)	2.8% (6)	3.5% (26)	0.0% (0)

Turning to the type of arrest, we find that the emergency release group is more likely to be arrested for a felony (39.1%) compared to other releases (30.2%). The percent of felony arrest charges among the other groups is almost equal, ranging from a high of 31.3% (release on bond) to a low of 28.2% (ROR).

Overall, these data indicate that the percentage and rate of outright arrests are much smaller than for combined outright and warrant arrest. In particular, the overall arrest percentage for emergency release group is 23.1% and the rate of total incidents is 29.8 per year, but, for outright arrests only the comparable percentage is 5.9% and the rate is 5.9 incidents per year. Also, the data indicate that differences in outright arrests among release groups are small. The exception, perhaps, is the percentage of felony arrests which is highest for the emergency release group. However, it should be noted that for all groups the majority of outright arrests involves misdemeanor offenses.¹

Post-release Arrest Charges for Emergency Releases

In terms of risk to the community, it is useful to look more specifically at the types of arrests that occur, since some arrest behaviors (e.g., assault) present greater harm than others (e.g., loitering). Table 3 presents the distribution of outright arrest charges for the emergency release group.

Table 3. Distribution of arrest charges for emergency release inmates within one year of release for Marion Co. jail intake cohort 1/1/2002 to 6/30/2002, by type of arrest

	Outright Arrest	Warrant Arrest
Drug	46 (35%)	97 (27%)
Possess alcohol	0	1

Possess controlled sub	8	17
Possess drug paraphernalia	17	50
Possess marijuana	10	41
Possess cocaine	4	72
Dealing in cocaine	4	7
Dealing in marijuana	1	3
Theft	29 (22%)	111 (15%)
Theft/receiving stolen prop	24	84
Auto theft	1	15
Welfare fraud	0	1
Burglary/FA/FB/FC	1	5
Forgery/FC	0	5
Other	2	1
Public Order/Morals	20 (15%)	166 (23%)
Public intoxication	6	15
Prostitution	2	73
Criminal mischief	0	9
Visiting a common nuisance	2	7
Criminal recklessness	3	4
Disorderly conduct/M	1	7
Public indecency	1	3
Other	1	10
Violent	85 (12%)	8 (6%)
Robbery FA/FB/FC	0	6
Battery	2	17
Intimidation	1	3
Resisting arrest	2	0
Auto	10 (8%)	0 (0%)
Operate vehicle never reg	5	0
Driving while suspended	1	0
Operate vehicle intoxicated	2	0
Driving license suspend	2	0
Court related	20 (15%)	0 (0%)
Hold	6	0

Body Attach	10	0
Contempt	4	0
Criminal conversion	2	0

The data indicate that most frequent charge for emergency releases involves drug-related offenses, comprising over one-third (35.4%) of total arrest charges for the emergency releases. In terms of specific arrest charges, possession of cocaine is most common. The next most frequent category of arrest charge is public order/morals offenses (27.1%), with prostitution being most common. The next most common category of arrest charges is theft (20.4%), with theft/receiving stolen property most common. Finally, among the four most frequent crime charge categories, violent is lowest (13.6%), with battery being most common. These emergency release arrests almost exclusively involve warrant arrests. Court-related and auto related charges are very infrequent (2.9%, and 1.5% respectively).

Overall, the outright arrest charge data indicate that when the emergency releases are arrested, the offenses tend to be relatively low-level drug, public order and property offense. Arrests for violent crimes are infrequent. For this study group of 1,166 emergency releases only 8 outright arrests for violent crimes were recorded over a one-year follow-up, none of which were for major acts of violence.

For emergency releases, the offense charge picture for warrant arrests is more substantial than that for outright arrests. As mentioned previously, however, warrant arrests are more likely to involve criminal behavior that occurred prior to the emergency release. As such, they may help explain why these offenders were detained in jail, but their contribution to understanding the risks to the community posed by the emergency release program is restricted.

Failure to Appear

While risk of harm to the community is a primary concern when releasing offenders early from pre-trial detention, another important concern which applies to offenders who have not been adjudicated is failure to appear (FTA) at subsequent court hearings. FTA undermines the integrity of the court process by demonstrating a lack of respect. Also, FTA carries an economic cost. Valuable court time is wasted by broken appointments, judicial and law enforcement processes are invoked to retrieve offenders, and court obligations have to be rescheduled.

Here we examine the FTA rates for one year after release by type of release. The data are based on a "fail_appear_date" variable found in the release conditions file

of the JUSTIS system. It is not clear that the variable captures all of the failure to appear dates that occur. It also should be noted that the case and specific court action related to the failure to appear cannot be identified. Thus, some of the failures to appear may not be related to the case for which an offender received an emergency release and instead be related to another case. However, it is the only failure to appear indicator available in the data set, and if the missing data are unbiased (i.e., randomly distributed across groups and individuals), comparisons among release groups should be valid.

The data indicate that the emergency release group awaiting adjudication has the highest rate of failure to appear. Although a large majority of offenders in this group do show up for court proceedings, roughly three out of ten (29.5%) had at least one failure to appear. The group with the next largest failure to appear rate is release on recognizance (15.3%), followed by the release on bond group (13.3%). The groups with the lowest failure to appear rates are court-ordered releases (10.4%) and time-served (6.1%), reflecting the fact that these offenders are more likely to be detained until their charges are adjudicated.

Time to Release

In order to understand the economic aspect of the emergency release program, we can look at time spent in and out of confinement by the various release groups. In particular, we can look at days detained until release as a cost incurred by the criminal justice system, and days from release to disposition as an indicator of confinement costs avoided by emergency release.

The release data, which pertain only to inmates who are released prior to any sentence of confinement, show that the ROR group has an average of 1.5 days between arrival and release. The release on bond group and the court-ordered release group spend 6.0 and 8.8 days in confinement respectively. In contrast, the time-served group spends an average of 18.4 days in detention, while the emergency release group has an average of 27.8 days. These findings are consistent with the operation of the types of release mechanisms that are involved.

At the time of the study, the cost of jail detention in Marion County was \$45 a day. Thus, we can calculate that on average it cost \$1,251 to detain an offender who later became an emergency release. To detain 1,000 such offenders over the course of a year runs approximately \$1.25 million. In comparison, detention costs are \$67.50 on average for an ROR release and \$270 on average for release on bond. Clearly, substantial savings can be realized if detained offenders are released sooner by means of an emergency release program or by another mechanism.

Examining the time between release and disposition, we find that the average number of days for the emergency release group is 164.0. Figures for the other release groups are very similar. We can use this figure (164.0 days) to estimate what it would cost to detain the emergency release offenders to disposition at a rate of \$45 a day. For 1,000 offenders, the cost would be roughly \$7.5 million. Looked at another way, we can estimate the number of new jail beds that would be needed to detain this group. One thousand offenders detained for 164 days involves 164,000 jail days. Given that each jail cell provides 365 jail days, the county would need 449 extra jail cells in order to detain the emergency release offenders to disposition. Double bunking inmates would cut that figure in half to roughly 225 new jail cells. It should be noted that detained offenders usually receive expedited processing, so figures based on released offenders will overestimate actual costs. Nonetheless, the data indicate that a very considerable investment would be required to keep the emergency release offenders in detention through to disposition.

Conclusion

Faced with a serious jail overcrowding problem, government officials in Indianapolis faced judicial intervention in the form of fines for exceeding a court established jail population limit occurred. This action led the county to implement an emergency release program in which selected offenders were released from detention prior to adjudication or were released from confinement prior to serving out their sentence.

This research investigated the question of whether offenders in the emergency release program pose a greater danger to the community than other released offenders. The findings indicate that 23.1% of the emergency releases were arrested within one year of release, which is the largest proportion among the release groups. Differences in re-arrest rates among release groups, however, are not large. The release on bond group has a re-arrest proportion of 20.8%, while the release on recognizance group has a proportion of 18.6%. Re-arrest rates, which take into account multiple arrests for the same offender, show the emergency release group with an annual rate per 100 individuals of 29.8 incidents, compared to 24.6 incidents for the release on bond group and 24.0 incidents for the ROR group. Thus, over the course of a year, a group of 1,000 emergency releases will show 52 more arrests than a comparable group of bond releases and 58 more arrests than a comparable group of ROR releases.

Categories of arrest behavior were examined to understand better the risk posed by the higher arrest rate. Specifically, a distinction was made between outright arrests, which typically involves criminal behavior contemporaneous with

the arrest, and warrant arrests, which involve law violations that pre-date the arrest, sometimes by a considerable amount of time. For the emergency release group, the criminal behavior for the warrant arrest may have occurred prior to the emergency release such that the arrest occurs during the follow-up period, but the criminal behavior does not.

This more detailed analysis indicates that the higher re-arrest rate for emergency releases can be attributed mostly to warrant arrests, with the two most frequent categories of criminal charges being drug-related offenses and public order / morals offenses. For outright arrests, ROR offenders have a higher percentage of re-arrests (6.8%) than emergency release offenders (5.9%), whose rate is almost identical to court ordered releases (5.7%).

Looking specifically at violent behavior, we find that for both warrant and outright arrests the proportion of emergency release offenders re-arrested is low, involving eight out of 138 charges for outright arrests, and 85 out of 733 charges for warrant arrests

The analysis also examined the failure to appear (FTA) rate for the release groups. Although FTA does not implicate community safety issues directly, it is an important matter for the court system. The results indicated that the emergency release group had a substantially higher FTA rate than other offenders, twice that of the group with the next highest rate. Although the available FTA data are nonspecific (not tied to a particular court case or offense) and may be incomplete, the findings suggest that the emergency release group is at higher risk for FTA than other offenders. Aggressive use of appointment notification and reminder systems, as are used in a variety of human service operations, could bring the FTA rate down to a practicable level.

In the aggregate, the emergency release group does not present a greatly increased risk to the safety of the community relative to other groups of released offenders. However, re-arrests, whether warrant or outright, consume the time and energy of the criminal justice system, and FTAs reduce the efficiency of court processes. Although people may weigh differently various system costs against savings that accrue from shorter periods of incarceration, the economic picture is relatively clear. Absent the emergency release program, overcrowded jail need a substantial amount of new funding if offenders are to be detained for a long period unless changes in release policy and procedures are implemented.

In many jurisdictions, jail incarceration is becoming a scarce resource. There is not nearly enough jail space to go around, because demand outstrips supply by a considerable margin. The issue is whether to increase the supply of jail space or to

use the available space more strategically. The emergency release program indicates that a more strategic use of jail incarceration can yield efficiencies without substantial increases in risk to public safety. The policy question is whether the tradeoff is worth it, and the answer to that question is complicated, as it depends on one's views of crime, government, taxes, and justice. Court-ordered supervision of the Marion county jail ended in 2007. Subsequently, an arrestee processing center was implemented and privately-run housing for jail inmates was expanded. Today, the jail system is facing another serious overcrowding problem. A criminal justice task force is recommending construction of an assessment and intervention center and a new jail (Indianapolis Criminal Justice Reform Task Force, 2016). Meanwhile, 90 percent of the jail population is awaiting trial, arrestees are being sent to other jails on a per diem payment basis, the county is clinging to a surety bond system which many offenders can't afford, and the sheriff will not release any detained inmates because the public is afraid for their safety (Mc Quaid, 2017).

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Endnote

¹ Overall, these data indicate that the percentage and rate of outright arrests are much smaller than for combined outright and warrant arrest. In particular, the overall arrest percentage for emergency release group is 23.1% and the rate of total incidents is 29.8 per year, but, for outright arrests only the comparable percentage is 5.9% and the rate is 5.9 incidents per year. Also, the data indicate that differences in outright arrests among release groups are small. The exception, perhaps, is the percentage of felony arrests which is highest for the emergency release group. However, it should be noted that for all groups the majority of outright arrests involve misdemeanor offenses.