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CATCH AND RELEASE (PART II)

An “evidence-based” pre-trial release program lands Milwaukee in a pickle

By Julius (Jay) Wachtel. Ever since NIJ adopted the “[evidence-based](#)” mantra it’s been *de rigueur* for governments at all levels to demand solutions that are founded in science and empirically verifiable. But in criminal justice, where it’s often hard to say what factors to consider in the first place, let alone how to measure their effects, thoughtlessly crunching data is risky.

For an example look no further than Milwaukee’s [brand-new pretrial release program](#). Developed by [Justice 2000](#), a small Milwaukee nonprofit founded in 2001 to promote the “safe release and community integration of criminal offenders,” it applies a set of measures to estimate the likelihood that a defendant might fail to appear or reoffend. Staff members collect information about the nature of the offense, criminal record, previous failures to appear, drug and alcohol use, mental impairment, community bonds and family ties from official records and personal interviews. Results are computed and furnished to a court commissioner who makes the final decision about bail and release.

Justice 2000’s director says that its protocol is based on a study of two years’ worth of release data, and that everything is done impartially. “We’re neutral, just supplying information and applying the tool.”

It’s not the first time that Justice 2000 has provided pretrial services. [In 2003 it took over](#) the city’s “Municipal Court Alternatives Program,” which offers persons cited for minor transgressions community service, drug treatment and counseling as alternatives to jail and fines. In 2004 the main outcome metric, fewer jail days, was 13,288, saving the city \$531,520 in housing costs.

Justice 2000’s new program is different. Just how different was apparent a few days ago when authorities announced that [Derrick Byrd](#) was returned to custody after a commissioner acting on Justice 2000’s recommendation released him on his own recognizance. What was the original charge? Robbery-murder.

Yes, that’s right: Milwaukee O.R.’d an accused murderer. Stunned prosecutors (they had asked for a \$150,000 cash bond) rushed to a judge, who looked things over and set bail at \$50,000. By then Byrd was gone, but he surrendered after checking in with Justice 2000 staff. His bail is now \$30,000, which he still can’t pay. Incidentally, there’s no doubt that he was involved in the crime, the murder last October of the owner of a recycling business. According to [a sketchy account](#), Byrd admitted that he participated in planning the heist but says that someone else pulled the trigger. Byrd reportedly has no prior criminal record and his lawyer says that he is willing to cooperate and point the finger at the real shooter.

Justice 2000’s program has been in effect only since mid-January. Amazingly, Byrd isn’t the only accused killer whom its staff has recommended for kid-gloves treatment. On January 24 police arrested [Chasity Lewis, 18](#), for reckless homicide. An admitted marijuana dealer, she told police that three boys tried to take drugs without paying and that one punched her. Doing what comes natural, she pulled a .22 pistol that she carried for protection and shot her assailant, a 16-year old boy, point-blank in the chest. Based on her lack of a prior record, school attendance and “steady home life,” Justice 2000 recommended

O.R. But for blowback from the Byrd case, she would have gotten it. (Instead, a commissioner set bail at \$20,000. Lewis remains in custody.)

All pre-trial release schemes are subject to two types of error. “Type 1” errors of overestimation (also referred to as false positives) lead to the detention of persons who would not have fled or committed another crime. “Type 2” errors of failure to include (also referred to as false negatives) cause the release of those who will likely flee or recidivate. According to Milwaukee County Sheriff David A. Clarke, Justice 2000’s protocol seems purposely biased in favor of the accused. “There’s a use for pretrial screening, but obviously this tool needs to be recalibrated,” said Clarke, who suggested that “evidence-based decision making” and promises of saving money are sweeteners offered by those with a secret liberal agenda.

Politics aside, it may be that when it comes to murder, trying to strike the usual cost-benefit, Type 1/Type 2 balance doesn’t work. When Justice 2000 played in the sandbox of municipal court the consequences of being wrong (i.e., Type 2 errors) were minimal. In general criminal court, though, releases carry far weightier implications. Predicting recidivism is a frustratingly inexact science. As we pointed out in [“Reform and Blowback,”](#) when a dangerous someone is let go and maims or kills, there’s no trying to explain why they were released.

Bottom line: releasing shooters on their own recognizance is a huge step into the unknown. It’s a new, quantum world, with hazy parameters and unpredictable consequences.

Well, maybe not all *that* unpredictable. In [“Risky Business”](#) we discussed the dangers of chasing after defendants who go on the lam. Warrant service is an extremely dangerous business that all-too frequently leads to shootouts and dead cops. Of course, officers serving warrants are at least forewarned. Imagine what can happen when patrol officers inadvertently come across a dangerous wanted person. [“Catch and Release”](#) featured two such examples:

- In December 2011 Lamont Pride, a robber wanted for a shooting in North Carolina, [shot and killed NYPD officer Peter J. Figoski](#). Pride had been arrested by NYPD twice in recent months, most recently on a drug charge for which he failed to appear. He was released on low bail both times because the North Carolina warrant didn’t authorize extradition.
- In June 2010 Dontae Morris, a felon with arrests for murder and weapons violations, [shot and killed Tampa police officers David Curtis and Jeffrey Kocab](#) during a traffic stop. Morris, who had been recently released from a prison term for sale of cocaine, had an active warrant for bad checks.

Just how Milwaukee came to endorse release practices that could lead to O.R.’s for murder suspects will be fodder for discussion for years to come. Partnering with what clearly seems to be an advocacy group (in 2010 Justice 2000 merged with [Community Advocates](#)) may have been imprudent. Budget-conscious county officials might have been seduced with promises of cost savings and freeing up bed space. Perhaps the appeal of an “evidence-based” based strategy was too hard to resist.

But don’t just trust *Police Issues*. It’s been a year since Malcolm K. Sparrow’s superb [research article](#) cautioned against assuming that “evidence-based” approaches can yield practicable solutions to the real-life dilemmas encountered by police. Those that prove useful, he said, tend to be rebranded variants of

what cops have already done. Dr. Sparrow counseled academics to heed the advice of practitioners, as they're the real experts at the game. Last May [judges in St. Louis, Missouri](#) took that notion to heart. Sick and tired of gun violence, they started setting \$30,000 bail, full amount cash only, on everyone caught illegally packing guns. No surprise, most remained locked up. Homicides promptly began to drop, and the year ended with 114, 20 percent less than in 2010 and the fewest since 2004. Researchers now studying the program think that it holds special promise.

Milwaukee, meet St. Louis.