RANDOMIZED EVALUATION
OF THE PSA

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The Access to Justice Lab at Harvard Law School
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Agenda

I. What is the A2J Lab?

II. What is the Study?

III. Addressing Concerns
The A2J Lab is a collection of researchers focused on understanding what new ideas from inside and outside the law might enhance access to justice that conduct rigorous evaluations through randomized control trials and adapts lessons and apply methods from other fields to the law.
The Study in General

- As mentioned, the Lab exclusively uses the **randomized control trial** as its methodology for impact assessment.

- Our preferred analogy:
The Study in General

• The Role of the Laura and John Arnold Foundation
  ➢ Constituted the Lab
  ➢ Supported first PSA evaluation in Dane County, WI (Madison)

• The Questions
  ➢ Does the PSA reduce FTA/NCA/NVCA/time spent incarcerated?
  ➢ Does the inclusion of interview-derived information predict risk of failure any better than the PSA alone?
  ➢ To what extent is the PSA race-neutral? (many definitions)
Our Approach
The Study Specifics

• Non-SLC Counties: Randomly assign cases, not judges, so that some PC affidavits include the PSA and some do not

• SLC: Randomly assign cases, not judges, so that some pretrial release decisions include access to interview responses and some do not

• How do we randomize?
  ➢ Pick a feature of persons or cases that is not at connected to post-release behavior
  ➢ Here we have chosen the new PC ID (or the booking number in SLC)

• Measure outcomes for the treatment population relative to the control
Why Randomize?

- Gold standard for causality and dealing with “confounding effects”
- Potentially more ethical allocation method
  - Are we faced with scarcity?
  - Are we in a position of “equipoise”?
The Proposed Utah Study

• Potential Jurisdictions
  ➢ Davis
  ➢ Morgan
  ➢ Salt Lake
  ➢ Utah
  ➢ Weber

• We will calculate judicial “concurrence rate” and then determine whether PSA cases generate lower FTA/NCA/NVCA/time spent incarcerated
Legal Concerns

• Due Process

➢ A personal right on the part of the criminal defendant to have a court treat him/her with an adjudicatory method bearing sufficient procedural safeguards against an erroneous decision

➢ Is it ethical and constitutional to conduct a probable cause review or initial appearance with the PSA? Is the same true without a PSA?

➢ We think both scenarios, because they are in effect across the country, pass muster
Legal Concerns

• Equal Protection

- The PSA does not, to our current knowledge, implicate suspect classification problems (e.g., race)

- On the other hand it might focus a judge’s attention on objective factors and dilute irrelevant information that affects all human decision making (including my own!)

- In addition, for almost all legal matters, we leave decisions up to a judge’s discretion, which depends on different factors even when cases appear facially similar.

- Importantly, judges retain all final decision-making authority. The judge can ignore the PSA in any case in which s/he sees fit.
Legal Concerns

• Randomization and “Benefits”

- Can we truly call the PSA a beneficial tool?

- We don’t know ahead of time whether the PSA will result in a benefit or a disadvantage for a particular defendant, or for defendants in Utah more generally

- The PSA might be the holy grail for pre-trial release. But the PSA also might not work.

- We don’t know until we test it. And to test the PSA correctly, we need a randomized study, not a before/after comparison.
THANK YOU!

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