All writings by Timothy Schnacke:

Despite the fact that risk is necessary, however, many criminal justice leaders lack the will to undertake it. To them, a 98% court appearance rate is 2% too low, one crime committed by a defendant while on pretrial release is one crime too many, and detaining some large percentage of defendants pretrial is an acceptable practice if it avoids those relatively small percentage failures. Indeed, the fears associated with even the smallest amount of pretrial failure cause those leaders to focus first and almost entirely on mitigating perceived risk, which in turn leads to unnecessary pretrial detention. P. 20 of Final Bail Fundamentals

Specifically, the researchers found that when compared to defendants held no more than 24 hours, low risk defendants who were held for two to three days were 40% more likely to commit new crimes before trial and 22% more likely to fail to appear, and if held for 31 days or more were 74% more likely to commit new crimes pretrial and 31% more likely to fail to appear. Moderate risk defendants showed the same correlations, albeit at different rates. Moreover, the researchers found, low risk defendants held two to three days were more likely to commit a new crime within two years, and defendants held for eight to fourteen days were 51% more likely to recidivate long-term than defendants detained less than 24 hours. P. 51 of Money as a Criminal Justice Stakeholder

While some, including this author, cite to Blackstone's Ratio ["better that 10 guilty people escape, than one innocent suffer"] to caution jurisdictions against adopting a false belief that "one crime is one crime too many" in bail, Blackstone's Ratio suggests a different way to think about crime and bail: that one person wrongly detained is one person too many. Accordingly, we must ensure that whatever process we adopt to allow for detention painstakingly avoids this result, and we must remember that while some ratio might be useful as a starting point in bail reform, it is the system that we put in place that will ultimately determine it. P. 43-4 of Model Bail Laws

The risk tools consistently tell us that, when it plays any part at all, current charge is only one small part of defendant risk, and that we see persons showing all levels of risk for all charges. Knowing this, jurisdictions must tread lightly when crafting a detention eligibility net based on criminal charge. P. 98 of Model Bail Laws

Indeed, if one looks at the research behind any particular pretrial risk assessment instrument, he or she will see that lower risk defendants are incredibly successful, operating in predicted risk categories with success rates in the 90th percentiles. Moreover, "high risk" defendants in most instruments are often predicted to succeed more than half of the time, and can actually succeed at higher rates than predicted when released with conditions designed to manage risk. In short, during that small window we call the pretrial phase of a criminal case, defendants are not as risky as we think. P. 98-9 of Model Bail Laws

In this generation of bail reform, we have more empirical research than ever before on pretrial misconduct, to the point where there is virtually no excuse for using it to help justify release and detention provisions. Nevertheless, during the legislative process (or any other process hoping to craft release and detention provisions based on the research), drafters will be faced with the

issues raised previously in this paper – including issues of true versus perceived defendant risk and with certain limitations of actuarial pretrial risk assessment instruments – all of which likely point toward a much narrower charge-based detention eligibility net and a more robust limiting process. Overall, good research will lead to good legislative findings, which, in turn, will lead to good laws. P. 168 of Model Bail Laws

This author's proposed model allows detention in the first instance based solely on prediction only for defendants charged with violent offenses. This is done for several reasons, which include the facts that: (1) the research, the law, and all other concepts addressed in this paper do not support any initial detention net beyond violent offenses for avoiding the harms we seek to address; (2) the research, instead, shows that most defendants overall are likely to succeed, and at rates better than expected if released on conditions; (3) the term "serious" is too loose a concept on which to base detention; (4) the fact that a defendant is currently on pretrial release for another charge is not enough, by itself, to allow detention in the first instance for anything less than a violent offense as the defendant is still un-convicted on both offenses, and detention might be authorized on the underlying charge under the secondary net; (5) if on probation, parole, or other post-conviction release, the system allows for detention for the underlying charge. P. 180 of Model Bail Laws

No rebuttable presumptions should be used in this model, for two reasons. First, the research (as well as various limitations of risk prediction) simply does not support any rebuttable presumption toward detention, and because of that, it is even more unfair to force defendants to attempt to prove they are not dangerous, that they will not do some unknown but forbidden act, and that they will not flee. Second, our country's history of using rebuttable presumptions has only led to their misuse, causing jurisdictions to treat them more like un-rebuttable presumptions. The only presumption should be a general presumption of release in all cases or more specific presumptions similarly guiding courts toward release that must be overcome by the government. P. 184 of Model Bail Laws

Indeed, this model is premised on the fact that solutions to certain hypothetical situations such as these are simply not found at bail. The solutions, instead, are found through commencing trials for high risk persons much more quickly, through sentencing (to begin the punishment or rehabilitative process for persons who habitually violate the law), or through crime prevention efforts designed to eliminate certain negative and systemic behaviors. Finally, the entire endeavor recognizes that judges in America have historically found ways to detain the persons they want to detain, and thus perhaps the fundamental point is that aberrational cases should not be used to create policy. P. 55-6 of Changing Bail Rules

Misunderstanding of the presumption of innocence comes primarily from the fact that there are some people who do not believe that the presumption has anything to do with bail. This belief, however, is mistaken, as the presumption of innocence has everything to do with the right to bail. Indeed, while explaining the right to bail in *Stack v. Boyle*, the Supreme Court wrote, "This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning." P. 2 of Presumption of Innocence and Bail