

Racial Disparities in Youth Pretrial Detention

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Abstract

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Pretrial detention, which makes up 75% of juvenile detention admissions, has been shown previously to be a juncture contributing to “disproportionate minority contact” in the juvenile carceral system. Given that prior evidence largely examines differences between Black and Caucasian youth, this study contributes data including Hispanic/Latinx, Indigenous, and Asian youth. Grounded in Critical Race Theory, the current study investigates a sample of over 43,000 juvenile cases in a northwest state. Using a generalized linear mixed model to estimate the effect of individual level characteristics while accounting for the random effect of differences at the county level, racial disparities in pretrial detention outcomes were assessed and implications discussed.

Introduction

Youth of color have persistently shown to be overrepresented in the juvenile carceral system, most often discussed as the phenomenon of disproportionate minority contact (Kempf-Leonard, 2007; Piquero, 2008). While disparities exist at multiple stages of processing, pretrial detention is a critical juncture given that it is an upstream point of contact and accounts for 75% of all admissions to detention facilities (*Census of Juveniles*, 2017). Pivotal, detaining youth prior to adjudication has been shown to result in worse outcomes at later stages of processing. Examples include detained youth being more likely to have petitions filed for further proceedings, lower likelihood of petition dismissal, more severe sentences, and greater likelihood of the youth being removed from home (Feld, 1989; Leiber & Fox, 2005; Rodriguez, 2010). Additionally, for youth with little prior contact with the carceral system, pretrial detention has been shown to be associated with recidivism (Walker & Herting, 2020). Lastly, the detention setting itself can expose confined youth to direct harm, including sexual abuse and harassment, physical violence, placement in restraints or solitary confinement, and further psychological trauma (Burrell, 2013).

Excluding race, several factors have been shown to be predictors of pretrial detention. Legal predictors, or factors related to the offense or offense history, include variables such as prior offenses, severity of offense, and property offenses (Armstrong & Rodriguez, 2005; Bishop et al., 2010; Lowery & Smith, 2020; Rodriguez, 2010). Regarding social characteristics, a few studies have shown that concentrated disadvantage or structural disadvantage predict pretrial detention (Lowery & Smith, 2020; Rodriguez, 2010). Conversely, concentrated affluence has been associated with a decreased likelihood of pretrial detention (Lowery & Smith, 2020). Specific social variables shown to predict pretrial detention include youth who were not attending school, had lower family incomes, and those that lived in single-parent households (Armstrong & Rodriguez, 2005; Lowery & Smith, 2020; Rodriguez, 2010). Within social

characteristics, studies have shown racially disparate impacts. For example, Leiber (2013) has shown that Black youth coming from a single-parent household increased the risk of pretrial detention 2.5 times more than that of white youth in single-parent households. Leiber & Fox (2005) demonstrated that single-parent households increased the likelihood of release for white youth but decreased the likelihood of release for Black youth. Drug use in white youth did not impact detention decisions whereas drug use increased likelihood of detention for Black youth (Leiber & Fox, 2005).

With respect to race as an independent predictor of pretrial detention, numerous studies have shown increased risk of pretrial detention for Black youth (Armstrong & Rodriguez, 2005; Bishop & Frazier, 1996; Bortner & Reed, 1985; Leiber & Fox, 2005; Lowery & Smith, 2020; Rodriguez, 2010; Secret & Johnson, 1997; Wu, 1997). To our knowledge, only one study has shown a decreased likelihood of detention for Black youth, however the lower detention rate was thought to be a mechanism of “self-correction” as compensation in a system with arrest policies disproportionately impacting minority youth (Rodriguez, 2007). In addition to Black youth, increased likelihood for pretrial detention has been shown for Hispanic/Latinx youth in a few studies (Armstrong & Rodriguez, 2005; Rodriguez, 2010). Rodriguez (2010) has also shown an increased likelihood of detention for American Indian youth. Asian and Pacific Islander youth are predominantly omitted from these studies either without mention or included in the categorical “other.”

Theoretical Model

Various theoretical perspectives are applied when considering the root causes of racial/ethnic disparities in detention decision. There appears to be a preponderance of evidence against those that disregard an independent influence of race such as “consensus theory,” discussed by Leiber and Fox (2005), and “formal rationality” discussed by Guevara et al. (2006). Consensus theory hold that disparities can be attributed to differential involvement in criminal and delinquent behavior with racial discrimination

being random and isolated, while formal rationality asserts that legal rules and criteria are applied in a manner blind to class and race. Evidence instead tends to favor theories inclusive of the influence of race on decision making. Guevara et al. (2006) contrast “formal rationality” with “bounded rationality” and “attributional theory” which make room for the influence of legally irrelevant factors such as race and gender. Leiber and Fox (2005) and Armstrong and Rodriguez (2005) discuss “symbolic threat” and racial threat” respectively, indicating that biased decisions stem from the underlying perception that minority youth are a threat to public safety. Among the reviewed studies, only Secret and Johnson (1997), through their discussion of “conflict theory” explicitly name racism (along with classism) as a feature of the juvenile carceral system that underpins disparities. Moreover, Bishop and Frazier (1996) alone definitively state in their conclusion that they “see evidence of institutional racism,” while other studies prefer terms such as “bias” or “discrimination.” Perhaps this is reflective of the general reluctance within health and criminal justice discourse to name structural racism as a root cause of inequities (Bailey et al., 2017).

Reluctance may also be due to the paucity of work that centers Critical Race Theory (CRT) and a Public Health Critical Race praxis (PHCR) (Delgado & Stefancic, 2001; Ford & Airhihenbuwa, 2010). Using this framework, we can be explicit that categories of race and ethnicity (as well as gender) in our (or any) study are social constructs and cannot represent any innate or biological characteristics of people, such as criminality. Racialization as a verb, rather than race as a noun, actively results in social stratification of populations according to historically entrenched, racist hierarchies as defined by white supremacy (Ford & Airhihenbuwa, 2010; Müller-Wille, 2014). CRT further reveals the “ordinariness” of racism in that racism is ubiquitous and embedded in societal structure and institutions (Ford & Airhihenbuwa, 2010). The embeddedness and persistence over time and across place and institutions is the manifestation of what CRT calls structural determinism, underlying theorization of structural racism as a fundamental cause of racial and ethnic health disparities (American Public Health Association, 2001; Bailey et al.,

2017; Ford & Airhihenbuwa, 2010). Taken together, we can posit that what some call the “justice” system is non-immune from institutional racism and furthermore is an essential tool for generating social stratification through its disproportionate impacts on racialized people of color (citation for general disparities in incarceration?). Considering racism as a fundamental cause of disparities may explain the observed stratified differences in predictors of youth detention, such as income, single-parent households, or school attendance. Applying CRT, we hold that the long historical record of racism and white supremacy informs our predictions in this study. The social construction of the “Black Criminal,” the “Indigenous Savage,” the “Latinx Illegal Alien,” and what was once the “Yellow Peril” and now the “Model Minority” are essential elements underlying racial disparities in the carceral system and beyond. Lastly, an important part of PHCR is the consideration of voice and positionality in this process of knowledge production (Ford & Airhihenbuwa, 2010). Rather than highlight each author’s intersectional identities, it is important to note that none of us have black or brown skin and voices of youth currently or potentially impacted by the juvenile carceral system are absent from this project; and maintaining a solely quantitative nature further limits our ability to include marginalized voices.

[See Theoretical Model Figure]

Objective and Hypothesis

It is true that there is a large body of existent research on predictors of pretrial detention including racial/ethnic disparities. Still, we feel the continued evaluation of this issue critical as it serves to audit a carceral system in a perpetual state of reform that emphasizes addressing disproportionate minority contact. As prior studies have predominantly provided evidence on disparity within the dichotomy of Black and white youth, the present study is a significant contribution to racial and ethnic disparities in pretrial detention. We present findings from one of the largest sample sizes to date and include

adequate representation of Hispanic/Latinx, American Indian/Alaskan Native, as well as Asian youth. The inclusion of a large sample Asian youth appears to be a unique contribution.

Given racial disparities in the juvenile carceral system at large and evidence of poor outcomes for youth who experience pretrial detention, this study examines the following hypothesis:

Likelihood of pretrial detention varies based on race and youth of color—particularly Black, Hispanic/Latinx, and Indigenous youth—face a higher likelihood of pretrial detention compared to white youth.

Methods

Sample and Data Sources

Data were obtained from an administrative dataset from 32 court jurisdictions and originally gathered between January 2002 and December 2015 for the purpose of evaluating a juvenile detention reduction initiative. The initiative was funded and implemented in stages within 8 jurisdictions with the other 24 jurisdictions serving as controls. For each intervention jurisdiction and its three assigned control jurisdictions, juvenile filings spanning five years were collected—starting two years prior to the start of the initiative in the intervention county and continuing for three years after the initiative started.

Cumulatively, the sample included youth with any filed offense in a juvenile court across 32 regional jurisdictions in a northwest state from January 2002 through December 2015, $n = 46,124$. For analysis, we excluded youth with missing data regarding pretrial detention ($n = 1,814$), resulting in a final analytic sample of 44,310.

The sample was predominantly male (73%; 27% female) and race/ethnicity categories included Caucasian (67.3%), Black/African American (9.3%), Asian (2.6%) American Indian/Alaskan Native (3.7%),

Hispanic/Latinx (16.0%) and Native Hawaiian/Pacific Islander (0.03%), and Unknown/Other (1.2%). The mean age at first offense was 15.1 years. Full descriptive statistics are found in Table 1.

[Table 1]

Measures

Qualifying Offense and Court Filings

This study uses the first offense in the five-year observation window from which to observe outcomes. This offense, designated as a qualifying offense (QO), was measured as a court filing rather than court referrals, dispositions/sentences, or arrests. A court filing indicated that a prosecutor judged the offense to meet the minimal standard of probable cause, whereas court referrals may not meet this minimal standard. Dispositions or sentences may vary widely between courts due to differences in diversion practices or other court policies that impact formal sentencing of youth. Lastly, arrests may not make it to official court filings due to lack of evidence, prosecutors' decision to not pursue a case, or the presence of diversion strategies for low level offenses in some courts. Year during which the QO occurred was also included in analysis.

Prior Offenses

Prior offenses were defined as court filings that occurred before the QO as defined above. Further data were available on number of prior misdemeanor offenses and number of prior felony offenses. However, the number of prior offenses was strongly correlated with both prior misdemeanors (Pearson Correlation = 0.867) and prior felonies (Pearson Correlation = 0.739) and the use of prior offenses specified by offense type did not significantly change accuracy of the model. For analysis we generated discrete categories for number of priors (0 = no priors, 1 = one prior, 2 = two priors, and 3 = three or more priors), which allowed for assessment of the impact of increasing number of prior offenses.

Offense Seriousness

Measures of offense severity of the QO available in the data included a continuous law severity scale (-1 to 142) provided by the administrative data set, as well as whether the QO was a felony or a misdemeanor, and whether the QO was violent. Because the law severity scale was developed as a local administrative tool, we elected to categorize severity by misdemeanor, felonies, and violent offenses for improved generalizability. Furthermore, the law severity scale correlated well with felony offenses (Pearson Correlation = 0.876), but not very well with violent offenses (Pearson Correlation 0.383), suggesting the impact of violent offenses was not captured well by the severity scale. Ultimately, a severity single severity variable was used spanning non-violent misdemeanors up to violent felonies (0 = non-violent misdemeanor, 1 = non-violent felony, 2 = violent misdemeanor, 3 = violent felony).

Demographics: Age, Gender, Race

The age at QO was recorded and data were also available on the age of the youth at their first offense. Since these two variables were highly correlated (Pearson Correlation = 0.764), we prioritized the age at QO given that this was temporally related to the decision the decision for pretrial detention. These data contained a gender variable that was predominantly limited to binary assignments of male or female with only 12 cases noted as other or unspecified.

Race and ethnicity groupings provided by the dataset included Caucasian, Black/African American, Asian, American Indian/Alaskan Native, Native Hawaiian/Pacific Islander, Hispanic, and Unknown/Other. Given the small sample size of Native Hawaiian/Pacific Islanders (n =13), members of this category were placed into the Unknown/Other group for analysis. It should be noted that racial/ethnic identity for administrative records is intended to be solicited from individuals and that this can occur multiple times throughout a youth's process of system involvement: at the point of arrest by the arresting officer, at intake screening at the detention facility, through the juvenile prosecutor's office or other court

processes. These processes likely introduce instances where race is assigned rather than self-identified, possible misassignment, or correction of prior error in some cases. Additionally, there was no further disaggregation of these categories, such as would be appropriate for the diversity of Asian individuals. These processes exemplify the above discussion of racialization as a verb and we must again highlight that these are socially constructed categories.

County

County in which the QO occurred was available for each subject. Given the likelihood of variability in detention outcomes between counties, we considered county as a level 2 variable in our model. All other independent variables were considered level 1 variables.

Outcome Variable: Pretrial Detention

Pretrial detention was indirectly measured as a detention stay occurring within seven days of QO (0 = no pretrial detention, 1 = yes pretrial detention), presuming that youth detained immediately were detained in response to the court filing and not because of parole violations or sentencing following court hearings. The distribution of days between court filing and detention admission was extremely right skewed (median = 5 days, mean = 65 days, range = 0 to end of observation at 365 days). Over half of the sample was detained within 5 days (51%) and only an additional 800 cases (3%) would be gained by extending the time to 10 days. Because of this, along with the relationship between detention soon after court filing, we counted any detention stay within seven days of filing as an instance of pretrial detention.

Analytic Models

Analyses were performed in SPSS Build 1.0.0.1327. Because the outcome variable was dichotomous and cases were organized in a nested manner within counties, a generalized linear mixed model was used in

order to estimate the effect of individual level characteristics while accounting for the random effect of differences at the county level. An intercept-only model was first estimated to determine if pretrial detention varied across counties. The random effects component of the intercept indicated significant variance by county (estimate = 0.252, $p < 0.01$) with an intraclass correlation coefficient of 0.20. The remaining individual level variables were included as predictors at level 1. Estimated regression coefficients, standard errors, and odds ratios calculated by exponentiating the estimated regression coefficients are presented below in Table 2. Figures presenting these results were created in R (Version 3.6.1).

Results

Results revealed significant racial/ethnic disparities. Black/African American youth, American Indian/Alaskan Native Youth, and Hispanic/Latinx youth were respectively 1.19, 1.17, and 1.20 times more likely than white youth to experience pretrial detention. There was no significant difference in odds of pretrial detention between white youth and Asian youth or youth categorized as other/unknown. Gender disparity was also present with female youth experiencing a 1.22 times higher likelihood of pretrial detention. Older youth were more likely to be detained pretrial with a log-odds of 0.134. Qualifying offense severity was a significant predictor of pretrial detention. Compared to non-violent misdemeanors, non-violent felonies were 2.83 times as likely, violent misdemeanors were 3.71 times as likely, and violent felonies were 5.01 times as likely to lead to pretrial detention. Each successive prior offense also increased the likelihood of detention. Youth with one prior offense had 1.41 times the likelihood of detention as those with no priors. For youth two priors there was 1.94 times the likelihood and youth with three or more priors had 2.96 times the likelihood of detention compared to youth without priors. There were no significant differences between years in which the QO occurred.

Discussion

The primary goal of this study was to elucidate racial and ethnic disparities in likelihood of pretrial detention. After factoring in gender, age, crime severity, previous offenses, and variation between counties, our analyses show that Black, Hispanic/Latinx, and American Indian/Alaskan Native youth are more likely to experience pretrial detention than white youth. Findings were not significant for youth identified as “Other” or “Unknown.” Likelihood of pretrial detention for Asian youth also was not significantly different from white youth. This is consistent with social theory describing Asian Americans as the “Model Minority” who benefit from “positive” stereotypes and receive relative privilege in comparison to other communities of color (Kim, 1999). However, lack of disaggregated data for Asian Americans and Pacific Islanders is a frequent and significant limitation in epidemiologic studies that may be masking subgroup disparities (Jung et al., 2015; Ramakrishnan & Ahmad, 2014). Similarly, along with most studies, data on gender were limited to binary categories of assigned sex. As such we were not able to assess for disparities among sexual minority/LGBTQ youth—another overrepresented group in the juvenile carceral system (Wilson et al., 2017).

Another limitation is the lack of additional youth-specific indicators such as school attendance, youth or parental mental health status, housing, and family structure and income. The ability to compare “similarly situated” youth would have enabled a stronger isolation of race as a predictor given that those with similar offenses or number of prior offenses may receive different judicial treatment because of different needs (Piquero, 2008). Macro-level variables detailing differences between counties such as demographic make-up, economic indicators, and urban vs. non-urban settings which may have improved model fit and contributed to comparing similarly situated youth were lacking. Our sample also did not include one of the largest (and most diverse) urban areas in the state which may have skewed representation toward rural counties.

Our study found that legal variables were stronger predictors of detention than race. Increasing severity of crime also predicted detention, with higher risk for violent crimes compared to non-violent crimes and higher risk for felonies compared to misdemeanors. Each successive prior offense significantly increased the likelihood of detention, with youth with three or more priors being three times as likely to be detained than youth without prior offenses. Nevertheless, with these variables accounted for, significant racial/ethnic disparities are present. Moreover, our methods do not take into consideration other cumulative effects of race including increased policing, surveillance, and arrest rates for communities of color which directly impact the predictive number of priors (Davis et al., 2018; Pierson et al., 2020). We have seen that pretrial detention is predictive of worse outcomes at later stages of processing and even associated with recidivism (Feld, 1989; Leiber & Fox, 2005; Rodriguez, 2010; Walker & Herting, 2020). It follows that the iatrogenic effects of detention are disproportionately imposed upon youth of color—particularly Black, Hispanic/Latinx, and Indigenous youth. In this way we can see how this carceral process operates as a mechanism of racialized social stratification as put forth by CRT. Remaining outcomes oriented, the disparities demonstrated by our study present further evidence of institutional racism.

Addressing disproportionate minority contact has been established as a core requirement of Juvenile Justice and Delinquency Prevention Act since 1992 (Office of Juvenile Justice and Delinquency, 2018). Despite this, our finding of disparate outcomes for minority youth in pretrial detention is consistent with research spanning four decades. Considering implications for policy or further research, persistent disparity may highlight an enduring need for building or strengthening culturally responsive diversion programs that prioritize youth of color. To be clear, despite lack of significant evidence for disparity, Asian youth may also benefit from culturally responsive diversion. However, even in the presence of diversion programs, Black youth have been shown to be less likely to be selected for participation, which necessitates persistent vigilance in outcome monitoring (Leiber & Fox, 2005). Thinking past racial

disparities for a moment, we still see that after a qualifying offense, nearly 1 in 3 children experience incarceration before trial. Even with eliminated disparity, the number of youth who live through a detention episode is striking and speaks to the scarcity of available resources that provide alternatives to incarceration. While assessment and monitoring of disparities are important, funding and evaluating alternatives such as diversion or transformative justice programs should be a priority for the benefit of all youth. Especially so given that youth detention centers are sites of violence and harm and with convincing evidence suggesting that communities can reduce the use of detention without attendant increases in crime (Stahlkopf et al., 2010). Pending a commitment to build what Ruth Wilson Gilmore calls “life-affirming institutions,” detention will likely remain a default solution (Kaba & Nicholls, 2018).

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Note: While typically called the juvenile justice system, the term juvenile carceral system has been intentionally used throughout this paper.

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Figures and Tables

Table 1. Descriptive Statistics

		Count	Column N %
	Total	44310	100%
Race	Black / African American	4130	9%
	Asian	1134	3%
	American Indian / Alaskan Native	1626	4%
	Hispanic / Latinx	7091	16%
	Caucasian	29801	67%
	Other / Unknown	528	1%
Gender	Female	11956	27%
	Male	32342	73%
	Other / Unspecified	12	0%
Age at Qualifying Offense	16+ Years Old	19751	45%
	14-16 Years Old	16685	38%
	<14 Years Old	7874	18%
Qualifying Offense Severity	Violent Felony	6047	14%
	Violent Misdemeanor	8901	20%
	Non-violent Felony	13437	30%
	Non-violent Misdemeanor	15925	36%
Prior Offenses	3+ Priors	2872	6%
	2 Priors	1821	4%
	1 Prior	4417	10%
	No Priors	35200	79%
Pretrial Detention	Youth Detained Pretrial	14273	32%

Table 2. Generalized Linear Mixed Model Estimates of Pretrial Detention

	<i>b</i> (SE)	OR (95% CI)
Intercept	-3.896 (0.294)***	0.020 (0.011–0.036)
Black / African American	0.177 (0.069)**	1.194 (1.043–1.367)
Asian	0.059 (0.096)	1.060 (0.878–1.280)
American Indian / Alaskan Native	0.154 (0.066)*	1.166 (1.025–1.327)
Hispanic / Latinx	0.179 (0.041)***	1.196 (1.104–1.295)
Other / Unknown	-0.117 (0.117)	0.890 (0.708–1.118)
Caucasian	(ref)	
Female	0.195 (0.041)***	1.216 (1.123–1.317)
Male	(ref)	
Age at Qualifying Offense	0.134 (0.011)***	1.143 (1.119–1.169)
Violent Felony	1.612 (0.176)***	5.013 (3.549–7.081)
Violent Misdemeanor	1.312 (0.122)***	3.712 (2.924–4.713)
Non-violent Felony	1.039 (0.140)***	2.827 (2.149–3.719)
Non-violent Misdemeanor	(ref)	
3+ Priors	1.085 (0.103)***	2.960 (2.421–3.620)
2 Priors	0.664 (0.078)***	1.942 (1.668–2.261)
1 Prior	0.344 (0.041)***	1.410 (1.301–1.528)
No Prior Offenses	(ref)	

Note: Robust standard errors in parentheses. OR = odds ratio, derived from exponentiated *b*

(ref) = reference group

* $p \leq 0.05$. ** $p \leq 0.01$. *** $p \leq 0.001$

Figure 1: Racial / Ethnic Disparities in Pretrial Detention

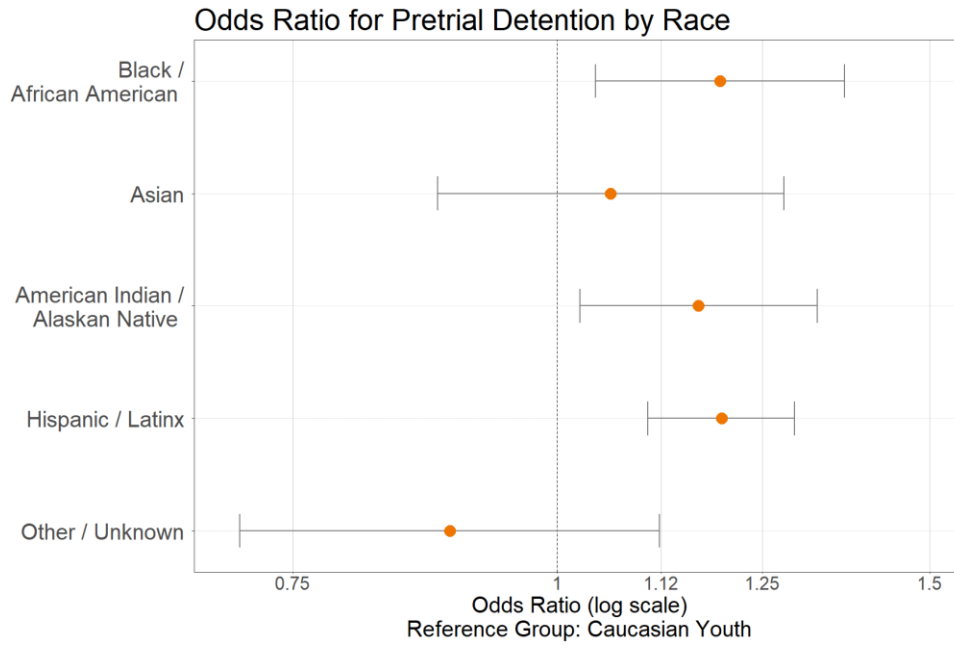


Figure 2: Other Predictors of Pretrial Detention

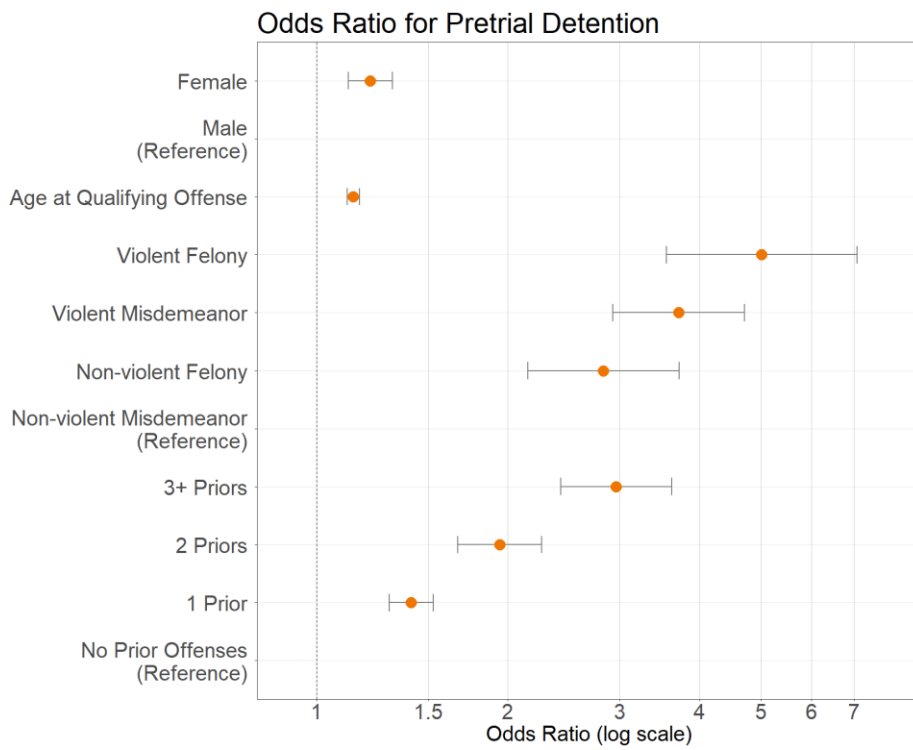


Figure 3: Conceptual Model

