

PRETRIAL RISK ASSESSMENT TOOLS: A PRIMER FOR JUDGES, PROSECUTORS, AND DEFENSE ATTORNEYS

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A vibrant national debate is occurring as to what role, if any, pretrial risk assessment tools can or should play in bail reform. This critical issue brief is intended to inform this ongoing debate by describing pretrial risk assessment tools and what they are designed to do. **Overall, the goal of this primer is to provide key information about pretrial risk assessment tools to contextualize and support further discussion regarding the use and evaluation of these tools in practice.**

Risk assessment tools were developed as a strategy to reduce the influence of personal beliefs and biases on criminal justice decision-making.

- They provide structure and focusing on factors that shown in research to be associated with the legal outcomes of interest.
- In the context of pretrial risk assessment, the outcome of legal interest is *appearance in court with no new arrest* during the pretrial period.

Decades of research examining the accuracy of predictions of future behavior, including violence and crime, shows that structured predictions are more accurate than unstructured ones.

- For jurisdictions exploring alternatives to money bail, pretrial risk assessment tools may provide some objective, empirical evidence to support pretrial decision-making.
- Importantly, pretrial risk assessment tools are designed to inform, not replace, the exercise of judicial decision-making and discretion.

There are more than two dozen different pretrial risk assessment tools in various jurisdictions across the United States.

- These tools differ not only in their approach to estimating risk, but also in the factors they assess and the source(s) of information necessary to complete the assessment (e.g., self-report, official records).
- Some tools were developed to assess specific populations, while others were developed for use in specific jurisdictions.
- Other tools were developed for widespread use across jurisdictions and others, still, were developed for one jurisdiction, but have since been adapted and/or validated for use in other jurisdictions.
- Most pretrial risk assessment tools reside in the public domain; very few are proprietary.

Although the results of pretrial risk assessment tools speak to likelihood of failure to appear and rearrest, the interpretation of a defendant's risk level is a policy decision, not a scientific one.

- Prior to implementation, judges and other stakeholders should be engaged in the process of selecting a pretrial risk assessment tool, as well as the development of local policies and guidelines for its use.
- Examples include the "risk tolerance" of the community and the response to different levels of risk presented by defendants (e.g., conditions of supervision).

Following implementation, there should be an independent evaluation of the accuracy of the pretrial risk assessments,

as well as the degree to which the implementation contributes to more equitable and less carceral decisions. Even a well-validated pretrial risk assessment tool will not produce the desired outcomes if it is not used correctly.

As pretrial risk assessment tools have proliferated in recent years, so too have concerns regarding the use of these tools in practice.

- Commonly cited objections include the potential for pretrial risk assessment tools to frustrate the aims of bail reform.
- Other concerns include the simplistic nature of pretrial risk assessment tools, their limited utility in managing risk, and concerns about the validity of tools when used in new jurisdictions.

These concerns reflect the nascent nature of the field of research; there have been relatively few studies of the use and impact of pretrial risk assessment tools.

- The research that does exist does show that pretrial risk assessment tools can predict failure to appear and/or rearrest with good and comparable accuracy across racial and ethnic groups.

- There is little research examining whether their use results in higher rates of detention.

Common problems to implementing pretrial risk assessment tools include the time and cost required to implement, the need for stakeholder buy-in, and the lack of community resources to address defendants' needs in the community.

- These problems are not unique to the implementation of pretrial risk assessment tools.
- Implementing any new practice in criminal justice settings will require time, effort, and resources to be successful.

The role of risk assessment tools in pretrial decision-making is heavily debated within the context of bail reform. This critical issue brief does not take a position on the relative policy merits of pretrial risk assessment tools as a mode of bail reform. Instead, the objectives were to: provide legal stakeholders with an overview of pretrial risk assessment tools and how they operate; describe the state of the research on their predictive validity and impact on pretrial decision-making; and clearly communicate common objections and implementation problems.



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