

INTRODUCTION TO VALIDATED, EVIDENCE-BASED RISK ASSESSMENT

Stephen Gockley, IPRTF Legal and Justice Systems Committee Chair

The Legal and Justice Systems Subcommittee of the Incarceration Prevention and Reduction Task Force has been focused on techniques and tools that will allow our community to safely release more individuals from our jail. Specifically, we have been focused on the population that is in the jail awaiting trial. Data indicates that on any given day in 2016, 59 percent of the people in our jail were held pretrial. There is probable cause that these individuals have committed a crime, but they are legally presumed innocent.

THE LAW

Washington law presumes that persons who have been arrested and are not convicted will be released without bail. There are two reasons that a person can be held for bail:

1. Substantial likelihood that a person will not return for trial
2. Risk that a person will commit a violent crime or interfere with the administration of justice

If a judge has determined that one or both of these factors exist, the judge can set conditions for release that will address the problem. The law also requires that the judge assign the least restrictive release conditions to insure compliance. The court often assigns a cash bail for this purpose. However, in Whatcom County -- as in jurisdictions across the country -- cash bail has not been a particularly effective tool in helping courts meet these requirements. For instance, those charged with more serious offenses can post a large bail if they have the financial resources, while low-income persons charged with minor misdemeanor offenses are held in custody waiting for their trial dates.

Many tools and techniques are used around the country to address this problem. One tool to help judges make better decisions is a **validated, evidence-based risk assessment**. Risk assessments supplement, but do not replace, judicial discretion. This tool assists the judge in determining who should be:

1. released pretrial without bail or conditions
2. released pretrial with conditions or monitoring
3. held for substantial bail

To implement a system that includes pretrial release with conditions, the Court will need to have someone monitor compliance with the release order. This will require additional Whatcom County staff. District and Municipal Courts have probation services that can monitor compliance. Superior Court does not have probation services available for their department. The Legal and Justice Systems Subcommittee has identified that a **best practice** is to combine a validated, evidence-based risk assessment with a pretrial monitoring unit.

Because many people face criminal charges in multiple courts, an ideal program would ensure that the conditions assigned by all courts are consistent with each other, and one department will monitor compliance with all. This structure should give us the best opportunity to reduce incarceration.

COSTS

Yakima courts have found that they spend approximately \$89.00 a day to hold a person in custody pretrial and approximately \$9.00 a day to monitor a person in the community while they are waiting for their trial date.

PRECEDENCE

Pretrial risk assessments are being used in Federal courts and in States around the Country. They have recently been adopted as tools to assist judges in King County, Spokane, and Yakima. Additionally, Washington State has created a task force to review pretrial practices in the state, with a subcommittee looking at the use of validated risk assessment tools. They anticipate having a report in 18 months.

Risk assessment tools can be purchased “off-the-shelf,” and others are validated for a community and geared to specific issues of concern for that jurisdiction. For example, King County wanted a tool that would provide a specific focus on a history of domestic violence, Yakima wanted a tool that would provide a focus on gang affiliation, and Spokane had an additional goal of wanting to reduce their jail population by 10 percent.

In conclusion, science and data can improve decision-making. These tools can provide a safe, low cost alternative to holding a person in custody while awaiting trial.

Date: June 2017
To: Whatcom County judges and court administrators
Subject: Improving pretrial outcomes
From: Vera Institute of Justice

This memo summarizes existing research on the benefits of pretrial services programs and risk-based decision-making as compared to financial conditions of release and pretrial detention, including case processing efficiencies, improved public safety, and fiscal benefits. The Vera Institute of Justice (Vera) has prepared this memo as part of the jail population reduction technical assistance Vera is providing to the Whatcom County Incarceration Prevention and Reduction Task Force. Vera's administrative data study will allow for additional cost-benefit analysis specific to Whatcom County in the coming months.

Pretrial release programs produce better case processing outcomes than financial bail

Pretrial services programs are the most effective way to ensure defendants appear for all court hearings and do not engage in illegal activity while in the community awaiting resolution of their cases.¹ Conversely, financial bail does not reliably predict whether defendants will appear for court or remain free of crime while released on bail.² In a cash-bail system, people of varying levels of risk are released after posting a financial bond and are unmonitored in the community, with whatever risk to the public they may have posed left unaddressed.³ Nearly half of the most dangerous defendants post a cash bond and are released.⁴

On the other hand, low-risk people frequently remain in jail because they cannot afford cash bail.⁵ Many pretrial detainees are low-risk defendants, who, if released, are highly unlikely to commit crimes and likely to return to court, with minimal monitoring. Other defendants present moderate risks that can often be managed in the community through monitoring, supervision, or other support.⁶ Research has found that moderate- and high-risk defendants who receive pretrial supervision are significantly more likely to appear for court. Moderate-risk defendants who were supervised missed court dates 38 percent less frequently than

¹ International Association of Chiefs of Police, *Law Enforcement's Leadership Role in the Pretrial Release and Detention Process* (Alexandria, VA: IACP, 2011), 6.

² Ibid.

³ Ibid., p. 10; Pretrial Justice Institute, *The Transformation of Pretrial Services in Allegheny, County, Pennsylvania: Development of Best Practices and Validation of Risk Assessment* (Rockville, MD: PJI, 2007), 5.

⁴ Pretrial Justice Institute, *Pretrial Justice: How Much Does It Cost?* (Rockville, MD: PJI, 2017), 4.

⁵ Laura and John Arnold Foundation, *Developing a National Model for Pretrial Risk Assessment* (Houston: LJAF, 2013), 1-2.

⁶ Laura and John Arnold Foundation, *Pretrial Criminal Justice Research* (Houston: LJAF, 2013), 1.

unsupervised defendants. For high-risk defendants, the reduction was 33 percent. Defendants supervised pretrial for six months or more were 22 percent less likely to be arrested for new crimes before case disposition.⁷ There is a small group of defendants who should most often be detained because they pose significant risks of flight or committing acts of violence or other offenses, which cannot be mitigated.⁸

In the District of Columbia, 80 percent of defendants are released either on their own recognizance or with non-financial conditions individually tailored to them. Fifteen percent of defendants are held without bail, primarily because no condition can reasonably assure the community's safety or the defendant's appearance in court. Only five percent have financial bail set. Of the defendants who are released, 97 percent finish the pretrial period without being arrested on a new felony charge, and 91 percent without being arrested on a new misdemeanor charge. Eighty-eight percent make all their court appearances.⁹

To ensure pretrial success, according to national standards, pretrial services programs should set up a system to remind defendants of their court dates. Sending court date reminders to defendants is the single most important thing a pretrial program can do to reduce failures to appear (FTA). From years of experience, pretrial services programs around the country have learned that it is not sufficient to hand defendants a piece of paper showing their next scheduled court appearance as they leave the courtroom. Defendants need reminders.¹⁰ Reducing FTA also helps to reduce bench warrants, case processing times, and unnecessary continuances.

It is also important not to over-supervise defendants, especially those who present lower risk for FTA and illegal activity. Release conditions that include alternatives to pretrial detention, such as electronic monitoring, intensive programming, or treatment, generally *decrease* pretrial success rates for lower-risk defendants and should be required only sparingly. Alternatives to pretrial detention are most appropriate for moderate- and higher-risk defendants and allow for expanded use of pretrial release while generally increasing pretrial success. Alternatives to pretrial detention should be imposed for this population when a defendant presents a specific risk of pretrial failure that can be addressed by a specific alternative.¹¹

⁷ Ibid., p. 6.

⁸ Ibid., p. 1.

⁹ American Bar Association Criminal Justice Section, *Frequently Asked Questions About Pretrial Release Decision Making* (Washington, DC: ABA, 2012), 6.

¹⁰ PJI, 2007, p. 6.

¹¹ Marie VanNostrand, "Alternatives to Pretrial Detention: Southern District of Iowa," *Federal Probation* 74, no. 3 (2010): 11-15.

Pretrial supervision promotes public safety more than pretrial detention

Even for relatively short stays in jail, low- and moderate-risk defendants detained for more days were more likely to commit additional crimes pretrial – and were more likely to do so during the two years after their cases ended. As the length of pretrial detention increases up to 14 days, recidivism rates for low- and moderate-risk defendants increase significantly.¹²

When held for two to three days, low-risk defendants were almost 40 percent more likely to commit new crimes than equivalent defendants (in terms of criminal history, charge, background, and demographics) held no more than 24 hours, not only while their cases were pending, but also years later. When held eight to 14 days, low-risk defendants were 51 percent more likely to commit another crime within two years after completion of their cases than equivalent defendants held no more than 24 hours. Low-risk defendants held for two to three days were also 22 percent more likely to FTA than similar defendants held for less than 24 hours. The number jumped to 41 percent for defendants held 15 to 30 days.¹³

Pretrial defendants who are detained in jail also have worse case outcomes than identical people who are released. Compared to those released before trial, low-risk people held in jail longer than three days are:

- Thirty percent more likely to be convicted or plead guilty, with sentence lengths 18 months longer;
- Four times more likely to receive a jail sentence and three times more likely to receive a longer jail sentence; and
- Three times more likely to receive a prison sentence and twice as likely to receive a longer prison sentence.¹⁴

Pretrial programs save costs

Pretrial services programs not only promote defendant accountability and ensure community safety by identifying people who can be safely released, but they also provide cost savings, whereas with financial bail, the determining factor as to whether or not a defendant is released back into the community is money.¹⁵ Cash-bail systems create unnecessarily high pretrial incarceration rates that overburden justice system and county budgets. As stated above, many of those detained are low risk, including defendants whose charges ultimately will be dropped. Each day someone is in jail, the price of his or her food,

¹² LIAF, *Pretrial Criminal Justice Research*, 2013, p. 5.

¹³ *Ibid.*, pp.4-5.

¹⁴ PJI, 2017, pp. 4-5.

¹⁵ IACP, 2011, p. 10.

medical care, and security (excluding fixed building expenses) may be conservatively estimated at \$85 per day. In fact, jailing arrested people before trial is the greatest expense generated by current pretrial justice practice.¹⁶

Community-based supervision has proven to be less costly than secure detention, but it is not without its own costs. Jurisdictions must therefore decide whether to shift resources to implementation and operation of a comprehensive pretrial services program, rather than expanding jail capacity. Individual state and county cost-benefit analyses suggest pretrial services programs save taxpayers money.¹⁷ By adopting policies that detain only higher risk people, counties can reallocate funding for other needed services.¹⁸

Examples of cost savings

Tarrant and Travis Counties, TX

A new study compares financial and risk-based pretrial systems using three and a half years of criminal case data. Tarrant County determines pretrial release almost exclusively by means of financial bond. Travis County uses validated risk assessment to identify low-risk people for release without financial requirements. Overall results indicate pretrial risk assessment can save money, strengthen public safety, and improve outcomes for defendants.

In Travis County, validated risk assessment results in better pretrial classification: fewer high- risk defendants released, and fewer low-risk individuals detained. According to the study, the costs of a risk-informed pretrial system are more than offset by savings that occur when defendants are properly classified:

- Case processing costs are 5 percent lower where risk assessment is used, including re-arrest, court hearings, prosecution, and indigent defense costs attributable to bond failure. More new crimes are committed by people released on bond.
- Victim costs are 72 percent lower where risk assessment is used. More crimes committed by people on financial release are felonies, and they are more often violent.
- Detention costs are 23 percent lower where risk assessment is used. Defendants spend longer in jail on average following arrest in the financial release system. They also spend more days detained for new offenses while on bond.
- Total costs are 30 percent lower where risk assessment is used. Total pretrial costs per defendant are \$2,134 in the jurisdiction using risk-informed pretrial release

¹⁶ PJI, 2017, p. 2.

¹⁷ IACP, 2011, p. 10.

¹⁸ PJI, 2017, p. 2.

compared to \$3,083 where release is determined by ability to pay a financial bond. Savings are primarily due to lower rates of new criminal activity committed by high-risk people inappropriately released. Additional savings also accrue from low-risk individuals who are more likely to be released on personal bond and shorter detention periods following arrest.¹⁹

Validated risk assessment can help courts make pretrial services more cost-effective by directing monitoring resources where they are most likely to address specific risks in a meaningful way. Not only are more people detained on a low bond in the financial system, but a higher proportion of those defendants have a statistically low risk of bond failure. Three times more people in the financial system would likely succeed if released, but they remain in jail because they cannot pay \$200 or less for a commercial bond.²⁰

Denver County, CO

An analysis using an economist-developed Pretrial Cost-Benefit Model found Denver, Colorado could avoid almost \$6 million in costs and reduce crime by using a risk-based system and setting release goals by risk level (e.g., release 65 percent of Level 1 defendants within 24 hours).²¹ Denver replaced its bond schedule with a pretrial risk assessment and now uses non-financial conditions of release, such as court reminders, monitoring and supervision, and unsecured bonds (in which a person pays money only if (s)he fails to appear in court).

Santa Clara County, CA

Santa Clara County, California uses a locally validated pretrial risk assessment that saved \$33 million in six months by keeping 1,400 defendants out of jail. Pretrial release costs the county just \$15 to \$25 per day compared to \$204 per day for jail. The county maintains a 95 percent court appearance rate and a 99 percent public safety rate among defendants released without supervision.²²

Broward County, FL

A cost-savings analysis by the Broward County, Florida sheriff's office estimated the county could save more than \$125 million annually by diverting 30 percent of arrested people from jail using programs already in place. The study also found the average cost of pretrial

¹⁹ Dottie Carmichael et al., *Liberty and Justice: Pretrial Practices in Texas* (Bryan, TX: Texas A&M University Public Policy Research Institute, 2017), 26-31.

²⁰ *Ibid.*, p. 47.

²¹ PJI, 2017, p. 5.

²² *Ibid.*

detention to be more than 15 times the cost of day reporting and nearly 75 times the cost of pretrial supervision.²³

Okaloosa County, FL

In fiscal year 2007, the population of the county jail in Okaloosa County, Florida averaged 695 people each day—117 percent of capacity. That same year, the county planned a major expansion of jail bed space at an estimated construction cost of \$12.5 million with annual operating costs of \$3.5 million. In 2008, before proceeding with the expansion, the county invested in improving its pretrial services program in order to reduce its jail population safely. By March 2011, the average daily population dropped to 464 people, 22 percent below capacity, saving the county \$27 million. The county placed its plans for jail expansion on hold.²⁴

Harris County, TX

A study in Harris County, Texas calculated that between 2008 and 2013, if all misdemeanor defendants assigned money bond of \$500 had been released without financial conditions, there would have been:

- 40,000 more people released pretrial;
- 400,000 fewer jail bed-days used;
- 1,600 fewer felonies and 2,400 fewer misdemeanors committed by people within 18 months of their release; and
- \$20 million in saved supervision costs.²⁵

North Carolina

A study of 10 counties with pretrial services programs in North Carolina found that each county spent approximately \$6.04 per defendant per day on pretrial release, but would spend approximately \$57.30 per defendant per day to keep those same defendants detained. The total cost savings of pretrial services versus pretrial incarceration amounted to more than \$1,050,000 per county per year.²⁶

Kentucky

In Kentucky, 88 percent of arrested people are released from jail before trial, and just three percent are given extra supervision conditions. Kentucky saved counties approximately \$25

²³ Ibid.

²⁴ ABA, 2012, pp. 5-6.

²⁵ PJI, 2017, p. 6.

²⁶ IACP, 2011, p. 10.

million in jail costs in one year by increasing the pretrial release rate by 5 percent, resulting in nearly 11,000 additional people released pretrial. Supervision costs in Kentucky are between two and 10 percent of detention costs.²⁷

Federal Courts

In the federal system in 2012, pretrial detention for a defendant was nearly 10 times more expensive (\$26,654.69 as compared to \$2,643.50) than the cost of supervision by a pretrial services officer. The cost of supervision has actually declined in recent years because the Judiciary had less funding to invest in community supervision. Probation and pretrial services officers focused the cuts on cases presenting the lowest relative risk and preserved resources, as much as possible, to mitigate the risk of the remaining higher-risk defendants and probationers. For example, officers established low activity supervision caseloads for low risk people who had not yet met the criteria for early termination.²⁸

The use of alternatives to detention for the appropriate pretrial population in the Southern District of Iowa not only improved outcomes, but also resulted in cost avoidance and true cost savings. The average cost of detaining a defendant pending trial is \$19,253, while the average cost of releasing a defendant pending trial to the alternatives to detention program (including cost of supervision, alternatives to detention, and fugitive recovery) is \$3,860.²⁹

Conclusion

Evidence shows current pretrial practices—especially those that rely on money bail and over-use jail beds and other scarce resources for lower risk people—are needlessly expensive and do not produce positive results.³⁰ A relatively small upfront investment in a pretrial services program often produces significant cost savings. These savings come from freeing up jail space and saving on the costs associated with incarceration, such as food, housing, building maintenance, and staff. More importantly, pretrial services programs hold defendants accountable, while also creating safer communities.

²⁷ PJI, 2017, p. 5.

²⁸ United States Courts, “Supervision Costs Significantly Less than Incarceration in Federal System,” July 18, 2013, <http://www.uscourts.gov/news/2013/07/18/supervision-costs-significantly-less-incarceration-federal-system>.

²⁹ VanNostrand, 2010, p. 10.

³⁰ PJI, 2017, p. 6.

Pretrial Risk Assessment

Disclaimer: At the last committee meeting requests were made for specific costs with different scenarios. Please take note that practitioners are generally not eager to give specific costs, thus the large ranges below.

Cost and time needed

Creating, validating and implementing a new tool: \$100k - \$150k; 6 months – 1 year.

Implement then validate an existing tool: \$30,000 - \$100,000; <6 months to implement + variable time to validate.

The primary driver for both time and cost is data availability and quality. It is possible that the dataset produced by Vera could be used as the source data – this could significantly reduce the cost. I will further investigate this possibility.

Further information

The field of pretrial risk assessment scholarship is not fully developed. Speaking to different practitioners presents very different perceptions of best practices in assessment development. Unsurprisingly, firms and individuals who create custom tools felt that using an existing tool was likely to be ineffective.

Risks to using an existing tool:

- It may not meet the needs stakeholders have identified and making changes to a nationally validated tool to address those needs can reduce the tools effectiveness (i.e., this undermines the data analysis it is built on).
- Data may not be organized in way that is compatible with an existing tool. For example, a system may only record an FTA when it leads to a judicial action and thereby misses an FTA that does not result in judicial action. Using a tool that is designed to assess the number of actual FTAs will not work appropriately in that system. A custom tool can be built to use the data available.
- It may not achieve the intended outcomes.

One of the individuals I spoke with who does not develop tools, but does provide the type of technical assistance Vera is currently providing, felt that existing tools could be effectively used (and often are). She is getting back to me with contacts in a few jurisdictions that have successfully implemented “off-the-shelf” tools.

Incarceration Prevention Reduction Task Force
Justice & Legal System Committee Meeting
June 13, 2017

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Introductory comments...

I originally began compiling this information for my own use.

1. *Although the information included here may apply in a variety of situations I was specifically looking for useful information regarding pretrial risk tools and risk tools that could be used by DCP in supervising defendants.*
 - a. *The information presented here are highlights of statements found in the cited documents that I thought were interesting and that I thought the judges may find interesting or helpful as well.*
 - b. *I thought this information may also be of interest to this group, or not.*
 - c. *Some of the documents are lengthy and you need to go to the original source document to get a complete understanding of the information.*
 - i. *Example 1. The National Association of Pretrial Services Agency (NAPSA) Standards on Pretrial Release document is nearly 90 pages.*
 - ii. *Example 2. The National Institute of Corrections Framework for Pretrial Justice Document is nearly 60 pages.*
 - d. *The notes for the three conversations I had with professionals in the field were made during the interviews. If a detail is important it should be verified.*
 - e. *Information that I did not seek out were standards or information specifically addressing how judicial officers, prosecutors, defense attorneys or others would interact or work with a risk assessment tool. Someone with expertise in those specific areas should pursue that information.*
 - i. *Example 1. The NAPSA document is about 90 pages of which approx.. 20-25 pages were of specific interest to me. The other pages referred to the other parts of the law and justice system I just mentioned.*
2. *DCP history with risk assessment tools... DCP probation has been using a risk assessment tool for at least 20-25 years.*
 - a. *The tool is used specifically for those out of custody defendants being supervised by DCP.*
 - b. *It was last validated about 10-15 years ago for the Washington State misdemeanor population.*
 - c. *It was originally called the Wisconsin, but after the validation in Washington it has been referred to as both the Wisconsin and the Washington.*
 - d. *As the probation director I'm interested in finding a risk tool that:*
 - i. *Is a more currently validated tool*
 - ii. *Has ongoing institutional support.*
 - iii. *Staff can be trained to use the tool with a reasonable amount of resources.*
 - iv. *Is user friendly for staff to complete for each defendant within a reasonable amount of time.*
 - v. *Is affordable.*

3. *I've learned a number of things about risk tools during this project.*
 - a. *There appears to be two different lines of thinking about risk assessment tools.*
 - i. *The first is that you can take a widely validated tool and begin using it in a local jurisdiction, with or without local validation based on the resources of the community.*
 - ii. *The second is that a risk tool can be developed from scratch and specifically tailored to the local jurisdiction.*
 - b. *There are many established validated tools already out there.*
 - c. *Each currently validated tool looks at similar criteria, but each is different.*
 - d. *If a jurisdiction wants to use a current tool out there, finding a validated tool won't be the problem.*
4. *Here's where things get complicated...and it all comes down to this... data vs. the human factor.*
 - a. *To use the Russell Stover and Sees Candy example... Which is better, dark or milk chocolate? Creamy center or nuts? Considering the human factor, both can be correct.*
 - b. *Finding an off the shelf program that can work is irrelevant if the decision makers will only accept a customized program.*
 - i. *I've talked to a researcher from each of these camps and each thinks that their type of tool works well/best.*
 1. *Zachary Hamilton from the WSU who is the Director of the Washington State Institute for Criminal Justice*
 2. *Jennifer Lux, Ph.D. who is a Research Associate and Risk Assessment Co-Project Director of the Ohio Risk Assessment System.*
 - c. *Another example, a decision maker may have a specific requirement that must be met before a tool will be accepted.*
 - i. *An article published by the Pretrial Institute, cited here, compared six different validated tools, the Virginia, Colorado, Kentucky, Federal, Florida, and Ohio.*
 1. *Between the six validated tools were 17 risk factors of which no two risk assessments measured the same exact risk factors.*
 - a. *The number of risk factors considered per risk assessment ranged from 6 to 10.*
 2. *If a decision maker is convinced that the risk tool must take into consideration education, then the only one that will work is the Federal risk assessment.*
 3. *If asking about the defendant's current status on probation or parole is a deal breaker, then the Kentucky is the only one that will work.*
 4. *If the deal breaker question is one regarding mental health then only the Colorado or Florida will work.*
5. *Deciding on a risk tool is not a one time irrevocable decision.*
 - a. *Just as someone's taste in chocolate can change, so can the preference of risk tools.*
 - b. *Tools can change over time, be revalidated or new ones can be used.*

A good local Washington State example is the Department of Corrections. For years they used the LSI, it was then replace by the ASRA. The state is currently in the process of moving away from the ASRA and will be using the STRONG-R. (This is based on the conversation with Elizabeth Drake, Washington State Institute for Public Policy)
6. *The information I gathered seemed to naturally fall into several categories.*
 - a. *Definitions*

- b. Expectations of a Risk Assessment Tool
- c. Do Validated Risk Assessments Always “Make Sense?”
- d. Core Functions of a Pretrial Services Program
- e. Standards for Pretrial Programs/Agencies
- f. Selecting a Risk Tool
- g. Phone Conversations

Disclaimer: These notes are directly from the sources cited. Most were copied and pasted and a few were hand entered. Please go to the original source to confirm accuracy and context.

DEFINITIONS

Dynamic Risk Factors:

“Dynamic risk factors, such as drug dependency, can change through treatment.”¹

Reliability:

“Reliability measures how well an assessment produces stable and consistent results.”²

Risk:

“In general, “risk” refers to the likelihood of an adverse outcome. In contemporary societies, examples of adverse outcomes include death (medicine), dropout (education), financial losses (investment), and future criminal behavior (criminal justice).”³

Static Risk Factors:

“Risk factors that cannot decrease, such as criminal history, are static. Once a criminal record is obtained, it will always be a part of an offender’s history.”⁴

Validity:

Validity refers to how often the instrument measures what it purports to measure.⁵

¹ Washington State Institute For Public Policy Report, *Predicting Criminal Recidivism: A Systematic Review of Offender Risk Assessments in Washington State*, 2.

http://www.wsipp.wa.gov/ReportFile/1554/Wsipp_Predicting-Criminal-Recidivism-A-Systematic-Review-of-Offender-Risk-Assessments-in-Washington-State_Final-Report.pdf

² National Institute of Corrections, *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*, 40.

<https://s3.amazonaws.com/static.nicic.gov/Library/032831.pdf>

³ Center for Court Innovation, *Demystifying Risk Assessment*, 4.

http://www.courtinnovation.org/sites/default/files/documents/Monograph_March2017_Demystifying%20Risk%20Assessment_1.pdfhttp://www.courtinnovation.org/sites/default/files/documents/Monograph_March2017_Demystifying%20Risk%20Assessment_1.pdf

⁴ Washington State Institute For Public Policy Report, *Predicting Criminal Recidivism: A Systematic Review of Offender Risk Assessments in Washington State*, 2.

http://www.wsipp.wa.gov/ReportFile/1554/Wsipp_Predicting-Criminal-Recidivism-A-Systematic-Review-of-Offender-Risk-Assessments-in-Washington-State_Final-Report.pdf

⁵ National Institute of Corrections, *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*, 40.

<https://s3.amazonaws.com/static.nicic.gov/Library/032831.pdf>

“Static factors are those that are unchangeable either by virtue of being historical in nature (e.g., prior criminal history) or by being largely immutable characteristics of an individual (e.g., male sex).”⁶

“Dynamic factors are those that can be changed, such as current unemployment, substance abuse, negative peer influences, or antisocial attitudes.”⁷

“A 2011 meta-analysis research study found that most validated pretrial risk tools contain similar risk factors. Despite some slight differences in wording or weighting in scoring across the tools, these factors fall into one or two categories: “static” factors pertaining to criminal history/system involvement, and “dynamic” factors pertaining to stability/community ties.”⁸

“Dynamic risk factors are factors that, when changed, have been shown to result in a reduction in recidivism.”⁹

EXPECTATIONS OF A RISK ASSESSMENT TOOL

“Bail determination is one of the most important decisions in criminal justice. Courts that make evidence-based decisions set the following as goals:

- (1) Protecting community safety.
- (2) Ensuring a defendant’s return to court.
- (3) Basing release and detention decisions on an individual defendant’s risk and the community’s norms for liberty.
- (4) Providing judicial officers with clear, legal options for appropriate pretrial release and detention decisions.”¹⁰

“It is important to note, however, that no risk assessment is 100% accurate.”¹¹

“A statistical likelihood of pretrial success is associated with each risk category.”¹²

⁶ Center for Court Innovation, *Demystifying Risk Assessment*, 6.

http://www.courtinnovation.org/sites/default/files/documents/Monograph_March2017_Demystifying%20Risk%20Assessment_1.pdfhttp://www.courtinnovation.org/sites/default/files/documents/Monograph_March2017_Demystifying%20Risk%20Assessment_1.pdf

⁷ *Ibid.*, 6.

⁸ Pretrial Justice Institute Report, *Pretrial Risk Assessment: Science Provides Guidance on Assessing Defendants*, 2.

[http://www.pretrial.org/download/advocacy/Issue%20Brief-Pretrial%20Risk%20Assessment%20\(May%202015\).pdf](http://www.pretrial.org/download/advocacy/Issue%20Brief-Pretrial%20Risk%20Assessment%20(May%202015).pdf)

⁹ Federal Probation Journal, *The Creation and Validation of the Ohio Risk Assessment System*, 1.

http://www.uscourts.gov/sites/default/files/federal_probation_journal_june_2010.pdf

¹⁰ National Institute of Corrections, *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*, iv.

<https://s3.amazonaws.com/static.nicic.gov/Library/032831.pdf>

¹¹ Washington State Institute For Public Policy Report, *Predicting Criminal Recidivism: A Systematic Review of Offender Risk Assessments in Washington State*, 4.

http://www.wsipp.wa.gov/ReportFile/1554/Wsipp_Predicting-Criminal-Recidivism-A-Systematic-Review-of-Offender-Risk-Assessments-in-Washington-State_Final-Report.pdf

“...pretrial risk tools only assess unsentenced defendants’ short-term pretrial risk to public safety and/or nonappearance in court.”¹³

The practical utility of a risk assessment lies in its ability to accurately distinguish between risk groups of defendants (low, medium, and high) for the purposes of case planning, resource allocation, and supervision.¹⁴

“Pretrial risk assessment tools cannot predict with exact accuracy a specific individual’s future behavior. The tools are research based guides to decisions courts must make....However, these tools provide an objective, standardized way of assessing the likelihood of pretrial failure that research shows produces higher accuracy than subjective assessments by even the most experienced decision makers...This does not mean that pretrial risk assessment tools should be used in place of professional discretion. The tool produces a score that can help anchor a decision, and occasional deviations, or overrides can be expected.”¹⁵

“Other studies have found that higher-risk defendants who are released with supervision have higher rates of success on pretrial release. For example, one study found that, when controlling for other factors, higher-risk defendants who were released with supervision we 33% less likely to fail to appear in court than their unsupervised counterparts.”¹⁶

“Finally, the principle of professional discretion recognizes that case managers and counselors responsible for processing the risk, need, and responsivity information and making decisions based on the information provided. Further, actuarial tools are designed to treat offenders in the aggregate and cannot be structured to anticipate every possible case or scenario. As a result, it is important to allow criminal justice personnel the ability to override the assessment instruments in specific circumstances.”¹⁷

“A structured objective classification process aids pretrial services in the replacement of subjective judgment with objective criteria in the determination of a defendant’s risk to the community and the likelihood of nonattendance during court proceedings.”¹⁸

¹²Pretrial Justice Institute Report, *Pretrial Risk Assessment: Science Provides Guidance on Assessing Defendants*, 4.
[http://www.pretrial.org/download/advocacy/Issue%20Brief-Pretrial%20Risk%20Assessment%20\(May%202015\).pdf](http://www.pretrial.org/download/advocacy/Issue%20Brief-Pretrial%20Risk%20Assessment%20(May%202015).pdf)

¹³ Ibid., 6.

¹⁴ Federal Probation Journal. *The Development and Validation of a Pretrial Screening Tool*, 5.
http://www.uscourts.gov/sites/default/files/fed_probation_dec_2008.pdf

¹⁵ Pretrial Justice Institute Report, *Pretrial Risk Assessment: Science Provides Guidance on Assessing Defendants*, 5.
[http://www.pretrial.org/download/advocacy/Issue%20Brief-Pretrial%20Risk%20Assessment%20\(May%202015\).pdf](http://www.pretrial.org/download/advocacy/Issue%20Brief-Pretrial%20Risk%20Assessment%20(May%202015).pdf)

¹⁶ Ibid., 2.

¹⁷ Federal Probation Journal, *The Creation and Validation of a Pretrial Screening Tool*, 2.
http://www.uscourts.gov/sites/default/files/federal_probation_journal_june_2010.pdf

¹⁸ Ibid., 3.

A growing body of research suggests that high quality risk assessment yields more accurate estimates of risk for future crime, when compared with professional judgment alone.¹⁹

DO VALIDATED RISK ASSESSMENTS ALWAYS “MAKE SENSE?”

“Furthermore, a defendant can have high needs (e.g., housing, employment, substance or mental health treatment), but still be low-risk for pretrial failure because research has found that these “needs” characteristics have low relation to risk of failure during the shorter-term, pretrial period of the defendant’s case.”²⁰

“Research has consistently shown that pretrial misconduct is not directly correlated to the seriousness of the offense.”²¹

“Six of the items that were identified as significant using the construction sample were combined into a tentative pretrial risk assessment instrument. Two additional items, residential stability and the number of occurrences of FTA within the last two years, were incorporated into the assessment despite their statistical non-significance. The decision to include these items was based on two factors. First, both of these items have traditionally been held as predictors of failure to appear and success on pretrial supervision. Second, a review of the instrument by field staff and the judiciary indicated that these items, regardless of their statistical relationship with outcomes, were required for the instrument to have face validity.”²²

“In other cases, however, science contradicts common assumptions. For instance, validation research in the criminal justice field has consistently shown that the presence of a diagnosis for mental illness is not a significant factor in predicting future criminal behavior, contrary to long-held assumptions in the field.”²³

Today, as many as 60 risk assessment tools are in use in jurisdictions across the United States. These tools are diverse in form, length, and content. The simplest tools rely exclusively on criminal records, while others add a short defendant interview, integrating the results into a

¹⁹ Center for Court Innovation, *Demystifying Risk Assessment*, 2.

http://www.courtinnovation.org/sites/default/files/documents/Monograph_March2017_Demystifying%20Risk%20Assessment_1.pdfhttp://www.courtinnovation.org/sites/default/files/documents/Monograph_March2017_Demystifying%20Risk%20Assessment_1.pdf

²⁰ Pretrial Justice Institute Report, *Pretrial Risk Assessment: Science Provides Guidance on Assessing Defendants*, 6.

[http://www.pretrial.org/download/advocacy/Issue%20Brief-Pretrial%20Risk%20Assessment%20\(May%202015\).pdf](http://www.pretrial.org/download/advocacy/Issue%20Brief-Pretrial%20Risk%20Assessment%20(May%202015).pdf)

²¹ Pretrial Justice Institute Report, *Pretrial Services Program Implementation: A Starter Kit*, 6.

[https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=1432f765-c481-
ea30-3b4b-60027df67823&forceDialog=0](https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=1432f765-c481-
ea30-3b4b-60027df67823&forceDialog=0)

²² Federal Probation Journal, *The Development and Validation of a Pretrial Screening Tool*, 4.

http://www.uscourts.gov/sites/default/files/fed_probation_dec_2008.pdf

²³ Center for Court Innovation, *Demystifying Risk Assessment*, 8.

http://www.courtinnovation.org/sites/default/files/documents/Monograph_March2017_Demystifying%20Risk%20Assessment_1.pdfhttp://www.courtinnovation.org/sites/default/files/documents/Monograph_March2017_Demystifying%20Risk%20Assessment_1.pdf

single risk score. Still other tools constitute more comprehensive risk and need assessments that require a long interview.²⁴ (This report was published in 2017)

CORE FUNCTIONS OF A PRETRIAL SERVICES PROGRAM

Pretrial Justice Institute Report

“The core functions of a pretrial services program.

- Core Function Number 1. The pretrial services program should interview prior to the initial appearance before a judicial officer everyone arrested or charged with an offense over which the court it serves has jurisdiction, with possible exceptions.
- Core Function Number 2. Verification of interview information and criminal history checks.
- Core Function Number 3. Assessment of risk of pretrial misconduct through objective means and presentation of recommendation to the court based upon the risk level.
- Core Function Number 4. Follow up reviews of defendants unable to meet the conditions of release.
- Core Function Number 5. Accountable and appropriate supervision of those released, to include proactive court date reminders.
- Core Function Number 6. Reporting of progress and outcome measures.”²⁵

“The pretrial agencies’ most fundamental decision lies in the recommendation made to the courts regarding whether an individual is detained or released and, if released, with (or without) some conditional requirements.”²⁶

STANDARDS FOR PRETRIAL PROGRAMS/AGENCIES

Pretrial services agencies and programs function under a variety of different organizational arrangements. They may, for example, operate as an arm of the court, as a unit of the local corrections or probation department, or as an independent non-profit organization. Importantly, these Standards contemplate that, regardless of the organizational arrangements, the pretrial services agency or program will help support the release/detention decision-making process.²⁷

American Bar Association Standards

Standard 10-1.10 The role of the pretrial services agency.

“The pretrial services agency should:

²⁴ Center for Court Innovation, *Demystifying Risk Assessment*, 2.

http://www.courtinnovation.org/sites/default/files/documents/Monograph_March2017_Demystifying%20Risk%20Assessment_1.pdfhttp://www.courtinnovation.org/sites/default/files/documents/Monograph_March2017_Demystifying%20Risk%20Assessment_1.pdf

²⁵ Pretrial Justice Institute Report, *Pretrial Services Program Implementation: A Starter Kit*, 5-12.

[https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=1432f765-c481-
ea30-3b4b-60027df67823&forceDialog=0](https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=1432f765-c481-ea30-3b4b-60027df67823&forceDialog=0)

²⁶ Federal Probation Journal, *The Development and Validation of a Pretrial Screening Tool*, 2.

http://www.uscourts.gov/sites/default/files/fed_probation_dec_2008.pdf

²⁷ National Association of Pretrial Services Agencies, *Standards on Pretrial Release*, 14.

<https://napsa.org/eweb/DynamicPage.aspx?Site=NAPSA&WebCode=standards>

- Conduct pre-first appearance inquiries.
- Present accurate information to the judicial officer relating to the risk defendant may pose of failing to appear in court or of threatening the safety of the community...
- Develop and provide appropriate and effective supervision for all persons released...who are assigned supervision as a condition of release.
- Monitor the compliance of released defendants...
- Promptly inform the court of all apparent violations of pretrial release conditions or arrests...
- Develop and operate an accurate information management system...
- Assist persons released prior to trial...
- Remind persons released before trial of their court dates...
- Have the means to assist persons who cannot communicate in written or spoken English.”²⁸

National Association of Pretrial Services Agencies

- Standard 3.1. Purposes of pretrial services agencies and programs.
“...perform functions that are critical to the effective operation of local criminal justice systems by assisting the court in making prompt, fair, and effective release/detention decisions and by monitoring and supervising released defendants...”
- Standard 3.2 Essential functions to be performed in connection with the defendant’s first court appearance
 - “Collect, verify, and document information about the defendant...pertinent to the court’s decision concerning release...
 - Present written, accurate information to the judicial officer relating to the risk a defendant may pose of failing to appear in court or of threatening the safety of the community....
 - Identify members of special populations that may be in need of additional screening and specialized services.
 - Provide staff representatives in court to answer questions concerning the pretrial services investigative report...
 - Develop supervision strategies that respond appropriately to risks and needs posed by defendants.”
- Standard 3.3 Interview of the defendant prior to first appearance
 - “The representative of the pretrial services agency or program who conducts the interview of the defendant should inform the defendant of his or her name and affiliation with the agency or program, and should advise the defendant:
 - The interview is voluntary.
 - that the pretrial services interview is intended to assist in determining an appropriate pretrial release decision for the defendant
 - of any other purposes for which h the information may be used
 - ...pretrial services interview should...should focus on questions directly relevant to the judicial officer’s decision concerning release or detention

²⁸ American Bar Association, *Criminal Justice Section Standards, Pretrial Release, Part I General Principles*, Standard 10-1.10.
https://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_toc.html

- Pretrial services agency or program should seek to verify essential information provided by the defendant.”
- Standard 3.4 Presentation of information and recommendations to the judicial officer concerning the release/detention decision
 - “...should assemble reliable and objective information relevant to the court’s determination concerning pretrial release or detention... prepare a written report... based on an explicit, objective, and consistent policy for evaluating risks and identifying appropriate release options.
 - Standard 3.4 (a) makes it clear that the assessment and recommendations should not be developed in an ad hoc fashion or on the basis of a staff member’s subjective exercise of discretion. Rather, they should be developed on the basis of explicit and objective policies, followed consistently in cases involving similar sets of circumstances.”

Standard 3.5 Monitoring and supervision of released defendants

- “...establish appropriate policies and procedures...monitor the compliance of released individuals...promptly inform the court of facts concerning compliance or noncompliance...recommend modifications of release conditions...maintain records...assist defendants...notify released defendants of their court dates...coordinate services of other agencies...”

Other standards address the organization and management of the supervising agency, confidentiality, and additional reviews of detained individuals.²⁹

“Studies spanning 30 years and six states demonstrated court date notification systems effectively reduce failure to appear rates.”³⁰

SELECTING A RISK TOOL

Bureau of Justice Administration: How to select/implement pretrial risk assessment instruments

“...Should be consistent with the jurisdictional standards of relevant criteria for bail consideration...”

Risk factors included...need to demonstrably related to FTA and rearrest rates, not solely on recidivism.

Risk factors and assessment terms should be clearly and unequivocally defined to ensure consistent evaluations.

The instrument should be simple enough to use under day-to-day circumstances...
 ...Must be valid and/or revised for the implementing jurisdiction....
 ...instruments should be relatively easy for criminal justice personnel to understand and administer.”³¹

²⁹ National Association of Pretrial Services Agencies, *Standards on Pretrial Release*, 53-69.
<https://napsa.org/eweb/DynamicPage.aspx?Site=NAPSA&WebCode=standards>

³⁰ Crime and Justice Institute, *Creating an Effective Pretrial Program*. 14.
http://www.crj.org/page/-/cijfiles/CSJ_pretrial_toolkit_Jun13.pdf

³¹ Bureau of Justice Administration, US Department of Justice, *Pretrial Risk Assessment Research Summary*, 4.

“Since the arrestee is presumed innocent, the American Bar Association (American Bar Association, 2002), the National Association of Pretrial Services Agencies (National Association of Pretrial Services Agencies, 2004), and the National Institute of Justice (Mahoney et al., 2001) have issued strong recommendations about the adoption and use of objective standardized guidelines or criteria (i.e., risk assessments) in assisting court and pretrial agents in making bail decisions.”³²

PHONE CONVERSATIONS DISCLAIMER!

The notes from these phone calls were compiled during the conversation
and may not be perfectly accurate.

All information should be verified for accuracy and context.

6/6/17 BVG phone interview with Elizabeth Drake who has researched and authored numerous reports as a staff member of the Washington State Institute for Public Policy:

Elizabeth Drake, Washington State Institute for Public Policy
360-664-9075, elizabeth.drake@wsipp.wa.gov

A summary:

1. Risk assessments are only as good as updated to the population. If affordable, have the risk assessment validated. When asked how much it would cost to have a tool validated she couldn't give a specific dollar amount, but did say that she thought that a price estimate in the 150K-200K range was excessive, particularly if using researchers associated with an educational institution.
2. When deciding on a risk assessment tool she recommends:
 - a. Looking at the level of in house support and institutional support.
 - b. How often or when was the last time the risk tool was revalidated for the population?
 - c. Regarding risk tools that have been evaluated, how does the Ohio look? She said that of the risk tools evaluated by WSIPP:
 - i. They only looked at the risk tool from the perspective of felony cases, although the felony case may have had a misdemeanor as some of the counts.
 - ii. Wasn't sure if the different ratings for the risk tools looked at were significant.
 - iii. "It could be that the ORAS may be better for misdemeanant cases."
3. DOC no longer uses the LSIR as it was replaced by the Adult Static Risk Assessment (ASRA). The ASRA is tailored to the Washington DOC population. It was determined to be more accurate than the LSIR.
4. DOC is transitioning to the STRONG-R which has benefits over an all static risk tool (ASRA).

³² Federal Probation Journal, *The Development and Validation of a Pretrial Screening Tool*. 2.
http://www.uscourts.gov/sites/default/files/fed_probation_dec_2008.pdf

5. The ASRA (static) can be used in combinations with other dynamic risk assessment tools that also include dynamic factors.
6. She recommends that any tool selected for use should have an Area Under the Curve (AUC) score. "The AUC is a commonly used statistic that measures the strength of association between risk classification and recidivism."³³ She stated that a rating of .7 is "pretty dang good."
7. She recommended contacting for additional information about risk assessments/validation in Washington State:
 - Zachary Hamilton, Ph.D.
 - Director, Washington State Institute for Criminal Justice (WSICJ)
 - Washington State University
 - Spokane, WA
 - 509.358.7961
 - Zachary.Hamilton@wsu.edu

6/6/17 BVG phone interview with Jennifer Lux who is a Research Associate at the University of Cincinnati:

Jennifer Lux, Ph.D.. Research Associate
 Risk Assessment Co-Project Director
 University of Cincinnati Corrections Institute
 PO Box 210389, Cincinnati, OH 45221-0389
 Cell: 440-537-9865, Tel: 513-556-6118
luxjl@ucmail.uc.edu

1. A summary of the Ohio Risk Assessment System (ORAS):
 - a. Provides multiple tools across the criminal justice system.
 - b. Provides consistent measurement of defendants in similar situations/circumstances.
 - c. Provides more than the initial training. The university is a "partner" with those that use the system. They provide ongoing support.
 - d. The ORAS is free to use once staff have been trained and certified. Because the tools are from a university they are not proprietary.
 - e. The ORAS comes with the research. They continue to study the tools to make sure they work.
2. They are currently working on revalidating the ORAS in Ohio. They are finishing the draft report now. They are completing the validation study for Massachusetts and have found the ORAS to be valid in that state without any changes. They are currently working on validation studies in Vermont, Colorado, Connecticut and Indiana (revalidation). An upcoming validation study will be completed in California. Indiana's original study was valid without any changes to the risk tool.
3. Texas has a validation study completed but in a different way than the other states. Texas asked the University of Cincinnati to start from scratch and look at all 200 possible

³³ Washington State Institute For Public Policy Report, *Predicting Criminal Recidivism: A Systematic Review of Offender Risk Assessments in Washington State*, 3.
http://www.wsipp.wa.gov/ReportFile/1554/Wsipp_Predicting-Criminal-Recidivism-A-Systematic-Review-of-Offender-Risk-Assessments-in-Washington-State_Final-Report.pdf

- risk factors and create a tool based on the results. She reports that the Texas risk tool ended up looking very similar to the original ORAS tool with only a few different questions. She concluded from this that the risk factors in Ohio and Texas are very similar. The Texas validation study was based on interviews with thousands of offenders.
4. The requesting agency/state pay for the validation study. She provided a rough estimate of the cost as being between 30K-100K depending on how many of the ORAS tools are being validated.
 5. They can only validate data that has been collected. Extra data can be collected for future validation studies. Their approach is that it is a combination of factors that impact recidivism.
 6. The ORAS launched in 2009. There have been no change in questions on the tool, but improvements have been made in how the interviewer is trained to ask questions of the defendant. This has been reflected in updating their trainings.
 7. After initial interviews, 200 potential risk factors were identified. It was only after analysis that the final risk factors were determined.
 8. Any dynamic factors must be weighted and determine if the question is being answered truthfully. All risk assessments that engage dynamic factors must find ways to get truthful answers. The risk score is based on the defendant answering the questions truthfully. The training is geared towards gathering truthful and accurate information and exploring different ways of asking the questions to get there. Training includes how to probe and get the correct answer. Collateral contacts can also be a way of verifying information provided.
 9. Using a static instrument tool (ASRA for example) is the only way to get away from interviewing. Dynamic cons include at times having to depend on what defendant reports. Using dynamic risk factors allow for the gathering of information that a static risk tool can't.
 10. All 9 of the ORAS risk tools have been validated. The misdemeanor tool has been validated and the questions are a subset of the community supervision tool questions. There is one extra question asked that is not on the other tools. That question involves asking about heroin use. They looked at other drug use and determined that it is heroin that has the impact on FTA rates and recidivism.

6/9/17 BVG phone interview with Zachary Hamilton who an Associate Professor at Washington State University, Department of Criminal Justice and Criminology.

Zachary Hamilton, Ph.D.
Director, Washington State Institute for Criminal Justice (WSICJ)
WSU Spokane, Department of Criminal Justice and Criminology
509-358-7961 Office
509-336-9208 Cell
Zachary.Hamilton@wsu.edu

1. He created a pretrial risk assessment for Spokane that has been validated. He is working on one for Seattle.
2. Variations for creating a risk assessment. He has a "book chapter" he can send.
3. Based on needs, resources, risks, needs, who is eligible and who need what resources. Maybe only need an assessment that measures only risk. Frame the tool to what you want it to do. Recidivism (general or specific, violent or property. What you want the tool to do (reduce jail population, identify offender needs). Uses point value systems. Various

levels and what resources the jurisdiction has available. What do you want, how quickly do you want it.

4. Strength of validation is more important than simply validation.
5. Other's tools may or may not work depending on what a jurisdiction is looking for and the local issues. Prevalence of different crimes may impact what a tool would look like
6. Purchasing an off the shelf tools may work or not. A customized tool may be more of what the local jurisdiction specifically looking for.
7. Experience with large DOC type departments with more resources.
8. Options
 - a. ASRA, not created specifically for pretrial or predicting FTA rates. Static.
 - b. Created from scratch taking into consideration local needs/interest.
 - c. Create a proxy tool. Using a combination of some items from AOC, other jurisdictions, and try to match them to the local jurisdictions.
9. Willing to come Whatcom County and meet with the task force to talk about risk assessment for the cost of transportation (flying from Spokane to Seattle and back, getting from Seatac to Bellingham).

OHIO RISK ASSESSMENT SYSTEM (ORAS)

"A major goal of the ORAS was to conform to the principles of effective classification...efficiently allocate supervision resources and structure decision making in a manner that reduces the likelihood of recidivism."³⁴

"...validating risk assessment instruments on specific target populations is important...As a result, the Ohio Risk Assessment System was designed to predict recidivism at different points in the Ohio criminal justice system."³⁵

"The primary measure of recidivism for this study was arrest for a new crime."³⁶

"The ORAS consists of a series of assessment tools that measure the likelihood of recidivism at different points in the criminal justice system. The validation results are promising and reveal that all assessment instruments are able to significantly distinguish between risk levels."³⁷

Other topic areas in this article include:

- Principles of Effective Classification
- Assessment Construction
- Responsivity Assessments
- The Pretrial Assessment Tool (and others) Validation Results
- Predictive Validity of the Various Tools

³⁴ Federal Probation Journal, *The Creation and Validation of the Ohio Risk Assessment System*, 1. http://www.uscourts.gov/sites/default/files/federal_probation_journal_june_2010.pdf

³⁵ Ibid., 2.

³⁶ Ibid., 3.

³⁷ Ibid., 9.

OHIO RISK ASSESSMENT SYSTEM (ORAS) PRETRIAL RISK ASSESSMENT TOOL

“The outcomes tracked for each defendant were whether they failed to attend a mandatory court appearance (FTA) and whether any new offense occurred while they were released pending sentencing. Both of these outcomes were coded dichotomously, with a value of 1 indicating the occurrence of this outcome and a 0 indicating that the outcome had not occurred for that case.”³⁸

“...items were selected based on their relationship to the two outcomes of interest: failure to appear and new arrest under pretrial supervision. To determine which items were selected, chisquare statistics were utilized.”³⁹

³⁸ Federal Probation Journal, *The Development and Validation of a Pretrial Screening Tool*, 4. http://www.uscourts.gov/sites/default/files/fed_probation_dec_2008.pdf

³⁹ *Ibid.*, 6.

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Adult Static Risk Assessment (ASRA) web-based program

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What is the Adult Static Risk Assessment web-based program?

An actuarial risk assessment is a process resulting in a score based on combining several measures of offender characteristics in such a way as to best predict future behavior. The Washington State Adult Static Risk Assessment is an actuarial assessment that combines age, gender, adult misdemeanors, and adult and juvenile felony history of convictions to predict re-offending. Static refers to risk factors that cannot decrease such as criminal history. Once a criminal record is obtained, it will always be a part of an offender's history.

The primary function of the static risk assessment is to categorize offenders into one of the following risk for re-offense levels: low, moderate, or high (property, drug, or violent). As stated in the report by the Pew Center on the States, *One in 31; The Long Reach of American Corrections*, "sophisticated risk assessment tools now help determine which offenders require the most supervision and what sort of monitoring and services they need."

The risk assessment provides an easily accessible summary of criminal history for the judicial officer, prosecutors, and defense counsel. This information can be helpful to the court to determine appropriate conditions for the offender pending trial/plea and sentencing.

The risk assessment may be conducted pre-sentence, prior to the first appearance (if the person is in custody), or prior to the arraignment (if the person is summoned to appear). Because the risk assessment portion is based entirely on Washington State and Non-Washington State criminal conviction history and other static information, it can be completed without contact with the offender.

For more information on the ASRA program, see the [Adult Static Risk Assessment User Guide](#).

Fixing the Money Bail System

By Judge Theresa Doyle

“[U]sually one factor determines whether a defendant stays in jail before he comes to trial. That factor is not guilt or innocence. It is not the nature of the crime. It is not the character of the defendant. That factor is, simply, money. How much money does the defendant have?”

—Robert F. Kennedy

The money bail system is under scrutiny across the nation, and for good reason. Requiring an accused to post money bail or go to jail conflicts with the presumption of innocence. Money bail fails to achieve effectively the goals of protecting public safety and ensuring future court appearances. Poor defendants who may pose little or no risk of violence or not appearing in court can languish in jail awaiting trial. Wealthy defendants at high risk for violence or flight can remain free by posting cash or property. Taxpayers pay the high costs of detaining people unnecessarily. Society bears the noneconomic costs of lost employment, housing, family support, public benefits, and financial and emotional security for the children of the incarcerated person.

Racial disparities are worsened under a money bail system. Studies show that judges, like most others in our society, suffer from implicit racial bias, and that the race of the accused affects release and bail decisions.

Outcomes are worse for defendants who are in jail pretrial. Many decide to plead guilty, whether or not they are, in order to avoid the collateral consequences of remaining in jail. Studies show that defendants who remain in jail pending trial and decide to plead guilty receive stiffer sentences than do recidivist offenders who are not incarcerated pretrial, but are otherwise similarly situated.

Judges have discussed concerns about the unconscious influence that a defendant's custody status has on their sentencing decisions. With an out-of-custody defendant, the judge has to make an affirmative decision to send the person to prison or jail rather than imposing an alternative. An in-custody defendant is already there.

The data supports these concerns about defendants who are incarcerated pretrial receiving worse sentences. A study by the Arnold Foundation showed that in-custody defendants were three times as likely to be sentenced to prison, and their sentences were more than twice as long, when compared with out-of-custody defendants convicted of similar offenses and with comparable criminal histories.

Money bail has been challenged in recent lawsuits. The Equal justice Initiative recently filed a class action in California and seven other states. The grounds are violation of equal protection, due process and the presumption of innocence. The constitutionality of monetary bail schedules, which set the bail amount by offense, is being litigated in several jurisdictions.

Many states and counties recognize the failures of the money bail system. Projects are underway across the nation to ensure release is based on risk, not financial ability. Most use an assessment of the risk of violence and failure to return to court. Judges set conditions of release to maximize the goals of court appearance and public safety. Pretrial monitoring follows.

Washington State is a “right to bail” state. The exception is where the charge is a capital offense or carries a potential life sentence. Wash. Const. Art. I, section 20. For all other offenses, Criminal Rule (CrR) 3.2 applies and presumes personal recognizance release (PR) absent a substantial likelihood of failure to return to court, or risk of commission of a violent crime or interfering with the administration of justice. Where the risk is failure to appear, CrR 3.2 requires the least restrictive alternative to money or property bond.

King County has one of the lowest incarceration rates nationwide, and a vigorous pretrial release program. In King County Superior Court, judges review the evidence supporting the current charge, the defendant’s criminal history and other relevant information to assess risk of violence. To assess the risk of nonappearance, the judge considers prior warrants, family and community ties, residential stability, treatment participation, employment and other relevant information. If straight PR is not appropriate, judges then make an informed decision whether to detain the person on bail, or order work release, electronic monitoring, supervised treatment and education programs (Community Corrections Alternative Programs or “CCAP”), call-in day reporting, or other conditions. The call-in day reporting program costs less than \$6 a day per participant, excluding overhead costs.

Some courts, such as Seattle Municipal Court, send text and telephone reminders of future hearings. Multnomah County uses an automated call system, which reduced the number of persons who failed to appear by 45 percent, and saved \$1.6 million in a single year.

This smarter approach reserves jail beds for those who pose a risk of violence or flight, allows the remainder to be released and keep their jobs and housing, and offers treatment and support resources for those who need them. Often defendants in King County released to CCAP begin turning their lives around long before their trial date, and in return receive a more favorable resolution of their case. Judges who have presided over the felony release calendar, and have ordered defendants to CCAP,

regularly hear from grateful defendants battling drugs or mental illness that CCAP was life-changing.

Pretrial release programs are not available in all counties. In preparing a presentation on money bail for the Superior Court Judges Association (SCJA) spring judicial conference, I surveyed my colleagues and learned that other courts have nothing like CCAP's wrap around program. Few jails offer work release. Most counties have no day reporting. Many courts permit electronic monitoring through a private vendor, but the fees charged make it inaccessible to poor defendants. Some courts are using a risk assessment to inform release decisions, but report there are not enough jail alternatives when there is some but not a high risk of non-appearance in court. The default is jail. The problem is that pretrial programs and supervision cost money.

With a grant from Department of Justice (DOJ), Yakima County recently launched a pretrial release program as one of three national "Smart Pretrial" sites. The program uses a validated risk assessment from the Arnold Foundation to evaluate likelihood of violence and failure to appear. Pretrial release decisions are based on a tiered system, ranging from PR with an automated reminder call, to electronic monitoring with weekly contact with the pretrial services supervisor. Effectiveness and cost savings will be studied. The program could become a model for other Washington jurisdictions.

Even with sensible pretrial release programs, issues with Washington's bail system would still remain. Washington is a "right to bail" state, unless the charged offense carries a possible life sentence. Only then is preventive detention, or a "no bail" hold allowed. In all other high risk cases, the Washington Constitution requires judges to set a bail amount. What happens with these likely violent defendants is that prosecutors will recommend, and judges will often impose, a prohibitive bail amount they hope the defendant cannot afford. This practice perverts the purpose of bail which, according to the appellate courts, is to effect release of the accused. Paradoxically, a dangerous defendant who is wealthy and able to meet the high bail is automatically released. This undermines the goal of public safety. A fix, however, would likely require an amendment to the Constitution because bail setting is required in all but capital and potential life sentence cases.

Another problem is the unavailability of an appearance bond after a recent amendment to CrR 3.2, following State v. Barton, 181 Wash.2d 148 (2014). The prior version of CrR 3.2 provided in subsection (b)(4) that an accused could deposit ten percent of the bail bond amount with the court, and get that amount returned at resolution of the case, if the person attends court and has no new crimes. Unlike a commercial surety bond, an appearance bond allows the defendant return of the ten percent cash, which commercial bail bondsmen usually take as their fee. Obviously the appearance bond option benefits defendants with limited financial resources, who cannot afford to lose their 10 percent. Judges sometimes used appearance bonds where there was future

appearance risk but little or no violence risk, and pretrial jail alternatives either were not available or not appropriate.

The problem in Barton was that the pretrial order required the ten percent “in cash or other security.” The Washington Supreme Court in Barton held that this violated the defendant’s constitutional right to bail “by sufficient sureties”, meaning a third party guarantee of that ten percent of the bail amount. Barton, 181 Wash.2d at 168. Barton threw the legality of appearance bonds into question. Commercial bonding companies hailed the decision.

Responding to its Barton decision, the Supreme Court then repealed that section of Criminal Rule 3.2 specifically authorizing appearance bonds. Likewise, King County Superior Court repealed that part of its counterpart local court rule. Now, fashioning a release order that operates like an appearance bond but complies with Barton and court rule is challenging. There is a proposed amendment to CrR 3.2 being studied which would specifically authorize appearance bonds and also comply with Barton.

The money bail system contradicts the presumption of innocence, discriminates based on wealth, fails to ensure public safety, jails people unnecessarily, imposes high social costs, and drives up jail costs. Fortunately, these flaws are coming to the attention of local governments, prosecutors, defenders and judges.

In April, at the annual SCJA judicial conference, there will be a presentation about money bail and alternatives used in other jurisdictions. Likewise, on May 25, 2016, Justice Mary Yu and I will co-chair a Symposium at the Temple of Justice in Olympia for the Supreme Court on issues with the money bail system. The Symposium is open to the public, lawyers welcome.

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