



HOW PRETRIAL RISK ASSESSMENTS REDUCE DISPARITIES AND IMPROVE SAFETY

The right risk assessment tool used the right way will lead to a pretrial justice system in Texas that is safer and more equitable than our current system.

Pretrial release hinges on money in most Texas counties—if one can afford the bond amount set in their case, they are released. Conversely, those who cannot afford the bond amount remain in jail. As a result, many dangerous people with financial resources are released, while low-risk, low-income people remain in jail.

Texas needs a better pretrial justice system, one that maximizes public safety while also treating people equitably. In order to develop such a system, pretrial release decisions should instead hinge on a person's risk of committing another crime if released and their risk of not appearing in court.

Pretrial risk assessments help judges make decisions based on the most accurate and objective information available. Risk assessments score a person's likelihood of returning to court for future court appearances and likelihood of reoffending if released. That score informs the judge's decision about pretrial release and any necessary conditions of release.

There are some common misconceptions about risk assessment tools, but the research shows that the right risk assessment used correctly actually make our communities safer and reduce existing racial and ethnic bias.

PRETRIAL RISK ASSESSMENTS CAN IMPROVE PUBLIC SAFETY

- Modern risk assessments can reduce the likelihood that someone is released who will commit additional violent crimes.¹
- A 2017 study commissioned by the Texas Office of Court Administration showed that 20% more crimes, and specifically 12% more violent crimes, were committed by people released on bond in Tarrant County, which was not using a risk assessment, compared to Travis County, which had implemented a risk assessment.²

PRETRIAL RISK ASSESSMENTS CAN REDUCE RACIAL BIAS

- Racial and ethnic disparities currently exist in pretrial decisions about bond type and amount. According to the Texas Judicial Council's Criminal Justice Committee, "[o]ver 25 research studies have consistently shown that African American defendants are more adversely impacted by pretrial detention decisions than are white defendants," meaning they are more likely to be assigned money bail and at higher amounts.³ Similar studies have documented disparities that adversely impact Hispanic defendants.⁴
- Yet, certain modern pretrial risk assessments have been shown to reduce this racial and ethnic bias. These tools allow for more objective pretrial decisions based upon factors that have shown to be actually predictive of risk.
- For example, one widely-used risk assessment known as the Public Safety Assessment (PSA) has been tested for racial bias and demonstrated to produce race-neutral and gender-neutral results that are not discriminatory towards any group.⁵

TO ACHIEVE BEST RESULTS, TEXAS NEEDS THE RIGHT RISK ASSESSMENT INSTRUMENT

- All risk assessment tools are not created equal. The preferred tools have been developed with the express purpose of reducing bias, while other inferior tools use factors that merely serve as proxies for race.⁶
- The Texas Office of Court Administration has developed a Texas-specific tool based on the PSA available for free to any Texas court.⁷ The PSA is an outstanding tool because it boils risk assessment down to a handful of factors related to defendant's past criminal convictions and failures to appear in court in order to determine future likelihood of failure to appear, new criminal activity, and new violent criminal activity, and has a high degree of predictive accuracy.⁸
- One key for any tool selected is that the factors and formula used to predict risk be transparent to all stakeholders including the public. The formula used to produce PSA risk scores is also publicly available.⁹

TEXAS SHOULD ALSO ESTABLISH THOUGHTFUL GUIDELINES FOR USE

- To ensure a pretrial risk assessment tool is working to reduce, not exacerbate, any existing bias, judges and others who will be using the tool must be trained how to properly use the tool.
- Furthermore, risk assessment results should never dictate that a judge detain an individual, but should instead be one piece of information contributing to individualized judicial decisions about the terms of pretrial release.
- After implementation, state and local jurisdictions should maintain publicly available data to monitor the predictive accuracy of the risk assessment tool as well as racial disparities, and adjust the risk assessment tool as necessary. Local jurisdictions should also continue to customize the tool to the local population.¹⁰

Using the right risk assessment tools to inform judicial decisions about pretrial release will ultimately lead to safer communities and a fairer justice system.

¹ Sharad Goel et al., *The Accuracy, Equity, and Jurisprudence of Criminal Risk Assessment* 8, 11 (2018) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3306723

² Dottie Carmichael et al., *Texas A & M Univ. Pub. Policy Research Inst., Liberty & Justice: Pretrial Practices in Texas* (2017), available at http://www.txcourts.gov/media/1437499/170308_bond-study-report.pdf.

³ Texas Judicial Council Criminal Justice Comm., *Report & Recommendations* (2016), available at <http://www.txcourts.gov/media/1436204/criminal-justice-committee-pretrial-recommendations-final.pdf>. See also David Arnold et al., *Racial Bias in Bail Decisions* (2018), available at <https://www.princeton.edu/~wdobbie/files/racialbias.pdf> (Under a traditional bail system, black defendants are 3.6 percentage points more likely to be assigned monetary bail than white defendants and given bail amounts \$9,923 greater than white defendants).

⁴ *Id.*

⁵ Laura and John Arnold Foundation, *Results from the First Six Months of the Public Safety Assessment – Court in Kentucky*, p. 4 (July 2014); see also Claire M. Booker, *Yakima County, Washington Pretrial Justice System Improvements: A Pre- and Post-Implementation Analysis* (Nov. 2017), available at <https://justicesystempartners.org/wp-content/uploads/2015/04/2017-Yakima-Pretrial-Pre-Post-Implementation-Study-FINAL-111517.pdf>

⁶ Pretrial Justice Institute, *Pretrial Risk Assessment Can Produce Race-Neutral Results* (2017).

⁷ Pretrial Risk Assessment Information System for Texas, <http://www.txcourts.gov/praitx/>.

⁸ Pretrial Risk Assessment Can Produce Race-Neutral Results, *supra* note 5.

⁹ Public Safety Assessment: Risk factors and formula, <https://www.psapretrial.org/about/factors>.

¹⁰ Goel et al., *supra* note 1.



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