

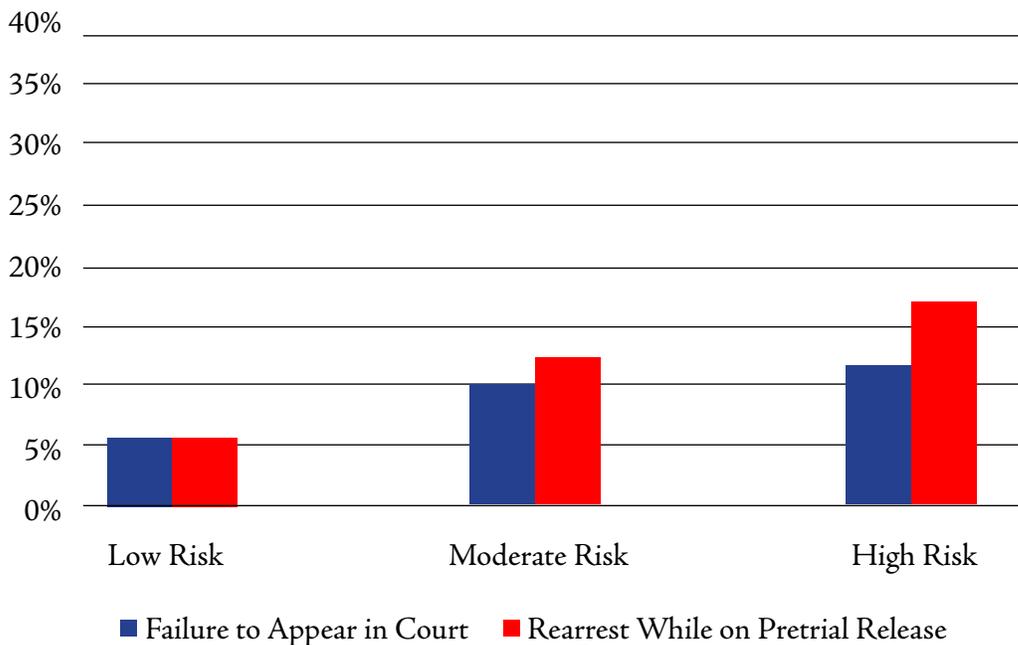
## Pretrial Risk Assessment 101: Science Provides Guidance on Managing Defendants

Every day, criminal justice officials make a decision that has implications for public safety and costs: Should a defendant be released pretrial or detained until adjudication? The period of time between arrest and disposition (the pretrial stage) provides an opportunity to use advancements in science to safeguard the public.

Historically, personal experience, professional judgment, confusing statutes, and monetary

charge-based bail schedules have guided critical bail decisions. However, in the last decade, communities around the country have demonstrated that the decision to release or detain a defendant pretrial can be improved by assessing the defendants' risk. Pretrial instruments can help decision-makers understand the likelihood of pretrial misbehavior to improve public safety outcomes and save money.

**Chart 1: Data Driven – Pretrial Risk Assessment Instrument Accurately Identifies Pretrial Risks**



A validation study of the Kentucky Pretrial Risk Assessment Instrument demonstrates the instrument’s ability to predict pretrial misconduct. As indicated in Chart 1, defendants categorized as low risk have the lowest rates of pretrial failure, and those categorized as high risk have the highest rates (rates of pretrial failure are typically low, even among those labeled “high risk”).<sup>1</sup>

## 1. What is a pretrial risk assessment instrument?

A pretrial risk assessment instrument is typically a one-page summary of the characteristics of an individual that presents a score corresponding to his or her likelihood to fail to appear in court or be rearrested prior to the completion of their current case. Instruments typically consist of 7-10 questions about the nature of the current offense, criminal history, and other stabilizing factors such as employment, residency, drug use, and mental health.<sup>2</sup>

Responses to the questions are weighted, based on data that shows how strongly each item is related to the risk of flight or rearrest during pretrial release. Then the answers are tallied to produce an overall risk score or level, which can inform the judge or other decisionmaker about the best course of action.

## 2. What risk factors are on a pretrial risk assessment instrument?

Unlike other risk/needs assessments, the pretrial risk assessment instrument contains factors that are associated with increased chances of only two types of failure during a short period of time: failure to appear for all court hearings and rearrest on a new charge. Typically, instruments weigh such factors as nature of the current charge, any pending charges, number of prior convictions resulting in jail time, prior violent convictions, failure to appear history, residential stability, employment/caregiver history, and drug abuse history.<sup>3</sup>

Which factors are predictive, and the weight of each risk factor, varies by jurisdiction. Some of this varia-

tion is based on differences in statutes, data quality, availability of supervision resources, etc. It is important to validate any instrument on your population and revalidate on a regular basis.

## 3. Why is it important to know someone's risk level?

A person's risk level should be used to guide two decisions: 1) the decision to release or detain pretrial, and 2) if released, the assignment of appropriate supervision conditions. While the charge for which someone was arrested is important in these decisions, the charge alone does not inform you of someone's likelihood to make all court appearances or his or her risk to public safety.

Research has shown that intensive supervision can work well with some higher-risk individuals, but it usually results in poor outcomes for people who have been assessed to be lower risk.<sup>4</sup>

The other reason to know someone's risk score is to make the best use of scarce resources. It is a waste of money to over-condition people who do not need those conditions in order to comply. It is a good use of money to provide supervision in the community to someone who needs it, when compared to the cost of housing, feeding, and providing medical care in jail. Supervision can cost between \$3-\$6 a day. Jail (housing, feeding, medical care) can cost roughly \$50 a day.

Most jurisdictions have bond schedules, which base a dollar amount set for pretrial release on the charge for which the person was arrested. These schedules do not have any mechanism to take into account the individual risks posed by a defendant, and often they permit someone to bond out prior to being screened for risk.

#### 4. How effective are pretrial risk assessment instruments?

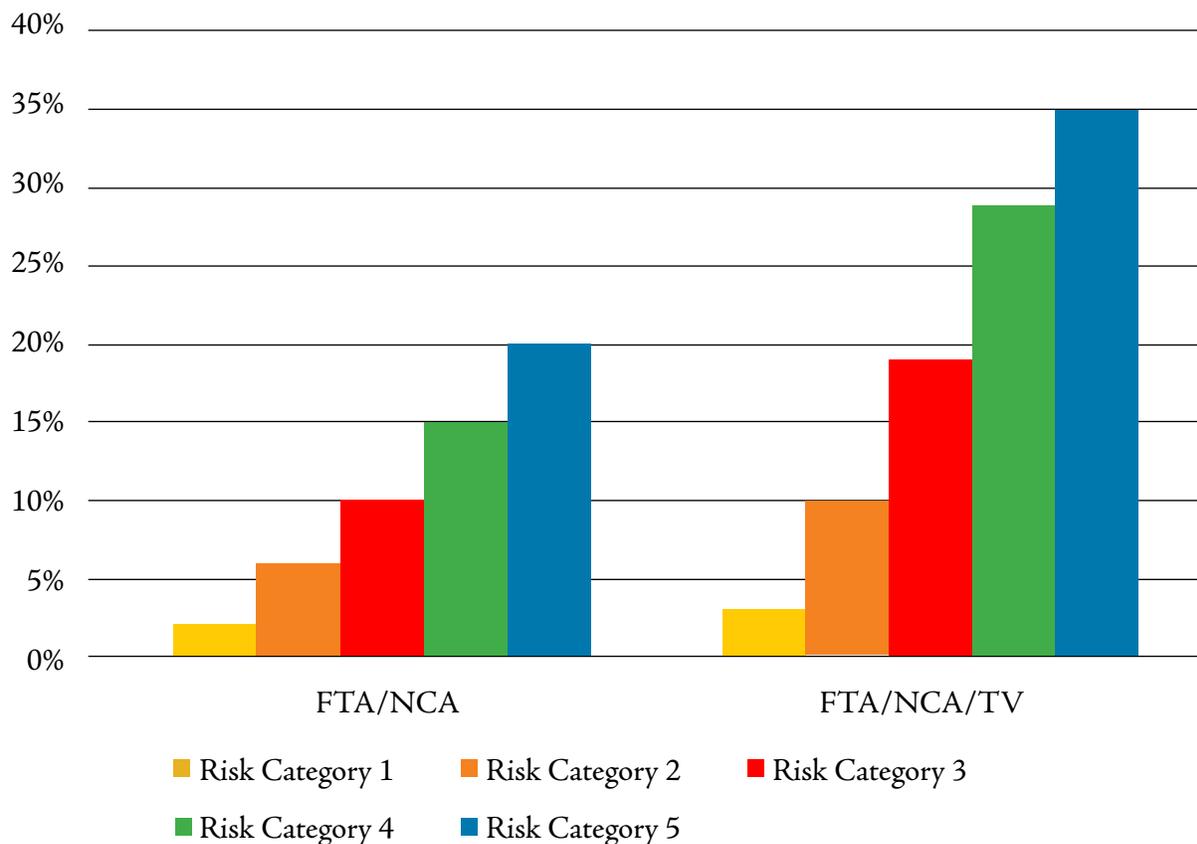
Pretrial risk assessment instruments are highly effective in their ability to predict rates of success on pretrial release (return to court and no new arrests while on release). Numerous studies have shown that validated pretrial risk assessments can accurately differentiate defendants' risk.<sup>5</sup>

The Virginia Risk Assessment Instrument uses a low/below average/average/above average/high scale to predict risk. A study of that instru-

ment showed its efficacy by demonstrating that low-risk individuals had a 92.9% success rate, average-risk individuals had an 82.2% success rate, and high-risk individuals had a 68% success rate.<sup>6</sup>

In the federal system, all 94 districts use a standardized instrument developed using their data. Chart 2 shows the outcomes, with Risk Category 1 being the lowest risk and Risk Category 5 being the highest. Those scored as Risk Category 5 still have reasonable outcomes when released pretrial with appropriate conditions of supervision.<sup>7</sup>

**Chart 2: U.S. Pretrial and Probation, Federal Pretrial Risk Assessment (FTA = Failure to Appear; NCA = New Criminal Arrest; TV = Technical Violation)**



## 5. How are pretrial risk assessment instruments developed?

Risk assessment instruments are developed by collecting and analyzing local data to determine which factors, and to what degree, are predictive of pretrial risks (failure to appear or rearrest). Careful consideration should be taken when developing an instrument for your jurisdiction. There are a number of model instruments that have been validated in one jurisdiction and adopted by other jurisdictions. In such cases, the jurisdiction collects data and then validates the imported tool on their own population. All instruments should be revalidated at regular intervals to ensure they retain their predictive validity. Differences in bail statutes, court rules, release options available to the court, and other factors cause variations from site to site. Statistical analysis on local data helps ensure these are taken into account.

There are a number of ways to accomplish the development of a locally valid instrument. Local universities and researchers may have the capacity to develop an instrument at reasonable cost. The U.S. Department of Justice may provide assistance under grant programs such as Justice Reinvestment or through their technical assistance programs.

## 6. What are the challenges and limitations of pretrial risk assessment?

Pretrial risk assessment instruments cannot predict with accuracy a specific individual's behavior. The tools are research-based guides to taking risks. There will be lower-risk individuals who fail on pretrial release, and there will be higher-risk individuals who succeed. However, these instruments provide an objective, standard way of assessing the likelihood of pretrial failure that research shows produces higher accuracy than subjective assessments by even the most experienced and well-respected decisionmakers.

This does not mean that pretrial risk assessment instruments should be used in place of professional discretion. The instrument produces a score that can help anchor a decision, and deviations (overrides) can be expected and the reasons should be documented.

The pretrial risk assessment instrument is an appropriate tool for an in/out custody decision based on *risk*. Other instruments are available to help identify areas of *need* that should be addressed during supervision (such as the need for mental health or substance abuse assessments).

Finally, the instrument must be consistently validated to ensure its predictive validity. For this to happen, jurisdictions must collect a variety of data about defendants, including if/how they are released pretrial, the quality and quantity of supervision conditions, their pretrial behavior, and the adjudication of their case. This data can help identify any other predictive factors for pretrial success, which programs can use to improve.

## 7. What can stakeholders do?

Criminal justice stakeholders – from elected county officials and sheriffs to judges and prosecutors – are putting research into action. They are collaborating to ensure that their policies and procedures match research to produce the best and most cost-effective outcomes. Over the last few years, jurisdictions have undertaken reviews of pretrial policies and procedures and implemented pretrial risk assessment instruments. For example:

**Kentucky:** Because of their successful use of pretrial risk assessment instruments to keep only those who need to be detained pretrial and successfully manage other defendants under community supervision, Kentucky’s legislature mandated the use of the instrument prior to first appearance in the Public Safety and Offender Accountability Act of 2011 (HB463).

**Ohio and Indiana:** In 2009, researchers from the University of Cincinnati used Ohio data to develop a set of risk assessment instruments to be used throughout the criminal case process, including pretrial.<sup>8</sup> The instruments are publicly available and formed the basis for a similar project completed in 2010 for Indiana.<sup>9</sup>

**Mecklenburg County, NC:** In 2010, the county implemented a pretrial risk assessment instrument and a research-based matrix of supervision conditions matched to risk levels. As a result, they reduced the average daily population of the jail by 33 percent.<sup>10</sup>

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## Endnotes

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