

NAPSA Annual Conference and Training Institute



Pretrial Success Assessments

SESSION 3

Why assessments matter in pretrial decisions

They give us a clearer picture of the person in front of us – moving beyond assumptions and guesswork.

They provide a structured framework – helping us reduce bias and make decisions based on evidence, not instinct.

They put risk in context – allowing us to understand the likelihood of outcomes and make informed recommendations.

Purpose of Pretrial Assessment

To Predict

- Helps identify who is likely to succeed or fail on pretrial release
- Why predict? Provides an opportunity to intervene and assist before failure occurs

Forensic risk assessment is the attempt to identify the probability that a given individual will engage in antisocial behavior within a defined follow-up period.

- Dr. Stephen Hart

Actuarial Assessment Tools

- **Objective:** conducted exclusively on things that can be counted or quantified
- Based on data that form patterns of the past
- More accurate than subjective assessments
- Used to guide discretion



Auto Insurance Assessment

- Age
- Distracted driving
- Peer(s) in vehicle with driver
- Low driving skills
- Low compliance with traffic laws



Risk Mitigation

Auto Insurance



Drivers education

Restrict nighttime driving

Prohibit peers as passengers

Strict enforcement:

- Seat belts
- texting, etc.

“Prediction of future criminal conduct is an essential element in many of the decisions rendered throughout our criminal justice system.”

Jurek v. Texas, 428 U.S. 262 (1976).

Assessments in Other Justice Areas

- Jail classification
- Specialty courts
- Sentencing
- Probation supervision levels
- Parole



"To use the less efficient of two prediction procedures in dealing with such matters is not only unscientific and irrational, but also unethical." - Grove & Meehl (1996)

- Actuarial (statistical) methods outperform clinical judgment in predicting outcomes.
- Structured, evidence-based tools reduce bias and improve accuracy.
- Using inferior methods is ethically problematic when better options exist.

Why Prediction Methods Matter

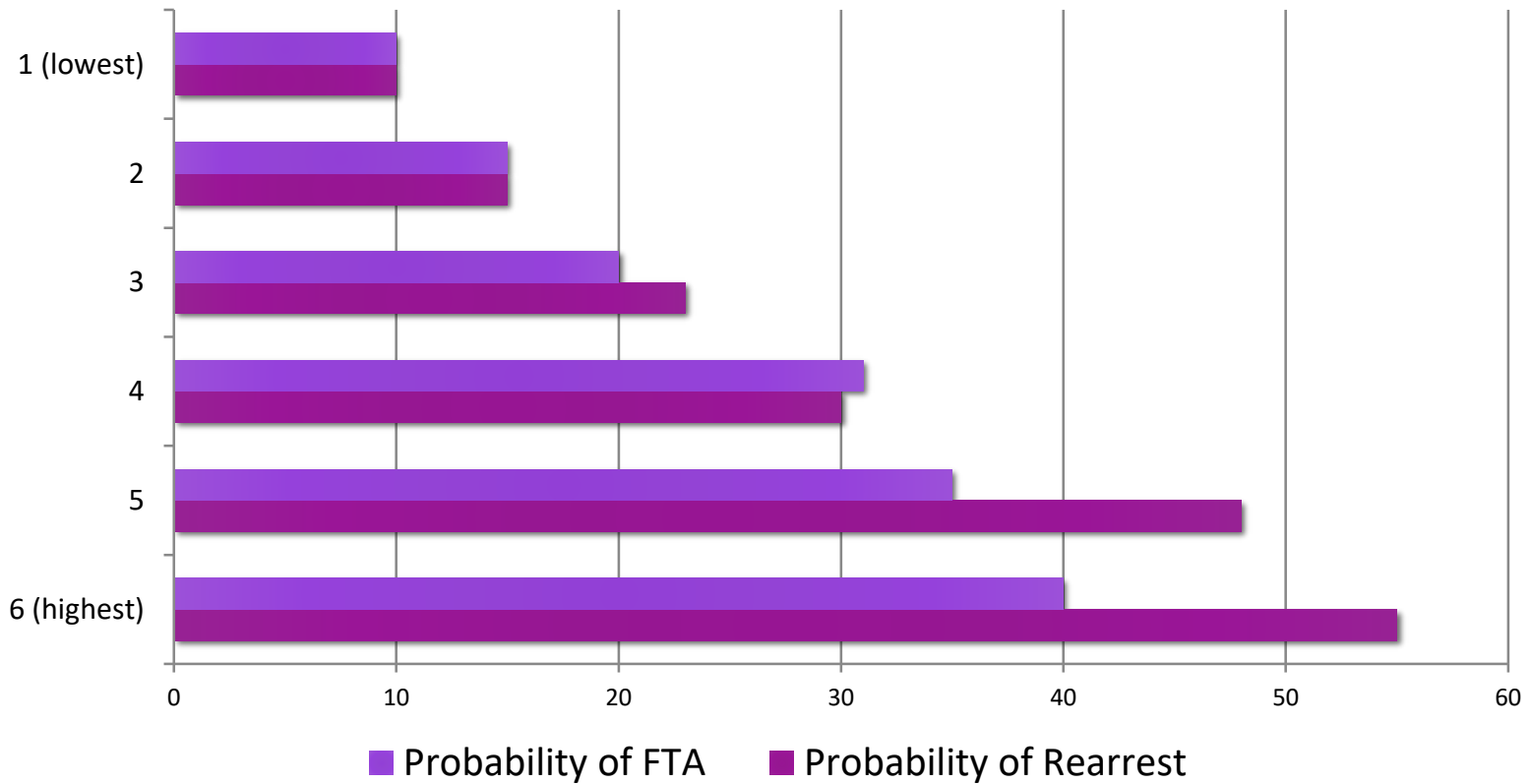
Pretrial Assessments



	Risk Mitigation Level	
Location	Low	Medium/High
Release Without Conditions	Yes	No
Supervised Release	No	Yes

Goals of Pretrial Assessment

Pretrial Assessment & Pretrial Release



How Pretrial Assessment Tools Are Validated

Data sample is drawn and examined

Shared characteristics measured for predictive strength

Risk Mitigation level assigned according to probabilities

- low, medium, “high”

Model is tested to prevent unintended bias



NAPSA & ABA Standards on Pretrial Assessment

- All defendants in custody should have one
- Assessments should be objective
- Locally validated





What best defines what “objective assessments” are?

- A. They are based on the judgment of those who have extensive experience in the field.
- B. They are based on the judgment of those who are highly intuitive by nature.
- C. They are based on things that can be counted or quantified.
- D. None of the above.



What has the research shown about the use of objective assessment tools?

- A. They are just as accurate as the subjective assessments of experts in the field.
- B. They are more accurate than the subjective assessments of experts in the field.
- C. While they are not as accurate as the subjective judgment of experts, they are better at assuring unbiased decision making.
- D. None of the above.



What statement best describes what a “validated pretrial assessment” is?

- A. It is one that has been used for a number of years and has gained acceptance by those who use it.
- B. It is one that has been tested through rigorous research and found to successfully sort defendants into risk mitigation categories
- C. It is one that is used in multiple jurisdictions.
- D. It is one that makes intuitive sense.



Session 4: Addressing Concerns about Pretrial Success Assessments



Addressing Concerns About Pretrial Assessments



Some Pretrial assessments unfairly or inaccurately label individual defendants “high, medium, or low” risk, while most research outcomes are positive.



- Pretrial assessments in and of themselves never do anything other than create outcome levels based on various types of defendant groups.
 - The subjective labeling of the groups comes from the stakeholders, not the science.
 - Pretrial assessments merely report the reality of what happened in the past to specific defendant groups.
 - A Judge may choose to use past data to inform the pretrial decision, or they may not. The process of pretrial decision making must always preserve judicial discretion.
-



Some Pretrial assessments provide various labels of “risk” without specifically identifying what those labels actually mean.



- We agree that some do.
 - This can be resolved through training or more clearly operationalizing terms on Pretrial assessment reports.
-



Some Pretrial assessments only provide an overall pretrial failure risk score, which is a combined outcome of missing a court appearance and/or being arrested.



Pretrial Services Reports can now include probabilities for court appearance, new arrests, as well as violent arrests, allowing judges to make an informed release determination.



Some Jurisdictions have addressed this issue by providing Reports which now include success rates for each level, giving judges necessary context.

Example:

EL PASO PRETRIAL RESEARCH ASSESSMENT - REVISED (EPPRA-R)

The following research provides the latest empirical outcomes of pretrial defendants in El Paso who are most closely associated with this defendant. This research is intended to provide empirical information to supplement a judge's statutory obligation to consider public safety and flight risks. The EPPRA-R empirically categorizes defendants into four pretrial categories of research outcomes based on El Paso's local population, as follows:

DEFENDANT'S CATEGORY:

Level 1

Level 1: 81% Overall Success Level 2: 70% Overall Success Level 3: 60% Overall Success Level 4: 51% Overall Success

"Overall Success" definition: No warrants during the pretrial period for failure to appear in court, no new criminal charges during the pretrial period, and no warrants for failure to comply with bond conditions. This defendant's responses and history result in the following outcomes from the most recent available research:

*SUCCESSFUL COURT APPEARANCE RATE	91%	†NO NEW VIOLENT CHARGE RATE	96%	‡NO NEW NON-VIOLENT CHARGE RATE	85%
-----------------------------------	-----	-----------------------------	-----	---------------------------------	-----



Pretrial assessments provide aggregate data that are applied to individuals affecting detention or release recommendations.



This is true, which is why Pretrial assessment utilization models should avoid the following:

- Detention Recommendations
- Money Bail Recommendations
- Any form of Punitive Recommendations

Pretrial Assessment should help inform:

Any research-based recommendation or conditions that help the defendant succeed during the pretrial period by assisting them to comply with conditions, avoid re-arrest and appear in court.



Pretrial assessments have hidden weights and algorithms, sometimes proprietary, that are not available to the public or the stakeholders who are using them to make decisions.



Pretrial Assessment data should not be hidden or proprietary,
its validation should be documented, publicly available
report

Stanford Law School developed the Risk Assessment Factsheet (RAF) as a structured, consistent set of key questions regarding important aspects of the design, deployment, and evaluation of pretrial risk assessment tools that stakeholders can use to obtain meaningful information about those tools.



Public Safety Assessment 01/27/2020

Name: Brian Brittain
 DOB: 11/30/1984 (35)
 Gender: M
 Report Date: 01/27/2020

SPN: 99999
 Race: W
 BN: 99999
 ID: 99999



Case Number(s) :	Charge(s) :
2020 300439 CFDB	812.014(2)(c)1 - GRAND THEFT - \$750 - < \$5,000
2020 300439 CFDB	856.021 - LOITERING OR PROWLING

Failure to Appear Scale

1	2	3	4	5	6
---	---	---	---	---	---

New Criminal Activity Scale

1	2	3	4	5	6
---	---	---	---	---	---

Risk Factors

1. Age at Current Arrest	23 or Older	5a. Prior Conviction	YES
2. Current Violent Offense	NO	6. Prior Violent Conviction	1 or 2
2a. Current Violent Offense & Age 20 or Younger	NO	7. Prior Failure to Appear In Past 2 Years	1
3. Pending Charge at Time of Offense	YES	8. Prior Failure to Appear Older than 2 Years	YES
4. Prior Misdemeanor Conviction	YES	9. Prior Sentence to Incarceration	YES
5. Prior Felony Conviction	YES		



Pretrial assessments cannot identify people who are more likely than not to commit a violent crime; “violence flags” may not be accurate and may provide misleading violence indicators.

The fact is, the vast majority of even the highest risk individuals will not go on to be arrested for a violent crime while awaiting trial.



This is an example of how Rates of violent charges are clearly delineated from rates of non-violent charges that do not pose a threat to public safety.

EL PASO PRETRIAL RESEARCH ASSESSMENT - REVISED (EPPRA-R)

The following research provides the latest empirical outcomes of pretrial defendants in El Paso who are most closely associated with this defendant. This research is intended to provide empirical information to supplement a judge's statutory obligation to consider public safety and flight risks. The EPPRA-R empirically categorizes defendants into four pretrial categories of research outcomes based on El Paso's local population, as follows:

DEFENDANT'S CATEGORY:	Level 1				
Level 1: 81% Overall Success Level 2: 70% Overall Success Level 3: 60% Overall Success Level 4: 51% Overall Success					
"Overall Success" definition: No warrants during the pretrial period for failure to appear in court, no new criminal charges during the pretrial period, and no warrants for failure to comply with bond conditions. This defendant's responses and history result in the following outcomes from the most recent available research:					
*SUCCESSFUL COURT APPEARANCE RATE	91%	†NO NEW VIOLENT CHARGE RATE	96%	‡NO NEW NON-VIOLENT CHARGE RATE	85%

EPPRA-R FACTORS & SCORING

Is the defendant currently under supervision?†	No	0
Have two or more prior violent or felony convictions?†‡	No	0
Does the Defendant have any pending charges?‡	No	0
Age 18.5 or under at the time of booking?†‡	No	0
ASK: Has the defendant been at this location for LESS than 1 year?†‡	No	0
ASK: Length of Current Employment	Longer than 6 Months	0
Level 1: 0 points Level 2: 1 point Level 3: 2 points Level 4: 3 to 6 points		TOTAL SCORE: 0



Pretrial assessments that include minor offenses, such as missing a court-debt payment, in their definition of danger, run the risk of increasing pretrial incarceration rates and further exacerbating racial inequalities in pretrial outcomes.



EXAMPLE OF A PRETRIAL SERVICES REPORT ONLY INCLUDING PAST CONVICTED (EXCEPT DWIS BY TEXAS STATUTE) AND DOES NOT UTILIZE MINOR OFFENSES IN THE RESEARCH.

In addition, only convictions and not arrests were used to validate this specific Risk Assessment (EPPRA-R).

CRIMINAL HISTORY DETAILS (Convictions only except for DWI):				
(Summary does not include Federal Convictions but does show on RAP Sheet)				
Felony	Felony 1 (Case number) Felony 2 (Case number)			0
Misdemeanor	N/A _____			0
DWI History (includes arrests)	N/A	Non-convictions Count	0	Convictions Count 0
Juvenile Felony	N/A			
Juv. Misdemeanor	N/A			
Pending Cases:	N/A			



EXAMPLE OF A PRETRIAL SERVICES REPORT ONLY INCLUDING PAST CONVICTIONS

Risk Factors

1. Age at Current Arrest	23 or Older	5a. Prior Conviction	<u>YES</u>
2. Current Violent Offense	NO	6. Prior Violent Conviction	<u>1 or 2</u>
2a. Current Violent Offense & Age 20 or Younger	NO	7. Prior Failure to Appear <u>In</u> Past 2 Years	1
3. Pending Charge at Time of Offense	YES	8. Prior Failure to Appear Older than 2 Years	YES
4. Prior Misdemeanor Conviction	<u>YES</u>	9. Prior Sentence to Incarceration	YES
5. Prior Felony Conviction	<u>YES</u>		



The data used to build pretrial risk assessments are deeply flawed and racially biased.



WHAT WE KNOW

VPRAI-Revised Race and Gender Neutral



Virginia Department of Criminal Justice Services

www.dcjs.virginia.gov



WHAT WE DO *NOT* KNOW

No current pretrial assessment studies exist that support the suggestion that pretrial assessments aggravate existing racial disparities, although a few peer reviewed studies have looked at this issue specifically and found that pretrial assessments do not aggravate existing racial disparities (DeMichele et al., 2020; Brittain et al., 2021)

More research needs to be completed, but we must be careful about making strong assumptions about pretrial risk assessments without ongoing evidence that they are indeed creating or aggravating racial disparities.



Validity and fairness questions arise when tools are trained on data from one jurisdiction but deployed in a jurisdiction with different demographics, judicial culture, and policing practices.

Pretrial assessments must be validated on local populations, and the validation process should always control for racial disparities.



Local validation is a must, and here's why

i Population Estimates, July 1 2021, (V2021)	⚠ 564,412	⚠ 4,728,030
PEOPLE		
Population		
i Population Estimates, July 1 2021, (V2021)	⚠ 564,412	⚠ 4,728,030
Race and Hispanic Origin		
i White alone, percent	⚠ 83.3%	⚠ 69.0%
i Black or African American alone, percent (a)	⚠ 11.7%	⚠ 20.3%
i American Indian and Alaska Native alone, percent (a)	⚠ 0.5%	⚠ 1.1%
i Asian alone, percent (a)	⚠ 2.0%	⚠ 7.4%
i Native Hawaiian and Other Pacific Islander alone, percent (a)	⚠ 0.1%	⚠ 0.1%
i Two or More Races, percent	⚠ 2.4%	⚠ 2.0%
i Hispanic or Latino, percent (b)	⚠ 16.1%	⚠ 44.4%
i White alone, not Hispanic or Latino, percent	⚠ 69.3%	⚠ 27.7%



Pretrial Assessment Publication

“The Empirical Case for Pretrial Risk Assessment Instruments”

JFA Institute

- Released in 2021
 - Addresses Poor Accuracy, Racial Bias and Pretrial Detention
 - Conclusion – “Not to abolish pretrial risk assessments but to ensure that their results are as accurate and unbiased as possible,”
-



Risk Assessment Publication

“Pretrial Risk Assessments – Bias and Disparities Keeping up with the Known Science”

- Released in 2023 by NAPSA
- Looks at known and available research on disparity in pretrial risk assessments
- Conclusion – “Pretrial assessments – if used properly are a positive advancement in the field of pretrial justice.”





Feedback Survey

Please check your app and complete the feedback survey for this session!

