

# PRETRIAL RISK ASSESSMENT CAN PRODUCE RACE-NEUTRAL RESULTS

## Validated Risk Assessment Tools Are Fairer and Safer than Money Bail And Can Protect Against Racial and Ethnic Disparities in the Criminal Justice System

The current system of using money bail to determine who is released and who is detained before a criminal trial has been well documented to be racially and economically biased (see Racial Disparity and Money Bail, p. 2). The commonsense alternative—systems that incorporate validated pretrial risk assessment tools as the foundation of pretrial decision making—can substantially reduce the disparate impact that people of color experience during this critical stage of the criminal justice process.<sup>1</sup> However, since 2014, when then-U.S. Attorney General Eric Holder cautioned against using risk assessment in criminal sentencing, questions about race and pretrial risk assessment have been a prominent discussion point.

Several scholarly articles have subsequently grappled with this issue, and some risk assessment instruments have been tested to look for and gauge inherent racial bias.<sup>2</sup> This Issue Brief compiles what has been learned from these efforts.

The findings reinforce the Pretrial Justice Institute’s long-held position that systems that incorporate validated risk assessment tools represent a significant and necessary improvement over current money-based systems. When they are designed with racial equity in mind, when the elements they weigh are transparent to all, when they are used as intended, and when they are subject to regular review, pretrial risk assessment tools produce results that are far fairer and far more equitable than those associated with money bail.<sup>3</sup>

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## Racial Disparity and Money Bail

Due to the history of racism and unequal opportunity in the United States, people of color are less likely to be able to afford money bail. They are also more likely to have a high financial bond and to be detained, two factors that further increase guilty pleas, convictions, and incarceration.

### Peer-reviewed studies have shown that:

- African American and Latino defendants are **twice as likely** to be detained because they are unable to pay money bail than White defendants.<sup>A</sup>
- African Americans are **66%** and Latino defendants are **91% more likely** to remain in jail pretrial than similarly situated White defendants.<sup>B</sup>
- Being African American increases a defendant's odds of being detained before trial by **25%**.<sup>C</sup>
- For non-violent drug offense arrests, African Americans are **twice as likely** and Hispanics were **two-and-a-half times as likely** to be detained as Whites.<sup>D</sup>
- African Americans are **50% less likely** to make bail than Whites with the same bail amounts and legal characteristics.<sup>E</sup>
- "Black defendants have **9% lower odds** of being granted a financial release and **44% higher odds** of being denied bail than White defendants with similar legal characteristics."<sup>F</sup>

A. Demuth, Stephen. "Racial and Ethnic Differences in Pretrial Release and Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees." *Criminology* 41, no. 3 (2003): 873-908.

B. Demuth, 2003.

C. Schlesinger, Traci. "Racial and Ethnic Disparity in Pretrial Criminal Processing." *Justice Quarterly* 22, no. 2 (2005): 170-93.

D. Jones, Cynthia. "Give Us Free": *Addressing Racial Disparities in Bail Determinations.* *Articles in Law Reviews & Other Academic Journals* 301 (2013).

E. Schlesinger, Traci. "The Cumulative Effects of Racial Disparities in Criminal Processing." *Journal of the Institute of Justice and International Studies* 7 (2007): 261-78; Schlesinger, 2005.

F. Schlesinger, 2005.

## Background

A formal pretrial risk assessment process can help courts make fairer, more objective pretrial decisions. By narrowing the court's focus to factors that have a statistical correlation with court appearance and public safety—the only two considerations allowed by law in most jurisdictions—pretrial risk assessment tools empower judges and other officials to make pretrial decisions that are less prone to bias and that result in better outcomes for defendants and jurisdictions alike.

Currently, most court officials make pretrial release decisions using information about a person's criminal charge and criminal history, from which they try to assess an individual's risk of missing court or of re-arrest during the pretrial period. Their subjective review of this information, however, necessarily relies on assumptions about which elements in a person's history put him or her at risk for pretrial failure. The absence of an objective aid also creates opportunities for unconscious bias and variation among decision makers within the same state, county, and even the same courthouse.

Early pretrial risk assessment tools developed to standardize these decisions were premised on elements that *seemed* to correlate with pretrial success: employment, community ties, marital status, etc. Over time, however, many of these items have been shown to not correlate with pretrial risk and, in some cases, to produce racially and economically disparate results.<sup>4</sup>

"...validated risk assessment tools represent a significant and necessary improvement over current money-based systems"

Modern pretrial risk assessment tools are developed using statistical analyses of recent criminal cases that compare hundreds of factors (like history of failing to appear for court, convictions, and age at first arrest) with pretrial outcomes. To calculate an overall risk score for each individual, developers of these tools

identify and use only those factors that are shown to be associated with court appearance and public safety.

Because pretrial risk assessment tools are developed using statistical analysis, their results are testable and can be modified—by weighting risk factors differently or removing factors that produce bias—to eliminate racial disparities. It is therefore incumbent upon courts to collect the necessary data and to conduct regular testing of the tools they use and the outcomes they produce.

It also bears noting that even the most objective tool, if used improperly, can produce biased outcomes or erode faith in judicial fairness. The use of a pretrial risk assessment tool simply gives courts access to objective information to use in the decisions they make. The outcomes of those decisions—who to detain or what conditions to apply—remain discretionary. Courts striving to eliminate unequal treatment and disparate outcomes should therefore conduct regular audits of their decisions and outcomes to ensure they are realizing this important goal.

### Criteria for Fair and Effective Risk Assessment

The Pretrial Justice Institute supports only pretrial risk assessment tools and risk-informed decision making that meet the following criteria:

- Pretrial risk assessment tools must be used only to measure the likelihood of court appearance and lawful behavior during pretrial release. The results should guide decisions about pretrial release and the level of release conditions to be imposed, if any. They should not be used to assess service or treatment needs or to inform any other part of the criminal case process (like sentencing).

- Pretrial risk assessment tools must be used to inform, not replace, judicial decision making.
- The factors and formula that influence risk scores must be publicly available and understandable. No “hidden algorithms” or proprietary calculations.
- The data used to produce pretrial risk assessment should be easily attainable so as not to delay the prompt release or detention of arrested people.
- Pretrial risk assessment tools must be regularly tested to ensure they are producing valid results for the population being served and producing results untainted by racial, gender, or other group bias.

### Reducing Detention v. Reducing Disparities

Over the past 25 years, the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative (JDAI) has helped jurisdictions across the United States reduce unnecessary juvenile detention. Participating jurisdictions’ average detention admissions have dropped by 49% and daily detention populations are down 43%. Despite this significant accomplishment, detention admissions have declined more sharply for White youth (down 59%) than for youth of color (down 44%), and racial and ethnic disparities in detention persist. One major factor driving disparate detention is that youth of color are still arrested at rates that outpace White youth.\* Reducing racial disparity is a core strategy of the initiative, and JDAI has called for a more intentional focus on disparities that includes participation of youth, families, and community members.†

\*. Rovner, Joshua. Racial Disparities in Youth Commitments and Arrests. Report. The Sentencing Project. 2016.

†. JDAI at 25: Insights from the Annual Results Reports. Report. The Annie E. Casey Foundation. Baltimore, 2017.

It is important and right to question the validity and outcomes of any tool that is used to help guide decisions that affect liberty. Modern pretrial risk assessment tools that meet this challenge are a substantial improvement over subjective assessment methods and risk tools of the past. Justice systems and the people they serve can be confident in the improved outcomes for all people of color through the use of evidence-based risk assessment.

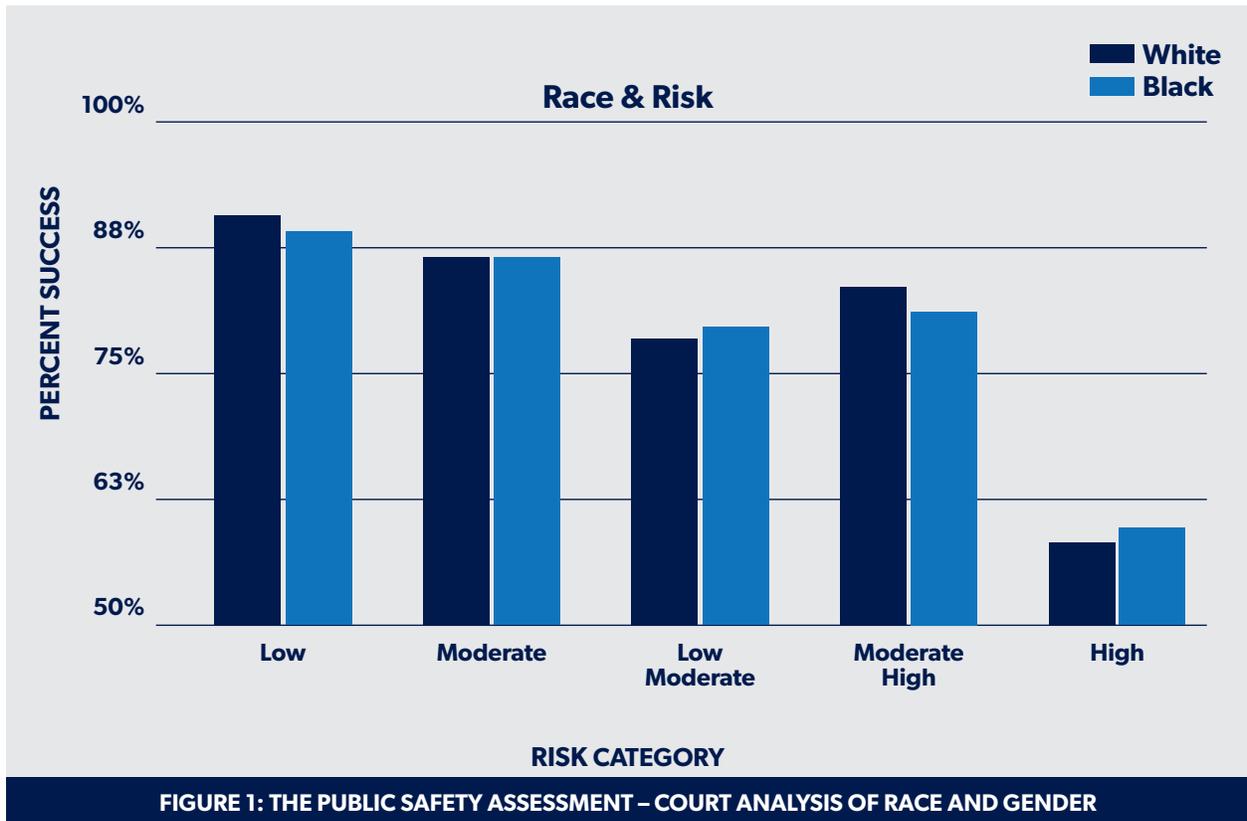
### Examples of Race Neutral Risk Assessment Tools

Following is information on two pretrial risk assessment tools that have been shown to produce race-neutral results.

#### The Public Safety Assessment (PSA)

The Public Safety Assessment (PSA) instrument, designed by the Laura and John Arnold Foundation, is the most commonly used pretrial risk assessment tool in the country. It was designed by analyzing more than 1.5 million cases drawn from more than 300 jurisdictions, making it reliable almost anywhere in the nation.

The Arnold Foundation funded the development and testing of the tool and provides technical implementation assistance to jurisdictions at no charge. The PSA is currently used in 29 jurisdictions, including three entire states—Arizona, Kentucky, and New Jersey—as well as three of the nation’s largest cities.



The Public Safety Assessment—Court Analysis of Race and Gender, Laura and John Arnold Foundation, 2014

The Arnold Foundation has tested the PSA for evidence of racial bias and concluded that it produces race- and gender-neutral results. Black and White defendants assessed with the PSA succeed at virtually identical rates, as shown in Figure 1 (p. 4).

Kentucky, a long-time leader in pretrial justice innovation, adopted the PSA in July 2013. The tool not only produces race- and gender-neutral results, but its accurate risk classification has also coincided with a 15% statewide reduction in pretrial crime.<sup>5</sup>

**The Virginia Pretrial Risk Assessment Instrument (VPRAI)**

Virginia has used the Virginia Pretrial Risk Assessment Instrument (VPRAI) for many years, and the tool has been tested and shown to produce race-and gender-neutral results. The state recently commissioned further improvements based on results analysis and the updated tool, VPRAI-Revised, produces risk levels that “have the same meaning for

Risk Level	People of Color	White
	Success %	Success %
1	92.8	94.8
2	89.7	90.8
3	84.8	85.2
4	79.9	77.3
5	72.2	69.0
6	64.1	62.3
Best Rate	84.7	84.8

**TABLE 1: COMPARISON OF RISK LEVEL - ANY SUCCESS RATES ACROSS RACIAL GROUPS (VPRAI-REVISED)**

Mona J.E. Danner, Marie VanNostrand, Lisa M. Spruance, Race and Gender Neutral Pretrial Risk Assessment, Release Recommendations, and Supervision: VPRAI and Praxis Revised, Luminosity, Inc., 2016.

PSA	VPRAI -Revised
Age at current arrest?	On active community supervision?
Current arrest for violent offense?	Current charge felony, drug, theft, or fraud?
Current violent offense & 20 years old or younger?	Criminal history?
Pending charge at time of arrest?	Pending charge at time of arrest?
Prior misdemeanor conviction?	Two or more FTA's?
Prior felony conviction?	Two or more violent convictions?
Prior FTA in past 2 years?	Unemployed at time of arrest?
Prior FTA older than 2 years?	History of drug abuse?
Prior sentence to incarceration?	

**TABLE 2: RISK FACTORS OF PSA AND VPRAI-REVISED**

Public Safety Assessment: Risk Factors and Formula, The Laura and John Arnold Foundation, New York, 2016; Danner, VanNostrand & Spruance, 2016.; Mona J.E. Danner, Marie VanNostrand, Lisa M. Spruance, Race and Gender Neutral Pretrial Risk Assessment, Release Recommendations, and Supervision: VPRAI and Praxis Revised, Luminosity, Inc., 2016.



People of Color and Whites and for females and males.” The comparative success rates presented in Table 1 (p. 5) show people of color succeed at the same rate (84.7%) as do Whites (84.8%).

Both of these tools—PSA and VPRAI-Revised—are based on factors that are statistically shown to predict pretrial behavior without creating racial disparity. Table 2 (p. 5) shows each tool uses a similar set of factors, such as a prior record of Failure to Appear (FTA) and conviction history, to determine pretrial risk.

## Conclusion

The integrity and effectiveness of pretrial justice depends on the court’s ongoing commitment to recognizing and eliminating bias in its decision making. Pretrial justice systems based on money bail and subjective decision-making criteria produce unacceptable racially disparate results. Validated pretrial risk assessment tools, when thoughtfully designed and tested and objectively applied, can help jurisdictions reduce racial and economic bias in the decisions they make and the outcomes they produce.

## Support for Pretrial Risk Assessment by the Defense Community

A group of the top national defense counsel organizations—the American Council of Chief Defenders (NLADA), Gideon’s Promise, the National Association of Criminal Defense Lawyers (NACDL), the National Association for Public Defense (NAPD), and the National Legal Aid and Defender Association (NLADA)—have issued a joint statement voicing their strong support for pretrial risk assessment.<sup>‡</sup> They cite the unfair and disparate outcomes of current pretrial decision making methods and the myriad ways that validated pretrial risk assessment tools can improve fairness and make justice systems safer and more efficient.

These groups “strongly endorse and call for the use of validated pretrial risk assessment in all jurisdictions, as a necessary component of a fair pretrial release system that reduces unnecessary detention and eliminates racial bias.”

‡. “Joint Statement in Support of the Use of Pretrial Risk Assessment Instruments.” National Association of Public Defenders. Accessed May 23, 2017. [http://www.publicdefenders.us/blog\\_home.asp?Display=563](http://www.publicdefenders.us/blog_home.asp?Display=563).

1. Jones, Cynthia. “Give Us Free’: Addressing Racial Disparities in Bail Determinations.” *Articles in Law Reviews & Other Academic Journals* 301 (2013).
2. Skeem, Jennifer L., and Christopher T. Lowenkamp. “Risk, Race, and Recidivism: Predictive Bias and Disparate Impact.” *Criminology* 54, no. 4 (2016): 680-712.
3. *Racial Disparities & Bail Reform in Kentucky, Kentucky Department of Public Advocacy, 2015; Results from the First Six Months of the Public Safety Assessment– Court™ in Kentucky*, Laura and John Arnold Foundation, 2010; Danner, Mona J. E., and Marie VanNostrand. *Race and Gender Neutral Pretrial Risk Assessment, Release Recommendations, and Supervision: VPRAI and Praxis Revised*. Report. Luminosity, Inc. 2016.
4. Mamalian, Cynthia A. *State of the Science of Pretrial Risk Assessment*. Report. Pretrial Justice Institute, 2011; *Assessing Pretrial Risk without a Defendant Interview*. Report. Laura and John Arnold Foundation, 2013.
5. *The Public Safety Assessment-Court Analysis of Race and Gender*. Report. Laura and John Arnold Foundation, 2014.