PRETRIAL RISK ASSESSMENT IN VIRGINIA

| May 1, 2009 | The Virginia Pretrial Risk Assessment Instrument |

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BACKGROUND

There are currently 29 pretrial services agencies serving 80 of Virginia's 134 cities and counties. All Virginia pretrial services agencies operate under the authority of the Pretrial Services Act[1] and are funded in whole or part by the Virginia Department of Criminal Justice Services (DCJS). DCJS administers general appropriation funds designated for the purpose of supporting the Pretrial Services Act (PSA) as discretionary grants to local units of government.

The field of pretrial services contains two primary sub-fields; pretrial release and pretrial diversion. Pretrial release generally involves the provision of information to judicial officers to assist them in making the pretrial release/detention decision, as well as the monitoring and supervision of persons released from custody while awaiting disposition of criminal charges. Pretrial diversion is a dispositional alternative for pretrial defendants. Defendants voluntarily enter into a diversion program in lieu of standard prosecution and court proceedings. Virginia pretrial services agencies provide pretrial release related services and do not provide pretrial diversion related services.[2]

The Pretrial Services Act was enacted into law with the purpose of providing more effective protection of society by establishing pretrial services agencies that will assist judicial officers in discharging their duties related to determining bail. The Act states that "such agencies are intended to provide better information and services for use by judicial officers in determining the risk to public safety and the assurance of appearance of persons … other than an offense punishable by death, who are pending trial or hearing." In addition, in accordance with Virginia Code § 19.2-152.3 the Department of Criminal Justice Services was required to develop risk assessment and other instruments to be used by pretrial services agencies in assisting judicial officers in discharging their duties relating to determining bail for pretrial defendants.

The duties and responsibilities of pretrial services agencies are detailed in Virginia Code § 19.2-152.4:3 - Duties and responsibilities of local pretrial services officers. Pretrial services agencies are required to supervise and assist all defendants placed on pretrial supervision by any judicial officer to ensure compliance with the terms and conditions of bail. In order to assist judicial officers in discharging their duties related to determining bail for pretrial defendants, pretrial services officers are required to provide the following services:

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[1] Article 5 (§19.2-152.2 et seq.) of Chapter 9 of Title 19.2

[2] The primary distinction between pretrial release and diversion is the nature of participation on the defendant's part. Participation in pretrial diversion is voluntary whereas the pretrial release decision and the setting of terms and conditions of release are a result of a judicial decision regarding the defendant. Pretrial release allows for the defendant to be monitored in the community while following the standard court process pending trial, whereas pretrial diversion allows the defendant to voluntarily enter into a diversion program and avoid standard prosecution. Should a defendant fail diversion, however, he will be returned to the court process for prosecution. See Marie VanNostrand, Ph.D. *Legal and Evidence-based Practices: Application of Legal Principles, Laws, and Research to the Field of Pretrial Services* (National Institute of Corrections and Crime and Justice Institute, 2007)

1. Investigate and interview defendants arrested on state and local warrants and who are detained in jails located in jurisdictions served by the agency while awaiting a hearing before any court that is considering or reconsidering bail, at initial appearance, advisement or arraignment, or at other subsequent hearings; and

2. Present a pretrial investigation report with recommendations to assist courts in discharging their duties related to granting or reconsidering bail.

Consistent with the Code of Virginia, the Virginia Department of Criminal Justice Services in partnership with the Virginia Community Criminal Justice Association and Luminosity, Inc., developed, implemented, and validated the Virginia Pretrial Risk Assessment Instrument (VPRAI) for use by pretrial services agencies. An overview of pretrial risk assessment generally, the development and validation of the VPRAI, and instructions for instrument completion are provided in this report.

PRETRIAL RISK ASSESSMENT

The purpose of a pretrial risk assessment instrument is to identify the likelihood of failure to appear in court and the danger to the community posed by a defendant pending trial. A pretrial risk assessment instrument should use research-based objective criteria to identify the likelihood of failure to appear in court and danger to the community pending trial.[3]

The use of an objective and research-based risk assessment instrument by pretrial services agencies to assist judicial officers in making bail decisions is strongly recommended by both American Bar Association[4] and National Association of Pretrial Services Agencies[5] Standards. Additionally, pretrial risk assessment instruments should be consistent with the concept of Pretrial Justice.[6]

Pretrial risk assessment research conducted over the past 30 years has identified common factors that are predictive of failure to appear in court and/or danger to the community including the following:

> *Pretrial Justice*
> *The honoring of the presumption of innocence, the right to bail that is not excessive, and all other legal and constitutional rights afforded to accused persons awaiting trial while balancing these individual rights with the need to protect the community, maintain the integrity of the judicial process, and assure court appearance*

- ♦ Current Charge(s)
- ♦ Pending Charges at Time of Arrest
- ♦ History of Criminal Arrests and Convictions
- ♦ Active Community Supervision at Time of Arrest (e.g. Pretrial, Probation, Parole)
- ♦ History of Failure to Appear
- ♦ History of Violence
- ♦ Residence Stability
- ♦ Employment Stability
- ♦ Community Ties
- ♦ Substance Abuse

In fact, the largest study on pretrial risk assessment was recently completed for the federal court system. An analysis of over 500,000 cases processed through the federal pretrial services system between fiscal years 2001 and 2007 revealed the best predictors of pretrial failure (failure to appear and/or being a danger to the community pending trial) included primary charge, pending charges, prior misdemeanor arrests, prior felony arrests, prior failures to appear, employment status, residence status, and substance abuse.[7]

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[3] National Institute of Justice, *Pretrial Services Programs: Responsibilities and Potential* (Washington, D.C.: U.S. Department of Justice, U.S. Government Printing Office, 2001) pg.46 "Programs that assess risks of pretrial misconduct in an exclusively subjective manner are more than twice as likely to have a jail population that exceeds its capacity than those programs that assess risk exclusively through an objective risk assessment instrument—56 percent, compared to 27 percent. Forty-seven percent of programs that add subjective input to an objective instrument are in jurisdictions with overcrowded jails."

[4] American Bar Association Standards for Criminal Justice *Standards on Pretrial Release, Third Edition* (2002)

[5] National Association of Pretrial Services Agencies *Standards on Pretrial Release, Third Edition* (2004)

[6] VanNostrand, Marie and Gena Keebler. *Our Journey Toward Pretrial Justice* in *Federal Probation*, Volume 71, Number 2, (September 2007) pp. 20-25

[7] VanNostrand, Marie and Gena Keebler. *Pretrial Risk Assessment in the Federal Court: For the Purpose of Expanding the Use of Alternatives to Detention* (Department of Justice, Office of Federal Detention Trustee, 2009)

Pretrial risk assessment instruments must be guided by Pretrial Services Legal and Evidence-based Practices.[8]   Pretrial Services Legal and Evidence-based Practices are interventions and practices that are consistent with the legal and constitutional rights afforded to accused persons awaiting trial and methods research have proven to be effective in reducing unnecessary detention while assuring court appearance and the safety of the community during the pretrial stage. There are guiding practices for pretrial risk assessment development according to LEBP.

1. *A pretrial risk assessment instrument should be proven through research to predict risk of failure to appear and danger to the community pending trial* – An appropriate risk assessment instrument for pretrial services is one that is developed using generally accepted research methods to predict the likelihood of failure to appear and danger to the community pending trial. A pretrial risk assessment instrument should be validated to ensure it is an accurate predictor of pretrial risk in the community or communities in which it is being applied.

> *Pretrial Services Legal and Evidence-based Practices are interventions and practices that are consistent with the legal and constitutional rights afforded to accused persons awaiting trial and methods research have proven to be effective in reducing unnecessary detention while assuring court appearance and the safety of the community during the pretrial stage*

2. *The instrument should equitably classify defendants regardless of their race, ethnicity, gender, or financial status* – An instrument that is proven through research to effectively predict the likelihood of failure to appear and danger to the community for an entire population may also be found to result in disparate classification and treatment of certain defendants. For example, an instrument may accurately categorize defendants generally, but may also over-classify defendants of a particular race or socioeconomic status. Over-classification involves the classification of a group of defendants into higher risk levels than the actual risk level of the group. The result of such over-classification is the unequal and unfair treatment of certain defendants; frequently minorities and the poor. A risk assessment instrument should be proven through research methods to equitably classify defendants regardless of their race, ethnicity, gender or financial status.[9]

3. *Factors utilized in the instrument should be consistent with applicable state statutes* – Bail statutes and pretrial services acts, if applicable, should be consulted to ensure that factors included in a pretrial risk assessment instrument are allowable for the purposes of bail consideration.

An objective and research-based risk assessment instrument is intended to identify (1) "low risk" defendants who can be safely released into the community with limited or no conditions pending trial; (2) "moderate" and "higher" risk defendants whose risk can be minimized by utilizing appropriate release conditions, community resources, and/or interventions upon release; and (3) the "highest risk"

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[8] Marie VanNostrand, Ph.D. *Legal and Evidence-based Practices: Application of Legal Principles, Laws, and Research to the Field of Pretrial Services* (National Institute of Corrections and Crime and Justice Institute, 2007)

[9] See Marie VanNostrand, Ph.D. *Assessing Risk Among Pretrial Defendants in Virginia: The Virginia Pretrial Risk Assessment Instrument* (Richmond, VA: Virginia Department of Criminal Justice Services, 2003) pp. 11-14 for a research methods model of ensuring equitable classification of groups

defendants, those for whom no condition or combination of conditions can reasonably assure the safety of the community or appearance in court, so they can be detained pending trial.

The intended use of an objective and research-based pretrial risk assessment instrument is consistent with the evidence-based practice "risk principle." As it relates to the post-conviction field, research has demonstrated that evidence-based interventions directed towards offenders with a moderate to high risk of committing new crimes will result in better outcomes for both offenders and the community. Conversely, treatment resources targeted to low-risk offenders produce little, if any, positive effect. In fact, despite the appealing logic of involving low-risk individuals in intensive programming to prevent them from graduating to more serious behavior, numerous studies show that certain programs may actually worsen their outcomes. By limiting supervision and services for low-risk offenders and focusing on those who present greater risk, probation and parole agencies can devote limited treatment and supervision resources where they will provide the most benefit to public safety.[10]

Recent research conducted specifically for pretrial defendants confirms the applicability of this principle to the pretrial services field. The pretrial risk assessment study for the federal court referenced above also examined the use of alternatives to pretrial detention including, but not limited to, the following: third-party custodian, substance abuse testing, substance abuse treatment, location monitoring, halfway house, community housing or shelter, mental health treatment, sex offender treatment, and computer monitoring. The research examined the effectiveness of the alternatives to pretrial detention while considering risk and the most significant findings are provided below.

♦ Release conditions that include alternatives to pretrial detention – with the exception of mental health treatment, when appropriate – generally decrease the likelihood of success pending trial for lower risk defendants and should be required sparingly.

♦ Alternatives to pretrial detention are most appropriate for moderate and higher risk defendants as it allows for 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.

♦ Defendants identified as moderate and higher risk are the most suited for pretrial release – both programmatically and economically – with conditions of alternatives to pretrial detention. The pretrial release of these defendants can be maximized by minimizing the likelihood of pretrial failure through participation in alternatives to detention.

> *Lower risk defendants who were required to participate in alternatives to detention pending trial were more likely to fail pending trial*
>
> **************
>
> *Moderate and higher risk defendants who were required to participate in alternatives to detention pending trial were more likely to succeed pending trial*

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[10] *Putting Public Safety First: 13 Strategies for Successful Supervision and Reentry* (The Pew Center on the States, 2008).

A pretrial risk assessment serves as the foundation for a recommendation regarding bail.   Pretrial services agencies are tasked with identifying the least restrictive terms and conditions of bail that will reasonably assure a defendant will appear for court and not present a danger to the community pending trial. Recommendations regarding bail are guided by statute (Virginia Code §19.2-123), pretrial services legal and evidence-based practices, and the evidence-based practice "risk principle."

ORIGINAL VIRGINIA PRETRIAL RISK ASSESSMENT INSTRUMENT (VPRAI)

The Virginia Pretrial Risk Assessment Instrument was developed in accordance with the statutory requirement for the Department of Criminal Justice Services to develop risk assessment and other instruments to be used by pretrial services agencies in assisting judicial officers in discharging their duties relating to determining bail for pretrial defendants. The purpose of the VPRAI is to identify the likelihood of failure to appear in court and the danger to the community posed by a defendant pending trial and to assist pretrial officers in making a bail recommendation.

 A brief summary of the VPRAI development and implementation is provided here. See the document *Assessing Risk among Pretrial Defendants in Virginia: the Virginia Pretrial Risk Assessment Instrument* for a complete description of the instrument development.[11]

Dataset

The dataset used to conduct the research was collected from a sample of defendants arrested in select Virginia localities between July 1, 1998 and June 30, 1999. The defendants were arrested in one of seven localities: Hampton, Fredericksburg, Spotsylvania, Emporia, Brunswick, Sussex, and Greensville. The localities included in the dataset varied substantially in community characteristics including: community type (urban, rural, and suburban); number of persons, households, and families; sex; race; median family income; percentage of people below poverty level; and education level.

Data were collected from a number of sources including those listed below.

1. Personal interviews were conducted with defendants, either face-to-face or by video teleconference, after arrest and prior to the initial bail hearing with a judicial officer.

2. Arrest warrants, criminal history records (i.e., National Criminal Information Center [NCIC], Virginia Criminal Information Network [VCIN], Department of Motor Vehicles [DMV], Virginia Court Automated Information System [CAIS], local police records), and court records were reviewed.

3. References provided by the defendant were contacted to verify certain information.

4. Current and prior adult criminal justice supervision records were consulted as needed.

The final sample used for the analysis included 1,971 adults (18 years or older or juveniles previously certified as adults by the Court) arrested for one or more jailable offense(s) (Class I and II misdemeanors, unclassified misdemeanors that carry a penalty of jail time, and all felonies), who were released pending trial. The cases were tracked until final disposition through the use of court and other official records to determine the pretrial outcome. The dataset was finalized in 2001.

Variables

Pretrial outcome – success or failure pending trial – was the dependent variable. Consistent with the intent of bail, pretrial failure was defined as failing to appear for court and/or being a danger to the community pending trial. Failure to appear was measured by a defendant's failure to appear for a scheduled court appearance pending trial which resulted in the issuance of a capias. Danger to the

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[11] Marie VanNostrand, Ph.D. *Assessing Risk Among Pretrial Defendants in Virginia: The Virginia Pretrial Risk Assessment Instrument* (Richmond, VA: Virginia Department of Criminal Justice Services, 2003)

community was measured by the presence of a new arrest for a crime that was allegedly committed while the defendant was released pending trial. Defendants who were deemed to have failed to appear and/or to have been a danger to the community pending trial were classified "failure" and those defendants who experienced neither and remained in the community during the entire time pending trial were classified "successful."

There were 50 variables classified as independent variables (risk factors), which were measures of the following: demographic characteristics, physical and mental health, substance abuse, residence, transportation, employment and school status, income, the charge(s) against the defendant, and criminal history.

Methodology and Results

The analysis consisted of univariate, bivariate, and multivariate analysis. The univariate analysis including descriptive statistics of the dependent variable (pretrial outcome – success or failure pending trial) and each independent variable (risk factor). The bivariate analysis included an examination of the relationship between each risk factor and pretrial outcome. The risk factors found to be statistically significantly related to pretrial outcome were identified and used to conduct the multivariate analysis. The multivariate technique logistic regression was used to identify nine statistically significant predictors of pretrial outcome.

1. **Primary Charge Type** – Defendants charged with a felony are more likely to fail pending trial than defendants charged with a misdemeanor.

2. **Pending Charge(s)** – Defendants who have pending charge(s) at the time of their arrest are more likely to fail pending trial.

3. **Outstanding Warrant(s)** – Defendants who have outstanding warrant(s) in another locality for charges unrelated to the current arrest are more likely to fail pending trial.

4. **Criminal History** – Defendants with at least one prior misdemeanor or felony conviction are more likely to fail pending trial.

5. **Two or More Failure to Appear Convictions** – Defendants with two or more failure to appear convictions are more likely to fail pending trial.

> *The statistically significant predictors of pretrial outcome include –*
>
> ✓ *Primary Charge Type*
> ✓ *Pending Charge(s)*
> ✓ *Outstanding Warrant(s)*
> ✓ *Criminal History*
> ✓ *Prior Failures to Appear*
> ✓ *Prior Violent Convictions*
> ✓ *Length at Current Residence*
> ✓ *Employment/Primary Child Caregiver Status*
> ✓ *History of Drug Abuse*

6. **Two or More Violent Convictions** – Defendants with two or more violent convictions are more likely to fail pending trial.

7. **Length at Current Residence** – Defendants who have lived at their current residence for less than one year are more likely to fail pending trial.

8. **Employed/Primary Child Caregiver** – Defendants who have not been employed continuously at one or more jobs during the two years prior to their arrest or who are not the primary caregiver for a child at the time of their arrest are more likely to fail pending trial.

9. **History of Drug Abuse** – Defendants with a history of drug abuse are more likely to fail pending trial.

Based on the logistic regression model results the risk factors were assigned weights or "points." The points included 1 point for all factors, with the exception of Two or More Failure to Appear Convictions, which was assigned 2 points due to the predictive strength of the risk factor. The points were totaled to create a score from 0 to 10. The scores were then used to create risk levels. As a result, the VPRAI consists of five risk levels including low, below average, average, above average, and high as shown in the following figure.

Figure 1. Risk Levels and Pretrial Outcome

Risk Level	Risk Score	N	% Population	Failure to Appear	New Arrest	Total Failure
Low	0, 1	471	24%	4%	6%	10%
Below Average	2	461	23%	8%	11%	19%
Average	3	412	21%	11%	16%	27%
Above Average	4	332	17%	13%	27%	40%
High	5 – 10	295	15%	16%	37%	53%

Data Source: Virginia Department of Criminal Justice Services, VPRAI access database. Sample of defendants arrested in select Virginia localities between July 1, 1998 and June 30, 1999. The defendants were arrested in one of seven localities: Hampton, Fredericksburg, Spotsylvania, Emporia, Brunswick, Sussex, and Greensville. n= 1,971

Source: Assessing Risk Among Pretrial Defendants in Virginia: The Virginia Pretrial Risk Assessment Instrument (Richmond, VA: Virginia Department of Criminal Justice Services, 2003)

Implementation

The instrument was completed in 2002 and automated in the statewide Pretrial and Community Corrections Case Management System (PTCC). The VPRAI was implemented by all Virginia pretrial services agencies using a phased in approach between July 2003 and December 2004. Implementation included pilot testing, onsite training to all agency staff and local community criminal justice boards, and post-implementation technical assistance and support. An instruction manual, investigation guide and training and resource manual were developed to assist the agencies in the successful implementation of the pretrial risk assessment instrument.[12]

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[12] See the Virginia Pretrial Investigation Guide, Virginia Pretrial Training and Resource Manual, and Virginia Pretrial Risk Assessment Instruction Manual - http://www.dcjs.virginia.gov/corrections/resources.cfm?menuLevel=5&mlD=13

VPRAI VALIDATION

By January 2005 all pretrial services agencies in Virginia were using the VPRAI to identify the likelihood of failure to appear in court and the danger to the community posed by a defendant pending trial and to assist pretrial officers in making a bail recommendation. After two years of statewide use the Virginia Department of Criminal Justice Services and the Virginia Community Criminal Justice Association partnered with Luminosity, Inc. to conduct a validation study. The primary purpose of validation is to confirm predictive validity – in this case that the instrument is able to predict future failure to appear for court and danger to the community pending trial for defendants in Virginia. Although the original instrument was research based, it remains desirable to confirm the predictive validity and ensure that circumstances that can change over time (e.g. crime patterns, law enforcement practices, drug usage, population demographics) have not impacted the accuracy of the instrument.

A VPRAI Validation Advisory Committee was formed to spearhead this initiative. The committee was composed of DCJS staff members and representatives from 10 pretrial services agencies. The committee worked together for nine months between March and October 2007 to conduct the VPRAI validation - an overview of the study is provided here.

Datasets

Primary and secondary datasets were used for analysis. The primary dataset consisted of a random sample of up to 500[13] cases from each of the 10 participating pretrial services agency (n=4,378). The sample was selected from the population of defendants who were arrested January 1 – December 30, 2005 who had both a pretrial investigation and VPRAI completed. A final sample containing pretrial outcomes of at least 2500 cases was desired for the study. Acknowledging that some defendants are not released pending trial and would need to be excluded from the study, an over sampling was conducted to ensure the minimum number of cases for the study. Each agency was provided the information relating to their respective sample so that they could identify the cases in the Pretrial and Community Corrections Case Management System (PTCC), determine the case dispositions and pretrial outcomes (success or failure by type), and enter the results into PTCC. Case dispositions and pretrial outcomes could not be identified for 106 cases which left a sample of 4,272. Of the remaining defendants, 65% were released pending trial while 35% were detained the entire time pending trial. For this reason, the final dataset used for analysis consisted of 2,778 defendants who were arrested between January 1 and December 30, 2005 who had both a pretrial investigation and VPRAI completed, were released pending trial, and a case disposition and pretrial outcome was determined. For this dataset pretrial failure included failing to appear for court and/or new arrest pending trial.

The secondary dataset consisted of all defendants released to the supervision of a pretrial services agency between January 1 and December 30, 2005. The sample included 7,174 defendants and consisted of persons released with a condition of pretrial supervision to any of the 29 pretrial services agencies serving 80 Virginia localities. The case dispositions and pretrial outcomes were known for these defendants; therefore, the existing data was simply extracted from PTCC. For this dataset pretrial failure was determined based on the reason a case was closed and included failing to appear for court, new arrest pending trial and bail revocation due to technical violations of supervision.

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[13] Two of the ten agencies had less than 500 cases for 2005; therefore, all cases were included in the analysis.

Methodology and Results

The first step in the validation process was to examine the accuracy of the VPRAI as a whole. Both datasets were used individually to determine how well the instrument classified defendants likelihood of pretrial failure (see figures 2 and 3).

Figure 2. Original VPRAI Pretrial Outcome by Risk Level – 10 Agency Random Sample

Risk Level	Success	Failure
Low	86.1%	13.9%
Below Average	82.1%	17.9%
Average	72.6%	27.4%
Above Average	66.8%	33.2%
High	63.0%	37.0%
Total Success/Failure Rates	72.5%	27.5%

Data Source: Virginia Department of Criminal Justice Services, PTCC (Pretrial and Community Corrections Case Management System). Random sample of defendants arrested in 10 Virginia localities January 1 – December 30, 2005 who had both a pretrial investigation and VPRAI completed. n= 2,778

Note: For this dataset pretrial failure included failing to appear for court and/or new arrest pending trial.

**Figure 3. Original VPRAI Pretrial Outcome by Risk Level –
All Defendants Released with Pretrial Supervision**

Risk Level	Success	Failure
Low	92.8%	7.2%
Below Average	87.4%	12.6%
Average	82.0%	18.0%
Above Average	75.7%	24.3%
High	67.7%	32.3%
Total Success/Failure Rates	82.0%	18.0%

Data Source: Virginia Department of Criminal Justice Services, PTCC (Pretrial and Community Corrections Case Management System). All defendants arrested January 1 – December 30, 2005 and released with a condition of pretrial supervision to any of the 29 pretrial services agencies serving 80 Virginia localities. n= 7,174

Note: For this dataset pretrial failure included failing to appear for court, new arrest pending trial and bail revocations due to technical violations of supervision.

As can be seen in figures 2 and 3, as the pretrial risk level increased (as classified by the VPRAI during the pretrial investigation) the failure rates increased. The VPRAI, as originally developed, accurately classifies defendants according to their likelihood of pretrial failure. A closer examination of both datasets reveals that the VPRAI also accurately classifies defendants by the type of pretrial

failure. Although the VPRAI was found to be a valid predictor of pretrial outcome, additional analysis was conducted to determine if the accuracy of the instrument could be improved. Individual bivariate analysis of the risk factors revealed that Outstanding Warrants was not a statistically significant predictor of pretrial outcome while the remaining 8 risk factors remained good predictors. Multivariate analysis further revealed that a revised instrument consisting of 8 risk factors (excluding Outstanding Warrants) was a slightly better predictor of pretrial outcome when compared to the original 9 factor model.

Figure 4. Revised VPRAI Pretrial Outcome Type by Risk Level – 10 Agency Random Sample

Risk Level	Success	FTA	New Arrest
Low	86.7%	1.6%	11.7%
Below Average	81.9%	4.1%	14.0%
Average	72.5%	5.8%	21.7%
Above Average	67.2%	6.6%	26.2%
High	63.5%	7.0%	29.5%
Total Success/Failure Rates	72.5%	5.5%	21.5%

Data Source: Virginia Department of Criminal Justice Services, PTCC (Pretrial and Community Corrections Case Management System). Random sample of defendants arrested in 10 Virginia localities January 1 – December 30, 2005 who had both a pretrial investigation and VPRAI completed. n= 2,778

Although the purpose of a pretrial risk assessment is to predict the risk of failure to appear and danger to the community pending trial, additional analysis was conducted to determine if the revised VPRAI (excluding Outstanding Warrants) also accurately predicted risk of technical violations. As can be seen in figure 5, the revised VPRAI also accurately classified defendants in five levels of risk based on the likelihood of pretrial failure including technical violations.

**Figure 5. Revised VPRAI Pretrial Outcome by Risk Level –
All Defendants Released with Pretrial Supervision**

Risk Level	Success	FTA	New Arrest	Technical Violation
Low	92.9%	3.7%	1.2%	2.2%
Below Average	87.5%	5.6%	1.6%	5.3%
Average	82.2%	6.7%	2.7%	8.4%
Above Average	76.3%	7.0%	4.2%	12.5%
High	68.0%	7.8%	6.2%	18.0%
Total Success/Failure Rates	82.0%	6.2%	2.9%	8.9%

Data Source: Virginia Department of Criminal Justice Services, PTCC (Pretrial and Community Corrections Case Management System). All defendants arrested January 1 – December 30, 2005 and released with a condition of pretrial supervision to any of the 29 pretrial services agencies serving 80 Virginia localities. n= 7,174

Revised Validated VPRAI

The revised and validated VPRAI consists of eight risk factors. Minor revisions to the descriptions of the risk factors were made during the validation study based on the advisory committee's experience with implementation and use of the VPRAI and to improve understanding of the risk factors. The eight risk factors are provided below (see next section *VPRAI Completion Instructions* for detailed definitions of each factor).

1. *Primary Charge Type* – Defendants charged with a felony are more likely to fail pending trial than defendants charged with a misdemeanor.

2. *Pending Charge(s)* – Defendants who have pending charge(s) at the time of their arrest are more likely to fail pending trial.

3. *Criminal History* – Defendants with at least one prior misdemeanor or felony conviction are more likely to fail pending trial.

4. *Two or More Failures to Appear* – Defendants with two or more failures to appear are more likely to fail pending trial.

5. *Two or More Violent Convictions* – Defendants with two or more violent convictions are more likely to fail pending trial.

6. *Length at Current Residence* – Defendants who live at their current residence for less than one year are more likely to fail pending trial.

7. *Employed/Primary Caregiver* – Defendants who have not been employed continuously at one or more jobs during the two years prior to their arrest or who are not a primary caregiver are more likely to fail pending trial.

8. *History of Drug Abuse* – Defendants with a history of drug abuse are more likely to fail pending trial.

The weights and scoring, including 1 point for all factors with the exception of Two or More Failures to Appear which is assigned 2 points, remains unchanged. The points are totaled to create a score from 0 to 9 and are used to create five risk levels including low, below average, average, above average, and high as shown in figure 6. The risk levels represent the likelihood of pretrial failure including failing to appear in court and danger to the community pending trial.

Figure 6. Revised VPRAI Risk Levels

Risk Level	Risk Score
Low	0, 1
Below Average	2
Average	3
Above Average	4
High	5 – 9

VPRAI COMPLETION INSTRUCTIONS

Eligibility

A VPRAI examines a defendant's status at the time of the arrest as it relates to the current charges, pending charges, criminal history, residence, employment, primary caregiver, and history of drug abuse. For this reason, the instrument is primarily intended to be completed after arrest and presented to the Court at first appearance. Completing the instrument soon after arrest increases the likelihood of capturing the most accurate information as it relates to the defendant's status at the time of his/her arrest and should be done so within 7 days.

A pretrial investigation must be conducted prior to completing the VPRAI (see Virginia Pretrial Investigation Guide). Defendants who do not meet all of the criteria listed below are not eligible for instrument completion as part of the pretrial investigation. Additionally, a VPRAI is required for all eligible defendants and should be completed by following the instructions provided herein.

1. The defendant must be an adult – 18 years or older or a juvenile previously certified as an adult by the court.

2. The defendant must not be incarcerated at the time of the arrest or when the warrants were served. Defendants who were incarcerated for unrelated charges at the time the new warrants were served are not eligible.

3. The defendant must have been arrested for one or more jailable offense(s) – Class 1 and 2 misdemeanors (M1 and M2), unclassified misdemeanor (M9) that carry a penalty of jail time, or any felony. Class 3 misdemeanors, Class 4 misdemeanors, and any Class 9 misdemeanors, which carry a maximum penalty of a fine, are not eligible for instrument completion.

4. The defendant must have been arrested for a criminal offense (includes criminal traffic charges but NOT traffic infractions). Defendants charged solely with the following are not eligible:
    a. civil offense
    b. FTA or capias due to an underlying charge from a civil court
    c. fugitive warrant/warrant of extradition

The VPRAI is automated and contained in the Pretrial and Community Corrections Case Management System (PTCC). The appendix contains an example of a completed instrument created from sample data. The VPRAI can be created after completing four tabs contained in the Screening sub-module of the Screening module of PTCC. The four tabs include the following: Screening, VPRAI (Step 1), VPRAI (Step 2), and VPRAI (Step 3).

Screening

The following information required for the VPRAI is entered into the Screening tab: First Name, Last Name, Race, Social Security Number (SSN), Sex, Date of Birth (DOB), Primary Charge Classification (PCC), Arrest Date, Jail, Screened In, and Investigated Yes (see figure 7).

Figure 7. Screening Tab in Screening Module

VPRAI (STEP 1)

The following information required for the VPRAI is entered into the VPRAI (Step 1) tab: Instrument Completion Date, Arrest Information, Research Factors, and Risk Factors. The Risk Level is a calculated field which resides on this tab (see figure 8).

Figure 8. VPRAI (Step 1) Tab in Screening Module

Research Factors

Four research factors are collected for future VPRAI validation and research initiatives. Guidance for selecting accurate responses to the factors is provided below.

1. *Charge Category* – There are 8 options for charge category including Violent, Firearm, Drug, Theft/Fraud, Failure to Appear, DUI, Traffic/Non-DUI, and Other. To identify the charge category follow the steps below.

    a. <u>Violent</u> – Determine if any of the charges are a violent offense - violent offenses include the following: Murder, Manslaughter, Mob-related felonies, Kidnapping, Abduction, Malicious Wounding, Robbery, Carjacking, Arson, Assault (simple assault or assault & battery/misdemeanor or felony), and Sex Offenses (Rape, Sexual Assault/Battery, Carnal Knowledge of a Child, Forcible Sodomy).

    Charges of burglary and possession or brandishing a firearm are **not** counted as violent. A charge of <u>attempt</u> or being <u>an accessory *before* the fact</u> to commit any of the offenses **is** counted. A charge of <u>conspiring</u> or being <u>an accessory *after* the fact</u> to commit any of the offenses is **not** counted.

    If any of the charges are violent select Violent for this factor and continue to the next research factor; otherwise, continue to step b.

    b. <u>Firearm</u> – Determine if any of the charges are a firearm offense - firearm offenses include any charge relating to possession, use, or manufacturing a firearm. Examples

include shooting at a vehicle, discharging a weapon in a public place, brandishing, illegally carrying a concealed weapon, or removing or altering the serial number or other identification number on a firearm. If any of the charges are a firearm offense select Firearm for this factor and continue to the next research factor; otherwise, continue to step c.

c. <u>Drug</u> – Determine if any of the charges are a drug related offense – drug related offenses include schedules I, II, III, IV, V and VI drugs, imitation controlled substances, counterfeit controlled substances, and drug paraphernalia. Note: Drug related offense does not include an alcohol related offense. If any of the charges are drug related select Drug for this factor and continue to the next research factor; otherwise, continue to step d.

d. <u>Theft/Fraud</u> – Determine if any of the charges are a theft/fraud offense – theft/fraud offenses include the following: any charge related to larceny, burglary, fraud, concealment, embezzlement, forgery, uttering, and bad check. If any of the charges are theft/fraud related select Theft/Fraud for this factor and continue to the next research factor; otherwise, continue to step e.

e. <u>Failure to Appear</u> – If any of the charges are a failure to appear select Failure to Appear for this factor and continue to the next research factor; otherwise, continue to step f.

f. <u>Driving Under the Influence (DUI)</u> – If any of the charges are a Driving Under the Influence select DUI for this factor and continue to the next research factor; otherwise, continue to step g.

g. <u>Traffic/Non-DUI</u> – If any of the charges are a traffic offense other than a DUI select Traffic/Non-DUI for this factor and continue to the next research factor; otherwise, continue to step h.

h. <u>Other</u> – If none of the charges meet the criteria above select Other for this factor and continue to the next research factor.

2. *Active Community Supervision*

♦ **Select *Yes*** if the defendant was under any active community criminal justice supervision including state or local probation, parole, pretrial services, alcohol safety action program (ASAP), drug court, day reporting, or any other form of active criminal justice supervision at the time of the arrest. Active supervision does NOT include unsupervised probation, a term of good behavior, or release on bail without pretrial supervision.

♦ **Select *No*** if the defendant was not on active community criminal justice supervision at the time of the arrest.

3. *Number of FTA Convictions* – Enter the number of convictions as an adult for Failure to Appear or Contempt of Court that was a result of failure to appear.

4. *Number of Violent Arrests* – Enter the number of arrests (count each charge) for a violent offense as an adult; regardless of the case disposition (guilty, not guilty, nolle prosequi, dismissed). Violent offenses include the following: Murder, Manslaughter, Mob-related felonies, Kidnapping, Abduction, Malicious Wounding, Robbery, Carjacking, Arson, Assault

(simple assault or assault & battery/misdemeanor or felony), and Sex Offenses (Rape, Sexual Assault/Battery, Carnal Knowledge of a Child, Forcible Sodomy).

Arrests for burglary and possession or brandishing a firearm are **not** counted as violent arrests. An arrest for <u>attempt</u> or being <u>an accessory *before* the fact</u> to commit any of the offenses **is** counted. An arrest for <u>conspiring</u> or being <u>an accessory *after* the fact</u> to commit any of the offenses is **not** counted.

Risk Factors

The VPRAI calculates a defendant's level of risk based on the eight (8) risk factors listed below. Responses to these risk factors are entered in the appropriate sections on this tab (see Figure 8: VPRAI (Step 1) Tab in Screening Module, p.16). Guidance for selecting accurate responses to the factors is provided below.

1. *Charge Type* – **Select *Misdemeanor* or *Felony*** to indicate whether the most serious charge classification for the arrest event is a misdemeanor or a felony.

   - If there is only one charge - select the classification for that charge (***Misdemeanor or Felony***).
   - For a capias or FTA warrant count the charge type of the most serious underlying charge.
   - **Select *Misdemeanor*** when there are multiple charges and all of the charges have a charge classification of misdemeanor.
   - **Select *Felony*** when there are multiple charges and one or more of the charges is a felony.

2. *Pending Charge(s)* – Pending charge(s) require: 1) that the defendant was previously arrested for one or more charges for jailable offenses that have not been "disposed of"; 2) was arrested for a new crime that was allegedly committed while released on bail pending trial; and 3) that a future court date has been set or that a warrant has been issued for failure to appear. A charge with a disposition of "deferred" is NOT counted as a pending charge.

   - **Select *Yes*** if the defendant had one or more charges for jailable offenses pending in a criminal or traffic (not civil) court at the time of arrest.
   - **Select *No*** if the defendant had no pending charge(s) at the time of arrest.
   - **Exception:** If the current arrest is solely for a failure to appear, the underlying charge related to the failure to appear does not constitute a pending charge.
   - The following scenarios **DO NOT** constitute a pending charge:

     - A defendant is arrested, remains incarcerated pending trial, and is served with new warrants; or

     - A defendant is arrested, released pending trial, and is arrested for a charge with an alleged offense date that is prior to the first arrest.

3. *Criminal History* – A conviction for a jailable offense is counted as a prior criminal history. Note: A charge with a disposition of "deferred" is NOT counted as a conviction.

   - **Select *Yes*** if the defendant has at least one adult misdemeanor or felony conviction in the past.

♦ **Select *No*** if the defendant has no misdemeanor or felony conviction in the past.

4. *Two or More Failures to Appear* – An arrest for failure to appear, bail jumping, or contempt of court that was a result of failing to appear is counted. A failure to appear for a single court appearance is counted once regardless of the number of FTA charges related to the one court appearance. An arrest for failure to appear is not counted if there is confirmation that the defendant was in custody (jail or prison) when the failure to appear occurred.

♦ **Select *Yes*** if the defendant has failed to appear in court two or more times as an adult.
♦ **Select *No*** if the defendant has not failed to appear two or more times as an adult.

5. *Two or More Violent Convictions* – Violent convictions are defined for the purposes of risk assessment to include the following: Murder, Manslaughter, Kidnapping, Abduction, Malicious Wounding, Robbery, Carjacking, Arson, Assault (simple assault or assault & battery/misdemeanor or felony), and Sex Offenses (Rape, Sexual Assault/Battery, Carnal Knowledge of a Child, Forcible Sodomy.

Convictions for burglary and possession or brandishing a firearm are **not** counted as violent convictions. A conviction for <u>attempt</u> or being <u>an accessory *before* the fact</u> to commit any of the offenses **is** counted. A conviction for <u>conspiring</u> or being <u>an accessory *after* the fact</u> to commit any of the offenses is **not** counted.

♦ **Select *Yes*** if the defendant has two or more prior violent convictions as an adult.
♦ **Select *No*** if the defendant does not have two or more prior violent convictions.

6. (A) *Length at Current Residence Less than One Year* – A residence is where the defendant currently lives and does not include non-residences such as a jail, prison, halfway house, hospital, or shelter.

♦ **Select *Yes*** to indicate if the defendant has lived at his residence for less than one year, is homeless, or does not have a stable residence.
♦ **Select *No*** if the defendant has lived at his current residence for one year or more.

(B) *Residence Verified* – Select ***Yes or No*** to indicate whether the residence information was verified by a reference or other secondary source.

7. (A) *Not Employed 2 Years/Primary Caregiver* – Employment includes part or full time as long as the defendant worked regularly and consistently for a minimum of 20 hours per week. A defendant is considered a primary caregiver if he or she is responsible for, and consistently cares for, at least one dependent child (under the age of 18) or disabled or elderly family member, living with the defendant at the time of the arrest.

♦ **Select *Yes*** if the defendant was unemployed at the time of the arrest, had a significant gap in employment over the two years prior to the arrest, is retired, disabled or a student <u>and</u> was not a primary caregiver at the time of arrest.
♦ **Select *No*** if the defendant has been employed relatively consistently at one or more jobs during the two years prior to the arrest.
♦ **Select *No*** if the defendant was a primary caregiver at the time of the arrest.

(B) *Employed/Caregiver Verified* – Select **Yes or No** to indicate whether the employed/primary caregiver information was verified by a reference or other secondary source.

8. *History of Drug Abuse* – For the purposes of risk assessment drug abuse includes any illegal or prescription drugs and **does not include alcohol**. Consideration should be given to the information provided by the defendant, criminal history, information contained in supervision records, and any information provided by references regarding drug use (**excluding alcohol**).

Examples: Indications of a history of drug abuse: 1) previously used illegal substance(s) repeatedly (this is to be distinguished from short-term experimental use); 2) defendant admits to previously abusing illegal or prescription drugs; 3) the criminal history contains drug related convictions; and 4) the defendant received drug treatment in the past.

Any one or a combination of the factors above can be used to determine whether or not the defendant has a history of drug abuse.

- ♦ **Select *Yes*** to indicate the defendant has a history of drug abuse.
- ♦ **Select *No*** if the defendant does not have a history of drug abuse.

Risk Level

After selecting responses to the eight risk factors the risk level is automatically calculated in PTCC by selecting the *Calculate Risk* button. The defendant's level of risk is identified as one of the following: Low, Below Average, Average, Above Average, or High (see figure 9).

Figure 9. VPRAI (Step 1) Tab in Screening Module: Risk Level Calculated

VPRAI (STEP 2)

The VPRAI (Step 2) tab shows the results of the risk factors by displaying a statement related to each risk factor in the *Risk Assessment* section. The risk level is also displayed in the *Risk Level* section. The section regarding Meets Presumption of No Bail §19.2-120 contained in the *From Magistrate's Bail Determination Checklist* section has been disabled and is no longer used. Additional considerations related to risk are entered in the *Additional Considerations* section (see figure 10).

Figure 10. VPRAI (Step 2) Tab in Screening Module
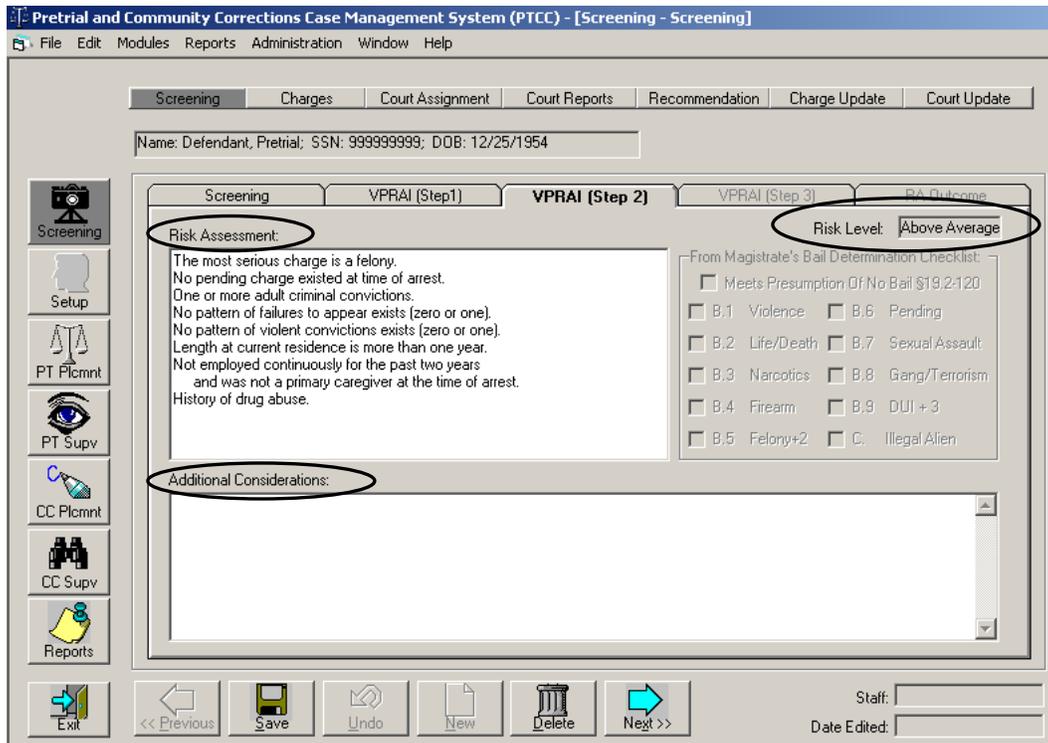
Additional considerations include information deemed important for the judicial officer to consider when making the bail decision. Additional considerations should include areas of risk that have been identified during the pretrial investigation that are not accounted for in the eight (8) primary risk factors detailed previously as well as mitigating factors (factors that may mitigate the seriousness of any of the eight (8) primary risk factors that were identified for the defendant) and positive factors that are relevant to the bail decision.

VPRAI (STEP 3)

The following information for the VPRAI is entered into the VPRAI (Step 3) tab: Recommendation, Recommended Conditions of Release, and Additional Comments/Recommendations. The VPRAI report is also created from this tab (see figure 11).

Figure 11. VPRAI (Step 3) Tab in Screening Module

Recommendation

The *Recommendation* section contains eight (8) options for a bail recommendation and includes the following:

1. Personal Recognizance;
2. Reduced Bond;
3. Same Bond;
4. Supervised Release with PR Bond;
5. Supervised Release with Secure Bond;
6. Increased Bond;
7. No Bond; and
8. No Recommendation.

One of the eight options must be selected.

Recommended Conditions of Release

Conditions of release can be recommended if the bail recommendation entered in the *Recommendation* section is either Supervised Release with PR Bond or Supervised Release with Secure Bond. There are seven (7) common conditions that can be recommended by selecting the box next to recommended condition (see Figure 11: VPRAI (Step 3) Tab in Screening Module, p. 22). The common conditions include:

1. Refrain from excessive use of alcohol or use of drugs;
2. Submit to testing for drugs and alcohol;
3. Refrain from possessing a firearm, destructive device, or other dangerous weapon;
4. No contact with victim or potential witness;
5. Maintain or seek employment;
6. Maintain or commence educational program; and
7. Comply with a curfew.

Other conditions of release permitted by the Code of Virginia can be entered in the *Additional Recommended Conditions of Release* section.

Additional Comments/Recommendations

Information related to the bail recommendation that is not included in the *Recommendation* and *Recommended Conditions of Release* sections can be entered here.

Create VPRAI

The VPRAI report is created by the PTCC software and uses information entered into the four tabs contained in the screening module of PTCC including the Screening, VPRAI (Step 1), VPRAI (Step 2), and VPRAI (Step 3) tabs. Select the *Create VPRAI* button to view and print the VPRAI report.

APPENDIX – EXAMPLE VPRAI REPORT USING SAMPLE DATA

Virginia Pretrial Risk Assessment Instrument

Instrument Completion Date: 05/02/2009   **Court Date:** 05/02/2009
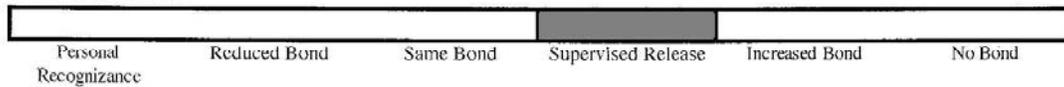
First Name: VPRAI   **Last Name:** Test   **Race:** Other

SSN: 999-99-9999   **Sex:** Male   **DOB:** 05/02/1971

Charge(s): Grand Larceny $5,000, General District Court

Recommendation

Personal Recognizance	Reduced Bond	Same Bond	Supervised Release	Increased Bond	No Bond

Conditions of Release

- Refrain from excessive use of alcohol or use of drugs
- Submit to testing for drugs and alcohol
- Maintain or seek employment
- Complete substance screening and assessment by the CSB

Additional Comments/Recommendations

The combination of the recommended conditions of release with pretrial supervision will address the risk concerns identified by our assessment. Financial conditions are not needed in this case to address the potential for failure to appear in court.

Risk Assessment

Factors Considered

- No pending charge existed at time of arrest
- No pattern of failures to appear exists (zero or one)
- No pattern of violent convictions exists (zero or one)
- Length at current residence is more than one year
- The most serious charge is a felony
- One or more adult criminal convictions
- Not employed continuously for the past two years and was not a primary caregiver at the time of arrest
- History of drug abuse
- The pretrial risk assessment identifies the defendant's risk level as above average

Additional Considerations

Although the defendant has not been employed continuously for the past two years, he recently obtained employment at American Auto Repair. This information was verified through the defendant's employer, John Sullivan.