

Pretrial Risk Assessment and Racial Bias

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Session Objectives

1. Learn about pretrial assessment science
2. Understand how the tools can inform pretrial decision-making
3. Become aware of issues relating to racial/ethnic bias



Risk Assessment Science



Pretrial assessments indicate a defendant's likelihood of:

1. Court Appearance *Not Flight*
2. Law-Abiding *Not Danger*



Pretrial Assessment

Is...

- Actuarial
- Statistical likelihood
- Objective aid to decision-making
- More accurate than subjective guesses

Is Not...

- Guarantee of an outcome
- Replacement for judicial discretion and decisions
- Inclusive of unique characteristics of person or alleged offense



Examples

ORAS-PAT

Factor	Points (Weight)
Age first arrest	0,1
# of FTA warrants	0,1,2
3 or more prior jail incarcerations	0,1
Employed at time of arrest	0,1,2
Residential stability	0,1
Illegal drug use past 6 months	0,1
Severe drug use	0,1

PSA

Factor	Points (Weight)
Age current arrest	0,2
Current violent offense	0,2
Pending charge	0,1,3
Prior misdemeanor conviction	0,1
Prior felony conviction	0,1
Prior violent conviction	0,1,2
Prior FTA in past 2 years	0,1,2,4
Prior FTA > 2 years	0,1
Prior incarceration sentence	0,2

VPRAI-R

Factor	Points (Weight)
Charge is felony drug, theft or fraud	0,3
Pending charge	0,2
Criminal history	0,2
Active community supervision	0,2
Two or more failures to appear	0,1
Two or more violent convictions	0,1
Unemployed at time of arrest	0,1
History of drug abuse	0,2

Optimal Assessment Use

- Informs: Which release conditions are provided for whom
 - “Lower Risk”
 - “Medium Risk”
 - “Higher Risk”
- Likely does not inform: Whom to Release and Whom To detain



Racial/Ethnic Bias

THE USE OF PRETRIAL "RISK ASSESSMENT" INSTRUMENTS: A SHARED STATEMENT OF CIVIL RIGHTS CONCERNS

- At www.civilrights.org (July, 2018)
- to guide the use of the tools, *if* they are used
- Signed by 115 civil rights organizations
- 6 principles
- Should end secured money bail



Their 6 Principles

1. Tools reduce/eliminate racial disparities
2. Tools not used for release/detention; used for least restrictive release conditions
3. Have prompt, adversarial detention/conditions hearing; burden on prosecutor; focus on great likelihood of flight and danger
4. Tools are transparent, accessible, challengeable
5. Tools express likelihood of success
6. Tools regularly revalidated; input and oversight by the community



The Research Says ...

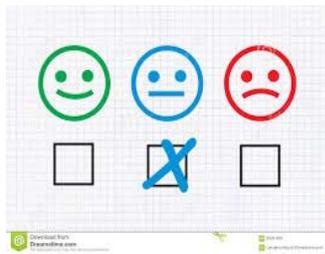
Evidence of presence (of bias)

or

Evidence of absence (of bias)

or

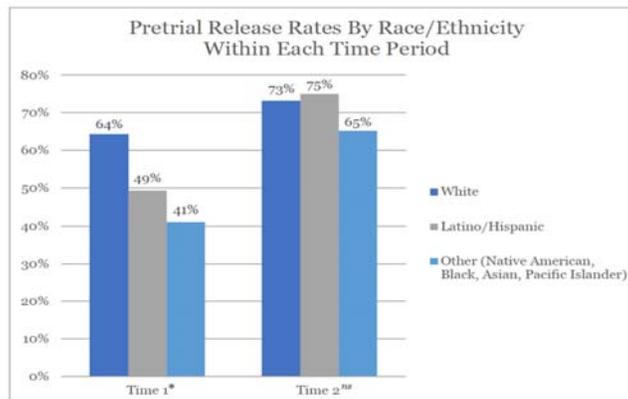
Absence of evidence



“The extant research evidence neither supports nor refutes these concerns” (Desmarais & Lowder (2019).



Yakima County, WA (2017)



“Some research also shows that the use of risk assessment tools can contribute to increased rates of pretrial release among racial and ethnic minorities over decisions made in the absence of pretrial risk assessment tools” (Desmarais & Lowder (2019).



What Matters

- Tools must be well constructed and validated
- Tools must be implemented well
 - Within state and federal law parameters
 - Can use a Decision Framework and Release Conditions Matrix



Contact Information

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