



ABA Restoring the Presumption of Innocence Project

Pretrial Release and Risk Assessments

50 years of research has consistently shown that pretrial detention increases post-conviction incarceration, because defendants who are detained in jail while awaiting trial are more likely to plead guilty, to be convicted, to be sentenced to prison, and to receive harsher sentences than those who are released before trial.¹ The average pretrial jail bed costs anywhere from \$60 - \$200 per day, so the country spends \$9 billion on pretrial jail beds per year.²

A pretrial risk assessment is a tool that calculates a risk level for a defendant. The risk level corresponds to the defendant's likelihood to fail to appear or of new criminal activity. The lower the risk level assessed, the lower the likelihood of failure to appear or new criminal activity.³

A risk assessment provides classifications for defendants that can be used when determining their pretrial release. It provides a calculated analysis of the risk the defendant poses, rather than just determining risk based on gut instinct or the limited facts provided to a judge. It also helps eliminate any personal biases against defendants for their race, age, gender, or socio-economic class. A risk assessment does not need to replace current pretrial risk assessment procedures to be beneficial. Just by adding a calculated assessment, the accuracy of the prediction is improved.⁴ Therefore, the assessment could be used to supplement current procedures and provide judges with more information for predicting a defendant's pretrial risk.

There are several different types of pretrial assessments used across the country. Although each slightly different, many of the factors used to calculate risk are the same between assessments. To be most effective, an assessment should be recalibrated to the jurisdiction it is

¹ KRISTIN BECHTEL, JOHN CLARK, MICHAEL R. JONES, & DAVID J. LEVIN, PRETRIAL JUSTICE INST., *DISPELLING THE MYTHS: WHAT POLICY MAKERS NEED TO KNOW ABOUT PRETRIAL RESEARCH* (2012). Available at [http://www.pretrial.org/download/pji-reports/Dispelling%20the%20Myths%20Exec%20Summary%20\(November%202012\).pdf](http://www.pretrial.org/download/pji-reports/Dispelling%20the%20Myths%20Exec%20Summary%20(November%202012).pdf).

² PRETRIAL JUSTICE INST. *IMPLEMENTING THE RECOMMENDATIONS OF THE NATIONAL SYMPOSIUM ON PRETRIAL JUSTICE: THE 2013 PROGRESS REPORT*. (2014). Available at <http://www.pretrial.org/download/infostop/Implementing%20the%20Recommendations%20of%20the%20National%20Symposium%20on%20Pretrial%20Justice-%20The%202013%20Progress%20Report.pdf>.

³ MARIE VANNOSTRAND & CHRISTOPHER T. LOWENKAMP, LAURA & JOHN ARNOLD FOUND., *ASSESSING PRETRIAL RISK WITHOUT A DEFENDANT INTERVIEW*. (2013). Available at http://www.arnoldfoundation.org/sites/default/files/pdf/LJAF_Report_no-interview_FNL.pdf.

⁴ CHARLES SUMMERS & TIM WILLIS, BUREAU OF JUSTICE ASSISTANCE U.S. DEP'T OF JUSTICE, *PRETRIAL RISK ASSESSMENT: RESEARCH SUMMARY 2* (2010) *available at* <https://www.bja.gov/Publications/PretrialRiskAssessmentResearchSummary.pdf>.

being used in.⁵ When deciding which assessment to use, or to model after, a jurisdiction needs to consider the goals of the risk assessment as well as the types of defendants within its jurisdiction.

Virginia Pretrial Risk Assessment Instrument (VPRAI)

The VPRAI was developed by the Virginia Department of Criminal Justice Services in 2003 to be used throughout Virginia in identifying a defendant's risk level if released before trial.⁶ The VPRAI calculates risk level based on nine factors: charge type, pending charges, outstanding warrant, criminal history, previous failures to appear convictions, previous violent convictions, length at current residence, length of employment, and history of drug abuse.⁷ It is used across the entire state.

The VPRAI is an example of an assessment that has been developed and recalibrated over a decade to provide the most accurate assessment tool for Virginia: the state began creating the original VPRAI in 1998 with its release in 2003, while it was validated and recalibrated in 2005.⁸ The VPRAI is often turned to by and used as a model for other jurisdictions creating and/or validating a risk assessments.⁹ The VPRAI is most likely to be used by a jurisdiction looking to create their own risk assessment for a tailored, state-wide jurisdiction. The VPRAI is also likely to be used as a model for validating and recalibrating a risk assessment after it has been created.

Ohio Risk Assessment System: Pretrial Assessment Tool (ORAS-PAT)

The ORAS-PAT was developed by the Center for Criminal Justice Research at the University of Cincinnati to be both quick to administer and predictive of a defendant's risk level.¹⁰ The ORAS-PAT calculates risk level based on seven factors: age of first arrest, previous failures to appear, prior jail incarcerations, employment at time of arrest, length at current residence, recent illegal drug use, and history of drug abuse.¹¹ It is used across the entire state.

The Ohio Risk Assessment System (ORAS) was created to classify risks at every stage of the criminal system.¹² The ORAS-PAT is an example of a pretrial risk assessment that was created to be a portion of a larger risk assessment system. It is also an example of a pretrial risk assessment that was tailored to its jurisdiction.¹³ Despite being created and tailored for Ohio, the

⁵ EDWARD LATESSA, PAULA SMITH, RICHARD LEMKE, MATTHEW MAKARIOS, & CHRISTOPHER LOWENKAMP, CREATION AND VALIDATION OF THE OHIO RISK ASSESSMENT SYSTEM 4 (2009) *available at* <http://www.pretrial.org/download/risk-assessment/Ohio%20Pretrial%20Risk%20Assessment%202009.pdf>.

⁶ VA PRETRIAL RISK ASSESSMENT INSTRUMENT TRAINING 1. Available at <https://www.dcjs.virginia.gov/corrections/documents/vpraiManual.pdf>.

⁷ *Id.* at 5-8.

⁸ MARIA VANNOSTRAND & KENNETH J. ROSE, PRETRIAL RISK ASSESSMENT IN VIRGINIA 7, 9 (2009) *available at* <https://www.dcjs.virginia.gov/corrections/riskAssessment/assessingRisk.pdf>.

⁹ Including California, Delaware, and nationally. *Toolkit – Creating an Effective Pretrial Program*, CALIFORNIANS FOR SAFETY AND JUSTICE, (2012) <http://www.safeandjust.org/resources/2013-06-creating-an-effective-pretrial-program>; Memorandum from Vera Inst. of Justice, Ctr. on Sentencing and Corr., to Delaware Justice Reinvestment Task Force 9 (Oct. 12, 2011) *available at*

http://ltgov.delaware.gov/taskforces/djrtf/DJRTF_Risk_Assessment_Memo.pdf; *Pretrial Risk Assessment*, PRETRIAL JUSTICE INSTITUTE (2014) <http://www.pretrial.org/solutions/risk-assessment/>.

¹⁰ CENTER FOR CRIMINAL JUSTICE RESEARCH, OHIO RISK ASSESSMENT SYSTEM: PRETRIAL ASSESSMENT TOOL (ORAS-PAT) SCORING GUIDE 3. (2010). Available at

<http://reentrycoalition.ohio.gov/docs/oras/tools/pre%20trial%20tool/Pretrial%20%20Scoring%20Guide%20final.pdf>

¹¹ *Id.* at 5-7.

¹² LATESSA, *supra* note 5, at 6.

¹³ *Id.* at 7.

ORAS has also been successfully adopted and is used in Indiana.¹⁴ This shows the ORAS-PAT's ability to be transferred and adopted to other jurisdictions, especially those with similar target populations. The ORAS-PAT is most likely to be used by a jurisdiction that wants to create a larger risk assessment to be used at every stage in the criminal justice system, not just a pretrial assessment.

Federal Pretrial Risk Assessment Instrument (PTRA)

The Office of the U.S. Courts and the Office of Federal Detention Trustee developed the PTRA as an actuarial risk assessment tool.¹⁵ The PTRA calculates risk level based on the following factors: number of felony convictions, prior failures to appear, pending charges, current offense type, offense class, age at interview, education level, employment status, residential ownership, current drug problems, current alcohol problems, citizenship status, foreign ties, valid passport, financial interest outside US, and recent travel outside of US.¹⁶

The PTRA may be the most wide-spread of the pretrial risk assessments, because it is used in at least 93 federal districts.¹⁷ The PTRA has been revalidated, showing that it is an accurate predictor of a defendant's risk level.¹⁸ This information is then used to make the PTRA more accurate in its results. Additionally, the PTRA also has the capabilities of being tailored to specific populations of defendants,¹⁹ which allows each jurisdiction to adapt the assessment to providing the most accurate results for its defendants. The PTRA is most likely to be used by a jurisdiction that has many different populations of defendants, because this is reflective of the diversity in defendants across the federal districts.

¹⁴ *Ohio Risk Assessment System*, PRETRIAL JUSTICE CENTER FOR THE COURTS, <http://www.ncsc.org/Microsites/PJCC/Home/Tools/Pretrial-Risk-Assessment/ORAS.aspx> (last visited Oct. 27, 2014).

¹⁵ Timothy P. Cadigan & Christopher T. Lowenkamp, *Implementing Risk Assessment in the Federal Pretrial Services System*, FED. PROBATION, <http://www.uscourts.gov/uscourts/FederalCourts/PPS/Fedprob/2011-09/implementing.html> (last visited Oct. 10, 2014).

¹⁶ FEDERAL PRETRIAL RISK ASSESSMENT INSTRUMENT (PTRA) 1-3. Available at [http://www.pretrial.org/download/risk-assessment/Federal%20Pretrial%20Risk%20Assessment%20Instrument%20\(2010\).pdf](http://www.pretrial.org/download/risk-assessment/Federal%20Pretrial%20Risk%20Assessment%20Instrument%20(2010).pdf).

¹⁷ Timothy P. Cadigan, James L. Johnson, & Christopher T. Lowenkamp, *The Re-validation of the Federal Pretrial Services Risk Assessment (PTRA)*, FED. PROBATION, http://www.uscourts.gov/uscourts/FederalCourts/PPS/Fedprob/2012-09/01_federal_ptr.html (last visited Oct. 27, 2014).

¹⁸ *Id.*

¹⁹ *Id.*