

# AN ORGANIZER'S GUIDE

to Confronting Pretrial Risk Assessment Tools in

## DECARCERATION CAMPAIGNS



COMMUNITY JUSTICE EXCHANGE

# ACKNOWLEDGMENTS

We would like to thank the many community organizers who shared their experiences and insight and offered feedback in the development of this guide.

This guide was created with invaluable collaboration from Media Mobilizing Project, a community organization working at the intersection of technology, race and economic justice. We want to specifically thank Hannah Sassaman and Bryan Mercer for their expertise and leadership.

Thanks to Elisabeth Epps, Sharlyn Grace, Lola Rainey, and Atara Rich-Shea for providing formative feedback and edits. And a special thanks to Raj Jayadev, Donna Mandel, and John Raphling for reviewing and giving critical feedback to final versions.

We hope to revise and update this guide as organizers try and experiment with new campaign strategies to push for decarceration. We welcome feedback on how to improve this tool.

For more information, please contact [info@communityjusticeexchange.org](mailto:info@communityjusticeexchange.org)

December 2019 Version  
© Community Justice Exchange

Cover art & design by [OORI Studio](#)

# CONTENTS

|   |    |
|---|----|
| INTRODUCTION  | 4  |
| <b>Section ONE</b> FRAMEWORK FOR ENGAGING WITH RISK ASSESSMENT TOOLS  | 6  |
| <b>Section TWO</b> UNDERSTANDING RISK ASSESSMENT IN YOUR JURISDICTION | 13 |
| <b>Section THREE</b> A FRAMEWORK FOR COMMUNITY CAMPAIGNS              | 29 |
| APPENDIX  |    |
| 1. Data & variables used in the construction of RATs                  | 37 |
| 2. Types of risk assessment tools                                     | 42 |
| 3. Scoring & decision making frameworks                               | 46 |
| ENDNOTES  | 48 |

# INTRODUCTION

As organizers, we're facing a turning point in how we build campaigns to end pretrial incarceration and mass supervision in the criminal legal system. This has been particularly true in the fight to end money bail, which may have seemed more straightforward in the past as we worked towards public recognition of the deep and long-lasting harms of wealth-based detention and its contribution to pretrial incarceration. Now we are at a crossroads, where campaigns to end money bail and pretrial incarceration must also contend with the broad and insidious introduction of risk assessment tools (RATs) as one of the "replacement" interventions the system wants to claim as "reform." We created this guide for organizers contending with this tension — how to engage with risk assessment tools in their work to end pretrial incarceration and mass supervision.

Risk assessment tools (RATs) are decision-making rubrics that make predictions. RATs can be simple, scored checklists, or they can be complex algorithmic software programs — and everything in between. To date, at least forty-one states, including at least 1000 counties,<sup>1</sup> have instituted RATs in their pretrial systems. They use at least one of more than 150 different kinds of tools to make predictions about a defendant's statistical likelihood, or "risk," of not returning to court or being rearrested if released. RATs influence the decisions of judges, magistrates, and pretrial service departments. In policy conversations about specifically ending money bail, the use of RATs is particularly held up as a "solution." For example, New Jersey, which made some of the most comprehensive changes to and nearly eliminated its money bail system with a law that took effect on January 1, 2017, made those changes while integrating a RAT.

We use the term "RAT" (Risk Assessment Tools) to refer both to sophisticated mathematical formulas, run by computers, as well as straightforward scoring guides for questions on checklists that are asked by a court officer before bail hearings. Algorithmic RATs are statistical tools that use hundreds or thousands of criminal records to try and predict future behavior — in this case, a pretrial defendant's probability, based on their apparent statistical similarities to others in the past, of showing up for court dates or being arrested for a new "violent" charge (as defined by the criminal legal system) if released.

Not every RAT is an algorithmic tool, however. A jurisdiction may use a decision-making rubric that is meant to be predictive but is not necessarily informed by data. These proto-RATs are still risk assessment tools and may appear as an assessment form used by a pretrial services department, a score card used by a judge, or any formulaic decision-making rubric that the system uses to judge a person and then make a detention or release decision.

This "substitution" narrative has been promoted by court administrators and some legislators seeking pretrial reform, despite RATs having been proven in some instances to perpetuate racial disparities<sup>2</sup> and, in some places where they are used, to do nothing to reduce the numbers of people jailed pretrial.<sup>3</sup> Organizers across the country have refuted this narrative in their local work to end pretrial incarceration and mass supervision. In late 2018, civil rights, community, legal,

racial justice, and data justice organizations released a national statement of concern,<sup>4</sup> establishing a coordinated national call to end money bail and enact major decarceral pretrial reform without using risk assessment tools. Data scientists have joined that call, releasing their own statement during the summer of 2019 opposing the use of risk assessment in pretrial decision-making.<sup>5</sup>

The fact is: the crisis of pretrial detention persists both in places where risk assessment is enshrined in decision-making, as well as in places where risk assessment tools are not yet used.

Opposing risk assessments in isolation from other pretrial detention mechanisms has the potential to obscure, or distract from, the fight to eliminate pretrial incarceration and supervision entirely.

Risk assessment tools and algorithms are used in other parts of the criminal legal system besides at the pretrial stage, including at sentencing and in parole/probation systems. Sometimes, algorithms assign the location of people caged within jails and prisons.

This guide focuses on pretrial risk assessment tools and campaigns related to ending pretrial incarceration.

**Instead of focusing on abolishing risk assessments as an endpoint, we propose that targeting risk assessments is a tactic within a larger campaign strategy to end pretrial incarceration and mass supervision with clear decarceral goals.** This guide provides tools for opposing RATs, and an analysis that our opposition to them is one part of a larger organizing strategy to end pretrial incarceration and mass supervision.

Because we know that in most jurisdictions, pretrial risk assessment tools are already used or are part of conversations about pretrial policy reform, we have organized this guide to help organizers figure out if and how taking on RATs should be part of their larger decarceration<sup>6</sup> strategy. We recognize that there will be a diverse set of strategies nationally, with different local goals around decarceration, confronting racial disparities in pretrial decision-making, and power-building for communities that are directly impacted by criminalization and incarceration.

Section  
**ONE**

provides a framework for engaging with RATs that are used in pretrial decision-making.

Section  
**TWO**

introduces a process for analyzing risk assessment in a particular jurisdiction.

Section  
**THREE**

provides a framework for planning a campaign with the intersecting goals of ending money bail, decarceration, and risk assessment accountability.

The guide also includes an extensive **APPENDIX OF RESOURCES**, including a review of pretrial risk assessment tools currently deployed across the U.S., and detailed information about how RATs have been constructed.

Section  
**ONE**

## FRAMEWORK FOR ENGAGING WITH RATS

This section names **seven core points** to help you decide whether organizing around pretrial risk assessments is a tactic useful for you within a larger campaign to end pretrial incarceration.

.....

- 1.** Risk assessment tools are neither new, nor rare, in the pretrial stage of the criminal legal system.
- 2.** Proponents of risk assessment tools assert that they are “objective” and “scientific”; however, the data driving the tools is biased.
- 3.** Risk assessment tool recommendations make both failure to appear in court and pretrial violence seem more predictable, and more common, than either really are.
- 4.** Despite claims by supporters, risk assessment tools do not automatically result in decarceration or reduce racial disparities.
- 5.** Risk assessment instruments only make a recommendation. Judges still decide who gets locked up and who goes home.
- 6.** Risk assessment tools perpetuate the belief that pretrial detention or supervision is necessary and justifiable for particular groups of people.
- 7.** Risk assessment tools are built from information that is taken out of context.

## **1 RISK ASSESSMENT TOOLS ARE NEITHER NEW, NOR RARE, IN THE PRETRIAL STAGE OF THE CRIMINAL LEGAL SYSTEM.**

Over the last ten years, risk assessment tools have been embedded in the pretrial decision-making processes of at least 1,000 counties.<sup>7</sup> Major foundations like Arnold Ventures<sup>8</sup> have promised to fund and promote the use of RATs in over 200 additional jurisdictions during the next five years. In almost every state, there are jurisdictions using or piloting risk assessment instruments in their pretrial systems. A Pretrial Justice Institute<sup>9</sup> survey in 2019 found that of its respondents, forty percent of counties who currently using a RAT reported that they have been using a RAT for 10 years or more.

In many places, pretrial RATs — which are touted by their developers and proponents as being more “scientific,” “objective” and less racially biased than many judges — were introduced as a reform to temper the often unchecked power of judges to deny and set bail for pretrial defendants. As the movement to eliminate money bail has grown stronger, reform-minded groups and courtroom insiders, who believe that RATs are fairer than judges’ or bail magistrates’ human subjectivity, began pushing for RATs to replace wealth-based detention.

Today, risk assessment tools have become a dominant part of most conversations about changing the pretrial system. Increasingly, organizers, advocates, investigative journalists, and academics are challenging the logic and use of RATs in pretrial decision making.<sup>10</sup>



## **2** PROPONENTS OF RISK ASSESSMENT TOOLS ASSERT THAT THEY ARE “OBJECTIVE” AND “SCIENTIFIC;” HOWEVER, THE DATA DRIVING THE TOOLS IS BIASED.

The “predictive” data points that RATs rely on — such as previous arrests and convictions — that are available to data scientists to make and train their tools are collected by police, and described as important by courts, legislators, and other state actors. These data points are instigated and defined by law enforcement, and they are embedded in deeply racist and classist histories and institutions.

Other supposedly predictive factors that are weighed by RATs, such as housing or employment status, purportedly measure “risk” but instead reflect racial and economic bias. As a result, RATs do more to describe the behavior of police and prosecutors, rather than predict the behavior of criminalized individuals.<sup>11</sup> Appendix 1 in this guide reviews the common datasets that RAT predictions are built upon and the great potential for bias in each, in greater detail.

Descriptions of RATs as “objective” often obscure the reality behind the curtain — that the tool might be conditioned on very political and biased decision-making. For example, there are multiple jurisdictions where the PSA tool incorporates “exclusion lists” that allow judges and prosecutors to add charges that automatically exclude recommendations for release and can override other preprogrammed scoring systems embedded in the tool.



## **3 RISK ASSESSMENT TOOL RECOMMENDATIONS MAKE BOTH FAILURE TO APPEAR IN COURT AND PRETRIAL VIOLENCE SEEM MORE PREDICTABLE AND MORE COMMON THEN EITHER REALLY ARE.**

When legislators, prosecutors, or courts say that they need a risk assessment tool to predict whether an accused person is a flight risk or a risk to public safety, they assume that many people purposely evade prosecution and/or commit crimes while released pending trial. Yet evidence shows that most people make their court dates and that pretrial violence — and violent crime itself— is very rare.

Decades of research and the experiences of community bail funds show that most people (more than 75 percent)<sup>12</sup> show up for all of their court dates. Of the minority that missed at least one hearing, 94 percent appeared in court within a year after their missed appointment.<sup>13</sup> Those who miss court are hardly ever fleeing prosecution.<sup>14</sup> Instead, people miss court dates because of life circumstances, such as the inability to miss work, needing childcare, or simply forget.<sup>15</sup> Recent studies find that court date reminders and allowing for rescheduling effectively reduce failures to appear.<sup>16</sup>

The ability to accurately predict future behavior, especially violence, is a difficult — if not impossible — task.<sup>17</sup> According to research scientists at M.I.T. who study risk assessment, “Applying ‘big data’ forecasting to our existing criminal justice practices is not just inadequate — it also risks cementing the irrational fears and flawed logic of mass incarceration behind a veneer of scientific objectivity. Neither judges nor software can know in advance who will and who won’t commit violent crime.”<sup>18</sup>

While many tools attempt to forecast the likelihood of a person being arrested for a new violent crime if released pretrial, there is no evidence to suggest that this would be an issue.<sup>19</sup> In fact, the numbers that do exist show that it is extremely rare for people to be rearrested on new accusations of violence while they have a case pending. A report released by the Chief Judge of Cook County, IL, showed that 15 months after bail reform went into effect, only six percent of the people charged with felonies and released pretrial were arrested for a new violent offense.<sup>20</sup>

Similarly, in Washington, D.C., where 94 percent of people accused of a crime are released pretrial without cash bail, only two percent of those people were arrested for a violent crime while on release. Even one of the most commonly used tools, the Arnold Ventures Pretrial Safety Assessment, or PSA, itself predicts that 92 percent of the people that its algorithm flags for pretrial violence will not get arrested for a violent crime.<sup>21</sup> “The fact is, a vast majority of even the highest-risk individuals will not commit a violent crime while awaiting trial,” explain the M.I.T. research scientists. “If these tools were calibrated to be as accurate as possible, then they would simply predict that every person is unlikely to commit a violent crime while on pretrial release.”

RATs allege to predict whether an accused person will commit a crime in the future. In practice, what RATs measure is the probability that police will arrest that person again. Given the over-policing of Black and Brown, poor, immigrant, LGBTQ, and otherwise marginalized communities, people of color and low-income people are more likely to be criminalized, targeted and arrested — whether or not legal charges will actually stick later.<sup>22</sup> Social policies reflect policing patterns: Because homelessness, poverty, mental illness, sex work, and drug use is criminalized in most places, people experiencing these conditions or engaging in these practices are much more likely to be rearrested. People who are rearrested are then more likely to be deemed “risky” to commit future violence.

## **4 RISK ASSESSMENT TOOLS DO NOT AUTOMATICALLY RESULT IN DECARCERATION OR REDUCE RACIAL DISPARITIES; THEIR RECOMMENDATIONS REFLECT THE PRIORITIES OF THOSE WHO PROGRAM THEM.**

In most places where they have been implemented, risk assessment tools have not, on their own, reduced the numbers of people jailed pretrial. Nor have they reduced racial disparities. RATs can be adjusted to increase pretrial incarceration, decrease it, or to maintain detention at a specific level.

For example, in Kentucky, where a mandatory risk assessment tool was implemented with the explicit intention to decrease the numbers of people jailed pretrial, studies examining the effect of the RAT have shown that it has not reduced pretrial incarceration, and the state continues to have a pretrial detention rate that is higher than the national average.<sup>23</sup> Further studies in Kentucky demonstrated an increase in racial bias in counties with high Black and Brown populations after the implementation of risk assessment in Kentucky’s pretrial system.<sup>24</sup> In New Jersey, pretrial detention numbers have decreased since the state implemented a major bail reform package and restructured the pretrial system — which included implementing a RAT. However, racial disparities in New Jersey’s pretrial system have remained — and in fact for Black defendants has increased more than the state administrators who implemented the RAT initially predicted.<sup>25</sup>

## **5 RISK ASSESSMENT INSTRUMENTS ONLY MAKE A RECOMMENDATION. JUDGES STILL DECIDE WHO GETS LOCKED UP AND WHO GOES HOME.**

Focusing on pretrial RATs that replace money bail can distract us from the fact that judicial discretion allows human bias to continue unchecked, regardless of a RAT's recommendations or use. Even if the RAT algorithms were 100% objective, 100% accurate, and 100% decarceral, they are still only recommendations to judges, magistrates, prosecutors, or pretrial service agencies. Their recommendations are not binding. As data scientist Megan Stevenson found in her study of Kentucky's risk assessment tool, the state's pretrial release rate did not increase significantly following implementation, because judges could override the tool's recommendations — and overwhelmingly, the judges in Kentucky studies were more inclined to keep people detained, rather than release them.<sup>26</sup>

## **6 RISK ASSESSMENT TOOLS PERPETUATE THE BELIEF THAT PRETRIAL DETENTION OR SUPERVISION IS NECESSARY AND JUSTIFIABLE FOR PARTICULAR GROUPS OF PEOPLE.**

While pretrial risk assessment algorithms' assessments are a poor substitute for individually investigating and accounting for risk, they are a perfect tool for perpetuating the damaging narrative that some groups of people are “risky” and require pretrial detention or supervision. Due to the built-in biases of the datasets that these tools are built on, and the racism of the criminal punishment system, these tools correlate “risk” with being Black and Brown, poor, LGBTQ, immigrant, and otherwise marginalized. The concept of “risk” is also associated with people accused of violent and crimes labeled as “serious” by the system; calling a person “risky” has profound consequences.

Ultimately, to end mass incarceration and criminalization, policy makers need to confront non-carceral interventions for those accused or convicted of violent acts, and create structural changes that prevent social inequalities that exacerbate violence. Exclusively crafting reforms that only target non-violent, non-felony, non-“serious” offenses will not substantively change the U.S. incarceration crisis.<sup>27</sup> To do so, organizers fighting to end money bail and pretrial detention will have to complicate the popular narrative of assigning individuals categories such as deserving/undeserving or worthy/unworthy, as well as the very concept of what “risks” we care about in our communities.

## **7** RISK ASSESSMENT TOOLS ARE BUILT FROM INFORMATION THAT IS TAKEN OUT OF CONTEXT.

Pretrial risk assessment tools are built upon a set of variables that take discrete data points about an individual and then attempt to draw conclusions from a profile created by these decontextualized data points. The out-of-context data points used to calculate a RAT score undermine the “objective” premise of risk assessment, and make RATs drivers of racial bias instead.

Consider: How can we predict “risk of arrest” without acknowledging policing bias? How can we measure housing stability or employment without considering the economic conditions of overpoliced neighborhoods? How can we calculate “failure to appear” without accounting for the personal and structural conditions that cause a person to miss court? None of these contextual points are considered when a RAT is built, nor when an individual is scored by a RAT.

We can see how decontextualization is a mechanism that dehumanizes people in the system and drives towards carceral outcomes. If an accused individual’s complex life chances are reduced to a profile or score, then judges, prosecutors, and pretrial services workers are encouraged to make transactional decisions that recommend supervision and detention – instead of taking the time to inquire about an individual person’s circumstances.

Section  
**TWO**

# UNDERSTANDING RISK ASSESSMENT IN YOUR JURISDICTION

Every jurisdiction is different, and any organizing campaign you take on is going to be specific to your community and what you are fighting to win. This section will help you to understand pretrial RATs in your jurisdiction.

In some places, whether and how risk assessment tools may be used in pretrial decision-making is a fairly new policy debate. In other places, the use of a RAT may be long-standing and entrenched in the pretrial system. Mapping out your situation is a critical first step to assess potential levers for an organizing campaign.

We have organized this section around **six questions** for learning about RATs in your jurisdiction. These six areas overlap, and some steps will take longer than others to answer and interrelate. You might also end up tackling the different questions in an alternate order. Answers to these questions may require investigation in your local community.

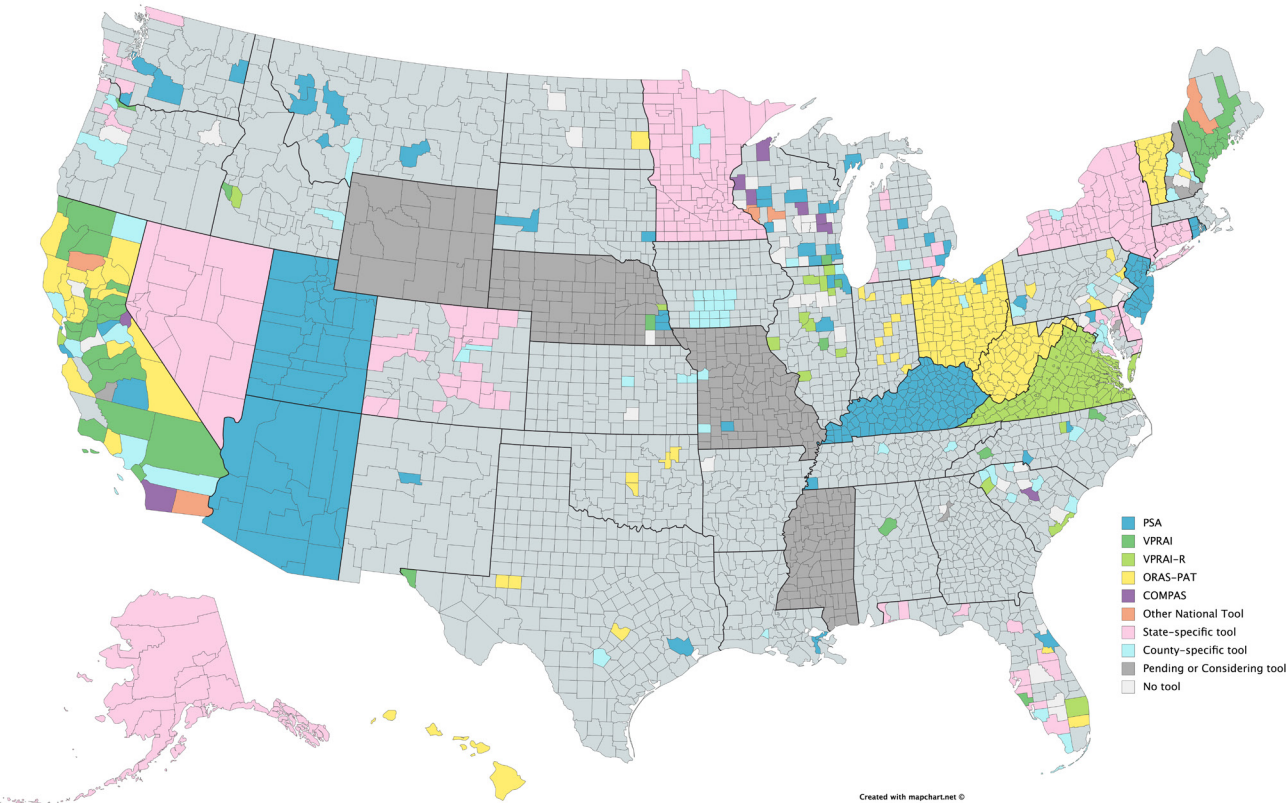
- 
1. What kind of RAT is in use (or being proposed)?
  2. Where in the implementation lifecycle is the RAT in your jurisdiction?
  3. What type of mandate has led to the use of a RAT in your jurisdiction?
  4. How is the RAT used?
  5. What (if any) transparency exists around the use of the RAT?
  6. What are the external political pressures that lead some to push RATs as a “solution”?

## 1 WHAT KIND OF RAT IS IN USE (OR BEING PROPOSED)?

Understanding what kind of RAT — as well as knowing which specific tool is being used or being considered — is requisite for determining any next organizing steps.

There are more than 150 types of pretrial risk assessment tools in use today. Many jurisdictions across the United States have been using some kind of risk assessment in the criminal legal system since at least the 1930s,<sup>28</sup> when clinical “experts” like psychologists, probation officers, and social workers would make guesses on a person’s likelihood to recidivate. Modern actuarial risk assessment was born with the development of the “Vera scales” in 1961, when the Vera Institute for Justice developed a point scale, weighing family and community ties to identify whether defendants were likely to appear in court if released.<sup>29</sup>

NATIONAL RAT USE<sup>30</sup>



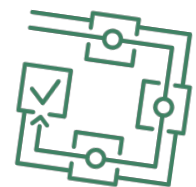
More counties began experimenting with risk assessment in the 1960s, 70s, and 80s, either using the Vera scales outright, or developing tools of their own. These RATs had wildly different levels of accuracy; many overpredicted “dangerousness,” and few were subject to any oversight.<sup>31</sup> During the “tough-on-crime” era of the 1980s, governments looked to “selectively incapacitate”<sup>32</sup> segments of the population that they believed were responsible for “chronic” offending, and they turned to actuarial risk assessment to help identify those individuals. At the same time, governments looked for individuals “safe” to release, in order to unwind some of the most egregious impacts of mass incarceration and its marked growth during this period.<sup>33</sup> Despite a repeated inability<sup>34</sup> of risk assessment tools to accurately predict whether individuals were likely to commit acts of violence upon release, dozens of jurisdictions instituted risk assessments throughout the 80s and 90s.

Today, at least 1,000 counties use some sort of pretrial RAT. If you live in one of them and want to learn about how risk assessment is used in your area, it is important to first identify whether your jurisdiction is using an algorithm-based tool or a decision-making rubric.

## ALGORITHMIC RATs

Modern risk assessment algorithms — actuarial tools trained on thousands of records of criminal justice data that then claim to predict future behavior — have been developed by private companies as well as public entities and academic institutions. The PSA, VPRAI, ORAS, and COMPAS are tools that are widely used and are often lobbied for and promoted by foundations and institutions involved in their construction. Appendix 2 discusses the specific details of the most commonly used algorithmic-based RATs including the PSA, VPRAI, ORAS, and COMPAS. Appendices 1 & 3 describe how these algorithms are constructed.

Numerous jurisdictions have created “homegrown,” or bespoke, algorithmic tools. In such cases, a jurisdiction will have contracted with experts, universities or think tanks to create a tool trained on data local to their county or state (rather than a national dataset). Even though these algorithmic tools are created locally, they may end up being used by other jurisdictions, similar to how commercially created RATs are used all over the country (see the example on the next page for a discussion of how Virginia’s tool, the VPRAI, has dispersed to other places). Examples of other bespoke algorithmic tools include the CPAT in Colorado, the NPRA in Nevada, and the SPRAT in Sonoma, CA.





## ONE RAT, MANY HOMES

A RAT can be used in different ways county to county, and state to state, depending on how the local jurisdiction adapts them to their laws, common practices, and rules of criminal procedure.

The original Virginia Pretrial Risk Assessment Instrument, or VPRAI, for example, was “trained” on 1,971 criminal justice records collected in Virginia jurisdictions during the late 1990s. From those records, developers calculated eight factors that they considered to be predictive of pretrial risk.<sup>35</sup> Wherever it is deployed, the VPRAI evaluates “failure to appear,” “new arrest,” and “new arrest with a violent charge” by evaluating accused people using these same eight factors, and reporting results to pretrial decision-makers in one combined score. The tool is now widely deployed in communities nationwide, both in its original format, the VPRAI, and in a re-calibrated format, the VPRAI-R, or “Revised VPRAI.”<sup>36</sup>

In Virginia, bail is first set for an accused person at a “magistrate hearing,” where the magistrate making the initial release determination consults a cursory checklist. Virginia’s risk assessment tool, the VPRAI-R, is not used at that important initial stage. Instead, it is used in later decisions to decide a defendant’s access to pretrial services. Only about 13 percent of community members arraigned in Virginia are run through the VPRAI-R.

In Madera County, California, county pretrial services staff administer the VPRAI after pretrial arraignment to decide whether an individual accused of a crime should be released. Release recommendations are made based on the combined VRPAI score: a score of 6 or more typically means that a defendant will be denied release pretrial, while a lower score of 1-2 typically results in being recommended for release — unless the alleged crime is considered a “serious” or violent offense. The VPRAI score goes into the file of the accused person, and is seen only by the judge, defense attorney, and prosecutor.<sup>37</sup>

Since February 2019, Ada County, Idaho, has also used VPRAI for all people who are arrested and booked into jail on new charges. Unlike in Virginia or Madera County, CA, Ada County’s court services will not use the VPRAI to recommend detention. Instead, the tool is only used to assign conditions of pretrial release. All parties in the pretrial arraignment — including the judge, prosecutor, defense counsel, and accused person — are able to see the results of the VPRAI and how it was scored.<sup>38</sup> Ada County plans to move to use the VPRAI-R in the future.



## NON-ALGORITHMIC RATs

Not every RAT is an algorithmic tool. It is important to note that a jurisdiction may use a decision-making rubric that serves the same function as a RAT but is not necessarily trained on a set of data. These non-algorithmic RATs are still risk assessment tools, and may appear as an assessment form used by a pretrial services department, a score card used by a judge, or any formulaic decision-making rubric that the system uses to judge a person and then make a detention or release decision. We think it is important to flag these non-algorithmic RATs, since they can normalize a process that opens the door for algorithmic-based tools.



### EXAMPLE OF NYC PRETRIAL ASSESSMENT

A non-algorithmic decision-making rubric has been used in New York City since the 1970s.<sup>39</sup> Designed and implemented by a non-profit organization in contract with the criminal court system, the Criminal Justice Agency (CJA), the CJA risk assessment incorporates community ties and criminal history metrics to produce a score (“high risk,” “moderate risk,” or “low risk”) and corresponding release recommendation (high = not recommended for release, moderate = moderate recommendation for release, low = recommended for release). The score is generated from information gathered through a pre-arraignment interview with the accused person and information from the accused person’s criminal record. Each metric receives certain points, depending on the answer, that are then added up to determine a score. The recommendation is presented to the judge as an “indication of the defendant’s likelihood of returning to court, if released.”<sup>40</sup> While public defenders, district attorneys, and judges all have access to and often refer to the CJA recommendation in bail hearings, studies show that the best predictor of a judge’s decision for bail is the district attorney’s request, not the CJA recommendation.<sup>41</sup>

| CJA Recommendation Point System   |             |    |           |    |    |
|---|-------------|----|-----------|----|----|
|   | Y           | YV | N         | NV | UC |
| 1. Does the defendant have a working telephone or cellphone?              | 1           | 1  | -2        | -2 | 0  |
| 2. Does the defendant report a NYC area address?                          | 0           | 3  | -2        | -2 | 0  |
| 3. Is the defendant employed / in school / in training program full time? | 1           | 1  | -1        | -1 | -2 |
| 4. Does the defendant expect someone at arraignment?                      | 1           | X  | -1        | X  | X  |
| 5. Does the prior bench warrant count equal zero?                         | 5           | X  | -5        | X  | X  |
| 6. Does the open case count equal zero?                                   | 1           | X  | -1        | X  | X  |
| Column totals   |             |    |           |    |    |
| Subtotals   | A = Y+YV    |    | B         |    |    |
|   | B = N+NV+UC |    | A minus B |    |    |
| <b>Total Score</b>  | <b>A</b>    |    | <b>B</b>  |    |    |

**RECOMMENDATION CATEGORIES**

Recommended for ROR (low risk) +7 to +12 pts  
 Moderate Risk for ROR +3 to +6 pts  
 Not Recommended for ROR (high risk) -13 to +2 pts

Or a policy exclusion applies:  
 Bench warrant attached to rap sheet;  
 Defendant is charged with bail jumping; or,  
 Conflicting residence information.

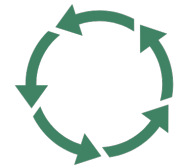
**No Recommendation**  
 Rap sheet unavailable;  
 Defendant charged with murder (or attempted),  
 escape or absconding, or incarcerated at time of  
 arrest; or,  
 Declined or Incomplete interview.



In this guide we are focused on pretrial RATs, but it is important to know if other RATs, used elsewhere in the system, could “spill over” into pretrial decision-making. For example, in Boston, the Office of Community Corrections uses a RAT (the ORAS tool) to determine post-sentencing intensive treatment. When the Office of Community Corrections began operating in the pretrial space, they also used the ORAS to determine levels of pretrial supervision.

## 2 WHERE IN THE IMPLEMENTATION LIFECYCLE IS THE RAT IN YOUR JURISDICTION?

Although the debate about using risk assessment tools has recently received more attention, in many jurisdictions, RATs have already been introduced in pilot programs or are deeply institutionalized in the pretrial process.



### SOME EXAMPLES FROM THIS MULTI-STAGE LIFECYCLE:



**IN PHILADELPHIA**, while organizers are fighting to keep a new, complex risk assessment tool from being implemented into pretrial decision-making in local courts, an older tool already sits on the desks of magistrates at arraignment.<sup>42</sup> This tool is ignored by most magistrates and judges, who instead use a bail schedule and their own instincts as their guides.<sup>43</sup>

**IN CALIFORNIA** in 2018, the state legislature enshrined the use of risk assessment tools into pretrial decision-making at the county level through Senate Bill 10.<sup>44</sup> Although this legislation (which is on hold until at least Fall 2020 because of a ballot initiative) establishes a formal state-wide process for the use of RATs by counties, a wide variety of risk assessment tools have been used by county court systems for many years; at least fifty of the fifty-eight counties in California already use a risk assessment tool of their choosing—from the PSA in San Francisco, the VPRAI in Shasta County, to an adaptation of the COMPAS tool in Los Angeles.<sup>45</sup>



**IN NEVADA**, the use of a customized state-created tool was first piloted in a number of counties and courtrooms over a two-year period before being mandated state-wide by a judicial body.

Understanding where a jurisdiction is in the implementation lifecycle of a RAT is critical to mapping out points of possible organizing leverage. There are numerous possibilities with some of the most common scenarios below:

**RATS ARE NOT YET IN PLAY BUT ARE BEING DEBATED AS A POSSIBLE TOOL IN VARIOUS VENUES (LEGISLATURE, JUDICIAL GOVERNING BODY, ETC.)**

*Example:* Michigan, as of Fall 2019, began discussing risk assessment tools as a component of pretrial reforms in a panel of experts convened by the Lieutenant Governor.<sup>46</sup> In Wyoming, RATs are not legally required, although a Committee on Pretrial Release Policies was convened in 2017 to make recommendations on how to introduce RATs across the state.<sup>47</sup>

**RATS ARE USED IN A PILOT OR DEMONSTRATION PROJECT THAT WILL THEN BE INTRODUCED IN A PROPOSAL FOR WIDER ADOPTION.**

*Example:* Mohave County in Arizona was chosen as one of five sites to pilot the PSA<sup>48</sup> years before the state Supreme Court directed all judges in the state to use the PSA for pretrial decisions.<sup>49</sup>

**INFORMAL RAT OR BAIL GUIDELINES ARE BEING USED WITH NO CLEAR PROCESS FOR FORMALIZING. THERE MAY BE DISCUSSIONS TO REPLACE AN INFORMAL RAT WITH A MORE OFFICIAL TOOL.**

*Example:* In Richland County, OH, the head of the county probation department independently built a risk assessment tool for felony pretrial determinations that evaluates a variety of demographic and psychological factors.<sup>50</sup>

**RATS HAVE BEEN IN USE FOR SOME TIME, BUT THE TOOL IS BEING SWITCHED. (NOTE: THIS IS BECOMING MORE COMMON, WITH THE REPLACEMENT BEING THE PSA, AS ITS DEVELOPER, ARNOLD VENTURES, EXPANDS TO 200 JURISDICTIONS.)**

*Example:* In 2019, Santa Clara County, California, began switching from a locally validated version of the VPRAI to the PSA, after having used the VPRAI since 2012.

**RATS HAVE BEEN IN USE FOR MANY YEARS AND ARE DEEPLY INSTITUTIONALIZED.**

*Example:* The state of Virginia has been using a RAT for almost twenty years— first the VPRAI, and then an updated version called the VPRAI-R.

## 3 WHAT TYPE OF MANDATE HAS LED TO THE USE OF A RAT IN YOUR JURISDICTION?

Understanding how a RAT has come to be used in a jurisdiction, and who holds the authority over implementing or tweaking it, is another critical step in determining what kind of leverage you may have to change that use. As with other RAT characteristics, there are a range of possibilities:

### FORMALITY

*There may be a fixed policy or rule that mandates using a RAT, or using it may be a practice that was institutionalized over time without a codified mandate.*

*Example:* Arizona’s Judicial Council approved a judicial administrative order in 2013<sup>51</sup> that encouraged all counties to expand pretrial services and use a RAT. The order chose the tool to use (PSA). Four years later, the Arizona Supreme Court went a step further and required that all courts use the PSA. In contrast, the state of Colorado has no explicit mandate requiring the use of RATs, but multiple county jurisdictions have implemented the locally-created CPAT.

### SPECIFICITY

*A policy or rule may choose a particular tool and specify implementation details — or it may just provide general guidance and set a goal of using a RAT in the pretrial system.*

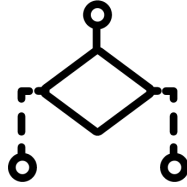
*Example:* In Arizona, a state judicial order specifically mandates the use of the Arnold PSA. Meanwhile, in Florida, legislation passed in 2019 recommends the use of RATs but does not specify which tool. It does provide parameters by which local validation is supposed to follow. And in California, the mandate provided by the state legislation (SB10) requires risk assessment tools be used by counties, but does not require a standardized or locally validated one. It does decree that the tool be approved by a central state authority.

### SOURCE OF MANDATE

*The mandate or guidance for a RAT could come from legislative or executive action, or it could come from a specific judicial governance body or a special task force. It is also possible that the source of the mandate is a private actor, like a foundation or nonprofit partnership with a jurisdiction. There is huge variance across states and local jurisdictions. Some mandates are state-wide, while many are county-level.*

*Example:* In Jefferson County, Alabama, a mandate to use a RAT is part of a legal settlement that came out of a lawsuit about money bail. In Connecticut, state-level legislation mandates the use of RATs. Nevada’s state-wide requirement to use a RAT was established by a judicial order. There was no mandate in New Orleans, but private foundation funding created a program that financially incentivizes the city to adopt a pretrial RAT.

## COMMON SCENARIOS FOR RAT IMPLEMENTATION



It is quite common for a mandate for the use of a RAT to not follow one simple scenario but come as the result of multiple, overlapping steps. The following are some of the most common ways in which a implementation mandate comes to be:

The use of a RAT is mandated by a special judicial order or committee.

The use of a RAT is mandated by a state law.

Judges issue a policy for RATs to be used as standard practice.

A local prosecutor's office issues a policy statement about their office using or following risk assessments in pretrial decision-making.

A pilot project using a RAT is tested in a small number of courtrooms, and then wider use is adopted via a local or judicial policy.

A county commission, city council, or pretrial services agency decides to implement risk assessment as a part of a new pretrial decision-making policy.

A jurisdiction has a RAT for a completely different purpose — for sentencing decisions, for example — and it is applied to the pretrial release decision-making context.

## 4 HOW IS THE RAT USED?

Despite policy discussions that make using RATs sound scientific, standardized, and devoid of subjective and discretionary decisions, there is much variance in how a RAT is used in pretrial decision-making and ultimately impacts release, incarceration, and supervision.

Additionally, there is a new and growing “industry” servicing local and state governments across the country with assistance implementing and using RATs. This includes private companies, consultants (often former government officials), researchers and academic institutions, data analysts, and non-profit technical assistance organizations that are supported by a range of private and foundation funding dedicated to advancing pretrial “reform” via RATs.



### Do judges, magistrates and prosecutors have to follow the RAT’s recommendations, or is it merely advisory?

In numerous jurisdictions, a RAT is administered but may be ignored in the courtroom. A judge, magistrate or prosecutor can always diverge from a RAT’s recommendations, and add more or fewer conditions onto a defendant seeking release from pretrial detention.

In some jurisdictions, courts have imposed a relatively onerous process onto judges who want to override a tool’s recommendation, but in general, the discretion of judges or magistrates to make pretrial detention and supervision decisions is not circumscribed by a RAT. In fact, it is so common for judges and magistrates to ignore a RAT’s recommendations that it is crucial to determine if there is a larger pattern showing how and when RAT recommendations are disregarded.

- Research into the state-wide use of the PSA tool in **Kentucky** has shown that people for whom the tool recommended release were still being detained, because judges overwhelmingly tend to disregard recommendations for release.<sup>52</sup> In New Jersey, there is a specific “override” process that a prosecutor can invoke to bypass the recommendation of the state RAT.<sup>53</sup>
- In **New York City**, pretrial release is determined at arraignment. During arraignment, the judge, prosecutor, and defense lawyer all have access to an accused person’s RAT score. However, this score is just a recommendation. The judge can ignore the score, without needing to follow any override procedures.





Do judges, magistrates and prosecutors have to follow the RAT's recommendations, or is it merely advisory?

Here are a few examples of major RAT tools and their documentation, which notes judges' and magistrates' discretion to diverge from the RAT prediction:



**PSA:** "The PSA does not direct a judicial officer to release or detain a person, or decide any conditions of release. To help judicial officers make use of the PSA scores in their pretrial decision making, local stakeholders develop policy frameworks (the Decision Framework and Release Conditions Matrix) that reflect local statutes, court rules, and policy preferences."<sup>54</sup>



**VPRAI-R:** "Pretrial risk assessment does not replace a judicial officer or pretrial officer discretion."<sup>55</sup>



**ORAS-PAT:** "An assessor may override the FINAL risk level identified."<sup>56</sup>

## Where and when is the RAT administered?

**A jurisdiction might apply a risk assessment at the point of arrest, as part of checking a person’s record to see if they have open cases — or in some jurisdictions, to screen them out of being taken to a holding cell or jail.**

**This early pre-arraignment use of RAT is often dependent on the charge.**

- In New Jersey (which uses the PSA), if a police officer has the equipment needed to run someone’s fingerprints, they can also run a risk assessment — whether in a police car or at a police station.
- New Jersey law mandates release for misdemeanor charges, and so the PSA is only used for felony charges at first appearance hearings.<sup>57</sup>



**In jurisdictions that have a pretrial services department, a pretrial interviewer might apply the risk assessment before arraignment.**

- In Cook County, Illinois, the pretrial services agency applies the risk assessment (the PSA) before a defendant’s bond hearing with a judge.

**In some jurisdictions, the risk assessment tool is applied after bail has already been set, following a prosecutor or a judge’s pretrial release decision.**

- In Virginia, bail is set for an accused person at a “magistrate hearing” — at which the magistrate making the initial release determination consults a cursory checklist. Virginia’s risk assessment tool — the VPRAI-R — is not used at that important, decisive stage. The VPRAI-R is used later, to determine a defendant’s access to pretrial services. Because so many people have a money bail set at the early hearing — and VPRAI-R does not intervene in the bail-setting process — pretrial detention has actually gone up by 10 percent in the Commonwealth since the adoption of the RAT.



## How is the score interpreted? What happens after the risk assessment is applied?

A risk assessment tool produces a score that will then be interpreted by a decision-making framework. (See Appendix 3 for more information on different ways this RAT score might be calculated.) The framework is often a simple chart that can be used by a magistrate or judge. It may be a chart that is used by a person administering the tool. For example, if a pretrial services worker presents a recommendation to the court based on the RAT score and decision-making framework, they will already have used the framework before presenting to the judge or magistrate.



*Understanding the following about how a RAT is interpreted in your jurisdiction is critical:*

- Is a defendant's score converted into a "risk level?" This is usually "low," "medium," or "high," based on points on a scale. The PSA, for example, ranks people on a scale of one to six for "failure-to-appear" (FTA) and "new arrest,"<sup>58</sup> and the ORAS-PAT ranks people on a scale of one to nine.<sup>59</sup>
- Are there specific recommendations associated with each "risk level?" Is the presentation of the "risk" score accompanied by recommendations (i.e. pretrial supervision), or are all interpretations left to the discretion of the judge or magistrate? Does the RAT recommend detention, or conditions of release only?

It is also important to note whether the score scale and decision-making framework have been adjusted over time. The categories for "risk levels" in a local decision-making framework can be changed and how big/small these categories are can also be changed.



### AN EXAMPLE OF SCORING METHOD:

In New Jersey (which uses the PSA), after a risk assessment is run on an individual via a quick set of questions, Pretrial Services generates one score for "failure-to-appear" (FTA) and another for "new criminal arrest/ new criminal arrest with a violent flag" (NCA).

These two scores are reviewed by a magistrate or judge, who matches the scores to a chart on proposed release recommendations based on a combined score. The judge or magistrate will then decide whether to recommend pretrial incarceration, release, or release with conditions for the person in question. (Appendix 3 shows an example of the decision-making matrix chart used locally in New Jersey with the PSA).

## 5 WHAT (IF ANY) TRANSPARENCY EXISTS AROUND THE USE OF THE RAT?

Many of the steps we've outlined happen very quickly and often without much, if any, transparency. Figuring out what transparency exists (or could exist) may determine some of your decisions about what and how interventions could happen. Specifically:



**How is a RAT's score and framework interpretation introduced at the arraignment or bond-setting hearing?**

For example, in courts in Denver, Colorado, pretrial services officers conduct an interview with an accused person and total up a "score" from static data points that then are correlated against the CPAT for final "risk score." The pretrial services officers then provide this data to judicial officers to use at arraignment.<sup>60</sup>



**Is the RAT score presented by pretrial services? Is the score read out loud at the hearing, or forwarded to the judge, prosecutor, and defense? Does the prosecutor get the RAT score in advance and use it as part of their argument to detain a person, or ask for bail or other conditions of release? Alternately, does the judge or magistrate receive the score and framework worksheet directly and then read the recommendation?**

For example, in Santa Clara County, CA, the RAT score is not read into the record. Instead, at the arraignment, Pretrial Services presents their recommendation for release or conditions of release based on the score.<sup>61</sup>



**What is presented in the RAT score?**

Is the score presented as a composite of "risk" (i.e., low, medium or high)?  
Is the likelihood of failure to appear measured separately, or is it one factor that is folded into a broader category of "risk?"

How is "risk" defined? What is and is not included in this definition?

- For example, in many counties in Ohio, and also in counties as far flung as California and Pennsylvania, courts use the ORAS-PAT to make pretrial risk assessment determinations. ORAS-PAT combines calculations of "risk" of failure-to-appear, new arrest, and violence into one score. The factors that the ORAS-PAT focuses on include drug use and abuse, housing stability, job access, and other issues correlated with poverty. It does not account for ways that meeting an accused person's needs could reduce their risk of not coming to court or being re-arrested.



## **Is it possible for an accused person to contest their RAT score or recommendation?**

The score may or may not be recorded – in many places, only the final “risk level” may be presented, not the math that went into the calculation of that risk level score. The score may or may not be presented in the courtroom, or the paperwork available to the accused person or their counsel. This means that the accused person may not be able to see and challenge the score.

- For example, when the Adult Static Risk Assessment (ASRA) tool is used in a handful of Washington State counties,<sup>62</sup> only judges and court staff, pretrial services staff, and prosecutors can see the results of the tool, not accused people or their attorneys.<sup>63</sup>



## **Is information about the ways that a judge can override a RAT recommendation read into the record? Is data collected about the RAT override rates by judge or courtroom?**

For example, judges in the commonwealth of Kentucky follow specific procedures articulated by the Chief Justice of the Kentucky Supreme Court<sup>64</sup> to override the recommendations of risk assessment tools. The courts’ data management system<sup>65</sup> records the risk score generated by pretrial services officers, the bail determination, whether the person was released, and if monetary bail was assigned — permitting independent analysis of how often and in what cases judges override RAT recommendations, and whether they do so in carceral or decarceral directions.



## **Is data about the RAT and pretrial detention rates, supervision conditions, and racial disparities collected by the jurisdiction?**

There is wide diversity in the kinds of data that jurisdictions track about their pretrial detention and release populations, whether or not they use RATs. For example, Armstrong County, Pennsylvania, which uses the ORAS-PAT, doesn’t track the impact of the RAT on the factors noted above. However, Alachua County, Florida, which uses the Florida Pretrial Risk Assessment Instrument, tracks the tool’s effect on decline in the jail population and on bail-setting practices and release/supervision practices, but they do not explicitly track if these reforms impact racial disparities.<sup>66</sup>

Our partners at Media Mobilizing Project are releasing a database in early 2020 analyzing the use of risk assessments in pretrial contexts in hundreds of jurisdictions. The database is meant for communities working to understand their pretrial system and working to end pretrial incarceration and punishment in their jurisdictions. You can access the database, and see if information about RATs in your jurisdiction are available, by visiting [pretrialrisk.org](http://pretrialrisk.org).

## 6 WHAT ARE THE EXTERNAL POLITICAL PRESSURES THAT LEAD SOME PEOPLE TO PUSH RATs AS A SOLUTION?

Often, external political pressures may influence the use and implementation of a pretrial RAT in a local criminal legal system. Understanding the underlying dynamics behind the advocacy for a RAT is critical.

**SPECIFICALLY:**

|  |  |
|--|--|
|  <p>Is the jurisdiction considering adding jail capacity, or is it in the middle of a jail construction debate?</p> |  <p>Is there public pressure (or a policy goal) to reduce the jail population to a particular number?</p> |
|  <p>Is there a desire by the system to expand e-carceration and electronic monitoring programs?</p>               |  <p>Is a new pretrial services program being established?</p>   |

Section  
**THREE**

# A FRAMEWORK FOR COMMUNITY CAMPAIGNS

We hope that Sections 1 and 2 of this guide provided an orientation to how risk assessment tools might be used in your jurisdiction, and what role they play in mass criminalization and the current pretrial detention crisis. Since pretrial systems are so localized in the criminal legal system, we understand that organizers have to do very local analysis to determine if there is leverage and an opening for a campaign to stop, reduce, or eliminate risk assessment tools in pretrial decision-making. For organizers working toward the end of money bail and the abolition of pretrial detention, taking on RATs may be one distinct step — or it might necessarily be intertwined with other decarceration campaigns.

This guide is written from the perspective that organizers are working to end pretrial detention and mass surveillance as part of a larger decarceration and prison abolition project. We are not prescribing specific campaigns, or even particular tactics, because the question of whether and how a community might confront or engage the use of RATs will vary greatly by locality and context.

We offer this framework as something for organizers to consider as communities come together to build power, contest the current criminal legal system and ask whether a campaign that focuses on risk assessment tools is a good fit in a larger campaign against pretrial detention and mass criminalization.

We present the following framework as a tool for organizers confronting RATs and deciding if a separate or integrated campaign fits within their larger decarceral goals. This framework builds off of campaign strategy mapping exercises, and will necessitate other power analysis and system mapping.

.....

**This framework is organized into five sections:**

1. THE PROBLEM
2. DEFINING THE WIN
3. IDENTIFYING TARGETS
4. POSSIBLE TACTICS
5. CAMPAIGN EXAMPLES

We assume that in many places, organizers will tackle all five sections together, rather than in a sequence, as each step informs the other.



## THE PROBLEM

Although Community Justice Exchange, along with hundreds of organizations across the country, opposes the use of algorithmic decision-making and judgement in the criminal legal system, we also recognize that it is not a stand-alone issue. The proliferation of RATs in the pretrial system is just one part of the mass criminalization machine. To answer the question of whether fighting current or planned pretrial RATs will get you closer to ending pretrial detention or whether it will pull you away from your decarceration work, clearly defining THE PROBLEM on your local terms is essential. Why does the use of risk assessment tools matter in the local context and to your local goals?

### ACTION ITEM

Define WHY and HOW the use of pretrial risk assessment tools affects the problem that you are confronting.

**Naming the problem will include asking IF taking on risk assessment tools is possible or useful for your decarceration campaign including, but not limited to, the following ways:**

- Is the use or potential use of a RAT a significant driver of pretrial detention in your jurisdiction?
- Is the RAT primarily being used to determine release or detention?
- Is the RAT being held up as a “solution” to the problem of money bail and pretrial detention in the local policy context?
- Is the RAT actually being used by judges or magistrates to inform their detention, release, or supervision decisions, or do judges or magistrates ignore or override the recommendations of RATs in practice? What actually drives pretrial detention: the RAT, or the judges or magistrates?
- Does using the RAT increase mass supervision in the pretrial population?
- Does it increase other forms of surveillance of that community?

**Answering questions to define THE PROBLEM will require doing the research about how a RAT works or is being proposed to work as a part of pretrial decision-making in your jurisdiction. Section 2 and the appendices in this guide can help to determine what drives pretrial detention and supervision in your jurisdiction, and whether or how RATs contribute.**

- What kind of RAT is being used (or proposed)?
- Where in the implementation lifecycle is the RAT in your jurisdiction?
- What type of mandate has led to the adoption of a RAT in your jurisdiction?
- How is the RAT used in pretrial decision-making?
- What (if any) transparency exists around the use of the RAT in your jurisdiction?

## IDENTIFYING TARGETS

Finding the target or targets in a local campaign against pretrial RATs may have multiple layers. You will be looking to determine WHO can actually make the change that you want, after you define the win.

In some places, there might be a clear, single target (for example, the County Commission or Judicial Council that is approving the use of the RAT). In other jurisdictions, there may be multiple targets, based on how the RAT is being implemented and used (for example, if state or local laws describe how the RAT should be used, but the judges or magistrates have come up with their own approach). In many places, the entity that mandated using a RAT (a state Supreme Court or a state legislature, for example) may be different than the entity that developed the local implementation rules or is overseeing it (a local municipal court, for example).

### ACTION ITEM

Identify which persons or entities have the power to make decisions that will lead to your defined WIN. Map out the different targets if there are multiple pressure points you need to push to secure your win. This may include conducting a full power analysis.<sup>67</sup>

#### Some examples of targets might include:

- 🎯 Judges, magistrates or pretrial services agencies might be targets in a jurisdiction because they use RAT results and have established implementation policies.
- 🎯 The District Attorney, whose office may have a policy on how they use RAT scores, might be a target.
- 🎯 An additional target might be the Public Defender's office — who may or may not have a policy on how they contest the RAT score.<sup>68</sup> (Note: A Public Defender office may often be an ally or partner, especially in places where RAT scores are only accessible to the judge and prosecutor, and not the defense attorney or defendant.)
- 🎯 Another target might be a local or state body that oversees implementation of the RAT and is supposed to oversee rules and policies.

When you map out your targets, you may also differentiate between primary and secondary targets. Primary, or “direct,” targets are the people or institutions that can directly give you what you want. Secondary targets are those that can influence your primary targets. Since the way that RATs have been selected, approved and ultimately implemented in jurisdictions often feature a complex interaction between individuals, elected and appointed bodies, as well as system actors and outside organizations, mapping out primary and secondary targets will often be necessary. It will be important to assess your ability to influence those targets, or the people to whom those targets are accountable.

## POSSIBLE TACTICS

We assume, when laying out this framework, that organizers will be working toward abolishing pretrial detention within different kinds of coalitions and organizational formations; some groups and their members are comfortable using direct action and other “outside game” tactics; some are more comfortable using lobbying and “inside game” tactics, and some prefer a combination of both.

Creating a campaign plan will involve choosing tactics: the activities you will engage in to achieve your goal. Many of your tactical choices will interrelate to your goals, targets and power map. Some tactics may be ones that you and your organization directly deploy; others may be divided across coalition partners and allies, depending on your relationships with the decision-makers, your ability to influence them or others close to them, and the kinds of activities you can engage in based on the specifics of your organization or coalition’s internal agreements. For example, some groups can engage directly in electoral strategies; some can mobilize members who have experience in the system and can directly tell their stories and push on decision-makers; while other groups may be able to mobilize large numbers of people to demand a specific policy or a transparency process.

### ACTION ITEM

Define organizing activities that are directly aimed at moving your targets and for which you can articulate a *theory of change* related to your goal(s). If you have multiple targets or multiple phases based on how RATs are being used, know how different tactics will relate to each other. It is important to rigorously analyze what tactics will lead towards the successful deployment of your strategy to winning your goals.

### THEORY OF CHANGE

Theory of change in its simplest form is explaining how if we do ABC, then we will produce XYZ change.

**Some general categories that specific tactical interventions may stem from might include:**

- ◆ Public education and consciousness-raising about RATs
- ◆ Courtwatching and court monitoring to document how RATs are being used
- ◆ Advocacy around RAT adoption, implementation and use including:
  - Releasing information on RAT implementation
  - Meetings with stakeholders who use or make decisions about RATS
  - Community oversight of RAT implementation and use

## CAMPAIGN EXAMPLES

Any campaign taking on RATs in pretrial decision-making is going to reflect the very specific capacity and conditions of the local jurisdiction. We also know that eliminating or reducing the use of a RAT will not, by itself, lead to decarceration. Specific interventions that you take on, focused on exposing, eliminating, or reducing the role of RATs in your jurisdiction, must be situated within larger campaigns in order to abolish pretrial detention and mass criminalization.

### ACTION ITEM

Design campaign strategies that respond to the RAT type and implementation lifecycle, articulated goals, local targets and leverage, and tactics that reflect capacity and context.

**Organizers are just starting to intervene in and design campaign strategies around the use of pretrial RATs, so many of our examples are in the experimentation phase. Some of these interventions might include:**

### ABOLISH OR LIMIT A RAT

- 🎯 Pass a local or state-level policy to explicitly eliminate, reduce, or limit the use of RATs in the pretrial process.
- 🎯 If a RAT is already used, pass a policy that creates a pathway for reducing (and eventually eliminating) RAT use, with timelines and benchmarks, while also expanding pretrial release, reducing racial disparities, and reducing pretrial supervision.

### ESTABLISH COMMUNITY CONTROL OVER THE TOOL

- 🎯 Require the formation of an independent governing body, with empowered community representation, that has power over the creation (if this is applicable), calibration/customization, and/or the implementation policies of a RAT.
- 🎯 Create an oversight body that oversees regular evaluation of the tool, including recalibration, specific implementation, and monitors decarceration metrics, reduction in racial disparities, and judicial adherence.

### COMMUNITY CONTROL

Community control is the idea that local residents should exercise power over services like the police, infrastructure, and schools.

## CAMPAIGN EXAMPLES

### FOCUS ON HOW THE RAT IS USED, WITH AN EMPHASIS ON HOW IT SHOULD CONTRIBUTE TO DECARCERATION AND REDUCES RACIAL DISPARITIES

- 🎯 Explicitly restrict the use of a RAT (via policy or practice memos) to prohibit use for conditional release or for recommending preventive detention.
- 🎯 Establish **requirements** for RATs used in your local jurisdiction (via public policy or practice memos):

**Require** judges, prosecutors, and defense attorneys to discuss, on record in open court, a RAT's scoring matrix, and ensure that defendants can contest a RAT's scoring.

**Require** that the presentation of any risk score or interpretation from a decision matrix include clear definitions and context:

- ◆ Any discussion of composite "risk" has to articulate whether it is "risk" of non-appearance, "risk" of reoffense, or a blending of different definitions.
- ◆ Require that the presentation of a "risk" score include an explanation of context and noteworthy factors such as timelines. For example, if a person has two FTAs on their record, how recent are those FTAs, and what was the context?

**Require** judicial training, and independent oversight and tracking, to ensure that RATs are being used only within specific, established parameters.

### BUILD IN TRANSPARENCY

- 🎯 Require reporting on the decarceral impact (or lack thereof) of a RAT early in implementation, and require an action plan for decarceration with clear metrics.
- 🎯 Require reporting on the RAT's impact on racial disparities, and an action plan for reducing racial disparities.

## CONCLUSION

### *So, what do we do with all of this analysis and mapping?*

There are no formulas or foolproof models for stopping or reducing the use of RATs. Our current work requires us as organizers to build our individual understanding and our communities' consciousness about the racial bias of algorithms, and how they affect the crisis of pretrial detention. We must continue to win local fights for decarceration. We hope that together, we can experiment with tactics and practices that not only oppose RATs but ultimately end detention altogether.

We are indebted to the legacy of community organizing against technologies used by oppressive systems. Simultaneously, we work to build new frameworks and models for organizing around new and evolving technologies, including RATs, at this moment in history.

We look forward to building a community of practice that struggles to understand the complexity of how pretrial RATs and other algorithmic interventions into daily life and freedom can change the terrain of what we fight for, and how we win.

For more information, updates, and discussion about how we organize to confront RATs and end detention, contact us at [info@communityjusticeexchange.org](mailto:info@communityjusticeexchange.org).



# APPENDIX #1

## WHAT ARE THE FACTORS THAT A RAT IS BUILT ON, AND WHAT DOES THE TOOL WEIGH TO MAKE ITS PREDICTIONS?

This appendix reviews how risk assessment tools are constructed and deployed. If you have determined that your jurisdiction is using a RAT (or plans to), understanding what data the tool is built on and how this information is being used in your community may influence how you design a campaign.

### TYPES OF DATA

Risk assessment tools generally rely on three datasets. This is true whether the RAT is a “fancy algorithm” or is a list of general bail guidelines.

**“STATIC” CRIMINAL JUSTICE DATA:** These are data points that don’t change over time, including a person’s age at first arrest, a person’s conviction or arrest history, and whether the person is on active supervision for another case. Static data is often pulled from a person’s record, rather than from an interview (so context is not considered).

**“DYNAMIC” DATA:** This is data describing a person’s drug use, employment, housing, and access to a cell phone. This sort of data could change over time, particularly with financial and social support. Dynamic data is collected through an interview.

**“SUBJECTIVE” DATA:** This is information that the criminal punishment system (perhaps through a pretrial services interviewer or a judicial officer) records about the accused person, based on an interview and the interviewer’s subjective interpretation. For example, an interview of an accused person is interpreted by the RAT administrator, who may mix their opinion and biases with the information that the accused person provides. Examples of this type of data include variables that claim to assess “demeanor,” “state of mind,” or relationships with others.

# APPENDIX #1

## VARIABLES

When designers build a risk assessment tool, they select a “training set” of data and choose factors within that set to correlate with outcomes that they want to predict. RATs used for pretrial release try to predict a person’s failure to appear in court, or a person’s likelihood of new arrest, if released pretrial. The RAT’s algorithm is then built off of this data set.

The data points that these tools select as “predictive” and build the algorithm on come from a range of sources (static, dynamic, and subjective categories, as discussed above). All these data generally rely on factors that are deeply correlated with racism and measure oppression in American society. Below we review some of the most common variables used to build risk assessment algorithms, and note the biases inherent in each.

### AGE

Many common tools consider the age of an accused person — either at the time of the current charge, or during their first arrest — as an aggravating factor that increases that person’s risk of either failing to appear in court, or being arrested again.

**Potential bias:** American policing criminalizes people of color, especially Black boys and girls.

Tools that consider the age of a person’s first arrest as an aggravating factor permanently mark a person as “risky” based on the behavior of the police, regardless of the outcome of the arrest.

If a fifty-year-old person is arrested and assessed by a risk assessment tool, a RAT might automatically count against them the fact that they were first arrested at 18, even if the charges against them from that arrest were dropped. The RAT would not consider whether policing patterns at the time of arrest were illegal or unconstitutional,<sup>69</sup> or whether the arrested person had accusations of criminal activity in the following years, or if that person contributed deeply to their neighborhood, family, and society.



# APPENDIX #1

## PRIOR FAILURES-TO-APPEAR (FTAS)

A number of risk assessment tools heavily weigh previous failures-to-appear (FTA) in court against an accused person in calculations of their current likelihood of returning to court. Sometimes previous FTAs are even used to calculate a person's current risk of "dangerousness."<sup>70</sup>

**Potential bias:** There are many reasons why a person might miss court other than willfully fleeing prosecution. Court dates can drag on for months, or years, before resolution.

People miss court primarily because of poverty. Many lack childcare or transportation, or are unable to take time off from work. Others deal with drug addiction, a lack of housing and healthcare, or other systemic issues that are associated with poverty and racial oppression.

Like other "static" factors, FTA data do not take into account that the conditions that led to prior missed court dates may have changed.

## CHARGE

Many tools punitively weigh the current charge, or another pending charge, in their risk assessment of FTA or new arrest. If a charge is seen as "serious" because it is considered a felony, or violent, a RAT may add extra points to the risk score.

**Potential bias:** The police levy more, and heavier, charges against people of color and poor people. Prosecutors have a long history of upcharging accused people, leading them to bear heavier bail amounts, longer jail stays, and increased pressure to plead guilty and forfeit a trial in order to go home sooner.

RATs are not built to consider the contexts from which a charge was made by police or prosecutors against an accused person. Likewise, dismissals of charges do not affect a RAT's recommendation.

# APPENDIX #1

## EMPLOYMENT

Many RATs consider unemployment an aggravating factor in flight risk or new arrest.

**Potential bias:** Black and Brown and immigrant communities, queer and trans folks, and poor people are often systematically excluded from living wage jobs in the official economy.

Historic and ongoing divestment from public education, segregation, and generations of criminalization of Black and Brown caregivers also have pushed many young people into low-wage and underground economy work.

While RATs punish people for lacking on-the-books employment, they do not recognize off-the-books work, community ties and support systems that help marginalized communities thrive.

## HOUSING

Many RATs, when calculating predictions of flight or new arrest, punish accused people for lacking stable housing in risk calculations predicting flight or new arrest.

**Potential bias:** Communities with high rates of eviction and housing instability are also the same ones that are over-policed and criminalized.<sup>71</sup> Behaviors that would not be criminalized behind closed doors become criminalized when a person has to live in public or semi-public spaces.

## DRUG OR ALCOHOL USE/ABUSE

RATs use current and past drug use to predict risk of rearrest or flight.

**Potential bias:** Drug use is equal among Black and white communities across the United States — but drug arrests and convictions are not.<sup>72</sup>

# APPENDIX #1

## MENTAL HEALTH

A number of tools negatively weigh current or historic mental health treatment, or presentation of “anti-social attitudes or beliefs” as “risky.”

**Potential bias:** What is considered “anti-social” is determined by a RAT administrator whose assessment is subjective. Often, there are no definitions for “anti-social” or “unstable.”

## PAST CONVICTIONS OR “CRIMINAL” HISTORY

Most tools use a person’s history of previous convictions as a factor to weigh when predicting flight risk or new arrest.

**Potential bias:** Convictions never tell the whole story about a person. More than 90% of convictions in the United States never saw their day in court.<sup>73</sup> Many convicted people took plea bargains, despite their claims of innocence, because prosecutors overcharged them, police overpoliced them, and they were held on an unaffordable money bail.

A RAT’s emphasis on conviction history may play on a judge or magistrate’s fear of releasing a person, instead of encouraging a judge or magistrate to define “risk” situationally and provide an accused person the space to tell their full story at arraignment — with the support of a lawyer — and maintain the presumption of pretrial innocence.

## LEVEL OF ARREST/LEVEL OF PREVIOUS CONVICTION

Many tools include extra points, and thereby increased assumptions of “risk,” based on the level of the charge on the accused person, or the “gravity” of their previous convictions.

**Potential bias:** As noted above, a charge is simply an accusation, and people will often plead guilty to a charge, taking on a conviction, in order to go home, or to secure a potentially lighter sentence. Arrests and convictions from the distant past have markedly less impact on a person’s current “risk”<sup>74</sup> of failing to appear in court or getting arrested again, though most tools don’t discount the length of time since previous arrests or convictions when calculating a person’s risk score.

# APPENDIX #1

## PAST JAIL SENTENCE/ PRISON SENTENCE/ TIME INCARCERATED

A number of tools penalize an accused person if they served a sentence inside a jail or prison cell.

**Potential bias:** Some people argue that time incarcerated correlates with “recidivism,” and predicts the likelihood of a new arrest — but this is a tautological factor: The criminal legal system itself creates conditions that reinforce the future punishment of a person who has already been punished.

## BLACK BOX FACTORS

A few home-grown RATs, including the tools built for probation and parole by Dr. Richard Berk in Philadelphia,<sup>75</sup> and proprietary tools like the COMPAS algorithm, hide the exact formula they use to judge a person. What is known is that in Dr. Berk’s algorithm for community supervision in Philadelphia, factors deeply correlated with racial bias, like zip code, were heavily weighed, at least when it was analyzed in 2012. COMPAS also heavily weighs youthful age as an aggravating — rather than a mitigating — factor.

# APPENDIX #2

## TYPES OF RISK ASSESSMENT TOOLS

In this appendix, we review some of the most common risk assessment tools that are being deployed across the United States. As you assess your jurisdiction, it is important to note that there are RATs named after one state that are used in multiple states; there are tools that are modified and built only for a single jurisdiction, and there are generic tools that are very widely used.

### VPRAI

One of the first modern risk assessment algorithms that was introduced into pretrial decision-making in 2003 was the VPRAI, or the Virginia Pretrial Risk Assessment Instrument.<sup>76</sup> There is a revised version of this tool (updated in 2016), which is referred to as VPRAI-Revised (or VPRAI-R). VPRAI-R was trained on more than 2,300 criminal justice records pulled from seven rural, suburban, and urban localities in Virginia. Both the VPRAI and the VPRAI-R are used in over 20 jurisdictions nationwide — including the states of Virginia, Alabama, Maine, and many counties in California. The VPRAI is an actuarial tool that evaluates eight published factors in its revised tool, and seven in its original version. Both the VPRAI and the VPRAI-R combine their risk predictions on “failure to appear” and “risk of rearrest” into one score. **You can see the factors that the tool weighs in Figure A.**

### ORAS-PAT

The ORAS-PAT, or the Ohio Risk Assessment System - Pretrial Assessment Tool, is used in over 35 jurisdictions nationwide, including counties in California, Pennsylvania, and Texas, and the states of Ohio and Vermont. The ORAS-PAT is part of a suite<sup>77</sup> of pretrial tools built in 2006 at the University of Cincinnati, trained on over 1,800 criminal justice records and in-depth interviews with people in different parts of Ohio’s criminal justice system: pretrial, community supervision, prison intake, and community reentry. More than 450 people (452) accused of crimes were interviewed for the pretrial portion of the ORAS, which launched in 2011. The ORAS combines its risk predictions on “failure to appear” and “risk of rearrest” into one score. **You can see the factors that the tool weighs in Figure A.**

# APPENDIX #2

## PSA

The Public Safety Assessment (PSA)<sup>78</sup> was developed by the John and Laura Arnold Foundation, now called Arnold Ventures. It was deployed in Kentucky in 2013, and is now used statewide in Arizona, New Jersey, and Utah, as well as in dozens of counties across the country (including San Francisco, CA; Alleghany, PA; and Milwaukee County, WI). Arnold Ventures plans to roll out the PSA in 200 additional jurisdictions during the next 5 years.<sup>79</sup> This tool was trained on over 750,000 records from almost 300 jurisdictions. The PSA uses only “static” factors to predict risk, so pretrial services offices do not need to interview an accused person in order to run the tool. Instead, the PSA relies on data that is collected in government databases. The PSA produces three distinct scores for magistrates or judges to consider: predictions on whether an accused person will fail to appear in court (FTA), be arrested for a new charge (NCA), or be arrested for a new violent charge (NCVA) while on release pretrial. **You can see the factors that the tool weighs in Figure A.**

## CPAT

The Colorado Pretrial Assessment Tool (CPAT) is used in at least 10 counties,<sup>80</sup> mostly in Colorado. The tool was derived from criminal justice data from ten Colorado counties, including pretrial interviews and criminal history and activity data points (pulled from the Colorado Judicial Branch, National Crime Information Center, and Colorado Crime Information Center),<sup>81</sup> in Colorado jurisdictions ranging from small and rural to large and urban. The tool uses a lot of demographic data to make its predictions, including as “risk” factors access to a stable residence and employment, mental health and substance use or abuse, current charges, and previous charges and sentences. The tool creates one combined score for failure-to-appear and risk. **You can see the factors that the tool weighs in Figure A.**

## COMPAS

For pretrial decisions, the COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) algorithm is used in at least 10 jurisdictions, including counties in Florida, South Carolina, and California. Additionally, the COMPAS algorithm is used in sentencing, probation and parole decisions in many jurisdictions nationwide. The COMPAS tool is proprietary (meaning it is for-profit and a trade secret), and its algorithm considered a black box (meaning that we don’t know exactly what factors and weights it uses to predict “risk”). We do know that it ranks over 137<sup>82</sup> different factors — **the categories of which are described in the chart in Figure A.**

# APPENDIX #2



## COUNTY SPECIFIC

A variety of jurisdictions have contracted with experts, universities and think tanks to create a “home grown” or “bespoke” tool. These tools are trained on data local to their county or state, and are generally developed by local universities or data scientists. Even though these tools are created locally, they may end up being used by other jurisdictions elsewhere. For example, the SAFER-Lite<sup>83</sup> instrument is a locally developed tool built for Spokane, Washington.<sup>84</sup> It evaluates factors that are subjective, including an accused person’s “attitude.”<sup>85</sup> Despite the specificity of SAFER-Lite’s training data, the tool is also used in Richland County, OH, and dozens of other jurisdictions nationwide. Many such homegrown risk assessments have been in use for years, operating without processes for testing or oversight.

Sonoma County, California, is among a number of California counties that have developed their own tools for pretrial decision-making. The Sonoma Pretrial Risk Assessment Tool (SPRAT)<sup>86</sup> developed a tool in partnership with the Community Corrections partnership to guide release recommendations. It also uses a number of demographic data features.<sup>87</sup>

# APPENDIX #2

## FIGURE A

### Variables Used As Inputs In Common Pretrial Risk Assessments

| Tool Type  | Variables   |
|--|---|
| <b>Public Safety Assessment (PSA)</b>                                  | Age at current arrest • Current violent offense • Pending charge at the time of the offense • Prior felony conviction • Prior violent conviction • Prior failure-to-appear older than two years • Prior sentence to incarceration   |
| <b>Ohio Risk Assessment System-Pretrial Assessment Tool (ORAS-PAT)</b> | Age at first arrest • Number of failure-to-appear warrants • Prior jail incarceration • Employment status • Residential stability • Illegal drug use • Severe drug use  |
| <b>Colorado Pretrial Assessment Tool (CPAT)</b>                        | Having a home or cell phone • Owning or renting one's residence • Contributing to residential payments • Past or current mental health treatment • Age at first arrest • Past jail sentence • Past prison sentence • Having active warrants • Having other pending cases • Currently on supervision • History of revoked bond or supervision  |
| <b>Virginia Pretrial Risk Assessment Instrument-Revised (VPRAI-R)</b>  | Active community supervision • Charge is felony drug, theft, or fraud • Pending charge • Criminal history • Two or more failures-to-appear • Two or more violent convictions • Unemployed at time of arrest • History of drug abuse   |
| <b>Virginia Pretrial Risk Assessment Instrument (VPRAI)</b>            | Charge type • Pending charge • Criminal history • Two or more FTA • Two or more violent convictions • Unemployed at time of arrest • History of drug abuse  |
| <b>COMPAS</b>  | Educational-vocational-financial deficits and achievement skills • Anti-social attitudes and beliefs • Anti-social and pro-criminal associates and isolation • Temperament and impulsiveness (weak self-control) factors • Familial-marital-dysfunctional relationship (lack of nurturance-caring and/or monitoring-supervision) • Alcohol and other drug disorders • Deviant sexual preferences and arousal patterns |

Source: Author generated from secondary research



# APPENDIX #3

## VARIABLE WEIGHTING/ SCORING & DECISION MAKING FRAMEWORKS

Once a person is “run through” a risk assessment tool, all of the factors that were used in making the tool add up to a score. The score is based on a process whereby each of the variable factors has been assigned a weight.

Different tools have different weighting schemes that establish how “important” a factor is in the ultimate assignment of a “risk” score. There is no single standard to explain how different tools weigh variables, but many tools will show how many points a person will get for each factor applied to them, and how the final score is tallied. Understanding which factors are most weighted in a tool is a critical component of understanding how it can affect decision-making.

A RAT will convert its different predictions about “failure-to-appear” and “risk of arrest” into a single score or recommendation that attempts to communicate an outcome to the judge or magistrate. Some tools create two, or even three, different scores. For instance, the Arnold PSA creates one score for “failure to appear,” another for “risk of arrest,” and, for those deemed “violent,” a third score for “risk of arrest with a violent charge.” These different scores are then put through a “decision making framework” in order to arrive at the release/supervision/detention recommendation.

Figure B on the following page shows the decision-making framework that is currently used in the state of New Jersey. It takes two combined final scores and then interprets them using a matrix that assigns a “pretrial monitoring level” depending on the scores. This type of framework will be produced locally, depending on the RAT, and is often open to adjustment and changes by the system.

# APPENDIX #3

## FIGURE B

### EXAMPLE OF NEW JERSEY'S DECISION MAKING FRAMEWORK (DMF), AS OF MARCH 2018<sup>88</sup>

All defendants released on ROR and any pretrial monitoring level (PML) will receive automated court date reminders and ongoing criminal history checks. Other monitoring services will be provided as shown in Table 1 below.

Table 1. Pretrial Monitoring Level Contacts and Conditions Monitoring

| Pretrial Monitoring Level | Phone Contact      | Face to Face Contact | Conditions Monitoring |
|---------------------------|--------------------|----------------------|-----------------------|
| PML 1                     | 1 per month        | None                 | Yes                   |
| PML 2                     | 1 per month        | 1 per month          | Yes                   |
| PML 3                     | 1 every other week | 1 every other week   | Yes                   |
| PML 3 + EM/HD             | 1 every other week | 1 every other week   | Yes                   |

Pretrial Release Recommendation Decision Making Framework (DMF)  
[March 2018]

DMF MATRIX

|       | NCA 1                                 | NCA 2   | NCA 3   | NCA 4  | NCA 5   | NCA 6                                   |
|-------|---------------------------------------|---|---|--|---|---|
| FTA 1 | Risk Level Green – Recommendation ROR | Risk Level Green – Recommendation ROR         |   |  |   |   |
| FTA 2 | Risk Level Green – Recommendation ROR | Risk Level Green – Recommendation ROR         | Risk Level Light Green – Recommendation PML 1 | Risk Level Yellow – Recommendation PML 2       | Risk Level Light Orange – Recommendation PML 3        |   |
| FTA 3 |                                       | Risk Level Light Green – Recommendation PML 1 | Risk Level Light Green – Recommendation PML 1 | Risk Level Yellow – Recommendation PML 2       | Risk Level Light Orange – Recommendation PML 3        | Risk Level Red – No Release Recommended |
| FTA 4 |                                       | Risk Level Light Green – Recommendation PML 1 | Risk Level Light Green – Recommendation PML 1 | Risk Level Yellow – Recommendation PML 2       | Risk Level Light Orange – Recommendation PML 3        | Risk Level Red – No Release Recommended |
| FTA 5 |                                       | Risk Level Yellow – Recommendation PML 2      | Risk Level Yellow – Recommendation PML 2      | Risk Level Light Orange – Recommendation PML 3 | Risk Level Dark Orange – Recommendation PML 3 + EM/HD | Risk Level Red – No Release Recommended |
| FTA 6 |                                       |   |   | Risk Level Red – No Release Recommended        | Risk Level Red – No Release Recommended               | Risk Level Red – No Release Recommended |

# ENDNOTES

## INTRODUCTION

- 1 See research conducted by Media Mobilizing Project to be released in database in early 2020, accessed at [pretrialrisk.org](http://pretrialrisk.org).
- 2 Sarah Picard, Matt Watkins, Michael Rempel, and Ashmini G. Kerodal, “Beyond the Algorithm Pretrial Reform, Risk Assessment, and Racial Fairness,” Center for Court Innovation (2019), [https://www.courtinnovation.org/sites/default/files/media/document/2019/Beyond\\_The\\_Algorithm.pdf](https://www.courtinnovation.org/sites/default/files/media/document/2019/Beyond_The_Algorithm.pdf).
- 3 Megan T. Stevenson, “Assessing Risk Assessment in Action,” *Minnesota Law Review* (August 29, 2017), doi:10.2139/ssrn.3016088.
- 4 “The Use of ‘Risk Assessment’ Instruments: A Shared Statement of Civil Rights Concerns,” The Leadership Conference Education Fund, (July 30, 2018), <http://civilrightsdocs.info/pdf/criminal-justice/Pretrial-Risk-Assessment-Short.pdf>.
- 5 Chelsea Barabas, Karthik Dinakar and Colin Doyle, “Opinion: The Problems With Risk Assessment Tools,” *New York Times* (July 17, 2019), <https://www.nytimes.com/2019/07/17/opinion/pretrial-ai.html>.
- 6 By “decarceration” we mean reducing either the number of persons imprisoned or the rate of imprisonment in a given jurisdiction. Decarceration may be described as the process of removing people from institutions such as prisons or mental hospitals. It is the opposite of incarceration.

## SECTION 1

- 7 See research conducted by Media Mobilizing Project to be released in database in early 2020, accessed at [pretrialrisk.org](http://pretrialrisk.org).
- 8 “Pretrial Risk Assessment Now Available to All Interested Jurisdictions; Research Advisory Board Announced,” Arnold Foundation (July 11, 2018), <https://www.arnoldventures.org/newsroom/laura-and-john-arnold-foundation-makes-pretrial-risk-assessment-available-to-all-jurisdictions-announces-expert-panel-to-serve-as-pretrial-research-advisory-board/>.
- 9 “Scan of Pretrial Practices 2019,” Pretrial Justice Institute (October 2019), [www.university.pretrial.org](http://www.university.pretrial.org).
- 10 “The Use of ‘Risk Assessment’ Instruments: A Shared Statement of Civil Rights Concerns,” The Leadership Conference Education Fund, July 30, 2018; Chelsea Barabas, et al. “Opinion: The Problems With Risk Assessment Tools,” *New York Times* (July 17, 2019); Julia Angwin, Jeff Larson, Surya Mattu and Lauren Kirchner, “Machine Bias,” *ProPublica* (May 23, 2016).
- 11 See section 2.1 - Stops, Citations, and Arrests are Limited Proxies for Police Performance. David G. Robinson, “The Challenges of Prediction: Lessons from Criminal Justice,” *I/S: A Journal of Law and Policy for the Information Society* 151 (2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3054115](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3054115).
- 12 Thomas Cohen and Brian Reaves, “Pretrial Release of Felony Defendants in State Courts,” Bureau of Justice Statistics Special Report (2007), <https://www.bjs.gov/content/pub/pdf/prfdsc.pdf>.
- 13 The largest study on court appearances to date, conducted by the Bureau of Justice Statistics between 1990 and 2004 in 40 of the 75 largest U.S. counties, found that more than three quarters of defendants showed up for all of their court dates.
- 14 Lauryn P. Gouldin, “Defining Flight Risk,” *University of Chicago Law Review* (April 12, 2018), <https://ssrn.com/abstract=3161822>.
- 15 Ethan Corey and Puck Lo, “The ‘Failure to Appear’ Fallacy,” *The Appeal* (January 9, 2019), <https://theappeal.org/the-failure-to-appear-fallacy/>.
- 16 Jason Tashea, “Text-message reminders are a cheap and effective way to reduce pretrial detention,” *ABA Journal* (July 17, 2018), [http://www.abajournal.com/lawscribbler/article/text\\_messages\\_can\\_keep\\_people\\_out\\_of\\_jail](http://www.abajournal.com/lawscribbler/article/text_messages_can_keep_people_out_of_jail).

# ENDNOTES

- 17 Sandra G. Mayson, “Bias In, Bias Out,” Yale Law Journal (October 1, 2018), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3257004](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3257004).
- 18 Chelsea Barabas, Karthik Dinakar and Colin Doyle, “Opinion: The Problems With Risk Assessment Tools,” New York Times (July 17, 2019), <https://www.nytimes.com/2019/07/17/opinion/pretrial-ai.html>.
- 19 “The prediction of violence is exceptionally difficult, and no one seems to have done it well.” Jan Chaiken, Marcia Chaiken and William Rhodes, “Predicting Violent Behavior and Classifying Violent Offenders,” Understanding and Preventing Violence, vol. 4, The National Academies Press (1994), <https://www.nap.edu/read/4422/chapter/5#224>.
- 20 Of the 24,504 pretrial felony defendants released from custody in the 15 months after the order, 147 (or 0.6 percent) were charged with a new violent offense. State of Illinois – Circuit Court of Cook County Press Release (May 9, 2019), <http://www.cook-countycourt.org/MEDIA/ViewPressRelease/tabid/338/ArticleId/2664/Chief-Judge-Evans-releases-bail-reform-report.aspx>.
- 21 “Developing a National Model for Pretrial Risk Assessment,” Laura and John Arnold Foundation Research Summary (November 2013), [https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF-research-summary\\_PSA-Court\\_4\\_1.pdf](https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF-research-summary_PSA-Court_4_1.pdf).
- 22 Radley Balko, “Opinion: Another ‘excuse’ for police bias bites the dust,” Washington Post (June 4, 2019), <https://www.washingtonpost.com/opinions/2019/06/04/another-excuse-police-bias-bites-dust/>.
- 23 Megan T. Stevenson, “Assessing Risk Assessment in Action,” Minnesota Law Review ( August 29, 2017), doi:10.2139/ssrn.3016088.
- 24 Tom Simonite, “Algorithms Should’ve Made Courts More Fair. What Went Wrong?” Wired (September 5, 2019), <https://www.wired.com/story/algorithms-shouldve-made-courts-more-fair-what-went-wrong/>.
- 25 Chloe Anderson Golub, Cindy Redcross, Erin Jacobs Valentine. “Evaluation of Pretrial Justice System Reform Efforts That Use the Public Safety Assessment,” MRDC (November 2019), <https://www.mrdc.org/publication/evaluation-pretrial-justice-system-reforms-use-public-safety-assessment>
- 26 Megan T. Stevenson, “Assessing Risk Assessment in Action,” Minnesota Law Review ( August 29, 2017), doi:10.2139/ssrn.3016088; Alex Albright, “If You Give a Judge a Risk Score: Evidence from Kentucky Bail Decisions,” Working paper (2019), [https://thelittledataset.com/about\\_files/albright\\_judge\\_score.pdf](https://thelittledataset.com/about_files/albright_judge_score.pdf).
- 27 Wendy Sawyer and Peter Wagner, “Mass Incarceration: The Whole Pie 2019,” Prison Policy Initiative (March 19, 2019), <https://www.prisonpolicy.org/reports/pie2019.html>.

## SECTION 2

- 28 Media Mobilizing Project conducted a survey, using direct interviews and secondary source documentation, to discover the tools most commonly used in jurisdictions. The map in this document (updated as of June 2019) is a snapshot of how RATs are being deployed around the country.
- 29 Matt Henry, “Risk Assessment: Explained,” The Appeal (March 25, 2019), <https://theappeal.org/risk-assessment-explained/>.
- 30 “Overview of Research Findings on Pretrial Risk Assessment,” Pretrial Justice Institute (2009), [http://thecrimereport.s3.amazonaws.com/2/45/d/1469/john\\_jay\\_resource\\_\\_1.pdf](http://thecrimereport.s3.amazonaws.com/2/45/d/1469/john_jay_resource__1.pdf).

# ENDNOTES

- 31 Danielle Kehl, Priscilla Guo, and Samuel Kessler, “Algorithms in the Criminal Justice System: Assessing the Use of Risk Assessments in Sentencing. Responsive Communities Initiative,” Berkman Klein Center for Internet & Society, Harvard Law School (2017), [https://dash.harvard.edu/bitstream/handle/1/33746041/2017-07\\_responsivecommunities\\_2.pdf](https://dash.harvard.edu/bitstream/handle/1/33746041/2017-07_responsivecommunities_2.pdf).
- 32 Peter W. Greenwood and Allan Abrahamse, Selective Incapacitation, RAND Corporation (1982), <https://www.rand.org/pubs/reports/R2815.html>; Andrew von Hirsch and Don M. Gottfredson, “Selective Incapacitation: Some Queries About Research Design and Equity,” NYU Review of Law & Social Change (1983-1984), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/nyuls12&div=10&id=&page=>.
- 33 See pullout box on page 8. Barry Mahoney, Bruce D. Beaudin, John A. Carver III, Daniel B. Ryan, and Richard B. Hoffman, “Pre-trial Services Programs: Responsibilities and Potential,” National Institute of Justice (March 2001), <https://www.ncjrs.gov/pdffiles1/nij/181939.pdf>.
- 34 The PSA, a commonly used pretrial RAT, predicted that 17 percent of people arraigned in Kentucky would be re-arrested for violent crime, while only 1 percent of them did. (See tables 10 and 15). Matthew DeMichele, Peter Baumgartner, Michael Wenger, Kelle Barrick, Megan Comfort, and Shilpi Misra, “The Public Safety Assessment: A Re-Validation and Assessment of Predictive Utility and Differential Prediction by Race and Gender in Kentucky,” (April 25, 2018), <http://dx.doi.org/10.2139/ssrn.3168452>.
- 35 Marie VanNostrand, Ph.D. and Kenneth J. Rose, “Pretrial Risk Assessment in Virginia,” Virginia Department of Criminal Justice Services in Partnership with the Virginia Community Criminal Justice Association (May 1, 2009), <https://www.dcss.virginia.gov/sites/dcss.virginia.gov/files/publications/corrections/virginia-pretrial-risk-assessment-report.pdf>.
- 36 See page 3, slide 6. Virginia State Crime Commission, “Pre-Trial Process” PowerPoint presentation (November 8, 2018), <http://vscc.virginia.gov/VSCC%20FINAL%20Pretrial%20Process%20Presentation.pdf>.
- 37 Collected from Media Mobilizing Project interview with Madera County Probation on June 28th, 2019.
- 38 Collected from Media Mobilizing Project interview with Ada County Court Services Bureau on July 15th, 2019.
- 39 Scott Kohler, “Case 29,” Vera Institute of Justice: Manhattan Bail Project (1962), [https://cspsc.sanford.duke.edu/sites/default/files/descriptive/manhattan\\_bail\\_project.pdf](https://cspsc.sanford.duke.edu/sites/default/files/descriptive/manhattan_bail_project.pdf). See page 3 for CJA’s current redesign: “Annual Report 2017,” New York City Criminal Justice Agency (June 2019), [https://issuu.com/csdesignworks/docs/ar\\_2017.final\\_062019lg](https://issuu.com/csdesignworks/docs/ar_2017.final_062019lg).
- 40 See page 12. Russell F. Ferry, Ph.D and Stephen Koppel, J.D., Ph.D., “New York City Criminal Justice Agency Annual Report 2017,” CJA Annual Report 2017 (June 2019), [https://issuu.com/csdesignworks/docs/ar\\_2017.final\\_062019lg/18](https://issuu.com/csdesignworks/docs/ar_2017.final_062019lg/18).
- 41 Mary T. Phillips, Ph.D., New York City Criminal Justice Agency, Inc., “Prosecutors’ Bail Requests and the CJA Release Recommendation: What Do They Tell the Judge?” National Criminal Justice Reference Service (August 2005), <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=238340>.
- 42 This tool has been used since the early 2000’s. E. Rely Vilčić and John S. Goldkamp, “Bail Prediction: Exploring the Role of Neighborhood Context in Philadelphia,” Criminal Justice and Behavior (August 7, 2015), <http://dx.doi.org/10.1177/0093854815599022>.
- 43 “ACLU of Pennsylvania and the Law Firm of Arnold & Porter Announce Lawsuit Over Bail Practices in Philadelphia,” ACLU Pennsylvania (March 12, 2019) <https://www.aclupa.org/news/2019/03/12/aclu-pennsylvania-and-law-firm-arnold-porter-announce-lawsui>.
- 44 Eric Escalante, “End of cash bail system sparks questions on new risk assessment system,” ABC 10 (August 29, 2018), <https://www.abc10.com/article/news/local/end-of-cash-bail-system-sparks-questions-on-new-risk-assessment-system/103-588818600>.

# ENDNOTES

- 45 “SB 10: Pretrial Release and Detention,” Judicial Branch of California, <https://www.courts.ca.gov/pretrial.htm>.
- 46 James David Dickson, “In first meeting, state jail task force outlines goals, seeks solutions,” *The Detroit News* (July 24, 2019), <https://www.detroitnews.com/story/news/local/michigan/2019/07/24/michigan-jail-task-force-hold-first-public-meeting-detroit/1812368001/>.
- 47 “Pretrial Release | Wyoming,” National Conference of State Legislatures, <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-wyoming.aspx>.
- 48 “Mohave County Probation Pre-trial Services,” Mohave Courts, <http://www.mohavecourts.com/probation/pretrial.html>.
- 49 Megan Cassidy, “Bond companies ‘extremely worried’ as Arizona moves away from cash bail bonds,” *AZ Central* (June 21, 2017), <https://www.azcentral.com/story/news/local/arizona/2017/06/21/arizona-courts-back-away-cash-bail-system-bond-companies-worried/400209001/>.
- 50 This data is based on an interview with the Probation Department of Richland County, conducted in Fall 2017 by Media Mobilizing Project.
- 51 “Snapshot of Pretrial Justice Reform: Arizona,” Pretrial Justice Center for Courts (2015), [https://www.ncsc.org/~media/Microsites/Files/PJCC/Pretrial Justice Brief 3 - AZ final.ashx](https://www.ncsc.org/~media/Microsites/Files/PJCC/Pretrial%20Justice%20Brief%203%20-%20AZ%20final.ashx).
- 52 Megan T. Stevenson, “Assessing Risk Assessment in Action,” *Minnesota Law Review* (August 29, 2017), doi:10.2139/ssrn.3016088.
- 53 “Bail Reform and Risk Assessment: The Cautionary Tale of Federal Sentencing,” *Harvard Law Review* (February 9, 2018), <https://harvardlawreview.org/2018/02/bail-reform-and-risk-assessment-the-cautionary-tale-of-federal-sentencing/>.
- 54 “Risk factors and formulas,” Public Safety Assessment, <https://www.psapretrial.org/about/factors>.
- 55 “Risk factors and formulas,” Public Safety Assessment, <https://www.psapretrial.org/about/factors>.
- 56 Kelly Pitocco, “ORAS: (Ohio Risk Assessment System) Purpose and Benefits,” Slide 19, <https://slideplayer.com/slide/7341338/>.
- 57 Glenn A. Grant, “Jan. 1 - Dec. 31 2018 Report to the Governor and Legislature,” *New Jersey Judiciary* (2019) <https://njcourts.gov/courts/assets/criminal/2018cjannual.pdf?c=dSE>.
- 58 “Risk factors and formulas,” Public Safety Assessment, <https://www.psapretrial.org/about/factors>.
- 59 Ed Latessa, Tammy Dean and Jennifer Lux, University of Cincinnati Corrections Institute, “Risk Assessment Factsheet: Ohio Risk Assessment System - Pretrial Assessment Tool (ORAS-PAT)” (May 6, 2019), <https://www-cdn.law.stanford.edu/wp-content/uploads/2019/05/ORAS-Sheet-Final-5.10-CC-Upload.pdf>.
- 60 See page 11. “Colorado Pretrial Assessment Tool (CPAT) Administration, Scoring, and Reporting Manual, Version 1,” Pretrial Justice Institute (February 2013), [http://capscolorado.org/yahoo\\_site\\_admin/assets/docs/CPAT\\_Manual\\_v1\\_-\\_PJI\\_2013.279135658.pdf](http://capscolorado.org/yahoo_site_admin/assets/docs/CPAT_Manual_v1_-_PJI_2013.279135658.pdf).
- 61 “Risk Assessment Factsheet: Ohio Risk Assessment System - Pretrial Assessment Tool (ORAS-PAT),” Stanford Pretrial Risk Assessment Tools Factsheet Project (May 6, 2019), <https://www-cdn.law.stanford.edu/wp-content/uploads/2019/05/ORAS-Sheet-Final-5.10-CC-Upload.pdf>.
- 62 “SRLJC Risk and Responsivity Subcommittee Meeting Agenda,” Spokane County (February 4, 2015), <https://www.spokane-county.org/AgendaCenter/ViewFile/Agenda/02042015-677?packet=true>.
- 63 “Access to the Adult Static Risk Assessment (ASRA) program,” Washington Courts (April 17, 2012), [https://custhelp.courts.wa.gov/app/answers/detail/a\\_id/2261/](https://custhelp.courts.wa.gov/app/answers/detail/a_id/2261/).

# ENDNOTES

64 “2011-2012 Order Approving Judicial Guidelines for Pretrial Release and Monitored Conditional Release,” Supreme Court of Kentucky (December 15, 2011), [https://kycourts.gov/courts/supreme/Rules\\_Procedures/201112.pdf](https://kycourts.gov/courts/supreme/Rules_Procedures/201112.pdf).

65 “Information & Technology Services,” Kentucky Court of Justice, <https://kycourts.gov/aoc/technologyservices/Pages/default.aspx>.

66 Media Mobilizing Project interviews conducted with Armstrong County on July 24th, 2019, and Alachua County on July 2nd, 2019.

## SECTION 3

67 For an example of a full power analysis framework, see the “Midwest Academy Strategy Chart,” [http://www.tcsg.org/sfelp/toolkit/MidwestAcademy\\_01.pdf](http://www.tcsg.org/sfelp/toolkit/MidwestAcademy_01.pdf)

68 In Philadelphia, both District Attorney Larry Krasner and Chief Defender Keir Bradford-Grey wrote a letter to the Philadelphia First Judicial Courts on their opposition to the courts’ non-transparent RAT plan. Samantha Melamed, “Will controversy over risk assessments break Philly’s touted criminal-justice reform collaboration?” *The Philadelphia Inquirer* (May 8, 2019), <https://www.inquirer.com/news/money-bail-criminal-justice-reform-philadelphia-larry-krasner-aclu-pennsylvania-20190508.html>.

## APPENDIX

69 “Snapshot of Pretrial Justice Reform: Arizona,” Pretrial Justice Center for Courts (2015), <https://www.ncsc.org/~media/Microsites/Files/PJCC/Pretrial Justice Brief 3 - AZ final.ashx>.

70 Megan T. Stevenson, “Assessing Risk Assessment in Action,” *Minnesota Law Review* ( August 29, 2017), doi:10.2139/ssrn.3016088.

71 Runa Rajagopal, “Building Justice: How Segregation Enables Over-Policing of Communities of Color,” *CityLimits.org* (September 26, 2016), <https://citylimits.org/2016/09/26/how-segregated-housing-enables-over-policing-of-low-income-communities-of-color/>.

72 “Race and the Drug War,” *Drug Policy Alliance*, <http://www.drugpolicy.org/issues/race-and-drug-war>.

73 Emily Yoffe, “Innocence Is Irrelevant,” *The Atlantic* (September 2017), <https://www.theatlantic.com/magazine/archive/2017/09/innocence-is-irrelevant/534171/>.

74 Megan C. Kurlychek, Robert Brame and Shawn D. Bushway, “Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?” *Criminology & Public Policy* (September 13, 2006), <https://doi.org/10.1111/j.1745-9133.2006.00397.x>

75 Geoffrey C. Barnes, Ph.D., Jordan M. Hyatt, J.D., M.S., “Classifying Adult Probationers by Forecasting Future Offending: Final Technical Report,” *National Criminal Justice Reference Service* (March 2012), <https://www.ncjrs.gov/pdffiles1/nij/grants/238082.pdf>.

76 Marie VanNostrand, Ph.D., “Assessing Risk Among Pretrial Defendants in Virginia: The Virginia Pretrial Risk Assessment Instrument,” *Virginia Dept. of Criminal Justice* (April 2003), <https://www.dcss.virginia.gov/sites/dcss.virginia.gov/files/publications/corrections/assessing-risk-among-pretrial-defendants-virginia-virginia-pretrial-risk-assessment-instrument.pdf>.

77 “The Ohio Risk Assessment System (ORAS),” *University of Toledo*, [https://www.utoledo.edu/law/studentlife/lawreview/pdf/Trout\\_ORAS-Overview.pdf](https://www.utoledo.edu/law/studentlife/lawreview/pdf/Trout_ORAS-Overview.pdf); Edward Latessa, Richard Lemke, Matthew Makarios, Paula Smith, and Christopher Lowenkamp, “The Creation and Validation of the Ohio Risk Assessment System (ORAS),” *Federal Probation* (June 1, 2010), <https://www.uc.edu/content/dam/uc/ics/docs/LatessaEtAlTheCreationAndValidation.pdf>.

# ENDNOTES

- 78 “Advancing Pretrial Justice,” Public Safety Assessment, <https://www.psapretrial.org/>.
- 79 “Arnold Foundation Launches Expansion of Public Safety Assessment Tool,” The Crime Report (April 25, 2018), <https://thecrimereport.org/2018/04/25/arnold-foundation-launches-expansion-of-public-safety-assessment-tool/>.
- 80 Greg Mauro, “National Conference of State Legislatures Risk-based Pretrial Site Visit Denver Pretrial Services,” National Conference of State Legislatures (September 10, 2014), <http://www.ncsl.org/Documents/CJ/GregMauroPresentation.pdf>.
- 81 See slide 17. Greg Mauro, “National Conference of State Legislatures Risk-based Pretrial Site Visit Denver Pretrial Services,” National Conference of State Legislatures (September 10, 2014), <http://www.ncsl.org/Documents/CJ/GregMauroPresentation.pdf>.
- 82 Julia Dressel and Hany Farid, “The accuracy, fairness, and limits of predicting recidivism,” Science Advances (January 17, 2018), <https://advances.sciencemag.org/content/4/1/eaao5580.full>.
- 83 Chad Sokol, “Recalculating the Spokane County Jail,” The Spokesman-Review (February 20, 2019), <http://www.spokesman.com/stories/2019/jan/04/after-setbacks-spokane-county-abandons-custom-crim/>.
- 84 Media Mobilizing Project interviews conducted with Armstrong County on July 24th, 2019, and Alachua County on July 2nd, 2019.
- 85 Spokane is now in the process of converting to the Arnold PSA tool. L.S. Hall, “What went wrong with the foundation-backed effort to lower jail populations?” Inside Philanthropy (January 16, 2019), <https://www.insidephilanthropy.com/home/2019/1/16/what-went-wrong-with-this-foundation-backed-effort-to-lower-jail-populations>.
- 86 Geoff Dornan, “Court orders use of Pre-Trial Risk tool to release defendants,” Nevada Appeal (March 21, 2019), <https://www.nevadaappeal.com/news/crime/nevada-supreme-court-orders-use-of-pre-trial-risk-tool-to-release-defendants/>.
- 87 “Sonoma County Pretrial - Origins,” California Judicial Branch (March 4, 2015), <https://www.courts.ca.gov/documents/Pretrial-Summit2015-5SonomaModel.pdf>.
- 88 “Pretrial Release Recommendation Decision Making Framework,” New Jersey Courts (March 2018). <https://njcourts.gov/courts/assets/criminal/decmakframework.pdf>



# COMMUNITY JUSTICE EXCHANGE

[www.communityjusticeexchange.org](http://www.communityjusticeexchange.org)  
[info@communityjusticeexchange.org](mailto:info@communityjusticeexchange.org)