

The Growing Risk of Risk Assessments

A Collection of Recent Research



History

Over the past five years, one of the most talked about solutions to mass incarceration has been computerized risk assessments. These so called “evidenced-based” tools were going to solve all the problems in the criminal justice system. No more unnecessary pretrial incarceration of low-level defendants. No more long waiting periods to bail out of jail. No more racial bias. It was truly going to be utopia. Progressive leading criminal justice jurisdictions and states like Kentucky, Illinois and Washington D.C. were first to implement these advanced tools.

These magical risk assessments were not just being supported by these progressive jurisdictions, but they were also being promoted heavily by the organizations that created them (Northpoint and the Laura and John Arnold Foundation to name a couple). They were also supported by everyone from social justice activists to academics to public defenders to legislators.

The NAACP and the ACLU held rallies across the country calling for the end of the “money-bail” system and the implementation of evidence-based risk assessments. Academics from Harvard, Columbia and other distinguished universities wrote research papers showing that releasing pretrial defendants utilizing computerized pretrial risk assessments was more effective than releasing them on financially secured bail. The American Bar Association wrote press releases and issued statements condemning “money-bail” as unconstitutional and celebrating risk assessments as the most fair and effective means of releasing defendants pretrial. And legislators all over the country from New Jersey to California to New Mexico to Texas, jumped on risk assessment bandwagon and began introducing legislation to codify the use of risk assessments into law.

The excitement buzzing around the criminal justice system was like a Black Friday frenzy at Best Buy. It was dubbed the third generation of bail reform. No longer did we need to trust judges with their fallible “human” biases. We now had pretrial risk assessments built with complex computer algorithms that could tell us who was safe to release from jail and who wasn’t. These algorithms were so powerful that they could also tell us who would return to court and who wouldn’t. It was all too good to be true.

Fast forward to 12 months ago, we are starting to see that it really was too good to be true.

The following booklet provides an overview of several recent research articles and independent peer reviewed academic studies on the use of computerized risk assessments in the criminal justice system. The results of each of these articles and studies show the same result, the use risk assessments fall way short of the numerous promises made by supporters. In fact, the results that occurred were the complete opposite of the results that were promised. Jails got more crowded, pretrial incarceration times increased and racial bias increased. It is important to mention that not a single one of the authors of the research presented in the booklet are supporters of the commercial bail industry. One could even say that they all support bail reform.

Today, the use of risk assessments is now opposed by almost all of the original social justice supporters. Even the Arnold Foundation has apologized for supporting risk assessments and no longer supports them (www.law360.com/articles/1143086). The most current studies have all come to the same conclusion that risk assessments should not be used. You will find summaries of the studies below and links to each of the studies highlighted.

More than 100 Civil Rights, Digital Justice, and Community-Based Organizations Raise Concerns, 2019

A broad coalition of more than 100 civil rights groups released a shared statement of concerns regarding the adoption and use of algorithmic based decision-making tools. The groups urge jurisdictions to not embed risk assessment tools in pretrial decision making.

// ...risk assessment tools are not a panacea to reforming our unjust and broken bail systems, and that, in fact, these tools can worsen racial disparities and allow further incarceration. //

You can read the article by [CLICKING HERE](#).

www.civilrights.org/2018/07/30/more-than-100-civil-rights-digital-justice-and-community-based-organizations-raise-concerns-about-pretrial-risk-assessment



Report on Algorithmic Risk Assessment Tools in the US Criminal Justice System Partnership on AI, 2019

A group of leading technology companies, including Google, Amazon, IBM, Facebook to name a few, created a nonprofit organization to study and formulate best practices on AI technologies. This group strongly voices their concerns about the use of these tools in the criminal justice system. They question their validity and accuracy, as well as call out the bias in the tools themselves.

www.partnershiponai.org/report-on-machine-learning-in-risk-assessment-tools-in-the-u-s-criminal-justice-system
To read study [CLICK HERE](#).

Technical Flaws of Pretrial Risk Assessments Raise Grave Concerns

Signed Statement of Concern from 27 Leading Academics, July 2019

Twenty-seven of the leading academics in predictive algorithms, representing some of the most prestigious Universities in the country signed a statement of concern regarding the use of pretrial risk algorithms in the criminal justice system.

Actuarial pretrial risk assessments suffer from serious technical flaws that undermine their accuracy, validity, and effectiveness. They do not accurately measure the risks that judges are required by law to consider.

According to the academics, these problems are insurmountable and cannot be remedied.

These problems cannot be resolved with technical fixes. We strongly recommend turning to other reforms.

Criminal justice is a domain where it is imperative to exercise maximal caution and humility in the deployment of statistical tools. We are concerned that proponents of these tools have failed to adequately address the minimum requirements for responsible use prior to widespread deployment.

www.cyber.harvard.edu/story/2019-07/technical-flaws-pretrial-risk-assessments-raise-grave-concerns
To Read article [CLICK HERE](#).

Bias in Bias Out

Sandra Mayson, University of Georgia School of Law, September 2018

This research examined the effectiveness and accuracy of risk assessments in the criminal justice system, specifically looking at racial bias. According to Ms. Mason, if the defendant data you are looking at includes historical racial biases, then your results will reflect that same bias. Because of this challenge, the use of these risk assessments has the potential to make the system more bias and unfair.

// Algorithmic prediction has the potential to perpetuate or amplify social inequality, all while maintaining the veneer of high-tech objectivity. //

There are so many variables that can be used to determine the risk of a defendant that you can't get consistent results across a population. Ms. Mason claims that achieving race neutrality with risk assessments is impossible.

// All prediction looks to the past to make guesses about future events. In a racially stratified world, any method of prediction will project the inequalities of the past into the future. //

www.yalelawjournal.org/article/bias-in-bias-out
To read study [CLICK HERE](#).

Danger Ahead: Risk Assessments and the Future of Bail Reform

Logan Koepke & David Robinson, Georgetown University - UpTurn, March 2018

This study included an analysis of risk assessments and focused on three key challenges facing them. First, that risk assessments overestimate risk because they use historical data not reflective of current times. Second, decision frameworks (the process by which a risk score is translated into an action) are inconsistent and based on local morals and risk tolerances that can vary from community to community. Lastly, the lack of transparency associated with the algorithms that are used to determine the risk score. If the public doesn't know how the algorithm works, how can they understand its effectiveness.

In conclusion, Koepke and Robinson, state that risk assessments are not capable of delivering an unbiased and fair solution that meets the reformist goals of reducing incarceration.

“ Pretrial risk assessment instruments, as they are currently used, cannot safely be assumed to advance reformist goals of reducing incarceration and enhancing the bail system’s fairness. ”

www.digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/1849/93WLR1725.pdf
To see study [CLICK HERE](#).



Assessing Risk Assessments in Action

Megan Stevenson, Economist and Legal Scholar, George Mason University, December 2017

This purpose of this study was to assess the use of pretrial risk assessments across the country, specifically in Kentucky, where one of the most critically acclaimed tools (the Arnold tool) was being implemented as part of a piece of new legislation that had passed the Kentucky legislature, HB463. Ms. Stevenson's research found that risk assessments were being oversold as the silver bullet solution to the challenges in the criminal justice system.

“ Somehow criminal justice risk assessment has gained the near universal reputation of being an evidenced based practice despite the fact that there is virtually no research showing that it has been effective. ”

After Bail Reform (HB463) and the Arnold PSA Implemented

Kentucky

Determining whether a particular policy is evidence-based depends on the quality, quantity and consistency of the social science research demonstrating its impact... According to this ranking, risk assessment would not be considered evidence-based, as there is no high-quality evidence showing that it has been effective.

24%  **20%**
INCREASED FAILURE TO APPEARS **INCREASED FUGITIVE RATE**

In addition to finding no real supporting evidence for the effectiveness of risk assessments, her own research showed that the use of the tools was having the opposite effect on the system. After implementation of the tool, incarceration rates did not decrease in any significant way and failure to appear rates and racial disparities actually increased.

“ Despite extensive and heated rhetoric, there is virtually no evidence on how use of this “evidence-based” tool affects key outcomes such as incarceration rates, crime, or racial disparities. ”


www.minnesotalawreview.org/wp-content/uploads/2019/01/13Stevenson_MLR.pdf
To read study [CLICK HERE](#).

This scathing report analyzed one of the most publicly used risk assessments COMPAS, developed by Northpoint. It found that the use of the COMPAS risk tool was having the opposite impact on the criminal justice system. Its results were labeled as being *“somewhat more accurate than a coinflip.”*

Only 20 percent of the defendants predicted to commit violent crimes, did, and only 61% of those charged with a misdemeanor crime were re-arrested within a two-year period. Additionally, the racial disparities that surfaced during the research were significant. According to the article, *“The formula was particularly likely to falsely flag black defendants as future criminals, wrongly labeling them this way at almost twice the rate as white defendants.”*

Additionally, *“White defendants were mislabeled as low risk more often than black defendants.”*

Two Drug Possession Arrests




DYLAN FUGETT BERNARD PARKER

LOW RISK 3 HIGH RISK 10

Fugett was rated low risk after being arrested with cocaine and marijuana. He was arrested three times on drug charges after that.

Two Petty Theft Arrests




VERNON PRATER BRISHA BORDEN

LOW RISK 3 HIGH RISK 8

Borden was rated high risk for future crime after she and a friend took a kid's bike and scooter that were sitting outside. She did not reoffend.

Two DUI Arrests



GREGORY LUGO MALLORY WILLIAMS

LOW RISK 1 MEDIUM RISK 6

Lugo crashed his Lincoln Navigator into a Toyota Camry while drunk. He was rated as a low risk of reoffending despite the fact that it was at least his fourth DUI.

Two Drug Possession Arrests

DYLAN FUGETT	BERNARD PARKER
Prior Offense 1 attempted burglary	Prior Offense 1 resisting arrest without violence
Subsequent Offenses 3 drug possessions	Subsequent Offenses None

LOW RISK 3 HIGH RISK 10

Fugett was rated low risk after being arrested with cocaine and marijuana. He was arrested three times on drug charges after that.

Two Petty Theft Arrests

VERNON PRATER	BRISHA BORDEN
Prior Offenses 2 armed robberies, 1 attempted armed robbery	Prior Offenses 4 juvenile misdemeanors
Subsequent Offenses 1 grand theft	Subsequent Offenses None

LOW RISK 3 HIGH RISK 8

Borden was rated high risk for future crime after she and a friend took a kid's bike and scooter that were sitting outside. She did not reoffend.

Two DUI Arrests

GREGORY LUGO	MALLORY WILLIAMS
Prior Offenses 3 DUIs, 1 battery	Prior Offenses 2 misdemeanors
Subsequent Offenses 1 domestic violence battery	Subsequent Offenses None

LOW RISK 1 MEDIUM RISK 6

Lugo crashed his Lincoln Navigator into a Toyota Camry while drunk. He was rated as a low risk of reoffending despite the fact that it was at least his fourth DUI.

Photos by Ritchie, Josh, ProPublica, May 23, 2016 , www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing



Black defendants were 77% more likely to be pegged as at higher risk to commit a future violent crime and 45% more likely to be predicted to commit a future crime of any kind.



www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing
To see article [CLICK HERE](#).

“We @Arnold Ventures agree with this proposal...that risk assessment tools are too important to be black boxes. The methodology must be transparent and open to public inspection, auditing and testing.”

– John Arnold, Founder Arnold Ventures

“Somehow criminal justice risk assessment has gained the near universal reputation of being an evidenced based practice despite the fact that there is virtually no research showing that it has been effective.”

“Despite extensive and heated rhetoric, there is virtually no evidence on how use of this “evidence-based” tool affects key outcomes such as incarceration rates, crime, or racial disparities.”

– Megan Stevenson, George Mason University



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