

Measuring and Managing Pretrial Risk with the Public Safety Assessment

Stakeholder Education

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PRESENTER: Zach Dal Pra

INFO: Spokane County

The Public Safety Assessment

- The PSA was developed in 2013 by the Laura and John Arnold Foundation (LJAF).
- To start its work on pretrial justice and risk assessment:
 - LJAF sought input from policymakers and practitioners.
 - Many emphasized the importance of pretrial decisions.
 - Despite decades of research, the adoption rate of validated pretrial risk assessments was low.
 - Existing assessments were resource-intensive, many were jurisdiction-specific, and none predicted the risk of pretrial violent activity.

Currently Using the PSA (as of September 2018):



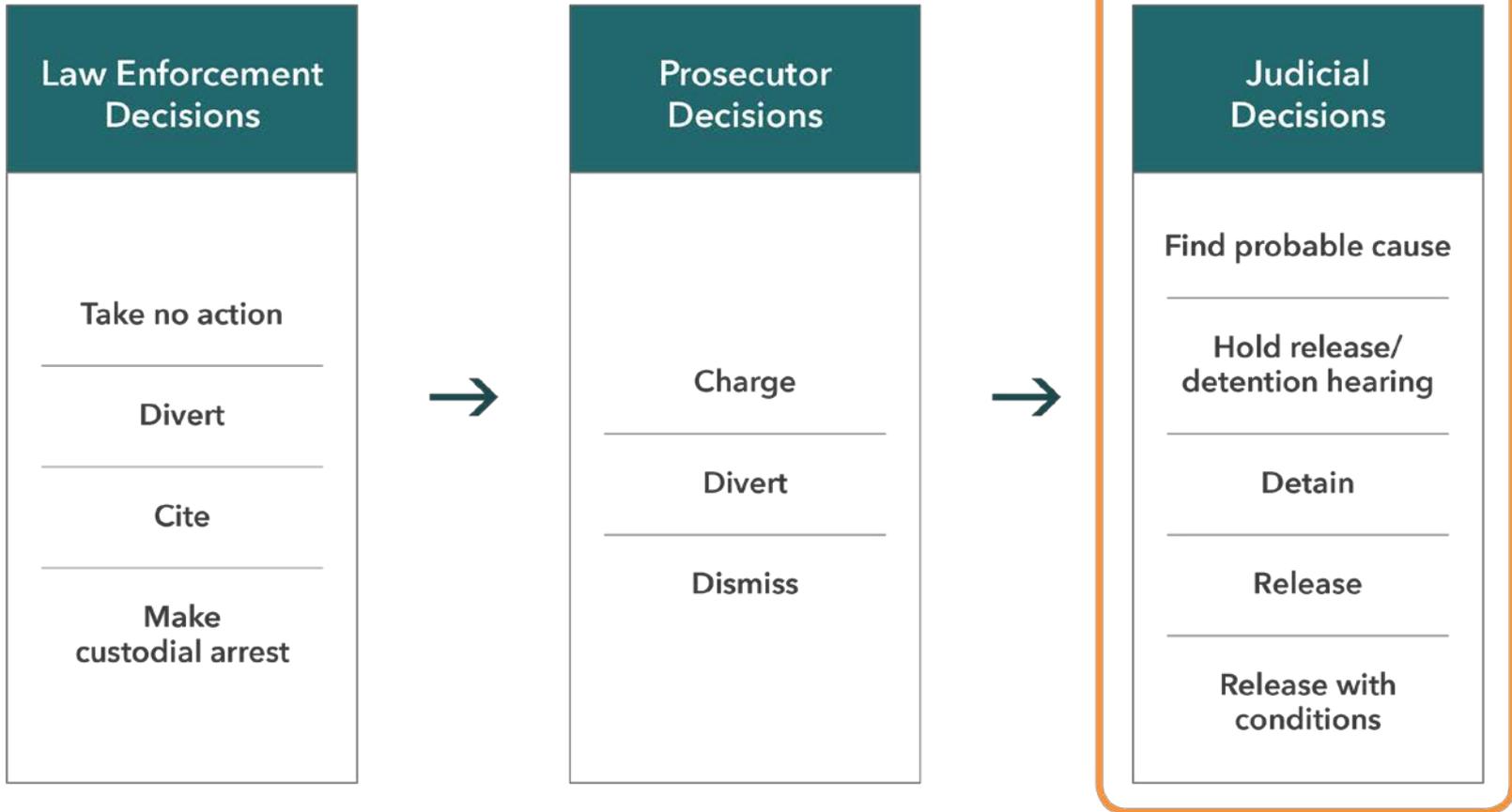
- **Kentucky:** statewide
- **Arizona:** statewide
- **New Jersey:** statewide
- **Utah:** statewide
- **North Carolina:** Mecklenburg County (Charlotte)
- **California:** Santa Cruz County, City and County of San Francisco, Tulare County
- **Illinois:** Cook County (Chicago), Kane County, and McLean County
- **Florida:** Volusia County (Daytona Beach)
- **Montana:** Five Counties
- **Ohio:** Lucas County (Toledo), Cleveland
- **Pennsylvania:** Allegheny County (Pittsburgh)
- **Washington:** Yakima County
- **Wisconsin:** Milwaukee County, Dane County
- **New Mexico:** Bernalillo County (Albuquerque)
- **Texas:** Harris County (Houston)
- **Louisiana:** Orleans Parish (New Orleans)
- **Iowa:** Four Counties
- **South Dakota:** Pennington and Minnehaha Counties

Today's Objectives

1. Review legal and evidence-based pretrial practices.
2. Discuss pretrial justice and pretrial risk assessment and management.
3. Learn how the PSA was developed.
4. Understand the PSA's risk factors, scoring, and results.
5. Consider the ways that the PSA's results can help inform pretrial decision-making.

Pretrial Justice Overview

Pretrial Decision Points



Pretrial Justice

- **After a person is arrested, judicial officers must decide:**
 1. Will this person be released?
 2. Will this person be detained?
 3. If released, what will be the release conditions?
- **The impact of pretrial decisions:**
 - Public safety pretrial
 - Case disposition
 - Likelihood of receiving a sentence to incarceration
 - Length of a sentence to incarceration
 - Public safety post-disposition

See handout for list of references.

Pretrial Justice

- **Legal and Evidence-Based Pretrial Practices (LEBP)**
 - **Legal:** Practices must uphold the rights of accused persons, victims, and others in society.
 - **Evidence-Based:** Practices are informed by national research and local data.
- **The law tells us what we can and cannot do; the research tells us how to do things effectively.**

Legal Principles

- **Presumption of innocence**
- **Right to release/presumption of release**
 - Release must be the norm.
 - Only two constitutionally valid purposes exist for limiting pretrial freedom: court appearance and public safety.
- **Non-excessive bail**
 - Least-restrictive conditions.
- **Due process**
- **Equal protection**
- **Individualized bail-setting**

Evidence-Based Practices

- These practices use empirical research to help guide and inform efficient, effective justice services.
- Research indicates which practices are effective for:
 - reducing unnecessary pretrial detention;
 - improving court appearance; and
 - increasing public safety and reducing crime.
- Pretrial risk assessments can play an important role.
- Pretrial risk-management strategies can be tested to determine whether they help increase pretrial success.

Pretrial Justice

Pretrial goals:

- Maximize public safety and law-abiding behavior.
 - Maximize court appearances.
 - Maximize pretrial release and minimize pretrial detention.
-

“ In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” U.S. v. Salerno (1987)

Pretrial Justice in Spokane, WA

CrRLJ 3.2 (a):

Presumption of Release in Noncapital Cases. Any person, other than a person charged with a capital offense, shall at the preliminary appearance or reappearance pursuant to rule 3.2.1 be ordered released on the accused's personal recognizance pending trial unless:

- (1) the court determines that such recognizance will not reasonably assure the accused's appearance, when required, or
- (2) there is shown a likely danger that the accused:
 - (a) will commit a violent crime, or
 - (b) will seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice.

Measuring Pretrial Risk

Pretrial Risk Assessments

- The PSA is an actuarial pretrial risk assessment—an objective resource based on statistics that uses pretrial risk factors to predict pretrial success or failure.
 - A pretrial risk factor is a characteristic (such as a prior conviction) that, when present, indicates an increased risk of pretrial failure.
- Pretrial risk assessment results, along with other information, can help inform pretrial decisions.
- PSA results help *inform* decisions and do not drive or make the decisions.

Pretrial Risk Assessments

- Hundreds of jurisdictions use pretrial risk assessments.
- More than two dozen types of assessments exist.
- Most pretrial risk assessments measure the following risks:
 - failing to appear in court; and
 - engaging in new criminal activity.

Pretrial Risk Assessments

- **Many risk assessments use the same core group of risk factors:**
 - age
 - pending cases
 - current offense
 - criminal history (prior convictions)
 - past failures to appear in court
 - other (such as stability/community ties)

Public Safety Assessment

The PSA's Innovations

LJAF sought to develop a pretrial risk assessment that would do the following:

- Predict failure to appear and new criminal activity separately.
- Predict new violent criminal activity.
- Assess risk factors that did not depend on interviews.
- Improve overall predictive accuracy.
- Be applicable anywhere in the United States.
- Be made available without cost.

PSA Development

- Preliminary research indicated that:
 - Criminal history factors are the strongest predictors of pretrial risk.
 - Community ties and stability factors do not improve predictability.
- The PSA was developed using 750,000 cases from seven state court systems (CO, CT, FL, KY, ME, OH, and VA), the federal pretrial system, and Washington, D.C.
- Researchers tested hundreds of correlations among risk factors and pretrial outcomes.

PSA Development

- Researchers identified the strongest predictors of Failure to Appear (FTA), New Criminal Activity (NCA), and New Violent Criminal Activity (NVCA).
- They concluded that the strongest predictors of FTA, NCA, and NVCA were related to a person's current charge, criminal history, and age.
- A person's age is the only demographic information used to score the PSA.

PSA Risk Factors

Risk Factor	Pretrial Outcome		
	FTA	NCA	NVCA
1. Age at current arrest		✓	
2. Current violent offense			✓
2a. Current violent offense and 20 years old or younger			✓
3. Pending charge at the time of the offense	✓	✓	✓
4. Prior misdemeanor conviction		✓	
5. Prior felony conviction		✓	
5a. Prior conviction	✓		✓
6. Prior violent conviction		✓	✓
7. Prior failure to appear pretrial in past 2 years	✓	✓	
8. Prior failure to appear pretrial older than 2 years	✓		
9. Prior sentence to incarceration		✓	

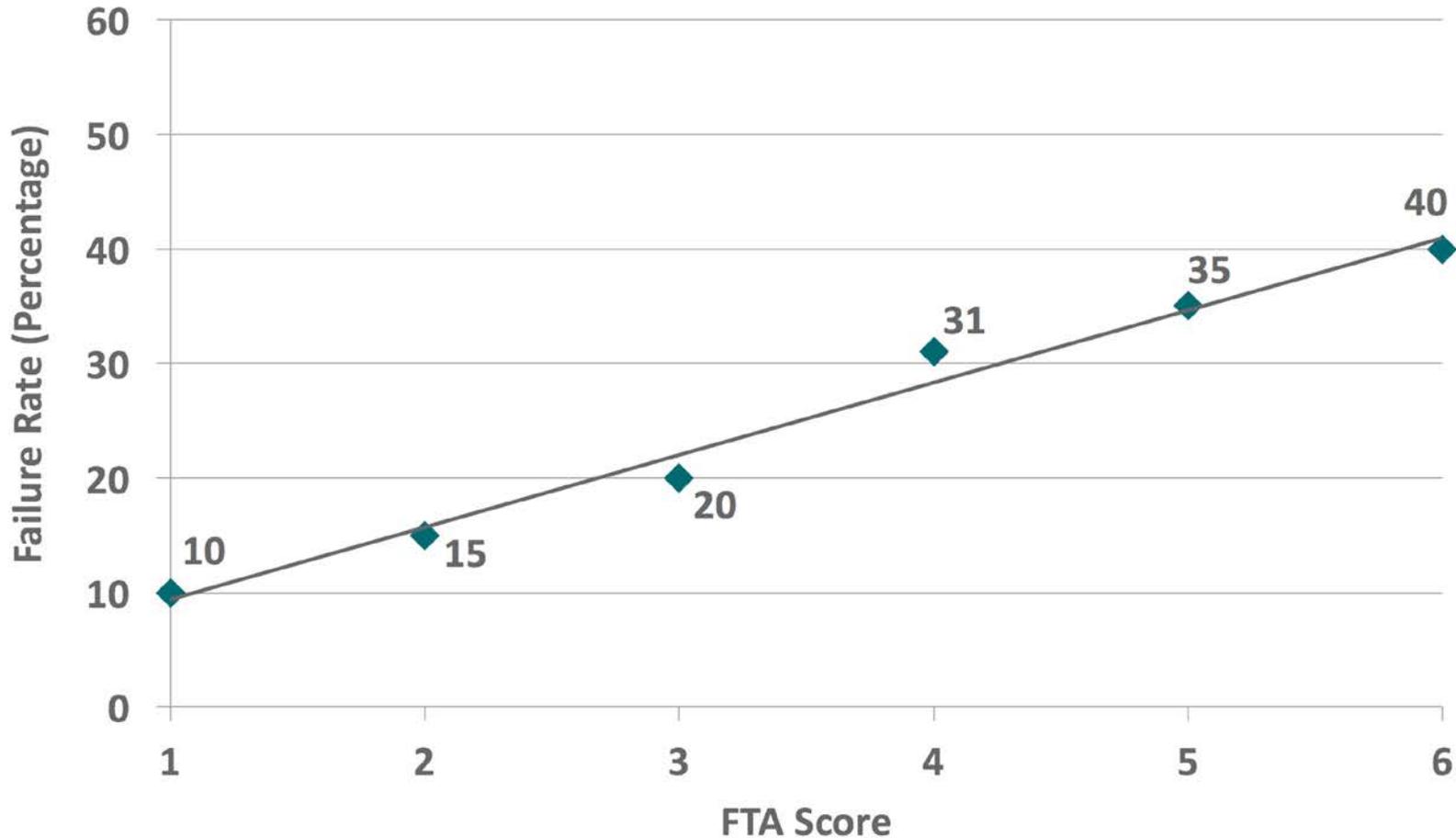
FTA = Failure to Appear; NCA = New Criminal Activity; NVCA = New Violent Criminal Activity

PSA Risk Scale and Flag

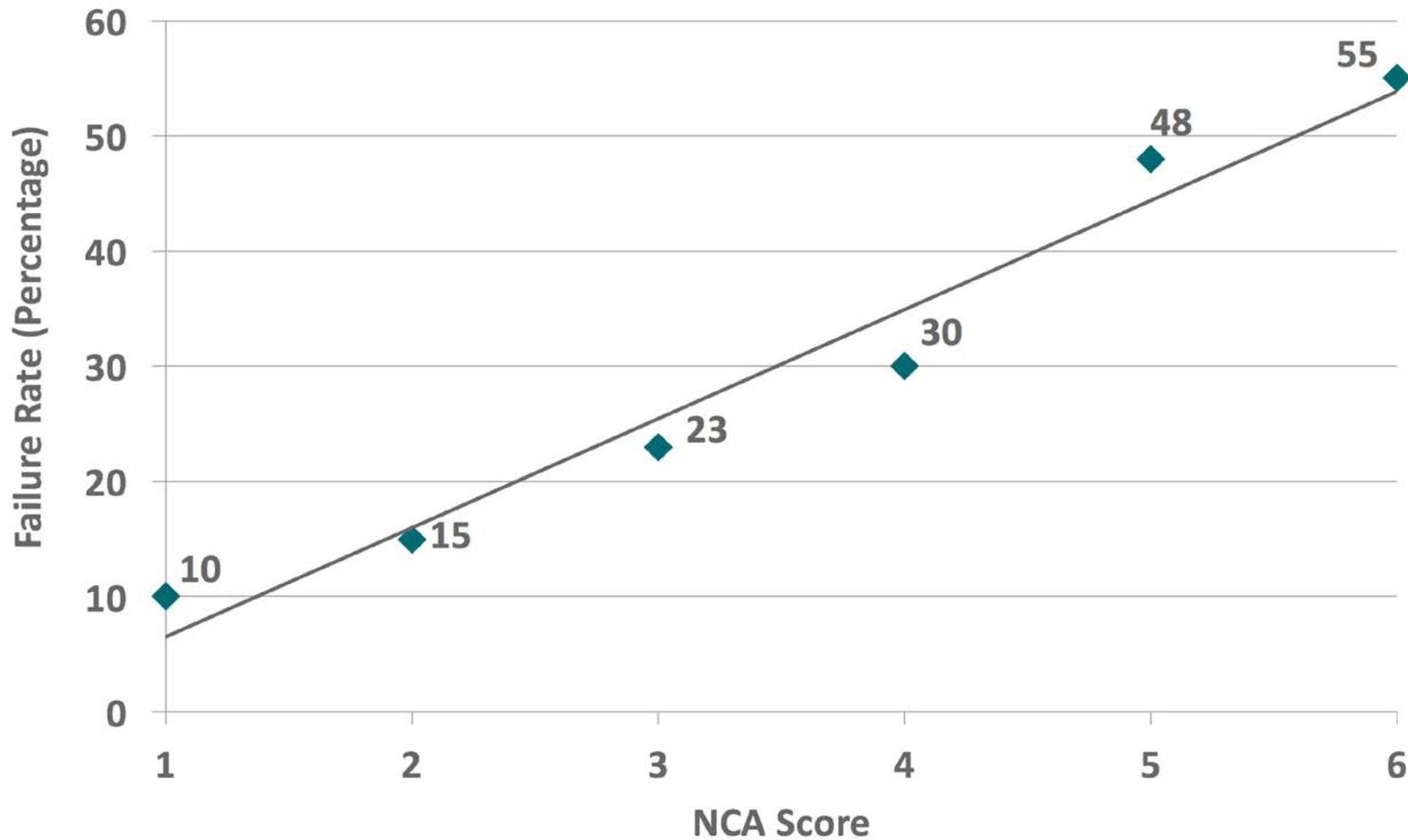
The PSA measures three things:

- Risk of Failure to Appear (FTA), using a scale of 1-6.
- Risk of New Criminal Activity (NCA), using a scale of 1-6.
- Risk of New Violent Criminal Activity (NVCA), using a yes/no “flag.”

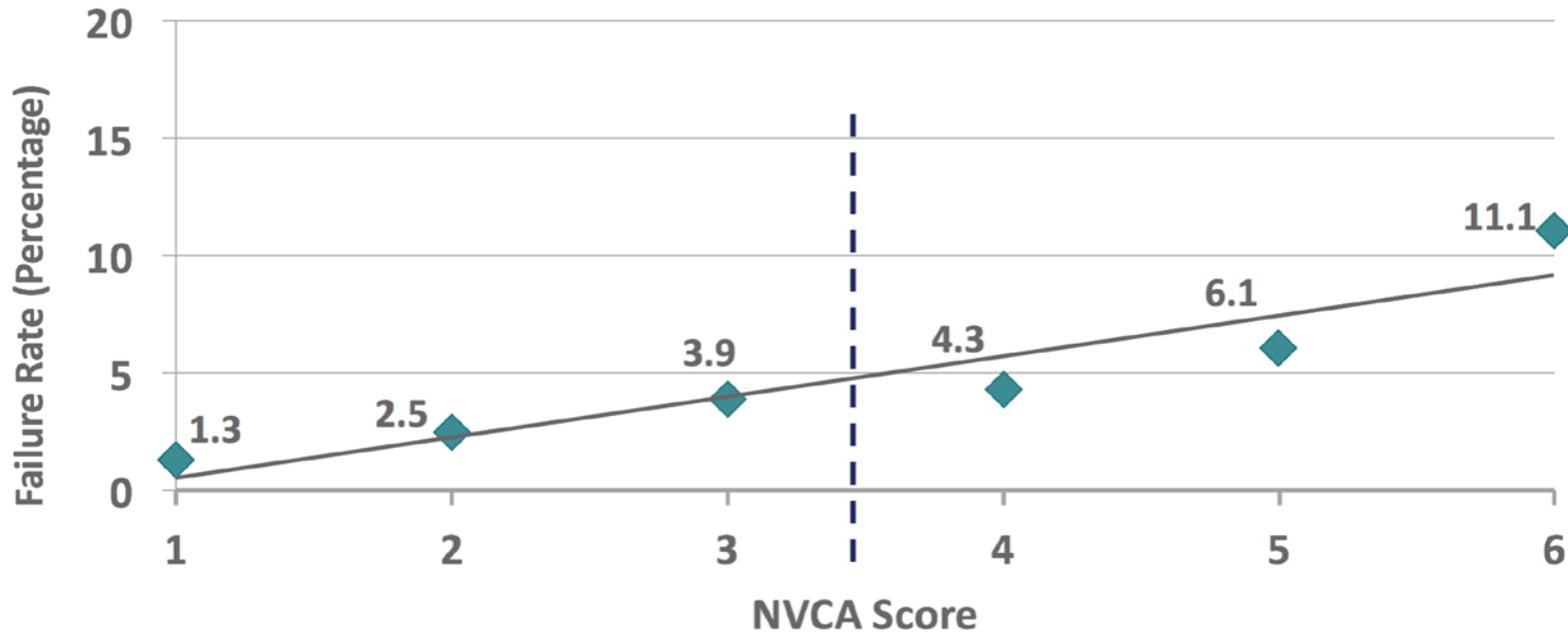
FTA Results: Original Data Set



NCA Results: Original Data Set



NVCA Results: Original Data Set



NVCA Score	NVCA Flag	%	NVCA Rate
1 - 3	No	93	2.4%
4 - 6	Yes	7	7.2%

PSA Validation

- Researchers validated the PSA with data from more than 500,000 new cases:
 - Data came from localities in the U.S. Northeast, Southwest, and Midwest.
- Results confirmed the predictive value of the nine risk factors and the weighting of each risk factor.

Completing the PSA

- The PSA is completed by Pre-Trial Services after a person is booked and before a first court appearance.
- The PSA Application is located in Pre-Trial Services Application and is currently in a test phase.

PSA Scoring

- **Who gets assessed with the PSA?**
 - Only adults
 - Not people who are already incarcerated
- **What data are used to score the PSA?**
 - Adult criminal history (pending charges and prior convictions)
 - Adult court appearance history (failures to appear)
 - Traffic and criminal charges that carry a potential penalty of incarceration
- **What data are not used to score the PSA?**
 - Juvenile records
 - Civil traffic violations or ordinance violations
 - Information self-reported from an interview

PSA Risk Factors

Risk Factor	Pretrial Outcome		
	FTA	NCA	NVCA
1. Age at current arrest		✓	
2. Current violent offense			✓
2a. Current violent offense and 20 years old or younger			✓
3. Pending charge at the time of the offense	✓	✓	✓
4. Prior misdemeanor conviction		✓	
5. Prior felony conviction		✓	
5a. Prior conviction	✓		✓
6. Prior violent conviction		✓	✓
7. Prior failure to appear pretrial in past 2 years	✓	✓	
8. Prior failure to appear pretrial older than 2 years	✓		
9. Prior sentence to incarceration		✓	

FTA = Failure to Appear; NCA = New Criminal Activity; NVCA = New Violent Criminal Activity

FTA Scoring

Failure to Appear (FTA)

Risk Factor	Points
Pending charge at the time of offense	No = 0 Yes = 1
Prior conviction (misdemeanor or felony)	No = 0 Yes = 1
Prior failure to appear in past 2 years	0 = 0 1 = 2 2 or more = 4
Prior failure to appear older than 2 years	No = 0 Yes = 1

Total FTA Points	=	FTA Scaled Score
0	=	1
1	=	2
2	=	3
3	=	4
4	=	4
5	=	5
6	=	5
7	=	6

NCA Scoring

New Criminal Activity (NCA)

Risk Factor	Points
Age at current arrest	23 or older = 0 22 or younger = 2
Pending charge at the time of offense	No = 0 Yes = 3
Prior misdemeanor conviction	No = 0 Yes = 1
Prior felony conviction	No = 0 Yes = 1
Prior violent conviction	0 = 0 1 = 1 2 = 1 3 or more = 2
Prior failure to appear in past 2 years	0 = 0 1 = 1 2 or more = 2
Prior sentence to incarceration	No = 0 Yes = 2

Total NCA Points	NCA Scaled Score
0	= 1
1	= 2
2	= 2
3	= 3
4	= 3
5	= 4
6	= 4
7	= 5
8	= 5
9	= 6
10	= 6
11	= 6
12	= 6
13	= 6

NVCA Scoring

New Violent Criminal Activity (NVCA)

Risk Factor	Points
Current violent offense	No = 0 Yes = 2
Current violent offense and 20 years old or younger	No = 0 Yes = 1
Pending charge at the time of the offense	No = 0 Yes = 1
Prior conviction (misdemeanor or felony)	No = 0 Yes = 1
Prior violent conviction	0 = 0 1 = 1 2 = 1 3 or more = 2

Total NVCA Points	NVCA Flag
0	= No
1	= No
2	= No
3	= No
4	= Yes
5	= Yes
6	= Yes
7	= Yes

Managing Pretrial Risk

Pretrial Risk Management

- ***We measure risk so we can manage that risk.***
- **Legal and evidence-based pretrial practices:**
 - Least-restrictive conditions
 - “Risk principle”
 - Practices shown to be effective

Pretrial Risk Management Strategies

Court date reminders

- Can improve court appearances by approximately 30% to 50%.

Pretrial monitoring/supervision

Court appearances: mixed results

- For “lower” risk persons: little or negative benefit.
- For “moderate” and “higher” risk persons: some increase in court appearances.

Public safety: mixed results

- For “lower” risk persons: little to no benefit or a negative effect.
- For “moderate” and “higher” risk persons: mixed results.

Pretrial Risk Management Strategies

Secured money bail: little support

Court appearances

- Two studies show that *unsecured* conditions achieve the same appearance rates as *secured* conditions.
- No study shows that higher monetary amounts increase appearance rates.

Public safety

- No studies show that secured financial conditions improve public safety.
- No study shows that higher monetary amounts improve court appearance rates.

Decision Framework

8 Guide to the Pretrial Decision Framework

After reading this guide, PSA project leaders will have a sound understanding of the major pretrial decisions that justice system professionals make about a person, from the decision by a law enforcement officer to initially contact someone, to the decision prosecutors make about filing charges and the judicial decision to release or detain someone pending trial. Project leaders will be able to help their implementation team consider how pretrial decisions are currently made; understand how the PSA may help inform future decisions; and create a pretrial Decision Framework for their jurisdiction.

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Introduction

The purpose of creating the pretrial Decision Framework (DF) is to articulate the sequence of major pretrial decisions that justice system professionals in your jurisdiction make about criminally accused adults. Such a framework is critical for thinking about the PSA in the context of your local pretrial system. The PSA is used to *measure* a person's pretrial risk, whereas the DF is used to help *manage* that risk. When completed, the DF provides a process and guidelines that enable jurisdictions to maximize the potential benefits of using the PSA, such as making fairer and more consistent pretrial decisions and providing transparency to the public. The process and activities described in this guide will help the implementation team clarify its jurisdiction's pretrial decision-making process, better understand the legal environment in which those decisions are made, and highlight how the PSA may contribute to future decisions.

Your team should create this framework early in the PSA implementation process.



Release Conditions Matrix

- Matches pretrial release conditions to a person's scores on the PSA.
- Developed locally, not by LJAF.
- Designed to help judicial officers use PSA results to make decisions that:
 - address assessed pretrial risk;
 - are consistent with the risk principle;
 - align with state law and local policy; and
 - take into account available pretrial risk-management resources.

Release Conditions Matrix

- People should be released with the least-restrictive conditions necessary to provide reasonable assurance of court appearance and law-abiding behavior.
- Pretrial release levels should be commensurate with risk of pretrial failure.
- Lower risk defendants should be released with minimal conditions, if any.
- Higher risk defendants who are not detained should be released with conditions that mitigate their identified risk.

EXAMPLE 2:**Moderate Resources Allocated for Pretrial Risk Management**

	New Criminal Activity (NCA) Scaled Score					
Failure to Appear (FTA) Scaled Score	1	2	3	4	5	6
1	Release Level 1	Release Level 1				
2	Release Level 1	Release Level 1	Release Level 2	Release Level 2	Release Level 3	
3		Release Level 2	Release Level 2	Release Level 2	Release Level 3	Release Level 4
4		Release Level 2	Release Level 2	Release Level 2	Release Level 3	Release Level 4
5		Release Level 3	Release Level 3	Release Level 3	Release Level 3	Release Level 4
6				Release Level 4	Release Level 4	Release Level 4

EXAMPLE 2: *(continued)***Moderate Resources Allocated for Pretrial Risk Management**

	Pretrial Release Level			
	1	2	3	4
Release Activities and Conditions				
Mandatory Statutory Conditions	Yes	Yes	Yes	Yes
Court Reminders	Yes	Yes	Yes	Yes
Criminal History Checks Once per Month		Yes	Yes	Yes
Check-in Once per Month			Yes	
Check-in Twice per Month				Yes
Other Case-Specific Conditions			If court-ordered	If court-ordered

PSA Report

PSA Report

- **The PSA report includes:**
 - Defendant's PSA scores for FTA and NCA and presence/absence of violence flag;
 - PSA risk factor results; and
 - Recommended release conditions based on Release Conditions Matrix.

Public Safety Assessment (PSA) Report



Defendant Information

Name: Test, Example Defendant I **APETS Def. ID:** 93792734 **SID:**
DOB: 10/10/1994 **Gender:** Female **Ethnicity:** White
State of Residence: Arizona **Country of Residence:** United States
Arrest Date: 04/03/2016 **PSA Assessment Date:** 4/4/2016

New Violent Criminal Activity Flag

Elevated Risk of Violence

New Criminal Activity Scale

1	2	3	4	5	6
---	---	---	---	---	---

Failure to Appear Scale

1	2	3	4	5	6
---	---	---	---	---	---

Case/Charge Information

Case: 201601231 **Booking:** 42316
Charge(s):

Statute:	Description:	Class/Type:	Count(s):
13-1204A	AGGRAVATED ASSAULT		1

Public Safety Assessment

Risk Factors	Responses
1. Age at Arrest	20 or younger
2. Current Violent Offense	Yes
a. Current Violent Offense and 20 Years Old or Younger	Yes
3. Pending Charge at the Time of the Offense	No
4. Prior Misdemeanor Conviction	Yes
5. Prior Felony Conviction	No
6. Prior Violent Conviction	1
7. Prior Failure to Appear Pretrial in Past Two Years	1
8. Prior Failure to Appear Pretrial Older than Two Years	No
9. Prior Sentence to Incarceration	Yes

Public Safety Assessment Recommendation: Release With Conditions

Recommendation Notes:

Recommend that if released, release with conditions to include:
 No contact with victim

A criminal history review indicates a 2014 misdemeanor conviction for domestic violence, which she received a 30-day jail sentence.

Q&A

Contact Information

Zach Dal Pra

Justice System Partners

602-595-5825

zach@justicesystempartners.org

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