# What do Criminal Justice Professionals Think About Risk Assessment at Pretrial?

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**Abstract**

Judicial decisions about whether to release or detain defendants are typically made quickly and include some level of input from other courtroom actors (i.e., prosecutors, defenders, and pretrial staff). There has recently been a push to provide more structure to pretrial decision-making by using risk assessment instruments. We describe findings from surveys with judges, prosecutors, defenders, and pretrial staff in 30 jurisdictions about their perceptions and use of risk assessments in making pretrial release decisions. We frame local jurisdictions as courtroom communities in which criminal justice actors share decision-making responsibilities and examine their perceptions of risk assessment. Their view and use of these tools is critical because there is substantial discretion in whether and how they implement recommendations. Findings suggest that there is both consistency and variability in how criminal justice professionals perceive and value risk assessments. This has important policy implications as a shared understanding of the utility of the tool may impact its value and the fidelity of its implementation. Although prior research has focused on judicial and prosecutorial discretion and decision-making at sentencing, this study highlights the need to deepen the conversation about pretrial risk assessment to all courtroom actors.

## 1. Introduction

Criminal justice professionals make pretrial decisions about which individuals to release or detain on a regular basis. Essentially, these legal actors are required to quickly assess the likelihood that uncertain events, such as appearing at court and remaining law-abiding, will occur if an individual remains free in the community while their case is processed. Because criminal justice professionals need to make these decisions quickly, and often using limited information, they use some combination of intuition and structured thinking when making these decisions. The downside of this discretion is the possibility of racial and ethnic bias in decision-making. Racial and ethnic minorities are disproportionately represented in the criminal justice system (Travis, Western, & Redburn, 2014). Blacks and Latinos are treated more punitively than similarly situated Whites by legal actors at various stages in the criminal justice process between arrest to sentencing after controlling for legally relevant factors (Tasca, Rodriquez, Spohn, & Kross, 2013; Kulateladze et al., 2014; Travis, Spohn, & Western, 2014). Studies that rely on administrative data in this body of research suggest that judges' implicit biases may impact their decision-making processes and reproduce racial/ethnic disparities (Albonetti, 1991; Bridges, Crutchfield, & Simpson, 1987). Some contend that risk assessment tools are used to reduce bias that may exist in sentencing decisions, but there is little research about bias in pretrial risk assessments.

Ever since the 1920s, criminal justice professionals have looked to social sciences to provide statistically based tools to help guide their decision making at various stages of the criminal justice system (Burgess, 1928; Harcourt, 2010). Risk assessments are ubiquitous within the criminal justice system and may be used at all phases of the criminalizing process. Recently, there has been a push to use risk assessment instruments during the pretrial decision-making to provide more structure to the decision process (Bechtel, Lowenkamp, & Holsinger, 2011; Mamalian, 2011). While several studies demonstrate the predictive validity of specific risk assessment tools (Austin, Coleman, Peyton, &

Johnson, 2003; Farabee, Zhang, Roberts, & Yang, 2010; Johnson, Wagner, & Matthews, 2002; LeCroy, Krysik, & Palumbo, 1998; Schwalbe, 2007), criminal justice professionals' view about risk assessments is less understood. Their views and use of these tools may condition whether and how they implement recommendations established by the assessments. Moreover, although the judge makes the ultimate decision to sentence a defendant, other courtroom actors likely play significant roles in the court. Take, for example, a case in which the recommendation from a risk assessment tool is release at a pretrial hearing. If both the prosecutor and judge trust the tool, a decision to release is more probable. If, however, the prosecutor believes the tool is too lenient, he/she may argue for detention, which may influence the judge's ultimate decision. As such, when considering the use of risk assessment tools, it is important to consider the perceptions of the larger courtroom workgroup as they impact how a risk assessment tool may be implemented in a jurisdiction. Specifically, pretrial staff have not traditionally been classified a member of the courtroom work group but their role of completing pretrial risk assessments for defendants can contribute to other legal actors' holistic understanding about a defendant and potentially shape collective discretion within the courtroom work group. Without a shared understanding of the utility of the tool, its value and use may be compromised.

The burgeoning risk assessment literature, research, and industry, for the most part, overlooks the experiences and application of frontline criminal justice actors. Their perceptions are particularly important given that a central feature of the U.S. legal system is discretion – so these "street level bureaucrats" have wide ability to decide how any risk assessment instrument is used. This discretion can result in a difference between stated policies and procedures that influence the use of risk assessments, and could undermine the purpose of implementing a risk assessment tool (Mamalian, 2011).

To better understand the use of pretrial risk assessment tools among important actors in the courtroom work group, we report findings from a survey of judges, prosecutors, defenders, and pretrial officers currently using the Laura and John Arnold Foundation's Public Safety Assessment (PSA). This paper is arranged to first provide a discussion of discretion within the criminal justice system to better understand how bias enters decision making processes. Next, we discuss the use of risk assessment instruments within the criminal justice system, including arguments for how the reduction of discretion may reduce racial and ethnic disparities in outcomes. We then frame local jurisdictions as courtroom communities in which criminal justice actors work together (Dixon, 1995). After this discussion, we describe our methods and procedures, followed by a presentation of the study findings and implications. These findings contribute to literature on pretrial risk assessment tools within a courtroom workgroup framework.

## 2. Background

### *2.1. Discretion in the Criminal Justice System*

Criminal justice has been framed as a market system by which uncontrolled discretion in charging, plea bargaining, and sentencing may lead to less efficiency and biased processes (see Schulhofer, 1988). Schlhofer (1988) contends that discretion produces a bargaining environment in which highly attractive offers can induce factually inaccurate admissions of guilt. Moreover, this social arrangement can lead to pretrial compromises that are based on incomplete information and that are less accurate than results reached at trial. A host of factors have been shown to influence the probability of a prosecutor's recommended sanction and a judge's decision to sentence. Several prior studies find that prosecutorial and judicial discretion is affected by case, defendant, victim, social, and criminal justice process characteristics (Albonetti, 1986, 1987, 1991; Holleran, Beichner, & Spohn, 2010; Miller & Sloan, 1994). However, both court room actors have key objectives for case outcomes. On the one hand, the prosecutor's main concern is increasing the likelihood of

conviction (Spohn, Beichner, & Davis-Frenzel, 2001) or obtaining a larger ratio of convictions to acquittals (Albonetti, 1986, 1987). Consequently, prosecutors make decisions about case outcomes based on a combination of the defendant's current offense and prior record and the victim's credibility and cooperation (Pinchevsky, 2017). On the other hand, judges are primarily driven by reducing crime, predicting future criminal behavior based on available information, and managing the flow of cases in an efficient manner (Albonetti, 1991). Judicial decision making is based on perceptions of the defendant's blameworthiness, public safety, and consequential practical constraints associated with their decision.

Some argue that discretion enables criminal justice professionals to nullify legitimately adopted sentencing policies and impose inequitable sentences based on irrelevant characteristics of defendants and crimes (Glaeser, Kessler, & Piehl, 2000). When making decisions about prosecuting or sanctioning an individual, criminal justice actors may rely on hunches in the absence of more information about the background or character of a defendant (Guthrie, Rachlinski, and Wistrick, 2001; Papillon, 2013). Judges or other legal actors will use case or defendant attributions to resolve their uncertainty and optimize courtroom efficiency. Empirically, studies show that the victim's and offender's race may interact to influence sanctioning decisions (Black, 1989; LaFree, 1998). Specifically, prosecutors have been found more likely to prosecute a case when the victim is white and offender is black within a case (Black, 1989). Additionally, studies have shown that racial and ethnic minorities are more likely than whites to be sentenced to prison (Spohn, 1990, 2000) – disparities have been confirmed to exist at the pretrial stage as well (Schlesinger, 2005; Demuth, 2003; Kutateladze et al., 2014).

Although pretrial decisions receive less empirical scrutiny relative to sentencing, discretion at this stage can have an important impact for a few reasons. First, financial considerations for release

can weigh heavier on poor and minority defendants resulting in *de facto* racial and ethnic discrimination. Second, the discretion that enters at earlier stages in the criminal case process, such as a pretrial decision, is less visible and restrictive than decision-making at the sentencing stage but has a greater impact on disparity (Hagan, 1974). Third, pretrial detention is found to have several negative consequences for those detained. The decision to deny bail and incarcerate an individual pending trial can potentially disrupt ties to family, employment, and community and stigmatize the defendant (Irwin 1985; LaFree 1985). Moreover, pretrial detention may also impede the defendant's ability to prepare an adequate defense (Foote 1954).

*2.2. Risk assessment in the Criminal Justice System*

Risk assessment has been offered as a tool to reduce racial and ethnic disparities in prosecutorial and judicial decisions to impose sanctions. In general, risk assessment tools are used by various criminal justice practitioners to predict the likelihood of a variety of outcomes including failure to appear (Summers & Willis, 2010; Siddiqi, 2005; VanNostrand & Keebler, 2009; Podkopacz, 2006; Pretrial Justice Institute, 2007; Lowenkamp, Lemke & Latesasa, 2008), recidivism (Gendreau, Little, & Goggin, 1996; Andrews & Bonta, 2000; Bonta, Law, & Hanson, 1998), and prison misconduct (Austin, 2003; Cunningham & Sorenson, 2007; Cunningham, Sorenson, & Reidy, 2005; Harer & Langan, 2001). Risk assessment is one of the most common ways of statistically predicting the likelihood of recidivating given the past and current characteristics of the offender and situation (Bonta, 2002). An abundance of empirical research has shown that actuarial risk assessment is more accurate at risk prediction than sole reliance on professional judgement (Andrews, Bonta, & Wormith, 2006; Grove, Zald, Lebow, Snitz, & Nelson, 2000; Latessa & Lovins, 2010).

Although clinical diagnoses were most frequently implemented to classify offenders, recent research suggests that objective actuarial tools may be the more reliable and efficient option relative to clinical assessments if administered by trained staff (Bonta, et al., 1998). The risk-need-responsivity (RNR) model represents the foundation for several instruments that assess and match offenders with corresponding intervention, treatment, or programmatic needs. The "risk" principle dictates that an individual be placed within a category associated with their propensity to engage in violent or criminal behavior. For instance, an individual may be assigned to a low-, medium-, or high-risk classification. According to the "needs" principle, a criminal justice agent will assess and report the existence and magnitude of an offender's problem behaviors. Due to important considerations pertaining to the offender's amenability to treatment, the "responsivity" principle examines individual characteristics that may hinder or augment their success from treatment (Van Voorhis, Braswell, & Lester, 2007). RNR techniques have garnered some support as an effective approach to reducing recidivism in the community (Grove & Meehl, 1996; Grove, Zald, Lebow, Snitz, and Nelson, 2000; Hanson, Bourgon, Helmus, & Hodgson, 2009; Lowenkamp & Latessa, 2002).

Actuarial risk instruments predict the statistical likelihood of reoffending given information about the offender. The most effective of these instruments examine both static and dynamic factors. While static factors are those characteristics of the individual that cannot be altered (i.e., age at first offense, prior convictions), dynamic factors or criminogenic needs are variables that can change over time (i.e., drug and alcohol abuse, family and peer relationships, anger management). The latter risk factors are better able to target both positive and negative individual factors that are apt to change over time. Moreover, dynamic risk factors are referred to as criminogenic needs because they represent variables that can be targeted with treatment (Bonta, 2002). A reduction in

these needs has been shown to result in lower levels of recidivism (Andrews & Bonta, 1998; Andrews, et al., 1990). As a result of this new risk management approach, a host of risk assessment tools have emerged. One of the most common risk-needs assessment tools is the Level of Service Inventory-Revised (LSI-R), which examines information on criminal history, education, employment, alcohol and drug use, companions, and emotional and personal state (see Andrews & Bonta, 1995). Based on the risk score produced by this 54-item scale through an officer-led interview process, an offender is assessed based on their likelihood of recidivating (Lowenkamp & Bechtel, 2007). Currently, this tool is one of the most theoretically guided assessment instruments used on an offender population (Bonta, 2002) with empirically established predictive validity (Andrews & Bonta, 1995, 1998; Gendreau, Goggin, & Smith, 2002).

Aside from their purpose of allocating treatment resources, risk/needs assessments are also used to classify prisoners and guide decision making. With few exceptions (see Gebo, Stracuzzi, & Hurst, 2006), previous research has not directly measured criminal justice professionals' views about risk assessment tools. Research has shown that community corrections officers' *compliance* with a risk/needs assessment tools can be shaped by an agency's belief in risk/needs tools, monitoring and training, perceptions of procedural justice, and projected confidence in risk/needs tool (Miller & Maloney, 2013). While these findings are important for understanding adoption of risk/needs assessment tools, they do not describe general views about specific risk assessment tools, and especially among separate criminal justice actors who have different roles but who must work harmoniously with one another.

*2.3. The courtroom workgroup*

Guided by an organizational sociological framework (see DiMaggio and Powell, 1984), some scholars hold that the courtroom establishes its own subcultures, mini-societies, or communities in

which various agents are "coupled" (Hagan, 1989). The courtroom workgroup perspective acknowledges that key courtroom actors (e.g., defense attorney, prosecutor, and judge) share decision making responsibility on a regular basis (Maloney & Miller, 2015; Eisenstein & Jacob, 1977; Eisenstein, Fleming, & Nardulli, 1988). The goals of this collaborative structure are to optimize efficiency and reduce uncertainty in case outcomes (Gebo, Stracuzzi, & Hurst, 2006). Differential patterns of sentencing may occur because courtroom workgroups perceive offenders and cases differently where the structure and interdependence of the workgroup explain variance in sentencing outcomes across jurisdictions (see Kim, Spohn, & Hedberg, 2015). For instance, the courtroom workgroups in larger jurisdictions routinize sentences for certain offenders and offenses to avoid guesswork in decision making (Gebo, Stracuzzi, & Hurst, 2006). This routinization is not possible in smaller jurisdictions due to the small number cases seen in those courts.

While pretrial officers are often overlooked in the courtroom workgroup literature, probation officers, who may serve the role of a pretrial officer, do have their place in the literature. In fact, some scholars contend that they hold substantial informational power to influence sentencing outcomes (McNiel et al., 2009; Rudes & Portillo, 2013; Walsh, 1985). Since probation officers hold the power to revoke a probationer's status, recommend sentences to judge, and record and submit information about an offender to other officers of the court, they arguably exercise considerable power and legitimacy in the workgroup (Rudes & Portillo, 2013), Although its focus is on the courtroom workgroup in juvenile proceeding, one study has explored the perceptions of probation officers about actuarial risk assessment tools which guide sentencing decisions to detain youths (Gebo, Stracuzzi, & Hurst, 2006). The authors found that jurisdictions where courtroom actors were less confident in each other, they were also less confident in the risk assessment tools for guiding decisions. In those jurisdictions with more discord, for instance, probation officers expressed concerns that the tool was vague and did not consider important individual factors in the

decision to sentence a juvenile to detention. Problems with the courtroom culture may translate into less favorable views about the use of actuarial risk assessment tools used to guide pretrial decisions to release/detain.

### *2.4. The current study*

Building on a theoretical understanding about the courtroom workgroup (see Castellano, 2009; Feeley, 1992; Eisenstein & Jacob, 1977; Gertz, 1977; Kim, Spohn, and Hedberg, 2015), we seek to answer four research questions about whether criminal justice professionals have a shared understanding of the use and value of risk assessment during pretrial:

1. What factors are important when making a release/bail decision?
2. What are the perceived strengths and weaknesses of the tool?
3. What are the perceived impact on communities of color from a pretrial risk assessment?
4. How does the tool influence judicial decision-making and prosecutorial/defense requests?

This research contributes to the literature in several ways. First, this study will elaborate on items that key courtroom actors consider important and legitimate in the criminal case process. More generally, scholarly work on courtroom actor's views about pretrial risk assessment tools is nonexistent. Except for studies that examined the factors that promote compliance with risk assessment tools among community corrections staff (Miller & Maloney, 2013), the empirical research about court room actors' views about a pretrial risk assessment tool is scant. Relatedly, this study introduces an important albeit less studied courtroom actor (pretrial officers) who plays an important role in submitting the PSA information to the judge. Second, this research will describe the relative importance of factors judges (and other actors) believe are important in the decision to release/detain at the pretrial stage. Third, this study will contribute to an understanding about courtroom actors' perceptions about racial and ethnic disparities at the pretrial stage and the extent to which the PSA exacerbates this disparity.

## 3. Methods

### *3.1. Risk Assessment Instrument Design and Use*

The PSA was developed[1] using nine datasets from seven states (Colorado, Connecticut, Florida, Kentucky, Ohio, Maine, and Virginia) and two datasets from the Federal Court System to calculate probabilities of FTA, new criminal activity, and new violent criminal activity (i.e., the definition of which is developed to fit each specific jurisdiction).[2] Jurisdictions implementing the PSA received technical assistance (TA) and training to explain the research used to develop the instrument, provide detailed instructions for completing the instrument, and offer ongoing support during implementation. The TA team focused on providing jurisdictionally tailored training and technical assistance to ensure that the instrument could be successfully implemented in each jurisdiction.

Prior to first appearance, pretrial officers use administrative data and conduct a thorough review of criminal history records to complete the assessment. The specific way the PSA is completed varies to fit each jurisdiction's standard operating practices and courtroom culture. The instrument includes a total of nine factors to develop three prediction models (one for each outcome)[3]:

- Failure to appear: pending charge at time of arrest, prior conviction, prior failure to appear within two years from date of arrest, and prior failure to appear prior to two years from date of arrest.
- New criminal activity: pending charge at time of arrest, prior misdemeanor conviction, prior felony conviction, prior violent conviction, prior failure to appear within two years from date of arrest, prior sentence to incarceration, young age (under 23) at current arrest.

[1] The authors of the current paper were not involved in the development and validation research used to develop the risk assessment instrument. We are conducting a broader research and validation project of the risk assessment instrument in which we are collecting available datasets used for development and validation by the risk assessment instrument development team. The current analyses do not assess the validity of the risk assessment tool or the procedures used to develop the instrument. Instead, we seek to understand judicial views about the use of the instrument.

[2] The instrument development team processed these datasets to identify the predictors of each of the three outcome variables. They used a series of statistical techniques (e.g., logistic regression, contingency tables) that produced hundreds of effect sizes. The effect sizes were averaged, and were restricted to variables that were at least one standard deviation above the mean effect size. Further analyses were conducted to identify the best effect sizes and operationalization in which each predictor variable had at least a 5 percent increase in likelihood of failure to appear or new criminal activity. The new violence criminal activity flag used a variable selection criteria of doubling the probability of failure when the item was included in a model (this paragraph is adapted from unpublished materials by Luminosity).

[3] The factors are weighted and converted to separate FTA and new criminal activity scales that range from 1 to 6, and a new violent criminal activity flag (i.e., binary indicator of yes/no).

- New violent criminal activity: pending charge at the time of arrest, prior conviction, prior violent conviction, current offense violent, and current offense violent * young age (under 21) at current arrest.

The FTA and new criminal activity scale scores are placed within a jurisdiction-specific decision-making framework (DMF) and converted into clear recommendations for each defendant, which can range from release on own recognizance, release on various levels of supervision (e.g., with electronic monitoring), and detention. The new violent criminal activity score produces a binary indicator as a violent "flag" to signal to judges that the defendant has a higher or elevated potential for violence, and the recommendation is typically to detain.

### *3.2. Survey Design and Administration*

Our team developed and administered web surveys to 171 legal actors in 30 jurisdictions that have implemented the PSA. The survey was part of a larger project to validate the use of the PSA and understand its implementation and actual use. The survey content was informed by information gathered from semi-structured interviews with legal actors conducted during site visits in three of the jurisdictions in an earlier phase of the project. The survey content was designed by a team of criminologists, assessed by a survey methodologist, and reviewed by a former probation executive.[4] All respondents were asked a series of questions about their jurisdiction, professional experience (e.g., time in position, experience with risk assessments), general information about the PSA (e.g., perceived strengths and weaknesses), training and technical assistance related to the PSA, and the actual implementation and use of the PSA (e.g., information received in the report and perceptions of accuracy). Each type of legal actor (i.e., judge, pretrial services, etc.) then received a set of questions tailored to their professional responsibilities to gain various perspectives on the use of risk

[4] The survey instruments were developed by the authors of this report, and we are thankful to Zachary Del Pra for assistance reviewing and commenting on the instrument as part of his role as a technical assistance provider to PSA sites.

assessment during pretrial. For example, judges were asked how often the PSA informed their release/bail decisions whereas defenders were asked how often the PSA informed their release request.

The survey was administered to a convenience sample of legal actors in jurisdictions that had implemented the PSA. The LJAF provided us with contact information for at least one legal actor per jurisdiction. We introduced the survey to the point of contact in each jurisdiction and requested names and email addresses for all the legal actors in the jurisdiction who interacted with the PSA. All potential respondents were sent a prenotice informing them about the survey, followed by a link to the survey itself. Every two weeks, sample members were sent a follow-up reminder and the LJAF sent a reminder the last week of administration. These procedures yielded a 72 percent response rate (n=171).

## 4. Results

Table 1 shows the background characteristics of the survey respondents. Nearly half of the respondents worked for a pretrial agency (46.2%), about one-quarter were judges, 10% were prosecutors, and 7% were public defenders. On average, the respondents had been in their current position for 9 years and in the jurisdiction for 16 years. The PSA had been used in most jurisdictions for 6 months to one year. More than half (54%) of the respondents indicated they had experience with risk assessments prior to implementing the PSA.

[insert Table 1 about here]

### *4.1. Important Factors to Consider for the Release Decision*

The respondents were given a list of factors that could be considered important in the release/bail decision, such as current charge, criminal history, and defendant's mental health. For

each item, they were asked to indicate whether it was extremely important, very important, somewhat important, not very important, or not at all important. **Table 2** presents the percentage of respondents who indicated that each item was either "extremely" or "very" important when making release/bail decisions.

The results suggest that there is a level of shared agreement on what matters in the release/detention decision among judges, prosecutors, and pretrial staff; however, defenders perceive these factors differently. For example, most judges, prosecutors, and pretrial staff indicated that current charge, pending charge, victim injury, and weapon involvement were important factors in the pretrial release decision; whereas, 42% or fewer of the defenders indicated those were important considerations. Three out of four defenders indicated that arguments made by the prosecution or defense were important considerations; this belief was only subscribed to by fewer than half of the prosecutors and 15% or fewer judges and pretrial staff. Criminal history and the defendant's mental condition were among the limited number of factors that garnered agreement from more than half of each type of criminal justice professional. Agreement on the fundamentals of risk and what should be considered at pretrial is important in that these more philosophical beliefs may impact courtroom actors' acceptance and use of risk assessment tools.

[insert Table 2 about here]

*4.2. Strengths and Weaknesses of the PSA and Decision-Making Framework*

Respondents were asked about their initial perceptions of strengths and weaknesses of the PSA and the recommendations that arise from its decision-making framework. As shown in Table 3, perceptions of the decision-making framework (DMF) aligned closely with the role of each courtroom actor. Not surprisingly, judges (33%) were most likely to view the loss of their discretion as a weakness of the DMF. Interestingly, this was a similar concern among prosecutors (29%) and

public defenders (25%). This is placed in context when we see that more than half of prosecutors (59%) felt that the DMF "would result in releasing too many defendants" and half of defenders (50%) felt it "would result in detaining too many defendants." It seems that attorneys on both sides are concerned that the recommendations from DMF are not in their best interests. Judges (45%) and pretrial staff (41%) were more likely than prosecutors (0%) and defenders (8%) to indicate that the DMF did not have any weaknesses.

[insert Table 3 about here]

Overall, these results suggest that judges and pretrial staff have fewer concerns about the DMF than either prosecutors or defenders. These perspectives align closely with their professional roles and responsibilities. For example, pretrial staff are responsible for gathering documentation and completing the PSA; it is not surprising that they see value in their work and identify fewer weaknesses. Judges are not bound to follow the recommendations and may use their discretion to disregard it on any given case. While prosecutors and defenders can argue for or against the DMF recommendation, the ultimate decision is with the judge. In some cases, the tool may be the deciding factor against their side and it is understandable that they may have more concern or skepticism than others.

### *4.3. Impact of Risk Assessment on Communities of Color*

In addition to the impact of risk assessment on the interests of different courtroom actors, its use may also impact racial disparities in pretrial outcomes. To assess perceptions of risk assessment and racial disparities during pretrial decision-making, respondents were asked two questions: (1) In regard to pretrial release for people of color, how often is race/ethnicity an issue? (2) How often do you feel the PSA and DMF contribute to disparities in the criminal justice system? As shown in Table 4, most defenders (92%) indicated that race/ethnicity is an issue at pretrial for people as color, compared with only 43% of prosecutors and pretrial staff and 33% of judges. Additionally, 82% of

defenders believed that the PSA and decision-making framework contributed to racial and ethnic disparities in the criminal justice system.

[insert Table 4 about here]

*4.4. PSA Influence on Release/Bail Requests and Decision-Making*

Finally, respondents were asked about the extent to which they agree with recommendations from the tool and how frequently they use it (Table 5). Virtually zero respondents indicated that they "always" or "never" agreed with the PSA recommendation. Judges (63%) and pretrial staff (72%) were more likely to indicate they agreed with it "often." Half of defenders and 38% of prosecutors indicated they agree with the recommendation "sometimes." Nearly one in three prosecutors "rarely" agree with it. This is consistent with earlier results suggesting that judges and pretrial staff saw fewer weaknesses in the DMF than prosecutors and defenders.

[insert Table 5 about here]

Agreement with the recommendations is aligned with how often courtroom actors indicate that the PSA informs their requests and decisions regarding the release/bail decision such that those who agree with its recommendations are more likely to use it. Nearly 80% of judges reported that the PSA "always" or "often" informs their release decision whereas only 41% of prosecutors and 42% of defenders indicated that the PSA informs the release/detention request they make to the judge. Respondents were also asked job-specific questions about the tool's usefulness at achieving specific goals (data not shown). More than half of judges indicated it had been useful when making a release decision and nearly all defenders indicated it had been useful in securing a client's release. However, most prosecutors reported that the PSA had not been useful in ensuring that higher risk defendants are detained. Moreover, prosecutors reported that they rarely or never invoke the PSA if the recommendation is release but nearly half will mention it if the recommendation is detention. Nearly all pretrial staff indicated that the PSA had been useful in managing and assessing risk; slightly fewer

indicated it had been useful in ensuring pretrial defendants receive the type and level of services/resources appropriate for their risk level.

## 5. Discussion

Several findings from the current study are worth discussing. First, we identified a level of shared agreement between courtroom actors in terms of items they considered important in the context of a decision to detain/release a pretrial defendant. The views among judges and prosecutors were more similar in terms of the perceived importance of current and pending charges, criminal history, prior FTA's, victim injury, and weapon involvement. Judges and prosecutors also agreed in their belief that the PSA is not based on current charges. The prosecutor and defenders agreed on lack of time efficiency of the PSA and importance of their arguments presented to the court about the defendant.

Importantly, jail capacity is a shared non-concern among all courtroom workgroup actors for the decision to release/detain which is interesting considering national concern about and legal attention to overincarceration (see Travis et al., 2014; Wagner & Rabuy, 2017) especially among pretrial defendants being detained in local jails (see Schlanger, 2006). Specifically, among the 693,300 inmates who were incarcerated in local jails at yearend in 2015, 434,600 (62.7%) were being detained prior to a conviction (Minton & Zeng, 2016). Specifically, these findings indicate that the assessments of offender blameworthiness and perceived threats to public safety are perhaps more important considerations in a judge's calculus than the practical constraints related to detaining or releasing a defendant at the pretrial stage.

This study also adds to the literature on the courtroom workgroup by measuring and describing views among a less explored courtroom actor – pretrial officers. For the most part, pretrial officers were similar to judges in their views about factors assessed in the decision to release or detain a

defendant. The role of pretrial officers is to complete the PSA tool based on known information about the defendant and submit this assessment to the judge. These actors may be probation officers who supervise the defendant or court staff members who take a clerical role in the criminal cases. One exception to this pattern concerns the PSA's strengths and weaknesses where a higher percentage of pretrial officers, relative to judges, perceived not having a defendant interview as a strength of the tool. Based on the findings, the interests of pretrial officers are to have as much information as possible about the defendant to inform the judge's decision. Similar to the judge, pretrial officers are concerned with optimizing case flow efficiency, which these actors believe is strengthened by the PSA tool.

At the same time, there were also some notable differences in the views between the actors. Prosecutors departed from the other actors in their beliefs about the held importance of the defendant's age or presence of defendant's family, friends, or caseworker. They were also less concerned about the strengths and weaknesses posed by having separate scores for FTA, NCA, and NCVA, which was more deemed a strength by other court room actors. Compared to other actors, prosecutors also perceived the PSA to be excluding important factors relevant to a pretrial release decision. Prosecutors are concerned with filing charges and securing a conviction where possible and necessary and have discretion to bargain charges (Miller & Sloan, 1994). This finding makes sense when considering prosecutors have demonstrable dual concerns when sentencing an individual – to maximize social welfare and benefit their personal career (Glaeser, Kessler, & Piehl, 2000).

Separately, defenders were also less enthusiastic about the presence of the victim or victim's family, friends, or caseworker. Finally, while defenders believed that the DMF detained too many defendants, prosecutors believed that this tool released too many defendants. Combined, these

findings suggest that courtroom work group actors may be more likely to adopt the recommendation provided by the assessment tool if they believe the pretrial assessment tool captures items they believe to be important for their argument or can more efficiently and accurately predict false negatives in the event of case outcomes.

Second, we would be remiss to the literature on risk assessment tools if we did not highlight courtroom actors' views about the relevance of the PSA to understanding and contributing to racial and ethnic disparities in the criminal justice system. Nearly all public defenders believe that a defendant's race and ethnicity are issues that enter into the pretrial release decision; however, nearly all of them also believed that the PSA contributes to racial/ethnic disparities in the criminal justice system. While theoretical and hypothetical linkages between race and risk factors have been established (Skeem & Lowenkamp, 2016)[5], empirical bases for this relationship has been refuted (Flores, Bechtel, & Lowenkamp, 2016). Nonetheless, defenders in this sample still perceive the PSA to be contributing to racial and ethnic disparities.

Third, most courtroom actors at least sometimes agreed with the PSA recommendations and reported that it had informed their decision or request bail/release. All judges in our sample reported that they at least sometimes agreed with the PSA recommendation which is important considering they make the final decision. Additionally, 98% of judges in our sample indicated that the PSA at least sometimes informs their decision. This finding bodes well for the adoption of the

[5] Scholars have argued that prediction variables within specific risk assessment tools are associated with race and may be biased against minorities (Smykla, 1986). In a valaidation of the LSI-R, Whiteacre (2006) assesses the possibility of false positives in classification in which certain groups of individuals may be over-classified and therefore receive more limitations on their privileges and freedoms. This author also draws attention to the fact that many risk assessment tools are validated using Caucasian male samples (see also Bloom, Owen, & Covington, 2003). Specifically, Whiteacre (2006) draws attention to the use of employment status and educational achievement as items of particular concern for introducing bias.

PSA since the judge is arguably the most powerful member of the courtroom work group with respect to deciding whether to release or detain a defendant. In contrast to the acceptance among judges, 31% of Prosecutors reported that they rarely agree with the PSA's recommendation and 41% of them say that the PSA does not inform their release/detain request to the judge.

## 6. Conclusion

In this paper, we hope to contribute to an understanding of how risk assessment instruments are perceived and used by criminal justice actors during pretrial. We demonstrated the factors criminal justice professionals believe should be considered in the release decision and whether this varies across professional fields. The survey showed the perceived strengths and weaknesses of the PSA and found how these perceptions vary by professions and whether it aligns with the factors that criminal justice professionals considered important. The survey also included items about the potential racial/ethnic discrimination during pretrial and the impact that risk assessment may have on disparate treatment. We concluded by discussing whether (and how) the PSA influences judicial decision-making as well as prosecutorial and defense requests during the release/detention decision.

Researchers who examine the role of pretrial risk assessment in influencing release/detainment decisions should continue to explore how attitudes of the courtroom work group shape the use of these tools. While there was some level of shared agreement about the PSA, certain courtroom actors departed from others in their opinions about the tool in some domains. Much like structured guidelines at the sentencing stage, the recommendations of pretrial risk assessment tools are voluntarily followed by judges. Generally, however, future studies on actuarial risk assessment tools which guide sentencing decisions should better understand the link between legal actor views, perceived legitimacy, and adoption of scores. Although the courtroom work group perspective theorizes that decision making at different stages of the criminal court process is shaped by multiple

players, the judge makes the final to detain or sentence. Previous qualitative work by Gebo, Stracuzzi, and Hurst (2006) highlights the need to study differences in courtroom work group views about actuarial risk assessment tools across jurisdictions of varying sizes, resources, and workload. Both qualitative and quantitative studies should continue to examine how the different court room actors contribute to the ultimate decision to incarcerate a person; an outcome which is especially important due to the plethora of collateral consequences for an individual resulting from such a decision.

**References**

Albonetti, C. A. (1986). Criminality, prosecutorial screening, and uncertainty: Toward a theory of discretionary decision making in felony case processings. *Criminology*, *24*(4), 623-644.

Albonetti, C. A. (1987). Prosecutorial discretion: The effects of uncertainty. *Law and society review*, 291-313.

Albonetti, C. A. (1991). An integration of theories to explain judicial discretion. *Social Problems*, *38*(2), 247-266.

Andrews, D. A., & Bonta, J. (1995). The level of supervision inventory-revised. *Toronto: Multi-Health Systems*, *106*, 19-52.

Andrews, D. A., & Bonta, J. (1998). *The psychology of criminal conduct* (2nd ed.). Cincinnati, OH: Anderson Publishing.

Andrews, D. A., & Bonta, J. (2000). *The level of service inventory-revised*. Toronto, Canada: Multi-Health Systems.

Andrews, D. A., Bonta, J., & Hoge, R. D. (1990). Classification for effective rehabilitation: Rediscovering psychology. *Criminal justice and Behavior*, *17*(1), 19-52.

Andrews, D. A., Bonta, J., & Wormith, J. S. (2006). The recent past and near future of risk and/or need assessment. *Crime & Delinquency*, *52*(1), 7-27.

Austin, J. (2003). Findings in prison classification and risk assessment. *Washington, DC: Department of Justice, National Institute of Corrections*.

Austin, J., Coleman, D., Peyton, J., & Johnson, K. D. (2003). Reliability and validity study of the LSI-R risk assessment instrument. *Washington: The Institute on Crime, Justice, and Corrections, George Washington University*.

Bechtel, K., Lowenkamp, C. T., & Holsinger, A. (2011). Identifying the predictors of pretrial failure: A meta-analysis. *Federal Probation*, *75*(2), 78-87.

Bloom, B., Owen, B., & Covington, S. (2003). *Gender-responsive strategies: Research*, *practice*, *and guiding principles for women offenders*. Washington, DC: U.S. Department of Justice, National Institute of Justice.

Bonta, J. (2002). Offender risk assessment: Guidelines for selection and use. *Criminal Justice and Behavior*, *29*, 355-379.

Bonta, J., Law, M., & Hanson, R. K. (1998). The prediction of criminal and violent recidivism among mentally disordered offenders: A meta-analysis. *Psychological Bulletin*, *123*, 123-142.

Bridges, G. S., Crutchfield, R. D., & Simpson, E. E. (1987). Crime, social structure and criminal punishment: White and nonwhite rates of imprisonment. *Social Problems*, *34*(4), 345-361.

Burgess, E. W. (1928). Factors determining success or failure on parole. In A. A. Bruce (Ed.), The workings of the indeterminate sentence law and the parole system in Illinois (pp. 205-249). Springfield, IL: Illinois Committee on Indeterminate-Sentence Law and Parole.

Castellano, U. (2009). Beyond the courtroom workgroup: caseworkers as the new satellite of social control. *Law & policy*, *31*(4), 429-462.

Cunningham, M. D., & Sorensen, J. R. (2007). Predictive factors for violent misconduct in close custody. *The Prison Journal*, *87*(2), 241-253.

Cunningham, M. D., Sorensen, J. R., & Reidy, T. J. (2005). An actuarial model for assessment of prison violence risk among maximum security inmates. *Assessment*, *12*(1), 40-49.

Demuth, S. (2003). Racial and ethnic differences in pretrial release decisions and outcomes: A comparison of Hispanic, Black, and White felony arrestees. *Criminology*, *41*(3), 873-908.

Demuth, S., & Steffensmeier, D. (2004). Ethnicity effects on sentence outcomes in large urban courts: Comparisons among White, Black, and Hispanic defendants. *Social Science Quarterly*, *85*(4), 994-1011.

DiMaggio, P. J., & Powell, W. W. (1984, August). Institutional isomorphism and structural conformity. In *a special session on new developments in institutional theory, American Sociological Association meetings, San Antonio, TX*.

Dixon, J. (1995). The Organizational context of criminal sentencing. *American Journal of Sociology 100*(5), 11S7-1198.

Eisenstein, J., & Jacob, H. (1977). *Felony justice: An organizational analysis of criminal courts*. Boston: Little, Brown.

Eisenstein, J., Fleming, R., & Nardulli, P. (1988). The contours of justice: Communities and their courts Little. *Brown and Company, Boston*.

Farabee, D., Zhang, S., Roberts, R. E., & Yang, J. (2010). *COMPAS validation study final report*. Prepared for California Department of Corrections and Rehabilitation, University of California, Los Angeles.

Feeley, M. M. (1992). Hollow hopes, flypaper, and metaphors. *Law & Social Inquiry*, *17*(4), 745-760.

Flores, A., Bechtel, K., and Lowenkamp, C. (2016). False positives, false negatives, and false analyses: A rejoinders to "Machine bias: There's software used across the country to predict future criminals. And it's biased against blacks." *Federal Probation, 80*(2): 38-46.

Foote, C. (1954). Compelling appearance in court: Administration of bail in Philadelphia. *University of Pennsylvania Law Review*, *102*, 1031-1079.

Gebo, E., Stracuzzi, N. F., & Hurst, V. (2006). Juvenile justice reform and the courtroom workgroup: Issues of perception and workload. *Journal of Criminal Justice*, *34*(4), 425-433.

Gendreau, P., Goggin, C., & Smith, P. (2002). Is the PCL-R really the "unparalleled" measure of offender risk? A lesson in knowledge cumulation. *Criminal Justice and Behavior*, *29*(4), 397-426.

Gendreau, P., Little, T., & Goggin, C. (1996). A meta-analysis of the predictors of adult offender recidivism: What works!. *Criminology*, *34*(4), 575-608.

Gertz, M. G. (1977). Influence in court systems: the clerk as interface. *The Justice System Journal*, 30-37.

Glaeser, E. L., Kessler, D. P., & Morrison Piehl, A. (2000). What do prosecutors maximize? An analysis of the federalization of drug crimes. *American Law and Economics Review*, *2*(2), 259-290.

Gottfredson, S.D., & Moriarty, L.J. (2006). Statistical risk assessment: Old problems and new applications. *Crime and Delinquency, 52*, 178-200.

Grove, W. M., & Meehl, P. E. (1996). Comparative efficiency of informal (subjective, impressionistic) and formal (mechanical, algorithmic) prediction procedures: The clinical–statistical controversy.

Grove, W. M., Zald, D. H., Lebow, B. S., Snitz, B. E., & Nelson, C. (2000). Clinical versus mechanical prediction: A meta-analysis. *Psychological Assessment*, *12*, 19-30.

Hagan, J. (1974). Parameters of criminal prosecution: An application of path analysis to a problem of criminal justice. *J. Crim. L. & Criminology*, *65*, 536-44.

Hagan, J. (1989). Why is there so little criminal justice theory? Neglected macro-and micro-level links between organization and power. *Journal of Research in Crime and Delinquency*, *26*(2), 116-135.

Hanson, R. K., Bourgon, G., Helmus, L., & Hodgson, S. (2009). *A meta-analysis of the effectiveness of treatment for sexual offenders: Risk, need, and responsivity* (Research Report No. 2009-01). Ottawa, Ontario, Canada: Corrections Research, Public Safety Canada.

Harcourt, B. (2008). *Against Prediction: Profiling, Policing, and Punishing in an Actuarial Age*. Chicago, IL: University of Chicago Press.

Harcourt, B. E. (2010). Neoliberal penality: A brief genealogy. *Theoretical Criminology*, *14*(1), 74-92.

Harer, M. D., & Langan, N. P. (2001). Gender differences in predictors of prison violence: Assessing the predictive validity of a risk classification system. *NCCD news*, *47*(4), 513-536.

Holleran, D., Beichner, D., & Spohn, C. (2010). Examining charging agreement between police and prosecutors in rape cases. *Crime & Delinquency*, *56*(3), 385-413.

Irwin, J. (1985). *The Jail: Managing the Underclass in American Society*. Berkeley: University of California Press.

Johnson, K., Wagner, D., & Matthews, T. (2001). Missouri juvenile risk assessment re-validation report.Madison, WI: National Council on Crime and Delinquency.

Kim, B., Spohn, C., & Hedberg, E. C. (2015). Federal sentencing as a complex collaborative process: judges, prosecutors, judge–prosecutor dyads, and disparity in sentencing. *Criminology*, *53*(4), 597-623.

Kutateladze, B. L., Andiloro, N. R., Johnson, B. D., & Spohn, C. C. (2014). Cumulative disadvantage: Examining racial and ethnic disparity in prosecution and sentencing. *Criminology*, *52*(3), 514-551.

LaFree, G. D. (1985). Adversarial and nonadversarial justice: A comparison of guilty pleas and trials. *Criminology*, *23*(2), 289-312.

Latessa, E. J., & Lovins, B. (2010). The role of offender risk assessment: A policy maker guide. *Victims and Offenders*, *5*(3), 203-219.

LeCroy, C. W., Krysik, J., & Palumbo, D. (1998). *Empirical validation of the Arizona Risk/Needs Instrument and assessment process*. Phoenix, AZ: Arizona Supreme Court, Administrative Office of the Courts, Juvenile Justice Services Division.

Lowenkamp, C. T., & Whetzel, J. (2009). The development of an actuarial risk assessment instrument for US Pretrial Services. *Fed. Probation*, *73*, 33-36..

Lowenkamp, C. T., & Latessa, E. J. (2002). Evaluation of Ohio's community based correctional facilities and halfway house programs: Final report. *Unpublished Technical Report: University of Cincinnati*.

Lowencamp, C. T., Lemke, R., & Latessa, E. (2008). The development and validation of a pretrial screening tool. *Federal probation,* 72, 2-9.

Lowenkamp, C. T., Holsinger, A. M., & Cohen, T. H. (2015). PCRA revisited: Testing the validity of the federal Post Conviction Risk Assessment (PCRA). *Psychological Services, 12,* 149–157. http://dx.doi.org/10.1037/ser0000024

Lowenkamp, C., VanNostrand, M., & Holsinger, A., (2013). *Investigating the Impact of Pretrial Detention on Sentencing Outcomes,* Laura and John Arnold Foundation.

Maloney, C., & Miller, J. (2015). The impact of a risk assessment instrument on juvenile detention decision-making: A check on "perceptual shorthand" and "going rates"?. *Justice quarterly*, *32*(5), 900-927.

Mamalian, C. (2011). *State of the science of pretrial risk assessment*. Retrieved from https://www.bja.gov/publications/pji_pretrialriskassessment.pdf

McNeill, F., Burns, N., Halliday, S., Hutton, N., & Tata, C. (2009). Risk, responsibility and reconfiguration: Penal adaptation and misadaptation. *Punishment & Society*, *11*(4), 419-442.

Miller, J., & Maloney, C. (2013). Practitioner compliance with risk/needs assessment tools: A theoretical and empirical assessment. *Criminal Justice and Behavior*, *40*(7), 716-736.

Miller, J. L., & Sloan, J. J. (1994). A study of criminal justice discretion. *Journal of Criminal Justice*, *22*(2), 107-123.

Minton, T. D., & Zeng, Z. (2015). Jail inmates at midyear 2014. *Washington, DC: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics*, *3*.

Pinchevsky, G. M. (2017). Understanding decision-making in specialized domestic violence courts: can contemporary theoretical frameworks help guide these decisions?. *Violence against women*, *23*(6), 749-771.

Podkopacz, M. (2006). *Fourth Judicial District Pretrial Evaluation: Scale Validation Study*. Minneapolis, MN: Fourth Judicial District of Minnesota Research Division.

Pretrial Justice Institute. (2007). *The Transformation of Pretrial Services in Allegheny County, Pennsylvania: Development of Best Practices and Validation of Risk Assessment*. Washington, DC: Pretrial Justice Institute.

Rudes, D. S., & Portillo, S. (2012). Roles and power within federal problem solving courtroom workgroups. *Law & Policy*, *34*(4), 402-427.

Schlanger, M. (2006). Civil rights injunctions over time: A case study of jail and prison court orders. *New York University Law Review.*, *81*, 550.

Schlesinger, T. (2005). Racial and ethnic disparity in pretrial criminal processing. *Justice Quarterly*, *22*(2), 170-192.

Schulhofer, S. J. (1988). Criminal justice discretion as a regulatory system. *The Journal of Legal Studies*, *17*(1), 43-82.

Schwalbe, C. S. (2007). Risk assessment for juvenile justice: A meta-analysis. *Law and human behavior*, *31*(5), 449-462.

Siddiqi, Q. (2005). *An evaluation of the new pretrial Release Recommendation System in New York City: phase ii of the post-implementation Research*. New York, NY: New York City Criminal Justice Agency.

Skeem, J. L., & Lowenkamp, C. T. (2016). Risk, race, and recidivism: predictive bias and disparate impact. *Criminology*, *54*(4), 680-712.

Smykla, J. O. (1986). Critique concerning prediction in probation and parole: Some alternative suggestions. *International Journal of Offender Therapy and Comparative Criminology*, *30/31*, 125-139.

Spohn, C. (1990). The sentencing decisions of black and white judges: Expected and unexpected similarities. *Law and Society Review*, 1197-1216.

Spohn, C. (2000). Thirty years of sentencing reform: The quest for a racially neutral sentencing process. *Criminal justice*, *3*, 427-501.

Spohn, C., & Holleran, D. (2000). The imprisonment penalty paid by young, unemployed black and Hispanic male offenders. *Criminology, 38*, 281-306.

Spohn, C., Beichner, D., & Davis-Frenzel, E. (2001). Prosecutorial justifications for sexual assault case rejection: Guarding the "gateway to justice". *Social problems*, *48*(2), 206-235.

Summers, C., & Willis, T. (2010). Pretrial risk assessment: Research summary. *Retrieved from Bureau of Justice Assistance website: https://www. bja. gov/Publications/PretrialRiskAssessmentResearchSummary. pdf*.

Tasca, M., Rodriguez, N., Spohn, C., & Koss, M. P. (2013). Police decision making in sexual assault cases: Predictors of suspect identification and arrest. *Journal of Interpersonal Violence*, *28*(6), 1157-1177.

Travis, J., Western, B., & Redburn, S. (2014). *The growth of incarceration in the United States: Exploring causes and consequences*. Washington, D.C.: National Academy Press.

VanNostrand, M., & Keebler, G. (2009). *Pretrial Risk Assessment in the Federal Court*. Washington, D.C.: Office of the Federal Detention Trustee, U.S. Department of Justice.

Van Voorhis, Patricia, Michael Braswell, & David Lester. 2004. *Correctional Counseling and Rehabilitation*. Cincinnati, OH: Anderson.

Wagner, P., & Rabuy, B. (2017). Following the money of mass incarceration. *Prison Policy Initiative*.

Walsh, A. (1985). The role of the probation officer in the sentencing process: Independent professional or judicial hack?. *Criminal Justice and Behavior*, *12*(3), 289-303.

Whiteacre, K. W. (2006). Testing the Level of Service Inventory–Revised (LSI-R) for racial/ethnic bias. *Criminal Justice Policy Review*, *17*(3), 330-342.

**Table 1. Survey Sample of Criminal Justice Professionals (n=150)**[6]

| | Number[7]/Mean | Percentage |
|---|---|---|
| Current profession | | |
| Judge | 42 | 28 |
| Prosecutor | 17 | 11 |
| Public defender | 12 | 8 |
| Pretrial Staff | 79 | 53 |
| Years in current position | 9.4 years | 41[8] |
| Years in jurisdiction | 15.9 years | 54[9] |
| Time PSA has been used in jurisdiction | | |
| Less than 6 months | 20 | 13 |
| 6 to 12 months | 62 | 42 |
| More than 12 months | 57 | 38 |
| Unsure/Don't know | 10 | 7 |
| Experience with risk assessment prior to PSA | 86 | 54 |

[6] We excluded 21 respondents from the analyses because they indicated having an administrative or "other" role. The analyses focus on individuals indicating being a judge, prosecutor, public defender, or pretrial staff. The pretrial staff designation includes individuals that are probation officers conducting pretrial supervision.

[7] The results for every item may not add to 100 percent (n = 150) due to rounding and missingness.

[8] Percent of respondents indicating more than 9.4 years of experience in current position.

[9] Percent of respondents indicating more than 15.9 years in the jurisdiction.

**Table 2. Percentage of Criminal Justice Professionals Who Perceive Items to be "Extremely" or "Very" Important in the Decision to Release/Detain Pretrial**

| Factor | All | Judges | Prosecutors | Defenders | Pretrial |
|---|---|---|---|---|---|
| Current charge(s) | 76% | 85% | 100% | 42% | 68% |
| Pending charge(s) | 90% | 100% | 94% | 42% | 91% |
| Criminal history | 91% | 88% | 100% | 58% | 98% |
| Prior failure to appear | 81% | 83% | 71% | 33% | 93% |
| Victim injury | 73% | 75% | 100% | 27% | 73% |
| Weapon involvement | 80% | 88% | 100% | 36% | 77% |
| Defendant's age | 44% | 40% | 18% | 33% | 58% |
| Defendant's mental condition | 58% | 63% | 65% | 55% | 54% |
| Defendant's substance use history | 33% | 40% | 29% | 27% | 30% |
| Arguments made by the prosecution or defense | 25% | 15% | 47% | 75% | 14% |
| Presence of defendant's family, friends, or caseworker | 16% | 18% | 6% | 42% | 12% |
| Presence of victim or victim's family, friends, or caseworker | 25% | 30% | 29% | 8% | 25% |
| Jail capacity | 6% | 3% | 0% | 17% | 7% |
| Other | 10% | 15% | 20% | 0% | 5% |

**Table 3. Percentage of CJ Professionals Who Perceived Strengths and Weaknesses of the PSA**

| | All | Judges | Prosecutors | Defenders | Pretrial |
|---|---|---|---|---|---|
| **Strengths of PSA** | | | | | |
| No defendant interview | 37 | 19 | 24 | 50 | 48 |
| Separate scores for FTA, NCA, NVCA | 57 | 60 | 35 | 50 | 62 |
| Time efficiency | 43 | 45 | 24 | 25 | 49 |
| Focus on risk | 62 | 69 | 29 | 67 | 65 |
| Not charge-based | 29 | 17 | 6 | 75 | 33 |
| Research-based | 69 | 67 | 41 | 67 | 76 |
| Developed from a national dataset | 40 | 33 | 29 | 25 | 48 |
| Other | 4 | 5 | 18 | 8 | 0 |
| No strengths | 3 | 0 | 12 | 8 | 1 |
| | | | | | |
| **Weaknesses of PSA** | | | | | |
| No defendant interview | 32 | 36 | 24 | 42 | 30 |
| Loss of judicial discretion | 17 | 29 | 24 | 17 | 9 |
| Not charge-based | 30 | 36 | 47 | 8 | 27 |
| Important factors were left out | 37 | 36 | 71 | 25 | 33 |
| Other | 13 | 2 | 24 | 50 | 10 |
| No weaknesses | 17 | 14 | 0 | 8 | 23 |
| | | | | | |
| **Weaknesses of DMF** | | | | | |
| Loss of judicial discretion | 22 | 33% | 29% | 25% | 14% |
| Release too many defendants | 16 | 13% | 59% | 0% | 10% |
| Detain too many defendants | 16 | 8% | 6% | 50% | 18% |
| No weaknesses | 34 | 45% | 0% | 8% | 41% |

**Table 4. Perceived Impact on Communities of Color from a Pretrial Risk Assessment**

| | All | Judges | Prosecutors | Defenders | Pretrial |
|---|---|---|---|---|---|
| **In regards to pretrial release for people of color, how often is race/ethnicity an issue?** | | | | | |
| Always/Often/Sometimes | 44% | 33% | 43% | 92% | 43% |
| **How often do you feel the PSA and decision-making framework contribute to racial/ethnic disparities in the criminal justice system?** | | | | | |
| Always/Often/Sometimes | 27% | 17% | 47% | 82% | 21% |

**Table 5. Agreement with and Use of the PSA**

| | All | Judges | Prosecutors | Defenders | Pretrial |
|---|---|---|---|---|---|
| How often do you agree with the PSA recommendation? | | | | | |
| Always | 2% | 0% | 0% | 0% | 5% |
| Often | 61% | 63% | 31% | 42% | 72% |
| Sometimes | 31% | 37% | 38% | 50% | 21% |
| Rarely | 6% | 0% | 31% | 8% | 2% |
| Never | 0% | 0% | 0% | 0% | 0% |
| How often does the PSA inform your release/bail decision [judges] or your release/bail request to the judge [prosecutors/defenders]? | | | | | |
| Always | 24% | 31% | 6% | 25% | N/A |
| Often | 39% | 48% | 35% | 17% | N/A |
| Sometimes | 21% | 19% | 18% | 33% | N/A |
| Rarely | 11% | 2% | 29% | 17% | N/A |
| Never | 4% | 0% | 12% | 8% | N/A |