

The Problems with Pretrial Risk Assessment Tools

Risk assessment tools are billed as objective predictors of human behavior critical for reducing jail populations. But instead of providing an antidote to discrimination, pervasive human error, and mass incarceration, risk assessment tools perpetuate racial and economic bias, junk science, and the criminalization of poverty.

People are complex individuals with their own circumstances, motivations, and choices - and no tool can accurately predict human behavior.

WHAT ARE PRETRIAL RISK ASSESSMENT TOOLS?

A **pretrial risk assessment tool** is an automated decision system that purports to predict the likelihood of a person's future actions, such as whether they will appear for court hearings.

In New York, pretrial risk assessment tools compare an individual's information with data from past cases to "score" them and assess the probability they will return to court if they are released before trial. In other states, these tools are also used to compute the likelihood that a person might be rearrested for another crime or cause other harm if released while awaiting trial. The kind of information input into these systems depends on the individual tool being used, but often includes the individual's employment status, duration at their home address, and whether they have a phone number. These factors may seem free of bias, but they are actually closely linked to race and economic status.

Administrators determine which risk scores are deemed high risk, medium risk, or low risk. The cut-off points determine whether people are released before their trials, but are rarely explained and are often based on subjective decisions made by administrators, not on data-driven analysis.

THE FLAWED LOGIC OF PRETRIAL RISK ASSESSMENT TOOLS

GARBAGE IN, GARBAGE OUT – BIAS IN, BIAS OUT

Risk assessment tools perpetuate a vicious cycle of discriminatory outcomes. The data these systems rely on reflect years of over-policing in communities of color, and will continue to perpetuate the same biases already present in our legal system. At every stage of the criminal legal system, stark racial inequities exist. Black and Brown people are more likely to get stopped, be arrested, be held pretrial, get convicted, receive lengthier sentences, and be denied parole.¹ If the decisions are solely sourced from this data, the outcomes will only perpetuate racial bias and inequities.

The factors that go into determining flight risk are also tainted by structural racism that has historically caused people of color to have less access to housing, health care, and jobs. If the tools are only as good as the data they rely on, then the tools will produce outcomes that reflect structural racism and racial bias. The tools have also been proven to produce greater false positives among Black people than white people—meaning they are less accurate in computing risk scores for Black defendants.

THE CLOAK OF SECRECY

Algorithms can be gamed and are based on subjective, biased human judgment. But how risk assessment tools work and why they produce the scores they do is usually kept secret. These systems are developed and operated by proprietary businesses, and their operative algorithms are kept secret even from the defendants they impact. This means any flaws in the algorithms remain hidden and are impossible to correct. The tools do not merely rely on data inputs but to a greater degree on the choices administrators make about which data they decide is relevant. The public does not know the underlying policies about how cut-off points are chosen for which risk scores are too risky, or which data was left out or included in the tool.



PROBLEMS WITH NYC'S PRETRIAL RISK ASSESSMENT TOOL

New York City's new risk assessment tool uses data from 2009 to 2015. A court found that the city's stop-and-frisk practices during part of that period were unconstitutional because they discriminated against Black and Latinx people. This means the data is unreliable because it does not reflect the type of policing practices that are acceptable today and it will statistically over-represent Black and Latinx individuals.

The city made many subjective decisions about which data to include and exclude from the dataset. This means the city tweaked and gamed the algorithm to make sure the tool produced scores that would appease prosecutors, rather than provide an objective measure of risk.

Pretrial risk assessment tools cannot accurately predict human behavior and only further perpetuate racial inequity.