

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

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**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 his or her 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. One of the downsides of this discretion is the possibility of unconscious racial and ethnic bias in decision-making. People of color are disproportionately represented in the criminal justice system (Travis, Western, & Redburn, 2014). Blacks and Latinos are treated more punitively than similar Whites by legal actors at various stages in the criminal justice process from arrest to sentencing after controlling for legally relevant factors (Tasca, Rodriguez, Spohn, & Kross, 2013; Kulateladze et al., 2014; Travis, Spohn, & Western, 2014).

Studies that rely on administrative data suggest that judges' implicit biases may impact their decision-making processes and reproduce racial/ethnic disparities (Albonetti, 1991; Bridges, Crutchfield, & Simpson, 1987). Legal scholars have questioned the use of risk assessments at sentencing (Harcourt, 2010; Starr, 2014), but there is little research about bias in pretrial risk assessments.

Actuarial risk assessments are not new to criminal justice professionals. At least since the 1920s, criminal justice professionals have used actuarial tools to inform their decision making at various stages of the criminal justice system (Burgess, 1928; Harcourt, 2010). Risk assessments are widespread throughout criminal justice systems and are being used at more phases of the criminalizing process. Recently, there has been a push to use risk assessment instruments to structure pretrial release decisions (Bechtel, Lowenkamp, & Holsinger, 2011; Mamalian, 2011). Although several studies demonstrated 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 of risk assessments is less understood.

It is important to understand what professionals think about risk assessments because this could influence implementation and use of a risk assessment. Although judges usually make the ultimate decision about the nature of pretrial release, other courtroom actors are involved in these decisions. Take, for example, a case in which the recommendation from a risk assessment tool is to release an individual on his or her own recognizance, but the prosecutor, defense counsel, or judge do not have confidence in the tool; in such a case, it is unlikely that this recommendation will be followed. It could be that a prosecutor believes the tool is too lenient and he or she may argue for a higher bail amount, for other conditions to be imposed, or even for detention. Therefore, when considering the use of risk assessment tools, it is important to consider the perceptions of the larger courtroom

workgroup. In this article we suggest that it is important to learn about the shared understanding of a risk assessment so that its value and use may not 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 the 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 courtroom staff, 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). In this article we 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 introducing structured decision making tools—such as the PSA—have the potential to reduce systematic errors made by humans (Kahneman, 2011). 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 findings and implications. These findings contribute to literature on pretrial risk assessment tools within a courtroom workgroup framework.

## Background

### *Discretion in the Criminal Justice System*

Criminal justice has been framed as a market system in which uncontrolled discretion in charging, plea bargaining, and sentencing may lead to less efficiency and biased processes (Schulhofer, 1988). Schulhofer (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 the offender is black (Black, 1989). Additionally, studies have shown that racial and ethnic minorities are more likely than whites to be sentenced to prison (Spohn, 1990, 2000)—and 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).

### *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). Past research has shown that actuarial risk assessment more accurately predicts risk than sole reliance on professional judgment (Andrews, Bonta, & Wormith, 2006; Grove, Zald, Lebow, Snitz, & Nelson, 2000; Latesa & 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 his or her 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 his or her 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 (such as age at first offense, prior convictions), dynamic factors or criminogenic needs are variables that can change over time (such as 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 his or her 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 tool can be shaped by an agency’s belief in risk/needs tools, monitoring and training, perceptions of procedural justice, and projected confidence in the 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.

### *The Courtroom Workgroup*

Guided by an organizational sociological framework (see DiMaggio & 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: In such cases the structure and interdependence of the workgroup can help 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 of cases seen in those courts.

Although 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 (McNiell et al., 2009; Rudes & Portillo, 2013; Walsh, 1985). Since probation officers hold the power to revoke a probationer’s status, recommend sentences to judges, 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 how probation officers perceive actuarial risk assessment tools that guide sentencing decisions to detain youths (Gebo, Stracuzzi, & Hurst, 2006). The authors found that in 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 or detain.

### *The Current Study*

Building on a theoretical understanding of 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 actors’ 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 on courtroom actors' views of a pretrial risk assessment tool is scant. Relatedly, this study introduces an important albeit less studied courtroom actor (the pretrial officer), who plays an important role in submitting the PSA information to the judge. Second, this research will describe the relative importance of factors that judges (and other actors) believe are important in the decision to release or detain at the pretrial stage. Third, this study will contribute to an understanding about courtroom actors' perceptions of racial and ethnic disparities at the pretrial stage and the extent to which the PSA exacerbates this disparity.

## Methods

### *Risk Assessment Instrument*

#### *Design and Use*

The PSA was developed<sup>1</sup> 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 (the definition of which is developed to fit each specific jurisdiction).<sup>2</sup> Jurisdictions implementing the PSA received technical assistance (TA) and training to explain the research used to develop the instrument,

<sup>1</sup> 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.

<sup>2</sup> 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).

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)<sup>3</sup>:

- **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.
- **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.

#### *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

<sup>3</sup> 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).

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.<sup>4</sup> 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 assessment during pretrial. For example, judges were asked how often the PSA informed their release and bail decisions, while 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).

## Results

Table 1 shows the background characteristics of the survey respondents. Nearly half of the respondents worked for a pretrial agency (46.2 percent), about one-quarter were judges, 10 percent were prosecutors, and 7 percent 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

<sup>4</sup> 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.



had been used in most jurisdictions for six months to one year. More than half (54 percent) of the respondents indicated they had experience with risk assessments prior to implementing the PSA.

### *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; however, 42 percent 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 percent 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 affect courtroom actors' acceptance and use of risk assessment tools.

### *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 percent) 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 percent) and public defenders (25 percent). This is

placed in context when we see that more than half of prosecutors (59 percent) felt that the DMF "would result in releasing too many

**TABLE 1**

Survey Sample of Criminal Justice Professionals (n=150) <sup>1</sup>		
	Number <sup>2</sup> /Mean	Percentage
Current profession		
Judge	42	28
Prosecutor	17	11
Public defender	12	8
Pretrial Staff	79	53
Years in current position	9.4	41 <sup>3</sup>
Years in jurisdiction	15.9	54 <sup>4</sup>
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

<sup>1</sup> 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.

<sup>2</sup> The results for every item may not add to 100 percent (n = 150) due to rounding and missingness.

<sup>3</sup> Percent of respondents indicating more than 9.4 years of experience in current position.

<sup>4</sup> 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%

defendants,” and half of defenders (50 percent) 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 percent) and pretrial staff (41 percent) were more likely than prosecutors (0 percent) and defenders (8 percent) to indicate that the DMF did not have any weaknesses.

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.

*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 affect 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 percent) indicated that race/ethnicity is an issue at pretrial for people as color, compared with only 43 percent of prosecutors and pretrial staff and 33 percent of judges. Additionally, 82 percent of defenders believed that the PSA and decision-making framework contributed to racial and ethnic disparities in the criminal justice system.

*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, next page). Virtually zero respondents indicated that they “always” or “never” agreed with the PSA recommendation. Judges (63 percent) and pretrial staff (72 percent) were more likely to indicate they agreed with it “often.” Half of defenders and 38 percent 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.

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 percent of judges reported that the PSA “always” or “often” informs their release decision, while only 41 percent of prosecutors and 42 percent 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.

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

	All	Judges	Prosecutors	Defenders	Pretrial
<b>Strengths of PSA</b>					
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
<b>Weaknesses of PSA</b>					
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
<b>Weaknesses of DMF</b>					
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
<b>How often do you agree with the PSA recommendation?</b>					
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%
<b>How often does the PSA inform your release/bail decision [judges] or your release/bail request to the judge [prosecutors/defenders]?</b>					
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

However, most prosecutors reported that the PSA had not been useful in ensuring the detention of higher risk defendants. 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 that pretrial defendants receive the type and level of services/resources appropriate for their risk level.

## 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 or 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 FTAs, 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 the PSA's lack of time efficiency and on the importance of the arguments they 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, at total of 434,600 (62.7 percent) were being detained prior to a conviction (Minton & Zeng, 2016). 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 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 other courtroom actors were more likely to deem a strength. 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, securing a conviction where possible and necessary, and having discretion to bargain charges (Miller & Sloan, 1994).

Separately, defenders were 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 important for their argument.

Second, and in light of the literature on risk assessment tools, we should 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),<sup>5</sup> empirical bases for this relationship have been refuted (Flores, Bechtel, & Lowenkamp, 2016). Nonetheless, defenders in this sample still

<sup>5</sup> 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 validation 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.

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 regarding bail or 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 percent of judges in our sample indicated that the PSA at least sometimes informs their decision. This finding bodes well for the adoption of the PSA, since the judge is arguably the most powerful member of the courtroom workgroup in deciding whether to release or detain a defendant. In contrast to the acceptance among judges, 31 percent of prosecutors reported that they rarely agree with the PSA's recommendation, and 41 percent of them say that the PSA does not inform their release/detain request to the judge.

## Conclusion

In this article, 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 that 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 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 workgroup 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 that guide sentencing decisions should better understand the link between legal actor

views, perceived legitimacy, and adoption of scores. Although the courtroom workgroup perspective theorizes that decision making at different stages of the criminal court process is shaped by multiple players, the judge makes the final decision to detain or sentence. Previous qualitative work by Gebo, Stracuzzi, and Hurst (2006) highlights the need to study differences in courtroom workgroup 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 courtroom 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.

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