

HB

335

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335</SUBJECT><COMM>HSTA30</COMM></TARGET>

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Sponsor Statement
House Bill 335

In 2016, the Alaska State Legislature passed into law Senate Bill 91, and within that law, a structure for a new tool for the evaluation of an offender arrested pre-trial was created. This "risk assessment tool" was intended to insert objective information into a judicial officer's decision as to whether to release a defendant before their trial date.

The Pretrial Services Division of the Department of Corrections has developed an algorithm that takes various factors into account related to a defendant to create a score that determines their risk of failing to appear for their court date or committing a new crime. In certain circumstances, this risk score is the only determining factor as to whether a defendant is released on their own recognizance.

Mathematical data can play an important role in ensuring that judicial officers understand current research and trends in criminal justice policy and practice. However, judges are those ultimately entrusted with providing the balance between protecting a defendant's freedom and maintaining the public's safety, and they should be given some discretion in making these release decisions.

House Bill 335 allows for a judge to use the risk assessment score developed by the Pretrial Services Division as information in their decision-making process but does not allow an algorithm alone to provide for a defendant's release. This creates a balance between unbiased data and judicial expertise that will ultimately better provide for the public's safety.

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**Sectional Analysis
House Bill 335**

Section One: Repeals requirement that conditions of release be the least restrictive possible.

Section Two: Requires that a judicial officer give equal weight to all factors in their determination of conditions of release.

Section Three: Repeals seven sections:

- AS 12.30.006(b)(3): Establishes the release procedures for low-risk Class A and B felony offenders
- AS 12.30.011(b): Establishes the release decision matrix for misdemeanors
- AS 12.30.011(c): Establishes the release decision matrix for Class C felonies
- AS 12.30.011(d): Establishes the release decision matrix for DUI's
- AS 12.30.011(e): Establishes the release decision matrix for the crime of Failure to Appear
- AS 12.30.011 (f): Establishes the release decision matrix for all other crimes
- AS 12.30.011(k): Requires that a defendant who has not been provided with a risk assessment report be released with the least restrictive conditions possible.

***Note, these are delayed amendments to statutes that went into effect in Jan. 2018*

Section Four: Amends Alaska Court Rules regarding the factors a judicial officer should consider in setting release conditions.

Section Five: Clarifies that the bill only applies to crimes committed on or after its effective date.

Section Six: Clarifies that the Court Rule amendment must pass for sections 1-4 of the bill to take effect.



Pretrial risk assessment tool developed for Alaska

Pamela Cravez

Beginning January 1, 2018, new information about defendants at their first pretrial bail hearing became available in all of Alaska's courts. Judicial officers, defense, and prosecuting attorneys are receiving information from a new pretrial risk assessment tool that calculates whether a defendant is at

A shorter version of this article appeared in the Winter 2018 print edition.

low, moderate, or high risk for failure to appear at trial or to commit another crime if released. The tool, incorporated in Alaska's new bail statute, aids in the judicial officer's decision regarding pretrial bail conditions.

The turn to evidence-based pretrial practices is in response to the growing number of defendants who are remaining in custody through disposition of their cases. From 2004 to 2014, the number of pretrial inmates in Alaska's prisons grew by 81 percent (Alaska Criminal Justice Commission (ACJC), 2017).

Risk assessment tools are being used throughout the country in pretrial, sentencing, probation, and parole. This article looks at risk assessment tools in general and the development of Alaska's pretrial risk assessment tool.

"[I]n some cases, low-risk defendants who were unlikely to engage in new criminal activity remained behind bars because they couldn't afford bail, while high-risk defendants who were likely to engage in new criminal activity and who paid bail were released" (ACJC, 2017: 17).

A review of defendants released pretrial from 2014 to 2015 in Alaska found that the



Bail hearing at Anchorage Correctional Complex Court with Judge Douglas H. Kossler presiding.

likelihood that a person released from jail on bail would fail to appear (FTA) for their court hearings was 14 percent. The likelihood that they would be re-arrested on another offense while out on bail was 37 percent (Crime and Justice Institute, 2017).

Alaska's new pretrial assessment tool will improve these numbers and public safety, according to Geri Fox. Fox leads the

decisions as well as sentencing, probation, and parole. This article looks at risk assessment tools in general and the development of Alaska's pretrial risk assessment tool.

► History of assessment tools

The use of predictive models in criminal justice goes back to the 1920s and efforts to address crime by incapacitating "career criminals" (Kehl, Guo, & Kessler, 2017: 3).

Many early models relied on simple math and the assessment of correctional staff and clinical professionals. In the 1960s and early 1970s, studies questioned criteria being used by the models, their accuracy, and individual fairness (Kehl et al., 2017: 4–5).

Over time, risk assessment tools have evolved, with the largest shift accompanying a movement toward evidence-based practices. "Evidence-based risk/needs assessment instruments consider the interplay between *static* and *dynamic* risk factors," according to Kehl et al. (2017: 8; emphases in original).

Static factors are those that do not change, including age at first arrest and current

Alaska Department of Corrections' Pretrial Enforcement Division. The division, created in 2016, is performing pretrial risk assessments on all defendants, as well as providing court reports and recommendations, monitoring individuals released pretrial, and providing other pretrial supervision services.

Risk assessment tools are being used throughout the country to aid in pretrial de-

charge. Dynamic factors are those that can change over time, including current age, employment status, and whether a person has a substance use disorder.

Dynamic factors are often used to determine programming and treatment in addition to risk, since they provide a window into an offender's criminogenic needs. These factors, which are collected in interviews, have the potential drawback of perpetuating gender and racial bias.

The drawback of static factors is that their immutability makes it more difficult for a defendant to show positive behavioral change (Bonta & Andrews, 2007). The latest generation of risk assessment tools use complex algorithms and large data sets that can be tweaked and adjusted over time to new data.

► **Alaska's pretrial tool**

Alaska worked with the Crime and Justice Institute (CJI), a division of the Boston-based nonprofit research and analysis organization Community Resources for Justice, to develop an Alaska-specific pretrial risk assessment tool for two reasons. First, while pre-existing open tools such as the Arnold Foundation's Public Safety Assessment (PSA) are available,

Table 1. Risk Factors and Correlations
Not all potential risk factors had strong correlations with Failure to Appear (FTA), New Criminal Arrest (NCA), gender, or race.

| | |
|--|--|
| Current age | Weak correlations for males or Alaska Natives |
| Current DUI | Weak correlations for FTA or NCA |
| Current drug | Weak correlations for FTA or NCA |
| Current public order | Weak correlations for NCA, females, whites, and Alaska Natives |
| Prior felony arrests | Weak correlation for Alaska Natives |
| Prior convictions | Weak correlation for FTA |
| Current probation charge | Weak correlation for FTA |
| Prior domestic violence arrests | Weak correlation for FTA |

Source: Crime and Justice Institute, 2017

they have not been validated against Alaska populations. Second, many off-the-shelf commercial tools are proprietary — details of how they work are not made public, which has caused some challenges. (See "Proprietary and open risk assessment tools," below.)

CJI used sample data from the Department of Corrections, Alaska Court System, and Department of Public Safety that was comprised of defendants who were either released from custody during the pretrial period (N=20,456) or who were detained and released on or after disposition of their case (N=8610). After cleaning and coding, 19,188 cases were identified to develop the

pretrial risk assessment of failure to appear (FTA) and new criminal arrest (NCA).

Similar to PSA, Alaska decided to use only static risk factors. These factors are collected electronically without the need for an interview.

CJI found that not all potential risk factors had strong correlations with FTA or NCA or by gender and race (Table 1).

In addition, risk factors for FTA did not always predict well for NCA. For instance, total prior FTA warrants, FTA warrants in the past 3 years, and current FTA charge were all found to be predictive of future FTA, but not predictive of NCA. As a result, two scales were developed to contain the strongest

Proprietary and open risk assessment tools

Alaska, Virginia, and Pennsylvania use risk assessment tools developed specifically for their state. Most, jurisdictions, though, use one of the commercial risk-assessment tools. The Level of Service Inventory – Revised (LSI-R), developed by Multi-Health Systems (the LSI-R isn't used in pretrial), and COMPAS, created by the Northpointe company are two popular tools. These commercial tools employ both static and dynamic factors. COMPAS, which uses proprietary software and offers little transparency regarding its calculations, has been the subject of controversy. In a recent ProPublica investigative journalism piece on the use of COMPAS in Broward County, Florida, it was found that the tool predicted re-arrest at an accuracy rate of 61 percent, "somewhat more accurate than a coin flip." ProPublica also found that the COMPAS algorithm predicted black offenders to be "future criminals" at twice the rate of white offenders (Angwin, Larson, Mattu, & Kirchner, 2016; see also *State v. Loomis*, 2016).

In 2014, U.S. Attorney General Eric Holder voiced concern about risk assessment tools. "Although these [risk assessment] measures were crafted with the best intentions, I am concerned that they may inadvertently undermine our efforts to ensure individualized

and equal justice." Speaking at the annual meeting of the National Association of Criminal Defense Lawyers, Holder added that the tools "may exacerbate unwarranted and unjust disparities that are already far too common in our criminal justice system and our society."

Risk assessment tools used for pretrial decisions generally focus on static risk factors. The Public Safety Assessment (PSA), developed by the Laura and John Arnold Foundation, is used by 29 jurisdictions in the country including all of Arizona, Kentucky, and New Jersey (Kehl et al., 2017: 10). PSA uses a narrow group of static risk factors — offender's age at time of arrest, criminal history, prior FTA's — and is based on data from 1.5 million crimes spanning 300 U.S. jurisdictions. Unlike proprietary, blackboxed commercial tools such as COMPAS, PSA makes all factors open to public scrutiny.

Lucas County, Ohio adopted the PSA tool in January 2015. A study funded by the Arnold Foundation found no race or gender bias in outcomes. Those released without bail increased from 14 percent to about 28 percent. Those out on release who were arrested for another crime was cut from 20 percent to 10 percent (Tashea, 2017).

Table 2. Failure to Appear (FTA) Scale

| Six risk factors | Weights |
|---|---|
| Age at first arrest | 0 = 22 and older 1 = 21 and younger |
| Prior FTA warrants | 0 = 0 prior FTA warrants ever 1 = 1 prior FTA warrant ever 2 = 2 or more prior FTA warrants ever |
| FTA warrants in last 3 years | 0 = 0 prior FTA warrants in past 3 years 1 = 1 prior FTA warrant in past 3 years 2 = 2 or more prior FTA warrants in past 2 years |
| Current FTA | 0 = No current FTA charge 1 = Yes current FTA charge |
| Currently property charge | 0 = No property charge on current arrest/case 1 = Yes at least one property charge on current arrest/case |
| Currently motor vehicle charge (non-DUI) | 0 = No motor vehicle charge on current arrest/case 1 = Yes at least one motor vehicle charge on current arrest/case |
| Total points possible | 0 to 8 points possible |

Source: Alaska Department of Corrections, Pretrial Enforcement Division

predictors for each measure (Tables 2 and 3). (Judges will have to reconcile the two scales when using the new bail statute that only refers to one scale. Suggestions for reconciling this include using the highest on either scale to determine highest risk; see Table 4.)

Once the list of predictors was established, they were tested in terms of gender and race to make sure that they were equally predictive whether a defendant was male or female, White or Alaska Native (CJI, 2017).

The judge is still going to consider statutory guidelines such as the nature and circumstances of the offense, weight of the evidence, family ties, employment, length of residence, conviction record, FTA record, danger defendant poses to the victim, and

Table 4. Score Matrix

| Failure to Appear (FTA) | | New Criminal Arrest (NCA) | |
|-------------------------|------------|---------------------------|------------|
| Total risk score | Risk level | Total risk score | Risk level |
| 0-4 | Low | 0-5 | Low |
| 5-6 | Moderate | 6-9 | Moderate |
| 7-8 | High | 10 | High |

Source: Alaska Department of Corrections, Pretrial Enforcement Division

The Pretrial Enforcement Division will use the highest score of the two scales when considering recommendations for the Court, according to Geri Fox.

reputation, character, and mental condition (AS 12.30.020 (i)).

Prosecutors and defense attorneys will receive information from the tool prior to a bail hearing and continue to play a critical role in assisting the court with relevant information, according to Fox.

“The judge has limited time to look at a case, try to understand it, and evaluate the risk. Alaska will now have an assessment to provide judges with some actuarial, statistical analysis of what we might be able to expect with defendants,” Fox said.

Table 3. New Criminal Arrest (NCA) Scale

| Six risk factors | Weights |
|---|--|
| Age at first arrest | 0 = 22 and older 1 = 21 and younger |
| Arrests in last 5 years | 0 = 0 prior arrests in past 5 years 1 = 1 to 2 prior arrests in past 5 years 2 = 3 or more prior arrests in past 5 years |
| Convictions in last 3 years | 0 = 0 prior convictions in past 3 years 1 = 1 prior conviction in past 3 years 2 = 2 or more prior convictions in past 3 years |
| Sentences that included probation | 0 = 0 prior probation sentences 1 = 1 prior probation sentence 2 = 2 or more prior probation sentences |
| Sentences in past 5 years that included probation | 0 = 0 prior probation sentences in past 5 years 1 = 1 prior probation sentence in past 5 years 2 = 2 or more prior probation sentences in past 5 years |
| Sentences that included incarceration not wholly suspended in past 3 years | 0 = 0 prior incarcerations in past 3 years 1 = 1 or more prior incarcerations in past 3 years |
| Total points possible | 0 to 10 points possible |

Source: Alaska Department of Corrections, Pretrial Enforcement Division

Although judges have discretion to make bail decisions, research shows that when presented with an algorithm, judges and prosecutors frequently give the actuarial analysis more weight. Rejection of the algorithm is often based on bias (Christin, Rosenblat, & Boyd, 2015: 7).

Studies also suggest that a well-designed algorithm may be far more accurate than a judge alone (Neufeld, 2017).

Prosecutors and defense attorneys will receive information from the tool prior to a bail hearing and continue to play a critical role in assisting the court with relevant information, according to Fox.

Transparency and oversight are two features of assessment tools that critics call essential to reducing inequities (Tashea, 2007).

Fox is committed to continuing to improve Alaska's tool while providing information about how it is being used. (See "Limitations and quality assessment of Alaska pretrial screening tool" below.)

Pamela Cravez is editor of the Alaska Justice Forum.

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Limitations and quality assessment of Alaska pretrial screening tool

Some of the strategies the Pretrial Division team will use to ensure quality pretrial assessment is a process they refer to as Inner-Rater Reliability (IRR), according to Pretrial Division Director Geri Fox. Every month, approximately six percent of all assessments will be scored by another officer who is unaware that the assessment was previously scored. When errors are detected, officers will receive coaching to assist them with future assessment. Officers also receive initial training and follow up training to ensure quality assessment. Finally, the software application has internal checks to reduce potential errors, according to Fox.

Juvenile convictions are not generally part of pretrial assessment tools, Fox pointed out.

The current Alaska pretrial assessment tool lacks out-of-state criminal history information due to FBI security rules for criminal justice data. However, over the next year, Fox's team will collect information about out-of-state convictions. A new validation

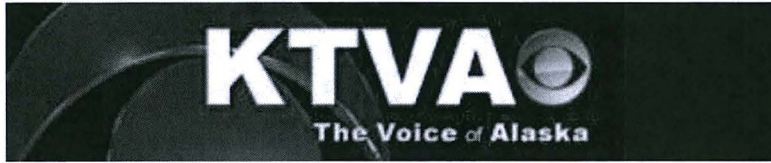
study will be completed to include out of state criminal history as part of future pretrial assessments. In the meantime, judges have discretion in most cases to factor any out-of-state criminal history into release decisions. Multiple data points will be tracked over the next few years and outcomes of the new pretrial functions monitored, according to Fox.

The tool will change over time, Fox says, as information is collected about its effectiveness. It will continue to improve. "This is part of the reason criminal justice systems have adopted evidence based practices. Information and quality data can assist with future policy making to enhance public safety."

The Crime and Justice Institute webinar "Alaska Pretrial Risk Assessment" describes the risk assessment tool, and can be viewed by registering name and email address at <https://attendee.gotowebinar.com/recording/1467307448127263490>.

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California felon a no-show in court after mandatory release

19 hrs 10 mins ago by Daniella Rivera

Updated:

14 hrs 32 mins ago

A California woman charged after a midday gunfight outside Northway Mall in January has now missed two scheduled court appearances since her mandatory release.

Anchorage Police say shots were fired in the parking lot outside Shockwave Trampoline Park-- a popular location for children and families-- on Saturday, January 27, after an argument broke out between two groups of people.

According to court documents, witnesses told police they saw people in a white sedan shooting at a red SUV.

Jessica Malcolm, 26, who was allegedly in the red SUV, fled the scene when it crashed but was caught by police. She was in possession of a Glock .45 handgun and a 30-round magazine.

APD charged Malcolm with being a felon in possession of a firearm, a class C felony, but she was free the next day, thanks to the state's new pretrial risk assessment tool.

The risk assessment tool is part of a delayed component of Senate Bill 91. It gives judges a computer-generated number between one and 10 for a defendant, which indicates they're either low-, medium- or high-risk for two factors: how likely the person is to fail to appear for future court hearings, and how likely a defendant is to commit new crimes while out on bail before trial.

Under the state's new pretrial risk assessment tool, Malcolm scored a zero and qualified for mandatory release.

The Department of Corrections confirms the tool's score only takes into account in-state criminal history, and Malcolm had arrived in Alaska two weeks prior to the shooting, leaving her felony criminal history behind in California.

Governor Bill Walker has submitted two bills this legislative session which aim to close the loophole in this portion of SB91.

Once the courts issue another warrant for Malcolm's arrest, APD can take her into custody again, provided the California native is still in Alaska.

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