



Data Points

When Pretrial Risk Assessment Results and Release Recommendations Don't Add Up

April 2023 | Podcast Transcript

Overview

This episode features two Research & Evaluation team members at Policy Research. Senior Research Associate Samantha Zottola, PhD, and Research Associate Kamiya Stewart, PhD, discuss key takeaways from their forthcoming paper, "Pretrial Risk Assessment, Risk Communication, and Racial Bias." *Data Points* is an ongoing podcast series produced by Policy Research that discusses research for social change.

Holley Davis:

There can be a lot of harm caused by not listening to guidelines. Not finishing your antibiotic prescription can cause an infection to grow and become more serious and possibly resist other medications. Using your phone while driving can cause a car crash. Usually when we disregard guidelines, we're only hurting ourselves. But what happens when a person, a judge, or a magistrate, ignores the guidelines provided to them when making decisions in the pre-trial period? In this episode, we're going to find out.

Welcome to *Data Points* where we discuss research for social change. *Data Points* is a production of Policy Research. My name is Holley Davis and I'm the communications director at Policy Research. In this episode, my colleagues, Research Associate Dr. Kamiya Stewart and Senior Research Associate Dr. Samantha Zottola, will share the research and key takeaways from their co-authored paper "Pretrial Risk Assessment, Risk Communication, and Racial Bias."

Dr. Zottola works on issues related to court processes, bail reform, and the behavioral health outcomes of people involved with the criminal legal system.

Dr. Stewart investigates social issues with the goal of advancing theory and knowledge to develop and communicate real-world solutions in a timely manner.

Drs. Zottola and Stewart, thank you so much for joining us. I'm looking forward to hearing more about your research findings.

Samantha Zottola:

Thanks, Holley. Hi, Kamiya. I'm so excited to be here today with you chatting about this research paper, which is the paper that brought us together as colleagues.

Kamiya Stewart:

Hi, Sam. Yeah, same here. I'm super excited for folks to hear the work that we have been doing. So yeah, let's get into it.

Samantha Zottola:

For this paper, we were looking at how the results of pretrial risk assessment instruments are presented to judges and other court actors who are looking at those instrument results and using them to inform decisions. Before we get into talking about exactly what we looked at and what we found, I wanted to set the stage by describing the initial appearance, because this is the appearance or the hearing where pretrial risk assessment instrument results are really being used to inform decisions. So talking about this hearing will give some helpful context.

The initial appearance is the first hearing a person has after they are arrested and booked into jail. The process varies depending on what state a person was arrested in or what exactly they're being charged with. So I'm just going to give a broad general description of this hearing. The initial appearance typically happens within about 8 to 48 hours of booking. At this hearing, a person goes before a judge or more likely before a magistrate. And the person is not often actually at the courthouse or in the courtroom for this hearing. The judge or magistrate is in the courthouse, and some of the other involved parties might be in the courtroom, but the person who's being charged is usually in a room in the jail and they're calling in for this hearing via a video call. So this hearing can have a very informal feel.

There are a couple of parties that are usually involved in this hearing. Obviously the person being charged and the judge or magistrate. Usually the prosecutor is involved because they're the ones responsible for bringing the charges against the person. And in many courts, pretrial services staff are involved because they're responsible for gathering information about a person who's been arrested and presenting that information to the judge or magistrate to help them make decisions. And there are a couple of things that a judge or magistrate does at the initial appearance.

First, they tell a person what they've been charged with. Second, they determine whether the person needs to have an attorney appointed to them. So a person typically doesn't have their own lawyer at this point. And third, they make the decision about whether or not to release the person from jail while the person awaits their trial. All of this happens within about 1 to 5 minutes. So it's a really short hearing, and judges and magistrates do not have a ton of information available to them at this hearing. It happens really quickly after a person has been booked. So there isn't a lot of time to gather information.

So at this hearing, the judge or magistrate knows what the person is being charged with. They can look at the person's criminal record and see their history. If the person has been to that same court before, the judge or magistrate can look at their history for appearing versus not appearing to past court hearings. The prosecutor can typically speak up at this hearing and share any information that they have and make their recommendation about whether the person should be released or not. And then finally, if the court uses a pretrial risk assessment instrument, the judge will have the results of that

assessment and whatever other information the pretrial services staff have gathered about the person and pretrial services staff recommendation about whether the person should be released.

Kamiya Stewart:

So at this time, arrest charges are filed and a judge or magistrate will now decide based on the information they have, whether to detain this person until their next court hearing or to release this person. If they do decide to release the person, they must decide if they're releasing them on their own recognizance, often known as ROR, which is when the person is released from jail without any conditions or without any stipulations. Or they might be released with conditions or released under specific stipulations made by the court. And some of these stipulations, it could be paying a cash bail, securing a bond, submitting to electronic monitoring, undergoing pretrial supervision, or another condition.

When people are released during the pretrial period, they are ideally expected to be successful during this time, meaning that they will show up to their next court hearing and they will not engage in any new criminal activity. Whether or not a person is released pretrial is very important to both their legal and personal lives. People who are detained pretrial are more likely to engage in plea negotiations, plead guilty, be convicted of a crime, be sentenced to prison or jail, and even be given a longer sentence. They also have the possibility of losing their jobs, houses, or children.

And extended time in jail pretrial can result in both mental and physical health consequences. What further complicates decisions and outcomes during the pretrial period and really during any stage of the criminal legal system is that racial disparities exist. Time and time again, there are findings that people of color are detained more than white people. And when people of color are released, it's under unnecessary and stricter conditions, such as paying higher bail amounts, receiving electronic monitoring, or excessive drug testing. So rightfully, there is a focus on making sure that pretrial reform efforts are applied equitably for all races so that all the benefits of increased release aren't going primarily to white people, but to everyone.

Samantha Zottola:

So one specific pretrial reform effort that aims to help make pretrial decisions more transparent and increase release rates is the use of pretrial risk assessment instruments. In our study, we focus specifically on the presentation of pretrial risk assessment instrument results. For folks who are listening who have never seen or used a pretrial risk assessment instrument, I want to just briefly explain what we mean when we refer to the results and how the results are presented. Basically, a pretrial risk assessment instrument is a list of questions that the jail staff or pretrial services staff answer about a person based on the person's records and sometimes based on an interview with the person.

Answers to the questions, usually just a yes or no, have point values assigned to them. The point values add up to a total score that corresponds to a risk estimate. That risk estimate is what we're talking about when we talk about the pretrial risk assessment instrument results. So, a person might have a score of 3 and that might correspond to a 10% chance of failing to appear in court. Or they might have

a score of 5 and that might correspond to a 20% chance of rearrest during the pretrial period. For the most part, pretrial risk assessment instrument results are presented as a percentage that describes how likely a person is to fail to appear in court or be rearrested during the pretrial period.

Occasionally, the results are also presented as a category like low, medium, or high risk. After the risk score and risk estimate are obtained by jail or pretrial services staff, the score and estimate are shared with the judges and magistrates and often with prosecutors as well. The results are usually sent as a short report prior to the initial appearance. The results of pretrial risk assessment instruments are helpful because they provide an evidence-based estimate of a person's risk for failing to appear in court or being rearrested during the pretrial period, which are the two factors that the judge or magistrate is really supposed to base the release decision on.

And they provide this information at the initial appearance, which like I said, is a really short hearing that comes up very quickly after a person is arrested. There isn't a lot of information available to a judge or magistrate. So these instruments and the estimates that they produce provide one helpful piece of information that the release decision can be based on.

Kamiya Stewart:

So ever since risk assessment instruments were implemented during the pretrial period, there have been concerns about them. Particularly, there are concerns based on whether or not they predict outcomes accurately overall and across race. So far, there is evidence that pretrial risk assessment instruments are generally good at predicting pretrial outcomes. There's also evidence that better decisions are made when pretrial risk assessment results are used than when they are not. For example, when the results are appropriately applied, the court releases people more and relies less on bail as a condition of release. And these are both good things, by the way.

However, when the results are not used accurately or even disregarded or ignored, racial disparities persist. And there's evidence that there still might be racial disparities when results are used accurately, which really emphasizes the importance of using multiple strategies to reduce racial disparities and other disparities during the pretrial period. In our research, we wanted to shed light on some of the unknowns. Firstly, we tested whether the presentation of pretrial risk assessment results influence pretrial court actors' decisions. We hope that if we did find that one presentation strategy worked better than another, or if one presentation strategy informed the most accurate decisions, then this can be an easy recommendation we could make, and it's also an easy change for courts to implement.

Secondly, we tested whether pretrial decisions differed based on the race of the person charged with the crime. People with the same pretrial assessment results should receive the same decisions. And these decisions, according to pretrial reform efforts, should aim to release people pretrial, especially releasing the people who should be released.

Samantha Zottola:

So we designed a study that involved having pretrial court actors, which are judges, magistrates, prosecutors, pretrial services staff read a short paragraph about a person who had been arrested and charged, and make a decision about whether the person should be detained for the pretrial period, released with conditions, or released without conditions. And the paragraph mimicked the information that they would have available to them if they were actually seeing this person for an initial appearance. The paragraph described a man who was charged with stealing items from a pawn shop, and we gave the results of a pretrial risk assessment instrument.

There were a couple of pieces of information that we varied across paragraphs, and we randomly assigned people to read one paragraph. One thing that we varied was the race of the man. Sometimes he was described as Black, and sometimes he was described as white. Then there were three things about the pretrial risk assessment instrument results that we varied across paragraphs. First, we varied how we stated the results. In some paragraphs, the results were stated as a percentage. For example, this person has a 10% chance of being rearrested. In other paragraphs, the results were stated as a frequency. For example, 1 in 10 people like this person are rearrested.

Second, we varied how we framed the results. In some paragraphs, the results were framed as how likely the person was to succeed, so appear in court and not be rearrested. In other paragraphs, results were framed as how likely the person was to fail, so not appear in court and be rearrested. Third, we varied whether the results corresponded with a low risk estimate or a high risk estimate. So we didn't actually state that the person was low or high risk. We didn't use those categories. We just stated frequencies and percentages that would correspond with either a low or a high risk estimate.

And we found that it did not matter whether the risk assessment results were stated as a percentage versus a frequency or whether they were framed as likelihood of success versus likelihood of failure. Neither of those two things were related to the release decision that our sample of pretrial court actors were making. The only thing that influenced the pretrial court actors release decision was whether the risk estimate corresponded to a low or high estimate. When the man in the paragraph was described as having a higher risk estimate, pretrial court actors were more likely to choose release with conditions. When the man was described as having a lower risk estimate, pretrial actors were more likely to choose release without conditions.

Kamiya Stewart:

So overall presentation or how the results were stated didn't matter. And this finding was consistent when the person charged was described as Black and African American or white. We did find, however, evidence that pretrial court actors did not seem to apply the pretrial risk assessment results the same across race. In general, what we should expect to find is that the risk estimate is really what's driving decision making. So, in general, we should see that when the person is described as having a low risk estimate, then pretrial court actors will be more likely to recommend that the person is released without conditions.

But when this person is described as having a high risk estimate, then we should see that pretrial court actors are more likely to recommend that the person is released with conditions. And we did find this, but we only found this when the person was described as being white. We did not find this when the person was described as Black and/or African American. So regardless of whether the risk estimate was shown as low or high, most pretrial court actors recommended that the Black and African American person was released with conditions. In other words, pretrial court actors seemed to appropriately apply the risk assessment results when the person charged was described as white, but not when the person was described as Black and African American.

Samantha Zottola:

So we have two main takeaways or recommendations based on our findings. First, it's still worth exploring the impact of the presentation of pretrial risk assessment instrument results on release decisions. We did not find that the way the results are presented made a difference to release decisions. But one study is not enough to say that something definitely does or definitely does not have an effect. So future research should keep exploring whether differences in how instrument results are presented impacts the decisions that they inform.

And I also do want to say that we personally are proponents for framing the risk assessment results in terms of how likely a person is to be successful, partly because this is the recommendation by the organization that's responsible for helping courts implement one of the most widely used pretrial risk assessment instruments. So it's a good idea to follow that organization's recommendation. And also because framing results in terms of success is aligned with the larger movement to change the language we use to describe people who are involved in the criminal legal system to help reduce the stigma and bias that these folks face.

So changing the way the results are presented may not help toward goals of increasing pretrial release rates or reducing racial bias, but it may help toward the goal of a larger culture shift away from stigmatizing language and away from a focus on failure.

Kamiya Stewart:

And for our second takeaway in our study, we also found that pretrial court actors didn't align their decisions with the pretrial risk assessment results for the Black and/or African American person, but they did for the white person. One explanation for this is racial bias. Pretrial court actors must be aware of their biases to prevent differences in decisions and outcomes for people of color. Through trainings and regular feedback and evaluations, we can make sure that pretrial court actors are using procedures and practices like pretrial risk assessment instruments to accurately inform decisions equally for all people.

It's also possible that pretrial risk assessment instruments alone might not be effective in eliminating racial disparities, and that more research should focus on application of pretrial risk assessment results, as well as other strategies to reduce racial and other disparities during the pretrial period.

Samantha Zottola:

And we are already well underway with some follow-up research.

Kamiya Stewart:

So as a follow-up to this work, we ask pretrial court actors to provide their opinions about pretrial risk assessment instruments and how they are used in their practice. We also ask about strategies they think would be helpful to reduce racial disparities during the pretrial period. And so with this new follow-up research, we hope to learn from people within the field and work with people in the field to help inform the best, most equitable practices.

Holley Davis:

Dr. Zottola and Dr. Stewart, thank you so much for translating your research into those takeaways for us. It's encouraging to hear that pretrial risk assessments are a tool that could help mitigate the racial disparities in pretrial release recommendations. But there's so much work to be done to identify and correct the racial bias that leads to worse outcomes for Black and African American people in the criminal legal system.

This has been an episode of *Data Points*, a production of Policy Research. Learn more about us by visiting prainc.com. If you have a question or comment about this episode, email us at communications@prainc.com. *Data Points* is available via Spotify, Stitcher, Apple Podcasts, and SoundCloud. This research and this episode were made possible by the John D. and Catherine T. MacArthur Foundation. The content and opinions expressed are solely the responsibility of the authors. This episode was produced and hosted by Holley Davis and engineered and edited by Elianne Paley. Until next time, keep creating positive social change.

About

Policy Research Associates, Inc. (PRA) is a certified Women-Owned Small Business (WOSB) founded in 1987. In partnership with our sister non-profit, Policy Research, Inc. (PRI), we offer four core services: research, technical assistance, training, and policy evaluation. Through our work, we enhance systems that assist individuals with behavioral health needs on their journey to recovery.

Contact

Policy Research Associates, Inc.

🏠 345 Delaware Ave, Delmar, NY 12054

✉️ pra@prainc.com

🌐 prainc.com

☎️ 518-439-7415