



Risk Assessment & Pretrial Diversion: Frequently Asked Questions

Overview

Increasingly, prosecutors across the country are developing innovative strategies that divert pretrial defendants to community-based programs. Risk assessment can be a powerful tool for helping to identify defendants appropriate for pretrial diversion and matching participants to services that will reduce their risk of reoffending. In addition to helping defendants avoid the collateral consequences of a criminal conviction, such as loss of employment and housing, diversion programs can also reduce the use of incarceration more broadly. In Milwaukee, Wisconsin, for example, the prosecutor-led diversion program adopted a risk assessment to determine which diversion program is most suitable for felony and misdemeanor defendants. (Low risk defendants are routed to a brief pre-filing program, moderate risk defendants are routed to a more intensive post-filing program, and high risk defendants are ineligible for pretrial diversion.) This program shows how prosecutorial innovation can be aided by the effective use of risk assessment tools.

The questions in this guide are those most frequently asked by prosecutors seeking to incorporate risk assessment tools into the development of pretrial diversion programs. In responding to these questions, this document draws on studies of existing diversion programs that use risk assessments.

Frequently Asked Questions

1. How can risk assessment tools support effective pretrial diversion?¹

Risk assessment tools improve professional decisions about risk for new criminal activity by using evidence-based criteria to assess a defendant's risk of reoffending. Typically, these tools produce a raw risk score and place defendants in risk categories (e.g., high, medium, or low). Used at an early stage in case processing, brief risk assessment tools can give practitioners an initial sense of what level of pretrial supervision might be used as an alternative to pretrial detention that does not compromise public safety.

¹ Picard-Fritsche, S., Rempel, M., Tallon, J.A., Adler, J., & Reyes, N. (2017). *Demystifying Risk Assessment: Key Principles and Controversies*. The Center for Court Innovation. Retrieved from <https://www.courtinnovation.org/publications/demystifying-risk-assessment-key-principles-and-controversies>.

Longer and more in-depth risk-need assessment tools also improve the ability of prosecutors to reduce risk of reoffending by identifying those needs and problems of the defendant that are contributing to their criminal behavior and, in turn, matching the defendants to appropriate supervision and treatment based on Risk-Need-Responsivity principles.² To illustrate how these principles might be applied, a restorative justice program that involves a single restorative conference followed by voluntary linkages to social services would be most appropriate for low- or moderate-risk misdemeanants, while intensive treatment (multiple days and sessions) would be more appropriate for high-risk defendants charged with more serious crimes. Whereas charge severity is a legally relevant consideration when making diversion decisions, charge-based eligibility criteria alone, without regard to the actual level of risk a defendant poses of re-offense in the future, has less potential to reduce recidivism.

2. **What are some tips for the effective implementation of risk assessment at the pretrial stage?**

There are several lessons from the field that can help to increase the effective implementation of risk assessment tools in the pretrial stage.

- *Work to achieve buy-in and consensus among all relevant stakeholders.* Recent examples from the field show that without buy-in from defenders, prosecutors, judges, and pretrial services agencies, it can be extremely difficult to implement risk assessments consistently. Before tool selection and implementation, include all relevant stakeholders in a collaborative effort to address the concerns, challenges, and benefits associated with risk assessment. Additionally, stakeholders should achieve as much consensus as possible on the menu of diversionary options available to defendants based on factors such as legal proportionality, risk classification, and available local resources.
- *Implement risk assessment as early in the process as possible.* If the goal is to increase diversion and reduce pretrial detention, then risk assessment should be used as soon as possible in the pretrial stage to identify all eligible defendants and divert them away from excessive system involvement—while providing a risk-responsive level of supervision.
- *Conduct local validation studies.* Not all risk assessment tools are equally appropriate for every jurisdiction or population. Partnerships between researchers and practitioners are key to establishing the appropriateness of a specific risk assessment tool for a given jurisdiction. For example, in a collaboration with the State’s Attorney’s Office in Cook County, researchers from the Center for Court Innovation validated a short risk-need assessment tool (the “C-CAT”) that had been adopted by the State’s Attorney’s Office to assist in the case management of misdemeanants diverted to services pretrial. The research revealed that while the C-CAT risk model was valid for diversion participants,

² *The Risk Principle:* Risk for new criminal behavior can be reliably estimated and correctional interventions should focus on higher risk offenders. *The Need Principle:* Therapeutic interventions should be directed towards an individual’s “criminogenic” needs, which are defined as dynamic needs that can be statistically tied to recidivism. *The Responsivity Principle:* Correctional treatment should be adapted to the specific risk factors, needs, strengths, and other attributes of the individual.

adjusting the definitions of high, low, and moderate risk significantly improved the performance of the tool in the Cook County context. These findings add to a growing body of literature suggesting that assessment tools developed for national use should be studied and adjusted for local jurisdictions.³ In addition, local validation can test whether the use of a specific tool could have a disparate impact by race and can facilitate adjustments to tools or local policy changes that increase racial equity.

3. What should my agency be looking for when selecting tools for application in this context?

In the pretrial context, and particularly in high-volume misdemeanor courts, agencies should be looking primarily for brevity and ease of use. With this goal in mind, there are two options.

- *Static tools* ask questions about static (unchangeable) factors such as criminal history, age and gender. These are the shortest and most basic tools and can be automated using information obtained solely from administrative or criminal records. However, static tools do not provide information about the underlying needs that drive criminal behavior.
- *Tools that involve interviews* also ask questions about static factors, but require an interview with defendants to determine dynamic (changeable) risk factors as well, such as employment, residential status, substance use, or impulsive styles of decision-making. These clinical tools require slightly more time to complete. However, for agencies looking to use social service interventions to reduce risk (e.g., by linking individuals to employment services), these types of tools are a necessity.

4. What are some common challenges of applying risk assessment pretrial and how can they be overcome?

There are several common challenges practitioners face when attempting to apply risk assessment in the pretrial context.

- *Time*: In many contexts where prosecutors implement diversion programs—particularly for misdemeanors—caseloads are large, and there is significant pressure to move cases. Risk assessment can add time to an already constrained process. Many static tools can be completed in 10 minutes or less and are based solely on administrative records. Dynamic risk-need tools require slightly more time, with the shortest tools requiring 15 to 20 minutes per defendant. Jurisdictions can overcome time-related challenges by selecting as concise a tool as possible that still manages to meet requirements (i.e., some programs that are focused on treatment provision will require a tool that covers risk and needs). Additionally, jurisdictions can increase efficiency by identifying specific individual(s) responsible for administering the assessment and determining the optimal point in the process when all assessments should be administered.

³ The C-CAT was developed as a national risk-need model for mixed defendant populations in high-volume courts and has been validated in a general court population in New York City (see Picard-Fritsche, S., Rempel, M., Kerodal, A. and Adler, J. (2018). *The Criminal Court Assessment Tool: Development and Validation*. New York: Center for Court Innovation.

- *Legal proportionality*: An individual’s risk level may not align intuitively with the seriousness of the current charges. For example, individuals arrested for low-level misdemeanors are often at high risk of re-arrest because they have significant criminal or substance use histories. At the same time, knowing an individual’s needs does not always help in crafting a mandate that is proportionate to the current offense. Jurisdictions seeing a large population of high-risk and/or high-need individuals, especially those charged with low-level offenses, may need to consider multiple diversion options or “tracks.” Options for “tracks” might include short-term treatment (if appropriate) or probation supervision for higher-risk individuals and community restitution or restorative justice “groups” for lower-risk individuals.
- *Limited local resources*: Many jurisdictions struggle with the reality that there are simply not enough available local resources to target the multiple needs of participants who are entering diversion programs. Before implementing a risk-needs assessment, jurisdictions should engage in “resource mapping” to assess the available local resources. Similarly, there should be decisions made ahead of time about what resources are made available to defendants at different risk levels. Jurisdictions might consider, for example, offering scarce local resources to higher risk individuals who have many needs, since the research tells us that this population is more likely to benefit from intervention. Lower risk individuals might be offered local resources only when available or on a voluntary basis.

5. **How can risk assessments advance the field of pretrial diversion more generally?**

The use of risk assessments has the potential to improve the effectiveness of pretrial diversion programs while safely reducing the use of incarceration. For example, in Milwaukee, Wisconsin, 9% of diversion cases resulted in a conviction compared to 74% of the comparison group, resulting in less jail time for diverted defendants than the comparison group (4% of diversion cases were given jail time compared to 50% of defendants in the comparison group). Importantly, Milwaukee’s diversion program also significantly reduced recidivism over a two-year period.⁴ Moreover, consistent and proper use of risk-need assessment tools can help to build a base of evidence for the broad use of pretrial diversion as jurisdictions document the success of these programs for defendants at various risk-levels and with a range of underlying needs. This type of evidence may increase the confidence of prosecutors across the country who are considering implementing their own pretrial diversion programs.

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⁴ Rempel, M., Labriola, M., Hunt, P., Davis, R.C., Reich, W.A., & Cherney, S. (2017). *NIJ’s Multisite Evaluation of Prosecutor-Led Diversion Programs Strategies, Impacts, and Cost-Effectiveness*. The Center for Court Innovation. Retrieved from https://www.courtinnovation.org/sites/default/files/media/document/2017/Pretrial_Diversion_Overview_ProvRel.pdf.