

Risk Assessment for Bail Hearings

Moving Away from Money Bail as the
Determinative Factor for Pretrial
Release

Methods Used to Determine Pretrial Release

- After a person has been charged with a crime, a Judge must decide whether to release a Defendant from jail while waiting for trial and what conditions, if any, to impose as a condition of bond.

How is the Bail Amount Determined

A judge is supposed to consider several factors when determining whether to release a Defendant pretrial, including:

- Facts and Circumstances of the current arrest
- Criminal history
- Defendant's ability to pay
- Safety of the community
- Safety of the victim

How is This Information Presented to the Judge

- The facts and circumstances of the arrest is presented to the Judge from a sworn statement prepared by the arresting officer
- The Judge uses the NCIC / TCIC printout for the Defendant's criminal history
- Other information related to the Defendant is presented in a report prepared by a pretrial officer.

Pretrial Report

During an interview with the Defendant, a pretrial officer collects the following from the Defendant:

- Biographical information
- Information about the Defendant's dependents
- Educational Background
- The Defendant's Financial responsibilities and whether the Defendant receives financial assistance (family, friends, government assistance, child support, etc.).
- Medical and mental health information

Problems with the Pretrial Report

- Bias of the interviewer may affect the type of information collected and reported
- Medical, mental and cognitive state of the Defendant at the time of the interview may affect the type and amount of information reported to the interviewer.
- The pretrial report does not give the Judge information related to whether the Defendant will commit a new offense and / or fail to appear in Court while on pretrial release.

In Reality.....

- Judges often rely on a Defendant's criminal history and a predetermined bail schedule to decide whether a Defendant should be released pretrial.
- A bail schedule means a money bail amount has already been assigned to a specific offense or degree of offense e.g. \$500 for a Class B misdemeanor, \$2,000 for a DWI – 2nd, \$3,000 to \$5,000 for a misdemeanor assault – family violence case

Problems with Relying on Criminal History and Bail Schedule

- Criminal History (e.g. prior convictions) may be caused by a person's prior inability to pay a surety or cash bond for pretrial release (a Defendant pleads guilty to secure his or her release).
- Using a bail schedule to assign a money bail amount does not take into consideration the likelihood a Defendant will commit a new crime or fail to appear in Court while out on bond.

- This means that Defendants who can pay a surety or cash bond are released while those who can't pay are detained.
- This does not result in increased safety and only further harms the poor.

How the Arnold Foundation is Changing Traditional Methods to Determine Bail

- To address the issues mentioned above (relying on criminal history, a bail schedule and bias in the pretrial interview, the Arnold Foundation (www.ArnoldFoundation.org) created an instrument called the **Public Safety Assessment (“PSA”)**.
- The PSA “is a research-based, data-driven pretrial risk assessment tool that provides Judges with objective information about the likelihood that a defendant will commit a new crime or will fail to return to court.” See www.ArnoldFoundation.org

How was the PSA Developed?

- Researchers analyzed data gathered from approximately 750,000 documents from more than 300 jurisdictions.
- The researchers goal was to find out which factors are the most predictive of whether a Defendant will fail to appear in court, commit a new criminal offense, and / or commit a new violent offense while on bond.

PSA Risk Factors

- The researchers determined there are nine (9) factors the most predictive of a Defendant's likelihood to commit New Criminal Activity ("NCA"), New Violent Criminal Activity ("NVCA") and Failure to Appear ("FTA").
- The factors are weighted and an algorithm produces a score for **NCA**, **FTA**, a **NVCA flag** and a **risk level** (below average, average, above average and / or high risk).

What are the PSA Risk Factors?

- Whether the current offense is violent
- Whether the Defendant has a pending charge at the time of the current offense
- Whether the Defendant has a prior misdemeanor conviction
- Whether the Defendant has a prior felony conviction
- Whether the Defendant has prior convictions for violent crimes

PSA Risk Factors (Cont.)

- The Defendant's age at the time of arrest for the current offense
- How many times the Defendant failed to appear at a pretrial hearing in the two years prior to current offense.
- Whether the Defendant failed to appear at a pretrial hearing more than two years ago.

Risk Factors the PSA Does Not Take into Consideration

- A Defendant's juvenile history / record
- Offenses where the penalty does not include incarceration in jail or prison (e.g. Class C misdemeanors and ordinance violations).
- It's important to note the PSA is not meant to be used for a Defendant who is charged with an offense while incarcerated.



MECKLENBURG COUNTY PRETRIAL SERVICES

Public Safety Assessment – Court Report

801 East Fourth Street
Charlotte, NC 28202
Phone: (704) 432-0803

Name: John J Defendant PID: 23457
DOB: 08/11/1977 Race: White Gender: Male
Arrest Date: 03/14/2016 PSA - Court Completion Date: 03/14/2016

New Violent Criminal Activity Flag

No

New Criminal Activity Scale

1	2	3	4	5	6
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Failure to Appear Scale

1	2	3	4	5	6
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Charge(s):

14-113.9 FINANCIAL CARD THEFT FELONY 2

Risk Factors:

Responses:

- | | |
|--|-------------|
| 1. Age at Current Arrest | 23 or Older |
| 2. Current Violent Offense | No |
| a. Current Violent Offense & 20 Years Old or Younger | No |
| 3. Pending Charge at the Time of the Offense | No |
| 4. Prior Misdemeanor Conviction | Yes |
| 5. Prior Felony Conviction | Yes |
| a. Prior Conviction | Yes |
| 6. Prior Violent Conviction | 0 |
| 7. Prior Failure to Appear Pretrial in Past 2 Years | 1 |
| 8. Prior Failure to Appear Pretrial Older than 2 Years | No |
| 9. Prior Sentence to Incarceration | No |

Recommendations:

Release Recommendation - Release to the custody of Pretrial Services.

Conditions - No additional conditions recommended.

Notes - Recommended for standard level of pretrial supervision.

How Does the PSA Assist Judges?

- The PSA provides Judges with an objective tool that assesses the likelihood a Defendant will commit a new offense and / or will fail to appear in Court while on pretrial release.
- In utilizing the PSA, the Arnold Foundation stresses it is not meant to “replace the judge or impede discretion or authority in any way. The decision about whether to release or detain a defendant always rests with the judge.”

www.ArnoldFoundation.org

How is the PSA Used in Harris County?

- During the bail hearing, the Judge has a copy of the PSA but also has the Defendant's entire criminal history and the pretrial report.
- The criminal history in particular causes the Judges to look beyond the PSA score and often will hold the criminal history against the Defendant even though the PSA takes it into consideration.

- To complicate the PSA, the misdemeanor and felony Judges in Harris County have correlated the PSA's risk assessment (below average risk, average risk, above average risk and high risk) with a bail schedule amount.
- For example, the recommended bail for a below average score will may be \$500 while the recommended bail for an above-average score is \$1500.

Felony Bond Schedule

Offense	Below Average Risk (1-2)	Average Risk (3-4)	Above Average Risk (5)
State Jail Felony	Presumption PR Bond for Listed Offenses Other \$1,000	No Early Presentment Refer to Magistrate for PR Bond Other \$1,500	\$15,000
Third Degree	Presumption PR Bond for Listed Offenses Other \$2,500	\$5,000	\$10,000
Second Degree	\$10,000	\$20,000	\$30,000
Third Degree -- Specified Charges Intoxication offenses Kidnapping Deadly Conduct Injury Child/Elderly	\$15,000	\$25,000	\$35,000
Second Degree -- Specified Charges Agg Assault Offenses Sexual Assaults Burglary Habitation Intoxication Manslaughter Manslaughter Compelling Prostitution	\$30,000	\$40,000	\$50,000

Misdemeanor Bail Schedule

	Below Average Risk (highest FTA/NCA score 1 or 2)	Average Risk (highest FTA/NCA score 3 or 4)	Above Average Risk (NCA score 5)	High Risk (NCA score 6)	Special Circumstance (NVCA Flag or FTA score 5 or 6)
Carve out situations A. PC 22.01 – Assault involving family violence B. PC 38.10 – Bail jumping / failure to appear C. PC 25.07 – Violating court orders or conditions of bond D. PC 46.04 – Unlawful possession of firearm within 5 years of family violence E. PC 38.06 – Escape F. PC 38.02 – Failure to identify while fugitive G. MRPs & MAGs	No presumption No initial bail amount Recommended @15.17: \$3,000-\$5,000	No presumption No initial bail amount Recommended @15.17: \$3,000-\$5,000	No presumption No initial bail amount Recommended @15.17: \$3,000-\$5,000	No presumption No initial bail amount Recommended @15.17: \$5,000	No presumption No initial bail amount Recommended @15.17: \$5,000
Specified charges A. PC 49.09 – DWI 2nd B. PC 49.04 – DWI \geq 0.15 C. PC 30.04 – Burgl of vehicle D. PC 21.08 – Indecent expos. E. DWI while on bond for DWI	Presumptive PB \$2,000 initial bail amount Recommended @ 15.17: \$2,000	Presumptive PB \$2,000 initial bail amount Recommended @ 15.17: \$2,000	No presumption No initial bail amount Recommended @ 15.17: \$2,000	No presumption No initial bail amount Recommended @15.17: \$3,000	No presumption No initial bail amount Recommended @15.17: \$5,000
All other Class A	Presumptive PB \$1,000 initial bail amount Recommended @ 15.17: \$1,000	Presumptive PB \$1,000 initial bail amount Recommended @ 15.17: \$1,000	No presumption No initial bail amount Recommended @ 15.17: \$1,000	No presumption No initial bail amount Recommended @15.17: \$2,000	No presumption No initial bail amount Recommended @15.17: \$5,000
All other Class B	Presumptive PB \$500 initial bail amount Recommended @ 15.17: \$500	Presumptive PB \$500 initial bail amount Recommended @ 15.17: \$500	Presumptive PB \$500 initial bail amount Recommended @ 15.17: \$500	No presumption No initial bail amount Recommended @15.17: \$1,000	No presumption No initial bail amount Recommended @15.17: \$5,000

- Per the Arnold Foundation, this is **NOT** how the PSA is meant to be used:
“ The PSA has nothing to do with the process of ‘assigning bail.’” www.ArnoldFoundation.org

How to Use the PSA During the Bail Hearing

- If possible, check the PSA score / risk assessment against the Defendant' criminal history – A mistake in scoring can result in higher recommended bail under the bail schedule.
- Point out the positive factors to the Judge: “Your honor, Mr. Smith scores out at average risk. He does not have any pending charges and no prior failures to appear pretrial in the past two years or older than two years.”

- If the Judge decides to read out the Defendant's criminal history on the record, make sure to mention the PSA already takes the criminal history into consideration.
- Also, if you know that a mentioned offense was 10 years ago, say this to the Judge for the purpose of the record.

PSA Scoring, Risk Factors and Algorithm

- It is important to note that the Arnold Foundation makes the PSA factors and algorithm publicly available.
- The purpose is for transparency and to address the deficiencies of other pretrial assessment tools.
- Check the website, re-read the instructions occasionally and try to ensure the PSA is scored and implemented as intended by the Arnold Foundation.

