



THE MARYLAND HOUSE OF DELEGATES ANNAPOLIS, MARYLAND 21401

Testimony in Support of HB 49 Revalidating Risk Assessment Tools Used in Pretrial Release Decisions

This bill would require jurisdictions that use a pretrial risk assessment tool as part of their pretrial services program to revalidate the tool every three years.

What is a Pretrial Risk Assessment Tool?

Pretrial Risk Assessment Tools (PRAT) are used by multiple states and localities in the United States as a way of predicting the likelihood that a defendant will appear in court with no new arrests during the pretrial period. PRATs were created as a way to supplement bail decisions which have traditionally been made by judges. They provide data that can be used to reduce individual biases in the criminal justice system.

There are more than two dozen different pretrial risk assessment tools currently in existence in the U.S. The most prevalent tools are based on factors that predict whether rearrest or failure to appear in court is more or less likely. Each PRAT is different, however they tend to include questions about a person's social and economic circumstances and criminal history. The pretrial services program scores the defendant's answers and provides that information to the judge about the person's estimated likelihood of failing to appear and/or being rearrested prior to trial.

Why Validate or Revalidate?

Underlying the use of all PRATs is data about a population's risk of reoffending or failing to appear in court. Validation of a PRAT is done by looking at a sample of people from that jurisdiction who were released from jail before their trials and then tracking them to see who failed to reappear and/or was rearrested prior to trial. The outcome of that study is used to update the questions on the PRAT and the weighting of those questions.

There are numerous reasons why periodic revalidation of a PRAT is needed. For one, criminal laws change; for instance, the decriminalization of possession of small amounts of marijuana means that some defendants have prior arrests or convictions that would no longer be crimes and therefore should not be considered in a PRAT. Second, revalidation can show that certain questions or supposed risk factors are not actually predictive of risk of failure to appear in court.

Experts recommend periodic revalidation of PRATs to ensure that they are reliable and valid, otherwise the tool may not accurately predict the likelihood of successful appearance in court with no further arrests.

State law already requires risk assessment tools used in parole decisions to be revalidated every three years.

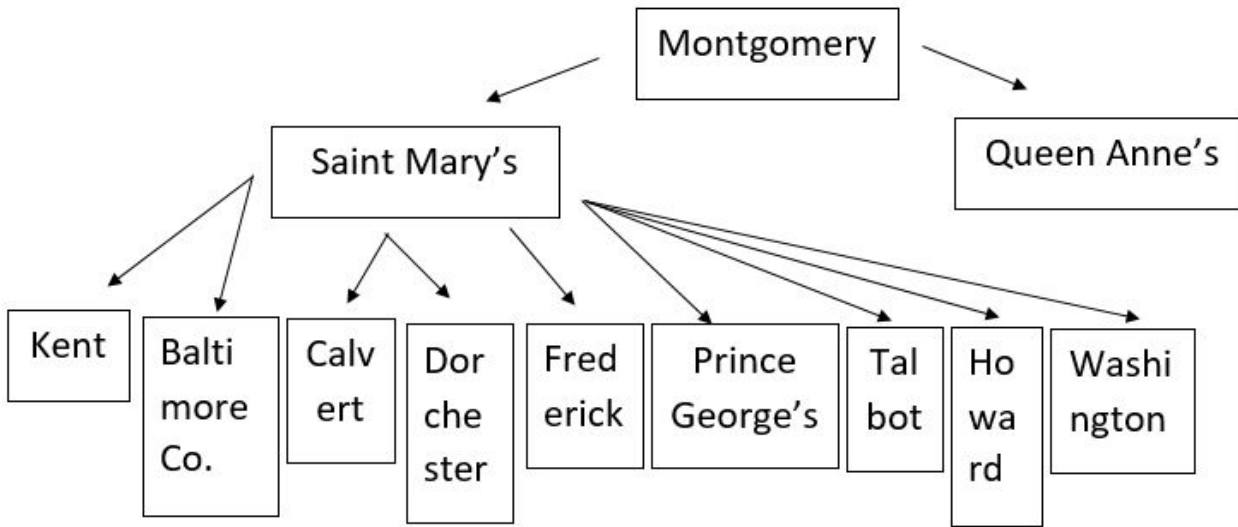
If PRATs are meant to help prevent bias in bail making decisions, it is imperative that they be up to date and based on empirical evidence otherwise, they risk reinforcing existing racial, gender, and socioeconomic inequities in the criminal justice system.

Pretrial Risk Assessment Tools in Maryland

As of 2019, at least 10 counties in Maryland currently employ a PRAT as part of their pretrial services program and many others are in the process of developing tools of their own. For locally-funded PRATs, there are no state laws governing the development, implementation, or revalidation of the tool.

Numerous Maryland counties have chosen to share PRATs with each other. Academic research on PRATs is clear that if a PRAT is used in pretrial release decisions, it should be validated to the particular locality. This bill would require the periodic revalidation of these tools to ensure that the outcomes are unbiased, fair, and accurate.

Pretrial Risk Assessment Tool Sharing Between Counties¹



¹ This chart does not include all counties currently using PRATs in Maryland – only those which responded to inquiry from Delegate Palakovich Carr’s office sent 12/12/19