Written Testimony HB 49: SUPPORT

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House Judiciary Committee
Chair Luke Clippinger
Vice Chair Vanessa E. Atterbeary

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My name is Dr. James Austin. I represent the JFA Institute which is a non-profit criminal justice research organization. JFA has assisted a number of jurisdictions implement and/or evaluate their pretrial risk assessment (PRA) instruments. I am providing written testimony (PRA) with respect to HB 49.

In the past year, JFA has completed such studies for Charleston County, South Carolina, Orleans Parish, Louisiana, the state of Nevada. In Maryland, JFA has also conducted studies for Montgomery County, Baltimore City, and St. Mary's County also in the past year.

My testimony today is to provide my opinions on the best practices for any jurisdiction to design, implement and validate a pretrial risk assessment instrument (PRA).

It's important to clarify at the outset the purposes of a PRA. Such instruments are to be used by the courts to provide a reliable and valid assessment of defendant's risk to be re-arrested, convicted and/or fail to appear (FTA) for a scheduled court hearing if released from pretrial detention. They are not to be used solely to make a detain or release decision. They are best used to determine the level of supervision and the imposition of special conditions for a defendant if released by the court. There should be a presumption of release for all pretrial defendants unless there is strong evidence that the defendant will flee the jurisdiction or will commit a violent crime if released.

We know from all of the research to date, that in general, all defendants whether charged with a misdemeanor or felony level crime(s) pose a low risk to flee the jurisdiction or commit (i.e., arrested and convicted) a new violent crime (murder, sexual assault, domestic violence, robbery, or assault) while under pretrial status. In general, the FTA rate for all released defendants is in the 10-15% range and the re-arrest rate for any crime is also in the 10-15% range. The re-arrest rate for a violent crime is very low (3-5% range).

For researchers, this means that trying to predict who will flee the jurisdiction, FTA or be re-arrested and convicted of a new crime while under the court's jurisdiction is difficult to do because of the overall high success rates. This is known as the "base rate" problem in predicting behavior. However, a reliable and valid PRAI can help the court identity those defendants who pose the lowest and highest risk to FTA or be re-arrested while under the court's supervision.

Over the past 20 years a number of jurisdictions thru-out nation have successfully implemented PRA instruments. All of the instruments generally use the same following factors to score a defendant's risk level:

1. Severity of the current charge(s);
2. Number and severity of prior convictions (not arrests);
3. Legal status at time of current arrest (e.g, already on pretrial release, on probation, etc.);
4. Prior FTAs;
5. Gang Affiliation;
6. Prior Pretrial Supervision failures; and,
7. Current age.

Some PRA instruments use other socio-economic factors (employment status, education level, residency) while others do not. Note that all of these factors reflect the same information that the courts currently use to make pretrial release related decisions. The only difference is that this information is being assessed and scored by trained staff in an efficient, reliable and valid manner.

In implementing these instruments, jurisdictions have used two implementation strategies. One approach is to take an existing PRAI from another jurisdiction or private organization and adopt it for use in its pretrial system (the adopt approach).[1] The other is to create a system that is designed for that jurisdiction (the original approach).

The "adopt another model" approach is the quickest (usually less than three months) and least expensive way to implement a PRA. This approach does not require any original research or design costs. However, the downside is that an instrument that was used in one jurisdiction may and usually does not perform as well in another jurisdiction. There is also a need to automate the instrument which can take some time and costs to the jurisdiction.

In the other approach (develop your own instrument), it takes more time (6-12 months) and will require original research usually by an outside consultant (as much as $50,000). But the instrument will perform better as it has been "normed" on the jurisdiction's population. It too will also have to be automated which can take some additional time and costs to the jurisdiction.

In Maryland, I worked with Montgomery County to develop its PRA instrument in 1996. That instrument has been adopted by St. Mary's and Baltimore Counties. Recently, I have completed re-assessments of the Montgomery PRA which has produced important changes in the instrument's design and format which has improved its performance. I have completed a similar study for St. Mary's with the same results. Finally, I designed a PRA for Baltimore City in 2010. That instrument has also been re-tested and adjusted.

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[1] A variety of private vendors have produced the ORAS, PSA, COMPAS, and VPRAI risk assessment instruments. Using them may or may not have associated implementation and on-going costs paid by the county to the vendor.

If Maryland desires to expand the use of PRA instruments at the County level, it should pay attention to the following issues:

1. Whether a PRA instrument is developed by the county or uses another county's or vendor's instrument, there must be an effort to evaluate the instrument on a periodic basis.
2. I use the term evaluate as there are two tests that need to be made. One is a reliability test to see if the instrument is being accurately scored. The second is the validation test which determines if the instrument's scored risk is statistically associated with FTA, re-arrest or reconviction.
3. The reliability test which is easy to do should be done on an annual basis by the agency.
4. The re-validation test should be done based on how the instrument was implemented.
5. In general, a county that uses another jurisdiction's instrument should have a study completed within three years of implementation to ensure the PRAI is working as intended and then re-tested every five years thereafter.
6. If a county develops its own PRAI, it should be formally evaluated every five years after the initial design and implementation effort is completed.

The re-validation effort consists of creating a sample of defendants who were screened on the instrument and released from jail in pretrial status. These released defendants are then assessed at least 12 months after release to see which persons have an FTA or were re-arrested and/or convicted. Statistical analysis is then conducted to see if the PRAI scoring factors and risk scale are associated with pretrial failure. If the PRAI is automated, the statistical analysis and report production can be quickly completed.

While the validation study is underway (it should not last more than 6 months), the current system continues to operate. The current system will not be found to be invalid assuming it has used factors known to be associated with pretrial success or failure. Rather, the evaluation will be used to improve the validity of the current PRA instrument.

The need to periodically evaluate and re-validate these instruments need not be that burdensome for the counties especially given their importance in managing local criminal justice costs and enhancing public safety. Once the instruments are automated, the time and effort to periodically evaluate them is minimal (from $15,000 to $35,000).

I believe there are 24 counties in Maryland. The state could ease the burden to the counties by providing implementation and re-validation funds for such purposes and/or a pool of consultants who will assist the counties with this work. Assuming an average re-validation cost of $35,000 per county and a requirement of an evaluation every five years, the annualized statewide costs to support this work for all 24 counties would be about $170,000 (24 counties x $35,000 per study/5 years).

With these thoughts in mind JFA does support Maryland's legislative effort to assist counties implement and validate PRAs.

Thank you.

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