

Race & Pretrial Risk Assessment



The design, testing and validation processes of actuarial pretrial risk assessment instruments are such that racial biases are virtually eliminated. A common misperception of these tools is that they rely heavily on defendants' prior arrests to determine the pretrial risk score, thereby discriminating against people of color who, for a variety of reasons, may have higher rates of previous justice system involvement. This is not the case. Below are some facts about this issue.

- Not a single existing actuarial risk tool - the one used nationwide in the federal courts, the handful of statewide tools, or the dozens of countywide tools - rely primarily on the number of charges.
- Many tools do not contain a charge history component because it was not shown to be predictive of pretrial risk in that jurisdiction. In the occasional scenario where charge history is present, it is just one of the approximately 8 to 12 predictive items on the tool.
- The weighting of risk factors on actuarial risk tools ensures that one factor cannot sway the total risk score to lead to biased decision-making to release or detain defendants of a certain race or ethnicity. This is true for any of the factors on a given tool such as previous arrests, convictions, violations of supervision, etc.
- Most risk factors are not scored at higher point values in a linear manner as the number of events (e.g., arrests, convictions, etc.) increase. Most often, defendants with one or more events are scored as 1 point (higher risk on that individual factor). So, a defendant of color with 5 events would score the same as a white defendant with 2 events. Statistically, both defendants represent the same level of risk in that jurisdiction, despite their differing arrest histories.
- Recently developed actuarial risk tools have been statistically tested to ensure they are not biased against certain demographic groups prior to implementation. The tests have shown that individual factors almost never show such bias because of the reasons stated above. If an item is found to result in biased results, it is deleted from the actuarial tool prior to implementation.

The tables below represent the results of the 2010 validated Kentucky pretrial risk instrument.¹ They show that black and white defendants are virtually identical on the final risk level with only a slight, not substantive, difference on moderate and low risk levels.

Hispanics were found to have much lower pretrial risk in the analysis, most likely because they were processed through Immigration and Customs Enforcement (ICE) holds and have minimal criminal histories but good stability in residency and work. There were also thousands of cases where the ethnicity was unknown.

Kentucky Pretrial Risk Levels by Race and Ethnicity

	HIGH Risk		MODERATE Risk		LOW Risk		Total Sample	
	Defendants	%	Defendants	%	Defendants	%	Defendants	%
BLACK	731	7.9%	3,983	43.1%	4,522	49.0%	9,236	19.7%
WHITE	2,880	7.8%	14,332	38.9%	19,674	53.3%	36,886	78.7%
Total	3,619	7.7%	18,476	39.4%	24,790	52.9%	46,885	100.0%

	HIGH Risk		MODERATE Risk		LOW Risk		Total Sample	
	Defendants	%	Defendants	%	Defendants	%	Defendants	%
HISPANIC	15	1.4%	256	23.1%	836	75.5%	1,107	3.0%
NON-HISPANIC	2940	8.1%	14,568	40.1%	18,863	51.9%	36,371	97.0%
Total	2955	7.9%	14,824	39.6%	19,699	52.6%	37,478	100.0%

¹ Austin, J., Ocker, R. & Bhati, A. (2010). *Kentucky Pretrial Risk Assessment Instrument Validation*. The JFA Institute.