

# Pretrial Risk Assessments in North Carolina

December 2024

## Introduction

In North Carolina, thirty-seven of the state's 100 counties offer some kind of pretrial supervision and support services.<sup>1</sup> The National Association of Pretrial Services Agencies identifies two primary roles of pretrial services agencies. First, to assist judicial officers in making informed release decisions that promote court appearance and public safety. And second, to offer supervision and support options for individuals who require oversight while on pretrial release.<sup>2</sup> These options can include services such as court date reminders, check-ins with staff, electronic monitoring, and providing referrals to community service providers.

Numerous North Carolina counties use pretrial risk assessments to assist judicial officers in making informed release decisions. As used here, the term pretrial risk assessment refers to tools that are designed to predict the likelihood that someone will appear in court and remain arrest-free while on pretrial release.<sup>3</sup>

This briefing paper provides information about the use of pretrial risk assessments in North Carolina, including the types of assessments being used and how they are implemented. We also share lessons learned from stakeholders about implementation. This information was gathered as part of a larger partnership between the UNC School of Government Criminal Justice Innovation Lab (the Lab) and the North Carolina Pretrial Services Association (NCPA) to assess the feasibility of research on the impact of pretrial services.

## Methodology

We gathered information about pretrial risk assessments primarily from three sources: (1) a survey of pretrial services agencies, (2) semi-structured interviews with pretrial services staff, and (3) sample pretrial services data. We supplemented these sources with information we obtained in other pretrial projects across the state.

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<sup>1</sup> Pretrial Supervision & Support Services in North Carolina. (Dec 2024). *UNC School of Government Criminal Justice Innovation Lab*. <https://cjl.sog.unc.edu/resource/pretrial-supervision-support-services-in-north-carolina/>.

<sup>2</sup> See Standard 4.1(a), pg.ix in National Association of Pretrial Services Agencies. (2020). *Standards on Pretrial Release: Revised 2020*. <https://drive.google.com/file/d/1edS2bltwfNROieGeu1A6qKluTfzqop92/view?usp=sharing>.

<sup>3</sup> For detailed primers on pretrial risk assessments, see Desmarais, S.L. & Lowder, E.M. (2019). *Pretrial Risk Assessment Tools: A primer for judges, prosecutors, and defense attorneys*. <https://safetyandjusticechallenge.org/wp-content/uploads/2021/06/Pretrial-Risk-Assessment-Primer-February-2019.pdf> and Advancing Pretrial Policy & Research (APPR). (2023). *Pretrial Assessment Tools*. <https://cdn.filestackcontent.com/security=policy:eyJleHBpcnkiOjQwNzgzNjQwMDAsImNhbgwiOlsicGljayIsInJlYWQiLCJ3cmI0ZSIslndyaXRlVXJslwiw3RvcmlUjCjB252ZXJ0liwlcVtb3ZlliwicVtV29ya2Zsb3ciXX0=,signature:9df63ee50143fbd862145c8fb4ed2fcc17d068183103740b1212c4c9bc858f63/wNGeL8FXS7OCTcH7I9eF>.

## Survey

In June 2024, we conducted a survey to gather information about the use of pretrial risk assessments in North Carolina. This was an extension of a previous survey we did in April 2023, to determine the scope and availability of pretrial services statewide. Based on results from the 2023 survey, we targeted twenty-six counties for the follow-up survey, including:

- Counties that reported using a risk assessment (eighteen counties);
- Counties that did not report using a risk assessment but indicated that they provide multiple pretrial services, suggesting they may have some other system to determine assignment to services (seven counties); and
- Counties where we had no information about the availability of pretrial services (one county).<sup>4</sup>

The survey included questions about the types of pretrial services available in each county and the number of people who receive services. It also asked whether a pretrial risk assessment was being used and if so, for more information about the tool and its implementation. We received responses from nineteen of the twenty-six surveyed counties, a 73% response rate.

## Semi-Structured Interviews

Of the nineteen counties that responded to the survey, thirteen reported using some kind of risk assessment.<sup>5</sup> We contacted all thirteen counties and requested an interview to discuss the assessment process in additional detail. Ten counties responded and agreed to participate in interviews. We conducted interviews with pretrial services staff, primarily pretrial agency directors.

During the interviews, we discussed how staff administer the assessment, which individuals are assessed, and how scores are used to recommend different levels and types of services. We also determined (1) when the tool was introduced, (2) whether any other tools were previously used, and (3) what other factors influence pretrial recommendations made to the judicial official (e.g., interviews separate from the risk assessment).

## Sample Data

Finally, four counties that participated in interviews provided sample pretrial case management system data to us for review.

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<sup>4</sup> Seven counties did not respond to the 2023 survey. However, before distributing the updated survey, we were able to verify that six did not have any kind of pretrial services and were not using risk assessments. Those six jurisdictions thus were removed from the group of counties that we identified for follow-up, leaving us with only one county where we did not have any information.

<sup>5</sup> Two of the thirteen counties did not fully complete the survey. While reporting use of a risk assessment, they did not answer additional questions about the type of assessment or its implementation. Nor did they respond to interview requests. As such, we cannot provide additional information about pretrial risk assessment in those two counties. De-identified summary information about the eleven counties that supplied more detailed information is provided in Appendix A.

## Findings

Eleven counties reported using a risk assessment *and* identified the specific instrument used.<sup>6</sup> Four reported using the Virginia Pretrial Risk Assessment Instrument or the revised version of that instrument (collectively, VPRAI), six reported using the Public Safety Assessment (PSA), and one county reported using a tool created by the jurisdiction.

### The Virginia Pretrial Risk Assessment Instrument

The VPRAI was released to the public in 2005 after initially being developed for statewide use in Virginia. The assessment considers eight factors. Five factors pertain to the person's criminal history:

- the nature of the current charge,
- whether the person has other pending charges at the time of arrest,
- the nature of the person's previous convictions (misdemeanor or felony),
- whether the person has two or more failures to appear, and
- whether the person has two or more violent convictions.

Three additional VPRAI factors are unrelated to criminal justice history:

- length of time at current residence,
- whether the person was employed at the time of arrest, and
- whether the person has a history of drug abuse.

The eight factors are used to calculate a raw score between zero and fourteen. The raw score then translates to six risk levels, one through six.<sup>7</sup>

In 2016, Virginia released the VPRAI-R, a revised version of the instrument. The VPRAI-R modifies two factors, removes one factor, and adds one factor, but otherwise operates the same as the VPRAI. Because both instruments were specifically created for use in Virginia, they require modification for use in North Carolina to, for example, align with the state legal standards.

Studies in other jurisdictions have validated the VPRAI's ability to effectively predict the likelihood of success on pretrial release.<sup>8</sup> Two North Carolina counties that use the VPRAI report having done their own independent validations of the assessment using local data. One of these validation studies was

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<sup>6</sup> A total of twenty-three counties reported using a risk assessment; only eleven specifically identified the instrument used.

<sup>7</sup> Virginia Department of Criminal Justice Services. (2018). *Virginia Pretrial Risk Assessment Instrument (VPRAI) Instruction Manual – Version 4.3*. [https://cjdata.tooltrack.org/sites/default/files/2019-05/virginia-pretrial-risk-assessment-instrument-vprai\\_0.pdf](https://cjdata.tooltrack.org/sites/default/files/2019-05/virginia-pretrial-risk-assessment-instrument-vprai_0.pdf).

<sup>8</sup> Stanford Law School Policy Lab. (2019). *Risk Assessment Fact Sheet: Virginia Pretrial Risk Assessment Instrument (VPRAI)*. <https://law.stanford.edu/wp-content/uploads/2019/06/VPRAI-Factsheet-FINAL-6-20.pdf>

led by the Lab and identified issues with the tool's ability to predict risk as to certain demographic groups.

#### *Administration of the Instrument*

Administration of the VPRAI requires an interview with the person charged and a review of their record of court appearance and criminal history. North Carolina counties that use the VPRAI report that the interview provides additional important information, such as details about the person's behavioral health needs.

In three of the counties using the VPRAI, assessments are done for everyone in custody before the first appearance, subject to limited exceptions.<sup>9</sup> Due to limited staff, one county prioritizes assessing individuals who are identified as having mental health or substance use concerns.

#### *Using the Score to Produce Recommendations*

After the VPRAI is completed and produces a risk score, pretrial services staff then apply a decision-making matrix called a Praxis. The Praxis is a table or series of tables that recommends a supervision level based on the person's risk score and the type of new charge. Appendix B shows an example of a Praxis from a county in North Carolina. In addition to modifying the VPRAI assessment to align with North Carolina law, North Carolina counties that use this instrument also customize the Praxis.

After the Praxis is applied, the VPRAI provides an opportunity for a "staff recommendation" that includes release, detain, or no recommendation. Only one North Carolina county that uses the VPRAI consistently provides a staff recommendation. In the other three counties, staff decline to do so, citing concerns about interfering with the judge's decision. Staff in these counties describe their role as providing information to the judge and signaling an appropriate supervision level, should the judge decide to release the individual; they do not, however, feel that it is appropriate to recommend whether the person should be released.

In the one jurisdiction where staff provide a recommendation, they report that judges generally follow that suggestion. Staff shared that they select "no recommendation" when they feel that the risk score may understate the person's true risk. For example, where the person has multiple impaired driving offenses in short succession, but no other criminal involvement. In this scenario, the risk assessment would provide a low risk score. If staff feel that this record indicates a more significant public safety risk, they will check "no recommendation" and explain their reasoning to the judge. Staff in other VPRAI jurisdictions also shared that they felt the instrument sometimes underrepresents risk in impaired driving cases.

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<sup>9</sup> In North Carolina, bail is initially set at an initial appearance before a magistrate. Individuals held after the initial appearance receive a first appearance before a judge. See Appendix A for more detail on how the VPRAI is used in North Carolina.

Judges retain discretion to deviate and impose conditions that are more or less restrictive than those recommended by the instrument or by staff. In all four North Carolina counties that use the VPRAI, staff reported that deviations are common.

### *Changing Use in North Carolina*

The VPRAI was once the predominant risk assessment instrument used in North Carolina. However, some jurisdictions have moved or are moving away from it, citing two concerns about the interview component. First, conducting an interview is time-consuming, an issue exacerbated by limited staff resources. And second, relying on an interview may introduce unconscious biases from pretrial services staff and result in inconsistent scoring and recommendations. When we conducted interviews, two of the four jurisdictions using the VPRAI were actively planning to switch to the PSA in 2024.

### **The Public Safety Assessment**

The PSA was developed by Arnold Ventures and released to the public in 2018, after five years of research and testing in pilot sites. The instrument relies on nine factors:

- the person's age at the time of arrest,
- whether the current offense is a violent one,
- whether the person has pending charges at the time of arrest,
- whether the person has a prior misdemeanor conviction,
- whether the person has a prior felony conviction,
- whether the person has a prior violent conviction,
- whether the person has a prior failure to appear in the past two years,
- whether the person has a prior failure to appear older than two years, and
- whether the person has previously been sentenced to incarceration.

Information on the nine factors produces three different raw scores for Failure to Appear (FTA), New Criminal Arrest (NCA), and New Violent Criminal Arrest (NVCA). The FTA and NCA raw scores are then converted to a scaled score from one to six. The NVCA raw score is converted into a "violence flag." An NVCA raw score of zero to three does not receive a flag for violence, while a NVCA score of four to seven does.<sup>10</sup>

### *Administration of the Instrument*

Unlike the VPRAI, the PSA does not require an interview. All needed information can be obtained from court records and criminal history databases. Several counties that currently use the PSA previously used the VPRAI or considered that instrument before choosing the PSA. Even though they transitioned away from the VPRAI or decided not to use it, three jurisdictions reported that judges valued the additional information provided by an interview. As such, pretrial services staff in those counties conduct a truncated interview in addition to administering the PSA. The interview focuses on topics

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<sup>10</sup> Advancing Pretrial Policy & Research (APPR). (2024). *How the PSA Works*. <https://advancingpretrial.org/psa/factors/>.

such as substance use history, compliance with other supervision (e.g., probation), and additional details on past convictions.

In four of the six jurisdictions using the PSA, the instrument is administered to nearly everyone in custody on a new criminal charge prior to the first appearance.<sup>11</sup> The fifth jurisdiction administers the PSA even earlier: during booking in connection with their initial appearance before a magistrate. As a result, in that jurisdiction magistrates can use risk assessment data when setting conditions of release. The sixth jurisdiction reported in our survey that staff complete the PSA after the first appearance before the judge. However, because that county did not participate in interviews, we could not obtain additional detail about its practices.

#### *Using the Score to Produce Recommendations*

Each jurisdiction that uses the PSA creates a release conditions matrix to guide decisions. The matrix recommends supervision levels that increase as FTA and NCA scores rise. In North Carolina, jurisdictions that use the PSA have between three and five different supervision levels. Each supervision level corresponds to different services and supervision requirements. A sample PSA release conditions matrix and table of corresponding services is provided in Appendix C.

In all PSA counties, judicial discretion is maintained, and judges can override recommendations in the matrix. As in VPRAI jurisdictions, staff in PSA counties report that judicial overrides are common.

Two North Carolina counties have conducted validations of the PSA using local data and report finding that the instrument was sufficiently predictive.

#### **Jurisdiction-Specific Tools**

One county reported using a jurisdiction-created tool. The tool uses information obtained from an interview to categorize people into three levels of supervision. A summary sheet from the interview and the recommended supervision level are then presented to the judicial official to be considered in the decision-making process. The assessment includes many of the same factors used in the VPRAI—e.g., criminal history, prior history of failure to appear, and substance use history. However, the jurisdiction has not yet validated the tool to determine if it is sufficiently predictive. Even if a jurisdiction borrows from a validated tool, minor changes can impact an assessment's accuracy and efficacy.

#### **Risk Assessments versus Structured Decision-Making Tools**

As noted above, only one North Carolina county has been able to implement risk assessment in connection with the initial appearance before a magistrate. However, we know from other work in North Carolina that many counties use structured decision-making tools at the initial appearance, sometimes followed by a risk assessment in connection with the later first appearance before a judge.

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<sup>11</sup> See Appendix A for more detailed information.

Unlike risk assessments, structured decision-making tools are not designed to predict the likelihood of certain pretrial outcomes. Instead, structured decision-making tools seek to provide a framework that promotes pretrial decisions that are informed by all relevant evidence and adhere to state law and local bail policy. An example of a structured decision-making tool used by magistrates at the initial appearance in one North Carolina county is included as Appendix D. Empirical evaluations done by the Lab show that these tools have been implemented with success.<sup>12</sup>

## Considerations for Implementation

During our interviews with pretrial staff, several themes emerged about successful implementation of risk assessments. We share those themes here, along with recommendations about pretrial risk assessment data practices.

### *Collaboration & Trust is Key*

In interviews, pretrial services staff emphasized the importance of collaboration when implementing a risk assessment instrument. Multiple jurisdictions described bringing together diverse stakeholders to agree on which assessment to use and how assessment risk scores should correspond to various supervision levels. This collaborative approach helps build buy-in for the instrument. Even in jurisdictions where judges commonly override assessment recommendations, pretrial services staff report that judges value the assessment. Specifically, that they review and consider the assessment report and inquire when reports are not provided.

Additionally, staff described that once pretrial services staff could “prove themselves,” through demonstrated professionalism in the courtroom and successful outcomes, judges and prosecutors became more comfortable releasing individuals to pretrial services.

### *Prioritize Ongoing Education*

Multiple interviewees mentioned the importance of ongoing training and education about the risk assessment instrument—both for pretrial services staff and other stakeholders. Particularly for new judges, staff described the benefits of formal training instead of relying on a more informal on-the-job introduction. Formal training ensures that judges have accurate and detailed information about the purpose of the assessment, the scoring process, and different recommendations. Interviewees also mentioned the need for refresher training for judges, developing training modules for pretrial services

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<sup>12</sup> For evaluations of structured decision-making tools in North Carolina, see: Vaske, J. (2020). *North Carolina Judicial District 30B Pretrial Pilot Project Final Report, Part II: Evaluation Report*. <https://cjil.sog.unc.edu/wp-content/uploads/2023/07/March-2020-Final-Report-30B-Project-Part-2.pdf>; Smith, J. & Vaske, J. (2021). *Bail Reform in North Carolina Judicial District 2*. UNC School of Government Criminal Justice Innovation Lab. <https://cjil.sog.unc.edu/wp-content/uploads/2023/07/JD-2-Final-Report-9.21.2021.pdf>; Smith, J., Vaske, J., & Hatton, C.R. (2022). *Bail Reform in North Carolina District 21*. UNC School of Government Criminal Justice Innovation Lab. [https://cjil.sog.unc.edu/wp-content/uploads/2023/07/JD-21-April-2022-Report\\_2022.4.13.pdf](https://cjil.sog.unc.edu/wp-content/uploads/2023/07/JD-21-April-2022-Report_2022.4.13.pdf); and Smith, J., Vaske, J., Taylor, W.D., & Turner, H. (2023). *Pretrial Reform in Orange County, North Carolina: Final Supplemental Report*. UNC School of Government Criminal Justice Innovation Lab. [https://cjil.sog.unc.edu/wp-content/uploads/2023/11/Orange-County-Bail-Project-Final-Supplemental-Report\\_2023.11.17.pdf](https://cjil.sog.unc.edu/wp-content/uploads/2023/11/Orange-County-Bail-Project-Final-Supplemental-Report_2023.11.17.pdf).



staff, and creating ongoing opportunities for stakeholders to provide feedback about the use of risk assessments.

Two counties noted that the role of pretrial services was initially limited to certain types of cases (e.g., low-level offenses, individuals with mental health issues) and that additional education over time prompted stakeholders to consider a broader role for the program.

### *Be Willing to Change*

All the jurisdictions reported changes in their pretrial services program over time with respect to use of risk assessments as well as the pretrial services offered, the number of pretrial staff, and the number of cases requiring supervision. Staff consistently emphasized the need to be flexible and willing to make changes based on feedback from stakeholders and data and research. One county described changing their release conditions matrix less than a year after implementation due to stakeholder feedback. Another county switched from the VPRAI-R to the PSA after an external validation study found that their instrument was not accurately predicting risk across race and gender.

### *Plan for and Improve Data Systems*

In the survey and interviews, we asked pretrial services staff about their data collection protocols. We also obtained and reviewed sample data from four counties. The type of information collected varied widely, as did the tools to collect and maintain that information. Some counties reported using paper files while others reported using customized case management software with cross-agency integration. The most common data-related problem we heard from stakeholders pertained to outdated case management systems with limited capabilities. Specifically, that while those systems track compliance with supervision requirements, they lack the ability to easily track risk assessment data. As a result, many counties keep manual records, either on paper or in a separate program like Microsoft Excel, to track information about completed risk assessments, risk assessment scores, and recommended and imposed supervision levels. Furthermore, even counties with sophisticated data systems lacked defined processes to track supportive services, like behavioral health referrals.

Data issues including a lack of quality control with data entry, failure to track all relevant data points, having paper records, and having electronic records that are not fully integrated with other record systems can confound efforts to evaluate outcomes, both for individuals and for the program itself. The ability to evaluate outcomes can be critical for many reasons including improving public safety, promoting court appearance, and obtaining and maintaining funding.

Jurisdictions looking to implement risk assessments or improve data collection practices may want to consider the following data-related recommendations:

- 1) Opt for an electronic case management system from which you can pull relevant data for quality control, outcome evaluations, and risk assessment validation studies; pulling data from paper records can be prohibitively time consuming for these purposes.
- 2) Have standard, written practices for completing risk assessments and entering pretrial data and for regular quality control of those functions.



- 3) Choose a case management system that can track all relevant pretrial data, including demographic information about defendants; all data that feeds the risk assessment; when the risk assessment was done and by whom; risk assessment raw and scaled scores; supplemental information obtained; pretrial services' recommendations; judicial officials' pretrial decisions; supervision and support services provided and received; compliance with supervision requirements, and pretrial failures.
- 4) If possible, opt for a case management software that can be integrated or linked with other county records, such as court records or jail booking information.

## Appendix A: Summary of Jurisdictions Using Risk Assessments<sup>13, 14</sup>

County	What Assessment Is Used?	When Was the Assessment Implemented?	Who Receives the Assessment?	When Is the Assessment Administered?
County A	VPRAI	2019	Priority is given to individuals in custody suspected to have behavioral health or substance use concerns.	Prior to the first appearance before a judge.
County B	PSA	2020	Everyone in custody, with limited exceptions (e.g., probation/parole violations, fugitive warrants).	Prior to the first appearance before a judge.
County C	PSA	2024	Everyone in custody.	Prior to the first appearance before a judge.
County D	Jurisdiction-Specific Tool	2023	Everyone in custody, except for individuals booked on impaired driving or domestic violence-related charges, which are ineligible for pretrial services.	Prior to the first appearance before a judge.
County E	PSA	2020	Everyone in custody, with limited exceptions (e.g., probation/parole violations, fugitive warrants).	Prior to the first appearance before a judge.
County F	VPRAI	2018	Everyone in custody.	Prior to the first appearance before a judge.
County G	PSA	2015	Everyone processed at the jail, except for individuals booked on certain high-level felonies that are ineligible for pretrial services and limited other exceptions (e.g., probation/parole violations, fugitive warrants).	Prior to the initial appearance before the magistrate and, if not completed at that time, prior to first appearance before a judge.
County H	VPRAI; Actively switching to the	2012	Everyone in custody.	Prior to the first appearance before a judge.

<sup>13</sup> Two additional counties partially completed the survey. They indicated that they used risk assessments, but did not respond to the additional survey questions about the type of assessment or its implementation. Nor did they respond to our interview requests. Because we lacked key information about those jurisdictions, they are not included in this table.

<sup>14</sup> Because we told participating jurisdictions that they would not be identified in public reporting, they are anonymized in this table.

	PSA at the time of the interview			
<b>County I</b>	PSA	Unknown	Unknown	After the first appearance before a judge.
<b>County J</b>	VPRAI-R; Actively switching to the PSA at the time of the interview	2017	Everyone in custody, with limited exceptions (e.g., probation/parole violations, fugitive warrants).	Prior to the first appearance before a judge.
<b>County K</b>	PSA	2022	Everyone in custody, with limited exceptions (e.g., probation/parole violations, fugitive warrants).	Prior to the first appearance before a judge.

## Appendix B: Sample VPRAI Praxis & Corresponding Supervision Levels

### Non-Violent Misdemeanor

Risk Level	Supervision Level
Level 1	No Supervision
Level 2	No Supervision
Level 3	Administrative
Level 4	Level I
Level 5	Level II
Level 6	Detain

### Driving While Impaired

Risk Level	Supervision Level
Level 1	No Supervision
Level 2	Administrative
Level 3	Administrative
Level 4	Level I
Level 5	Level II
Level 6	Detain

### Non-Violent Felony

Risk Level	Supervision Level
Level 1	No Supervision
Level 2	Administrative
Level 3	Level I
Level 4	Level II
Level 5	Level III
Level 6	Detain

### Violent Misdemeanor

Risk Level	Supervision Level
Level 1	No Supervision
Level 2	Administrative
Level 3	Level I
Level 4	Level II
Level 5	Detain
Level 6	Detain

### Violent Felony or Firearm

Risk Level	Supervision Level
Level 1	Level II
Level 2	Level III
Level 3	Detain
Level 4	Detain
Level 5	Detain
Level 6	Detain

Supervision Level	Description
<b>Administrative</b>	<ul style="list-style-type: none"> <li>Receive reminders in advance of court dates</li> <li>Telephone report to Pretrial Services once per week</li> </ul>
<b>Level I</b>	<ul style="list-style-type: none"> <li>Telephone report to Pretrial Services twice per week</li> <li>Subject to monthly state-wide criminal background checks</li> <li>Receive reminders in advance of court dates</li> <li>Special condition compliance verification</li> </ul>
<b>Level II</b>	<ul style="list-style-type: none"> <li>Telephone report to Pretrial Services three times per week</li> <li>Subject to monthly state-wide criminal background checks</li> <li>Office visits with Pretrial Services as directed</li> <li>Receive reminders in advance of court dates</li> <li>Special condition compliance verification</li> </ul>
<b>Level III</b>	<ul style="list-style-type: none"> <li>Telephone report to Pretrial Services Monday through Friday</li> <li>Subject to monthly state-wide criminal background checks</li> <li>Receive reminders in advance of scheduled court dates</li> <li>Monthly office / Court visits with Pretrial Services</li> <li>Special condition compliance verification</li> <li>May also be subject to SCRAM, GPS monitoring, and drug screens</li> </ul>

## Appendix C: Sample PSA Release Conditions Matrix & Corresponding Supervision Levels<sup>15</sup>

Failure to Appear (FTA) Scaled Score	New Criminal Arrest (NCA) Scaled Score					
	1 91% Likely Arrest-Free	2 85% Likely Arrest-Free	3 78% Likely Arrest-Free	4 68% Likely Arrest-Free	5 55% Likely Arrest-Free	6 47% Likely Arrest-Free
<b>1</b> 89% Likely to Appear	Release Level 1	Release Level 1				
<b>2</b> 85% Likely to Appear	Release Level 1	Release Level 1	Release Level 1	Release Level 1	Release Level 2	
<b>3</b> 81% Likely to Appear		Release Level 1	Release Level 1	Release Level 1	Release Level 2	Release Level 3
<b>4</b> 73% Likely to Appear		Release Level 1	Release Level 1	Release Level 1	Release Level 2	Release Level 3
<b>5</b> 69% Likely to Appear		Release Level 2	Release Level 2	Release Level 2	Release Level 2	Release Level 3
<b>6</b> 65% Likely to Appear				Release Level 3	Release Level 3	Release Level 3

Release Activities and Conditions	Pretrial Release Level		
	1	2	3
Mandatory Statutory Conditions	Yes	Yes	Yes
Court Date Notifications	Yes	Yes	Yes
Criminal History Checks Once per Month		Yes	Yes
Check-in Once per Month			Yes
Other Case-Specific Conditions			If court-ordered

<sup>15</sup> Advancing Pretrial Policy & Research (APPR). (2024). *Release Conditions Matrix*. <https://advancingpretrial.org/psa/factors/release-conditions-matrix/>.

# Appendix D: Sample Structured Decision-Making Tool for Magistrates

## COUNTY MAGISTRATE BAIL EXPLANATION FORM



**DO NOT COMPLETE THIS FORM IF:**

- > Defendant arrested on OFA after FTA
- > Specific bail statute applies e.g., recidivist firearm offense
- > Case involves only a probation violation
- > Case involves fugitive order/warrant

Defendant Name		Magistrate Name	
Case #(s)		Date	

**STEP 1: What is the offense class of the most serious charge?<sup>1</sup>**

Class 2 or 3 Misdemeanor [GO TO STEP 4]

DWI, Class 1 or A1 Misdemeanor or Class F-I Felony [GO TO STEP 2]

Class A-E Felony [GO TO STEP 3]

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**STEP 2: Check any that apply:**

Charged offense was committed when Defendant was on pretrial release for a related offense<sup>2</sup>, or on supervised probation for any offense

Defendant has insufficient ties to the community to assure appearance or resides out of state<sup>3</sup>

Defendant has a history of FTAs<sup>4</sup>

Defendant has a prior record of a felony conviction or misdemeanor convictions within the last five years demonstrating a pattern of conduct<sup>5</sup>

Charged offense involves domestic violence<sup>6</sup>

Charged offense involves violence<sup>7</sup> or injury to a person<sup>8</sup>

Charged offense requires sex offender registration<sup>9</sup> or is a failure to register as a sex offender offense<sup>10</sup>

Charged offense is a drug trafficking offense<sup>11</sup>

Charged offense involves distribution of drugs<sup>12</sup>

Charged offense is stalking or cyberstalking

Charged offense is DWI and Defendant has at least one prior DWI conviction within the last 7 years

Defendant is impaired such that immediate release is likely to cause harm to self/others/property<sup>13</sup>

Charged offense involves Defendant's use of a firearm or deadly weapon or possession of a firearm in connection with a drug offense.

Charged offense related to gang activity<sup>14</sup>

**[IF ANY BOX IS CHECKED, GO TO STEP 3. IF NO BOX IS CHECKED, GO TO STEP 4]**

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**STEP 3: Make the statutory determination:**

Statute *requires* the judicial official to impose a written promise, custody release, or unsecured bond *unless* he/she determines that such release [check any that apply]

will not reasonably assure the appearance of the defendant as required;

will pose a danger of injury to any person; or

is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses<sup>15</sup>

**[IF ANY BOX IS CHECKED, GO TO STEP 5. IF NO BOX IS CHECKED, GO TO STEP 4]**

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**STEP 4:**  Follow policy recommendation & impose a written promise, custody release, or unsecured bond. **[FINISHED]**

Deviate from the policy recommendation & impose a secured bond. Record reasons below. **[GO TO STEP 6]**

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**STEP 5:**  Follow policy recommendation and impose a secured bond. Record reasons below. **[GO TO STEP 6]**

Deviate from the policy recommendation & impose a condition other than secured bond. **[FINISHED]**

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**STEP 6: FOR ALL SECURED BONDS, give reasons for imposing secured bond:**

I considered all information presented regarding ability to pay.<sup>17</sup> **[FINISHED]**

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