# ALGORITHMIC-BASED DECISION-MAKING TOOLS | FREQUENTLY ASKED QUESTIONS

## WHAT ARE RISK ASSESSMENTS/ALGORITHMIC DECISIONMAKING TOOLS?

Risk assessment tools are instruments that use actuarial data to forecast the likelihood that an individual will engage in a specific behavior. In the context of bail and pretrial justice, risk assessment tools are used to attempt to forecast the likelihood of an arrestee's appearance at trial and/or their risk to public safety. These tools are based on decades of historical data and can tell you how often similarly situated individuals have failed to appear or have been arrested by the police when released before trial.

## WHY ARE YOU CONCERNED ABOUT RISK ASSESSMENTS?

Risk assessment tools have multiple flaws. They are based on data from our historically discriminatory justice system, and therefore hold the potential to perpetuate discrimination in their assessments. The data driven nature of the forecasts made by these tools masks the concerns raised by their discriminatory effects. These tools measure group risk, not the individual person's likelihood of appearance/public safety risk. This is in direct contravention of a person's constitutional right to an individualized hearing before they are deprived of their liberty. Furthermore, risk assessments are often based on socioeconomic factors such as a person's education level or neighborhood, which causes them to be falsely flagged as dangerous, even though they themselves pose no risk. Plus, very rarely does the public know what data risk assessment tools are based upon, or how the algorithm works (the so-called "black box"). Any tool being used to take away someone's liberty should be open to scrutiny by the public.

## IF YOU OPPOSE RISK ASSESSMENTS, WHY PUT OUT A LIST OF PRINCIPLES?

We do oppose risk assessments, and believe that jurisdictions should end secured money bail in order to decarcerate people before trial. However, we also recognize that these tools are already being implemented across the country, and therefore wanted to issue a list of principles governing their use. We believe the tools should only be used as a means to reduce the potential harm caused by pretrial detention, within a pretrial system that provides individuals with an adversarial hearing with procedural safeguards that will protect their rights and the presumption of innocence.

## WHY SHOULDN'T RISK ASSESSMENT TOOLS BE USED TO RECOMMEND DETENTION?

The presumption of innocence – that anyone accused of a crime is innocent until proven guilty – is a bedrock principle of the criminal legal system. Preventative detention – the jailing of an individual to prevent that individual from committing further offenses – is only supposed to be used in extremely limited circumstances, if at all; it should not be the norm. Rather, if a jurisdiction is going to use these tools, they should only be used to recommend release of individuals on their own recognizance. When the tools do not recommend release, the recommendation should only trigger an individualized hearing to determine whether the person presents a substantial and identifiable risk of flight, or a credible danger to the community or a specific individual in jurisdictions where that inquiry is required by law.

## AREN'T THESE TOOLS BETTER AT PREDICTING RISK/LESS BIASED THAN JUDGES?

Not necessarily. Multiple studies have shown how inaccurate these tools can be when flagging a person who has been arrested as dangerous. One such study found that Blacks are falsely flagged as dangerous twice as often as Whites. Another study found that algorithms are only slightly more accurate than a coin toss, and yet another found that these tools were about as accurate as a random person selected to make a prediction.

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