

A Primer for Pretrial Risk Assessment

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Over 30 years of Research in Assessment has Identified some Important Principles

- Risk (Who)
- Need (What)

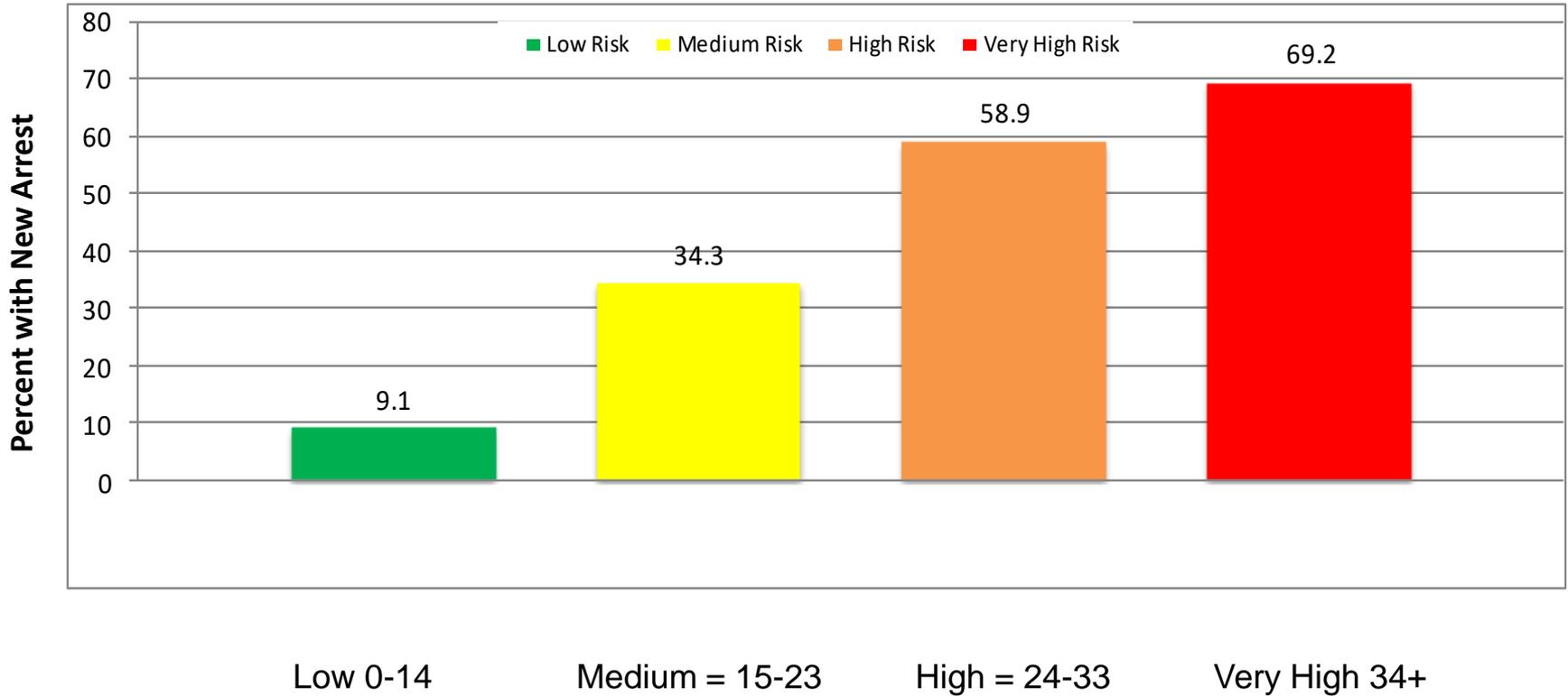
Let's Start with the Risk Principle

Risk refers to risk of reoffending and not the seriousness of the offense.

Risk Principle

As a general rule treatment effects are stronger if we target higher risk offenders, and harm can be done to low risk offenders

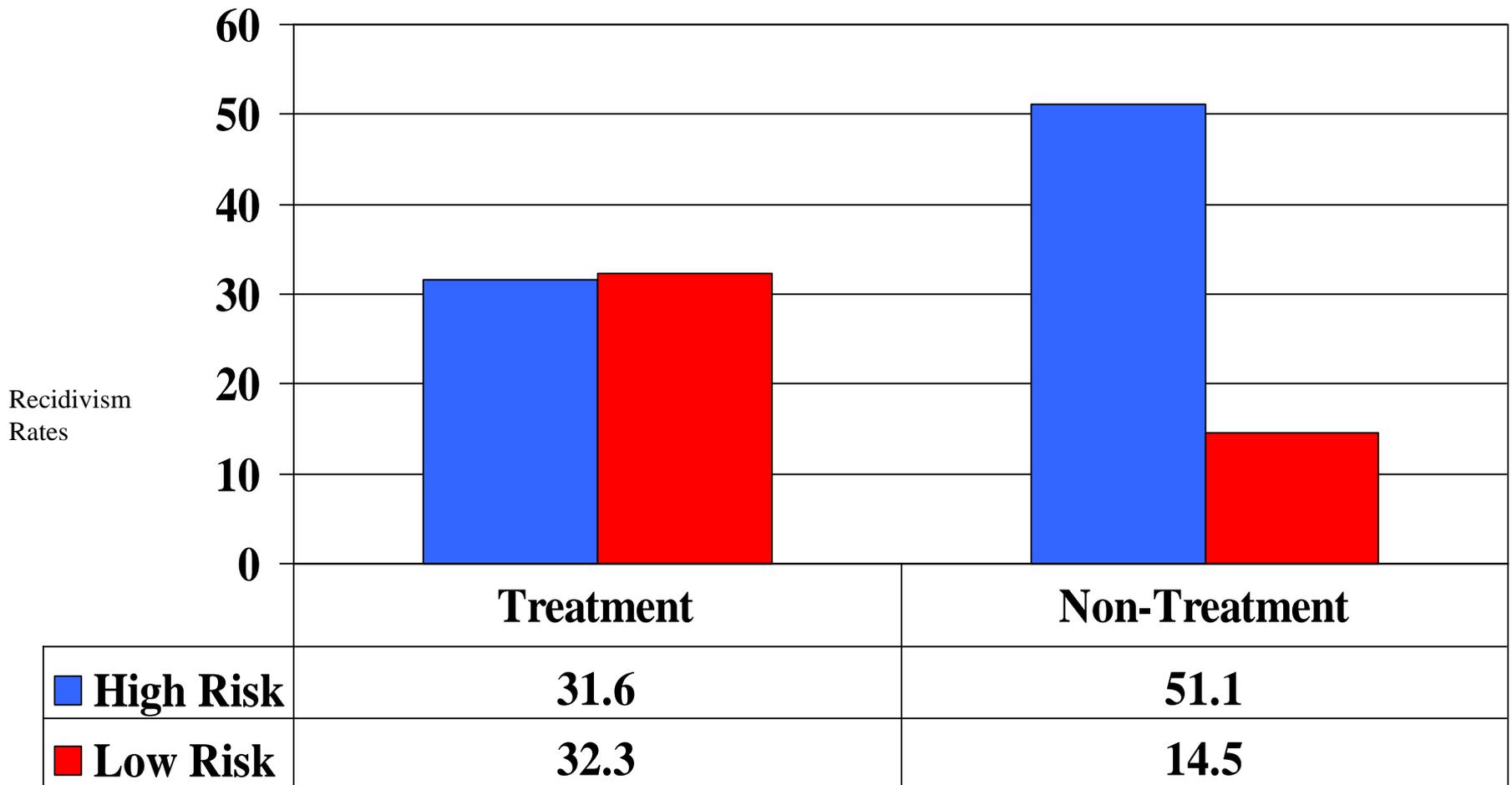
Risk Level by Recidivism for the Community Supervision Sample



Intensive Intervention for Low Risk Offenders will Often Increase Failure Rates

- Low risk offenders will learn anti social behavior from higher risk
- Disrupts pro-social networks
- Increased reporting/surveillance leads to more violations/revocations

Study of Intensive Rehabilitation Supervision in Canada

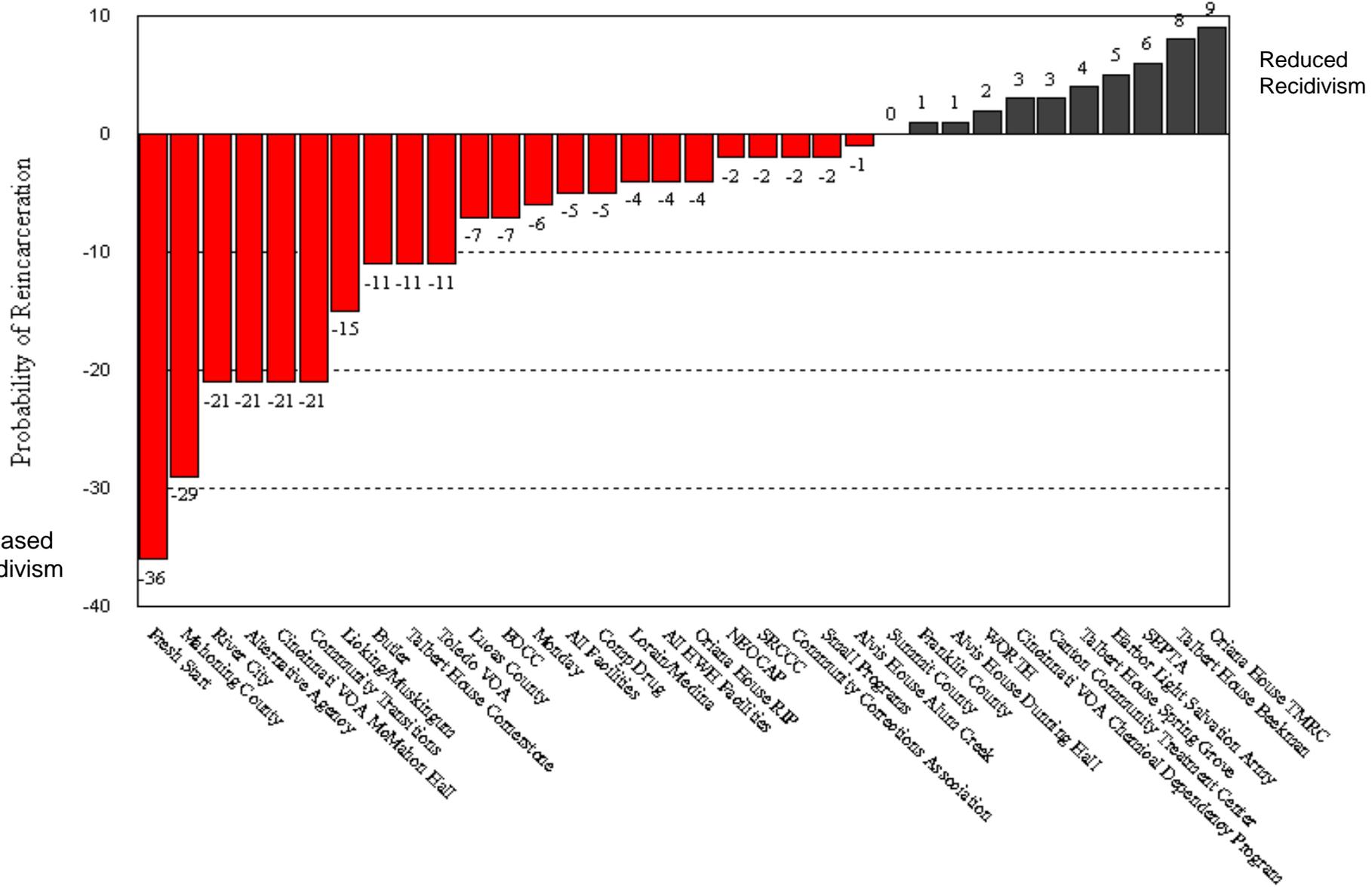


Bonta, J et al., 2000. A Quasi-Experimental Evaluation of an Intensive Rehabilitation Supervision Program., Vol. 27 No 3:312-329. *Criminal Justice and Behavior*

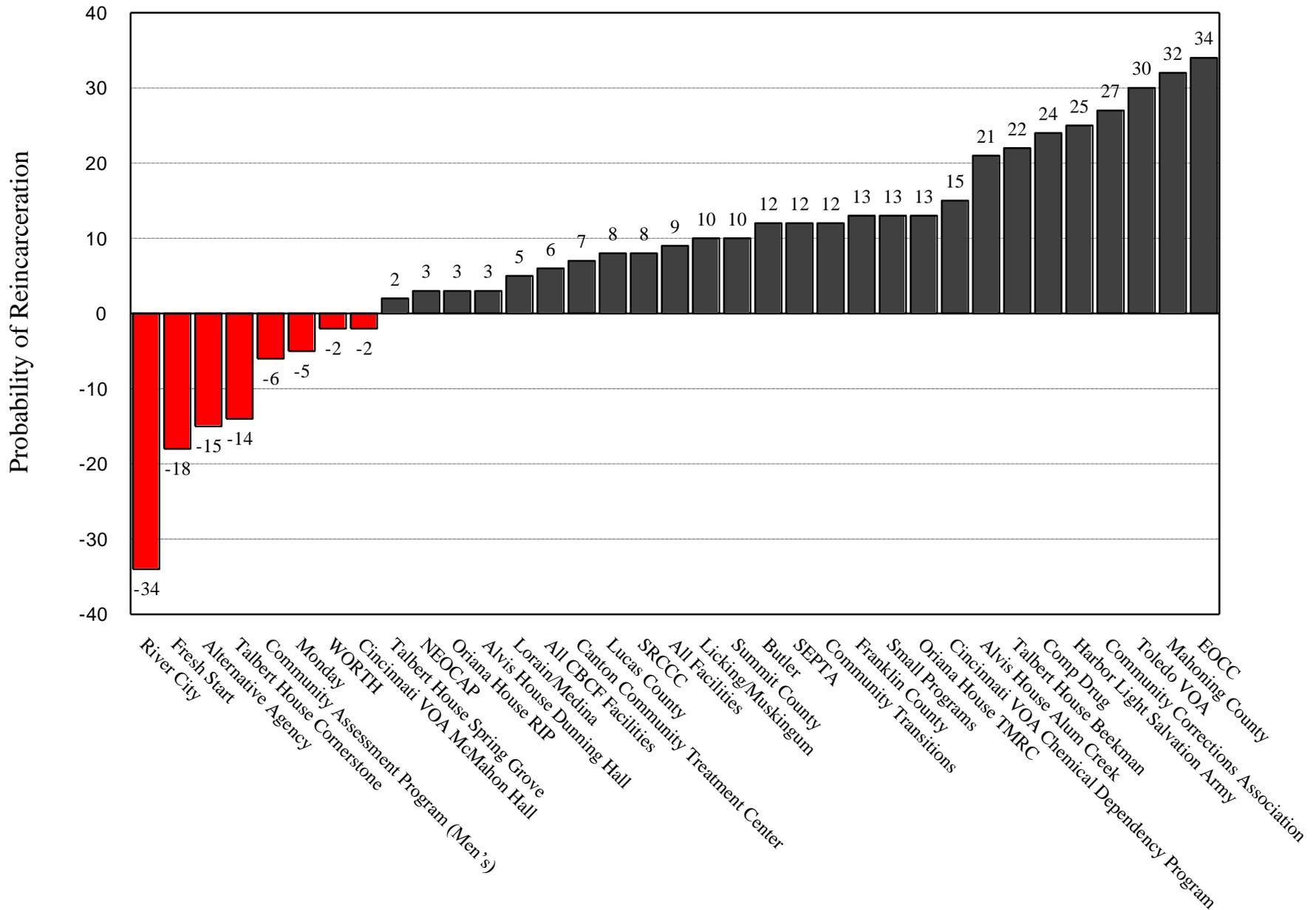
STUDY OF COMMUNITY CORRECTIONAL PROGRAMS IN OHIO

- **Largest study of community based correctional treatment facilities ever done up to that time.**
- **Total of 13,221 offenders – 37 Halfway Houses and 15 Community Based Correctional Facilities (CBCFs) were included in the study.**
- **Two-year follow-up conducted on all offenders**
- **Recidivism measures included new arrests & incarceration in a state penal institution**

Treatment Effects for Low Risk Offenders



Treatment Effects For High Risk Offenders



The Risk Principle and Pretrial Release

- Van Nostrand and Keebler (2009) found that when lower risk defendants were released to conditions that included alternatives to detention, they were *more* likely experience pretrial failure.
- These defendants were, in effect, over-supervised given their risk level.

To understand the Need Principle we need to review the body of knowledge related to risk factors

What are the risk factors correlated with criminal conduct?

Major Set of Risk Factors

1. Anti-social/pro-criminal attitudes, values, beliefs and cognitive emotional states.
2. Pro-criminal associates *and* isolation from anti-criminal others.
3. Temperamental and anti-social personality patterns conducive to criminal activity including:
 - Weak socialization
 - Impulsivity
 - Adventurous
 - Restless and aggressive
 - Egocentrism
 - Risk-taking
 - Weak problem-solving, self-regulation & coping skills
4. A history of anti-social behavior.

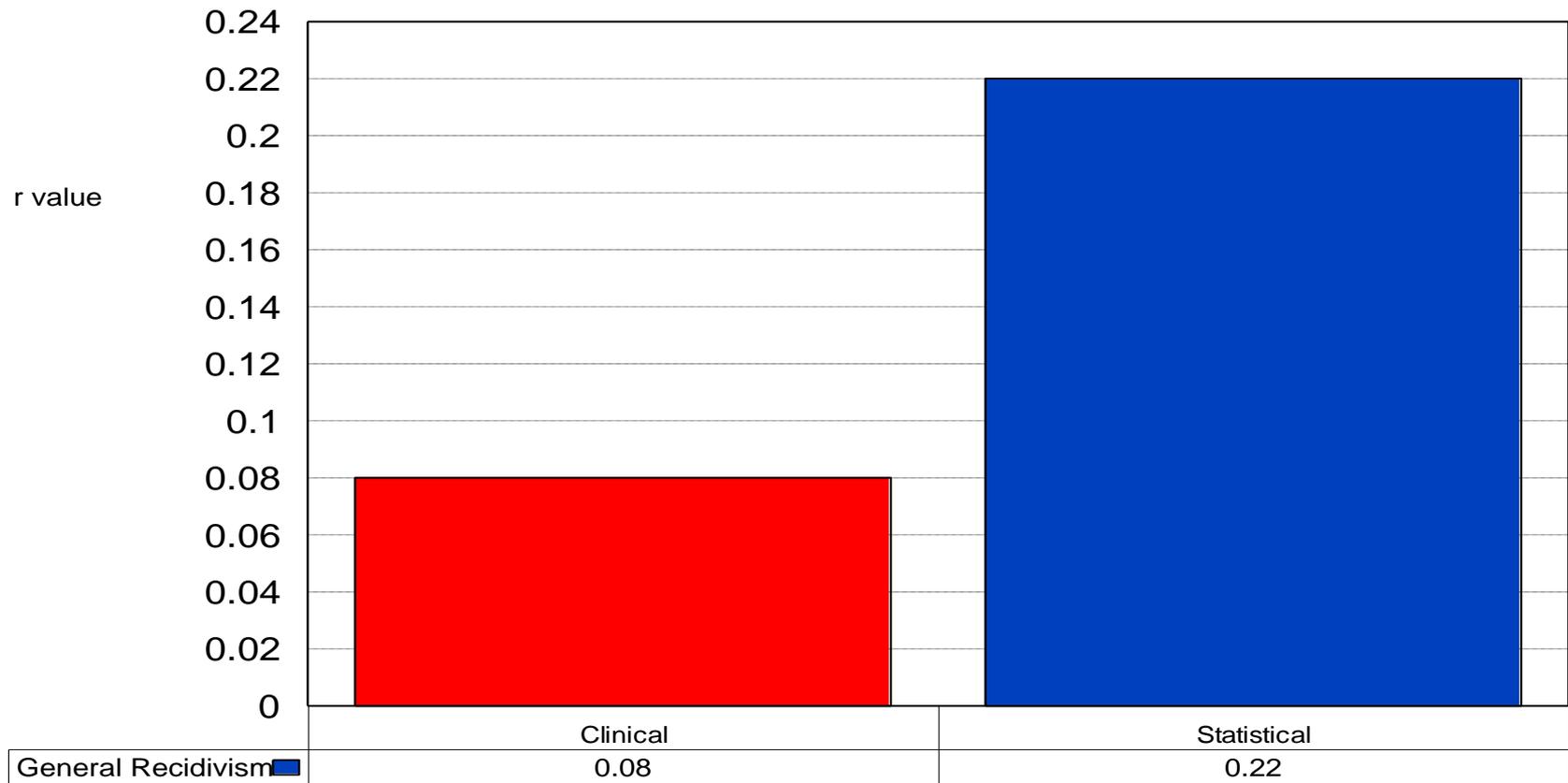
Major Set Continued

5. Familial factors that include criminality and a variety of psychological problems including:
 - Low levels of affection, caring, and cohesiveness
 - Poor parental supervision and discipline practices
 - Outright neglect and abuse
6. Low levels of personal, educational, vocational, or financial achievement.
7. Low levels of involvement in pro-social leisure activities.
8. Substance abuse.

Assessment is the engine that drives effective correctional programs

- Need to meet the risk and need principle
- Can help reduce bias
- Aids decision making
- Best risk assessment method is the actuarial (statistical) approach

Comparison of Clinical vs. Statistical Prediction of Recidivism



To Understand Assessment it is
Important to Understand Types of Risk
Factors

Dynamic and Static Factors

- Static Factors are those factors that are related to risk and do not change. Some examples might be number of prior offenses, whether an offender has ever had a drug/alcohol problem.
- Dynamic factors relate to risk and *can change*. Some examples are whether an offender is currently unemployed or currently has a drug/alcohol problem.

There are two types of dynamic risk factors

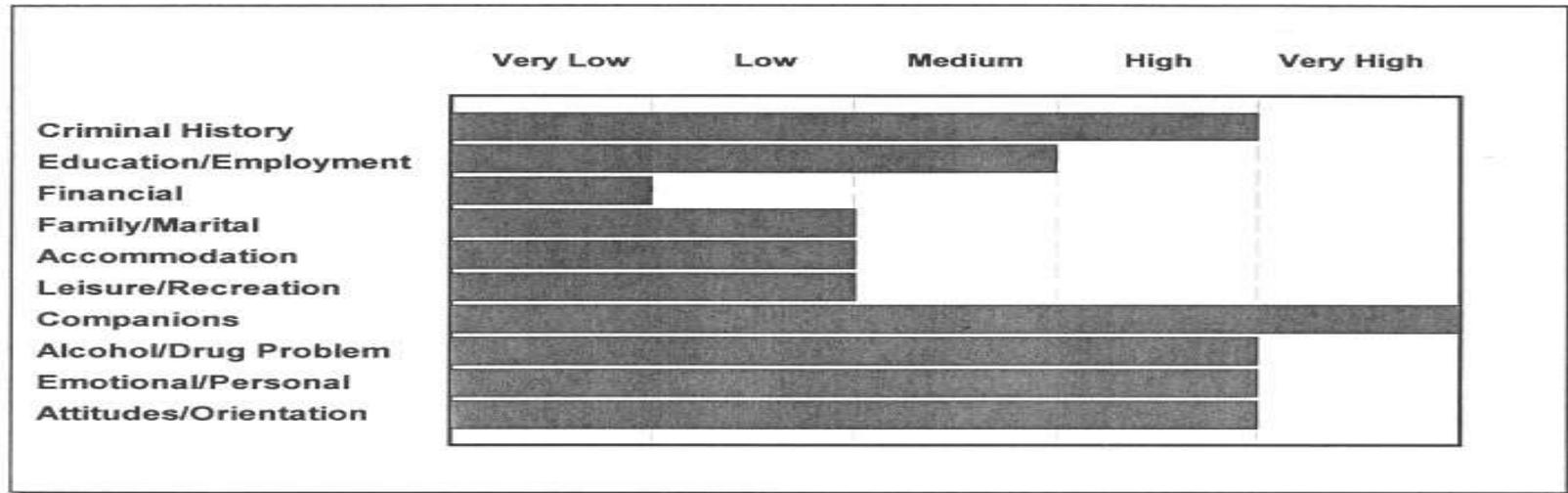
- Acute – Can change quickly
- Stable – Take longer to change

According to the American Heart Association, there are a number of risk factors that increase your chances of a first heart attack

- ✓ Family history of heart attacks
- ✓ Gender (males)
- ✓ Age (over 50)
- ✓ Inactive lifestyle
- ✓ Over weight
- ✓ High blood pressure
- ✓ Smoking
- ✓ High Cholesterol level

Some Examples of Offender Risk Assessment Tools

- Level of Service Inventory (LSI)
- COMPAS
- Ohio Risk Assessment System

Assessment of Risk/Needs based on LSI-R Subcomponents**Details Regarding Subcomponent Risks / Needs****Criminal History:**

1. Any prior adult convictions: Yes, Number: 3
2. Two or more prior convictions: Yes
3. Three or more prior convictions: Yes
4. Three or more present offenses: Yes, Number: 3
6. Ever incarcerated upon conviction: Yes
8. Ever punished for institutional misconduct: Yes, Number: 1
9. Charge laid or probation/parole suspended during prior community supervision: Yes

Education/Employment:

11. Currently unemployed: Yes
13. Never employed for a full year: Yes
14. Ever fired: Yes
16. Less than regular grade 12: Yes

Family/Marital:

23. Dissatisfaction with marital or equivalent situation: A relatively unsatisfactory situation with a need for improvement

Accommodation:

29. High crime neighbourhood: Yes

Leisure/Recreation:

31. Could make better use of time: A relatively unsatisfactory situation with a need for improvement

Companions:

Northpointe COMPAS Risk Assessment

Name: **Jones, Robert**

Date of Birth: **11/01/1968** SSN: **111-11-1111** Offender #: **121989**

Date of Screening: **11/01/2002** Comment/Description:

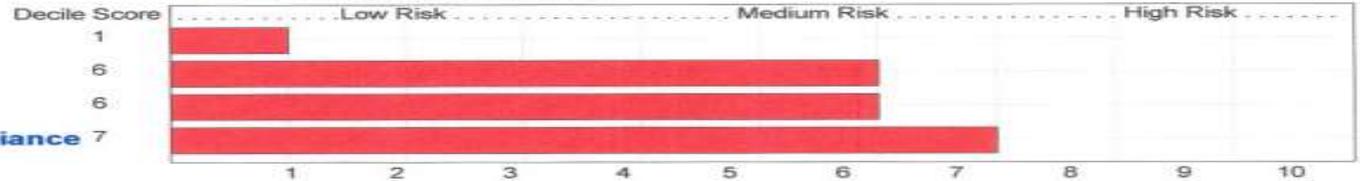
Overall Risk Potential

Violence

Recidivism

Failure to Appear

Community Non-Compliance



Criminogenic and Needs Profile

Criminal History Factors

Criminal Involvement	7
History of Non-Compliance	9
History of Violence	1
Current Violence	3

Criminal Associates/Peers

Substance Abuse	10
Financial Problems/Poverty	8
Vocational/Education Problems	5

Criminal Attitudes

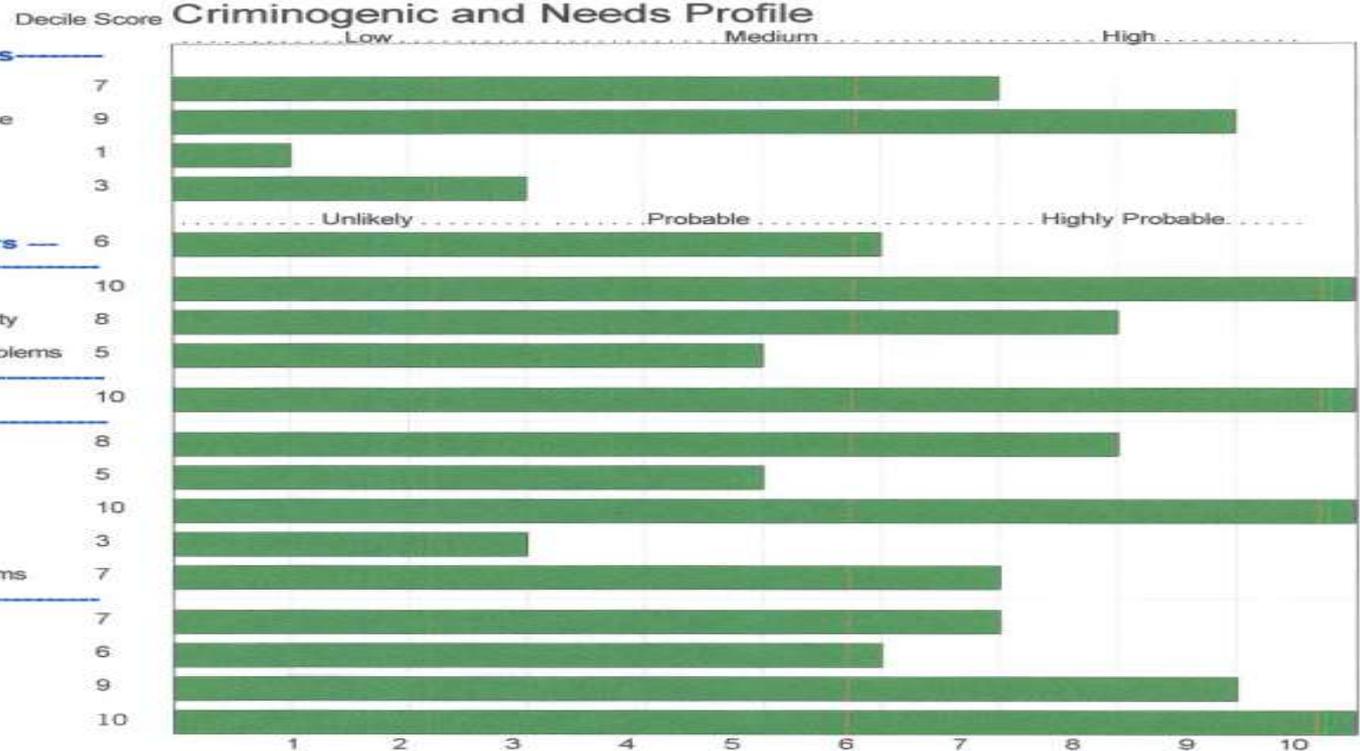
Criminal Thinking	10
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Social Environment

Family Criminality	8
Social Environment	5
Leisure and Recreation	10
Residential Instability	3
Social Adjustment Problems	7

Higher Order Factors

Socialization Failure	7
Criminal Opportunity	6
Criminal Personality	9
Social Isolation	10



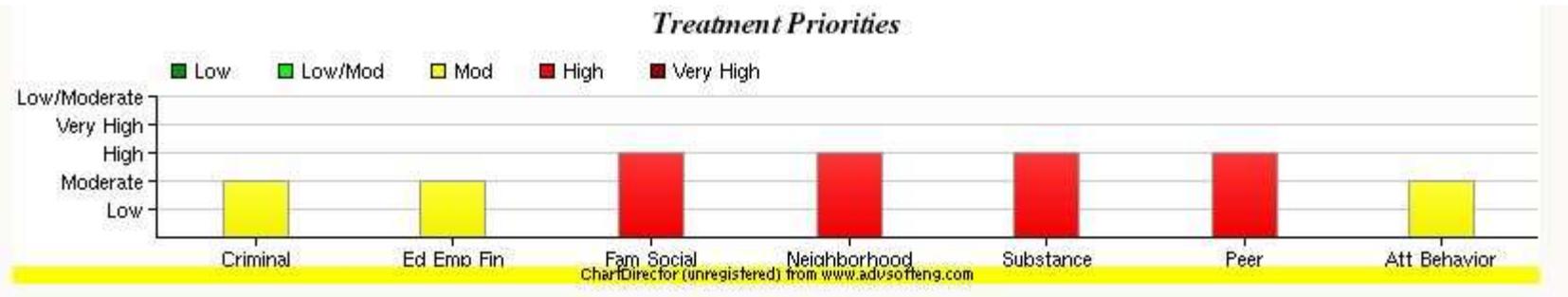
* Scales with an asterisk are deactivated.

One New Non-Proprietary System is the ORAS

The Ohio Risk Assessment System (ORAS) consists of 6 basic tools:

1. Pre-Trial Tool (ORAS-PAT)
2. Misdemeanor Assessment Tool (ORAS-MAT)
3. Community Supervision Assessment Tool (ORAS-CST)
4. Prison Intake Screening Tool (ORAS-PST)
5. Prison Intake Tool (ORAS-PIT)
6. Reentry Tool (ORAS-RT)

ORAS-Community Supervision Tool Intake Assessment



Challenges of Developing Pretrial Assessment Tools

- There have been hundreds of studies of criminal behavior over many years, involving thousands of offenders that have found great deal of consistency with regard to the basic domains of risk
- The challenges with pretrial are fairly unique and is probably the reason that there is so much consistency between pretrial assessment tools

Some Methodological and Practical Issues in Developing Pretrial Assessment

All the problems normally associated with developing assessment tools plus:

- Quality and availability of data
- Difficult to do random assignment and result is skewed sample – many high risk/serious defendants are not granted pretrial release
- Generally we are concerned about outcomes during the pretrial release period: result is short follow-up and low base rates of failure
- Legal status limits type of information that can be gathered
- Time constraints for assessment
- Two outcomes: FTA and New Arrests

Pretrial Assessment

- There are a number of assessment tools available and most find similar predictors

The Most Common Items in Pretrial Assessment Tools

- Prior FTAs
- Prior Convictions
- Present Charge a Felony
- Being Employed
- History of Drug Use
- Having a Pending Case

Other Common Items

- Prior Incarcerations
- Community Ties and Residential Stability
- Substance Use
- Education
- Age

ORAS- PAT

- Like most it is short
- Non-proprietary
- Minimal Training

PRETRIAL ASSESSMENT TOOL

NAME: _____

DATE OF OFFENSE: _____

CASE NUMBER: _____

DATE OF ASSESSMENT: _____

BOND AMOUNT: _____

COURT DATE: _____

Verified

1. What was the age of the defendant at first arrest. If unknown, use first conviction
0 = If the defendant was 33 or older
1 = If the defendant was 32 or younger
2. How many failure to appear warrants have been filed in the last 24 months
0 = None
1 = A single failure to appear in the last 24 months
2 = Two or more failure to appears in the last 24 months
3. Did the defendant have three or more prior jail incarcerations?
0 = No
1 = Yes
Number of Prior Prison incarcerations: _____
4. Was the defendant employed at the time of arrest?
0 = Defendant is employed full time/disabled/retired/student (31+ hours)
1 = Defendant is employed part time (10-30 hours)
2 = Defendant is unemployed
Defendant on public welfare?: _____
Job start date was within 6 months: _____
5. Any illegal drug use in the last 6 months
0 = No
1 = Yes
6. Defendant self reported severe drug related problems
0 = No (1-3)
1 = Yes (4-5)
7. Has the Defendant lived at the current residence for 6 months or more?
0 = Yes
1 = No
Is the current residence within the assessor's jurisdiction? _____

Risk Level

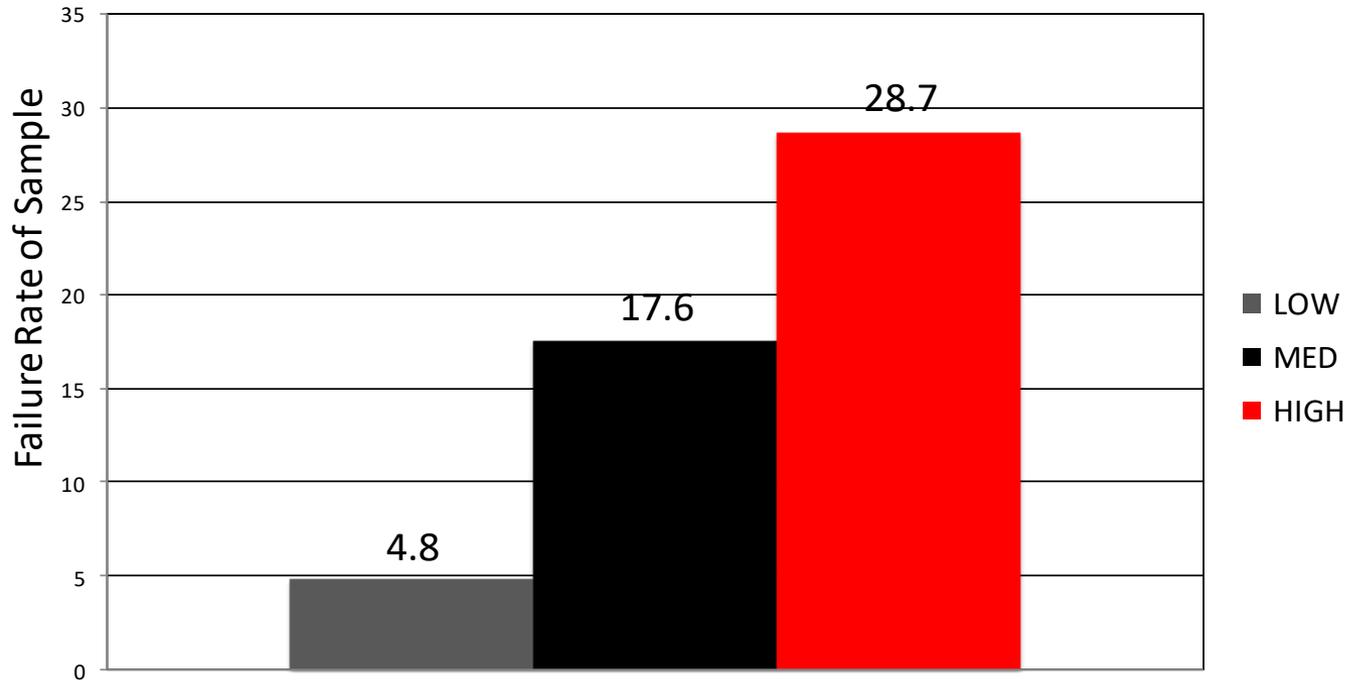
0-2 = *Low*

3-5 = *Medium*

6+ = *High*

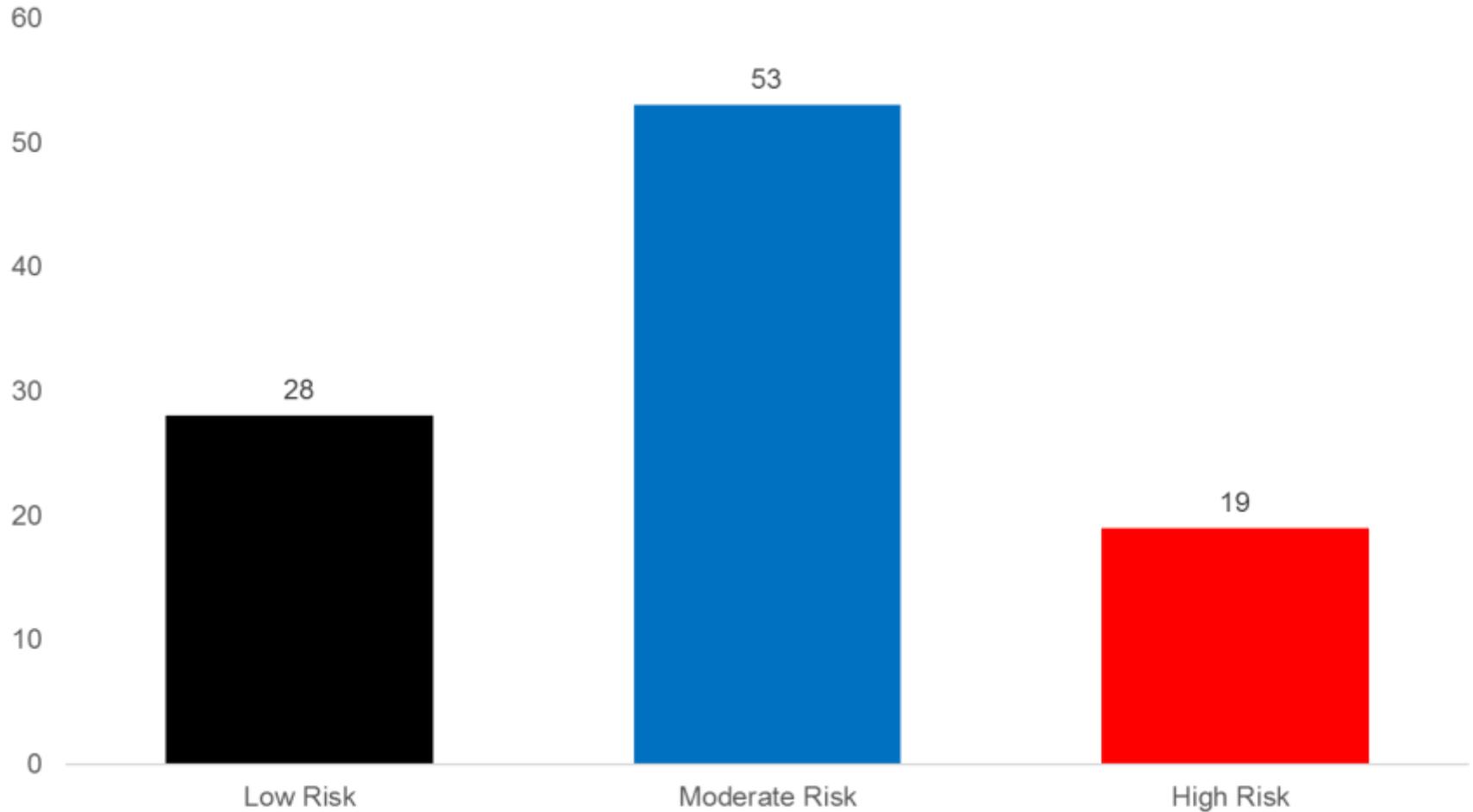
TOTAL SCORE

Cutoffs: Any Violation



Differences in Recidivism Rates for each Risk Level
(n=452)

Percentage in Each Risk Category



Public Safety Assessment Court (PSA-Court)

- Developed by the Arnold Foundation
- Use data from KY to compare non-interview data to interview-based assessment – found non-interview was just as predictive
- Next looked at 745,525 cases and three outcomes (1) new criminal activity (2) FTA and (3) new violent criminal activity
- Identified nine factors (all criminal history based) and adding interview based did not improve risk assessment performance

Factors in the PSA

- Age at current arrest (NCA)
- Current violent offense (NVCA)
- Current violent offense & 20 years old or younger (NVCA)
- Pending charge at the time of the offense (FTA, NCA, NVCA)
- Prior misdemeanor conviction (NCA)
- Prior felony conviction (NCA)
- Prior conviction misdemeanor or felony (NCA, NVCA)
- Prior violent conviction (NCA, NVCA)
- Prior failure to appear in the past two years (FTA, NCA)
- Prior failure to appear older than two years (FTA)
- Prior sentence to incarceration (NCA)

Subjective vs. Objective Pretrial Process

- NIJ found when subjective process is used versus objective, jail population nearly doubles
- Others have found that use of a tool leads to more recommendations of release

Some Observations

- For traditional Pretrial programs (looking at FTA or risk of reoffending):
 - Most tools are similar
 - Short and sweet
 - Sort fairly well
- For Pretrial programs that want to provide services (i.e. place in drug court)
 - Most of the existing general assessment tools will do just fine (i.e. LSI, ORAS-CST, or COMPAS)

Research on the Effects of Supervised Pretrial Intervention is still Evolving but some Findings Include:

- Use of quantitative or mixed quantitative-qualitative risk assessments lowers a defendant's likelihood of pretrial misconduct
- Ability to impose sanctions and reports to courts is associated with less pretrial misconduct
- The more ways a pretrial program has to follow-up an FTA, the lower the likelihood of a defendant's pretrial misconduct
- Some evidence that providing reminders can reduce FTA although evidence is mixed

Other Findings

- Few studies on use of electronic monitoring, but no conclusive evidence that it is effective in reducing FTAs or new arrests
- Studies on requiring substance abuse testing and treatment have found no difference in failure rates for higher risk defendants, but lower risk appear to do better
- Use of targeted mental health screening lowers a defendant's likelihood of pretrial misconduct - but requiring mental health treatment does not appear to matter

FTA Rates

- Vary tremendously across jurisdiction
- Estimates low as 5% to high of 25% and no real average or acceptable rate
- Differences can be explained by systemic difference – i.e. geographic, political, capacity) and CJS may use different practices and notification methods

Many have Implemented Court Notification Systems

- Historically most were phone calls or a post card
- With few exceptions most studies show notification by phone or mail has significantly reduced FTAs (4% to 25%)
- Most of this research has focused on overall effectiveness of notification, not type or timing

Research on Court Notification Systems

- Bornstein et al study in Nebraska looked at 4 conditions:
 - Basic reminder
 - Reminder with sanctions
 - Reminder with sanctions and benefits of showing up
 - No reminder
- Found that Reminder with Sanctions had the lowest rate (8.3%) versus control (12.6%), but low to begin with
- They also looked at:
 - race/ethnicity
 - sex
 - geographic location (specifically, rural vs. urban counties)
 - offense type
 - number of charges

Findings by Other Factors

- FTA rates were:
 - 11.7% Whites
 - 18.7% Blacks
 - 10.5% Hispanics

After controlling for offense type and number of charges differences were not significant
- FTA rates varied by type and number of offenses:
 - Rates were higher for more serious charges & for those with multiple charges
 - 1 offense (5.4%)
 - 2 or more (15.4%)
- Rates did not differ significantly by sex
 - Male (10.8%)
 - Female (9.4%)
- Rates did vary by location:
 - urban (12.4%)
 - rural counties (6.8%)

They also Found that Institutional Confidence made a Difference

- Those with less confidence and more cynicism in the Court had higher FTA rates
- Whites had more dispositional trust than non-whites, and Blacks had less trust in the courts than Whites and Hispanics
- They also found that a reminder was more effective for defendants relatively low in trust.

Research on Methods of Notification

- Most have used phone (calls or texts) or postcards, however recent studies suggest text messages are more effective
- May be due to what is called “open rate” – rate at which electronic message is opened: text as high as 98%, email 22% (Frost and Sullivan, 2010).

Studies on Timing

- Few studies on effects of timing of notification. Most from health field.
- Downer, et al., found that text messages within 3 days prior to appointment reduced rates of missed appointments by 9%.
- Foley & O'Neil found rates of FTA for appointments dropped by 13% if they received text message within 24 hours.

Recent Study Comparing Different Strategies Lowenkamp & Holsinger (2017)

- Randomized study of over 10,000 cases from Kentucky
- Five groups
 - Call
 - Call with Warning
 - None
 - Text
 - Text Warning
- No significant differences but rates were low across the board
 - Call 12%
 - Call w/Warning 12%
 - None 13%
 - Text 11%
 - Text w/Warning 12%

Some Challenges

- Time Constraints and Practicality of Assessment
- Money Bail Schedules
- Local Capacity (i.e. programs, validation of tools, etc.)
- Subjective Assessment
- Court Culture and Judicial Behavior

Implementing Assessment

- What do I want to use it for?
- Length of time needed to complete
- Training
- Cost
- Complexity
- When will it be done?
- Where will it be done?
- Who will do it?
- Level of staff commitment
- Is assessment reliable?
- Is assessment valid?

Validation

Validating means it is measuring what you think it is measuring

Reliability

- Are staff consistent in scoring?
 - Inter-rater reliability
 - Training
 - Experience

Pretrial Detention is a Hotly Contested Issue

- The empirical research that has been conducted to-date is sometimes inconsistent, and contradictory, and there are challenges that limit academic and methodological rigor.
- While validated risk assessment tools can help courts make decisions about pretrial release, they are not fool proof.
- These tools often place defendants into risk categories: “low”, “moderate” or “high” for likelihood to fail-to-appear or continued criminal behavior, however, seriousness of the current charge is a commonly used factor that courts take into consideration when making pretrial decisions. In essence, seriousness often trumps risk.
- Finally, until additional well designed studies are conducted, conclusions about the effects of pretrial detention are speculative at best.

2017 Meta analysis of pretrial research that examined risk assessment, bond type and intervention.

- Despite finding a total of 811 manuscripts after applying criteria to gauge the rigor of the study the number fell to 16 studies representing over 391,000 defendants.
- The authors concluded that, “Overall, the quality of the research that could be included in the current analysis was not very good, with some noted exceptions.”
- While noting that the results should be viewed with caution, they concluded that “It appears that more restrictive bond types are associated with lower FTA rates”.
- They did place more confidence in the finding that court notification reduced FTA rates.

Some things to remember

- There is no “one size fits all” assessment tool
 - some domains or types of offenders will require specialized assessments (such as sex offenders or domestic violence)
 - use or purpose will vary
- Actuarial assessment is more accurate than clinical assessment, but no process is perfect
- Assessment helps guide decisions, doesn't make them -- professional discretion is part of good assessment
- Reliability is more difficult to achieve with dynamic instruments – requires training of staff and continual monitoring of assessment process