

## **FREQUENTLY ASKED QUESTIONS**

### **What is the Public Safety Assessment (PSA)?**

The Public Safety Assessment (PSA) is a pretrial risk assessment tool created by the Laura and John Arnold Foundation, in partnership with leading criminal justice researchers. The assessment is intended to help judges gauge a defendant's risk level if released while awaiting trial on a criminal charge. The assessment uses evidence-based, objective information to predict the likelihood that an individual will engage in new criminal activity if released, and to predict the likelihood that he/she will fail to appear for a future court hearing. In addition, it flags those defendants who present an elevated risk of committing new violent criminal activity while awaiting resolution of their case.

### **Why do judges need the PSA?**

Utah judges are required to make difficult decisions about whether defendants should await trial or resolution of a criminal case in jail, or whether they can safely await resolution in the community with certain conditions. After setting a defendant's court date, which could be several days to weeks into the future, a judge must make an immediate decision about custody of that defendant. Currently, in order to make this decision, a judge is only given a description of the circumstances surrounding the defendant's arrest by law enforcement officers in a probable cause statement. Because judges are not currently given any information about an offender's criminal history or risk level at the time they are required to make these decisions, many use the bail schedule – a standard designation of specific money bail amounts for each criminal charge.

This means two things in Utah: the current criminal charge has become a proxy for public safety risk, and money has become the primary means of securing release independent of risk. Those who can afford to post bail are able to secure release from jail, but those who cannot must remain locked up. High-risk defendants who pose a significant public safety risk are able to post bail and go on to commit other crimes, while low-level, nonviolent defendants, who are unlikely to commit a new crime, are kept behind bars. This disparity does not benefit public safety.

Research shows that even a short stay in jail can have negative consequences for individuals, families, and communities. It can cause a person to lose a job, housing, and even custody of his/her children. Faced with these pressures, pretrial defendants often plead guilty to crimes they may not have committed just so they can get back to work and their families.

The PSA is part of an effort to help protect communities and make our system more fair. It is a research-based, data-driven pretrial risk assessment that provides judges with objective information about the likelihood that a defendant will commit a new crime or will fail to return to court. Judges will still rely on their professional judgement and experience when making these decisions, but now, they will also have factual criminal history and past court attendance

information readily available. Providing judges with more information, can only result in better, more informed decisions.

### **How was the PSA created?**

The Arnold Foundation created the PSA using the largest, most diverse set of pretrial records ever assembled – 1.5 million cases from approximately 300 jurisdictions across the United States. Researchers analyzed 750,000 of those cases and identified the nine factors that best predict whether a defendant will fail to appear or commit new criminal or new violent criminal activity if released.

### **What does the PSA predict?**

The PSA generates predictions of failure upon release through two risk scores—one for failure to appear in court and one for the potential for committing a new crime. These are scored on a scale of 1 through 6. The assessment also includes a “violence flag,” indicating whether the defendant poses an elevated risk of committing a new violent criminal act if released.

### **What factors does the PSA consider in assessing risk?**

The PSA uses nine static factors to assess the risks identified above. The PSA relies solely on the nine variables below. It does not rely on factors such as race, ethnicity, or geography.

1. Age at current arrest
2. Violence of current offense
  - Violence of current offense and the offender is twenty-years old or younger
3. Pending charge at the time of the offense
4. Prior misdemeanor conviction
5. Prior felony conviction
  - Prior conviction (misdemeanor or felony)
6. Prior violent conviction
7. Prior failure to appear in the past two years
8. Prior failure to appear older than two years
9. Prior sentence to incarceration

### **Where does the information used to calculate the PSA come from?**

The answers to the above risk factors will be pulled from state and national criminal history databases. Utah criminal history data will be extracted from the Utah Bureau of Criminal Identification (BCI) through the Utah Criminal Justice Information System (UCJIS). National criminal history data will be extracted from the National Crime Information Center (NCIC) maintained by the Criminal Justice Information Services Division (CJIS) of the Federal Bureau

of Investigation (FBI). Failure to appear and disposition data will be pulled from the Utah State Court's information system (CORIS).

### **Has the PSA been validated?**

Yes. The PSA has been nationally validated to predict appearance in court and risk to commit a new offense or new violent offense before case disposition.

The Utah State Courts will be working with the Access to Justice Lab at Harvard Law School to conduct studies in five counties to determine whether use of the PSA leads to reductions in all, or in some (without causing increases in the others), of the following outcomes:

- (1) failures to appear;
- (2) new criminal activity;
- (3) new violent criminal activity; and
- (4) the number of days defendants spend incarcerated pretrial.

The courts will also be tracking pretrial outcomes statewide to ensure the PSA, and pretrial release and supervision programs overall, are successful. The courts will be conducting quality assurance tests and making adjustments to the entire pretrial program as needed.

### **Is the algorithm used to calculate the PSA publicly available?**

Yes. The Laura and John Arnold Foundation have publicly released the complete list of PSA risk factors and the risk factor weights that are used when scoring defendants. You can find that report [here](#).

### **Who will be using the PSA?**

Judges. The PSA will be calculated automatically when a defendant is booked into jail for a new criminal offense. The PSA report will be available to judges at the time they make a probable cause decision – within 24 hours of arrest. If/when charges are filed (typically within 72 hours to 4 calendar days after arrest), the PSA report will be made publicly available in Xchange and will remain visible throughout the life of the case. Reports will be accessible to defense and prosecution counsel in order to allow them to prepare arguments to the court regarding pretrial release.

### **Will judges be required to follow the recommendation from the PSA?**

No. Judges are not required to follow the recommendation of the PSA. Judges will continue to use their judicial discretion when making pretrial release decisions. The PSA provides judges

with objective information about a defendant's risk and is simply one source of information for judges to consider.

### **Will monetary bail go away?**

No. Monetary bail will still be available to defendants just as it is now. Defendants with a qualifying charge will have the option to bail/bond out of jail based on the Uniform Fine/Bail Forfeiture Schedule, or wait for a judge to make a pretrial release decision.

While the PSA may result in more defendants being released on non-monetary conditions, Utah is a "right to bail" state, where "bail" means "release," not the money used to secure it. There are only a few charges under which a defendant may be detained in jail without the possibility of release. Under our current laws, a defendant may only be held without the opportunity for bail if they have committed one of the types of charges listed in Utah Code §77-20-1(2):

- A capital felony
- A felony committed while the offender is already on probation or parole, or or while free on bail awaiting trial on a previous felony charge
- A felony when there is substantial evidence to support the charge and clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court
- A felony when there is substantial evidence to support the charge and clear and convincing evidence that the person violated a material condition of release while already released on bail.

### **Why are criminal defendants released from jail while awaiting trial?**

Under the American system of justice, people charged with a crime are presumed innocent until proven guilty. The Utah Constitution has guaranteed since statehood that people charged with a crime have a right to be released before their trial, except in limited instances. By allowing a person to remain free while awaiting trial, the state avoids punishing a person awaiting a determination of guilt – a fundamental principle of our justice system. The use of the Pretrial Risk Assessment will not change the right or the process.

### **What is the purpose of a money bail bond?**

The purpose of a bail bond is to provide a financial incentive for a defendant to return to court. Requiring defendants to post a money bond does not deter them from committing new crimes while awaiting trial. Under state law, a commercial money bail bond is not forfeited if a defendant is arrested for a new crime while released pretrial on another charge. A commercial money bond cannot be forfeited if a defendant violates conditions of their release such as failing a drug test, obtaining a weapon or violating curfew.

