



What you need to know about
Risk Assessment Tools and their
impact on communities of color.

MAKING
POLICY
PUBLIC

WHAT ARE RISK ASSESSMENT TOOLS (RATs)?

RATs are decision-making tools that use court records and demographic information to guess how a person will behave if they are released from jail before trial.

RATs try to guess how “risky” the person accused of a crime is – if they will pose a threat to public safety or if they will miss their court date if they are released.



Not all RATs look the same. RATs can be formulas run by a computer (called algorithmic RATs) that compare the arrested person’s demographics and criminal records to others with similar criminal records or backgrounds. Or they can be questions on a checklist asked by a court officer. RATs give each person a “risk” score.

Risk assessment tools are used throughout the legal system in pretrial, sentencing, probation, and parole. This guide focuses on pretrial RATs.

THE ISSUE

Everyday, nearly half a million people who have only been accused of a crime are put in jail before their trial – mostly because they can’t afford to pay bail. **70% of them are people of color.** The legal system in the US is rooted in racism – people of color are more likely to have higher bail set and serve longer sentences than white people for the same charges.

Many people see RATs as a way to reduce the number of people held in jail pretrial. It may seem like RATs limit the decision-making power of judges (known as judicial discretion) who might have racial prejudice or bias. But because RATs depend on information about a person’s race, class, and how their neighborhood has been policed, people of color continue to be disproportionately impacted.

Judges and court systems use RATs after someone is arrested to help decide if:

1) If they should be **released without bail** or other conditions.

2) If they should be **released with conditions** like money bail, drug testing or electronic monitoring.

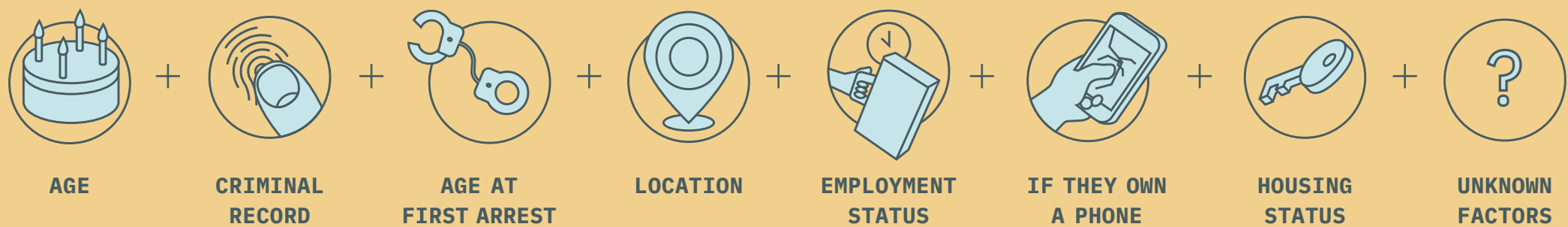
3) If they should **be held in jail without bail** (also known as “remand”).

To organize for a just end to pretrial incarceration, it’s important to see how RATs impact communities of color and perpetuate systemic racism. Keep reading to learn how RATs work and to explore alternative solutions!

HOW DO RISK ASSESSMENT TOOLS WORK?

RATs try to guess a person’s future behavior based on a number of factors.

Almost always, the exact factors that RATs consider aren’t made public. They can use anywhere from 4 to 100 factors about a person and their community, like:



LET’S SEE HOW RATs IMPACT TWO PEOPLE DIFFERENTLY

Shawn and Grayson were arrested for the same charge of having a small bag of cocaine. Once they were arrested and processed, they were brought to court where a judge used a RAT to decide their pretrial conditions. But the RATs found very different outcomes for them. Both of their experiences are based on real people who have had RATs used to set their pretrial conditions.

SHAWN, AGE 19

Shawn lives in Newark, New Jersey with a roommate. He works part-time at a shoe store. He likes to play video games and spend time with his girlfriend.

When he was 14, he was arrested after throwing a pencil at his classmate. Black students are 10 times more likely to be referred to the police for school discipline.

Shawn was arrested again at 18 because he didn’t pay for a bus ticket. Many low-income neighborhoods are over-policed, so police often arrest people for low-level violations to fill quotas.

AGE
19 – RATs assume young people are more likely to skip court, so Shawn’s age works against him.

CRIMINAL RECORD
Shawn has been arrested before and was 14 at his first arrest, so RATs will assume he’s likely to be arrested again.

LOCATION
Newark, New Jersey

HOUSING STATUS
Shawn lives with a roommate and isn’t on the lease.

EMPLOYMENT STATUS
Part-time job – RATs assume someone with full-time work is more likely to show up to court, so Shawn’s job status works against him.

The RAT scores Shawn as **HIGH RISK** and recommends release with bail.

GRAYSON, AGE 22

Grayson is a full-time student at Rutgers. He’s majoring in economics and is on the rowing team.

When Grayson was 13, he got into a fight at school and broke his classmate’s nose. He was given an in-school suspension for two weeks.

When he was 19, he was caught drunk driving and was given three months of community service and probation. White men are much less likely to get arrested when pulled over for drunk driving.

AGE
22

CRIMINAL RECORD
Community service, probation, and no prior arrests. Some RATs only look at arrest records, so Grayson’s in-school suspension and drunk driving incident didn’t make it onto his criminal history.

LOCATION
On campus at Rutgers University.

HOUSING STATUS
On the lease of his apartment – RATs assume someone with stable housing is more likely to show up to court.

EMPLOYMENT STATUS
Full-time student – RATs consider someone with full-time status as more likely to show up to court , so being a student works in Grayson’s favor.

The RAT scores Grayson as **LOW RISK** and recommends release without bail.

Shawn and Grayson were charged with the same crime, so why did they have such different outcomes? To understand the problems with RATs, we need to look at bigger issues within the legal system.



WHAT'S THE PROBLEM?

As more courts across the country use pretrial RATs, many communities are concerned about the consequences...

ARREST RECORDS DON'T TELL THE WHOLE STORY

RATs look at data from arrest records to guess how someone will behave in the future. But arrest records say more about how a person (and their community) has been policed, than about their individual behavior.

Many low-income, Black and brown neighborhoods are over-policed. In these neighborhoods, police are incentivized to arrest people for low-level offenses and activities that aren't always seen as crimes in other neighborhoods. This means some neighborhoods have higher arrest rates than others. As a result, Black and brown people get arrested more often and at younger ages, so where you live can make or break your score.

"BIAS IN, BIAS OUT"

Many people think RATs can end racial bias in the pretrial process. But in places where RATs are used, racial disparities in pretrial detention have not improved.

In New Jersey, jail populations dropped after introducing a new risk assessment tool and eliminating cash bail. But the racial demographics of people in jail stayed the same—50% Black, 30% white.

Since RATs rely on data with racial and economic disparities, there's no way to avoid outcomes without the same disparities.

JUDGES STILL HAVE A SAY

RATs are often seen as a way to limit how much say a judge has, or judicial discretion, in setting severe pretrial conditions, like being remanded or setting a high bail. But in most jurisdictions that require RATs, judges can still make final decisions about someone's pretrial conditions.

Studies have found that even when RATs recommend release, judges tend to set harsher conditions than what's suggested.

POVERTY IS A RISK FACTOR

Many of the factors that RATs consider have to do with how much money and access to resources someone has. This means things like not having a full-time job or owning a home can send you to jail.

RATs MAKE SOME COMPANIES RICH

RATs are a growing and profitable industry! Private companies make RATs and usually get to decide what factors get used, like job status or age. These companies often hire lobbyists to make sure governments keep using their tools.

NO TRANSPARENCY

Most companies do not have to make their algorithms public. Often, even judges and lawyers don't know what factors are being used to evaluate someone.

THERE'S NO PROOF THAT RATs WORK

RATs make it seem like it's possible to predict if someone will commit a violent crime or miss their court date. But there's no evidence that RATs do anything to improve public safety or ensure that people return to court.

A study in Cook County, IL found that 99% of people considered "high risk" (likely to commit a crime if released before their trial) did NOT commit crimes before their court date.

INNOCENT UNTIL PROVEN ... RISKY?

The US Constitution requires courts to assume that people charged with a crime are innocent until proven guilty. But RATs are used before someone's trial or plea bargain. This means people are being punished (with high bail, jail, or other severe conditions) even if they haven't been convicted of a crime!

ARE RISK ASSESSMENT TOOLS THE ONLY SOLUTION?

We know that many people are in the legal system because of mental illness, trauma, substance abuse, or simply because they are low-income. No one should be punished for not having access to support or resources. A system without RATs should provide people with the support they need to show up to court and thrive beyond the legal system!

HOW DO WE GET THERE?

It's not easy and will take some time. Change needs to happen at a large scale, but there are smaller steps we can take to get there. Instead of punishing someone for not having access to resources, the legal system should consider their circumstances holistically and evaluate their needs. Evaluations should consider their mental health, history with substance abuse, housing, parental responsibilities, and other relevant factors.

COURTS SHOULD PROVIDE :

CHILDCARE DURING COURT DATES

When a primary caregiver is arrested, their children are often forced into the foster care system. If someone is a primary caregiver, they should be released and given extra support for childcare to make it easier to get to court.

FLEXIBLE COURT DATES FOR CAREGIVERS

Unexpected childcare responsibilities are normal! If someone is a primary caregiver, they should be given some flexibility with scheduling their court date.

PHONE ACCESS

It's easy to forget a court date! Text message reminders can help. No one should be penalized for not owning a cellphone. Courts could provide cell phones to individuals while their case is open.

REFERRALS TO SUPPORTIVE HOUSING

For people who don't have stable housing, courts should refer them to supportive housing programs. Supportive housing is affordable housing with supportive services, like health and education.

REFERRALS TO COUNSELING

For people dealing with mental health or substance abuse, courts should refer them to free counseling services.

Communities across the country are organizing to stop the use of RATs and end pretrial incarceration. See the back to join a campaign near you!

Communities across the country are organizing to stop the use of Risk Assessment Tools and end pretrial incarceration. Contact these organizations to join a campaign near you today:

Organizations leading advocacy on Risk Assessment Tools

- Chicago Community Bond Fund (IL)
chicagobond.org
- Dignity and Power Now (CA)
dignityandpowernow.org
- JustLeadershipUSA (National)
jlusa.org
- Leadership Conference on Civil and Human Rights (National)
civilrights.org
- Media Mobilizing Project (PA)
mediamobilizing.org
- People's Action (National)
peoplesaction.org
- Silicon Valley De-Bug (CA)
siliconvalleydebug.org
- Southerners on the Ground (GA)
southernersonnewground.org

More research and information on Risk assessment Tools

- AI Now
ainowinstitute.org
- Center for Media Justice
mediajustice.org
- Human Rights Watch
hrw.org

Legal organizations

- Civil Rights Corps
civilrightscorps.org
- American Civil Liberties Union
aclu.org

Making Policy Public

is a program of the Center for Urban Pedagogy (CUP). CUP partners with policy advocates and graphic designers to produce foldout posters that explain complicated policy issues, like this one.
makingpolicypublic.net



The Center for Urban Pedagogy (CUP)

is a nonprofit organization that uses the power of art and design to increase meaningful civic engagement.
welcometocup.org



JustLeadershipUSA (JLUSA)

is dedicated to cutting the US correctional population in half by 2030. JLUSA empowers people most affected by incarceration to drive policy reform.
jlusa.org



Katrin Bichler

is a multidisciplinary designer focusing on data, social and environmental justice, cats and Jake Gyllenhaal.
katrinbichler.com

Collaborators:

CUP: Siyona Ravi, Yasmin Safdié
JLUSA: Megan French-Marcelin
Monica Novoa, Katie Schaffer
Designer: Katrin Bichler
Illustration Support: Sarah Jansen

Big thanks to:

Christine Gaspar, Clair Beltran, Miranda Grundy, Erin George, Hannah Jane Sassaman, Lex Stepling, Nicole Triplett, and everyone else who provided feedback on the project.

Support for this project was provided by the National Endowment for the Arts and public funds from the New York City Department of Cultural Affairs in partnership with the City Council. General support for CUP's programs is provided in part by The Kresge Foundation, Laurie M. Tisch Illumination Fund, Mertz Gilmore Foundation, New York Foundation, Sigrid Rausing Trust, Sordana Foundation, and the New York State Council on the Arts with the support of Governor Andrew M. Cuomo and the New York State Legislature.

© The Center for Urban Pedagogy, 2020