

# Predicting Behavior Pretrial and an Explanation of the Steps in the Criminal Justice Process

[00:00:00] **Jason Hibbs:** What I want people to know is that everything they're doing online is being watched, is being tracked. Every single action you take is carefully monitored and recorded.

That's an excerpt from Netflix's 2020 docudrama, *The Social Dilemma*, adding to an arguably crucial conversation about how social media companies use data to feed us what will keep us coming back for more. So if math can be used to predict a person's online behavior, can we do the same thing in real life?

The answer is yes.

[00:00:39] **Michelle Butts:** There's an algorithm.

[00:00:40] **Jason Hibbs:** We're talking pre trial this episode of the *Rethinking Jails and Justice* podcast, specifically about an algorithm used to predict how defendants will behave during a very important window of time, after their arrest and initial appearance, and before their court date.

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I'm your host Jason Hibbs, but before we dive into that, my producer and I were talking about just how complex this system is and specifically the steps in the process from arrest to sentencing. So with the help of Lucas County prosecutor, Julia Bates, let's take a moment to walk through this process.

And if you need to pause, or pause and rewind to let some of this sink in. Don't feel bad because this is complicated for those of us not as familiar with the criminal justice system. Let's start with the arrest with Prosecutor Bates.

[00:01:51] **Julia Bates:** There's two different ways an arrest can be made. An arrest can be made with a warrant that they take and they serve on the person.

They knock on your door, and they say, we've got a warrant for your arrest. Or, they could be chasing somebody down that they saw, or that they have information that committed a crime, and then they apprehend them.

[00:02:09] **Jason Hibbs:** But not everyone is taken to jail. Some receive a summons and are allowed to go about their lives until the date of their court appearance.

But those accused of the more serious offenses are taken to jail and booked.

[00:02:21] **Julia Bates:** You get booked, you go to the jail, you get fingerprinted, You get photographed, they run your background to see what kind of a person that you are, do you have a history, and what they're looking at, whether or not to keep you in jail or whether to release you.

[00:02:37] **Jason Hibbs:** That, right there, is what we're going to talk about more in just a moment. Because while it may sound simple coming from the prosecutor, There's a pretty complex assessment system that goes into making this decision at what is a critical point for the accused.

[00:02:52] **Julia Bates:** Part of the problem, and I know we're going to talk about MacArthur in a minute, the jail can only handle so many people to do it safely for the people that are incarcerated and safely for the people that work there.

And so it's best that you keep only those most dangerous people who are dangerous and safe. To themselves and others out in the community in custody.

[00:03:12] **Jason Hibbs:** An arraignment is the next step in the defendant's first court appearance. It's here. The judge confirms if they have an attorney and appoints a public defender if needed.

The judge explains the defendant's rights and charges and the defendant enters a plea of guilty. Not guilty or no contest. And by the way, no contest just means the defendant is not admitting guilt, but accepts there is enough evidence to support a conviction. The judge then sets or denies bail.

Defendants who pay bail are released until the trial or sentencing. Those who plead guilty or no contest, of course, skip the trial and proceed to sentencing. Now this initial arraignment occurs in municipal court, but the case will move to another court depending on its nature. Now that was a lot, pause and rewind if you need to because there's more.

The next step is an either or, either a preliminary hearing or appearance before the grand jury which essentially does the same thing.

[00:04:10] **Julia Bates:** Preliminary hearing is a probable cause determination by a judge. Probable cause is it more likely than not that this happened and is it more likely than not that this person is responsible.

That's what probable cause is, so it's not a very high burden. In this town, we rarely do preliminary hearings. The reason for that is we have the grand jury meeting every day but Friday. So every day, they can come before the grand jury and present the case. And in Ohio, you must be charged by the grand jury with a felony.

So if you charge, if you have a felony crime, only the grand jury can answer that.

[00:04:52] **Jason Hibbs:** Laws about felonies and grand juries vary from state to state.

[00:04:56] **Julia Bates:** And since we have grand jury meeting every day the need for preliminary hearing, which is a duplicitous event because Preliminary hearing finds probable cause, but the grand jury finds probable cause.

Grand jury is made up of 15 citizens that are drawn from the voter registration rolls. They come in, they serve for two weeks. They come in to the pro they work in the prosecutor's office upstairs. They have a foreman, they have a secretary, and they're sworn. And they have certain secrets. requirements. In other words, they can't disclose things that occur before the grand jury and they can't talk about their vote.

[00:05:32] **Jason Hibbs:** Of the 15 grand jurors, only nine are needed to make a decision. The remaining six are alternates in cases of conflicts of interest, juror illness, or other circumstances. Among the nine jurors, seven of them must vote for a defendant to be indicted.

[00:05:48] **Julia Bates:** So we present these cases every single day. We have two prosecutors that do this regularly.

We have victim advocates up there to help the victims if they need some assistance. Grand jury listens to the facts, listens to the case, and then they decide whether or not, is it more likely than not that the crime occurred, and is it

more likely than not that the Person in charge did it. That's what they have to find.

If they find that, they vote what is called a true bill. That's an indictment. Okay, so they take the vote. Now we have to know the vote because we have to decide whether to type up an indictment or whether we type up a no bill. If they don't get seven votes, There's no indictment. That's considered, that's called a no bill.

That means you're done, it's over. Sometimes the cases that are no bill have to do with people who don't show up.

For instance, I'll give you a couple of examples. A domestic violence case gets sent to the grand jury. The case is now before the grand jury for consideration. There's no victim. Victim doesn't show up. Nobody to testify about what happened other than a cop who took a report. And that's hearsay. You can have hearsay before the grand jury, but you can't really win a case that way.

So when you have no victim, many times those cases are done.

Now you have an indictment. The indictment comes down here, I sign it, gets filed in the clerk's office, and then the person that's charged, if they're in jail, gets brought over to the court, and we have what's called an arraignment here in Common Pleas Court. The judge will set bond again, and if bond has already been set and there's no change in circumstances, the bond will continue.

If there's a significant change in circumstances, the bond can be increased, it can be decreased, etc. same.

[00:07:42] **Jason Hibbs:** Bates says changes vary but could include a for domestic violence, re the victim, which could l their bond and putting th On the other hand, if som for aggravated robbery wi a lesser charge like simp They are likely to be released due to the reduced severity of their charge.

[00:08:08] **Julia Bates:** Lawyers will be appointed if the person is indigent and doesn't have funds to hire a lawyer. In common pleas court, one third of the cases are assigned to the public defender. Two thirds of the cases are on indigent defendants go to, outside counsel, the list of court appointed lawyers. And in order to get on the list, you have to have malpractice insurance, you have to have, be an attorney in good standing, and so forth like that.

So now an attorney gets appointed, attorney will come in, enter a plea of not guilty, ask the case be set down for trial, judge will schedule a trial. And the

parties, the prosecutor and the defense lawyer, will get together and talk about the facts, talk about the evidence, discuss the case. And the case can either result in a plea to the charge, a plea to a lesser charge, or a trial.

[00:08:55] **Jason Hibbs:** Twelve jurors are required for felony cases. In criminal cases, the jury must reach a unanimous verdict.

[00:09:03] **Julia Bates:** And you have the sentencing that takes place for the judge. The defendant has a right to make comments. The victims can make a victim impact statement. The judge will then impose the sentence. And then if you want to appeal, you file a notice of appeal and your case can be heard by the Court of Appeals, which is five judges and they have a panel of three that will listen to the case.

If they listen to the case and they decide that the verdict was just, then they will affirm the conviction. If they didn't like what happened in the trial, they can reverse the conviction and they can also send the case back for further proceedings.

And then we also ultimately have the Ohio Supreme Court that can hear the case. And then ultimately you can go to the United States Supreme Court, which we've done only a couple of times in my It doesn't happen very often, but we did win there a couple of times. That's in a nutshell.

That's a criminal procedure 101.

[00:10:01] **Jason Hibbs:** If you're wondering where sentenced people go that depends on the inmate and the offense, but Bates says, for example, an older person with a nonviolent offense would likely go to a minimum security facility, but we're not talking about prison today. We're talking about an important element of the MacArthur Foundation's Safety and Justice Challenge to safely reduce the jail population, keyword safely.

So how can we lower the population at the jail without endangering innocent people in the communities that the defendants are likely returning to? Let's start that conversation with Michelle Butts, the Director of Lucas County Regional Court Services.

[00:10:42] **Michelle Butts:** So pretrial services really covers the gamut from point of, I'll say police contact and being charged with a criminal offense to the point of case disposition.

[00:10:55] **Jason Hibbs:** Simply put, case disposition refers to how the case ended, which ranges from case dismissal, to a defendant being sentenced to prison. Butts says every person booked in the Lucas County Jail receives the pretrial assessment, which helps determine their risk of not appearing and committing a new crime.

[00:11:14] **Michelle Butts:** How we measure success of our pretrial clients is did they appear at all of their court dates and did they remain arrest free while their case was pending.

[00:11:24] **Jason Hibbs:** Butts says pretrial assessment programs are nothing new. In fact, Lucas County has used a risk assessment tool developed by the Vera Institute since the 1980s.

However, she says it didn't effectively predict pretrial outcomes, such as court appearances and staying out of trouble. She says the old assessments were often ignored, leading to cash bonds regardless of the assessment. The problem, that assessment needed local validation. How does one validate a tool like this?

You

[00:11:56] **Michelle Butts:** hire researchers. We hired researchers. We've gone through a couple validation studies, the most recent of which took our data through 2018. And when you're validating a tool, you're really trying to see, is it accurately predicting outcomes?

[00:12:13] **Jason Hibbs:** While the Arnold Foundation's public safety assessment does not replace judicial discretion, it does provide judges with information when making pretrial release decisions by estimating the likelihood of a defendant missing a court appearance, being arrested for a new crime or a new violent crime during pretrial release.

Again, that's the time between the initial appearance. and the trial. Now, not only was this assessment validated locally, but according to the foundation, the assessment was created using, quote, the largest, most diverse set of pretrial records ever assembled, 1.5 million cases from approximately 300 jurisdictions across the United States.

Researchers analyzed the data and identified nine factors that best predict whether a defendant will commit new criminal activity, commit new violent criminal activity, or fail to appear in court if released before trial. Race, ethnicity, and geography are not the same. Factors while age, the current charge,

types of prior charges and prior violent convictions are considered and waited for a full list of those factors and how each factor is weighted.

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[00:13:35] **Michelle Butts:** So the validation study, you wanted to make sure you know that our people Are those at the lower end of the scales, they're showing up, staying out of trouble. Those at the higher end of the scales are, obviously doing the opposite.

[00:13:49] **Jason Hibbs:** So this sounds like a math equation to me.

[00:13:52] **Michelle Butts:** There's an algorithm.

[00:13:54] **Jason Hibbs:** How do you determine how to rank people? Who do you give a one or a two? How does that work? We

[00:14:00] **Michelle Butts:** don't. So what we do, there are nine factors involved in the public safety assessment, and they're really based upon age and upon criminal history. So my staff are doing very thorough background checks on individuals to try to find all of the factors so that they can accurately score this assessment.

And the actual I guess application of the numbers behind the assessment is based upon research. So it was, I think it ended up being like over a million cases. Between the original research and the validation study across the country that showed that those nine factors were most predictive,

[00:14:37] **Jason Hibbs:** that is so fascinating that you can accurately predict someone's behavior based on all of the other data.

from similar people. But I guess in this social media world where we talk so much about algorithms, maybe people, I feel like I understand that more now than I did in the past. Can you walk me through a hypothetical defendant and how you would score that person?

[00:15:01] **Michelle Butts:** So let's say we have a domestic, Somebody who has been booked, accused of domestic violence.

And that individual is a, we'll say a 25 year old, doesn't matter gender, because really gender does not play into this. It's a 25 year old individual who has a prior conviction for domestic violence. May have served prior incarceration for that

domestic violence charge. Let's say they were sentenced to 30 days in a local jail facility and they previously failed to appear in court on that charge, and they may have had other failures to appear on other cases, criminal cases that may or may not have resulted in a conviction.

And based upon those factors and the scoring associated with those factors, They may come up, let's say, and I'm going to just throw, randomly throw numbers out there, that they're assessed as a four on a failure to appear scale and a three on a new criminal activity scale and have a violence flag triggered that indicates that if they commit a new crime, the likelihood is that it would be violent.

So it's based upon the answers to the questions and really the facts. given their prior criminal history and failures to appear.

[00:16:16] **Jason Hibbs:** But what if someone failed to appear in a different jurisdiction? Butts says Lucas County has access to a comprehensive criminal history repository which provides local court data and access to state and national records.

She says staff also search public websites to gather as much information as possible. And this may surprise you. As for violence, Butts says violent offenses like domestic violence and murder are weighted equally because both are considered offenses of violence. For this, it's a simple yes or no answer.

[00:16:53] **Michelle Butts:** So offenses of violence, it's either a yes or a no, and yes carries the same weight as a no.

[00:16:59] **Jason Hibbs:** This violence factor impacts the new criminal activity scale, but not the failure to appear scale. The most significant factor across all scales is whether the defendant has a pending charge at the time of a new offense, especially if they were out on bond for another pre trial offense.

When the new crime was committed

[00:17:20] **Michelle Butts:** on our public safety assessment, when we're providing that information to all the court actors, they see the answers to all of the questions.

[00:17:28] **Jason Hibbs:** Interesting. Do you, do the defendants ever see that? And I'm wondering if long term people are thinking, Oh, wow, if I do this is going to spell more trouble for me.



If I get in trouble for something else in the future.

[00:17:40] **Michelle Butts:** You hope so. Truly, that's what we had hoped, is that, especially with our failures to appear, that, the word would get out on the street that, hey, if I'm not showing up to court this, I could possibly next time not be released.

I'm going to end up being held in jail. Our. Our, certainly our defense counsel has access to the public safety assessment and they can show it to their clients.

[00:18:03] **Jason Hibbs:** Some defendants are released with supervision, but how much supervision? Megan Webb says the pre trial assessment helps judges make that determination too.

[00:18:14] **Meegan Webb:** I'm the unit manager at Lucas County Electronic Monitoring. I oversee the daily operations of the GPS house arrest program. We have gone from traditional house arrest to using GPS monitors on all of our clients. And we have the ability using the PSA scores to know if they need more intensive supervision or a lower type of supervision.

Those that are on the lower end of the scale We try to keep them productive members of society, allow them, more freedom to interact with their children still, to go to work. But we also have on the higher end where we can keep them more contained.

[00:18:53] **Jason Hibbs:** Webb says for years now, her office has been able to communicate with defendants through their ankle monitor.

And in the future, Lucas County will have three dimensional GPS, allowing them to do more than track dots on a map, but tilt the map to see, for example, which apartment floor someone is on.

[00:19:11] **Michelle Butts:** We can restrict movement a little bit more if they're not doing what they're supposed to and going places that they're not supposed to, especially, although that revocation if they're in an exclusion zone.

[00:19:23] **Meegan Webb:** We can limit movement. So if you come in and you are. You're not allowed to door dash, but we're seeing you go places you're not supposed to go while you're door dashing, like near your exclusion zone, near where your victim lives. We can take that out.

[00:19:39] **Jason Hibbs:** Which in this case would mean no more door dashing.

The defendant must stay at home. The web says they've expanded the use of monitors to all areas. all regional courts and hired more officers, which helps keep more people out of jail. But a replication study conducted to validate the public safety assessment found the PSA did not increase pretrial release rates.

However, Butt says this was attributed to an already in place, ongoing decrease in jail bookings and a focus on higher risk individuals. With that being said, The study found Lucas County pre trial release rates remained above the national average. And the PSA did help the jail's dynamics by reducing the revolving door effect.

[00:20:25] **Michelle Butts:** I can say that for myself personally, I didn't really I wasn't looking at it from that lens. But having been part of a team that was reviewing the pretrial jail population every week, I could see the complexion of the jail changing for sure. More higher risk individuals being held in the Lucas County Jail than what were there previously.

[00:20:47] **Jason Hibbs:** The study also compared pre and post public safety assessment periods and found improvements in pre trial outcomes. A 6 percent decrease in failure to appear rates, a 5 percent decrease in new criminal arrest rates, and a 2 percent decrease in new violent crime rates.

[00:21:06] **Michelle Butts:** I think our percentage points dropped at about the same rate which could be seen in other studies nationally.

[00:21:12] **Jason Hibbs:** The report also recommends ongoing validation of the PSA, but says a new validation study is needed. However, changes were made in 2022 to manage risk better, shifting from a decision making framework to a release conditions matrix. Now, this change, which resembles a validation study,

[00:21:40] **Michelle Butts:** The data people hate me because I'm like, isn't it just as simple as changing the dates? It's not that simple. If only it was that simple. But yeah, more than likely we'll have to hire a researcher to do it maybe get some grant money to do that, but yes, we're definitely in need of another validation study.

[00:21:59] **Jason Hibbs:** The categories that we've mentioned before, failure to appear committing a new crime, committing a new violent crime that one statistic, did drop the new violent crime went from six to four percent, but can you get that number down even more? Because that's probably what you're most worried about, right?

The new violent crimes.

[00:22:19] **Michelle Butts:** Yeah, and what that meant was before the PSA, what, 94 percent of our people had no new violent crime. And then it went to 96%. 96 percent of the people we released had no new violent crime. That's pretty good. Yeah, I don't know how much more we can improve on that. But obviously there is room for improvement.

[00:22:47] **Jason Hibbs:** One of the other recommendations from the report, saying that the jail population demonstrates a racial disproportionality, as more than half the bookings were of black individuals, despite the general population being about 20 percent black. Now, this is, it says this is a large disparity that warrants consideration, but I know that's not unique to Lucas County.

How do you address that?

[00:23:11] **Michelle Butts:** In pretrial, we can't. The only thing that we can do is try to ensure that when people are released, they're being treated the same and that we're, and our study did show that among white, and we classified a white defendants and black defendants, they were being released at equal rates.

[00:23:28] **Adam Watkins:** That's not atypical. And. That's also true on the juvenile side.

[00:23:34] **Jason Hibbs:** Adam Watkins is a criminology and criminal justice professor at Bowling Green State University.

[00:23:40] **Adam Watkins:** From my perspective, and I, there's not agreement on this point. Some people will definitely take issue with what I'm about to say, but I, from my perspective, I think focusing on the direction of the trend is vastly more important.

I, not to imply that we shouldn't be focused on. The disproportionate aspect of it, but I'm definitely just from my perspective much more interested in the direction of the trend and the direction of the trend as you just described it seems favorable. Sometimes I may be in focusing on that or becoming overly preoccupied with that.

I think you just maybe miss some of the successes that clearly are being made in this process.

[00:24:23] **Jason Hibbs:** The study also recommended employees continue to receive training on how the PSA works. Butts says when the new PSA was implemented, staff and stakeholders underwent rounds of training and that ongoing training occurs for all staff, including new hires and supervision staff.

She emphasizes the PSA is a supportive tool, not the sole determinant in judges release or detention decisions.

[00:24:50] **Michelle Butts:** In fact I just finished up a training with, through our public defender's office. That's an important piece is you have to continually even if there aren't changes, You have to continually remind people what the tool is and what the tool isn't.

The tool is not an oracle. It is not the sole consideration that should be given to a released detention decision. It is a tool. And there are many other factors that a judge has to take into account when they're making that decision. And it is the judge's decision.

[00:25:24] **Jason Hibbs:** While these two feel positive about the changes made to pretrial assessment.

They say they do still get pushback.

[00:25:31] **Michelle Butts:** I think that, there's a general consensus, and this is just a thought there's no weight behind it, that most people who are not justice involved feel that somebody did something and they should be locked up and we're not locking everybody up.

[00:25:53] **Jason Hibbs:** So it sounds like you're getting pressure, Michelle, from others to keep people locked up.

[00:26:00] **Michelle Butts:** Not, and I'm saying that where I can't say that I have experienced it from community members, maybe other people within the justice system.

[00:26:10] **Jason Hibbs:** Who?

[00:26:11] **Michelle Butts:** Law enforcement.

[00:26:12] **Jason Hibbs:** And we had a conversation in episode two with law enforcement. Yeah, they admit that even a lot of the officers just, the beat cops they don't like it.

[00:26:20] **Michelle Butts:** Cause yeah, they do the work and I get it, they do the work on the street and, arrest the person, take them to the jail and Michelle's

[00:26:27] **Jason Hibbs:** letting them out.

[00:26:28] **Michelle Butts:** Four hours later, they're back out the door of the jail. But again, there's a reason they're back out the door of the jail, because we have been given what they call delegated release authority, that if somebody is of a certain likelihood to appear in court and remain arrest free.

We can give them a court date and say, make sure you show up, but you are free to go

[00:26:53] **Jason Hibbs:** pushback. And those concerns for safety are of course, not unique to Lucas County executive vice president of criminal justice for Arnold ventures, which created the PSA addressed some of those concerns.

[00:27:07] **Arnold Ventures:** We hear this all the time that a person who is out of jail awaiting trial who does something terrible that has really harmed somebody is out because of the PSA.

And that's, nothing could be further from the truth. First of all, the money bail system allows somebody to buy their freedom even if they're a danger to somebody else. Secondly, the, it's judges that make these decisions but most importantly, this is part of the balancing. That must go on in a system of justice to balance liberty against risk.

And we think the PSA helps judges make better decisions, so that those who are detained with good grounds. But more importantly, those who needn't be in jail, and that's the vast majority of people in jail, who are there simply because they're poor they can frequently, safely be released.

So it's a matter of striking the right balance.

[00:27:57] **Jason Hibbs:** Arnold Ventures and their partners have uploaded information about the assessment to the web, including guides for communities wanting to implement the assessment. However, Webb feels that despite these efforts, many defendants, victims, and their families still don't understand the admittedly complex process.

She's heard that feedback firsthand.

[00:28:19] **Meegan Webb:** People wonder Oh I was here and I saw a guy and he had an ankle monitor on him. Why was he here? And you have to really consider if you keep somebody locked up or you keep them in their house and you keep them from being productive members. of their family, of society, they can no longer work, they can no longer provide what happens to their children and what happens to their significant other and if then those people start ending up in systems and what we're trying to do is rehabilitate as a whole.

[00:28:55] **Jason Hibbs:** The reports, the data, along with the steps we mentioned at the beginning of this episode may be found on our website, [wgte.org/forward/slash/rjj](http://wgte.org/forward/slash/rjj). Thank you for listening. I'm your host, Jason Hibbs. Content warning. The tease for the next episode and the next podcast itself contains language that may not be appropriate for children.

Discretion is advised. On the next Rethinking Jails and Justice podcast.

Am I surprised that these kids are bed hopping or They're on drugs or they're fighting and they're just angry. No, because what child asked to be on this earth and not protect it.

[00:29:42] **Jason Hibbs:** Saving our kids.

Kids are victims at that young age.

Victims of predators who are. Are drug dealers predators who are just making money off of them and kids don't realize that.

[00:29:58] **Jason Hibbs:** The local people with solutions to stop youth violence and what you can do to help a young person without pushing them further away.