

## Final Report on the Revalidation of the Florida Pretrial Risk Assessment Instrument

Natalie Goulette

Kathrine Johnson

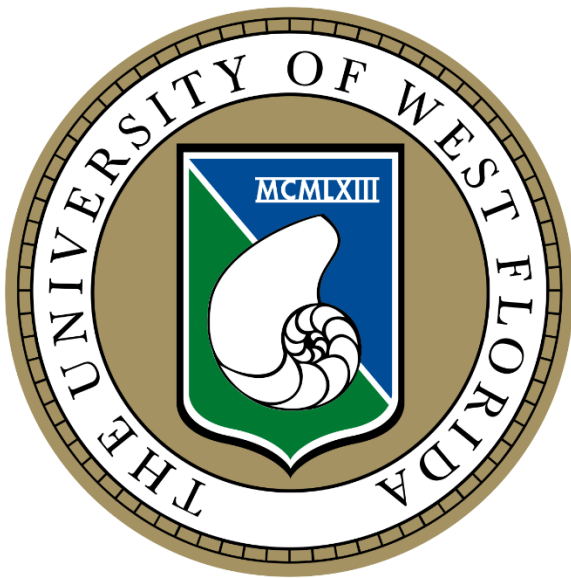
Kimberly McCorkle

Richard Hough

University of West Florida  
Pensacola, Florida

Jeff H. Kilpatrick

Accreditation Manager, Alachua County  
Gainesville, Florida



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## About the Researchers

**Natalie Goulette, Ph.D.**, is an Associate Professor in the Department of Criminology & Criminal Justice at the University of West Florida. Her research interests include extra-legal disparities in case processing, collateral consequences of criminal convictions, high-impact practices, and custodial grandparents. Her most recent publications can be found in *Criminal Justice Review*, *Women & Criminal Justice*, *Criminal Justice Studies*, and *Corrections: Policy, Practice, & Research*.

**Kathy Johnson, Ph.D.**, is an Associate Professor in the Department of Criminology & Criminal Justice at the University of West Florida. She has been involved in higher education for the past 30 years. Dr. Johnson's related publications include electronic monitoring, habitual offender sentencing, 10-20-Life sentence enhancement, the impact of inmate holds on jails, training of law enforcement personnel, and a variety of pedagogical issues including distance and online learning, capstone experiences, and writing-intensive courses.

**Kimberly McCorkle, J.D.**, is Vice Provost and Professor at the University of West Florida. Her primary research interests include intimate partner violence, domestic violence legislation and policy, and police practices. She is the co-author of the textbook *American Homicide 2e* with Dr. Richard Hough.

**Richard Hough, Ed.D.**, is an Instructor in the Departments of Criminology & Criminal Justice, and Administration & Law at the University of West Florida. His research interests include the use of force in criminal justice, the investigation of homicide, and criminal justice policy implementation. His recent textbooks include *The Use of Force in Criminal Justice*, and *American Homicide 2e*, co-authored with Dr. Kimberly McCorkle.

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## **Introduction**

Pretrial release decisions should not be punitive in nature – rather, they should focus on helping people succeed pretrial. The presumption of release should remain a priority over reliance on jail and/or financial conditions of release vis-à-vis money bonds which create a disparity between the haves and the have-nots. Part of this transformation involves using a validated Risk Assessment Instrument (RAI) to determine the degree to which a defendant returns to court, likelihood of reoffending, or posing a danger to the public. This comprehensive approach serves as the backdrop for criminal justice reform.

An actuarial pretrial assessment, such as the Florida Risk Assessment Instrument, can play a positive role in advancing pretrial justice when it is part of a comprehensive approach. As federal courts have consistently held, the vast majority of people who are arrested are legally entitled to be released while their cases are pending. Moreover, research shows that most people, even those that score high on pretrial risk assessment tools, succeed on pretrial release. Longstanding legal principles maintain that pretrial decisions should be individualized and it is important that presumptions not be made solely on the charge(s).

One of the inherent values of a well-developed pretrial assessment tool is that it provides empirically supported information around important pretrial outcomes based on historical data. Financial conditions of release are increasingly disfavored for a variety of reasons in which, existing evidence shows they do not improve court appearance or public safety, resulting in the disproportionate detention of individuals without economic means and/or people of color.

Florida Statute section 903.046(2) lists the criteria judicial officers are to take into consideration in making their pretrial release decisions. These criteria include: the nature and circumstances of the offense; the weight of the evidence; the defendant’s family ties; length of time in the community; employment history; financial resources; mental conditions; prior criminal history; prior history of appearance in court; current status on pretrial release; probation and parole; and the “nature and probability of danger which the defendant’s release poses to the community.” The statute does not provide any guidance on what weight to assign each of these criteria in assessing a defendant’s risk of danger to the community and non-appearance in court.

The Association of Pretrial Professionals of Florida (APPF) was awarded a grant from the Bureau of Justice Assistance (BJA) during 2010 in support of creating a validated statewide risk assessment instrument. A statewide risk assessment instrument was developed by the JFA Institute and was initially validated in 2011. Significant work was done to validate this objective risk assessment tool for use in helping judicial officers in determining what weight to give to individual factors, and how individual defendant profiles are related to risk of pretrial misconduct, failure to appear and/or new arrest for a new law violation. There is ample research over the years which has clearly demonstrated the possibility of sorting defendants into categories, accurately reflecting the risks they pose to the safety of the community and appearance in court. Six Florida counties participated in the initial data collection and study in 2010: Alachua; Manatee; Osceola; Palm Beach; Pinellas; and Volusia. As a result of this study

11 factors were identified as having an independent effect on predicting pretrial misconduct. These predictor variables were:

- Age at admission;
- Current most serious charge;
- Is current charge 907.041;
- Employment status at admission;
- Marital status;
- Have a telephone/cell phone;
- Time at current residence;
- History of substance abuse and/or mental health;
- Previous FTAs;
- Previous adult felonies; and
- Previous adult misdemeanors

The National Association of Pretrial Services Agencies (NAPSA) revised its Standards on Pretrial Release in 2020. Pretrial Release Standard 2.8 states in part, that all justice systems incorporate validated risk assessments into their bail decision-making protocols. Actuarial risk assessment has demonstrated in the fields of justice, business, social science, and medical settings to predict outcomes better than professional judgement alone. Stakeholders should ensure that risk assessments are used for their intended purposes and ensure users have been trained on the proper use of the tool. Validated risk assessment can help minimize predictive bias based on an individual's race, gender, or ethnicity. Research conducted by Governments Justice Center (GSC) determined actuarial assessments do not fully eliminate racial and socio-economic bias; however, they can lessen bias more effectively than clinical and/or professional judgement.

NAPSA Accreditation Standard 3.01 requires accredited pretrial programs use an objective risk assessment instrument validated for the jurisdiction within the past 10 years using scientific methods and/or established pretrial release criteria supported by local empirical evidence. The Florida Corrections Accreditation Commission (FCAC) Standard 6.02M requires that accredited pretrial programs use a validated risk instrument or established release criteria, which is periodically reviewed by the Chief Judge or designee of the local jurisdiction.

During 2019, APPF decided to revalidate the Florida RAI. The following counties agreed to participate in the data collection: Alachua; Charlotte; Collier; Duval; Escambia; Lee; Manatee; Miami-Dade; Monroe; Orange; Osceola; and Polk. Initially, the time line to complete the revalidation was during the summer of 2020. However, the COVID-19 pandemic derailed efforts to meet this time line and the time line was significantly altered due to changes on program operations and court events. As a result, Duval, Lee, and Polk counties withdrew from the project.

The Criminal Justice faculty from the University of West Florida (UWF) analyzed the data and, without their commitment and hard work, this risk assessment instrument could not have been revalidated. APPF is especially appreciative of the work completed by Dr. Natalie Goulette; Dr.

Kimberly McCorkle; Dr. Kathy Johnson; and Dr. Richard Hough. None of this would have been possible without their knowledge, professionalism, and expertise.

The revalidation of the Florida RAI found the majority of pretrial cases were successful; no warrants issued for missed court hearings, not having a new arrest, nor violating any release conditions. As a result of this revalidation study, seven (7) factors were identified as having an independent effect on predicting pretrial misconduct. These predictor variables were:

- Current most serious charge;
- Is current charge 907.041;
- Employment status at admission;
- Have a telephone/cell phone;
- Homelessness;
- Previous FTAs, and
- Prior adult felony;

The Florida RAI is used as a part of the pretrial process to provide information regarding defendants' risk of missing a scheduled court hearing or posing a danger to the community through having a new charge during pretrial period. **Pretrial service agencies should not use the Florida RAI as the only determinant of bail recommendations (nor should courts use them as the only factor in bail decisions or to replace judicial decision making).** Risk assessment results should be one of several pieces of relevant information used to determine the least restrictive means needed to maximize release, maximize appearance and maximize public safety rates.

APPF acknowledges with great appreciation these pretrial practitioners and professionals who were instrumental in this revalidation project being successful:

- Michael Arizmendi                      Alachua County
- Brian Brittain                              Volusia County  
NAPSA Vice President
- Mirna Corredor                              Lee County
- Bill Cross                                      Escambia County
- Jennifer Dunkirk                              Osceola County
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- Duane Triplett                      Monroe County
- Gary Wakefield                      Duval County
- Tammy Wheeler                      Osceola County

### **Sample and Data**

Data for this revalidation project was collected for the sole purpose of examining the success of individuals released from custody, prior to the disposition of their case, on a pretrial status (ROR, SUBD, CABD, Pretrial Release Program, etc.). Members of the research team met with representatives from each of the nine counties to discuss the overall goals of the project and potential barriers associated with data collection. In collaboration with county representatives, the research team created a code sheet. This code sheet included variables that have been used in other validated risk assessment instruments and were included in the original validation study (Austin et al., 2009). All of this information contained in the code sheet was available to each of the participating counties. The code sheet was pilot tested and revised for all nine counties before actual data collection began. A list of these items can be found in **Appendix A**.

A data dictionary was also created to ensure consistency in the coding process across the individual counties. This dictionary identified each of the items/information included in data collection and identified how these items should be coded by court/jail personnel. Items included suspects' demographics (race/ethnicity, sex, age), charges, bond information, as well items typically used for risk assessment purposes (mental health status, substance abuse, and ownership of a phone).

Nine counties, Alachua, Charlotte, Collier, Escambia, Manatee, Monroe, Miami-Dade, Orange, and Osceola, agreed to participate in the current project. As shown in Table 1, the counties provided a mix of small, medium, and large counties across the state of Florida. The administrative location of the pretrial programs that participated in the revalidation research included Court Services, Sheriff's Office, County Corrections, and the Board of County

Commissioners. While Alachua and Charlotte counties were the only participating counties that have first appearance just once a day, all other counties had first appearance twice per day. Six counties, Alachua, Collier, Escambia, Manatee, Monroe, and Orange offered first appearance on weekends and holidays. Appearance rates ranged from 58% to 99% across the counties that recorded this information. Finally, in 2018, the number of individuals supervised by these counties ranged between 283 in Collier County and 7,865 in Miami-Dade County.



Table 1. Characteristics of Nine Counties

	Alachua	Charlotte	Collier	Escambia	Manatee	Monroe	Miami Dade	Orange	Osceola
County Population	266,944	182,033	320,239	318,316	420,985	74,228	2,751,796	1,378,538	368,456
Program Budget (2018)	\$1,496,922	\$559,171	\$323,200	\$810,962	\$821,452	\$510,601	\$5,542,000	\$2,967,750	\$727,686
Program Fees	Yes	Yes	Yes	No	No	No	No	Yes	Yes
Provide Supervision of Defendants on PTR	Yes	Yes	Yes	Yes	UNK	Yes	Yes	Yes	Yes
Does Program Supervise Defendants who Posted Bond	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Number Supervised in 2018	387	417	283	1,119	3500+	941	7,865	2546	3021
Jail Capacity	1,148	1,074	1,312	1,400	UNK	695 (3 locations)	4,890	4107	919
Number of Annual Arrests	9,154	6,689	8,566	15,738	UNK	7,000	56,400 (bookings)	37,068	11,173 (bookings)
Percentage of Pretrial vs Sentenced Offenders	UNK	75.7 vs 24.3	70 vs 30	UNK	65 vs 22 vs 13 (other)	UNK	58 vs 8	77 vs 23	UNK
Percentage of Pretrial Defendants with Felonies only vs misdemeanors only	UNK	79.8 vs 20.2	73 vs 27	UNK	91 vs 8 vs 1 (other)	UNK	78 vs 22	65 vs 35	UNK

Table 1. Characteristics of Nine Counties

	Alachua	Charlotte	Collier	Escambia	Manatee	Monroe	Miami Dade	Orange	Osceola
Number of Individuals Attending FA Annually	6,135	6,389	6,331	7,218	8000+	UNK	24,253	UNK	UNK
Number of Individuals Interviewed for FA	2,325	6,369	6,331	909	3500+	2707	20,709	22,211	4,669

In order to replicate and improve on the original validation project (Austin et al., 2009), a goal of 350 cases for each county was selected. The sample was drawn from subjects who were released in pretrial status from each county during July, August, September, and October 2019. A systematic random sample where each county was given a sampling sequence (e.g., 1 in every 7<sup>th</sup> case, 1 in every 3<sup>rd</sup> case, etc.) was used. When counties failed to meet the goal of 350 cases, they collected data on every defendant who was released on pretrial status during the month of November 2019. As Table 2 shows, the goal of 350 cases was exceeded by three of the nine counties. Three counties met the goal, or came very close to meeting it, while another three counties fell short (Alachua had 160 cases, Escambia had 246 cases, and Manatee had 210 cases).

County	Pretrial Releases	Percent
Alachua	160	5.6
Charlotte	336	11.7
Collier	439	15.2
Escambia	246	8.5
Manatee	210	7.3
Miami-Dade	335	11.6
Monroe	350	12.1
Orange	395	13.7
Osceola	402	14.0

Each individual who obtained pretrial release was followed for six months or until case disposition, whichever came first, to monitor pretrial misconduct. Similar to the original validation study, the outcome variable, pretrial misconduct, was defined as the commission of a new criminal offense resulting in a new arrest, failure to appear, or both (Austin et al., 2009). Two additional outcomes, (failure to comply and return to custody) were also investigated, but were not used to test the final scoring algorithm. This information completed the data file.

### ***Validation Methodology***

Once data was collected by the individual counties, and was received by the research team, all of the potential predictor variables were recoded into dichotomous, dummy variables. The relationship between all predictor variables and the outcome measures were assessed using cross tabulations. Tables 3 through 5 list the variables and show the results of these bivariate analyses.

From the bivariate analyses, a set of predictors were identified to include in the multivariate analysis. In order to investigate the relationship between the identified predictors with pretrial misconduct, net of all other predictors, multivariate logistic regressions were conducted. This process resulted in more predictors being removed from the analysis. The following seven factors were identified as having an independent effect on predicting pretrial misconduct:

1. Current most serious charge;
2. Is current charge 907.041;
3. Employment status at admission;
4. Have a telephone/cell phone;
5. Homelessness;
6. Previous FTAs; and
7. Prior adult felony convictions

In order to replicate the previous validation study, weights were assigned to each category of the final set of predictors using the marginal increase in pretrial misconduct risk attributable to a particular predictor. This marginal increase is measured relative to the base (or omitted category) (Austin et al., 2009). Once all weights were calculated, a summated score was tabulated for each individual in the sample. This score ranged in value from 0-38.

Characteristic	N	%	% w/FTA	% w/New Crime	% w/FTC	% w/Return to Custody	% w/FTA or New Crime
Base	2,881		5.1%	4.1%	2.5%	0.3%	9.2%
<b>Gender</b>							
Male	1,826	70.6%	6.0%	5.5%	2.8%	0.4%	11.5%
Female	784	29.1%	4.9%	2.4%	2.8%	0.4%	7.2%
<b>Race</b>							
White	2,019	70.1%	5.3%	4.4%	3.1%	0.2%	9.7%
Black	756	26.2%	6.2%	5.2%	2.0%	1.0%	11.4%
Other	98	3.4%	8.5%	3.7%	1.2%	0.0%	12.2%
<b>Type of Bond Release</b>							
Cash	332	11.5%	6.2%	1.6%	0.8%	0.0%	7.8%
Surety	1401	48.6%	6.9%	7.0%	1.5%	0.8%	13.9%
ROR	461	16.0%	4.6%	3.5%	2.6%	0.0%	8.2%
Other	398	13.8%	5.5%	3.2%	5.2%	0.0%	8.7%
<b>Employment at Admission</b>							
Unemployed	794	27.6%	7.7%	6.7%	3.1%	0.3%	14.4%
Other	1934	67.2%	4.7%	3.5%	2.7%	0.3%	8.2%

Table 3. Pretrial Releases from Sample Counties: July – Nov. 2019

Characteristic	N	%	% w/FTA	% w/New Crime	% w/FTC	% w/Return to Custody	% w/FTA or New Crime
<b>History of Substance Abuse</b>							
No	2128	73.9%	5.3%	3.6%	1.9%	0.2%	8.9%
Yes	576	20.0%	6.2%	7.9%	6.0%	0.7%	14.0%
Unknown	177	6.1%	8.6%	5.5%	1.6%	1.6%	14.1%
<b>Complying with Substance Abuse Treatment</b>							
No	2138	74.2%	5.9%	5.1%	3.4%	0.5%	11.0%
Yes	71	2.5%	7.5%	9.0%	4.5%	0.0%	16.4%
Unknown	672	23.3%	4.8%	2.5%	0.6%	0.2%	7.3%
<b>History of Mental Illness</b>							
No	2550	88.5%	5.5%	4.8%	5.2%	0.4%	10.3%
Yes	275	9.5%	6.3%	3.6%	7.7%	0.4%	9.9%
Unknown	56	1.9%	8.5%	0.0%	20.0%	0.0%	8.5%
<b>Complying with Mental Health Treatment</b>							
No	1973	68.5%	6.1%	5.1%	2.3%	0.5%	11.1%
Yes	116	4.0%	8.7%	2.9%	6.3%	0.0%	11.5%
Unknown	792	27.5%	4.3%	3.7%	4.3%	0.1%	8.0%
<b>Marital Status at Admission</b>							
Single	1954	67.8%	6.2%	5.2%	2.5%	0.5%	11.4%
Other	927	32.2%	4.6%	3.1%	3.3%	0.1%	7.7%
<b>Caregiver of Children</b>							
No	1988	69.0%	5.8%	4.9%	2.4%	0.6%	10.7%
Yes	836	29.0%	5.1%	4.1%	3.5%	0.0%	9.2%
Unknown	57	2.0%	10.4%	0.0%	4.2%	0.0%	10.4%

Table 3. Pretrial Releases from Sample Counties: July – Nov. 2019							
Characteristic	N	%	% w/FTA	% w/New Crime	% w/FTC	% w/Return to Custody	% w/FTA or New Crime
<b>Have a Telephone/Cellphone</b>							
No	289	10.0%	6.4%	9.0%	2.6%	0.0%	15.4%
Yes	2527	87.7%	5.5%	4.0%	2.8%	0.4%	9.5%
Unknown	65	2.3%	11.3%	5.7%	0.0%	1.9%	17.0%
<b>Have Reliable Transportation</b>							
No	733	25.4%	8.8%	6.6%	0.8%	1.5%	15.5%
Yes	1438	49.9%	4.2%	4.1%	3.3%	0.0%	8.3%
Unknown	710	24.6%	5.5%	3.5%	3.6%	0.0%	9.0%
<b>Current Charge is 907.041</b>							
No	1967	68.3%	7.4%	4.6%	2.6%	0.5%	11.9%
Yes	896	31.1%	2.3%	4.7%	2.9%	0.2%	6.9%
Unknown	18	0.6%	0.0%	0.0%	20.0%	0.0%	0.0%

Table 4. Pretrial Releases from Sample Counties: July – Nov. 2019							
	N	%	% w/FTA	% w/New Crime	% w/FTC	% w/Return to Custody	% w/FTA or New Crime
Base	2,881		5.1%	4.1%	2.5%	0.3%	9.2%
<b>Previous FTAs</b>							
None	2,337	81.1%	4.1%	3.3%	5.7%	0.2%	7.4%
One	177	6.1%	10.7%	9.0%	2.4%	0.0%	19.8%
2+	96	3.3%	14.6%	9.4%	7.1%	0.0%	24.0%
Unknown	271	9.4%	6.6%	5.5%	6.4%	1.8%	12.2%
<b>Previous Adult Felony</b>							
None	2,308	80.1%	4.1%	2.5%	4.8%	0.1%	6.6%
One	248	8.6%	7.7%	9.3%	10.5%	1.6%	16.9%
2+	305	10.6%	10.2%	12.1%	9.2%	1.0%	22.3%
Unknown	20	0.7%	10.0%	0.0%	11.1%	0.0%	10.0%
<b>Previous Misdemeanor, Municipal Ordinance, and/or Criminal Traffic</b>							
None	1,865	64.7%	4.1%	2.2%	4.9%	0.2%	6.3%
One	364	12.6%	6.9%	6.6%	6.5%	0.5%	13.5%
2+	637	22.1%	7.1%	8.2%	8.7%	0.8%	15.2%
Unknown	12	0.4%	0.0%	8.3%	0.0%	0.0%	8.3%
<b>Time at Current Residence</b>							
Under 12 mos.	704	24.4%	6.8%	3.6%	8.0%	0.1%	10.4%
12 mos. +	1,980	68.7%	4.3%	4.3%	4.7%	0.3%	8.6%
Unknown	197	6.8%	6.1%	4.1%	14.8%	1.5%	10.2%
<b>Homeless</b>							
No	1,052	89.2%	4.3%	3.7%	5.9%	0.1%	8.0%
Yes	84	7.1%	9.7%	7.8%	4.8%	0.5%	17.5%

	N	%	% w/FTA	% w/New Crime	% w/FTC	% w/Return to Custody	% w/FTA or New Crime
<b>Total Charges at Release</b>							
Zero	3	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%
One	1,912	66.4%	5.1%	3.3%	4.8%	0.3%	8.4%
Two	601	20.9%	3.7%	6.0%	7.1%	0.5%	9.7%
Three+	354	12.3%	7.6%	5.1%	9.2%	0.6%	12.7%

Charge	% w/FTA	% w/New Crime	% w/FTA or New Crime
Base Rate	5.1%	4.1%	9.2%
Violent	1.5%	3.7%	5.2%
Drug	5.3%	4.4%	9.7%
Property	13.7%	5.4%	19.1%
Other non-violent	8.7%	5.8%	14.5%
Mental health	4.6%	2.0%	6.6%
Substance abuse	5.5%	8.3%	13.9%
Both	8.9%	5.9%	14.9%



Age at Admission	N	%	% w/FTA	% w/New Crime	% w/FTC	% w/Return to Custody	% w/FTA or New Crime
Base	2,881		5.1%	4.1%	2.5%	0.3%	9.2%
Unknown	50	1.7%	5.3%	5.3%	0.0%	0.0%	10.5%
19 & younger	143	5.0%	1.6%	3.9%	0.0%	0.0%	5.5%
20-24	441	15.3%	5.2%	3.7%	5.1%	0.7%	8.9%
25-29	479	16.6%	5.8%	6.3%	7.3%	0.7%	12.1%
30-34	478	16.6%	8.4%	4.7%	6.1%	0.5%	13.1%
35-39	380	13.2%	5.3%	3.8%	3.7%	0.6%	9.1%
40-44	271	9.4%	7.1%	4.6%	6.5%	0.0%	11.8%
45-49	202	7.0%	5.6%	7.9%	10.1%	0.0%	13.6%
50-59	337	11.7%	4.1%	3.0%	6.3%	0.0%	7.1%
60-69	94	3.3%	2.2%	2.2%	5.7%	0.0%	4.5%
70 & older	6	0.2%	20.0%	0.0%	0.0%	0.0%	20.0%

	<i>B</i>	<i>s.e.</i>
Intercept	-2.16**	0.28
Characteristics		
Unemployed	0.41**	0.15
Homeless	0.69**	0.17
Does not have a phone	0.44*	0.20
Not 907 charge	-0.62*	0.25
Violent offense	-1.13**	0.27
Property offense	0.21	0.23
Drug offense	-0.22	0.20
Prior felony	0.96**	0.17
One FTA	0.75**	0.22
Two FTAs	0.94**	0.28

a Logistic regression model for binary outcome. \*\* p < .01; \* p < .05.

<b>Florida Pretrial Misconduct Risk Assessment Instrument</b>	
<b>Current Most Serious Charge</b>	
Violent	0
Drug	0
Property	2
Other	0
<b>Is current charge 907.041</b>	
No	4
Yes	0
<b>Employment status at admission</b>	
Unemployed	4
Other	0
<b>Homeless</b>	
Yes	6
No	0
<b>Have a Telephone/Cell phone</b>	
Yes	0
No	5
<b>Previous FTAs</b>	
None	0
One	7
Two or more	8
<b>Previous Adult Felonies</b>	
None	0
One or more	9

### **Findings and Conclusions**

In total, 2,881 individuals were included in the revalidation project. Approximately 70% of individuals were male. Seventy percent were also white. Over two-thirds of these individuals were single, did not have a history of substance abuse, or a history of mental illness. Most individuals had a working telephone or cell phone. Nearly 80% of the sample did not have any prior FTAs or prior felony convictions. Two-thirds of the sample were charged with just one criminal offense at release from jail.

Fewer than 10% of the sample engaged in pretrial misconduct. This finding suggests that most individuals can be released back into the community without failing to appear for a future court hearing or being charged with committing a new criminal offense. In examining pretrial misconduct rates by offense type, a larger percentage of property offenders engaged in pretrial misconduct than individuals who were charged with committing a violent, drug, or other non-violent offense.

Table 7 represents the results from the multivariate logistic regression model. The strongest predictors of pretrial misconduct included having a prior felony offense and the number of prior FTAs. Individuals who were unemployed, homeless, and did not have a phone were also significantly more likely to engage in pretrial misconduct. Individuals who were charged with a violent offense were significantly less likely to commit pretrial misconduct, even after controlling for other predictors.

In comparing the results presented here with those of the original validation study, a few differences were noted. First, age was not found to predict pretrial misconduct in the current study. While marital status was found to be a significant predictor of pretrial misconduct 10 years ago (Austin et al., 2009), this was not found in the current study. Finally, length of time at current residence was not found to be a significant predictor.

The current study extended and replicated the prior validation project, completed over 10 years ago. While the findings presented here were similar to those presented by Austin et al. (2009), some differences were noted. These results were considered in preparing the revised and altered scoring instrument.

## **References:**

Austin, J., Bhati, A., Jones, M., Ocker, R. (2009). Florida pretrial risk assessment instrument. *The JFA Institute: Denver, CO.*

## **Scoring for the Revalidated Florida Risk Assessment Instrument**

Implementation of a pretrial risk assessment instrument, an empirically-based tool is aimed at estimating the likelihood of appearance in court with no new arrests, thereby providing information that can support objective and transparent decision-making. Pretrial risk assessment instruments provide some objective, empirical evidence to inform decisions to release defendants who pose low risk of failure to appear and threat to public safety with minimal or no conditions; to release other defendants with conditions and strategies to maximize the likelihood they will appear at future court dates and avoid re-arrest; and to consider detention only for those defendants whose risk of failure to appear and threat to public safety cannot be managed in the community. The results of the pretrial risk assessment instrument should never result in detention without a due process hearing with a higher burden of proof on the state to show that there are no conditions that would reasonably assure appearance in court with no new arrest.

It is important to remember the Florida RAI measures the likelihood of pretrial misconduct. Pretrial misconduct has been defined as Failing to Appear (FTA) and/or an arrest for a New Law Violation (NLV). The Florida RAI should not be the only determinant of bail recommendations nor should courts use them as the only factor in bail decisions. **This tool is designed to inform, not replace, the exercise of judicial decision-making and discretion.** Risk assessment results should be one of several pieces of relevant information used to determine the least restrictive means needed to maximize release, maximize court appearances, and maximize public safety rates.

These instructions are designed to provide a guide for those responsible for completing the Florida RAI. This instrument was tested and re-validated on representative samples from the nine counties of Alachua, Charlotte, Collier, Escambia, Manatee, Monroe, Miami-Dade, Orange, and Osceola. The instrument uses a relatively straightforward additive point scoring system that is designed to identify candidates for pretrial release according to the level of risk they pose for either failing to appear (FTA) for subsequent court cases or to be re-arrested for a new crime while on pretrial release.

Seven scoring items were found to be related to FTA and/or re-arrest. To properly assess pretrial defendants, there must be a high degree of accuracy in the scoring process. These instructions are designed to help staff complete the scoring process in a reliable manner.

The scoring and results of the Florida RAI must be fully disclosed to the person whose risk is being assessed, and he or she must have the opportunity to contest its accuracy (Garrett & Stevenson, 2020; Slobogin, 2020). Lack of transparency is a critique of many pretrial risk assessment instruments that can be mitigated easily by sharing individual assessment results and disseminating information on the process through which an instrument was developed, including who was involved and how items were selected and weighted.

### **Scoring Item Instructions**

For each of the seven (7) items on the Instrument, select the choice that best describes the defendant for each item. The number of points assigned to the possible choices for each item is listed next to each choice on the Instrument.

**Item**

**1. Current Most Serious Charge**

How to score: Answer the question, “**What is the nature of the defendant’s most serious current charge?**” Choose from among the following four choices:

- Violent [0 point]
- Drug [0 points]
- Property [2 points]
- Other [0 points]

General or Common Crime Groupings:

<b>Violent</b>	<b>Drug</b>	<b>Property</b>	<b>Other</b>
Murder	Drug sale	Burglary	Weapon
Rape	Drug possession	Theft	DWLS
Assault	Conspiracy to sell drugs	Fraud	DUI
Battery		MV Theft	Other non-violent
Robbery		Other property	
Other violence			

**2. Is Current Charge 907.041?**

How to score: Answer the question, “**Are any of the defendant’s current charges listed in Florida Statute Chapter 907.041 (Pretrial detention and release)?**” Choose from among the following two choices:

- Yes [0 points]
- No [4 points]

**3. Employment Status at Admission**

How to score: Answer the question, “**What was the defendant’s employment status at the time of admission into the jail for the current charge?**” Choose from among the following two choices:

- Unemployed (Choose this option if during the 6 months prior to jail admission, the person has been unemployed and without any legal source of income sufficient or

steady enough to provide for his/her support. This includes homemakers and others who are supported by spouse, family, or friend.) [4 points]

- Other (Choose this option if any of the following options apply: (a) Employed - During the 6 months prior to jail admission for the current charge, the person has been employed full-time, part-time, or on a seasonal basis; (b) Full-Time Student - Prior to jail admission, the person is enrolled as a full-time student at a community college, a four year university, or graduate school; (c) Retiree - Prior to jail admission, the person is retired; (d) Disabled - Prior to jail admission, the person is receiving disability benefits; or (e) Unknown.) [0 points]

#### 4. Have a Telephone/Cellphone

How to score: Answer the question, **“Did the defendant have a telephone or cellphone at the time of admission into the jail on the current charge?”** Choose from among the following two choices:

- Yes [0 points]
- No or Unknown [5 points]

#### 5. Homelessness

How to score: Answer the question, **“During the 6 months prior to jail admission for the current charge, the person has been homeless.”** Choose from among the following two choices: No or Yes admission into the jail on the current charge?” Choose from among the following two choices:

- No [0 points]
- Yes or Unknown [6 points]

#### 6. Previous Failures to Appear

How to score: Answer the question, **“What is the number of prior (to jail admission) failures to appear the defendant has had in the past seven years for which a warrant was recorded as being issued and not rescinded?”** If the defendant missed multiple court events on the same day, count this as one FTA. Choose from among the following three choices:

- None [0 points]
- One [7 points]
- Two or more [8 points]

#### 7. Previous Adult Felony Convictions

How to score: Answer the question, **“What is the number of adult felony adjudications the defendant has had in the past seven years?”** Include Withholds and do not include arrests for which there is no disposition. Choose from among the following two choices:

- None [0 points]
- One or more [9 points]

## **Risk Level Designation**

After completing each item on the Instrument, sum the number of points. The scoring of the instrument ranges from a low of 0 points (“Lowest Risk”) to a high of 38 points (“Highest Risk”). It is important to remember, even those pretrial defendants who are determined to possess the highest risk of pretrial failure are successful more often than they are unsuccessful.

It is important to note that even a well-validated risk assessment instrument tool will not produce accurate estimates of risk for failure to appear and/or re-arrest if it is not used correctly.

The four levels of risk established by the research and validation study are as follows:

**Risk Level 1 - Low Risk** = 11 points or less – Individuals in this risk level have been determined to be successful 89.5% of the time.

**Risk Level 2 - Low Moderate Risk** = 12 points -16 points - Individuals in this risk level have been determined to be successful 80% to 89.4% of the time.

**Risk Level 3 - Moderate Risk** = 17 points – 21 points - Individuals in this risk level have been determined to be successful 64.4% to 79.9% of the time.

**Risk Level 4 - High Risk** = 22 points and above - Individuals in this risk level have been determined to be successful 53.8% to 64.3% of the time.

The estimated likelihood produced by the Florida RAI is known as a risk estimate. The risk estimate describes as a probability or category of risk (i.e. Low; Low Moderate; Moderate; and High). The risk estimate produced by the Florida RAI will be based upon the defendant’s score in relation to a reference or norming population. The defendant’s score will be compared to the scores of defendants studied during the RAI re-validation process and their rate of failure to appear and/or re-arrest.

The Florida RAI can describe a defendant’s likelihood of failure to appear and/or re-arrest as a function of the rates of outcomes among other defendants with a score in the same range. The Florida RAI cannot speak to how these rates of failure to appear and/or re-arrest are viewed within a given jurisdiction. The acceptability and tolerability of those rates should be determined by stakeholders before implementation. This instrument is not intended to inform case management and treatment per se, but rather to estimate the likelihood of failure to appear and/or re-arrest if a defendant is released to the community without any conditions.

Any conditions of pretrial release should only be imposed to increase the likelihood a defendant will appear in court with no new arrests.

Once the points have been summed for each defendant, assign the risk level using the above noted scale.

At this point, the risk level designation process is complete unless staff wants to over-ride the scored risk level. Note that staff can only move the scored risk level by one category. For example, staff can move the risk level from Low to Low Moderate but not to Moderate or High risk.

The items that can be used to over-ride the risk level must be established by each jurisdiction. The nine jurisdictions that developed this instrument suggest the items below:

<b>Mitigating Factors – Reduce Risk</b>	<b>Aggravating Factors – Increase Risk</b>
<ul style="list-style-type: none"> <li><input type="checkbox"/> ___ Very Stable Employment</li> <li><input type="checkbox"/> ___ Stable Residence</li> <li><input type="checkbox"/> ___ Strong Family Controls and Support</li> <li><input type="checkbox"/> ___ Previous success on pretrial release</li> <li><input type="checkbox"/> ___ Elderly</li> <li><input type="checkbox"/> ___ Medical impairment/disabled</li> <li><input type="checkbox"/> ___ Old age of prior convictions and arrests</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> ___ Gang Member</li> <li><input type="checkbox"/> ___ Prior arrests with no convictions</li> <li><input type="checkbox"/> ___ Recent prior conviction for violent offense</li> <li><input type="checkbox"/> ___ Active Felony Hold</li> <li><input type="checkbox"/> ___ Significant Mental Health Problem</li> <li><input type="checkbox"/> ___ Fugitive From Justice</li> <li><input type="checkbox"/> ___ Active Capias</li> <li><input type="checkbox"/> ___ On probation or parole at time of current arrest</li> <li><input type="checkbox"/> ___ Undocumented/Illegal w/out family or support</li> </ul>

A supervisor must review all over-rides. The rate of overrides should be no greater than 15% of all cases scored. The outcomes for defendants who received over-rides should be tracked to determine the extent to which the overrides enhanced or detracted from the predictability of the instrument.

Successful adoption of the Florida RAI requires stakeholder buy-in; implementation of the Florida RAI requires collaboration between court administration, pretrial services, judges and other stakeholders is essential to ensuring that the risk assessment instrument information is used to inform pretrial decision-making consistently. Best practice is to educate judges and stakeholders regarding the research on pretrial risk assessment instruments, as well as the role of risk assessment tools in supporting (not replacing) judicial discretion.



## Appendix Data Items Collected

County Defendant's  
Mutually Exclusive ID Number  
Date of Birth  
Gender  
Race  
Ethnicity  
Jail Admission Date  
Jail Release Date  
Type of Bond/Release  
Pretrial Supervision  
Primary Current Charge #1  
Description at Release  
Primary Current Charge #1 Level at Release  
Primary Current Charge #1 Bail Amount at Release  
Primary Current Charge #2 Description at Release  
Primary Current Charge #2 Level at Release  
Primary Current Charge #2 Bail Amount at Release  
Primary Current Charge #3 Description at Release  
Primary Current Charge #3 Level at Release  
Primary Current Charge #3 Bail Amount at Release  
Total Number of Charges at Release  
Number of Prior FTAs in the Past 7 Years  
Number of Adult Felony Convictions in the Past 7 Years  
Number of Adult Misdemeanor, Criminal Traffic, & Municipal Ordinance Convictions in the  
Past 7 Years  
Length of Time in Months at Primary/Current Residence at Time of Jail Admission  
Employment Status at Time of Jail Admission  
History of Substance Abuse History or Mental Health Issues  
Compliance with Substance Abuse or Mental Health Treatment Plan  
Marital Status at Time of Jail Admission  
Access to Reliable Transportation  
Caregiver of Minor Children or Others  
Have a Telephone/Cell Phone at Time of Jail Admission?  
Is Current Charge 907.041?  
Did defendant post bond before seeing a judicial officer

## Appendix "A"