The Recorder
The Journal of Texas Municipal Courts

Volume 28 June 2019 No. 4

Measuring The Risk Of Risk Assessments

Risk Assessment Instruments Are Tools in the Decision Making Process, Not a Substitute for Judicial Discretion

Henry W. Knight
Juris Doctor Candidate 2019, University of Texas School of Law
TMCEC Intern, Summer 2018

Editor's Note: *Proposals for bail reform were prominent in the 86th Legislature. Many bail reform proposals hinged on the increased use of personal bonds and the use of a risk assessment instrument. The July 2018 issue of The Recorder featured an article which explored the misunderstanding, utility, and limits of personal bonds. This article continues that discussion by taking a close look at risk assessment instruments.*

The pretrial release system is a critical, but often overlooked, aspect of the American criminal justice system. Pretrial release has two overarching purposes: (1) to prevent any new criminal activity by the defendant before

Measuring the Risk *continues on pg. 4*

With a Little Help From My Friends? Legal Representation in Municipal Court

Robby Chapman, Director of Clerk Education, TMCEC

It should come as no surprise to those that practice in municipal court that the general public is not typically familiar with the complexities of court or the criminal justice system. In a limited jurisdiction court with jurisdiction over fine-only offenses, such as Texas municipal and justice courts, this is especially true as more unrepresented individuals appear as court users in this type of court than in the other courts in the criminal justice system. One common misunderstanding is the meaning of the word "attorney." To a court clerk or judge, "attorney" clearly means a professional licensed to practice law in the State of Texas by the State Bar of Texas. To the many court users, however, attorney also includes the term as it is commonly applied when delegating authority to an agent

Legal Representation *continues on pg. 13*

Inside This Issue

Texas Municipal Courts Education Center

2210 Hancock Drive
Austin, Texas 78756
512.320.8274 or 800.252.3718
Fax: 512.435.6118
www.tmcec.com

Fair and Impartial Justice for All

Published by the Texas Municipal Courts Education Center through a grant from the Texas Court of Criminal Appeals. An annual subscription is available for $35.

AROUND THE STATE

In Apprciation of Regan Metteauer

After nearly seven years of service to TMCEC, at the end of March Regan Metteauer joined the Judicial Commission on Mental Health as a staff attorney. TMCEC thanks Regan for her tireless and unfaltering dedication to her work at the Center. Texas municipal courts, and the Texas judiciary as a whole, are in a better place due to her excellent legal research and writing, clear and engaging presentations, and genuine passion for education.

Regan, pictured here, was recently presented a token of our appreciation the Traffic Safety Conference in Houston.

TMCA Annual Meeting

The Annual Meeting and Educational Program of the Texas Municipal Courts Association (TMCA) will be held in Houston at the Omni Westside Hotel on August 18-19, 2019. The conference will begin Sunday, August 18th at 1:00 p.m. and conclude following the awards banquet on Monday evening, August 19th. A special room rate at the Omni of $121 for a single room or $131 for a double room has been secured for those attending the conference. Last year's room block sold out quickly, so register now and reserve your room early. Go to https://www.txmca.com/annual-conference/conference-2019/ for more information. Attendance counts towards mandatory judicial education, clerk certification, and MCLE credit for attorneys.

At this meeting, the TMCA Annual Awards are announced. Go to the TMCA website [www.txmca.com or form.jotform.com].

Risk Assessment Instruments: A Judge's Perspective

Judge Robin A. Ramsay
Denton County

In early 2018, the district and county criminal judges in Denton County requested that I chair a committee charged with developing a risk assessment instrument for use in our county. It was their belief that the magistrates, most of whom are municipal judges, were setting bail without any real consideration of the defendant's financial circumstances or the actual threat to the community posed by that defendant. It was the judges' consensus that our county jail routinely held many defendants on minor charges solely because they lacked funds, while other far more violent defendants who were of some means commonly posted bail and remained free without conditions.

Despite some trepidation, the use of a risk assessment instrument has not impeded or delayed the process of setting bail. Initially, I had feared that the administration of a risk assessment instrument might be overly complicated, the necessary information to complete the risk assessment instrument impossible to find, and that the process would overwhelm our limited staff. To my great delight, none of these issues have occurred. Our risk assessment instrument process has been in operation for almost four months now and I have been extremely pleased with its results.

The number of people accused of lower level, non-violent offenses released on personal bonds has dramatically increased. Our ability to identify those defendants who have "re-offended" while free on bond or who have failed to appear for other offenses prior to the current arrest has greatly improved. And, most importantly, our ability to recognize those defendants charged with offenses for which conditions of bail might be necessary to best protect the community or victim has improved significantly.

I have performed magistrations for more than 25 years, and I thought I knew all I need to know about the process. I was wrong. Since the time I have had the luxury of access to a risk assessment instrument prior to setting bail, I have learned that my "gut feelings" about a defendant or offense is only a partial view of those considerations that most directly affect a defendant's ability to comply with obligations under bail. Most fundamentally, access to a risk assessment instrument allows me, if not forces me, to contemplate all of the considerations set forth under Article 17.15 of the Code of Criminal Procedure. In short, use of a risk assessment instrument requires that I do think about all of those things that I should have been considering for a very long time.

Judge Robin Ramsay is currently an Associate District and County Criminal Court Judge for Denton County. Until November 2018, Ramsay served as the Presiding Municipal Judge for the City of Denton.

Note: On the pages 10-11 is the risk assessment currently used by Judge Ramsay in Denton County. It was adapted from one used in Ohio.

Measuring the Risk *continued from pg.1*

case resolution and (2) to ensure the defendant's appearance in court. If those were the only two concerns involved, then judges could easily fulfill them by detaining every defendant pending trial. However, the presumption of innocence precludes that outcome; it also makes the pretrial release decision far more complicated.

Generally, defendants who pose the highest risk of committing new crimes or skipping court should be detained; those of the lowest risk should be released with minimal or no conditions; and those of moderate risk can often be released with the conditions necessary to assure their appearance and prevent additional offenses.[1] Judges have the troublesome task of identifying defendants posing a flight risk and crafting corresponding release conditions with little available information.

I. Determining Pretrial Release

Because pretrial release constitutes the highest volume of cases in the judicial process, judges and court administrators often prioritize speed and efficiency when conducting bail hearings.[2] The process typically proceeds as follows. Once an accused is arrested and brought before a judge at a hearing, that judge is expected to conduct a short interview and determine, often based solely on experience and intuition, if there is any reason why the accused should not be released on bond. Subsequently, if the accused is released, the judge must also decide whether to impose conditions on release or whether to impose monetary bail. This decision is typically difficult, demanding the judge quickly exercise meticulous scrutiny in examining each defendant's case. Furthermore, according to Congress and the U.S. Supreme Court, judges must also balance community safety concerns and the likelihood the accused will appear at trial against the accused's presumption of innocence.[3] Bail must then be set in proportion to the accused's relative level of risk and may not be levied excessively as punishment for the alleged crime.[4] Despite these balancing concerns, a risky defendant may walk free on bond if they have sufficient financial resources, while a comparatively less risky defendant may be detained due to a lack of similar resources.

Due to the complex demands in play, it is not surprising that research suggests that arbitrary bail decisions are common.[5] Judicial officers rarely have access to information beyond an accused's previous criminal history and current charges when making decisions about appropriate bond amounts and bail conditions.[6] As a result, states are increasingly incarcerating defendants pre-trial in an effort to minimize risk.[7] The proportion of jail inmates that have not yet been convicted increased from 50 percent in 1985 to over 65 percent in 2016.[8] At the same time, jail populations grew from approximately 256,000 to nearly 745,000, with the Bureau of Justice Statistics attributing an estimated 95 percent of the growth to the increased incarceration of pretrial inmates.[9] Many of these defendants have been detained because they cannot afford bail, and a significant portion of them are being held on misdemeanor offenses on bail amounts of $1,000 or less.[10] This occurs because the typical pretrial release system in the United States is resource-based and relies on a defendant's financial resources in determining whether they should be released or detained.[11] When those defendants cannot pay their bail bond, they are detained until trial, which places additional costs on jails, cities, municipalities, and the accused.

II. Risk Assessment Instruments

To address jail overcrowding concerns, some jurisdictions are choosing to move away from resource-based pretrial release models in favor of risk-based models, which would instead rely on a defendant's risk of failing to appear in court and the danger they pose to the community, rather than a defendant's ability to pay monetary bail amounts. One tool that frequently assists judges and court staff in implementing these risk-based models is the pretrial risk assessment instrument (PRAI). While such tools often vary in evaluation criteria and implementation, they typically have two primary goals: (1) to standardize pretrial recommendations and (2)

to maximize the number of successful pretrial decisions.[12] To clarify, the term *successful* is best understood in contrast with the term *failure*, which is usually defined as failure to appear for the scheduled court date and/or re-arrest for further criminal violations prior to adjudication. Standardized risk assessments help judges make informed decisions based on actuarial metrics, thereby raising the likelihood of *successful* pretrial recommendations.

A. Origins

A risk assessment instrument is a tool that measures a defendant's risk of pretrial failure based on a collection of several risk factors. They first appeared in 1961, when the Vera Institute of Justice launched an experiment in New York City to test the hypothesis that defendants could be categorized by the degree of risk they posed to fail to appear in court, and that such categorizations could be used in recommending pretrial release.[13] The Vera Institute developed a "point scale" that measured strength of family and community ties as the criteria for identifying defendants who had a high likelihood of appearing in court.[14] After learning the conclusion of the Vera experiment, many jurisdictions established their own pretrial services programs and implemented similar point scales to assess risks of failing to appear in court for local defendants. Many adopted the "Vera Model," using the same criteria, but in the 1970s, others chose to develop new assessments once states began changing their bail laws to demand consideration of community safety in addition to flight risk.[15]

B. Evaluation

Currently, the most common factors found in assessment instruments include some combination of (1) current charge, (2) prior convictions, (3) prior incarcerations, (4) pending charges, (5) history of failure, (6) community ties and residential stability, (7) substance abuse, (8) employment and education, and (9) age.[16] There is certainly some debate over which risk factors are the most predictive. For example, the risk factor "community ties" has often been reported to be a predictor of pretrial failure, likely due to its emphasis in the Vera Point Scale; however, researchers have challenged this particular measure and have repeatedly found that the factor does not add to the predictive power of a pretrial risk tool.[17] Nevertheless, assessments typically include some form of residential stability as a proxy to determine risk as it relates to community ties. Despite the fervent debate, assessment instruments almost always agree that defendants with prior histories of failing to appear in court and prior convictions are more likely to fail to appear in the current case and be rearrested.[18]

It is important to note that no tool can predict the behavior of any individual with 100 percent accuracy. Risk assessments do not "predict" behavior. Rather, they place individuals in risk categories (e.g., minimal, low, moderate, or high) according to the historical behavior of other individuals who have exhibited similar characteristics.[19] These assessments must be data-driven and guided by objective actuarial instruments because research shows that data-driven analysis combined with subjective risk assessment produces better outcomes than subjective judgment alone.[20] Still, risk assessments are an aid—rather than a replacement—for professional discretion.

III. The Negative Consequences of Pretrial Detention

A pretrial detention study found that pretrial detention was unrelated to the overall likelihood of a custodial sentence, but significantly related to the length of incarceration. Those defendants who were detained pretrial were sentenced to significantly longer periods of incarceration than those who were not detained.[21] Notably, that study included important statistical controls for factors such as sex, age, race, attorney type, county type, number of charges, number of priors, and offense type, but not a measure of risk.[22]

Another study, utilizing similar statistical controls, conducted using data from the state of Kentucky (153,407 cases disposed of from July 1, 2009 to June 30, 2010) found that pretrial detention was the strongest predictor of an eventual jail sentence or imprisonment.[23] Those who were detained awaiting trial were more than four times more likely to receive a jail sentence and more than three times more likely to receive a prison sentence, relative to those not detained. The predictive power of pretrial detention on the likelihood of incarceration poses significant concerns for the American criminal justice system. It implies that defendants with resources to secure their pretrial freedom are inherently less culpable than those without similar resources.

Some, but not all, of the observed discrepancies in sentencing can be attributed to the implicit biases of court administrators and judges. Implicit bias often conflicts with self-reported beliefs, but refers to prejudice resulting from implicit attitudes toward particular groups and implicit stereotypes about particular groups.[24] These biases are typically unconscious and do not necessarily reflect poorly on those who exhibit them. As one judge explained, "social scientists are convinced that we are, for the most part unaware of them. As a result, we unconsciously act on such biases even though we may consciously abhor them."[25] Risk assessments can alleviate and control some of these unconscious biases, because their measurements are numerically-based and almost always exclude immutable characteristics such as race, gender, ethnicity, and national origin.

IV. Selecting an Assessment Tool and the Current State of Risk Assessment Adoption

According to most estimates, fewer than 10 percent of jurisdictions nationally employ risk assessment instruments to inform pretrial release or detention decisions.[26] This puts judges in the unenviable position of having to make high-stakes determinations based solely on a subjective appraisal of each defendant. This trend is changing; however, as more and more jurisdictions are developing and implementing pretrial risk assessments.[27]

Researchers have published guidelines for selecting and implementing assessments and have highlighted several important factors:

1. PRAIs should be consistent with the jurisdictional standards of relevant criteria for bail considerations, particularly with regard to race, ethnicity, gender, and financial status.
2. Risk factors included in the PRAI must be demonstrably related to failure to appear and re-arrest rates, not solely to recidivism or general criminogenic factors.
3. Risk factors and assessment terms should be clearly and unequivocally defined to ensure consistent evaluations.
4. The instrument should be simple enough to use under day-to-day circumstances. Instruments that require specialized knowledge or overly time-sensitive data are likely too burdensome for most jurisdictions' use.
5. PRAIs that rely on actuarial data must be validated and/or revised for the implementing jurisdiction. Jurisdictional variations in risk factors are likely.
6. PRAIs should be relatively easy for criminal justice personnel to understand and administer.[28]

The above factors, if implemented properly, will likely reduce the effect of any predictive bias in pretrial decision-making, but they lack a level of specificity required for direct implementation.

As a more practical example, the Virginia Pretrial Risk Assessment Instrument (VPRAI), and the research methods used to ensure its race and gender neutrality, serve as a model for risk assessment development and validation.[29] Before determining a defendant's risk, the court officer must establish that the defendant is eligible for the VPRAI. Some defendants are excluded because the VPRAI is narrowly tailored and would not necessarily be sufficiently predictive of their behavior. Once a defendant is determined eligible, the assessment calculates their risk level based on eight factors: (1) charge type; (2) pending charge; (3) criminal history; (4) two or more failures to appear; (5) two or more violent convictions; (6) length at current residence less than one

year; (7) not employed two years/primary caregiver; and (8) history of drug abuse.[30] The VPRAI then interprets the responses and provides a release recommendation, recommended conditions of release, and additional comments (which may include additional risks or mitigating factors relevant to the bail decision).[31]

In 2016, Harris County implemented the Public Safety Assessment (PSA), a data-driven risk assessment tool that provides objective information that judges can use when deciding whether to release or detain a defendant prior to trial. The Laura and John Arnold Foundation (LJAF) developed the PSA to address the scarcity of risk assessments in courts. The resulting point system was created using a database of over 1.5 million cases drawn from approximately 300 U.S. jurisdictions and evaluates defendants according to many of the same factors that the VPRAI measures.[32] For example, the PSA also measures prior convictions and prior instances of failing to appear, but it notably does not take into account employment or any residential factors due to predictive validity concerns. The PSA is unique for two reasons. First, it relies only on administrative records and can be completed without conducting an interview with the defendant, permitting more defendant assessments in less time. Second, LJAF created the PSA with the intention of implementing it across the country. Most risk assessments are tailored specifically for their own jurisdiction. Beyond Harris County, over 40 jurisdictions have either adopted the PSA or are engaged in implementation with LJAF technical assistance.[33] According to LJAF, the early results have been promising, showcasing reductions in pretrial jail populations, rates of failures to appear, and the level of crime committed by those on pretrial release.[34] Despite the successes of systems like the PSA and the VPRAI, concerns regarding equity persist.

V. Critiques of Risk Assessment Instruments

A. Race and Gender

Critics of risk assessment instruments argue that these tools contribute to racial disparities by relying on flawed group-based patterns that inherently treat people of color differently.[35] Some also argue that the legacy of unfair criminal justice practices (and general forms of racism) makes it nearly impossible to remove this bias from most risk factors (e.g., criminal history).[36] In other words, the data that these assessments rely on is flawed and no amount of good-faith effort in properly using these instruments will correct it. One study examined the federal system's Post Conviction Risk Assessment (PCRA) and found that the instrument strongly predicted recidivism for black and white individuals, but also found that black individuals were more likely than whites to have higher PCRA scores due to higher criminal history scores, with criminal history mediating the relationship between race and recidivism.[37] Unfortunately, there is no definitive way to determine the cause of the disparity in criminal history scores. It is impossible to discern whether these differences fit the critics' argument that higher criminal history scores reflect differential enforcement, including over-policing and over-enforcement against people of color, or if these differences are higher simply due to people of color having higher criminal propensity.[38]

In a similar study of the PCRA examining gender, researchers found that the instrument strongly predicts recidivism for both genders, but over-predicts for women. Women, on average, received higher scores due to the influence of male scores, which drove estimates higher.[39] The researchers therefore recommended that gender be included as a risk variable. Excluding gender can lead to disproportionate punishment for women because the predicted probabilities are heavily influenced by the higher offending patterns of males.[40]

B. Specificity

Risk assessments also have other predictive shortcomings unrelated to race and gender. In some instances, their lack of specificity can result in inaccurate assessments of certain defendants. Some categories of sex offenders,

for example, tend to be categorized as low-risk by particular risk assessments despite being likely to reoffend while awaiting trial.[41] The assessments typically miss defendants that are educated, professionally employed, and lack significant criminal history, yet convey a high risk of failure due to the nature of their offenses.

Despite their shortcomings, risk assessments can be invaluable to any jurisdiction that implements them. Kentucky, which passed a bill in 2011 requiring judges to use a research-based, validated assessment to measure a defendant's flight risk and public danger, saw positive results after the system was implemented.[42] Pretrial releases increased from 50 percent to 70 percent of all arrested defendants within the first year, 85 percent of low-risk defendants were released (an 8 percent increase), and the monitoring program was assigned 40 percent more clients.[43] Simultaneously, the appearance rate and public safety rate measured by the monitoring program increased by 1 percent.[44] The pretrial release instrument could therefore be considered successful because it increased the number of defendants released pending trial, without negatively affecting appearance rates or public safety.

VI. Benefits of Risk Assessment Adoption and Inherent Barriers

Currently, most risk assessments in use in the United States are subjective and qualitative. Such assessments are falling out of favor because they are less consistent across multiple assessors, and they have been shown to have less predictive value than quantitative measures.[45] When recommendations are inconsistent with the defendant's level of risk, defendants tend to fail to appear or recidivate more often. However, the use of quantitative or mixed quantitative-qualitative risk assessments has been shown to lower a defendant's likelihood of pretrial misconduct.[46] Furthermore, research has suggested that assessments could be conducted without an interview, potentially improving judicial efficiency by speeding up the pretrial process. Two studies found empirical support that risk assessments that were administered without an interview maintained similar levels of predictive validity to those that required an interview.[47] Interviews are typically an inessential part of risk assessments because the most predictive factors, such as prior convictions and prior failures to appear, are static. A judge can determine that a defendant has a prior failure to appear or conviction without speaking to them. If there is widespread adoption of risk assessments, defendants will likely appear more often and courts will spend fewer resources processing those defendants.

Potentially the most significant hurdle in risk assessment adoption is "court culture." Researchers coined the term in the 1970s in their efforts to understand court management, court reform, and expedition and timeliness in particular.[48] Court culture is specifically defined as the expectations and beliefs judges and court administrators have about the way work gets done, which varies considerably both within and between courts.[49] Risk assessments cannot be truly effective unless they become part of their adopting jurisdiction's court culture. Theoretically, implementation is a two-step process. First, the court or jurisdiction must select or develop a particular risk assessment instrument, keeping in mind that all assessments should be validated or revised for the implementing jurisdiction. Second, the court must integrate the assessment into its normal judicial processes. This second step is absolutely crucial. Lack of buy-in among key stakeholders, including judges, prosecutors, defense attorneys, and others, has been shown to undermine the adoption of evidence-based practices.[50] Additionally, in most risk assessment jurisdictions, judges have the authority to override any instrument conclusions upon a subjective finding of dangerousness or risk of flight.[51] For example, a study of the use of a risk assessment system to set bail in Cook County, Illinois showed a greater than 80 percent override of the tool's recommendations on the part of arraignment court judges.[52] If judges, prosecutors, defense attorneys, or court administrators refuse to trust the assessment tools, then the quantitative measurements serve no purpose and will be continually overridden by subjective qualitative analysis.

Conclusion

Criminal justice advocates have touted objective risk assessments as a crucial tool for reducing jail overcrowding and ending mass incarceration. While these tools can help standardize pretrial recommendations and diminish the effect of human bias, there is nothing inherent in risk assessments that will reduce jail populations, make prison populations less racially disparate, or otherwise reform the criminal justice system.[53]

Risk assessments are a tool. They should neither replace judicial discretion nor be the sole consideration in the pretrial decision making process. Judges who use these instruments will continue to look at the facts of the case, listen to arguments provided by the prosecution and defense counsel, and include any additional information or insight about a case or defendant that the assessment may not have captured. The judge's analysis, supplemented by information gleaned from the risk assessment, will be improved and will continue to be the paramount consideration.

1. Anne Milgram et al., *Pretrial Risk Assessment: Improving Public Safety and Fairness in Pretrial Decision Making*, 27 Fed. Sent. R. 216.
2. John S. Goldkamp & Michael D. White, *Restoring Accountability in Pretrial Release: The Philadelphia Pretrial Release Supervision Experiments*, 2(2) Journal of Experimental Criminology 143 (2006).
3. See, *Stack v. Boyle*, 342 U.S. 1 (1951); *United States v. Salerno*, 481 U.S. 739 (1987); see also 18 U.S. Code Sections 3062, 3141 to 3150.
4. *Salerno*, 481 U.S. at 747.
5. Sheila Royo Maxwell, *Examining the Congruence Between Predictors of ROR and Failures to Appear*, 27 Journal of Criminal Justice 127, 129 (1999).
6. *Id.*
7. Zhen Zheng, Bureau of Justice Statistics, *Jail Inmates in 2016,* p.4 (2018).
8. *Id.*
9. *Id.*
10. See, Ram Subramanian, et al, Vera Institute of Justice, *Incarceration's Front Door: The Misuse of Jails in America*, p. 32 (2015).
11. Marie VanNostrand, *Pretrial Risk Assessment – Perpetuating or Disrupting Racial Bias?*, The Pretrial Blog (Dec. 6, 2016) https://www.pretrial.org/pretrial-risk-assessment-perpetuating-disrupting-racial-bias/.
12. Keith Cooprider, *Pretrial Risk Assessment and Case Classification: A Case Study Control*, 73(1) Federal Probation 17, 21 (2009).
13. Pretrial Justice Institute, *Overview of Research Findings on Pretrial Risk Assessment and Pretrial Supervision*, p. 1 (2009).
14. *Id.*
15. *Id.*
16. Kristin Bechtel et al., *Identifying the Predictors of Pretrial Failure: A Meta-Analysis*, 75(2) Federal Probation, p. 129, 130 (2011); see also, Edward Latessa et al., *Creation and Validation of the Ohio Risk Assessment System: Final Report* p. 2 (2009).
17. John S. Goldkamp & E. Rely Vilcica, *Judicial Discretion and the Unfinished Agenda of American Bail Reform: Lessons from Philadelphia's Evidence-Based Judicial Strategy*, 47 Studies in Law, Politics, and Society, p. 115 (2009).
18. Pretrial Justice Institute, supra note 12, at 4.
19. Sarah Picard-Fritsche et al., *Demystifying Risk Assessment: Key Principles and Controversies*, p. 13 (2017).
20. William M. Grove & Paul E. Meehl, *Comparative Efficiency of Informal (Subjective, Impressionistic) and Formal (Mechanical, Algorithmic) Prediction Procedures: The Clinical-Statistical Controversy*, 2(2) Psychology, Public Policy, and Law pp. 293, 316 (1996).
21. Meghan Sacks & Alissa R. Ackerman, *Bail and Sentencing: Does Pretrial Detention Lead to Harsher Punishment?* 25(1) Criminal Justice Policy Review, pp. 59, 69 (2012).
22. *Id.*
23. Christopher T. Lowenkamp, et al, Laura and John Arnold Foundation, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes,* p. 3 (2013).
24. Anna Roberts, *(Re)forming the Jury: Detection and Disinfection of Implicit Juror Bias*, 44 Conn. L. Rev. 827, 833 (2012); Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 Cal. L. Rev. 945, 949 (2006).
25. Judge Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promises of Batson, and Proposed Solutions*, 4 Harv. L. & Pol'y Rev. 149 (2010).
26. *Id.* at 315.
27. Cynthia A. Mamalian, Pretrial Justice Institute, *State of the Science of Pretrial Risk Assessment*, p. 27 (2011).
28. Charles Summers & Tim Willis, Bureau of Justice Assistance, *Research Summary: Pretrial Risk Assessment*, p. 4 (2010).
29. VanNostrand, *supra* note 11.
30. Va. Dep't of Criminal Justice Serv., *Virginia Pretrial Risk Assessment Instrument (VPRAI)*, p. 5 (2009).
31. *Id.* at 9.
32. *Public Safety Assessment: A Risk Tool that Promotes Safety, Equity, and Justice*, Laura and John Arnold Foundation Blog, https://www.arnoldfoundation.org/public-safety-assessment-risk-tool-promotes-safety-equity-justice/ (Aug. 14, 2017).
33. *Id.*
34. *Id.*
35. *See generally* Bernard Harcourt, *Risk as a Proxy for Race: The Dangers of Risk Assessment*, 27 Federal Sentencing Reporter, p. 237 (2015).
36. Bernard Harcourt, *Against Prediction: Profiling, Policing, and Punishing in an Actuarial Age*, p. 13 (2008).
37. See, Jennifer L. Skeem & Christopher T. Lowenkamp, *Risk, Race, and Recidivism: Predictive Bias and Disparate Impact*, 54 Criminology 680, 681 (2016).
38. Matthew DeMichele et al., *The Public Safety Assessment: A Re-Validation and Assessment of Predictive Utility and Differential*

continues on pg. 25

Example

Assessment ID: 19-579036
Assessed: 04/03/2019
Name: Smith, John (SO # 1111111)

MAGISTRATE COURT RISK ASSESSMENT

DOB:	01/01/01	Arrest Date(s):	04/02/2019
Gender:	Male	Offense(s):	TAMPER W/ IDENTIFICATION NUMBERS PERSONAL PROPERTY
Days in Jail:	1	Offense Degree(s):	MA

DEMOGRAPHICS	SCORE
1. Age	<=19: 2 points 20-29: 1 point >=30: 0 points
2. Citizenship Status	Other County: 1 point United States: 0 points
3. Emergency Contact	None Provided: 3 points Provided: 0 points
4. Employment Status	Unemployed: 3 points Employed: 0 points
CONTACT INFORMATION	**SCORE**
1. Transient	Homeless: 6 points Has Home: 0 points
2. Local Residence	Outside of Denton Co:2 points Denton Co: 0 points
3. State Residence	Outside of Texas: 5 points Texas: 0 points
4. Telephone	No Phone: 4 points Phone Number: 0 points
IDENTIFYING INFORMATION	**SCORE**
1. Social Security Number	No SSN: 4 points Has SSN: 0 points
2. Driver's License	No DL: 4 points Has DL: 0 ponts
CRIMINAL HISTORY	**SCORE**
1. Arrests in the past 10 years	1 point per arrest, does not include current
2. Arrests for Assaultive Offenses	2 points per charge, includes current
3. Arrests for Sexual Offenses	2 points per charge, includes current
4. Arrests for Stalking/Viol Protective Orders	2 points per charge, includes current
5. Arrests for PG 1 Offenses	Yes: 2 points No: 0 points (includes current)
6. Active Denton Co. Bonds	Yes: 5 points No: 0 points
7. FTA/17.16/17.19	2 points per instance, includes current
Assessment Total	**0**

Low Risk: 0-12 Low Moderate Risk: 13-17 Moderate Risk: 18-22 High Risk: =>22

Assessment ID: 19-000000
Assessed: 03/28/2019
Name: Smith, John (SO # 000000)

MAGISTRATE COURT RISK ASSESSMENT

DOB:	01/01/01	Arrest Date(s):	11/03/2017
Gender:	Male	Offense(s):	ENGAGE IN ORGANIZED CRIMINAL ACTIVITY; Theft Prop<$100 W/Prev Convis
Days in Jail:	1	Offense Degree(s):	MA; MB

DEMOGRAPHICS	SCORE
1. Age	1
2. Citizenship Status	0
3. Emergency Contact	0
4. Employment Status	3
CONTACT INFORMATION	**SCORE**
1. Transient	6
2. Local Residence	2
3. State Residence	0
4. Telephone	0
IDENTIFYING INFORMATION	**SCORE**
1. Social Security Number	0
2. Driver's License	0
CRIMINAL HISTORY	**SCORE**
1. Arrests in the past 10 years	5
2. Arrests for Assaultive Offenses	2
3. Arrests for Sexual Offenses	0
4. Arrests for Stalking/Viol Protective Orders	2
5. Arrests for PG 1 Offenses	2
6. Active Denton Co. Bonds	5
7. FTA/17.16/17.19	0
Assessment Total	**28**

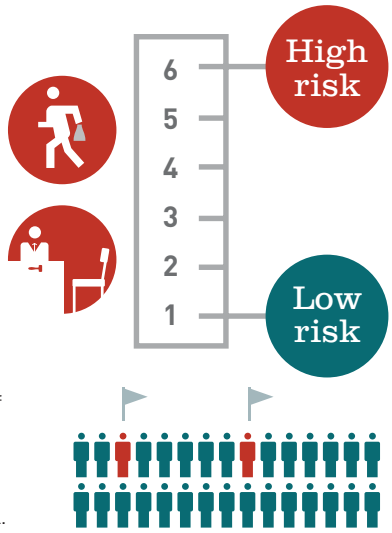
Low Risk: 0-12 Low Moderate Risk: 13-17 Moderate Risk: 18-22 High Risk: =>22

The Public Safety Assessment (PSA)

Following a person's arrest, a judge must decide whether that person should:

A judge considers many factors in making this decision. One tool that judges may use to help make this decision is the PSA.

The PSA produces a score that represents the likelihood that a defendant who is released before trial will commit a new crime or will fail to appear for a future court appearance.

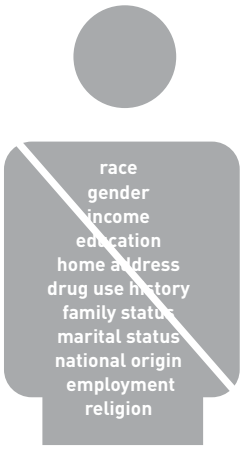


The PSA also flags the small number of defendants who pose an elevated risk of committing a crime of violence if released before trial.

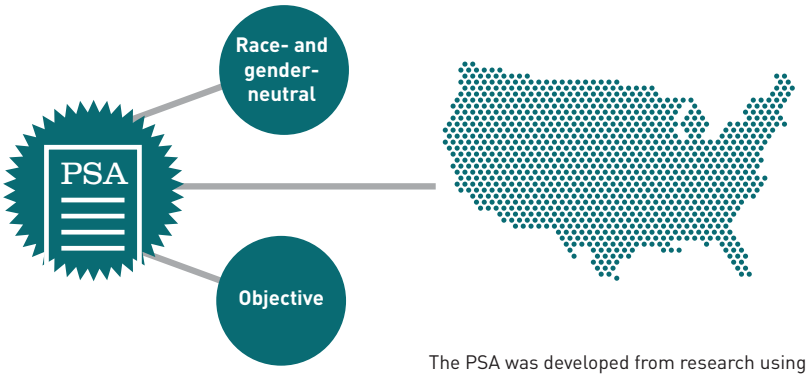
The PSA score is calculated based on nine factors.

- Current violent offense
- Pending charge at the time of the offense
- Prior misdemeanor conviction
- Prior felony conviction
- Prior violent conviction
- Prior failure to appear pretrial in past 2 years
- Prior failure to appear pretrial older than 2 years
- Prior sentence to incarceration
- Age at current arrest

The PSA does NOT look at any of the following factors:



The PSA provides information that is race- and gender-neutral. It helps guide pretrial decision making in an effort to increase safety, reduce taxpayer costs, and enhance fairness and efficiency in the system.



The PSA was developed from research using data from across the United States.

The PSA score is not the only information that a judge considers, and the final decision will always be made by a judge.

For more information about the PSA, please visit www.arnoldfoundation.org.

Legal Representation continued from pg.1

in certain business matters, such as in documents including a "Power of Attorney" or "Medical Power of Attorney." The confusion is understandable. These documents, often drafted by attorneys, include the word "attorney" throughout and allow another person to handle certain matters for another. Somewhat logically, court users then assume that the same document will bestow upon anyone the ability to appear in court for another and otherwise practice law. Practically, this typically involves the defendant or another person asking for the individual named in a power of attorney to be his or her "attorney" in the court case.

Does this document arm someone with all that the person needs to represent another in court? Could a defendant simply get a little help from a friend? The short answer is no. To understand why, it is important to understand the different meanings associated with "attorney."

Attorney at Law vs. Attorney in Fact

When most people think of an attorney, they are likely thinking of a person that can represent them in legal matters. The law, and the legal effect of certain actions on individuals, cannot be learned via a Google search or summarized in 280 characters. What appears to be a simple transaction, such as paying a citation in full to "close it out" may have far reaching consequences for the uninitiated. In one of the most important cases on the right to counsel, the U.S. Supreme Court went so far as to opine, "Even the intelligent and educated layman has small and sometimes no skill in the science of law…He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him."[1] Such is the importance of having this "guiding hand" of counsel, that even in municipal courts, where defendants cannot be sentenced to any form of confinement, municipal judges regularly include warnings to all unrepresented defendants advising the person of the help an attorney could provide. This help in municipal court may include legal advice as to consequences of fine-only convictions, remedying driver license issues, case preparation, and appearing in court on behalf of the defendant. Additionally, the required magistrate warnings enumerated in the Code of Criminal Procedure include two admonishments as to legal representation: the right to retain and attorney and the right to have one appointed in certain cases.[2]

It makes sense, then, that attorneys are required to complete substantial education and licensing in order to practice in court. As professionals, attorneys complete seven years of education after high school that culminates in the Doctor of Jurisprudence, or J.D., degree. An attorney must then have passed a comprehensive 2 ½ day exam on the law called the Bar Exam. Once licensed, and upon gaining admission to the State Bar of Texas, the attorney is given authority by the Supreme Court of Texas to be an "*attorney at law*." An attorney at law may legally practice law in Texas. This means that he or she may perform work such as providing legal advice on the consequences of actions taken in court, appearing in court or submitting pleadings on behalf of a person, or formally asking the court for certain actions in a case. This exclusive authority is documented on the attorney's law license, which states that the individual may practice in the state courts.

An "*attorney in fact*" on the other hand is an individual that may act as an agent for another, called the principal, in certain non-legal transactions. This individual receives the authority to act in these transactions in a document called a "power of attorney" and may take actions such as handle bank information, conduct real estate transactions, or make medical decisions. Texas law provides for this instrument in the Texas Estates Code, which describes the effect of a power of attorney as granting "an agent powers with respect to a person's property and

***Harkins v. Murphy & Bolanz*, 112 S.W. 136 (Tex.Civ.App.- Dallas 1908, writ dism'd)**

A power of attorney does not authorize a person to act as an attorney at law in a court proceeding.

financial matters."[3] Examples of the powers that may be granted are included in the actual form outlined in the code.[4] A specific triggering event, incapacity for example, allows the agent to use the power of attorney to act on behalf of the principal in these non-legal transactions. An *attorney in fact*, by the very definition, though, may not represent a person in court proceedings unless that person is also an *attorney at law*. This means that a power of attorney, regardless what it stipulates, may not permit a non-licensed person to represent another in court. As one court pointed out, "Attorneys are licensed because of their learning and ability, so that they may not only protect the rights and interests of their clients, but be able to assist the court in the trial of the cause."[5]

Unauthorized Practice of Law

The important differences attorney in fact and attorney at law terms are not always clear to court users in municipal court, and it is not uncommon for a non-attorney parent, guardian, or relative to provide a "Power of Attorney" in an effort to represent a child or adult in court. Recently a number of organizations purport to assist individuals with things like surcharges and court cases, similar to debt relief companies. It is unclear whether a licensed attorney is representing individuals on behalf of these organizations. Allowing a non-licensed individual that is not a licensed attorney does not necessarily do the defendant any favors. An unskilled and untrained individual is not specifically trained in the law and will not be familiar with legal procedure or the legal effect of actions taken in municipal court or potential collateral consequences of which must be carefully considered by an attorney. Collateral consequences may include things like professional and driver license suspensions, immigration, and the ability to possess a firearm. A non-licensed individual is also not held to the professional and ethical standards of an attorney. If mistakes are made, the defendant will have little recourse.

The State places significant importance on the benefit of representation by a licensed attorney, and there are serious criminal and civil consequences for an individual that holds himself or herself out to be an attorney. The Unauthorized Practice of Law Committee appointed by the Supreme Court of Texas is the primary civil enforcement. The Texas Government Code defines the practice of law as including the preparation of a document incident to a proceeding on behalf of a client before a judge in court as well as giving advice or rendering any service requiring the use of legal skill or knowledge.[6] The Committee is authorized to "seek the elimination of the unauthorized practice of law by appropriate actions and methods, including the filing of (civil) suits."[7] Examples of lawsuits filed by the Committee may be found on the Texas Unauthorized Practice of Law Committee website at http://www.txuplc.org/Home/decisions.

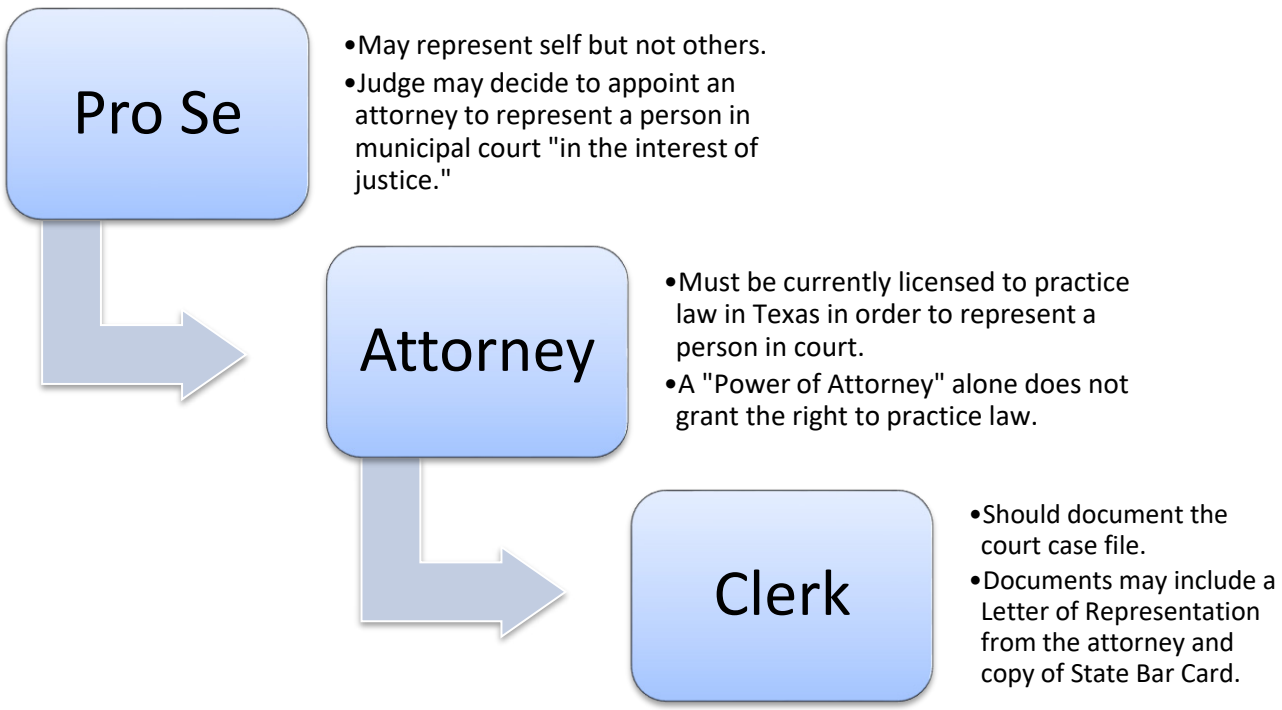
Criminal consequences include two crimes under the Texas Penal Code. The first is the crime of "Holding Oneself Out As a Lawyer" found (Section 38.122, Penal Code). A person that is not currently licensed to practice law and in good standing with the State Bar or other licensing authority where he or she holds that license, commits an offense if the person hold himself or herself out to be an attorney for economic benefit. The punishment for this offense is a third degree felony. The second crime is "Unauthorized Practice of Law" (Section 38.123, Texas Penal Code). It is a crime if a person for economic benefit, among other things, enters into a contract that grants the exclusive right to select and retain counsel to represent a person in any legal proceeding. The punishment for this offense is a Class A misdemeanor.

Court Considerations

It is important for municipal courts to review local rules in order to protect the rights of court users, prevent the unauthorized practice of law, and ensure the fair administration of justice. One way to address confusion is for the court to outline the documentation required in order to represent a defendant in court. Courts typically require attorneys to submit a written "letter of representation." This letter should state the attorney's name and State Bar number in addition to information identifying their client's court case. Once submitted, the letter

becomes a part of the court case file, so that there is no confusion in court, on appeal, or during a records request as to whether the individual has legal representation. This also prevents interested parties, such as prosecutors, from inadvertently communicating or plea bargaining with a represented person without that person's attorney present. Another common practice is to require presentation of a bar card. The bar card is issued individually and includes the attorney's name, State Bar number, and date licensed on the front. On the back, the card states that the person named is enrolled as an attorney by the Supreme Court of Texas. The State Bar number, sometimes abbreviated as "SBN" preceding a number is also sometimes listed on correspondence from attorneys. It is assigned by the State Bar of Texas and indicates membership in the State Bar of Texas. If a court requires an attorney to present the attorney's bar card, then the clerk should also make a copy and add that to the court case file.

Finally, courts should plan how to address the issue of improper representation upon receiving correspondence from non-attorneys attempting to represent another person or non-attorneys appearing in court attempting to represent another. This may be a family member or even a non-legal company seeking to handle matters in multiple courts for a defendant. Although the Government Code provides guidance to courts on what constitutes the unauthorized practice of law, it does not deprive judges of the authority to determine whether that is occurring on a case by case basis.[8] Is a non-attorney working for a company that is paid to "clear up" a defendant's driver license issues with the Department of Public Safety and municipal court practicing law by sending correspondence to the court asking for waiver of court costs in a specific case? What about a wife appearing to handle an old case for her disabled husband? These are potentially hard questions, and the answer is not as easy as it seems to the public. Ultimately, however, "courts have the duty and authority to supervise the legal profession by ensuring that those practicing law are qualified and by determining the boundaries of the practice of law."[9]



1. *Gideon v. Wainwright*, 372 U.S. 335, 345 (1963).
2. Article 15.17, Code of Criminal Procedure.
3. Section 752.001, Estates Code.
4. Section 752.051, Estates Code.
5. *Harkins v. Murphy & Bolanz*, 112 S.W. 136 (Tex.Civ.App. – Dallas 1908, writ dism'd).
6. Section 81.101, Government Code.
7. Section 81.104(2), Government Code.
8. Section 81.101(b), Government Code.
9. *Unauthorized Practice Committee, State Bar v. Cortez*, 692 S.W.2d 47, 51 (Tex. 1985).

Getting Behind the Wheel on Opioids Could Be a Road to Tragedy

Driving while on prescription opioids has played an increasingly significant role in fatal motor vehicle crashes, irrespective of alcohol use and demographic characteristics, according to a new study conducted at the Columbia University Mailman School of Public Health. The findings are published online in *JAMA Network Open*.

"There has been heightened concern about drugged driving in recent years due in part to increasing permissibility and availability of marijuana, and excess consumption of prescription opioids," said Guohua Li, MD, DrPH, professor of Epidemiology at the Columbia Mailman School. "However, few epidemiological studies have assessed the causal role of prescription opioids in fatal motor vehicle crashes."

The researchers studied 18,321 pairs of drivers involved in 18,321 fatal two-vehicle crashes recorded between 1993 and 2016 in the Fatality Analysis Reporting System, a dataset on all motor vehicle crashes that occurred on public roads in the United States and that resulted in at least one fatality within 30 days of the crash. Each pair of drivers included an initiator whose actions or errors led to the fatal crash and a non-initiator involved in the same crash.

"This pair-matched analysis provides compelling evidence that use of prescription opioids by drivers is a significant contributing factor for fatal two-vehicle crashes," noted Li, who is also the founding director of the Center for Injury Epidemiology and Prevention at Columbia.

The most common driving error leading to fatal two-vehicle crashes was a failure to keep in lane (41 percent), followed by failure to yield right of way (25 percent), and speeding (17 percent). Failure to keep in lane accounted for the majority (55 percent) of errors made by drivers who tested positive for prescription opioids. Reduced alertness and lane tracking ability are among the side effects of prescription opioids.

The prevalence of prescription opioids detected for the years studied increased from 2.0 percent to 7.0 percent among crash initiators, and from 0.9 percent to 4.6 percent among non-initiators. Crash initiators were also more likely to test positive for alcohol (29 percent) than non-initiators (10 percent).

"After adjusting for demographic characteristics and driving history, we found that use of prescription opioids more than doubles the risk of fatal two-vehicle crash initiation, regardless of the blood alcohol level," said Stanford Chihuri, co-author of the study. "It is important that clinicians take into consideration these medications' adverse effect on driving safety when counseling patients about the risks of opioids."

Reprinted with permission. This article is part of a study at Columbia University's Mailman School of Public Health led by Dr. Guohua Li, Professor of Epidemiology and founding director of Columbia University's Center for Injury Epidemiology and Prevention.

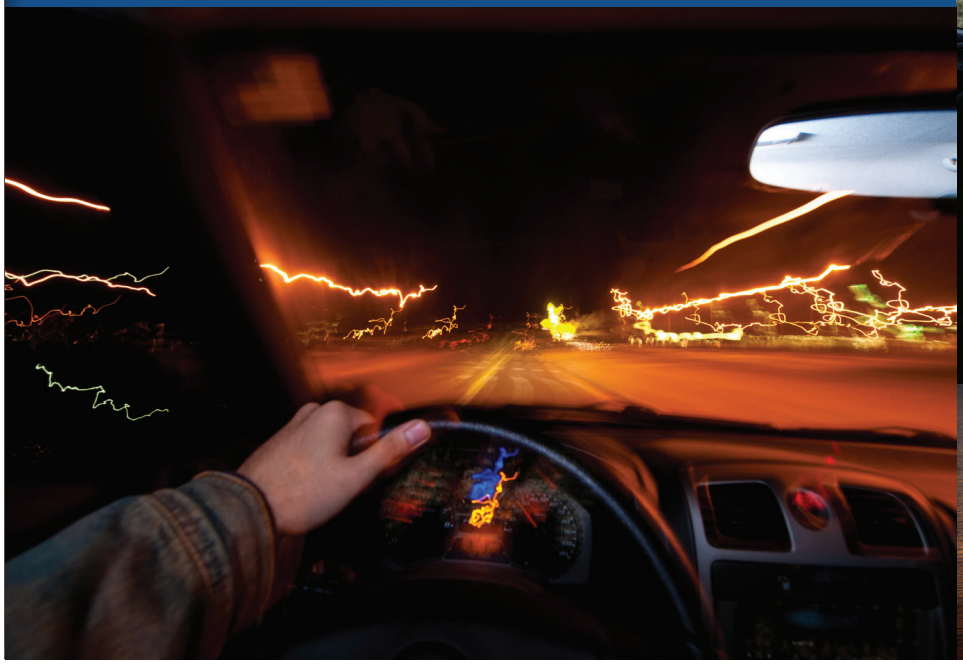
IMPAIRED DRIVING SYMPOSIUM

July 25-26, 2019

Doubletree by Hilton Austin
6505 N. I-35
Austin, TX 78752

REGISTER TODAY!

This TxDOT-sponsored conference for judges is brought to you by the Texas Association of Counties, Texas Center for the Judiciary, Texas Justice Court Training Center, and Texas Municipal Courts Education Center.



Texas Association of Counties

Texas Center for the Judiciary

Save a Life™ Texas Department of Transportation

Texas Justice Court Training Center

Texas Municipal Courts Education Center

More information and a registration form can be found at www.tmcec.com/mtsi/impaired-driving-symposium/.

High in Plain Sight

A Workshop in Lott, Texas – July, 12, 2019

When: Friday, July 12, 2019, 8:30 a.m. - 4:30 p.m.

Where: Rosebud-Lott High School, 1789 U.S. 77, Lott, TX 76656

Cost: Free

Open to: Judges, Court Staff, Law Enforcement, Educators, Government/Elected Officials

Credit: 7 hours CLE, judicial education, and clerk certification credit

Presented by: Officer Jermaine Galloway, "The Tall Cop"

Sponsored by: Rosebud Municipal Court, Lott Municipal Court, TMCEC

This workshop will provide attendees with the ability, knowledge, and confidence to help prevent and identify students who are abusing drugs. Attendees will also be taught the strategies and different terms that are consistent with underage drinking and drug abuse.

REGISTER TODAY at https://tinyurl.com/y5a8kskm

Questions? Contact Ned Minevitz at ned@tmcec.com or 512.320.8274.

Classroom to Courtroom: When a Class Visits Your Court!

When young students visit your court, wonderful things can happen! Students may learn the purpose of the municipal court, or lifesaving traffic-safety lessons, and they may even learn that a career in law is possible for them! Driving on the Right Side of the Road (DRSR) encourages courts to reach out to their community schools and provides lessons, activities, and materials to courts hosting school visits. This lesson has been edited for brevity. For the entire lesson, please contact Elizabeth De La Garza (elizabeth@tmcec.com) or go to www.drsr.info.

Safe Not Sorry Lesson (Elementary grades)

Learning Objectives: The students will:
1. recognize the importance of safety rules;
2. listen critically to interpret and evaluate;
3. participate in class discussion; and
4. write safety rules.

Vocabulary: ignition, buckle, handrail, reflectors, intersection, crosswalk, pedestrian

Resources:
- DRSR Children's Books website
- DRSR Lessons website

Teaching Strategy:

1. Ask students to think about their day so far and what rules they have had to follow. Have students share the rules. Ask questions such as:
   - Why do you follow rules?
   - What would happen if we did not have rules?
   - What is the purpose of rules?
2. Have the students create an anchor chart on their large paper/poster with the following titles: Home / School / Community

Home	School	Community

3. Have students brainstorm rules they follow in each category and place the rules on the chart.
4. Share with students that you are going to read a book titled *Safe Not Sorry*. Show the cover. Ask students to predict what it might be about. Ask them to explain their predictions.
5. Read the story. Ask questions as you read the book, such as:
   - What are some safety rules to follow in a car?
   - Why shouldn't drivers text and drive?
   - Why is it important to obey traffic signs?
   - When is it safe to ride in the front seat? (age 13)
   - What are some rules to remember when riding on a bus?
   - Why is it important to listen to the bus driver?
   - Is it okay to ride your bicycle across intersections? Explain.
   - What is a cross walk? Why is it used?
   - What are some rules to follow in your neighborhood?
   - What is meant by the buddy system?
   - What does it mean to be "street smart?"
6. Divide students into 5 groups. Assign each group a type of safety from the book:
   - Car Safety
   - School Bus Safety
   - Bicycle Safety
   - Pedestrian Safety
   - Neighborhood Safety
7. Each group will do the following:
   - Create a poster to put up in the school later about the importance of that type of safety. Groups should include important rules they learned.
   - Present their posters to the class going over the rules that they have learned and why they are important.
8. If another culminating experience is needed, have the student create an acrostic poem using the acrostic poem handout. Students can color or decorate their finished poems. In an acrostic poem, students will create a safety poem using each letter in the words "SAFETY RULES" to use in one word of the poem. See example on page 20. The letters can come at the beginning middle or end of the word. Example:

Students
Always
Follow
saf**E**
Texas
wa**Y**s

R
U
L
E
S

Materials Needed:
- *Safe Not Sorry* book or *Safe Not Sorry* PowerPoint
- poster board or large paper
- colored markers or crayons
- Acrostic handout (if needed)

Note: The *Safe Not Sorry* PowerPoint is available online at http://www.tmcec.com/drsr/educators/childrens-books/. Copies of the book may be ordered at no charge from TMCEC. Email: drsr@tmcec.com for more information.

Acrostic Poem

Create a safety poem. Each letter below should be used to create a word or phrase about the importance of safety rules.

S

A

F

E

T

Y

R

U

L

E

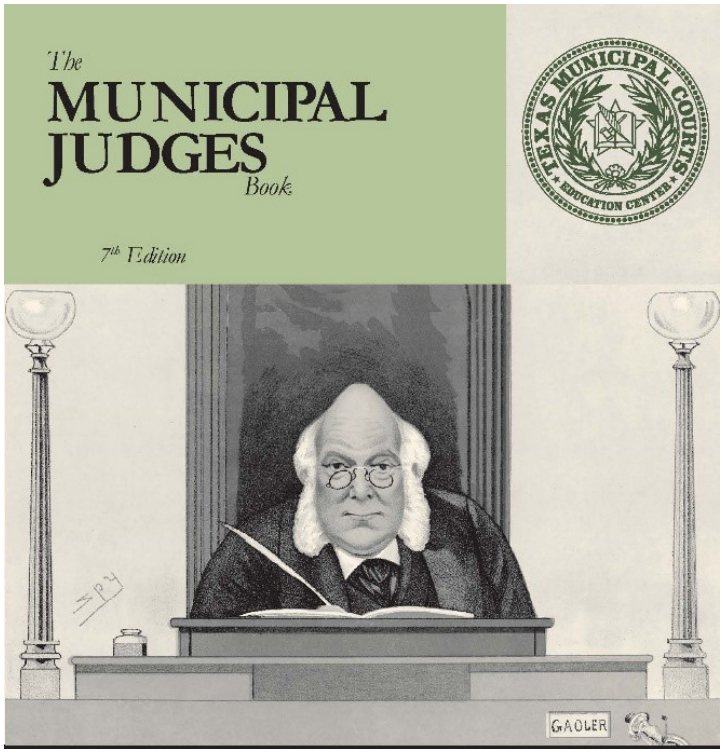
S

Free E-Book: *The Judges Book*, 7th Edition

Interested in procedural and substantive laws impacting Texas municipal courts? *The Municipal Judges Book,* featuring both historic and contemporary issues, critically analyzes the nature of municipal courts and the judge's role in the Texas criminal justice system. You can access an eBook version of *The Municipal Judges Book* completely free of charge! Follow the link below and enter the coupon code tmcecfree1to access the book at no charge.

https://store.bookbaby.com/book/the-municipal-judges-book1

This offer is limited to municipal judges and court support personnel, and other professionls trained by TMCEC. Please do not share the link with others. Thank you.



THE 7TH EDITION OF *THE MUNICIPAL JUDGES BOOK*

LIMITED TIME
$10.00 AND FREE SHIPPING

Name:_____
Court:_____
Address: _____
City _____State _____, Zip: _____
Court Telephone Number: (___) _____
Email Address: _____

All orders must be prepaid.
Make checks payable to Texas Municipal Courts Education Center.

Send order to:
Texas Municipal Courts Education Center
2210 Hancock Drive
Austin, Texas 78756
Fax: 512.435.6118

CREDIT CARD PAYMENT INFORMATION:

( ) MasterCard ( ) Visa
Credit card number:
_____
Expiration Date: _____
CVC # (on back of card): _____
Billing Zip Code: _____
Name as it appears on card (print clearly):
_____
Amt to be Charged : _____
Authorized signature:
_____

***Please complete your sales tax exemption form if exempt and submit to TMCEC.**

Upcoming TMCEC Programs

Juvenile Case Manager Conference – June 10-12th, 12 to 16-hour program. Omni Austin Southpark. Texas law requires JCM training in accordance with local rules. This conference offers courses that track the legislative requirements. Cost: $150 Registration fee, $50 per night single room fee. Certification credit.

2019 Prosecutors Conference – June 17-19th, 12 to 15-hour CLE program. Omni Austin Southpark Hotel. This program is uniquely designed for attorneys prosecuting in municipal court. Price varies.

Court Administrators Conference – June 17-19th, 12 to 16-hour program. Omni Austin Southpark Hotel. This program is designed for clerks serving as court administrators or in a supervisory capacity. Cost: $150 Registration fee, $50 per night single room fee. Certification credit.

Poverty Simulation – June 27th, 12:00-4:00, Hurst Conference Center. Lunch provided at no charge at 11:30 a.m. A poverty simulation is a role-playing experience. At this training, you will experience a day in the life of an individual receiving or accessing services. The poverty simulation experience is designed to help participants begin to understand what it might be like to see what many of those we serve experience every day. This simulation is open to judges and all court support personnel, including prosecutors. There is no fee. Offered in conjunction with the North Texas Chapter of the Texas Court Clerks Association. Four hours of judicial education and certification credit.

High in Plain Sight – July 12th, 8:30-4:30, seven-hour program. Rosebud-Lott High School. This workshop by the "Tall Cop" (Officer Jermaine Galloway) offers participants insights into how to help prevent and identify young people who are abusing drugs. Open to judges, court staff, law enforcement, and city officials. No charge. CLE, judicial education, and certification credit offered. Register at: https://goo.gl/Lf77bn.

Procedural Justice Clinic – July 25th, 10:00-3:00, Midland. Procedural Justice is a concept that addresses practical ways to address the public's perception of the court system. This program looks at how the four key elements of voice, neutrality, respect, and understanding can be effectively communicated in municipal courts, while maintaining the court's authority. Offered in conjunction with the West Texas Chapter of the Texas Court Clerks Association. Designed for judges, prosecutors, and court support personnel. Court security officers may attend as a part of a team. Four hours judicial education and certification credit. No charge. Three hours CLE/ two hours ethics.

Impaired Driving Symposium – July 25-26th, Doubletree by Hilton Hotel, Austin. Only for judges. A joint program with judges from all types of trial courts in Texas in attendance. Travel and meal reimbursement available. Judges and magistrates only. Eight hours of judicial education credit – counts towards the eight-hour continuous requirement for municipal judges. $50 registration fee. No single room fee. CLE credit.

Legislative Updates – These seven-hour programs are for CLE, judicial and clerk certification credit. Register early as there are often wait lists. Participants are responsible for making and paying for hotel accommodations Cost: $100. CLE: $50.

Date	City	Hotel Information	Phone
August 13, 2019	Lubbock	Overton Hotel	806.776.7000
August 16, 2019	Dallas	Omni Park West	972.869.4300
August 20, 2019	Houston	Omni Westside	281.558.8338
August 23, 2019	Austin	Omni Southpark	512.448.2222

Register Online: http://register.tmcec.com

Five Steps To Help Mitigate Implicit Bias on the Bench

Joseph Sawyer
Director of Online Learning & Faculty Development
National Judicial College

1. Don't even start until you can admit this to yourself.

No human being is unbiased. You have to acknowledge that you are not the exception to this rule. You also must be highly motivated to overcome your biases. Without strong internal motivation, research tells us that you will not be successful in conquering your biases.

2. Identify your biases.

Implicit biases are, by definition, unknown. You can't hope to dismantle your implicit biases until you discover what they are. Start by taking the **Implicit Association Test** offered free online by Harvard University, https://tinyurl.com/ml3a79s. Then review your sentencing patterns for bias. Have a trusted colleague observe you in court and provide feedback on how you treated litigants and defendants of different backgrounds, genders, and ethnicities.

3. Decide which of your implicit biases to address first.

Don't try to tackle your implicit biases all at one time. Focus on the most pressing ones that impact your docket and community.

4. Identify and acknowledge individual differences.

Lady Justice wears a blindfold. You can't. You have to learn how differences in people may affect your thinking. You can do this by…

- Putting extra effort into identifying the unique aspects of stigmatized individuals
- Being aware of what you're thinking when confronted by initial identifying factors that can lead to stereotyping (differences in race/ethnicity, gender, language, etc.)

- Working on embracing all the diverse members of the human family
- Appreciating the individual differences in people.

5. Slow down.

Your biases are more likely to affect you and court users in times of stress. Focus on conscious decision making. Do everything o*n purpose* by being deliberate. Consider rules carefully. Don't run your court on auto-pilot.

These are just a few of many strategies for ensuring that judges treat all court users fairly. For more detailed information sign up for the ***Ethics, Fairness and Security in Your Courts and Community*** course Oct. 21–24, 2019 at the National Judicial College (NJC).

Reprinted with permission. *The Judicial Edge*. The National Judicial College. www.judges.org. January 28, 2019

2019 TMCEC Academic Schedule At-A-Glance

Seminar	Date(s)	City	Hotel Information
Regional Judges & Clerks Seminar (waitlist for clerks)	June 3-5, 2019	Abilene	MCM Elegante Suites 4250 Ridgemont Drive, Abilene, TX 79606
Juvenile Case Manager Conference	June 10-12, 2019	Austin	Omni Southpark 4140 Governor's Row, Austin TX 78744
Court Administrators & Prosecutors Conference	June 17-19, 2019	Austin	Omni Southpark 4140 Governor's Row, Austin TX 78744
Poverty Simulation	June 27, 2019	Hurst	Hurst Conference Center 1601 Campus Drive, Hurst, TX 76054
New Judges & Clerks Seminar	July 8-12, 2019	Austin	Omni Southpark 4140 Governor's Row, Austin TX 78744
High in Plain Sight	July 12, 2019	Lott	Rosebud-Lott High School 1789 U.S. 77, Lott, TX 76656
Procedural Justice Clinic	July 25, 2019	Midland	Midland Municipal Court 201 E. Texas Ave., Midland, TX 79701
Impaired Driving Symposium	July 25-26, 2019	Austin	Doubletree by Hilton 6505 IH-35 North, Austin, TX 78752
Legislative Update	August 13, 2019	Lubbock	Overton Hotel 2322 Mac Davis Lane, Lubbock, TX 79401
Legislative Update	August 16, 2019	Dallas	Omni Park West 1590 Lyndon B Johnson Fwy., Dallas, TX 75234
Legislative Update	August 20, 2019	Houston	Omni at Westside 13210 Katy Fwy., Houston, TX 77079
Legislative Update	August 23, 2019	Austin	Omni Southpark 4140 Governor's Row, Austin TX 78744

Note: There are special registration forms to be used to register for the New Judges and New Clerks Seminars, Prosecutors Conference, and Impaired Driving Symposium (see page 17). Please visit our website at www.tmcec.com/registration/ or email register@tmcec.com for a registration form.

Register Online: register.tmcec.com

Measuring the Risk Continued *from pg.9*

Prediction by Race and Gender in Kentucky, p. 13 (2016).

39. Jennifer L. Skeem et al., *Gender, Risk Assessment, and Sanctioning: The Cost of Treating Women Like Men*, 40 Law and Human Behavior 580, 597 (2016).
40. *Id.*
41. Jon Muller, *Implementing Pretrial Services Risk Assessment with a Sex Offense Defendant Population*, 73(2) Federal Probation 91, 92 (2009).
42. Richard Williams, *Lawmakers in More than Two Dozen States Are Changing the Rules on Bail*, State Legislatures Magazine, May 2012, at 32.
43. Robert Veldman, *Pretrial Detention in Kentucky: An Analysis of the Impact of House Bill 463 During the First Two Years of Its Implementation*, 102 KY. L.J. 777, 783 (2014).
44. *Id.*
45. Patricia M. Harris, *What Community Supervision Officers Need to Know About Actuarial Risk Assessment and Clinical Judgment,* 70(2) Federal Probation 18, 19 (2006).
46. David Levin, *Examining the Efficacy of Pretrial Release Conditions, Sanctions and Screening with the State Court Processing Statistics Data Series*, p. 1 (2007).
47. Bechtel, et al, supra note 16, at 132; see, Marie VanNostrand & Christopher T. Lowenkamp, Laura and John Arnold Foundation, *Assessing Pretrial Risk Without A Defendant Interview*, p. 5 (2013).
48. *See* Nimmer, 1971, and Church, 1978; as cited in Brian Ostrum et al., *Court Cultures and Their Consequences*, 20 Court Manager 1 (2005).
49. *Id.*
50. Picard-Fritsche, supra note 19, at 18.
51. Veldman, supra note 51, at 784.
52. *Chicago Judges Spurn Risk Assessment System in 85% of Bail Cases*, The Crime Report, https://thecrimereport.org/2016/07/05/chicago-judges-spurn-risk-assessment-system-in-85-of-bail-cases-2/ (Jul. 5, 2016).
53. Matthew DeMichele et al., *The Public Safety Assessment: A Re-Validation and Assessment of Predictive Utility and Differential Prediction by Race and Gender in Kentucky*, p. 56 (2018).

TEXAS MUNICIPAL COURTS EDUCATION CENTER
FY19 REGISTRATION FORM:
Regional Judges & Clerks Seminars, Court Administrators, and Juvenile Case Managers

Conference Date: _____ Conference Site: _____

Check one:

☐ Non-Attorney Judge ($100)
☐ Attorney Judge not-seeking CLE credit ($100)
☐ Attorney Judge seeking CLE credit ($200)

☐ Regional Clerks ($100)
☐ Court Administrators Seminar ($150)
☐ Juvenile Case Manager ($150)

By choosing TMCEC as your CLE provider, attorney-judges help TMCA pay for expenses not covered by the Court of Criminal Appeals grant. Your voluntary support is appreciated. The CLE fee will be deposited into the grantee's private fund account to cover expenses unallowable under grant guidelines, such as staff compensation, membership services, and building fund.

Name (please print legibly): Last Name: _____ First Name: _____ MI: _____

Names you prefer to be called (if different): _____ Female/Male: _____

Position held: _____ Date appointed/hired/elected: _____ Are you also a mayor?: _____

Emergency contact (Please include name and contact number): _____

HOUSING INFORMATION - Note: $50 single room fee each night

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for a double occupancy room for two nights with another seminar participant at all regional judges and clerks seminars. To share with a specific seminar participant, you must indicate that person's name on this form. If you do not wish to share, please add $50 a night for a single room. I request

☐ a private room ($50 per night : ____ # of nights x $50 = $_____). TMCEC can only guarantee a private room; type of room (queen, king, or two double beds*) is dependent on hotels availability. Special Request: _____

☐ a room shared with a seminar participant. Room will have two double beds. TMCEC will assign roommate or you may request roommate by entering seminar participant's name here: _____

☐ I do not need a room at the seminar.

Hotel Arrival Date (this must be filled out in order to reserve a room): _____

*If you bring a companion with you to stay in the hotel, the hotel reserves the right to charge an additional fee.

Municipal Court of: _____ Email Address: _____

Court Mailing Address: _____ City: _____ Zip: _____

Office Telephone #: _____ Court #: _____ Fax: _____

Primary City Served: _____ Other Cities Served: _____

I have read and accepted the cancellation policy, which is outlined in full on page 11 of the Academic Catalog and under the Registration section of the website, www.tmcec.com. Full payment is due with the registration form. Registration shall be confirmed only upon receipt of the registration form (with all applicable information completed) and full payment of fees.

_____ _____
Participant Signature (may only be signed by participant) Date

PAYMENT INFORMATION:
Registration/CLE Fee: $_____ + Housing Fee: $_____ = Amount Enclosed: $_____

☐ Check Enclosed *(Make checks payable to TMCEC)*
☐ Credit Card

Credit Card Payment:

Amount to Charge: *Credit Card Number* *Expiration Date*

Credit card type: $_____ _____ _____

☐ *MasterCard*
☐ *Visa* *Name as it appears on card (print clearly):* _____
Authorized signature: _____

Receipts are automatically sent to registrant upon payment. To have an additional receipt emailed to your finance department list email address here:

_____

Please return completed form with payment to TMCEC at 2210 Hancock Drive, Austin, TX 78756, or fax to 512.435.6118.

Legislative Updates: Register Now!

TMCEC is planning four regional, six-hour elective programs in August 2019 after the 86th Legislative Session. The registration fee is $100. For attorneys seeking CLE, there is a voluntary $50 CLE fee (No TCOLE Credit). The one-day sessions will be held from 9:00 a.m. - 5:00 p.m. If you wish to stay at the hotel, you are responsible for your own accommodations. A room block is available at the state rate plus tax under the TMCEC block. Please check the box next to the legislative update you would like to attend.

❑ **August 13, 2019**
Overton Hotel
2322 Mac Davis Lane
Lubbock, Texas 79401
806.776.7000
Register by: July 13, 2019

❑ **August 16, 2019**
Omni Park West
1590 LBJ Freeway
Dallas, Texas 75234
972.869.4300
Register by: July 16, 2019

❑ **August 20, 2019**
Omni Westside
13210 Katy Freeway
Houston, Texas 77079
281.558.8338
Register by: July 20, 2019

❑ **August 23, 2019**
Omni Southpark
4140 Governors Row
Austin, Texas 78744
512.448.2222
Register by: July 23, 2019

Name *(please print legibly)*: _____
Street: _____ City: _____
Zip: _____
Office Telephone #: _____ Court #: _____ Fax: _____
Primary City Served: _____ Other Cities Served: _____
Email Address: _____

Check all that apply:

❑ Full Time
❑ Part Time
❑ Attorney*
❑ Prosecutor*
❑ Presiding Judge/Judge
❑ Non-Attorney
❑ Associate/Alternate Judge
❑ Court Administrator
❑ Court Clerk
❑ Deputy Court Clerk
❑ Other ($150):** _____

* Please add $50 if requesting CLE credit.
**Pending approval from the Executive Director and/or the Board of Directors

I understand that I will be responsible for making and paying for my own hotel reservation. Payment is required for this program; payment is due with this form. The registration fee is refundable if the Center is notified of cancellation in writing 10 days prior to the seminar.

_____ _____
Participant Signature *Date*

PAYMENT INFORMATION:

❑ **$100** Registration Fee Enclosed
❑ **$50** CLE Fee Enclosed*

For participants who do not work in a municipal court:
❑ **$150** Registration Fee Enclosed ($200 if CLE is requested)

❑ Credit Card
❑ Check Enclosed *(Make checks payable to TMCEC)*

Credit Card type:
❑ MasterCard
❑ Visa

Credit Card Number: _____

Expiration Date: _____

Name as it appears on card (print clearly): _____

Total Amount:

$ _____ Authorized Signature _____

Receipts are automatically sent to registrant upon payment. To have an additional receipt emailed to your finance department list email address here:

_____

Please return completed form with payment to TMCEC at 2210 Hancock Drive, Austin, TX 78756.
Fax registration forms with credit card information to 512.435.6118.
Register online: https://register.tmcec.com/

TEXAS MUNICIPAL COURTS
EDUCATION CENTER
2210 Hancock Drive
AUSTIN, TX 78756
www.tmcec.com

Change Service Requested

Presorted Standard
U.S. Postage
PAID
Austin, Texas
Permit No. 114

TMCEC MISSION STATEMENT

To provide high quality judicial education, technical assistance, and the necessary resource materials to assist municipal court judges, court support personnel, and prosecutors in obtaining and maintaining professional competence.

Prom Card Order Form

It's prom season! Given prom's celebratory nature, some students think of prom as a time to indulge in drugs and alcohol. TMCEC has developed "Sober Prom" Pledge Cards for municipal courts' use in promoting a safe and sober prom night. Whether it is students coming to court or court employees visiting a school, these pledge cards make an excellent tool.

☐ Yes! Please send me a set of male and female prom cards!

Name: _____

Court: _____

Non PO Box Mailing Address: _____

_____

Phone Number: _____

How Will Be Using the Pledge Cards?: _____

_____

Please scan and e-mail this form to ned@tmcec.com, fax it to (512) 435-6118, or mail it to Ned Minevitz, 2210 Hancock Dr., Austin TX 78756

Municipal Traffic Safety Initiatives

Save a Life™
TEXAS DEPARTMENT OF TRANSPORTATION