

# District Attorney: pretrial assessment tool 'not without its hiccups'



By Sean Maguire | Updated: Mon 5:38 AM, Feb 19, 2018

**ANCHORAGE (KTUU)** - Alaska's pretrial risk assessment system is "not without its hiccups" six weeks after it was first implemented, said Rick Allen, the Anchorage District Attorney.

One of the issues with the new system is that pre-enforcement officers are not able to use out-of-state criminal histories when determining if a person should be released.

Another criticism, according to Allen, is that some people arrested for violent acts are being released after paying little or no bond over the District Attorney's objections.

A third issue for the DA, is there have been some instances where the 2018 pretrial assessment tool has been used for 2017 cases, something Allen said shouldn't happen under Alaska statute.

The pretrial risk assessment is a delayed part of Senate Bill 91 that sets up the Pre-enforcement Division (PED), a \$10.2 million program that changes how people are evaluated before appearing in court. "They're evaluating two different things, the person's likelihood of committing another criminal offence and then the person's likelihood of failing to appear for the instant offence," said Allen.

Allen said the program offers a more objective analysis of a person charged with a crime and their eligibility for release. In the old system, the determining factor was often whether someone could pay a cash bail. Now, the possibility of being

released hinges on criteria such as age of first arrest and number of convictions in the past three years.



The PED director, Geri Fox, explains the pre-assessment tool was designed by researchers looking through data of when people were more likely to re-offend and when they were likely to fail to appear at court. However, one data component was unavailable to researchers and the consequence has left a “glaring hole” for the judicial system, said Allen.

“We can only build a predictive model when we have the data, but the FBI tightly controls how out-of-state criminal history data is used. So Alaska wanted out-of-state criminal history, Alaska asked for out-of-state criminal history, but we simply couldn’t have it when the tool was developed,” said Fox.

Fox explains the FBI is willing to share national crime data on a case-by-case basis but not as a general tool for creating a pretrial assessment system. When asked how lawmakers were not aware that the FBI was not going to share the necessary data, Fox said in an e-mail: “When the statute was passed, Alaska legislators could not have anticipated that a particular data component would have been needed - but unavailable to researchers. The legislation does not specify what data must be pulled - only that the assessment be evidence-based and validated. Legislators would have likely accounted for the lack of out of state criminal history data had it been a known issue at the time.”

The result if the lack of data is that the tool functions for people with Alaskan criminal histories but out-of-state criminal histories cannot be considered when determining if someone should be eligible for release. For more serious crimes, prosecutors are able to make judges aware of out-of-state criminal histories and judges can use their own discretion to make a decision about whether someone should be released.

The director of the criminal division at the Dept. of Law, John Skidmore, explains for low-risk and medium-risk charges, the judge has no discretion in the matter: “There is a grid that says depending on the type of charge, will depend upon the guidance given to the judge to approach this type of situation. There are sort of blocks on that grid, if you will, if people are considered a low-risk or a medium-risk and they’ve committed certain types of crimes, judges have no discretion. Judges have to release that person based on the risk assessment tool.”

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The "glaring hole" in the new pretrial system was evident during the arraignment of a convicted felon from California, 26-year-old Jessica Malcolm. On Jan. 27 shots were fired at Northway Mall; Malcolm was arrested carrying a firearm and appeared in court the next day. The PED were unable to use her out-of-state criminal history and she was subsequently recommended to be released on her own recognizance; as a Class-C felony, the judge had no choice but to release Malcolm that afternoon. She subsequently missed her next court date and Allen said, "surprise, surprise, we've seen hide nor hair of her since."

The Anchorage DA, the Governor, and Fox are all calling for a statutory fix that will give judge's the necessary discretion to hold someone if they have an out-of-state criminal history and are charged with a low-level offence. Gov. Walker has introduced identical legislation in both houses that would amend the current statute.

Allen however signals other growing pains with the PED including letting people charged with violent crimes back on the street. "We have had some recent incidents where folks have been arrested for very violent acts and over our objection have been released with little or no bond."

The Anchorage DA points to the case of Evgueni Antisiferov who was charged with shooting a person who had stolen his marijuana. The charging documents describe that Antisiferov is alleged to have shot a person as they sat in the passenger seat of a car. Allen said the pretrial assessment tool was used in relation to that case and Antisiferov was released on an unsecured bond. "He didn't put down any money, he signed something and promised to come back."

Furthermore, the Anchorage DA describes that the Antisiferov case occurred Dec. 24, 2017 and Allen said it's the state's position that it is inappropriate under Alaska statute to use the new system for 2017 cases.

Allen said these initial problems may be due to the "growing pains" of implementing a new law. Skidmore echoed that sentiment, speaking about how differing interpretations of a law in an adversarial legal system can cause uncertainty as criminal law is reformed.

"The fact that a new law is passed and there is some uncertainty is sort of par for the course, it's always going to happen," he said.

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