

Bail Reform: Why Judges Should Reject ‘Risk Assessment’

By **Eric W. Siddall** | August 25, 2017

If you aren’t following bail reform, you may not be aware that accompanying the attempt to eliminate bail across the country is the touting of “risk assessment tools” to determine who should be detained on bail before trial.

The chief proponent of such tools is the [Arnold Foundation](http://www.arnoldfoundation.org/) (<http://www.arnoldfoundation.org/>), which maintains that its own “[risk assessment tool](http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-research-summary_PSA-Court_4_1.pdf)” (http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-research-summary_PSA-Court_4_1.pdf) is a cutting-edge way of providing an objective assessment in this area.

The tool’s principal developer, (former New Jersey attorney general Anne Milgram), has said she introduced “rigorous statistical analysis” to the process in order to “[moneyball criminal justice](https://www.washingtonpost.com/news/post-nation/wp/2017/08/05/why-a-grieving-mother-blames-chris-christie-for-her-sons-killing/?utm_term=.ba9530564b9b)” (https://www.washingtonpost.com/news/post-nation/wp/2017/08/05/why-a-grieving-mother-blames-chris-christie-for-her-sons-killing/?utm_term=.ba9530564b9b).”

Editor’s Note: [38 jurisdictions currently use the tool](http://www.arnoldfoundation.org/initiative/criminal-justice/crime-prevention/public-safety-assessment/) (<http://www.arnoldfoundation.org/initiative/criminal-justice/crime-prevention/public-safety-assessment/>) developed by the Arnold Foundation.

However, the use of this tool has led to the wholesale release of violent criminals—and tragedy.

Three recent examples in New Mexico, New Jersey and San Francisco illustrate my point.

A [story](http://www.dailywire.com/news/19478/frightening-violent-repeat-offenders-released-jeffrey-cawood) (<http://www.dailywire.com/news/19478/frightening-violent-repeat-offenders-released-jeffrey-cawood>) published by the conservative website

The Daily Wire said the assessment tool has led to virtually every defendant arrested in New Mexico for a violent crime being released without bail.

The story quoted a report from Albuquerque NBC affiliate KOB4, saying, “Even with the highest rate of failing to appear in court and the highest rate of new criminal activity for a defendant, the tool still recommends that person[s] be released on their own recognizance unless the prosecutors have filed for preventative detention.”

[In New Jersey](https://www.washingtonpost.com/news/post-nation/wp/2017/08/05/why-a-grieving-mother-blames-chris-christie-for-her-sons-killing/?utm_term=.ba9530564b9b) (https://www.washingtonpost.com/news/post-nation/wp/2017/08/05/why-a-grieving-mother-blames-chris-christie-for-her-sons-killing/?utm_term=.ba9530564b9b), according to the *Washington Post*, the tool determined that a man jailed for illegally possessing a gun was not a danger and recommended his release. Days later, that man hunted down a rival and shot at him 22 times, killing him. The family of the victim is now suing the Arnold Foundation, amongst others, for the death.

In San Francisco, the online website *SFGate* reported that a man suspected of murder [was released](http://www.sfgate.com/crime/article/Suspect-in-Twin-Peaks-killing-had-been-released-11743329.php) (<http://www.sfgate.com/crime/article/Suspect-in-Twin-Peaks-killing-had-been-released-11743329.php>) days earlier after being arrested for possession of two guns. According to the website, the judge, relying on the assessment tool, rejected the District Attorney’s office recommendation that the man be kept in jail on a probation violation.

A spokesman for the DA’s office was quoted as saying the use of the tool has caused “many instances of contention.”

He continued: “As it relates to this case along with many other cases, we have a disagreement with how that risk assessment is being calculated. They suggested release with certain conditions, and the judge carried out that recommendation and this defendant was released.”

The Arnold Foundation argues that its tool is needed because “failing to appropriately determine the level of risk that a defendant poses impacts future crime and violence, and carries enormous costs—both human and financial.”

The examples in New Mexico, New Jersey and San Francisco certainly attest to the truth of that statement.



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Additional Reading: Risk assessment tools have triggered a contentious debate in the criminal justice community. In June, the Supreme Court refused to hear the case (<https://thecrimereport.org/2017/06/27/high-court-wont-hear-case-on-risk-assessment-tool/>) of a Wisconsin man who was sentenced to six years in prison by a judge who consulted the results of a risk assessment algorithm. **The plaintiff argued that the use of the algorithm violated his rights to due process.**

The tools represent a threat to the bail bond industry, which has backed two federal lawsuits (<https://thecrimereport.org/2017/08/23/nj-bail-reform-works-prosecution-defense-complain/>) seeking to end the algorithm's use.

Eric W. Siddall is Vice President of the Los Angeles Association of Deputy District Attorneys (ADDA), the collective bargaining agent representing nearly 1,000 deputy district attorneys who work for the County of Los Angeles. This is an edited version of an [essay](https://www.laadda.com/real-world-failure-bail-assessment-tools/) (<https://www.laadda.com/real-world-failure-bail-assessment-tools/>) that appeared earlier this month on ADDA's website. Readers' comments are welcome.
