What you need to know about Risk Assessment Tools and their impact on communities of color.
WHAT ARE RISK ASSESSMENT TOOLS (RATs)?

RATs are decision-making tools that use court records and demographic information to guess how a person will behave if they are released from jail before trial.

RATs try to guess how “risky” the person accused of a crime is – if they will pose a threat to public safety or if they will miss their court date if they are released.

THE ISSUE

Everyday, nearly half a million people who have only been accused of a crime are put in jail before their trial – mostly because they can’t afford to pay bail. 70% of them are people of color. The legal system in the US is rooted in racism – people of color are more likely to have higher bail set and serve longer sentences than white people for the same charges.

Many people see RATs as a way to reduce the number of people held in jail pretrial. It may seem like RATs limit the decision-making power of judges (known as judicial discretion) who might have racial prejudice or bias. But because RATs depend on information about a person’s race, class, and how their neighborhood has been policed, people of color continue to be disproportionately impacted.

To organize for a just end to pretrial incarceration, it’s important to see how RATs impact communities of color and perpetuate systemic racism. Keep reading to learn how RATs work and to explore alternative solutions!
RATs try to guess a person’s future behavior based on a number of factors. Almost always, the exact factors that RATs consider aren’t made public. They can use anywhere from 4 to 100 factors about a person and their community, like:

<table>
<thead>
<tr>
<th>FACTORS</th>
<th>SHAWN, AGE 19</th>
<th>GRAYSON, AGE 22</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGE</td>
<td>19 – RATs assume young people are more likely to skip court, so Shawn’s age works against him.</td>
<td>22 –</td>
</tr>
<tr>
<td>CRIMINAL RECORD</td>
<td>First arrest at age 14 – RATs will assume he’s likely to be arrested again.</td>
<td>Community service, probation, and no prior arrests – some RATs only look at arrest records, so Grayson’s in-school suspension and drunk driving incident didn’t make it onto his criminal history.</td>
</tr>
<tr>
<td>LOCATION</td>
<td>Newark, New Jersey</td>
<td>On campus at Rutgers University.</td>
</tr>
<tr>
<td>HOUSING STATUS</td>
<td>Not on a lease – Shawn lives with a roommate</td>
<td>On the lease of his apartment – RATs assume someone with stable housing is more likely to show up to court.</td>
</tr>
<tr>
<td>EMPLOYMENT STATUS</td>
<td>Part-time job – RATs assume someone with full-time work is more likely to show up to court, so Shawn’s job status works against him.</td>
<td>Full-time student – RATs consider someone with full-time status as more likely to show up to court, so being a student works in Grayson’s favor.</td>
</tr>
</tbody>
</table>

RATs scores Shawn as HIGH RISK and recommends release with bail.

RAT scores Grayson as LOW RISK and recommends release without bail.

Shawn and Grayson were both arrested for having a small bag of cocaine and were charged with the same crime. Once they were arrested and processed, they were brought to court where a judge used a RAT to decide their pretrial conditions. But the RATs found very different outcomes for them. Both of their experiences are based on real people who have had RATs used to set their pretrial conditions.

Shawn and Grayson were charged with the same crime, so why did they have such different outcomes? To understand the problems with RATs, we need to look at bigger issues within the legal system.
**WHAT’S THE PROBLEM?**

As more courts across the country use pretrial RATs, many communities are concerned about the consequences...

**ARREST RECORDS DON’T TELL THE WHOLE STORY**

Many people think RATs can end racial bias in the criminal process, but in places where RATs are used, racial disparities in pretrial detention have not improved.

In New Jersey, jail populations dropped after introducing a new risk assessment tool and eliminating cash bail. But the racial demographics of people in jail stayed the same—50% Black, 30% white.

Since RATs rely on data with racial and economic disparities, there’s no way to avoid economic disparities, there’s no way to avoid.

**JUDGES STILL HAVE A SAY**

RATs are often seen as a way to limit how much a judge or jury will decide. But even judges and lawyers don’t know what factors are being used to evaluate someone.

Studies have found that when courts use RATs to decide release decisions about someone’s pretrial conditions.

**POVERTY IS A RISK FACTOR**

A study in Cook County, IL found that 99% of people considered “high risk” (likely to commit a crime if released before their trial) did NOT commit crimes before their trial. This means some judgments about people are made based on assumptions about what factors get used, like job status or age. These assumptions often have nothing to do with someone’s risk.

**RATs MAKE SOME COMMUNITIES RICH**

RATs are a growing and profitable industry. Private companies write RATs and usually get to decide what factors get used, like job status or age. These companies often have little incentive to make sure governments keep using their tools.

**NO TRANSPARENCY**

Most companies do not have to make their algorithms public. Often, even judges and lawyers don’t know what factors are being used to evaluate someone.

**THEORY OF IMPACT**

RATs make it seem like it’s possible to predict outcomes. Evaluations should consider their mental health, history with substance abuse, housing, parental responsibilities, and other relevant factors.

**ARE RISK ASSESSMENT TOOLS THE ONLY SOLUTION?**

We know that many people are in the legal system because of mental illness, trauma, substance abuse, or simply because they are poor. No one should be punished for not having access to support or resources. A system without RATs should provide people with the support they need to show up to court and thrive beyond the legal system.

**HOW DO WE GET THERE?**

It’s not easy and will take some time. Change needs to happen at large scale, but there are smaller steps we can take together. Instead of punishing someone for not having access to resources, the legal system should consider these circumstances historical and evaluate each person on their own merits. To help cut down on poverty, history with substance abuse, housing, parental responsibilities, and other relevant factors.

**COURTHOUSE SHOULD PROVIDE**

As more courts across the country use pretrial RATs, many communities are concerned about the consequences...

CHILDCARE DURING COURT DATES

When a primary caregiver is arrested, their children are often forced into the foster care system. If someone is a primary caregiver, they should be released and given extra support for childcare to make attending court dates easier.

**FLEXIBLE COURT DATES FOR CAREGIVERS**

For people dealing with mental health or substance abuse, courts should refer them to counseling services.

**REFERRALS TO SUPPORTIVE HOUSING**

For people who don’t have stable housing, courts should refer them to supportive housing programs. Supportive housing is affordable housing with supportive services, like health and education.

**REFERRALS TO COUNSELING**

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Communities across the country are organizing to stop the use of Risk Assessment Tools and end pretrial incarceration. Contact these organizations to join a campaign near you today!

Organizations leading advocacy on Risk Assessment Tools:

- Chicago Community Bond Fund (IL) chicagobond.org
- Dignity and Power Now (CA) dignityandpowernow.org
- JustLeadershipUSA (National) jlusa.org
- Leadership Conference on Civil and Human Rights (National) civilrights.org
- Media Mobilizing Project (PA) mediamobilizing.org
- People’s Action (National) peoplesaction.org
- Silicon Valley De-Bug (CA) siliconvalleydebug.org
- Southerners on the Ground (GA) southernersonnewground.org

More research and information on Risk Assessment Tools:

- AI Now ainowinstitute.org
- Center for Media Justice mediajustice.org
- Human Rights Watch hrw.org

Legal organizations:

- Civil Rights Corps civilrightscorps.org
- American Civil Liberties Union aclu.org

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