



# Data Points

## Do Pretrial Risk Assessments Perform Equitably for All?

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### Overview

This episode features Violette Cloud, Liz Hassett, and Samantha Zottola, and discusses their research evaluating the application of a pretrial risk assessment instrument in a Native American population.

*Data Points* is an ongoing podcast series produced by Policy Research that discusses research for social change.

### Violette Cloud:

We've found in research that depending on the way that you phrase questions, who's asking the questions, when those questions are being asked, the responses of the individuals are going to differ on various intersectional levels. So folks that maybe English isn't their first language, folks who maybe have a different level of education, they might understand those questions in a different way, or maybe they're in acute crisis and so they're not prepared to answer some of the questions.

### Holley Davis:

That was Dr. Violette Cloud, a senior project associate at Policy Research. In this episode, she speaks with Dr. Samantha Zottola and Liz Hassett about their research evaluating the application of a pretrial risk assessment instrument in a Native American population.

Welcome to *Data Points*, where we discuss research for social change. *Data Points* is a production of Policy Research. My name is Holley Davis, and I'm the communications director of Policy Research. In this episode, Dr. Samantha Zottola, Dr. Violette Cloud, and Liz Hassett will discuss their research evaluating the application of the public safety assessment in a Native American population. Sam works on issues related to court and jail practices, bail reform, and the behavioral health outcomes of people involved with the criminal legal system. Violette Cloud has extensive training in behavioral health, criminal law, and federal Indian law and works to transform behavioral health services within the criminal legal system. She's a citizen of the Diné Navajo Nation and has family ties to the Southern Ute Tribe. Liz serves as a grant manager in Pennington County, South Dakota. In this capacity, Liz assists county departments with grant application implementation and compliance activities. She provides direct grant management for the MacArthur Foundation's Safety and Justice Challenge and the Bureau of Justice Administration's Innovations in Reentry Initiative.

First, I would love if each of you could share why you've devoted your time to this work.

### **Violette Cloud:**

Yeah, so I could probably talk about why this is so important to me for a day, but I strongly identify with doing good quality work with Native American communities to improve services and improve the research around them. One of the challenges we find in research is that the sample size with Native American participants is usually so small that they don't get reported in just general everyday findings. So to work on the projects that is going to have a sufficient sample size to be able to really look at the issues, to be able to provide advice on how to improve them is really important to me. But I think my background and my personal reason for coming into that is, growing up, I just saw and recognized that there was disproportionate involvement among Native American individuals with the criminal justice system and all the associated elements of that, whether that's poverty, homelessness, substance use, mental health issues, and I think that by starting to focus scientific research for this community, we can start peeling away some of those inequities.

### **Holley Davis:**

That's so impactful. Thank you, Violette. Sam?

### **Samantha Zottola:**

So I started doing research on pretrial risk assessment instruments when I was still in grad school, and I quickly realized that even though these instruments are used pretty widely to inform decisions about who is released pretrial, there is not a lot of research on them, especially compared to all of the research that's out there on risk assessment instruments that are being used at other time points in the legal system. But every day around the country, thousands of people are booked into jails and they have pretrial risk assessments completed, and the results are used to make this really consequential decision about their release and the conditions that may be placed on them.

That decision has a huge impact on the person, on their family, on the community, and the jurisdictions that are using these instruments. I think that jurisdictions want to make these decisions well, but we need more research to be sure that they are accurate for everyone so that we can be confident that they inform good decision-making for everyone. Because, right now, there are whole populations of people for whom the assessment results have not really been studied enough, like Native American populations. So this is just a line of work that I have gotten really involved in and have become really invested in.

### **Liz Hassett:**

The reason why I became involved or was interested in this partnership for this research project was Pennington County. As a part of the MacArthur's Safety and Justice Challenge, one of our goals was to implement an objective risk assessment instrument, and the primary goal was to not only utilize it as

an informational tool for judges, for individuals who are appearing in first appearance court, but also as a holder release option at the point of booking. So one of the things that we wanted to do, which every jurisdiction that implements an objective risk assessment should be normed and validated for your own community.

So for us, it would be very costly and difficult to identify a university, a research lab, or something like that from another jurisdiction. Because we do have a unique population and we have unique needs, and the population that we have is not regularly studied. So I think one of the things that really led us to the connection with PRA and involvement in their research was because they get it. They have staff, and they understand the population. We're willing to do the legwork to make sure that this study was beneficial for all.

### **Holley Davis:**

Wow. It's so great to hear all of your different perspectives of what brought you to this work, and I just love hearing about this kind of multifaceted approach and personal connection that you all have through these different areas. So, Sam, can you set the stage for our discussion? What was the study, and what did you hope to find?

### **Samantha Zottola:**

This study was a local validation of the public safety assessment, which is one particular pretrial risk assessment instrument. Pennington County had been using the public safety assessment for a couple of years to help inform their pretrial decision-making. So they wanted to validate the instrument in their population. In other words, to make sure that the instrument is working in Pennington County the way that it should.

### **Holley Davis:**

Can you explain what is a pretrial risk assessment, when is it used, and why should jurisdictions consider using them?

### **Samantha Zottola:**

A pretrial risk assessment instrument is a short assessment, typically about 7 to 14 items, that asks mostly about a person's criminal history and their history of appearing in court. There are quite a few different pretrial risk assessment instruments out there. So there is variation in the specific items included on each instrument. The responses to each item are added up to produce a risk score, and that score corresponds to an estimated likelihood for a person's risk for failing to appear in court or their risk of being rearrested while they're on pretrial release for any offense. Then sometimes there are risk for rearrest for a violent offense in particular. So typically, low scores, like a score of one or two, will correspond to a low chance of failing to appear in court, a low chance of rearrest, and a low chance, in particular, of violent rearrest.

The assessment is done when someone is booked into jail, and it's used to inform decisions made, sometimes at the point of release from jail and sometimes also, more typically, at the point of release at initial appearance, which is that first hearing with a judge or magistrate where they're deciding whether someone will be released or detained. If they're released, they make decisions about whether there will be conditions on that release, like does the person have to pay bail, engage in drug testing, or pretrial supervision. The instrument is really, especially supposed to be used to help inform decisions about those release conditions. Ideally, these instruments provide transparent estimates of risk that are based on research and are evidence-based.

### **Holley Davis:**

Thanks so much for that overview. So, Violette, why would an assessment need to be validated for different groups and locations? I had been under the assumption, before I read this paper, that you have an assessment and it's basically good to go for all people in places, but clearly that's not the case. Can you explain why?

### **Violette Cloud:**

As Sam described, pretrial risk assessments are tools designed to predict outcomes like rearrest and court appearance. We've found in research that depending on the way that you phrase questions, who's asking the questions when those questions are being asked, the responses of the individuals are going to differ on various intersectional levels. So folks that maybe English isn't their first language, folks who maybe have a different level of education, they might understand those questions in a different way, or maybe they're in acute crisis. So they're not prepared to answer some of the questions. They don't feel safe to answer the questions. So the process of validating is really digging into the way that different groups, whether that's gender, that's age, that's race, that's locality, are responding to these questions. You can compare the rates of the results to be able to say folks from this group really are answering the questions very similarly to the folks from this group. We can interpret it to mean that both groups are hearing the question in the same way and therefore responding to it in the same way.

### **Holley Davis:**

That is so helpful. Thank you so much for explaining that. So applying Violette's answer to Pennington County, Liz, can you share a bit about the makeup of Pennington County and the court that was the subject of this research?

### **Liz Hassett:**

Absolutely. So Pennington County has about 115,000 people, for which has changed very drastically over the last few years. Native Americans make up about 10% of that population. Now we know that there are more indigenous individuals within the community because we're kind of a hub between three different reservations. We are the shopping hub. We're the activities' hub. There's a lot of individuals that have relatives that they come visit. We really had a vested interest in looking at what do the disparities

look like within the individuals who are receiving a PSA and what can we do, whether it's programming-wise or neighboring community-wise, to assist the individuals that are coming into our community.

### **Holley Davis:**

So what I'm hearing is that your community is a focal point for activity. So there's many people who are coming in, and it just serves as the commerce center functionally for the surrounding communities. Violette, you had mentioned that you're very interested and invested into researching impacts of the criminal legal system on Native American people. Could you orient us to that data? What do we know, and what should our listeners know to fully understand the context of this research?

### **Violette Cloud:**

Based on national census, we have an understanding of the Native American population being around about 3%. So when we look at our detention centers, our jails, we see that that proportion for Native Americans is substantially higher, which would suggest over-representation of individuals that are Native American, that become involved in the criminal legal system. In that representation, we can hypothesize what the cause is, but from my perspective, I think it's compounded by a lot of that systemic and socioeconomic challenges that Native American populations are more likely to face. That includes poverty, limited resources, very rural living communities, and so less access to community resources, services for mental health, and substance use treatment.

Just bringing us back to the pretrial assessment, whatever assessment you're using, it functions as a comb or a net. So the question becomes, did that assessment do a good job of identifying who was actually likely to appear and who was less likely to be rearrested, and did it do it without bias? And so this could be one of those junctures where that overrepresentation of Native Americans in the system, it could be that causal element to that overrepresentation, not limited to the other compounded social economic challenges that I've mentioned before.

### **Holley Davis:**

Thanks for providing that overview of the national picture, Violette. If we focus in on Pennington County, Liz, does the story change somewhat?

### **Liz Hassett:**

It does. Our population, as mentioned, is about 10% within Pennington County, are listed as Native American. However, when we look at the justice system, specifically with the jail, that population is between 60% to 65%. So clearly, there are disparities existing, and one of our primary strategies and pillars of our MacArthur work since 2015 has been building relationships with the tribal entities surrounding and within Rapid City. I think the PSA was a benefit because we took the opinion out of it. We have a very, very long-standing distrust, mistrust between the Pennington County community and our neighboring reservation communities. There's just a lot of conflict there.

So in knowing that we made a concerted effort to do whatever we could and begin the process of rebuilding or just generally building trust and relationships and helping to identify what options do we have to begin to reduce that over-representation in any way possible. I think the PSA was one step towards that goal. The validation of the PSA will help us identify what else do we need to do, where else can we potentially impact the reduction in disparities within the community and within the criminal legal system as a whole. So one of the things that we have truly engaged in any way possible is to seek assistance, research partners, and guidance wherever we can get it.

### **Holley Davis:**

Thank you for that, Liz. So, Sam, Violette was very helpful in explaining to me why you would need to validate an assessment for a particular group and community. So what does that validation entail, and what was the study design that we are talking about here?

### **Samantha Zottola:**

Pennington County shared data with us on all the people who had been booked into the jail over a 3-year period. We pulled a sample of people who had been released pretrial, and we analyzed how well their PSA scores predicted whether they failed to appear in court or whether they were rearrested for any offense in that time period between when they were released from the jail and when their court case closed because that's their pretrial period. We looked at the full sample overall how well the PSA predicted outcomes, and then we looked at prediction across men and women and across Native American and White people to get at testing whether or not there's any bias in the prediction. So, like Violette was talking about, we wanted to know, do the scores predict these outcomes in the same ways for White people and Native American people? Are they predicting equally well for those two groups?

### **Holley Davis:**

So what did you find through all of these analyses?

### **Samantha Zottola:**

We found that in the full sample, the PSA scores showed, unfortunately, poor validity in predicting failure to appear but fair validity in predicting rearrest. So the scores were not predicting failure to appear in this sample, but they were predicting rearrest. We did not find any evidence of bias in PSA prediction of rearrest by gender or race. However, we did find some evidence of bias in the prediction of failure to appear. So scores were not great at predicting failure to appear for anyone in this sample, but prediction was particularly poor for Native American people compared to White people, and it was poorer for women compared to men.

### **Holley Davis:**

So the PSA was able to predict new pretrial arrests without much bias but was unable to predict whether a person would fail to appear in court. What does that mean in practice?

## **Samantha Zottola:**

In practice, the scores weren't really indicating who was failing to appear and who wasn't. I do want to say that we were only able to look at a subset of people in the Pennington jail over the period that we had data for because we had to focus on a sample that had all of the data collected about them that we needed for the analyses. So one of our recommendations for the county is to collect more data and do a validation again on a bigger sample.

## **Holley Davis:**

Great. Thank you. Liz, you've mentioned before that Pennington County as a whole is quite rural in some areas. So do you think that the county's rurality impacts court appearance, or could that be a reason why?

## **Liz Hassett:**

I think, to some extent the fact that some of the people that are needing to appear in court don't necessarily live full-time in Rapid City or in Pennington County. The other piece is, we haven't had consistent use of court notifications and some other things just because we haven't had that capability, whether it be the technology piece or the people power to launch into one of those things. One of the things that we've tried to do with regard to failure to peers and some of those pieces is utilize our local homeless shelter and day centers and some of those places to send notifications to individuals that may not have a cell phone or a number or may not receive a letter, don't have consistent address to just try and notify individuals in every which way we can because we have a fair amount of individuals that don't have an active cell phone consistently and don't have an active address consistently.

So we're trying to be creative in utilizing and figuring out what's the best way to reach people with regard to their scheduled hearings. We just don't have as much technology options. We don't have as many opportunities to do some of the things, but we are also small enough to be able to allow places like the Care Campus open up and be of service to the people that need it. The Care Campus is a facility that houses our human services. We have safe solutions, which is if you're intoxicated or under the influence, you can have a safe place to sleep for the night. It's a self referral. Within the Care Campus facility, about 80% are Native Americans that utilize that facility as a whole.

## **Holley Davis:**

So what I've heard is that it's maybe less about... Rurality definitely plays a factor, but it's the community being underresourced, and that might be contributing to these failures to peers. Is that right?

## **Liz Hassett:**

I don't know if it's underresourced. I think the biggest thing with failures to appear is getting the information out in the right avenue and method to ensure people can and do attend court. I think one of the bigger issues is transportation difficulties. Our busing system is not great. It's very complicated. I don't know that I could figure it out. It takes a long time to get from point A to point B.

So if you do not have a vehicle yourself, you have child care issues or anything else, or you're at a job and you simply cannot leave because you might get fired or lose your employment, I think we have a lot of those barriers at play that definitely have an impact in our failure to appear. I think in bigger cities, transportation is a lot better. To be frank, in the summertime, it's fine to walk to places from point A to point B, but in the wintertime, it gets very, very, very cold. We have blizzards, we have below-zero weather, and it makes it very difficult for people that don't have a vehicle or don't have a way to get from point A to point B to get to the courthouse.

### **Holley Davis:**

Thank you for that clarification. That was so helpful. So, Violette, could you share your thoughts on what barriers Native American populations might face that could cause it to be particularly challenging to appear in court?

### **Violette Cloud:**

Yeah, I think Liz hit the nail on the head really from the systems' perspective as far as transportation being an issue, challenges around reminders. Even myself, just thinking to myself trying to get to a dentist appointment or anything, I'm like, "I need a reminder. I made this thing a month ago." And so also, the system can be really intimidating, and I think sometimes dates change, and so if they change, maybe location change, there's a lot of challenges that could be happening there. But I also want to bring a different level of attention, which is trust, like trust with the community.

So I think historically and for this community, I think there are some trust issues with the system, just that like, "Is there going to be justice if I show up?" Kind of deal. I think the work that Liz and Pennington County are doing with the Care Campus is just so incredible, and to be able to hear that, I think anecdotally and just me looking at the numbers here, hearing the numbers of, "Okay, you have 60% representation in your jail, but 80% utilization of your Care Campus." That's incredible. To me, what I hear there is that the people that are working at the Care Campus are building that trust with the communities, but I think that's really important. Rebuilding that trust with communities, I think, would improve just that responsiveness and all around other things.

### **Holley Davis:**

Thank you, and I'm so glad that you brought up the trust aspect. I was curious if Liz could share a little bit about what the community has been doing to build trust with the tribal populations in the surrounding area. I would love to hear more.

### **Liz Hassett:**

We had to identify an outreach team to go into communities and begin to identify ways to build that trust. We identified kind of a community system pair to go and speak at different community events. One of the things that we really focused on early on with MacArthur was warrant resolution because



we did have a really high number of active warrants. So one of the things that we have focused on was, how can we reduce the number of active warrants? And so we created a 1-800 number for people to call. We were able to work with the state's attorney's office and warrants division through the sheriff's office to identify ways to resolve warrants without going into custody, without having a court hearing. The other piece is, there's always been a warrant resolution option, but the requirement there was that you had to pay \$25.

\$25 could be everything that somebody had. So some people would just never use that option because that was just a nonstarter for them. So what we would do is we would go to some of these community events and we would say, "Hey, do you want to see if you or somebody that you know has a warrant? If so, tell them to call me. Call this 1-800 number or let's resolve it right here." There's one instance where there was an individual that had a warrant, and I don't even remember how many years. It was over 15 years that warrant was active. To think about that person having a warrant active for that many years and that nervousness they must have felt every time. It was for a traffic citation.

So they were able to resolve that, and there was no fine. The case was dismissed, the warrant was dismissed, it was in the best interest of justice, but then that started to help build trust because it wasn't, "We're going to get you." Or it's a, "Gotcha." situation. We truly want to help, and we truly want to see people be successful and not have this warrant or whatever it is over your head. The other option was the diversion program through the state's attorney's office. There's quite a few people that they said, "Well, we can refer you to the state's attorney's office diversion program to complete class A or to do community service B." And not have their case go in front of the courts, which would then reduce the likelihood of a warrant being served if they failed to appear.

We were able to build trust one person at a time because that one person who had the 15-plus-year warrant was telling other people, "Hey, I went through this process and I didn't have to go to jail. I didn't have to go to court. I didn't have to do this, and the people are really nice." People trust the people that they care about more than they trust the system or more than they trust a random person.

## Holley Davis:

That's fantastic. I keep on thinking about the example that you provided of 15 years of just walking around with that level of stress for so much time. That's life-changing, literally, for somebody, and just so much extra weight that you don't need to be carrying around anymore. That's really very, very impactful. Another thought that sparked was the degree to which being a rural community is such an asset in your trust-building campaign of these peer-to-peer interactions have such an amplifying effect when the population is so small because everybody knows everyone else. So these stories are not just somebody who is so disconnected from me, but it's my neighbor, it's my friend, it's my aunt, my uncle. So that's really wonderful.

**Liz Hassett:**

Yeah, I think we're rural enough to be able to do some really creative things, and I think that helps us, but we're big enough to... We have big city problems in a more rural location, and we've had to be creative and come to the table a lot to just try and figure out how to navigate all of those things and, at the end of the day, make sure we have the resources available to take care of the people in our community.

**Holley Davis:**

I love that. Thank you so much for sharing. So switching gears back to the PSA, Sam, you had mentioned that the research team had a series of recommendations for Pennington County. Would you be able to share those with us?

**Samantha Zottola:**

Yeah, absolutely. So like I mentioned, we're only able to use a subset of the sample of people who were coming through the jail in Pennington County, and it was only individuals who had been released on recognizance or released without any bail because those were the only people that we could be sure were out in the community during the follow-up period that we had data for. So really, our biggest recommendation to Pennington County was, it would be great for Pennington County to go back and collect some more data. So we've shared some ideas about the specific pieces of data that need to be collected so that Pennington County then could do a larger validation with maybe their full sample or close to their full sample and get an idea of how the tool is working for everyone.

When it comes to using the failure to appear score, a lot of times, we, as a research team, find ourselves suggesting to communities that it can be better to use that score to drive connections to resources as opposed to using that score to drive restrictive conditions. Because, in general, it's not easy to predict failure to appear. As Liz and Violette have been talking about, there are a lot of systemic barriers or reasons that are based in race, ethnicity, class, and inequalities that are driving why people don't appear in court. So using that scale to drive connection to resources, I think, is something that will be better for individuals. I think in the long run, it will be better for the community because then people are getting connected to the resources that they need. Pennington County is already doing a really fantastic job of that connection to resources.

**Holley Davis:**

Excellent. Can you also share if and what recommendations that you would have for other jurisdictions who are also looking to implement a pretrial risk assessment that hasn't yet been validated?

**Samantha Zottola:**

Yeah, absolutely. So my first recommendation, if a county is looking to implement a risk assessment instrument, I would say look to some of the ones that have already been validated in other jurisdictions as you are choosing one. It's not inappropriate to look at how the tool is working in other counties,

especially counties that are similar to you in terms of population size, demographics, or geographic location, those kinds of things. You can look to how the tool is performing in those counties to get an idea of how it might perform in your county. But once you implement an instrument, then my recommendation would be honestly to validate it as soon as you can, because you just don't know for sure that it's working in your jurisdiction if it's not validated in your jurisdiction.

So it may not be informing the best decisions for people. I think it also makes it harder to get buy-in for use of the instrument because the biggest hesitation I hear when it comes to using pretrial risk assessment instruments, especially from judges, is how do I know if this tool works? And if it's not locally validated, the answer is, you don't know. So there are a lot of reasons why validations don't happen right away, and it's not inappropriate to pick a tool based on how it's working in other jurisdictions, but I really do recommend earmarking funds or finding a way to get the funds to do a validation within one to five years or so of implementing the instrument in your jurisdiction.

### **Holley Davis:**

Thanks, Sam. Those are so practical and tangible. I really appreciate those recommendations. So, Liz, how are you all interpreting and applying the results of this study?

### **Liz Hassett:**

Yeah, so we've had a presentation of the results, and one of the things that happened for us and why we weren't able to give as much data as we wanted was we had a change in data systems. So that has really hindered our ability to make global changes because we don't really know where we're at again. So when you look at between 2018 and 2021, the practices, some of the situations, and the availability of resources changed since that time. The whole world changed. So one of the things that we want to do and are interested in is, what does that look like post-COVID and what changes can we do?

This validation was extremely helpful. It gave us a starting point. It gave us an idea of how we were doing and what that looked like. But I think it's a little bit of to be determined because we have to kind of see, and we're interested in revalidation, especially because, as Sam alluded to, we need a bigger sample. So I think we should always be evaluating how changes we're making have an impact positively or negatively on the community, and does it help us reach our goal or help us ensure fair and equal justice under the law as a whole.

### **Holley Davis:**

So to start wrapping us up, Violette, what can communities do for indigenous populations to promote equity?

## Violette Cloud:

Really, engaging community leaders and engaging specific when you're working with Native American populations, I think it's just out of respect, and this ties right back to that trust building. It starts with respect. Respecting tribal sovereignty and respecting Native American identity and the culture and the values and traditions that the folks in and around your jurisdiction live by and practice, and also the historical context. So you need to get the community buy-in and community voice that's represented in there. And I think just listening to Liz and listening to what's happening in Pennington County, they are working in that direction. I think one of the best recommendations I have is engaging folks on the staff, like having representation on your staff in your system, the folks with power to make those decisions, having that representation there so that it doesn't feel like there's one type of person that is the regulator, the policer, the lawmaker, and there's another type of person that is the unhoused, the jailed, the not appearing, the defendant, etc.

So just being reflective on that, the data shows that representation can really make an impact in communities. But sometimes the issue for these rural communities is resources but also staffing workforce. I always think about this. These things are two ends of the same rope almost, where folks, if they are unhoused, if they do have poverty or socioeconomic issues, the options in these communities to choose a different path are limited. Similarly, the ways that our systems are trying to get these services, treatment services, improving the staffing in our jails, all this stuff, we need a workforce, and we need folks that can make a living in these communities. I think those issues actually affect both ends of it.

So folks are less likely to be in a position where they're going to engage in the legal system if they do have those options of employment, education, health, wellness, et cetera. So these are very global, high-minded issues, but I think the question kind of calls to that. It's this detailed, nuanced stuff where you can adjust your screening and your assessments, but it's also these big-picture things of like, "What are we doing to create opportunities for a different life than justice involvement?" Again, another research idea and opportunity here of exploring ways that we can improve other alternatives.

## Holley Davis:

Thank you so much for joining me today, Sam, Violette, and Liz. It's been really illuminating hearing about all of the considerations that go into validating a pretrial risk assessment to ensure that justice is equitably served for all. I hope that this episode is helpful for jurisdictions looking to implement similar reforms in their communities.

This has been an episode of *Data Points*, a production of Policy Research. Learn more about us by visiting [prainc.com](http://prainc.com). If you have questions or comments about this episode, email us at [communications@prainc.com](mailto:communications@prainc.com). *Data Points* is available via Spotify, Apple Podcasts, and SoundCloud.

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This episode was produced and hosted by Holley Davis and engineered and edited by Elianne Paley. Until next time, keep creating positive social change.

## About

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