

# AZ JUDICIAL CONFERENCE

*Mental Health and  
Dangerousness*



**MENTAL HEALTH AND DANGEROUSNESS**

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# Mental Health and Dangerousness

Presented by: Hon. Dean Fink, Dr. Jason Frizzell, Mr. Donald Jacobson

# Mental Health and Dangerousness

This session will present a national survey conducted by ASU on State Courts regarding definitions and response to dangerousness in various case types along with current status of the development of SBHRFs in Arizona. Presentation and discussion will focus on a general understanding of recognizing and responding to individuals with a mental illness. Reviewing specific issues in recognizing risk for those with a mental illness who are on medication, and assessing of dangerousness to self and others along with appropriate response. Perspectives will be provided from both the judicial and mental health practitioner perspective.

# Common Determinations of Dangerous

## Criminal

Criminal Dangerous Offense<sup>1</sup>  
(A.R.S. § 13-105(13))

Pretrial Detention & Community  
Safety<sup>1</sup>  
(A.R.S. § 13-3961)

Not Competent to Stand Trial, Not  
Restorable (NCNR), Dangerous<sup>2</sup>  
(A.R.S. § 13-4517(A)(4))

Secure Behavioral Health  
Residential Facilities (SBHRF)

## Sentencing Framework

Dangerous Offense, Sentencing  
Enhancement<sup>1</sup>  
(A.R.S. § 13-704)

Guilty Except Insane (GEI)<sup>2</sup>  
(A.R.S. § 13-502; § 31-502)

Dangerous Offense, Sentencing  
Enhancement<sup>1</sup>  
(A.R.S. § 13-704)

## Title 36 Civil Framework

Mental disorder required  
(§ 36-501)

Danger to Self  
(§ 36-501(12)(a))

Danger to Others  
(§ 36-501(12)(b))

Persistently or Acutely Disabled  
(§ 36-501(33))

Gravely Disabled  
(§ 36-501(24))

1 – Mental disease or defect not required to exist

2 – Mental disease or defect required to exist

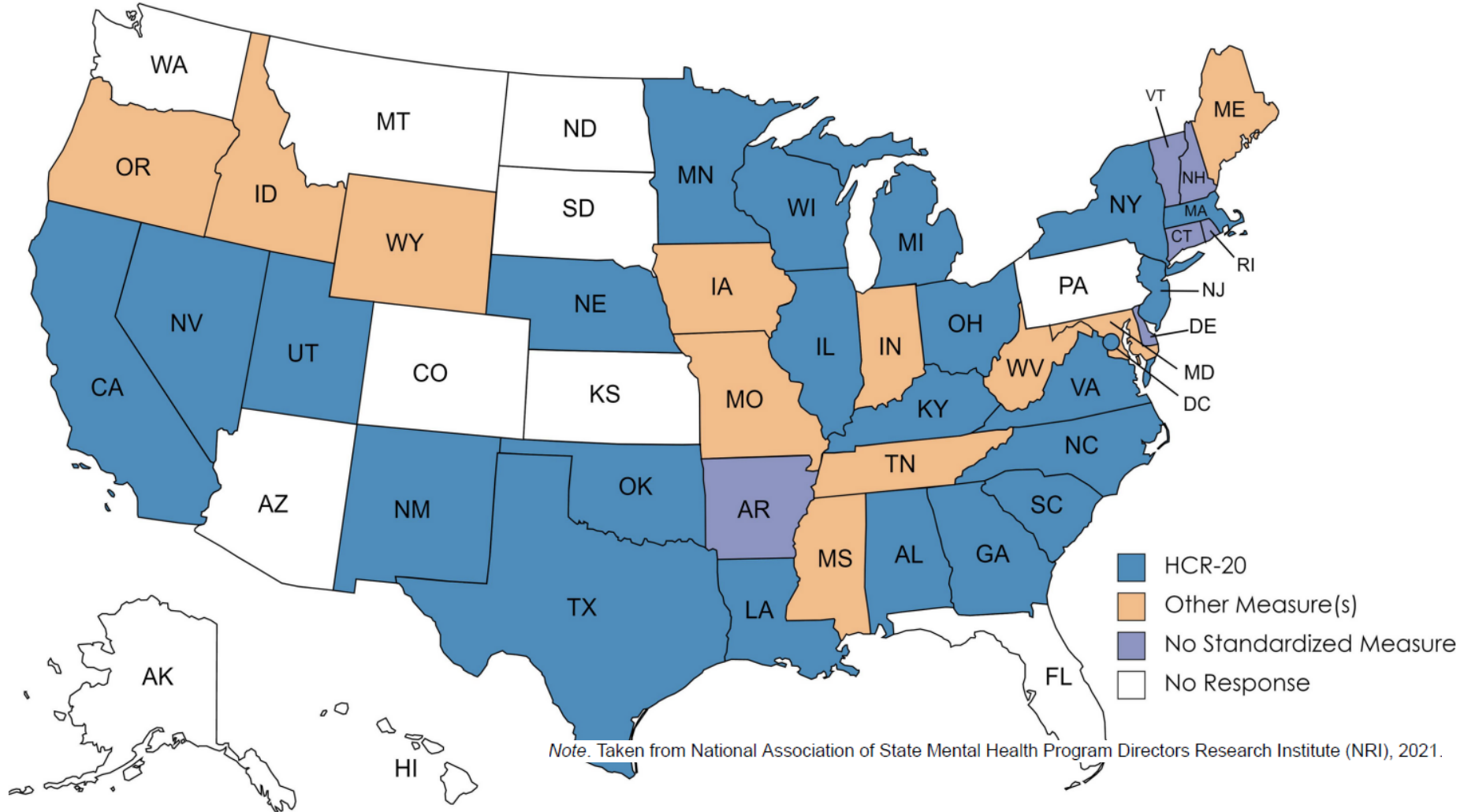
# National Technical Policy Report – *Judging Danger: Mental Illness, Risk and the Justice System*, by Teagan Lunn, Dr. Courtney Simmons, ASU School of Interdisciplinary Forensics

**Table 1.**  
How Dangerousness Is Defined Across Legal Contexts

Legal Context	Purpose of Dangerousness Determination	Standard / Trigger	Role of Mental Illness	Arizona Approach	Federal / National Context
Civil Commitment	Protect individual/community; authorize involuntary treatment	Danger to self/others, grave disability, or deterioration risk	Central consideration	Arizona permits court-ordered treatment for persistent, acute, or grave disability even absent imminent violence (A.R.S. §36-540)	States vary widely; some require imminent danger only
Pretrial Detention / Bail	Determine release conditions before trial	Risk to public safety or failure to appear	Usually indirect/ non-required	A.R.S. §13-3961 allows detention for specified serious offenses	The Federal Bail Reform Act permits detention based on dangerousness
Sentencing Enhancements	Increase punishment severity	Dangerous offense involving a weapon or serious injury	Not required	A.R.S. §§13-105.13, 13-704 focus on offense conduct	Many jurisdictions increasingly use risk tools at sentencing
GEI / NGRI Commitment	Determine criminal responsibility and post-acquittal confinement	Dangerousness linked to mental illness	Required for continued commitment	Arizona GEI requires mental illness-related dangerousness	Standards vary; some states separate dangerousness from mental illness

# National Technical Policy Report – *Judging Danger: Mental Illness, Risk and the Justice System*, by Teagan Lunn, Dr. Courtney Simmons, ASU School of Interdisciplinary Forensics

## Use of HCR-20 or Other Standardized Dangerousness Instrument by States



Note. Taken from National Association of State Mental Health Program Directors Research Institute (NRI), 2021.

For a comparison of strengths and weaknesses of various instruments see Table 3 of *Judging Danger: Mental Illness, Risk and the Justice System*, by Teagan Lunn

# HCR-20

The HCR-20 takes its name from three scales:

- Historical (past),
- Clinical (present),
- Risk Management (future),
- and from the number of items (20) that it measures.

Each risk item has a three-level rating structure with specific rating guidelines (Low, Moderate, or High).

The HCR-20 should be administered by trained mental health professionals, typically forensic or clinical psychologists with additional training in structured risk assessments and may take up to 14 hours.

The background of the slide is a dark blue image. On the left, there are several rows of bookshelves filled with books. On the right, there is a large, faint image of a scale of justice, symbolizing law and ethics. A thin red horizontal line is positioned above the main title text.

# Dangerousness Risk Assessment: Practical, Ethical and Legal Considerations

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Licensed Psychologist – Private Practice

# Disclosure

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- **I do not have any financial interests in relation to this presentation, am selling no products and I get no royalties of any kind.**
- **Views expressed in this presentation are my own, and do not necessarily represent any position of any jurisdiction I contract with, any governmental entity, or MHEs as a whole.**

# Disclosure

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**The following presentation is not meant to be exhaustive, but to cover broad considerations for dangerousness assessments completed by Mental Health Experts in the State of Arizona.**

# Learning Objectives

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- **Review the relevance of scientific data to judicial decision-making.**
- **Understand violence risk assessment and how methodologies fit (or don't) within standards of evidence.**
- **Ethical, practical and legal considerations that affect mental health experts in their obligations to the court.**

# Why is science worth talking about in this context?

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## Daubert Standard

- Although Judges are the gatekeepers of scientific evidence, most judges are not trained scientists and have difficulty filtering information.
- Scientific evidence is not a dichotomy of “junk science” and substantially accurate science.
- In reality, much of the conventionally accepted science base in mental health (as well as other disciplines) can be extraordinarily complicated.

# Daubert Standard

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1. Has the technique or theory been tested?
2. Has it been published and peer-reviewed?
3. Known or potential error rates;
4. Are there standards that control its operation?
5. Is it widely accepted within the relevant scientific community?

# What does “dangerousness” mean?

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- **Legal definition vs. scientific construct**
  - ARS 13-4501.2: “‘Dangerous’ means that, as a result of a mental illness, defect or disability, a person’s continued behavior can reasonably be expected, on the basis of a mental health expert’s opinion, to result in serious physical harm or death to another person.”

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# What does “dangerousness” mean?

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- **Legal definition vs. scientific construct**
  - First generation studies initially tried to study how to *predict* violence. Super bad outcomes.
  - Ultimately, these studies were a major but *predictable* black eye for psychology:
    - HOPVAW – How Often Predictions of Violence Are Wrong = 44% - 99%\* at follow up 1 to 5 years later.

# What does “dangerousness” mean?

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- **More on scientific constructs**
  - Second generation studies examine risk factors.
  - Assessing for known, ideally empirically-supported correlates of violence.
  - Ultimately, the limitation here is based on a comparison between a specific individual’s known history and a known population of violent offenders.
  - The yield is a probability estimate for future offending.

# Implications for your experts

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- **Mental health experts are not immune from errors or bias.**
  - **Ethical consequences**
  - **Legal consequences**
  - **Moral consequences**
- 
- The background of the slide is a dark blue image. On the left, there are several rows of bookshelves filled with books. On the right, there is a large, white scale of justice, also known as a balance scale, which is a symbol of law and equity. The overall theme of the slide is related to legal and ethical implications.

# Take home messages

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- **The science behind violence risk assessment is complicated, based on questionable assumptions, and there is little agreement amongst experts.**
- **As it pertains to the idea of dangerousness, the nexus between what a psychologist can offer in terms of risk assessment and what the legal system expects/needs can be a poor fit, especially when there is poor consensus.**
- **Consequences can be irreversible.**

# Ask me anything (about forensic psychology)!

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Feel free to reach out:

Dr. Frizzell can be reached at

[jason@frizzellpsych.com](mailto:jason@frizzellpsych.com) for questions, discussion, or anything else!

### **HCR-20: Assessing Risk for Violence**

The HCR-20 was developed from a thorough consideration of the empirical literature concerning factors that relate to violence. The HCR-20 takes its name from three scales — Historical, Clinical (present), Risk Management (future) — and from the number of items (20) that it measures. Each risk item has a three-level rating structure with specific rating guidelines (*Low*, *Moderate*, or *High*).

The HCR-20 is not designed to be a formal test or scale; there are no assigned numerical values nor are there any specified cutoff scores. Based on the structured professional judgment (SPJ) model, the HCR-20 helps structure an assessment so that important factors will not be missed and, thus, will be emphasized when formulating a final professional judgment about a defendant's level of risk to commit future acts of violence.

<b>I. Historical Risk Factors</b>	<b>Degree of Risk for this Defendant:</b>		
	<b>Low</b>	<b>Mod</b>	<b>High</b>
1. History of Violence			
2. Young Age at First Violent Incident			
3. Relationship Instability			
4. Employment Problems			
5. Substance Use Problems			
6. Major Mental Illness			
7. Psychopathy			
8. Early Maladjustment			
9. Personality Disorders			
10. Prior Supervision Failure			

<b>II. Clinical Items (current factors)</b>	<b>Degree of Risk for this Defendant:</b>		
	<b>Low</b>	<b>Mod</b>	<b>High</b>
11. Lack of Insight			
12. Negative Attitudes			
13. Active Symptoms of Major Mental Illness			
14. Impulsivity			
15. Unresponsive to Treatment			

<b>III. Risk Management Items (future factors)</b>	<b>Degree of Risk for this Defendant:</b>		
	<b>Low</b>	<b>Mod</b>	<b>High</b>
16. Plans Lack Feasibility			
17. Exposure to Destabilizers			
18. Lack of Personal Support			
19. Noncompliance with Remediation Attempts			
20. Stress			

## **I. Historical Risk Factors**

### **H1. History of Violence**

Prior violent behavior is perhaps the best single predictor of future violence. Monahan (1981) notes “if there is one finding that overshadows all others in the area of prediction, it is that the probability of future crime increases with each prior criminal act.” Klassen and O’Connor (1994) state: “Based on findings to date it appears that virtually any measure of past offending can be expected to predict future violence.” The risk of future violence increases incrementally according to the number of prior episodes. Some data suggest that the relationship between past violence and future violence is greatest in the years immediately following the most recent violent episode and that risk decreases with time.

History of Self-Harm or Suicide Attempts: A history of suicide attempts or self-harm have been shown to be a higher risk for future violence. Garrison and colleagues (1993) found that all forms of suicidal behavior increased the probability of violence to others. The severity of each type of behavior also was correlated. In a review, Apter et al. (1995) noted that 7% to 48% of patients with a history of violent behavior have also made suicide attempts in the past. This is reported to be true for adults (Skodol & Karasau, 1978) and for prepubertal children (Pfeffer et al., 1993). Similar findings have been reported in prisoners (Climent, Plutchik, Ervin, & Rollins, 1977) and in juvenile delinquents (Battle et al., 1993). (p.913)

It is possible that suicide is related to violence by its association with other variables such as anger, impulsivity, and substance abuse. These variables have been associated with risk for both violence and suicide in adults.

### **Application to Mr. (In):**

### **H2. Young Age at First Violent Incident**

It is most often found that the younger the person was at the time of first known violence, the greater is the likelihood of subsequent violent conduct (Harris et al, 1993; Lattimore, Visher, & Linster, 1995; Steadman et al., 1994; Swanson, 1994). The risk level for future violence increases with both an earlier onset and a greater overall frequency of juvenile offending. However, early initiation into violence may not predict a higher frequency or rate of violent offering per year. Early initiation into violence/delinquency (i.e., particularly that which occurs prior to age 14) is associated with an increased risk for violent recidivism and predicts more chronic and serious violence. For example, Farrington (1995) found that approximately 50% of boys convicted of a violent offense between the ages of 10 and 16 years were convicted of another violent offense by early adulthood – a rate compared to 8% for those who have no conviction(s) of a violent crime as juveniles. Compared to 30% of youth whose first violent offense occurred during preadolescence (i.e., ages 11 to 13 years) and approximately 10% of youth whose first violent act occurred during adolescence. Elliot (1994) found that 50% of youth who committed their first violent act prior to age 11 years continued their violent behavior into adulthood. An even stronger relationship exists for youth whose first act of violence occurred in early childhood (i.e., ages 2 to 5 years) – this may be seen for boys more frequently than for girls.

### **Application to Mr. (In):**

### **H3. Relationship Instability**

It is generally found that social support works to guard against violent crime (Klassen & O’Connor, 1994; Swanson, 1994). This held true in Harris et al. (1993), where “never married” correlated +.18 with subsequent violence. Klassen & O’Connor (1988) have also noted the link

between being unmarried and being violent. Men who are violent within relationships are at elevated potentials to be violent outside of their relationships (Gondolf, 1988; Suanders, 1992).

**Application to Mr. (In):**

#### **H4. Employment Problems**

General statistics on criminal recidivism show a link between income level and conduct on parole (Monahan, 1981), and unemployment and general criminal recidivism (Andrews & Bonta, 1995). There is no special reason to assume that this would not hold with respect to mentally disorder subjects. Menzies and Webster (1995) found, in a sample of mentally disordered offenders, that unemployment at time of arrest was one of four variables from a large set of factors which predicted later violence. Harris et al. (1993) observed that, although it was not one of the 12 strongest predictors, men who recidivated violently during the course of their seven year follow-up had shorter spans of employment, by 50%, than their matched counterparts. Andrews and Bonta (1995) report that employment problems relate to general recidivism.

**Application to Mr. (In):**

#### **H5. Substance Use Problems**

Substance-use difficulties refer to the use of alcohol, licit or illicit drugs, or inhalants that is sufficiently severe to cause problems in physical health or in one or more major areas of life functioning. Research consistently supports the proposition that substance abuse is a risk factor for violent behavior and criminal recidivism. Results of a 20-year longitudinal survey found that drug use during early adolescence was associated with concurrent and later delinquency. Alcohol may be as much of a risk factor as drug use. In a national sample of high school students from the CDC Youth Risk Behavior Survey, the rate of physical fighting was significantly higher among adolescents who used illicit substances.

Clinicians have little difficulty recognizing, on the basis of experience, the link between substance abuse and violent conduct. This variable proved significant in the study by Harris et al. (1993), and it is certainly regarded as an important factor in other recent reviews (Klassen & O'Connor, 1994). Swanson (1994) has reported that, in his large-scale, multi-site, Epidemiological Catchment Area (ECA) project, having a substance abuse diagnosis yielded much stronger associations with violence than did having a mental disorder. In fact, of all variables studied, it bore the strongest link to violent behavior.

**Application to Mr. (In):**

#### **H6. Major Mental Illness**

“Mental disorder may be a robust and significant risk factor for the occurrence of violence, as an increasing number of clinical researchers in recent years have averred.” (Monahan, 1992, p.519). Swanson’s (1994) ECA study turned up mental disorder, particularly schizophrenia and mania, as strong risk markers for community violence. Hodgins (1992) has amassed convincing data from population-based research that major mental illness elevates the probability of life-time violence. Douglas and Hart (1996), in a quantified review of the research, found that the presence of major psychotic disorders increased the odds substantially of persons acting violently. Just as age doubtless has a complex relation to violence, so likely do the many aspects of major mental illness like delusions (Taylor et al., 1994) and hallucinations (McNiel & Binder, 1994).

**Application to Mr. (In):**

#### **H7. Psychopathy**

One of the most distinctive feature of the paper by Harris et al. (1993) is its finding that the 20-item PCL-R (Hare Psychopathy Checklist-Revised) was the best single predictor of violence in groups of schizophrenic and personality disordered individuals. Various investigators have found psychopathy to be a robust risk factor for future violence in a variety of diverse populations (Forth, Hart, & Hare, 1990; Hill, Rogers & Bickford, 1996; Quinsey, Riche, & Harris, 1995; Rice & Harris, 1992, Serin, 1991, 1996; Serin & Amos, 1995). A meta-analysis of 18 studies which had investigated the relationship between psychopathy and violence (and other forms of antisocial behavior) revealed, on average, a large effect size ( $d = .79$ ) between psychopathy and these outcome measures (Salekin, Rogers, & Sewell, 1996).

### **Application to Mr. (In):**

#### **H8. Early Maladjustment**

This item taps maladjustment at home, school, or in the community before the age of 17. The quality of early family life has been found in psychiatric samples to predict future violence (Klassen & O'Connor, 1989; Yesavage, 1983). There is some evidence that seriousness of antisocial behavior is directly proportional to the severity of childhood maltreatment (Smith & Thornberry, 1995).

Exposure to Violence in the Home: Family discord, conflict, and violent relationships within the family have been linked to an increased risk for violence among youth. Prior studies have found associations between marital conflict and partner-directed violence and a youth's likelihood of engaging in violence. In Maguin et al.'s (1995) Seattle study, family conflict during adolescence was strongly associated with an increased risk for violence at age 18 years, but conflict occurring during childhood (e.g., age 10 years) was not associated with an increased risk for violence.

Violent and chronic adolescent offenders are frequently found to have witnessed violence in the home. Violence between parents also has shown a positive association with later violence in a child's adolescence and adulthood. Youths who frequently witness aggression between parental figures are more likely than others to consider aggression as an acceptable method for dealing with interpersonal conflicts. In many of these instances, the use of violence becomes modeled and reinforced.

Childhood History of Maltreatment: Having a history of victimization by physical or maltreatment is associated with an increased risk for violence in youth. Being a victim of abuse induces predisposing experiences including those that model violence and those that reinforce or reward violence. Results from the Second National Family Violence Survey (Gelles, 1997) suggest that youth who are victims of severe violence in the home are approximately three times more likely to use drugs and alcohol, to get into fights, and to deliberately damage property. Youth subjected to abuse/neglect also are approximately four times more likely to steal and to be arrested than other youth. In a large study of violent crime arrest rates among youth in North Carolina, a positive association was found between frequency of maltreatment and violence.

Another study found that adolescents with a history of abuse and neglect were more violent than their nonabused counterparts, even when demographic and family variables were controlled. Widom (1989) found that persons who were physically abused were slightly more likely to be at risk for violence and those who were neglected showed the greatest increase in risk for violence. Abuse/neglect increased the chances of later delinquency and criminality by 40%.

Parental / Caregiver Criminality: A number of factors related to parental antisocial behavior and maladjustment within the family system have been linked to violent behavior among youth. In

particular, a number of studies suggest that parental criminality increases the risk for violent crime among children and adolescents.

Other forms of parental deviance, such as substance-abuse problems and mental illness, also are linked to youth violence, although the magnitude of the relationship is not as strong or as consistent. Parental attitudes towards violence in youth also may play a role. In one study, children whose parents were more tolerant of their violent behavior when they were age 10 years were more likely to report violence at age 18 years. In addition, biological predisposition and other distally related factors (e.g., socioeconomic status, poor child-parent attachment) may be associated with antisocial behavior in parents.

Early Caregiver Disruption: There is mounting evidence that early separation from parents or caregivers is associated with a higher risk for violence and delinquency. Farrington (1989) found that separation from parents before the age of 10 years is associated with self-reported violence in adolescence and early adulthood. In several European studies, parental separation or living in a broken or single parent family at an early age (i.e., ages 10 to 13 years) has been associated with later violence among youth. Similarly, a follow-up study of African American children in Chicago showed that leaving home before the age of 16 years was linked to increased violence in both men and women.

School achievement: Educational problems have been consistently found to be prevalent in violent offenders. Academic failure (i.e., low achievement, low attainment, poor grades) beginning in the elementary grades is associated with an increased risk for later violence. In one study, low attainment and low academic track assignment by age 11 years doubled the risk of later violence. Commitment to school may be an important protective factor. Truancy and dropping out prior to age 15 years may be associated with subsequent violence. Having frequent school transitions around age 14 to 16 years, especially within the same year, also may be a risk factor.

Poor achievement may result from intellectual limitations or it may occur secondarily to a lack of interest/effort and other school-related problems. These problems themselves also are risk factors for violence. Regardless of the cause, poor school achievement increases the risk for future violent behavior.

### **Application to Mr. (In):**

#### **H9. Personality Disorders**

Personality disorders, especially those of the antisocial or borderline type, are based on criteria which depend in part on a history of antisocial behavior. There is some evidence of a predictive link between personality disorder and violence (Widiger & Trull, 1994). This variable produced a correlation of +.26 with violence in the Harris et al. (1993) study. Yarvis (1990) determined that antisocial and borderline personality disorders were over-represented in a sample of murderers. Epidemiological studies, both in Canada (Bland & Orn, 1986) and the United States (Robins, Tipp, & Przybeck, 1991), support the association between violence and antisocial personality disorder. The key ingredients of anger, impulsivity, hostility, and the like, elevate the risk for both general and violent criminal behavior (Hare, 1991; Hare & Hart, 1993; Sonkin, 1987).

### **Application to Mr. (In):**

#### **H10. Prior Supervision Failure**

This refers to a history of having failed to comply with rules and expectations of correctional (both custodial and community) and mental health services, or failing to comply with any conditions of a court order. Past supervision failures have been associated with increased risk for violence in adults. Harris et al. (1993) found failure on prior conditional release to be associated with future violent acts (+0.24).

### **Application to Mr. (In):**

#### **Clinical Items (current factors)**

##### **C1. Lack of Insight**

This is construed as the “reasonable understanding and evaluation of one’s own mental processes, reactions, self knowledge” (English & English, 1958, p.264). Violence may be precipitated by attributing hostility to others’ behaviors or intentions when no such hostility is evident (Dodge, Price, Bachorowski, & Newman, 1990).

Low Empathy / Remorse: An impaired ability to experience empathy and remorse are traits that have been linked to each other and to violence. Deficits in one’s capacity for empathy and remorse are frequently indentified by courts as prima facie predictors of violence potential. Empathy is defined as the identification, understanding, and sharing of another person’s thoughts, feelings, and intentions. Deficiencies in empathy often have been linked to the risk for engaging in interpersonal violence. Conversely, the presence of empathy has been found to mitigate or inhibit aggression and to facilitate prosocial behavior.

Remorse is defined as distress arising from repentance for past behavior that has hurt others. Although there have been few empirical studies linking a lack of remorse to violence, it is one of the key components to the constellation of “callous/unemotional traits” (Frick & Hare, 2001) that distinguish a subgroup of children and adolescents exhibiting a particularly serious and persistent pattern of antisocial and delinquent behavior. In juveniles, these CU traits have been associated with a greater frequency and variety of violent offenses , with a greater frequency of proactive aggression, and with a more positive outcome expectancy from using violence to achieve a desired result.

### **Application to Mr. (In):**

##### **C2. Negative Attitudes**

It is important to determine the extent to which the individual’s pervasive attitudes are pro- or anti-social. This includes current attitudes toward other people, social agencies, and institutions, and the law and other authority. Andrews and Bonta (1995) report that procriminal sentiments, or attitudes that support the use of crime, relate to criminal and violent behavior.

Attitudes condoning violence have been found to be a moderate predictor of later violence in adolescence. Studies have noted two core social cognitive deficiencies among youth that may lead to increased aggression: (a) an inability to generate nonaggressive solutions to interpersonal conflicts; and (b) a tendency to frequently perceive hostile or aggressive intent by others, even when none is intended. Cognitive predispositions, appraisals of provocation of intentionality (i.e., hostile attribution bias), violent fantasies, aggressive self-statements or self-talk, and expectations about success or instrumentality of violence may increase the risk.

Inappropriately inflated self-esteem also may be linked to violence risk. Those with an inflated sense of self-worth tend to be very sensitive to any threat to their ego or self-image and may respond aggressively to negative appraisals or feedback. Empirical studies have found that

idealization and inflated ratings of self-competence were associated with higher levels of aggression. In one review, researchers noted that *“the more favorable one’s view of oneself, the greater the range of external feedback that will be perceived as unacceptably low.”*

#### **Application to Mr. (In):**

### **C3. Active Symptoms of Major Mental Illness**

A history of mental illness (H6) has already been noted as a predictor of violence. Current symptoms are also an indicator, i.e. psychotic symptoms (disturbances in content and form of thought, inappropriate affect, hallucinations, delusions). Monahan (1992) has suggested that more florid psychotic symptoms are more likely tied to violent conduct. Link and Stueve (1994) and Swanson, Borum, Swartz, and Monahan (1996) found that psychotic symptoms which both over-ride one’s sense of self-control, and are threatening to one’s sense of safety or well being are more strongly related to violence. De Pauw and Szulecka (1988) claim there is some evidence that patients “with well developed delusions are more likely to commit violent crimes against persons than those with undifferentiated psychoses.” (p.91).

#### **Application to Mr. (In):**

### **C4. Impulsivity**

Both risk taking and impulsivity are dimensions of behavior that have been linked to one another, as well as to violence. Impulsivity as risk factor for violence is often characterized by behavioral and affective instability, and marked fluctuations in mood or general demeanor. This includes proneness to react with intense emotions very suddenly and without consideration of the consequences. Impulsivity also refers to the inability to remain composed and focused, particularly when under pressure. “Lifestyle impulsivity” has been found to differentiate recidivistic from non-recidivistic offenders (Prentky, Knight, Lee, & Cerce, 1995). Lifestyle impulsivity may include very dangerous and potentially harmful activities, such as substance abuse, impulsive crimes, or impulsive spending.

Impulsivity has been considered an important risk factor in the prediction of violence among children, adolescents, and adults. Impulsivity in youth is linked to increased risk for violence as measured by self-report and official records. Related to this is the dimension of behaviors regarded as “risk-taking” or “daring” that have been shown to bear a strong relationship to violence – even doubling or tripling the risk for violent behavior among older children and adolescents.

Factors such as hostility (Megargee, Cook, & Mendelsohn, 1967; Menzies & Webster, 1995, Quinsey, Maguire, & Varney, 1983) and anger (Kay, Wolkenfeld, & Murrill, 1988; Novaco, 1994; Selby, 1984) also relate to violence.

Anger Management Problems: Anger can be a “potent activator of aggression” (Novaco, 1994). Anger also tends to be associated with antisocial attitudes, and both are related to aggression, particularly reactive aggression. Anger management and assertiveness often are among the main treatment targets for violent offenders. Difficulty managing anger, particularly an explosive temper, often is associated with a higher risk of violence. Anger may increase arousal and, consequently, the risk for aggression. Conversely, empathy, guilt, anxiety, or fear may inhibit risk.

Attention Deficit / Hyperactivity Difficulties: Attention/concentration deficits (including ADD) and hyperactivity have been shown to predict violence in childhood, adolescence, and adulthood.

Both component problems – attention/concentration and hyperactivity – are associated separately in the empirical literature with violence risk. Hyperactivity is particularly problematic in the presence of conduct problems. One controlled study found that when compared with a control group, hyperactive youth had a significantly higher rate of arrest (46% vs. 11%) and incarceration (22% vs. 1%) than the control group. Hyperactive youth also had a higher rate of arrest specifically for violent crimes (34% vs. 9%).

**Application to Mr. (In):**

### **C5. Unresponsive to Treatment**

It is vital to know if an individual has sought help and accepted it, rejected it out of hand, or agreed to it merely to “look good” to a court, or other authority. The critical factor would seem to be whether there is or is not demonstration of attainment, and whether the person possesses the kinds of skills needed to cope with present and future social, vocational, interpersonal, and basic living demands. Compliance with a proposed intervention or risk reduction strategy often is contingent on appreciation of the intervention, motivation to participate, access to the program, and a belief in the beneficial outcome. Those who do not believe or anticipate that the proposed treatment will be effective in alleviating their problems, or they may find the “costs” or side effects of treatment to be so aversive that the costs outweigh any benefits. Poor compliance has been associated with increased risk for violence.

**Application to Mr. (In):**

### **Risk Management Items (future factors)**

#### **R1. Plans Lack Feasibility**

An individual who has shown an ability to accept and make use of treatment or remedial programs will likely be at reduced risk for violence. A well-conducted meta-analysis turned up several characteristics of effective and appropriate treatment for the reduction of general recidivism: (1) delivery of more intensive services to higher risk as opposed to lower risk cases; (2) specification and targeting of criminologic needs (clinical risk factors), and; (3) matching modalities of treatment to offenders’ needs and learning styles (Andrews et al., 1990).

**Application to Mr. (In):**

#### **R2. Exposure to Destabilizers**

Exposure to destabilizers refers to situations in which persons are exposed to hazardous conditions to which they are vulnerable and which may trigger violent episodes. “Hazardous conditions” may include the presence of weapons, substances, or some victim group (i.e. children or an abused spouse). This item is related to a lack of professional support. In a study by Estroff and Zimmer (1994), patients with few mental health professionals to assist them were at heightened odds for acting violently. Difficulty in handling basic social and life skills such as housing, finances, meals, and leisure predicts violence (Bartels et al., 1991). Risk increases when individuals are discharged to situations similar to those involved in the index offense, as it does when persons associate with antisocial peers (Gendreau, 1995). Although alcohol and other drugs are hard to limit, with the cooperation of the subject and specialized agencies, it may be possible to reach firm agreements about substance use and to monitor intake systemically.

**Application to Mr. (In):**

#### **R3. Lack of Personal Support**

The absence of supportive relationships can reduce the effectiveness of risk reduction efforts and increase the risk of exposure to risky conditions. Hostile or conflictual relationships also may increase the risk for violence. Healthy family relationships have been associated with fewer feelings of violence or acts of violence. Poor family relationships may well precipitate violent acting out (Klassen & O'Connor, 1989).

**Application to Mr. (In):**

#### **R4. Noncompliance with Remediation Attempts**

This notion is the motivation to succeed and willingness to comply with medication and other therapeutic regimens. Potential for violence would seem to be reduced if the individual can accept and conform to agreed-upon rules. Noncompliance with medication has been shown to predict violence (Bartels et al., 1991).

**Application to Mr. (In):**

#### **R5. Stress**

The part of the HCR-20 attempts to forecast what sources of stress an individual is likely to encounter and how s/he may react or cope with these. Monahan (1981) suggested attention to three general areas: family, peer, and employment. Felson (1992) has demonstrated a relationship between stress and violence in both ex-offenders and released psychiatric patients. Those who had a history of being victims of violence were more likely to be violent under stress. One study found that stressful events were linked to higher rates of aggression over a 1-year period.

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# Judging Dangerousness: Mental Illness, Risk, and the Justice System

**Prepared For:** Donald Jacobson, Senior Special Projects Consultant, Arizona Supreme Court, Steering Committee on Mental Health & the Justice System

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## **Executive Summary**

Dangerousness determinations shape some of the most consequential decisions in the legal system, including involuntary civil commitment, pretrial detention, sentencing, and release decisions for individuals found guilty except insane (GEI) or not guilty by reason of insanity (NGRI). Across these contexts, courts and clinicians are tasked with balancing public safety concerns against individual liberty interests. However, dangerousness remains inconsistently defined across jurisdictions and legal settings, and the tools used to predict future violence or criminal behavior remain imperfect (Gordon, 2016; Treatment Advocacy Center, 2020).

Although mental illness is often associated with public perceptions of violence, research consistently demonstrates that mental illness alone is a poor predictor of violent behavior and that individuals with serious mental illness are more likely to experience victimization than perpetrate violence (Gordon, 2016). Nonetheless, dangerousness determinations continue to influence detention, treatment, sentencing, and release decisions throughout the legal system.

Risk assessment tools and structured professional judgment instruments are increasingly used to guide dangerousness determinations in both criminal and civil settings. These instruments may improve consistency compared to unstructured clinical judgment, but they also raise substantial concerns regarding predictive accuracy, false-positive rates, racial and cultural bias, and overreliance on static risk factors (Fazel et al., 2012; Ogonah et al., 2023).

## **Key Findings**

- Dangerousness is defined differently across civil commitment, pretrial detention, sentencing, and insanity-related proceedings.
- Arizona primarily relies on offense-based dangerousness standards in criminal contexts, while civil commitment standards permit broader consideration of grave disability and treatment needs.
- Risk assessment tools vary substantially in purpose, setting, and predictive validity.
- False positives are common, particularly among racial and ethnic minority groups (Fazel et al., 2012).
- Mental illness alone does not reliably predict violent behavior (Gordon, 2016).

## **Policy Recommendations**

- Clarify statutory definitions of dangerousness across legal contexts.
- Increase transparency regarding the limitations and appropriate uses of risk assessment tools.
- Require ongoing validation and bias assessment of actuarial instruments.
- Emphasize least restrictive alternatives whenever possible.
- Distinguish mental illness from generalized assumptions of dangerousness

## **Background**

Dangerousness determinations affect liberty, autonomy, access to treatment, detention status, and sentencing outcomes in both civil and criminal legal systems. Courts, clinicians, and legal decision-makers regularly evaluate whether an individual poses a risk to themselves or others when determining whether to authorize involuntary treatment, deny pretrial release, enhance criminal penalties, or continue psychiatric confinement. These decisions often require balancing competing priorities. On one hand, there is a legitimate public safety interest in preventing serious harm and ensuring access to treatment for individuals in crisis. On the other hand, dangerousness determinations can result in significant restrictions on liberty, including involuntary hospitalization, detention, prolonged confinement, and increased criminal sanctions.

Public concern surrounding dangerousness and mental illness increased substantially following deinstitutionalization, during which large psychiatric institutions were closed and responsibility for treatment shifted toward community-based systems that were often underfunded or inaccessible (Davis et al., 2012; Lamb & Weinberger, 2020). As a result, some individuals with severe mental illness experienced worsening psychiatric symptoms, increased instability, and greater contact with the criminal legal system. At the same time, highly publicized incidents involving individuals with mental illness contributed to broader public perceptions linking psychiatric disorders with violence (Torrey, 2015; Vitacco & Degroot, 2013). Media portrayals frequently emphasize rare but extreme cases, reinforcing stigma despite evidence showing that most individuals with mental illness are not violent and are more likely to be victims of crime than perpetrators (Nawka et al., 2012; Gordon, 2016). These tensions continue to shape modern determinations of dangerousness across legal contexts.

### **How Dangerousness Is Used Across Legal Contexts**

Although dangerousness is often discussed as a single concept, its definition and application vary substantially depending on the legal context. Dangerousness determinations may focus on treatment needs, risk of violence, likelihood of recidivism, or offense severity, depending on the procedural stage and statutory framework. Dangerousness in civil commitment settings is often linked to treatment needs and functional impairment rather than solely violent behavior.

Arizona law operationalizes “dangerousness” differently across civil commitment, pretrial detention, sentencing, and insanity-related proceedings. Rather than adopting a single definition, Arizona statutes define dangerousness according to the legal objective at issue, including treatment, public safety, punishment, or criminal responsibility. These distinctions are important because the same individual may be evaluated under substantially different dangerousness frameworks depending on the procedural context.

#### **Civil Commitment**

Civil commitment standards are generally rooted in two related legal principles: *parens patriae*, which permits the state to intervene to protect individuals unable to protect themselves, and police power, which allows the state to protect the broader community from harm. Many modern civil commitment statutes were influenced by California’s 1967 Lanterman-Petris-Short Act, which emphasized dangerousness and grave disability standards tied to a “need for

treatment” based on danger to self, danger to others, or inability to care for one’s basic needs (Brooks,1978; Gordon, 2016). Although all states now authorize involuntary treatment under some form of danger-to-self-or-others standard, jurisdictions vary substantially in how dangerousness is operationalized, including whether imminent harm is required, whether commitment must be based on recent behavior, and the extent to which courts may rely on predictions of future risk (Gordon, 2016).

For example, several states (Alabama, Delaware, Georgia, Oklahoma, Pennsylvania, and Tennessee) continue to require that an individual pose an imminent risk of harm to themselves or others to qualify for involuntary commitment (Treatment Advocacy Center, 2020). These standards may exclude individuals who are gravely disabled or experiencing substantial psychiatric deterioration but who are not yet considered imminently dangerous, potentially delaying intervention until individuals experience significant functional decline or crisis. As a result, advocacy organizations such as the Treatment Advocacy Center have recommended broader commitment standards that recognize diminished insight, functional deterioration, and treatment noncompliance and permit intervention before individuals become acutely dangerous or justice-involved (Treatment Advocacy Center, 2020). Several states have consequently expanded Assisted Outpatient Treatment (AOT) statutes to allow court-ordered outpatient treatment for individuals who can live safely in the community with supervision and treatment compliance but who remain at substantial risk of deterioration without intervention. For example, North Carolina (§ 122C-271) and Minnesota (§ 253B.09) authorize outpatient commitment based on risk of deterioration or harm associated with mental illness rather than imminent dangerousness alone.

### ***Arizona’s Civil Commitment Framework***

Arizona’s civil commitment framework emphasizes mental disorder, functional impairment, and treatment need rather than criminal culpability. Under A.R.S. § 36-540, a court may order treatment if it finds by clear and convincing evidence that, as a result of a mental disorder, a person is a danger to self, danger to others, persistently or acutely disabled, or gravely disabled, and is unwilling or unable to accept voluntary treatment (Ariz. Rev. Stat. § 36-540). Arizona statutes define “danger to others” as impaired judgment resulting from mental disorder such that continued behavior can reasonably be expected to result in serious physical harm (Ariz. Rev. Stat. § 36-501). “Danger to self” includes suicidal behavior as well as circumstances in which lack of treatment may result in serious physical harm or illness (Ariz. Rev. Stat. § 36-501).

Importantly, Arizona law recognizes “persistent or acute disability” and “grave disability,” permitting intervention before imminent violence occurs (Ariz. Rev. Stat. § 36-501). Unlike jurisdictions requiring imminent danger alone, Arizona’s framework also emphasizes deterioration, impaired functioning, and inability to recognize treatment needs as relevant considerations in determining whether court-ordered treatment is appropriate (Ariz. Rev. Stat. §§ 36-501, 36-540). The statutory framework further requires courts to consider the “least restrictive treatment alternative,” emphasizing assisted outpatient treatment (AOT) and combined inpatient-outpatient treatment whenever feasible (Ariz. Rev. Stat. §§ 36-501, 36-540). Arizona’s conditional outpatient treatment statute similarly permits supervised outpatient treatment when a patient no longer requires hospitalization but may deteriorate or become dangerous without structured treatment compliance (Ariz. Rev. Stat. § 36-540.01).

### **Pretrial Detention and Bail Decisions**

Dangerousness also plays a central role in pretrial detention decisions. The federal Bail Reform Act of 1984 authorized courts to deny bail to defendants deemed dangerous to the community, shifting pretrial detention beyond concerns about failure to appear (Baughman & McIntyre, 2012). Today, nearly all states permit dangerousness to be considered in pretrial proceedings, though jurisdictions vary substantially in how these determinations are made. Some states rely primarily on offense-based statutory exclusions, while others incorporate actuarial risk assessment instruments, clinical evaluations, judicial discretion, or combinations of these approaches (Viljoen et al., 2019). Although mental illness is often discussed in pretrial contexts, there is little evidence supporting mental illness alone as a reliable predictor of dangerousness in bail decisions (Nash et al., 2025). Nonetheless, several states continue to include implicit considerations of mental illness in pretrial detention statutes or judicial decision-making, and individuals with mental illness remain disproportionately represented among those denied pretrial release (Graca et al., 2025).

### ***Arizona's Pretrial Framework***

Arizona's pretrial dangerousness framework is substantially more offense- and public-safety-oriented than its civil commitment framework. Under Arizona Revised Statute § 13-3961, individuals charged with certain serious offenses, including capital offenses, sexual assault, and some dangerous crimes against children, may be denied bail when "the proof is evident or the presumption great" (Ariz. Rev. Stat. § 13-3961). The statute additionally permits detention where the court finds clear and convincing evidence that a defendant poses a substantial danger to another person or the community and that no release conditions can reasonably assure public safety (Ariz. Rev. Stat. § 13-3961). Some Arizona counties also use the Public Safety Assessment (PSA; Advancing Pretrial Policy and Research [APPR], 2021), an actuarial instrument designed to estimate risk of failure to appear, new criminal arrest, and new violent criminal arrest (Bureau of Justice Assistance, n.d.).

Unlike Arizona's civil commitment statutes, mental illness is not required for dangerousness determinations in the pretrial setting. Instead, dangerousness is linked primarily to offense severity, violent conduct, criminal history, and community safety concerns. Arizona Revised Statute § 13-3961 also permits courts to infer dangerousness based on alleged gang membership in some circumstances (Ariz. Rev. Stat. § 13-3961).

### **Sentencing and Dangerous Offense Enhancements**

Dangerousness may also influence criminal sentencing. In many jurisdictions, dangerous offenses receive enhanced penalties, and some systems incorporate actuarial risk assessment tools during sentencing to evaluate recidivism risk and criminogenic needs (Chanenson & Hyatt, 2016; Fazel et al., 2022). Although most states continue to rely primarily on offense severity and criminal history when enhancing punishment, risk assessment tools and structured evaluations are increasingly used to guide sentencing recommendations, supervision intensity, electronic monitoring decisions, and reentry planning (Chanenson & Hyatt, 2016; Fazel et al., 2022). Their use varies substantially across jurisdictions, with some states incorporating standardized actuarial instruments during sentencing proceedings, others limiting their use to select cases or supervision decisions, and some jurisdictions using no formal sentencing risk assessments at all (Chanenson & Hyatt, 2016). When incorporated into sentencing decisions, these tools may influence the type of sanction imposed, sentence length, conditions of supervision, and placement decisions such as prison- versus community-based supervision (Fazel et al., 2022).

### ***Arizona's Sentencing Framework***

Arizona's sentencing framework conceptualizes dangerousness primarily in terms of offense conduct rather than individualized predictions of future violence. Under Arizona Revised Statute § 13-105, a "dangerous offense" is defined as an offense involving the discharge, use, or threatened exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury (Ariz. Rev. Stat. § 13-105). Once an offense is designated dangerous, Arizona Revised Statute § 13-704 imposes substantially enhanced sentencing ranges and limits eligibility for probation, suspension of sentence, and early release (Ariz. Rev. Stat. § 13-704).

Arizona's sentencing framework, therefore, differs from jurisdictions that increasingly incorporate actuarial risk assessment instruments during sentencing proceedings. Rather than relying primarily on clinical predictions of future violence, Arizona's dangerousness enhancements focus on weapon use, serious injury, and offense characteristics. This framework reflects a more offense-based conceptualization of dangerousness, tied to the severity of punishment and incapacitation. Although some Arizona jurisdictions use actuarial instruments in pretrial settings, there is limited evidence of a standardized statewide sentencing risk assessment system used to guide dangerousness-based sentencing decisions.

### **GEI/NGRI and Release Decisions**

Dangerousness determinations are also central to cases involving insanity-related verdicts, including not guilty by reason of insanity (NGRI), not criminally responsible (NCR), and guilty except insane (GEI) findings. In these cases, the insanity determination itself focuses on the defendant's mental state at the time of the offense rather than their current psychiatric functioning (O'Donnell, 2020). However, evaluations of dangerousness and current mental illness often become central in decisions regarding continued confinement, treatment placement, and release eligibility following an insanity-related acquittal or verdict. The Supreme Court's decision in *Foucha v. Louisiana* established that continued commitment generally requires both the presence of mental illness and dangerousness, limiting indefinite confinement based solely on perceived dangerousness absent ongoing psychiatric impairment (O'Donnell, 2020). As a result, post-acquittal release decisions frequently depend on psychiatric evaluations, clinical judgment, and risk assessments intended to evaluate both current mental illness and risk of future harm.

Jurisdictions vary in how closely dangerousness must be tied to active mental illness for continued confinement following insanity-related findings. Some states require both mental illness and dangerousness for continued commitment, whereas others permit confinement based more broadly on dangerousness and public safety concerns even when active psychiatric symptoms are less clear (NRI, 2021).

### **Arizona's GEI Framework**

Arizona uses a "guilty except insane" (GEI) framework rather than a traditional not guilty by reason of insanity (NGRI) model. Under A.R.S. § 13-502, a defendant may be found GEI if, at the time of the offense, a mental disease or defect prevented the person from knowing the criminal act was wrong. The statute expressly excludes conditions resulting from voluntary intoxication, character defects, impulse-control disorders, and abnormalities manifested solely through criminal conduct.

If a defendant is found GEI, the court suspends the criminal sentence and commits the individual to a secure mental health facility for a period tied to the sentence that otherwise could have been imposed. The court must additionally identify whether the conduct involved death, physical injury, or substantial threats of harm to others. Arizona’s GEI framework, therefore, explicitly links mental illness, dangerousness, and secure confinement in a manner distinct from both civil commitment and offense-based sentencing enhancement statutes.

**Table 1.**  
How Dangerousness Is Defined Across Legal Contexts

<b>Legal Context</b>	<b>Purpose of Dangerousness Determination</b>	<b>Standard / Trigger</b>	<b>Role of Mental Illness</b>	<b>Arizona Approach</b>	<b>Federal / National Context</b>
Civil Commitment	Protect individual/community; authorize involuntary treatment	Danger to self/others, grave disability, or deterioration risk	Central consideration	Arizona permits court-ordered treatment for persistent, acute, or grave disability even absent imminent violence (A.R.S. §36-540)	States vary widely; some require imminent danger only
Pretrial Detention / Bail	Determine release conditions before trial	Risk to public safety or failure to appear	Usually indirect/non-required	A.R.S. §13-3961 allows detention for specified serious offenses	The Federal Bail Reform Act permits detention based on dangerousness
Sentencing Enhancements	Increase punishment severity	Dangerous offense involving a weapon or serious injury	Not required	A.R.S. §§13-105.13, 13-704 focus on offense conduct	Many jurisdictions increasingly use risk tools at sentencing
GEI / NGRI Commitment	Determine criminal responsibility and post-acquittal confinement	Dangerousness linked to mental illness	Required for continued commitment	Arizona GEI requires mental illness-related dangerousness	Standards vary; some states separate dangerousness from mental illness

**Table 2.**  
Arizona Statutory Frameworks Relevant to Dangerousness Determinations

<b>Legal Context</b>	<b>Primary Statute(s)</b>	<b>How Dangerousness Is Defined or Operationalized</b>	<b>Primary Legal Purpose</b>	<b>Key Features Relevant to the Brief</b>
Civil Commitment	A.R.S. §§ 36-501,	Danger to self, danger to others, grave	Treatment and stabilization	Emphasizes least restrictive treatment alternatives and

	36-540, 36-540.01	disability, or persistent/acute disability resulting from mental disorder		allows intervention before imminent violence occurs
Assisted Outpatient Treatment (AOT) / Conditional Outpatient Treatment	A.R.S. §§ 36-540, 36-540.01	Continued outpatient treatment permitted when a patient no longer requires hospitalization but may deteriorate, become dangerous, or suffer serious harm without treatment compliance (Ariz. Rev. Stat. §§ 36-540, 36-540.01)	Community stabilization and prevention of deterioration or rehospitalization	Emphasizes least restrictive treatment alternatives while permitting structured supervision, medication requirements, monitoring, and return to inpatient treatment for noncompliance or renewed dangerousness
Pretrial Detention	A.R.S. § 13-3961	Risk to public safety or substantial danger to others/community	Community protection and court appearance	Focuses on offense severity, violent conduct, and detention eligibility rather than psychiatric impairment
Sentencing Enhancements	A.R.S. §§ 13-105, 13-704	Dangerous offense involves weapon use, threatened weapon use, or serious physical injury	Punishment enhancement and incapacitation	Dangerousness is tied primarily to offense conduct rather than future violence prediction
GEI Proceedings	A.R.S. § 13-502	Mental disease or defect prevented defendant from knowing conduct was wrong	Criminal responsibility and secure psychiatric confinement	Links dangerousness and mental illness in insanity-related proceedings

### Assessing Dangerousness: Tools, Accuracy, and Limitations

Dangerousness determinations are increasingly informed by actuarial instruments and structured professional judgment approaches designed to estimate the likelihood of violence, recidivism, treatment noncompliance, or other forms of risk (Stevenson, 2018; Ogonah et al., 2023). In general clinical practice, professionals often rely on case conceptualization or formulation approaches to understand and predict future behavior (Macneil et al., 2012). Contemporary approaches frequently utilize the “five P’s” framework—presenting problems, predisposing factors, precipitating factors, perpetuating factors, and protective factors—to evaluate how psychological, social, and environmental factors contribute to risk. In dangerousness evaluations, clinicians may take a similarly investigative approach by assessing prior criminal history, substance use, retaliation thoughts, weapon ownership, and collateral information gathered from schools, medical providers, employers, and family members when available (Crowley, 2003).

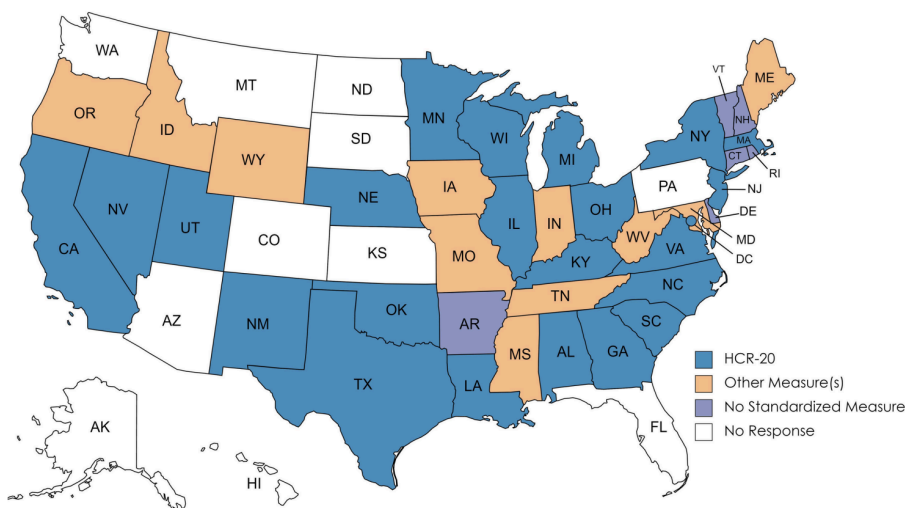
At the same time, clinicians and legal systems increasingly supplement clinical judgment with actuarial instruments and structured professional judgment tools that use structured scoring

procedures or statistical modeling to estimate the probability of future violence, recidivism, treatment noncompliance, or supervision failure (Stevenson, 2018; American Psychological Association, n.d.). More than 400 violence and recidivism risk assessment instruments have been developed, and approximately 80% of State Mental Health Authorities report using at least one standardized dangerousness assessment instrument (National Association of State Mental Health Program Directors Research Institute [NRI], 2021; Ogonah et al., 2023). Approximately 35% of states report using multiple instruments simultaneously (NRI, 2021).

Although these tools differ substantially in structure, setting, and purpose, most attempt to estimate future violence risk by combining historical, clinical, behavioral, and environmental risk factors. Historical factors generally refer to relatively static characteristics or past experiences associated with future violence or recidivism, such as prior criminal history, early behavioral problems, prior violence, or past supervision failures (Douglas & Skeem, 2005; Viljoen et al., 2018). Clinical factors typically involve current psychological or psychiatric functioning, including symptoms of mental illness, impulsivity, substance use, emotional instability, treatment engagement, or psychopathic traits. Behavioral factors often include observable conduct such as aggression, retaliation threats, treatment noncompliance, or prior failures to appear in court, whereas environmental factors refer to external conditions associated with risk, including housing instability, peer influences, access to weapons, family conflict, employment difficulties, and lack of community support. Some instruments focus primarily on static historical factors, whereas others incorporate more dynamic or modifiable factors that may serve as intervention targets, such as antisocial attitudes, substance use, or treatment responsiveness.

**Figure 1**  
*Risk Assessment Tools Utilized Across States, 2020-2021*

**Use of HCR-20 or Other Standardized Dangerousness Instrument by States**



*Note.* Taken from National Association of State Mental Health Program Directors Research Institute (NRI), 2021.

**Commonly Used Risk Assessment Approaches**

Commonly used forensic and psychiatric dangerousness instruments include the HCR-20 Version 3 (HCR-20V3; Douglas et al., 2013), Violence Risk Appraisal Guide (VRAG; Quinsey et al., 2006), Short-Term Assessment of Risk and Treatability (START; Webster et al., 2004), Hare Psychopathy Checklist–Revised (PCL-R; Hare, 2003), and Static-99R (Phenix et al., 2016; NRI, 2021; Ogonah et al., 2023). Although these instruments differ substantially in structure and purpose, most attempt to estimate future violence risk by combining historical, clinical, behavioral, and environmental risk factors. For example, the PCL-R evaluates interpersonal-affective and antisocial psychopathic traits (Neumann et al., 2007; Ogonah et al., 2023), whereas the HCR-20<sup>V3</sup> combines historical, clinical, and risk-management domains and is widely used in forensic and psychiatric settings internationally (Ogonah et al., 2023). The VRAG focuses more heavily on violent recidivism through developmental, offense-related, and psychosocial risk factors, while START places greater emphasis on short-term risk and protective factors relevant to psychiatric treatment and community supervision.

Pretrial and criminal legal risk assessment instruments, including the Virginia Pretrial Risk Assessment Instrument, COMPAS Pretrial Case Manager, the Level of Service Inventory–Revised (LSI-R; Andrews & Bonta, 1995), and the federal Pretrial Risk Assessment (PTRA), are more commonly used to estimate risk of failure to appear, rearrest, recidivism, or supervision needs in criminal legal settings (Bureau of Justice Assistance, n.d.; Nash et al., 2025). Although some instruments incorporate factors related to substance use or mental illness, most focus primarily on criminal history, prior failures to appear, offense characteristics, and behavioral risk indicators rather than psychiatric status specifically.

**Table 2.**  
Risk Assessment Tools by Legal Stage and Decision Type

<b>Tool / Approach</b>	<b>Stage of Legal Process</b>	<b>Decision It Informs</b>	<b>Main Factors Assessed</b>	<b>Strengths</b>	<b>Key Limitations</b>
Public Safety Assessment (PSA) / PTRA <small>(Advancing Pretrial Policy and Research [APPR], 2021)</small>	Pretrial	Release, detention, bail conditions	Criminal history, prior failures to appear, prior violence	Fast, standardized	Limited transparency; concerns about racial disparities
COMPAS <small>(Public Safety Risk Assessment Clearinghouse [PSRAC], n.d.)</small>	Sentencing/community supervision	Supervision level, sentencing recommendations, and recidivism risk	Criminal history, social and behavioral factors	Widely implemented	Criticized for racial bias and opaque algorithms
LSI-R <small>(Andrews &amp; Bonta, 1995)</small>	Sentencing, probation, reentry	Criminogenic needs and supervision planning	Education, employment, substance use, and criminal history	Focuses on intervention needs	Predictive accuracy varies across populations

HCR-20 <sup>V3</sup> (Douglas et al., 2013)	Civil commitment, forensic hospitalization, and release decisions	Violence risk management	Historical, clinical, and risk-management factors	Structured professional judgment approach	Requires extensive clinical training; mixed predictive consistency
VRAG (Quinsey et al., 2006)	Forensic/correctional settings	Violent recidivism prediction	Developmental, offense, social factors	Strong actuarial structure	Older validation samples; limited cultural adaptation
START (Webster et al., 2004)	Psychiatric and forensic settings	Short-term violence and treatment risk	Dynamic strengths and vulnerabilities	Includes protective factors	Less validated across diverse populations
PCL-R (Hare, 2003)	Sentencing, forensic evaluations, release decisions	Psychopathy and violence risk estimation	Interpersonal, affective, antisocial traits	Influential in forensic practice	Risk of overprediction and prejudicial use
Clinical Judgment / Case Formulation	Used throughout process	Commitment, release, sentencing, treatment recommendations	Individual history, context, symptoms, collateral information	Allows individualized/contextual assessment	Vulnerable to evaluator bias and inconsistency

*Note.* Most instruments predict group-level risk better than individual behavior and produce substantial false-positive rates, particularly among racial and ethnic minority groups.

### **Predictive Accuracy and False Positives**

Although risk assessment tools are widely used, research on their predictive performance remains mixed. Many instruments demonstrate only moderate predictive ability, and predictive accuracy often varies substantially across populations and settings (Ogonah et al., 2023). Additionally, one of the most significant concerns involves false positives: individuals incorrectly classified as high risk who do not go on to engage in violent or criminal behavior. Another limitation of the current literature assessing the tools' predictive ability does not account for community supervision or readmissions to psychiatric facilities and focuses only on measures of recidivism (Ogonah et al., 2023). Not including these readmissions may reduce the outcome rates or increase the number of reported false negatives (saying someone is not predictive of risky behavior, when they are).

Meta-analytic evidence suggests that approximately half of individuals categorized as high risk are incorrectly classified (Fazel et al., 2012). False positives raise substantial liberty concerns because dangerousness determinations may result in involuntary hospitalization, detention, enhanced sentencing, or prolonged confinement. False negatives also carry important public safety implications because individuals classified as low risk may still engage in future violence. Research further suggests that predictive performance may vary by population, setting, and outcome, raising concerns about the use of instruments beyond the populations in which they were originally validated (Ogonah et al., 2023). Consequently, dangerousness

determinations require balancing public safety priorities against the risks of unnecessary restriction (Fazel et al., 2012).

### **Racial, Cultural, and Contextual Bias Concerns**

Another persistent concern is whether risk assessment instruments reinforce existing racial and socioeconomic disparities within the legal system. Although race is rarely included explicitly in actuarial tools, many instruments rely on variables associated with structural inequality, including employment instability, neighborhood disadvantage, criminal justice contact, and family structure (Moore & Padavic, 2011). Critics argue that these variables may indirectly function as proxies for race and poverty, inflating dangerousness classifications among historically marginalized groups.

For example, single-parent households are more common among Hispanic and African American families than among White and Asian families, yet some assessments treat single-parent households as a risk factor. Additionally, the language used in risk assessment items may create bias that places minority groups at risk of harsher punishment. In the example above, framing the question as “do you have a supportive adult or family member” rather than “parents” may reduce differences related to cultural and social disparities between groups (Moore & Padavic, 2011).

Research also suggests that predictive accuracy may differ across populations, including women, racial and ethnic minority groups, and individuals from non-Western cultural contexts (Ogonah et al., 2023; Nijdam-Jones, 2020). Emerging forensic research further suggests that contextual information and institutional practices may shape how evaluators interpret and weigh risk-related information, even when structured instruments are used (Zapf & Dror, 2017). Altogether, the research suggests risk assessment instruments may unintentionally reproduce existing systemic inequalities if contextual factors are interpreted as indicators of dangerousness.

### **Clinical Judgment and Judicial Discretion**

Research suggests that judicial officers do not rely solely on the recommendations of mental health experts or actuarial risk assessment tools when making dangerousness-related decisions. Instead, judges often incorporate broader contextual information regarding the individual’s life circumstances, offense characteristics, victim concerns, perceived community risk, and practical sentencing considerations. Studies examining judicial use of pretrial risk assessments found that judges frequently viewed actuarial instruments as “one tool among many” and continued to rely heavily on contextual narratives, local knowledge, and professional intuition when making release decisions (DeMichele et al., 2021). Judges also reported overriding actuarial recommendations in cases involving factors they believed were insufficiently captured by the instrument, including mental illness, domestic violence concerns, and perceived community safety risks (DeMichele et al., 2021). Similarly, qualitative research examining judicial use of risk assessments found that judges incorporated additional contextual information beyond actuarial scores, including victim statements, offense severity, firearm involvement, prior supervision performance, family circumstances, housing stability, and perceived community impact when making release decisions (Esthappan, 2026). Judges in that study frequently described risk assessment instruments as advisory rather than determinative and reported selectively departing from actuarial recommendations when they believed important contextual details were not adequately captured by the tool.

Research further suggests that professional background and institutional role may shape how dangerousness itself is interpreted. In experimental research using identical behavioral scenarios, judges and psychiatrists differed in their willingness to support civil commitment depending on the type of dangerous behavior presented (Poletiek, 2002). Judges were generally more likely to emphasize concerns regarding deprivation of liberty and insufficient evidence of dangerousness, whereas psychiatrists were more likely to conceptualize commitment as a mechanism for obtaining treatment and clinical intervention (Poletiek, 2002). Survey research with Virginia judges similarly found that although a strong majority supported considering recidivism risk during sentencing and regularly reviewed structured risk assessment results, only a small minority reported relying primarily on the actuarial instrument itself, with most instead relying equally on the instrument and their own judicial experience (Monahan et al., 2018). Virginia judges further emphasized that the usefulness of risk-informed sentencing depended heavily on the availability of realistic community-based alternatives, with many reporting inadequate access to outpatient mental health, substance-use treatment, and diversion resources in their jurisdictions (Monahan et al., 2018). Judges also expressed concern that additional procedural requirements tied to risk assessment recommendations could increase administrative burdens and contribute to court delays (Monahan et al., 2018).

At the same time, incorporating broader contextual information into dangerousness determinations introduces additional concerns regarding consistency, bias, and transparency. Many actuarial instruments rely heavily on criminal history and related structural factors, potentially embedding existing inequalities in policing, surveillance, and criminal legal system contact into supposedly “objective” risk estimates. Experimental research further suggests that risk assessment information may unintentionally alter how judges interpret broader social and contextual factors.

For example, an experimental study involving judges found that providing actuarial risk assessment information increased the likelihood of incarceration for relatively poor defendants while decreasing incarceration for relatively affluent defendants, despite identical criminal histories and risk scores (Skeem et al., 2020). Additional empirical research from Texas similarly found that implementation of a structured pretrial risk assessment policy initially increased nonfinancial release and reduced pretrial detention without increasing violent pretrial crime, but many of these effects diminished over time as judges returned toward prior release practices and discretionary decision-making patterns (Sloan et al., 2025). Collectively, these findings suggest that dangerousness determinations are rarely based solely on expert recommendations or actuarial scores, but instead reflect broader institutional, contextual, and discretionary decision-making processes.

## **Policy Considerations and Recommendations**

Dangerousness determinations involve inherently difficult judgments about future behavior, public safety, and liberty interests. Although structured assessment tools may improve consistency compared to unstructured judgment alone, substantial concerns remain regarding predictive accuracy, fairness, transparency, and bias (Fazel et al., 2012; Ogonah et al., 2023).

### **Policy Considerations**

1. *Cultural Fairness and Language Neutrality in Assessment Tools*: Ensure risk assessments are validated across diverse genders, racial, ethnic, and cultural groups while revising assessment language to avoid unintentionally penalizing individuals from different family structures or cultures than the Western norm.

2. *Inclusion of Protective Factors*: Expanding assessments to recognize broader support systems, such as extended family, community members, or mentors, rather than relying on traditional nuclear- family assumptions
3. *Training for Practitioners*: Providing training on cultural competence and implicit bias for professionals utilizing and interpreting risk assessment tools

### **Policy Recommendations**

1. *Clarify Definitions of Dangerousness*: Jurisdictions should adopt clearer, more consistent statutory definitions of dangerousness across legal contexts to reduce inconsistency and confusion.
2. *Distinguish Mental Illness from Generalized Dangerousness*: Mental illness alone should not be treated as sufficient evidence of dangerousness absent additional behavioral or contextual indicators.
3. *Increase Transparency Regarding Risk Assessment Tools*: Courts and evaluators should clearly disclose the intended purpose, limitations, error rates, and validation data associated with actuarial instruments.
4. *Require Ongoing Validation and Bias Assessment*: Risk assessment tools should be regularly evaluated across jurisdictions and demographic groups to identify disparities in predictive performance.
5. *Emphasize Least Restrictive Alternatives*: Whenever possible, decision-makers should prioritize treatment and supervision approaches that minimize unnecessary restrictions on liberty.

### **Conclusion**

Dangerousness determinations affect some of the most significant liberty-restricting decisions in both civil and criminal legal systems. Yet dangerousness remains inconsistently defined across jurisdictions and procedural contexts, and the methods used to predict future violence remain imperfect. Although actuarial instruments and structured professional judgment approaches may improve consistency in decision-making, they cannot eliminate uncertainty regarding future behavior. Current evidence suggests that risk assessment tools are best understood as aids to decision-making rather than definitive predictors of individual violence (Fazel et al., 2012; Ogonah et al., 2023). Future reforms should focus on improving transparency, reducing unnecessary restrictions on liberty, minimizing racial and cultural bias, and ensuring that dangerousness determinations appropriately balance public safety concerns with individual rights and treatment needs.

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**Table 1.**  
How Dangerousness Is Defined Across Legal Contexts

<b>Legal Context</b>	<b>Purpose of Dangerousness Determination</b>	<b>Standard / Trigger</b>	<b>Role of Mental Illness</b>	<b>Arizona Approach</b>	<b>Federal / National Context</b>
Civil Commitment	Protect individual/community; authorize involuntary treatment	Danger to self/others, grave disability, or deterioration risk	Central consideration	Arizona permits court-ordered treatment for persistent, acute, or grave disability even absent imminent violence (A.R.S. §36-540)	States vary widely; some require imminent danger only
Pretrial Detention / Bail	Determine release conditions before trial	Risk to public safety or failure to appear	Usually indirect/ non-required	A.R.S. §13-3961 allows detention for specified serious offenses	The Federal Bail Reform Act permits detention based on dangerousness
Sentencing Enhancements	Increase punishment severity	Dangerous offense involving a weapon or serious injury	Not required	A.R.S. §§13-105.13, 13-704 focus on offense conduct	Many jurisdictions increasingly use risk tools at sentencing
GEI / NGRI Commitment	Determine criminal responsibility and post-acquittal confinement	Dangerousness linked to mental illness	Required for continued commitment	Arizona GEI requires mental illness-related dangerousness	Standards vary; some states separate dangerousness from mental illness

**Table 2.**  
Arizona Statutory Frameworks Relevant to Dangerousness Determinations

<b>Legal Context</b>	<b>Primary Statute(s)</b>	<b>How Dangerousness Is Defined or Operationalized</b>	<b>Primary Legal Purpose</b>	<b>Key Features Relevant to the Brief</b>
Civil Commitment	A.R.S. §§ 36-501, 36-540, 36-540.01	Danger to self, danger to others, grave disability, or persistent/acute disability resulting from mental disorder	Treatment and stabilization	Emphasizes least restrictive treatment alternatives and allows intervention before imminent violence occurs
Assisted Outpatient Treatment (AOT) / Conditional Outpatient Treatment	A.R.S. §§ 36-540, 36-540.01	Continued outpatient treatment permitted when a patient no longer requires hospitalization but may deteriorate, become dangerous, or suffer serious harm without treatment compliance (Ariz. Rev. Stat. §§ 36-540, 36-540.01)	Community stabilization and prevention of deterioration or rehospitalization	Emphasizes least restrictive treatment alternatives while permitting structured supervision, medication requirements, monitoring, and return to inpatient treatment for noncompliance or renewed dangerousness
Pretrial Detention	A.R.S. § 13-3961	Risk to public safety or substantial danger to others/community	Community protection and court appearance	Focuses on offense severity, violent conduct, and detention eligibility rather than psychiatric impairment
Sentencing Enhancements	A.R.S. §§ 13-105, 13-704	Dangerous offense involves weapon use, threatened weapon use, or serious physical injury	Punishment enhancement and incapacitation	Dangerousness is tied primarily to offense conduct rather than future violence prediction
GEI Proceedings	A.R.S. § 13-502	Mental disease or defect prevented defendant from knowing conduct was wrong	Criminal responsibility and secure psychiatric confinement	Links dangerousness and mental illness in insanity-related proceedings

**Table 3.**  
Common Risk Assessment Tools and Their Limitations

<b>Tool / Approach</b>	<b>Stage of Legal Process</b>	<b>Decision It Informs</b>	<b>Main Factors Assessed</b>	<b>Strengths</b>	<b>Key Limitations</b>
Public Safety Assessment (PSA) / PTR <small>(Advancing Pretrial Policy and Research [APPR], 2021)</small>	Pretrial	Release, detention, bail conditions	Criminal history, prior failures to appear, prior violence	Fast, standardized	Limited transparency; concerns about racial disparities
COMPAS <small>(Public Safety Risk Assessment Clearinghouse [PSRAC], n.d.)</small>	Sentencing/ community supervision	Supervision level, sentencing recommendations, and recidivism risk	Criminal history, social and behavioral factors	Widely implemented	Criticized for racial bias and opaque algorithms
LSI-R <small>(Andrews &amp; Bonta, 1995)</small>	Sentencing, probation, reentry	Criminogenic needs and supervision planning	Education, employment, substance use, and criminal history	Focuses on intervention needs	Predictive accuracy varies across populations
HCR-20 <sup>V3</sup> <small>(Douglas et al., 2013)</small>	Civil commitment, forensic hospitalization, and release decisions	Violence risk management	Historical, clinical, and risk-management factors	Structured professional judgment approach	Requires extensive clinical training; mixed predictive consistency
VRAG <small>(Quinsey et al., 2006)</small>	Forensic/correctional settings	Violent recidivism prediction	Developmental, offense, social factors	Strong actuarial structure	Older validation samples; limited cultural adaptation
START <small>(Webster et al., 2004)</small>	Psychiatric and forensic settings	Short-term violence and treatment risk	Dynamic strengths and vulnerabilities	Includes protective factors	Less validated across diverse populations

PCL-R (Hare, 2003)	Sentencing, forensic evaluations, and release decisions	Psychopathy and violence risk estimation	Interpersonal, affective, antisocial traits	Influential in forensic practice	Risk of overprediction and prejudicial use
Clinical Judgment / Case Formulation	Used throughout the process	Commitment, release, sentencing, treatment recommendations	Individual history, context, symptoms, collateral information	Allows individualized/contextual assessment	Vulnerable to evaluator bias and inconsistency

*Note.* Most instruments predict group-level risk better than individual behavior and produce substantial false-positive rates, particularly among racial and ethnic minority groups.

