

## **Cyber Challenges to International Human Rights**

**Title:** Bail or Jail? Judicial versus Algorithmic Decision Making in the Pretrial System

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**Abstract:**

Pretrial detainees in the United States account for two-thirds of jail inmates. Whether a person is detained pretrial depends solely on whether he or she can afford the bail amount. One approach that jurisdictions are taking in order to reduce overreliance on pretrial detention is to use actuarial tools to assess defendants' risk. Predictive algorithms rationalize the decision-making process by summarizing all relevant information in a more efficient way than the human brain, and help detaining only those who pose an actual risk to society. Most of the existing risk assessment tools are based on traditional methods of statistical regression analysis. This article reviews these tools from the lenses of modern AI and machine learning techniques, providing a roadmap for their successful implementation.

Studies have shown that mechanical predictions are, on average, 10% more accurate than clinical predictions. However, mechanical predictions are not free of bias and the fear is that in the name of science traditional biases will be reinforced. The article concludes that applying machine learning techniques require strict scrutiny and collaboration between lawyers, judges, policy makers and computer scientists. The key is to embody ethical design in developing AI systems and to embrace the terms transparency, accountability and fairness.