

## **The Use of Pretrial "Risk Assessment" Instruments: A Shared Statement of Civil Rights Concerns**

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**We believe that jurisdictions should work to end secured money bail and decarcerate most accused people pretrial, without the use of "risk assessment" instruments.**

The extraordinary measure of pretrial detention should be treated as a last resort and should only be imposed upon an accused person after they've received a thorough, adversarial hearing that observes rigorous procedural safeguards respecting individual rights, liberties, and the presumption of innocence.

**In light of the concerns raised in this document, we urge jurisdictions to reconsider their use of risk assessment tools.** Pretrial risk assessment instruments – although they may seem objective or neutral – threaten to further intensify unwarranted discrepancies in the justice system and to provide a misleading and undeserved imprimatur of impartiality for an institution that desperately needs fundamental change.

**Where these tools are still used, in order to reduce the harm they cause:**

1. **Pretrial risk assessment instruments must be designed and implemented in ways that reduce and ultimately eliminate unwarranted racial disparities across the criminal justice system.** Those engaged in the design, implementation, or use of risk assessment instruments should also test ways to reduce the racial disparities that result from using historical criminal justice data, which may reflect a pattern of bias or unfairness.
2. **Pretrial risk assessment instruments must be developed with community input, revalidated regularly by independent data scientists with that input in mind, and subjected to regular, meaningful oversight by the community.** The particular pretrial risk assessment instrument chosen should be trained by, or at least cross-checked with, local data and should be evaluated for decarceral and anti-racist results on a regular basis by the local community, including people impacted by harm and violence, and people impacted by mass incarceration, and their advocates.
3. **Pretrial risk assessment instruments must never recommend detention; instead, when a tool does not recommend immediate release, it must recommend a pretrial release hearing that observes rigorous procedural safeguards.** Such tools must only be used to significantly increase rates of pretrial release and, where possible, to ascertain and meet the needs of accused persons before trial, in combination with individualized assessments of those persons. Risk assessment instruments must automatically cause or affirmatively recommend release on recognizance in most cases, because the U.S. Constitution guarantees a presumption of innocence for persons accused of crimes and a strong presumption of release pre-trial.
4. **Neither pretrial detention nor conditions of supervision should ever be imposed, except through an individualized, adversarial hearing.** The hearing must be held promptly to determine whether the accused person presents a substantial and identifiable risk of flight or (in places where such an inquiry is required by law) specific, credible danger to specifically identified individuals in the community. The prosecution must be required to demonstrate these specific circumstances, and the court must find sufficient facts to establish at least clear and convincing evidence of a substantial and identifiable risk of flight or significant danger to the alleged victim (or to others where required by

law) before the exceptional step of detention of a presumptively innocent person, or other onerous supervisory conditions can be imposed. All conditions short of detention must be the least restrictive necessary to reasonably achieve the government's interests of mitigating risks of intentional flight or of a specifically identified, credible danger to others. Any person detained pretrial must have a right to expedited appellate review of the detention decision.

5. **Pretrial risk assessment instruments must communicate the likelihood of *success* upon release in clear, concrete terms.** In accordance with basic concepts of fairness, the presumption of innocence, and due process, pretrial risk assessment instruments must frame their predictions in terms of success upon release, not failure. Further, such tools should only predict events during the length of the trial or case – not after the resolution of the open case.
6. **Pretrial risk assessment instruments must be transparent, independently validated, and open to challenge by an accused person's counsel.** At minimum, the public, the accused person, and the accused person's counsel must all be given a meaningful opportunity to inspect how a pretrial risk assessment instrument works. The accused person's counsel must also be given an opportunity to inspect the specific inputs that were used to calculate their client's particular categorization or risk score, along with an opportunity to challenge any part – including non-neutral value judgments and data that reflects institutional racism and classism – of that calculation.

**Signed by:**

1. African American Ministers In Action
2. Alternate ROOTS
3. American-Arab Anti-Discrimination Committee
4. American Civil Liberties Union
5. Amistad Law Project
6. Arab American Institute
7. Asian Pacific American Labor Alliance
8. Bend the Arc Jewish Action
9. Black Alliance for Just Immigration
10. Black Lives Matters Philadelphia
11. The Bronx Freedom Fund
12. Brooklyn Community Bail Fund
13. The Center for Carceral Communities
14. Center for Democracy & Technology
15. The Center for Media Justice
16. Center for Popular Democracy
17. Center on Race, Inequality, and the Law at NYU Law
18. Chicago Community Bond Fund
19. Civil Rights Corps
20. Color Of Change
21. Cville Immigrant Bond Fund
22. Data & Society
23. Dauphin County Bail Fund
24. Decarcerate Tompkins County

71. NETWORK Lobby for Catholic Social Justice
72. New America - Public Interest Technology
73. New America's Open Technology Institute
74. Northwest Community Bail Fund
75. Oakland Privacy
76. One Pennsylvania
77. Open MIC (Open Media and Information Companies Initiative)
78. Our Data Bodies
79. OVEC-Ohio Valley Environmental Coalition
80. People's Action | Mass Liberation Project
81. People's Paper Co-op
82. The People's Press Project
83. Philadelphia Bail Fund
84. Philadelphia Community Bail Fund
85. Philadelphia Red Umbrella Alliance
86. PolicyLink
87. Portland Freedom Fund
88. POWER Interfaith
89. Prison Policy Initiative
90. Progressive Leadership Alliance of Nevada
91. Project SAFE
92. Public Defender Association
93. Public Knowledge
94. Reclaim Philadelphia
95. Reentry Think Tank
96. Richmond Community Bail Fund
97. Silicon Valley De-Bug
98. Southern Center for Human Rights
99. Southerners On New Ground
100. Southwest Workers Union
101. Texas Organizing Project
102. Tucson Second Chance Community Bail Fund
103. United Church of Christ, OC Inc.
104. Urbana-Champaign Independent Media Center
105. Voice of the Experienced
106. Washington Lawyers' Committee for Civil Rights and Urban Affairs
107. Washington Square Legal Services Bail Fund
108. Young Women's Freedom Center
109. 215 People's Alliance