

THE USE OF PRETRIAL "RISK ASSESSMENT" INSTRUMENTS:

A SHARED STATEMENT OF CIVIL RIGHTS CONCERNS

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 used, in order to reduce the harm they can cause we urge the following:

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

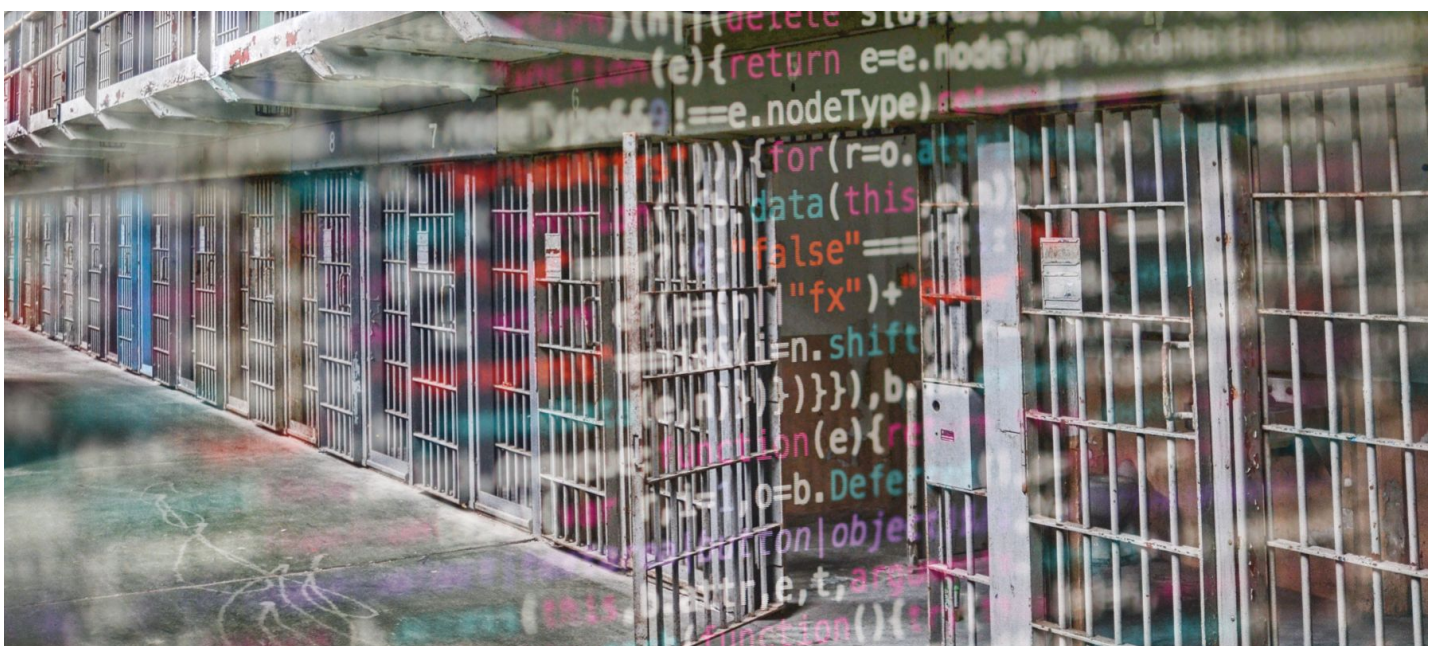
Neither pretrial detention nor conditions of supervision should ever be imposed, except through an individualized, adversarial hearing. The hearing must be held promptly to determine whether the accused person presents a substantial and identifiable risk of flight or (in places where such an inquiry 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 Civil Liberties Union
4. American-Arab Anti-Discrimination Committee
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 (BAJI)
10. Black Lives Matter Philadelphia
11. Brooklyn Community Bail Fund
12. Center for Democracy & Technology
13. Center for Popular Democracy
14. Center on Race, Inequality, and the Law at NYU Law
15. Chicago Community Bond Fund
16. Civil Rights Corps
17. College and Community Fellowship
18. Color Of Change
19. Cville Immigrant Bond Fund
20. Data & Society
21. Dauphin County Bail Fund
22. Decarcerate Tompkins County
23. Defender Association of Philadelphia
24. Defending Rights & Dissent
25. Drug Policy Alliance
26. Eastern Iowa Community Bond Project
27. Electronic Frontier Foundation
28. Ella Baker Center for Human Rights
29. Entre Hermanos
30. Essie Justice Group
31. Families for Justice as Healing
32. Fight for the Future
33. Free Press
34. FreeThe350BailFund
35. Global Justice Institute
36. Government Information Watch
37. Helping Educate to Advance the Rights of Deaf Communities (HEARD)
38. Humanizing AI in Law Research Group, MIT
39. Immigrant Family Defense Fund
40. Impact Fund
41. Impact Justice
42. Jewish Council for Public Affairs
43. Juntos
44. Justice Strategies
45. Kent County (Michigan) Immigrant Bond Relief Fund
46. LatinoJustice PRLDEF
47. The Leadership Conference Education Fund
48. The Leadership Conference on Civil and Human Rights
49. Local Progress
50. Madison County Bail Fund Inc.
51. Massachusetts Bail Fund
52. Media Alliance
53. Media Mobilizing Project
54. Mijente
55. Minnesota Freedom Fund
56. Movement Voter Project
57. MoveOn
58. NAACP
59. NAACP Legal Defense and Educational Fund, Inc.
60. National Action Network
61. National Association of Social Workers
62. National Bail Out
63. National Center for Lesbian Rights
64. National Council of Churches
65. National Employment Law Project
66. National Hispanic Media Coalition
67. National Law Center on Homelessness & Poverty
68. NETWORK Lobby for Catholic Social Justice
69. New America - Public Interest Technology
70. New America's Open Technology Institute
71. Northwest Community Bail Fund
72. Oakland Privacy
73. One Pennsylvania
74. Open MIC (Open Media and Information Companies Initiative)
75. Our Data Bodies
76. OVEC-Ohio Valley Environmental Coalition
77. People's Paper Co-op
78. People's Action | Mass Liberation Project
79. Philadelphia Bail Fund
80. Philadelphia Community Bail Fund
81. Philadelphia Red Umbrella Alliance
82. PolicyLink
83. Portland Freedom Fund
84. POWER Interfaith
85. Prison Policy Initiative
86. Progressive Leadership Alliance of Nevada
87. Project SAFE
88. Public Defender Association
89. Public Knowledge
90. Reclaim Philadelphia
91. Reentry Think Tank
92. Richmond Community Bail Fund
93. Silicon Valley De-Bug
94. Southern Center for Human Rights
95. Southerners On New Ground
96. Southwest Workers Union
97. Texas Organizing Project
98. The Bronx Freedom Fund
99. The Center for Carceral Communities
100. The Center for Media Justice
101. The Greenlining Institute
102. The Institute of the Black World 21st Century
103. The Mass Liberation Campaign
104. The National Council for Incarcerated and Formerly Incarcerated Women and Girls
105. The People's Press Project
106. Tucson Second Chance Community Bail Fund
107. United Church of Christ, OC Inc.
108. Urbana-Champaign Independent Media Center
109. VietLead
110. Voice of the Experienced
111. Washington Lawyers' Committee for Civil Rights and Urban Affairs
112. Washington Square Legal Services Bail Fund
113. Young Women's Freedom Center
114. 215 People's Alliance

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