

Updated Position on Pretrial Risk Assessment Tools

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AT THE PRETRIAL JUSTICE INSTITUTE, we have always been committed to reducing the number of unconvicted people in jail and ensuring that those who are released don't have unnecessary restrictions on their freedom. Our approaches to achieving these goals have evolved over the years, and today we are sharing how our position on pretrial risk assessment tools has changed. The intense studying and listening we have done over the last year has provided us with a deeper sense that there is no pretrial justice without racial justice.

We now see that pretrial risk assessment tools, designed to predict an individual's appearance in court without a new arrest, can no longer be a part of our solution for building equitable pretrial justice systems. Regardless of their science, brand, or age, these tools are derived from data reflecting structural racism and institutional inequity that impact our court and law enforcement policies and practices. Use of that data then deepens the inequity.

As we formulate our updated framework for pretrial justice, we want to share how we got here, and we look forward to discussing our position with people who are also working to advance pretrial justice.

In the past, we stated that jurisdictions could lower jail populations, reduce racial disparities, and keep communities safer by using a research-based tool that was transparent and consistent from day to day, courtroom to courtroom. We thought the risk assessment data showing that people are overwhelmingly successful upon release would increase pretrial liberty rates without the use of financial conditions. We doubled down on the theory of change that implementing pretrial risk assessment tools and ending money bonds would bring down pretrial jail populations.

About three years ago, we heard but did not fully appreciate the opposition to pretrial risk assessment tools from civil rights organizations, impacted people, and researchers. Despite these valid concerns, we were too focused on fighting the damaging status quo to really listen. We made a mistake—we did not have the

right people at the table when we were designing our roadmap to decarceration, particularly individuals directly impacted by the system. As we pushed forward, some places saw significant increases in pretrial liberty, but many did not, and racial disparities persisted in both. We were wrong for having risk tools as part of our “smart” pretrial justice framework.

In the places that have undertaken reform, success hasn’t hinged on an assessment tool; it has been driven by a commitment to decarceration, values-based discussions about the purpose of detention, a willingness to acknowledge the humanity of everyone, and each system’s openness to change. Successful jurisdictions have also learned that the best way to get people back to court safely is by both addressing barriers related to basic needs, like behavioral health treatment or transportation, and assessing policies and practices that govern the way the system does business.

Let us be more specific. We have consistently opposed the use of pretrial risk assessment tools to make *detention* decisions. We now expand that to oppose their use to determine restrictions placed on a person’s pretrial liberty (reporting visits, electronic monitoring, curfews, drug testing, etc.). We remain opposed to the use of secured financial bonds, as well as fees for supervision conditions, that allow some people to buy their freedom while others remain in jail. Our forthcoming framework will continue to support numerous other strategies for pretrial justice reform, including expanded use of citations, adversarial detention hearings for a limited number of serious charges, and addressing people’s needs (as opposed to risk) through community-based support. There are many pathways to pretrial justice without the inclusion of a pretrial risk assessment tool.

In PJI’s 44 years of existence, “pretrial justice” has been a constantly moving target. We recognize that in order to center our work on racial justice, we need to move in a new direction in pursuit of a more safe, fair, and equitable system—and we’re doing it. For systems using assessment tools, and especially those doing so at our encouragement, let’s talk. We will meet you where you are and work together to best achieve liberty, equity, and safety using anti-racist practices. We can honor the presumption of innocence and invest in safety for all in a way that advances equity.

—The PJI Team