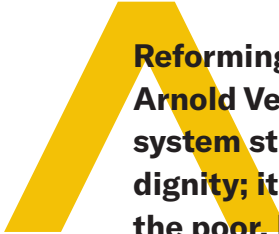


# Statement of Principles on Pretrial Justice and Use of Pretrial Risk Assessment



**Reforming our broken pretrial justice systems is a cornerstone of Arnold Ventures' criminal justice work. America's criminal justice system strips too many people of their jobs, families, health, and dignity; it puts people of color at risk, disproportionately harms the poor, limits the potential of juveniles caught in the system, and doesn't provide impacted individuals the opportunities they need to get back on track. And it does all this at an enormous fiscal cost. Pretrial justice is a critical and understudied part of this larger problem: in short, too many people are in jail who do not need to be there. Arnold Ventures envisions a criminal justice system that dramatically reduces the use of pretrial detention. We strive to advance community safety and the values of fairness, effectiveness, and racial justice by working to eliminate unjust pretrial detention and ensure that jail is used only when necessary.**

In this statement, we reflect on the problems of pretrial detention, the role of pretrial risk assessment in reform, and set forth principles that guide our efforts in three critical areas of our pretrial justice research and policy work: *first*, that to protect the presumption of innocence, only people charged with the most serious offenses should be eligible for pretrial detention and any decision to detain those people must be based on individualized findings of pretrial risk (risk of flight or risk of danger to the community); *second*, that relying on money bail as the basis for release and detention decisions abrogates the required risk-based analysis, traps people in jail for no reason other than poverty, and contributes to unconscionable racial and economic disparities in our justice system; and *third*, that validated and evidence-based pretrial risk assessment can support more objective and consistent judicial decision-making about pretrial release conditions—but is only one among a variety of pretrial justice reforms jurisdictions should adopt.

# The Growth and Overuse > of Pretrial Detention

## JAILS AND MASS INCARCERATION

While the term “mass incarceration” often focuses on the dramatic growth of people in prison, jails have also experienced exponential growth in recent years. Between 1970 and 2014, the U.S. jail population quadrupled; and between 1983 and 2013, the jail incarceration rate increased from 96 per 100,000 residents to 231 per 100,000 residents.<sup>1</sup> On a national scale, this growth in jail populations is the result of an increase in pretrial detention<sup>2</sup>: the incarceration of people who have yet to be convicted of anything while their criminal cases are still pending. At any given time, there are more than 730,000 people in jail in the U.S., two-thirds of whom are in pretrial detention. And, in the last thirty years, the American criminal justice system has significantly increased its use of jail relative to arrests: even as arrest rates have fallen, more people have been booked into jail. In 1984, there were 51 jail admissions per 100 arrests; in 2012, there were 95 admissions per 100 arrests, and during that same period jail stays have grown longer.<sup>3</sup> Jails have a singular reach across the country with 19 times the number of admissions as prisons—nearly 10.6 million admissions annually.<sup>4</sup>

## SYSTEMIC FLAWS

The massive growth of people in pretrial detention reflects a fundamental injustice within our local systems: many of those who are jailed should not be there. That is because many local justice systems and system actors use pretrial detention as the norm, rather the exception: they have broad discretion and few limits on the use of pretrial detention; and they lack the information and tools to make better-informed decisions about pretrial release conditions or detention. In such an environment, money bail, not public safety or flight risk, drives detention decision-making and wealth predetermines liberty.

## RACIAL AND ECONOMIC DISPARITIES

As a result of those systemic flaws, jail populations are plagued by racial and economic disparities. Decades of research on bail decisions have shown that African Americans face higher bail amounts than whites with similar arrest charges and criminal histories and that the race of the person arrested plays a significant role in bail and pretrial detention decisions,

<sup>1</sup>Subramanian, R.; Henrichson, C., & Kang-Brown, J. (2015). In Our Own Backyard: Confronting Growth and Disparities in American Jails. Vera Institute of Justice, 7, available at [https://storage.googleapis.com/vera-web-assets/downloads/Publications/in-our-own-backyard-confronting-growth-and-disparities-in-american-jails/legacy\\_downloads/incarceration-trends-in-our-own-backyard-fullreport.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/in-our-own-backyard-confronting-growth-and-disparities-in-american-jails/legacy_downloads/incarceration-trends-in-our-own-backyard-fullreport.pdf).

<sup>2</sup>Jail populations used to be almost evenly split between people held in pretrial detention (unconvicted) and those convicted; now they are primarily pretrial (unconvicted). In 1983, for example, the ratio of the national jail population was 1.16:1, pretrial to convicted. In 2013 it was 2.67:1. Both populations grew during this time, but the pretrial population grew by 285% and the convicted population by 68%. Aiken, J. (2017). Era of Mass Expansion: Why State Officials Should Fight Jail Growth. Prison Policy Initiative, Table 1 available at [https://www.prisonpolicy.org/reports/jailsovertime\\_table\\_1.html](https://www.prisonpolicy.org/reports/jailsovertime_table_1.html).

<sup>3</sup>Subramanian, R. et al. (2015). Incarceration’s Front Door: The Misuse of Jails in America. Vera Institute of Justice, 22-23, available at [https://storage.googleapis.com/vera-web-assets/downloads/Publications/incarcerations-front-door-the-misuse-of-jails-in-america/legacy\\_downloads/incarcerations-front-door-report\\_02.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/incarcerations-front-door-the-misuse-of-jails-in-america/legacy_downloads/incarcerations-front-door-report_02.pdf).

<sup>4</sup>Zeng, Z. (2018). Jail Inmates 2016. Bureau of Justice Statistics, U.S. Department of Justice, available at <https://www.bjs.gov/content/pub/pdf/ji16.pdf>.

to the detriment of African Americans.<sup>5</sup> High rates of pretrial detention exacerbate pre-existing racial and economic disparities as bail decisions are frequently driven by implicit and explicit racial bias.<sup>6</sup> People in jail are poor: poorer than people in prison and poorer than their non-incarcerated counterparts, with a median income less than half that of non-incarcerated people their age.<sup>7</sup>

### COMMUNITY COSTS

Over the past few decades, even though crime rates have dropped significantly, the number of people held before trial has increased dramatically, and the cost of running the country's jails has also increased—now exceeding \$22.2 billion each year.<sup>8</sup> Jails are typically the most expensive public safety resource in a county; their overuse comes at the expense of other municipal services and public safety investments that could be more cost-effective and deliver better outcomes. People confined to jail before trial are at risk of losing their jobs, their homes, or even custody of their children. In fact, research shows that defendants detained before trial are more likely to plead guilty, receive jail sentences, receive longer jail sentences, and eventually be rearrested.<sup>9</sup>

<sup>5</sup> Jones, C.E. (2013). 'Give Us Free': Addressing Racial Disparities in Bail Determinations. *New York University Journal of Legislation and Public Policy*, 16, 919-62, 943-44, available at <http://www.nyujlpp.org/wp-content/uploads/2014/01/Jones-Give-Us-Free-16nyujlpp919.pdf>.

<sup>6</sup> Arnold, D.; Dobbie, W. & Yang, C. (2018). Racial Bias in Bail Decisions. *The Quarterly Journal of Economics*, 33 (4), 1885-1932, available at <https://www.princeton.edu/~wdobbie/files/racialbias.pdf>; Wooldredge, J. (2012). Distinguishing Race Effects on Pre-Trial Release and Sentencing Decisions. *Justice Quarterly*, 29(1), 41-75, available at <https://doi.org/10.1080/07418825.2011.559480>.

<sup>7</sup> Rabuy, B. and Kopf, D. (2016). Detaining the Poor. *Prison Policy Initiative*, 2, available at <https://www.prisonpolicy.org/reports/DetainingThePoor.pdf>.

<sup>8</sup> The cost of jailing people varies widely across the country: one recent study compared two similarly-sized counties and found that one jail cost \$191.95 per incarcerated person per day and one cost \$85.63 per incarcerated person per day. The analysis further shows that the county that spent more per incarcerated person spent less overall because its jail incarceration was much lower than the county that spent less per incarcerated person. See Henrichson, C.; Rinaldi, J. & Delaney, R. (2015). *The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration*. Vera Institute of Justice, 19, available at [https://storage.googleapis.com/vera-web-assets/downloads/Publications/the-price-of-jails-measuring-the-taxpayer-cost-of-local-incarceration/legacy\\_downloads/price-of-jails.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/the-price-of-jails-measuring-the-taxpayer-cost-of-local-incarceration/legacy_downloads/price-of-jails.pdf).

<sup>9</sup> Heaton, P.; Mayson, S. & Stevenson, M. (2017). The Downstream Consequences of Misdemeanor Pretrial Detention. *Stanford Law Review*, 69(711), available at <https://review.law.stanford.edu/wp-content/uploads/sites/3/2017/02/69-Stan-L-Rev-711.pdf>.

# Judicial Decisions > and Risk Assessment

## PUBLIC DIALOGUE

In the past few years, much of the public conversation related to pretrial justice has focused on pretrial risk assessment. In the pretrial context, risk assessments are actuarial measurements that use administrative data to predict risk of non-appearance or risk of committing a new offense if released pretrial. These assessments aim to provide judges with objective and consistent data to make informed decisions.<sup>10</sup> Today, advocates, academics, researchers, practitioners, and policymakers are all considering the concept of risk assessment—debating the merits of the various available assessments, and examining the legal and policy frameworks in which they operate.

## CONSISTENT DECISIONS

The development of risk assessments over the past sixty years reflects research showing that human decision-making can be deeply flawed, reflecting ingrained biases that are virtually impossible to correct.<sup>11</sup> Providing judges with an objective means to consider only relevant data may counterbalance some of those biases and lead to fairer pretrial outcomes. While future research may provide additional information on the effectiveness of pretrial risk assessment, we know—both from research and from implementation experience—that decision-making informed by a quality risk assessment is fairer than without.

## USING CRIMINAL JUSTICE DATA

Even though risk assessment can promote consistency, it is important to acknowledge the fundamental challenge that all data scientists and policy experts face when collecting, analyzing, and using criminal justice data from federal, state, or local administrative systems: these data will inevitably reflect the biases and racial injustice endemic to the American criminal justice system.<sup>12</sup> This means that, like any other data-informed policy intervention, pretrial risk assessment is not perfect. But data-informed decision-making is certainly less biased than the status quo of human intuition and bail schedules, both of which inevitably produce inequities.<sup>13</sup> Pretrial risk assessment introduces a new measure of consistency into judicial decision-making and can deliver improvements on current practice. Moreover, risk assessment can always improve: the factors and weights of all assessments can—and should—be re-evaluated and recalibrated as researchers learn more; promoting even better judicial decisions, and moving us closer to our goal of eliminating unjust pretrial detention.

<sup>10</sup> Schnacke, T. (2014). *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*. National Institute of Corrections, 6 available at <https://s3.amazonaws.com/static.nicic.gov/Library/028360.pdf>.

<sup>11</sup> See, e.g., Meehl, P. E., *Clinical Versus Statistical Prediction: A Theoretical Analysis and a Review of the Evidence*. (Minneapolis: University of Minnesota Press, 1954); W. Grove, et al. (2000). *Clinical Versus Mechanical Prediction: A Meta-Analysis*. *Psychological Assessment*, 12(1), 19–30; S. Ægisdóttir, et al. (2006). *The Meta-Analysis of Clinical Judgment Project: Fifty-Six Years of Accumulated Research on Clinical Versus Statistical Prediction*. *Counseling Psychologist*, 34, 341–82; S. Gottredson & L. Moriarty. (2006). *Statistical Risk Assessment: Old Problems and New Applications*. *Crime & Delinquency*, 52(1), 178–200; Andrews, D.A.; Bonta, J. & Wormith, J. (2006). *The Recent Past and Near Future of Risk and/or Need Assessment*. *Crime & Delinquency*, 52(7), 7–27.

<sup>12</sup> Mayson, S. *Bias In, Bias Out*. *Yale Law Journal*, 128 \_\_ (2019 Forthcoming); University of Georgia School of Law Legal Studies Research Paper No. 2018-35, available at <https://ssrn.com/abstract=3257004>; Chouldechova, A. (2017). *Fair Prediction with Disparate Impact: A Study of Bias in Recidivism Prediction Instruments*. *Big Data*, 5(2), 153–163. <https://www.liebertpub.com/doi/pdf/10.1089/big.2016.0047>.

<sup>13</sup> *Ibid.*

## THE PUBLIC SAFETY ASSESSMENT

One of Arnold Ventures' earliest investments in pretrial reform was to develop, implement, and evaluate a risk assessment—the Public Safety Assessment or PSA. The PSA was born out of the demand from policymakers and administrators committed to pretrial reform for an accessible and validated pretrial risk assessment that did not require an interview of the arrested person. Since 2013, Arnold Ventures has funded the PSA's development, piloting it initially in seven sites and then limiting implementation to about 30 additional jurisdictions until its public release in 2018.<sup>14</sup>

The PSA was designed to improve upon or eliminate some of the limitations of other pretrial risk assessments that have been implemented across the country over the years. Detailed information about the PSA's development, validation, implementation, and evaluation is available on the PSA website. Unique characteristics of the PSA include:

- > **Size of dataset.** The PSA was created using the largest, most diverse set of pretrial records ever assembled—a dataset of 1.5 million cases of which approximately 750,000 cases were analyzed from approximately 300 jurisdictions across the United States. We engaged researchers who analyzed the data to determine which factors are most predictive of new criminal activity, new violent criminal activity, and failure to appear.
- > **Including most predictive factors and protecting against racial bias.** The research team identified and tested hundreds of factors, which fell into broad categories, including prior arrests and convictions, pending charges, prior failures to appear in court, drug and alcohol use, mental health, employment, and residence. Factors such as drug and alcohol use, mental health, employment and residence were excluded because of their lack of predictive strength. Race was never a factor under consideration in the PSA's development. Ultimately, the team isolated the nine factors that most effectively predicted new criminal activity, new violent criminal activity, and failure to appear. Historical and prospective validations have examined how well the PSA performs by race and gender to ensure that the PSA does not promote racial bias.<sup>15</sup>
- > **Accessibility.** The PSA does not require an interview and is freely available. Other risk assessments require a face-to-face or phone-based interview, which immediately introduces greater subjectivity and bias into the process, compounding the problem we are trying to avoid. Interviews are also costly and time-consuming to administer because of the staffing needed to conduct them. Further, Arnold Ventures provides the PSA to jurisdictions at no cost; we have no profit motive in its adoption or implementation.
- > **Evaluation.** The PSA factors and weights are publicly available, and the tool is being rigorously evaluated by independent research organizations to ensure that it works as expected without racial, ethnic, or gender bias. Early results of those evaluations are promising: for example, Mecklenburg County, North Carolina found that fewer defendants were detained and money bail was used less often after implementation;<sup>16</sup> likewise, Yakima County, Washington found that pretrial release rates increased by 24% for people of color post-implementation.<sup>17</sup> Arnold Ventures is committed to ongoing evaluation: we are currently supporting seven randomized control trials, two impact evaluations, and several validation studies of the PSA, all conducted by respected researchers.

<sup>14</sup> See What Is the PSA?, available at <https://www.psapretrial.org/about/background>.

<sup>15</sup> DeMichele, M. et al. (2018). The Public Safety Assessment: A Re-Validation and Assessment of Predictive Utility and Differential Prediction by Race and Gender in Kentucky, available at <https://www.arnoldfoundation.org/wp-content/uploads/3-Predictive-Utility-Study.pdf>.

<sup>16</sup> MDRC (2018). Preliminary Results from the Evaluation of the Public Safety Assessment (PSA) in Mecklenburg County, N.C. PowerPoint presentation at 2018 conference of the Association for Public Policy Analysis and Management, Washington, D.C.

<sup>17</sup> Brooker, C.M.B. (2017). Yakima County, Washington Pretrial Justice System Improvements: Pre and Post Implementation Analysis. <https://justicesystempartners.org/wp-content/uploads/2015/04/2017-Yakima-Pretrial-Pre-Post-Implementation-Study-FINAL-111517.pdf>.

> **Local stakeholder leadership.** The implementation of the PSA, including how it is scored, interpreted and used is led by local leaders and community members. Before implementing the PSA, local policymakers (e.g., representatives from the local courts, law enforcement, district attorney’s office, and indigent defenders) must collaborate to create a Decision Framework (DF) and Release Conditions Matrix (RCM) for their jurisdiction. The DF lays out when and how the PSA is used in pretrial decision-making in the jurisdiction. Once a release decision is made, the judge must decide the terms and conditions of a person’s release. Local policymakers develop the RCM to match local pretrial release options with the PSA results. It is through development of the DF and RCM that local law and statute, policy preference, and community values related to pretrial detention and release are expressed.

#### RESEARCH EXPANSION

In 2019, Arnold Ventures will launch the Advancing Pretrial Initiative, which pairs a training and technical assistance provider with a research partner to open the next chapter in research and development for the PSA and additional pretrial reforms. By working intensively with up to ten jurisdictions (Research-Action Sites), and providing implementation assistance in another 200 sites across the country that want to implement the PSA, we will further examine the implementation of the PSA, validate it, and consider improvements as we learn even more about the efficacy of risk assessment in action. By collaborating with a research and evaluation partner in this new phase of the PSA’s development, we are affirming Arnold Ventures’ commitment to re-evaluating and recalibrating the PSA factors and weights in response to research findings. This iterative approach is critical to our belief in transparency and research integrity.

#### RISK ASSESSMENT IN CONTEXT

Risk assessments are valuable for reframing the pretrial decision about release conditions from money to likelihood of success as well as for improving judicial decision-making. But they are not a cure-all for the problems of our pretrial justice system. It is essential to recognize that states and counties that have made significant progress in reducing their use of pretrial detention have done so through the adoption of pretrial risk assessment together with other reforms, such as using citations in lieu of arrest, early appointment of counsel, strengthening pretrial services, and case processing reforms.<sup>18</sup> Arnold Ventures’ commitment to implementation, research, and improvement of pretrial risk assessment is in service of our holistic vision of pretrial justice reform. Risk assessment is a beginning, not an end.

<sup>18</sup> New Jersey adopted comprehensive statewide pretrial justice reform through a combination of legislation, constitutional amendment and changes in practice and policy, including the adoption of the PSA, the elimination of money bail, the implementation of a statewide pretrial services program, enforcement and monitoring of speedy trial provisions and administrative technological efficiencies. In the first two years of these changes, the state’s pretrial jail population declined 30%. See New Jersey Courts, Criminal Justice Reform Statistics: Jan. 1-Dec. 31, 2018, Chart C at 5 available at <https://www.njcourts.gov/courts/assets/criminal/cjrreport2018.pdf?c=oQT>.

# Pretrial Justice Problems & Principles > for Reform

As Arnold Ventures moves into a new phase of pretrial justice grant-making, we articulate below the problems of our pretrial system that must be addressed if we are to achieve just outcomes for arrested individuals. For each problem, we lay out principles that we recommend to guide pretrial reform efforts in the field.

## PROBLEM 1

Our current pretrial system is an assembly line that often results in detention-by-default and undermines the presumption of innocence. The Supreme Court has affirmed that pretrial freedom should be the norm in the American criminal justice system, with pretrial detention the “carefully limited exception.”<sup>19</sup> To make the presumption of innocence real, state statutes and constitutions require that judges make pretrial detention decisions on the basis of public safety, risk of flight, or both. But these jurisprudential bases for pretrial detention have not been defined by the Court. As such, they function as broad parameters justifying pretrial detention, and few states meaningfully limit the categories of arrested persons that may be considered for detention (either based on charge or criminal history) referred to as the “detention eligibility net.” And, in practice, judges often functionally detain people by setting unaffordable money bail (or other conditions of pretrial release) without properly assessing the two risk factors or the individual’s ability to pay.<sup>20</sup> In fact, many jurisdictions use fixed bail schedules that assign predetermined dollar amounts to charges, irrespective of any assessment. Although the concept of money bail was originally intended to facilitate release while “reasonably assuring” future court appearance, there is no rigorous empirical evidence demonstrating that it accomplishes this objective, even while there are other tools (e.g., court reminders) that have proven to be effective in increasing appearance rates.<sup>21</sup> Finally, our pretrial system too often fails to provide individuals with due process of law: days-long delays before arraignment are routine and most jurisdictions across the country do not provide defendants with pretrial legal counsel. It is not uncommon for someone who is arrested, booked into jail, and unable to bail out immediately to spend a week in jail before meeting with a lawyer.

## > PRINCIPLES

> **The detention eligibility net** should be narrowed to allow for pretrial detention only in the most serious cases, and only upon a showing and finding of dangerousness or risk of willful flight that cannot be safely mitigated in the community.

> **Detention decisions** should be individualized and made with strict due process protections for defendants (e.g., adversarial hearing with discovery, required findings on the record, clear and convincing evidence standard). Fixed bail schedules are incompatible with these due process rights.

<sup>19</sup> *U.S. v. Salerno*, 481 U.S. 739, 755 (1987).

<sup>20</sup> See Schnacke, *Fundamentals*, 71.

<sup>21</sup> Bechtel, K., et al. (2016). A Meta-Analytic Review of Pretrial Research: Risk Assessment, Bond Type, and Interventions. *American Journal of Criminal Justice*, available at <https://doi.org/10.1007/s12103-016-9367-1>; VanNostrand, M.; Rose, K. J., & Weibrecht, K. (2011). State of The Science of Pretrial Release Recommendations and Supervision. Pretrial Justice Institute, available at <https://higherlogicdownload.s3-external-1.amazonaws.com/PRETRIAL/State%20of%20the%20Science%20Pretrial%20Recommendations%20and%20Supervision%20-%20PJ1%202011.pdf?AWSAccessKeyId=AKIAJH5D4I4FWRALBOUA&Expires=1552333458&Signature=X%2FrQydbtdyirIC79aEx7DIgUpA%3D>; Cooke, B. et al. (2018) Using Behavioral Science to Improve Criminal Justice Outcomes: Preventing Failures to Appear in Court, University of Chicago Crime Lab and ideas42 available at [http://urbanlabs.uchicago.edu/attachments/store/9c86b123e3b00a5da58318f438a6e787dd01d66d0efad54d66aa232a6473/142-954\\_NYCSummonsPaper\\_Final\\_Mar2018.pdf](http://urbanlabs.uchicago.edu/attachments/store/9c86b123e3b00a5da58318f438a6e787dd01d66d0efad54d66aa232a6473/142-954_NYCSummonsPaper_Final_Mar2018.pdf).

> **Any court-ordered conditions** should be governed by a presumption of release under the least restrictive conditions that reasonably ensure public safety and the individual's return to court.

## PROBLEM 2

Wealth is used as a proxy for risk to public safety or risk of flight. An individual's wealth bears no relation to public safety risk. Nonetheless, the way our money bail system functions in most places, some people can pay their way out of jail, while poor people—even those who pose no threat to the community—cannot. These people, jailed solely due to poverty, are also disproportionately people of color.<sup>22</sup> Evidence also supports the notion that unnecessary pretrial detention has adverse public safety impacts.<sup>23</sup> Thus, the primacy of money in pretrial decision-making obscures legitimate public concerns while punishing the poor, exacerbating racial disparities, and increasing the likelihood of conviction and the length of sentences.

### > PRINCIPLES

> **Pretrial detention** should reflect the concerns set forth in state bail statutes—public safety and flight risk—not one's income; and courts should be responsible for designing a system that maximizes court appearance.

> **To the extent there is a role for money bail** as a condition of release, it should only be imposed following an assessment of ability to pay.<sup>25</sup>

> **The practice of commercial bail bonding** should be restricted and subject to stringent regulation to protect defendants; fees that raise justice system revenue should be eliminated; unsecured bonds should be favored over secured bonds.

## PROBLEM 3

The law requires that judges assess risk, but they often lack an objective way to do so. Since the early 1960s, judges in some jurisdictions have used assessments to help them meet their obligation of assessing pretrial risk.<sup>26</sup> Pretrial risk assessments aim to provide judges with a means of objectively assessing relevant data on risk to public safety and/or likelihood of flight to inform how they set release conditions.<sup>27</sup> Ultimately, judges are responsible for incorporating the outcome of a pretrial risk assessment into their decision-making processes, alongside any other factors they are required to consider or may consider in their discretion. But risk assessments are not widely used: only 25% of Americans live in a jurisdiction that uses a validated, evidence-based pretrial risk assessment.<sup>28</sup>

<sup>22</sup> Don't I Need A Lawyer?: Pretrial Justice and the Right to Counsel at First Judicial Bail Hearing. (2015). National Right to Counsel Committee, available at [https://constitutionproject.org/wp-content/uploads/2015/03/RTC-DINAL\\_3.18.15.pdf](https://constitutionproject.org/wp-content/uploads/2015/03/RTC-DINAL_3.18.15.pdf).

<sup>23</sup> Stevenson, M. (2018, forthcoming). Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes. Journal of Law, Economics & Organization, available at [https://papers.ssrn.com/sol3/Papers.cfm?abstract\\_id=2777615](https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2777615).

<sup>24</sup> See, e.g., Leslie, E. & Pope, N. (2017). The Unintended Impact of Pretrial Detention on Case Outcomes : Evidence from New York City Arraignments. Journal of Law and Economics, 60(3), 529-77, available at <https://doi.org/10.1086/695285>.

<sup>25</sup> Although we believe that money bail and commercial bond are overused and misused in the pretrial detention and release determination, in some cases they may present the least restrictive release condition through which a judge can secure return to court.

<sup>26</sup> Mamalian, C. (2011). State of the Science of Pretrial Risk Assessment, Pretrial Justice Institute, available at <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=be57ae7c-5239-3950-60f9-0ff13af6e688>.

<sup>27</sup> Mamalian, Science of Pretrial Risk Assessment, 6.

<sup>28</sup> Pretrial Justice Institute (2017). The State of Pretrial Justice in America, 13, available at <https://higherlogicdownload.s3-external-1.amazonaws.com/PRETRIAL/The%20State%20of%20Pretrial%20in%20America%20-%20PJ1%202017.pdf?AWSAccessKeyId=AKIAJH5D4I4FWRALBOUA&Expires=1551993126&Signature=F5BvKJcdWnU8N%2Fj400%2BWq3lwfyE%3D>.



> **PRINCIPLES**

> **Pretrial risk assessments**, when properly developed and implemented, are advisable in order to give judges an objective way to analyze relevant data and make better-informed pretrial decisions.

> **Risk assessments must be transparent**, locally validated, and must not exacerbate racial disparities.

> **Risk assessment should not be used** as the basis to detain someone, only to inform release conditions. Detention decisions should be reserved for a legal process as outlined by the Supreme Court in *U.S. v. Salerno*.

> **A pretrial risk assessment** is intended to be a support for better judicial decisions about pretrial release conditions. It is not intended, nor should it be used, to replace the role or discretion of a judge.

Every day, in countless courtrooms across the country, judges must decide whether to detain and under what conditions to release people arrested and charged with crimes. Too often, those decisions are made without proper regard for the constitutional rights at stake, or for the impact of pretrial detention on the individual before the court. Under virtually every state statute<sup>29</sup> governing this decision, judges are mandated to consider the risk of failure to appear and the risk to public safety, but, frequently, those considerations are not squarely addressed and are made without the benefit of complete, accurate, and pertinent information. Arnold Ventures believes that the conversation about reducing the harmful consequences of pretrial detention presents an opportunity to open the pretrial process to public scrutiny, assess the costs and effectiveness of various alternatives to jail, promote use of data to guide judicial decisions, and reserve the deprivation of liberty for those cases where the risks are high and effective alternatives do not exist. The goal of eliminating unjust and unnecessary pretrial detention is within reach.

<sup>29</sup> See, e.g., K.Y. Rev. Stat. Ann. §§ 431.520, 431.066; N.J. Stat. Ann. §2A:162-17; N.C. Gen. Stat. §15A-534; S.C. Code Ann. §17-15-10; Minn. Stat. §629.715(1)(a).