

Basic Principles for Money Bail Reform

- Any system must have only an extremely limited use of pretrial detention.
 - We must be cautious of the federal system. It got rid of money bail essentially entirely, but it has astronomical detention rates because it has presumptions of many offenses that result in detention and because practitioners have not made rigorous pretrial decision-making a priority. Any new statute cannot have any (or extremely limited) presumptions in favor of detention and must provide clear language limiting the use of detention. It must also provide strong, expedited, appellate review of any detention decision to help ensure a culture of aggressive advocacy.
- The system cannot simply morph into one of onerous restrictions on liberty and mass surveillance.
 - The statute must minimize additional requirements of supervision like drug testing, GPS monitoring, alcohol bracelets, restrictions on employment, home confinement, etc... Any restriction on liberty of a presumptively innocent person must be no greater than necessary to achieve an important interest. This will not only protect liberty and privacy and save money, but it will reduce needless incarceration on technical violations of unnecessary conditions.
- We cannot create a new “user funded” alternate system to replace the existing system. We must remove the notion that profit can be made from these pretrial release decisions and eradicate the notion that the system must be funded off the backs of the mostly impoverished people who are brought into it.
 - Even when jurisdictions move away from money bail, many now charge defendants to use pretrial services. (e.g. fees for every drug test, monthly supervision fees, fees for GPS monitoring, etc . . .) The bail industry is now shifting to offer GPS monitoring or drug treatment or supervision, and defendants must pay for the “use” of these services. We must be very careful not to create a system substantially similar to the old system that is merely reorganized.
 - In many places, a product of these fees is that people are being jailed because they can’t afford these fees for those services and therefore don’t qualify for them.
 - These fees, even when they don’t result in jailing, effectively shift people from pretrial detention to enormous post-trial debt. We can’t have a replacement system where indigent people are saddled with the bills. There are too many downstream consequences (drivers licenses, employment, credit, etc . . .). It shouldn’t be too hard to make this case because we’re going to be saving so much money on jail costs
- Pretrial services agencies are much better when they have a public health, social-work, and evidence-based academic valence (vs. law enforcement). They should not be housed within a Sheriff’s Department or an existing Probation or Parole Department. There should be a separate and independent Pretrial Services agency (like Kentucky or DC).
- Risk assessments must be open, transparent, validated and rigorous about what they tell us empirically and what aspects of them are simply political/values choices. They must be clear about assumptions and labels being political choices (such as how much risk we are willing to tolerate) and not empirically derived. They must minimize exacerbation of racial disparity. They must continually be updated with data from the jurisdiction to improve them and to make sure that the new data is based on a world in which improved pretrial services exists.
 - We must be clear about “risk of what.” Risk of “re-offending” tells us very little, as does a risk of “failure to appear.” We care about serious offenses that are a “danger to the community” and about flight. The empirical tools we have now are good for helping us decide what conditions to apply but not for the in-or-out decision.
- We must have robust provisions requiring jurisdictions to keep standardized data about pretrial practices so that we can identify areas of improvement, make it more efficient and fair, and identify problem areas.
- We should be trying to filter out as many people as possible from this process. This includes fewer stops and arrests, more citation and release, and expanded eligibility for diversion.
- We should ensure far better conditions for the tiny number of people held in detention.