



**Testimony of Robin Campbell,
Communications Director of the Pretrial Justice
Institute**

Presented to the Judiciary Committee of the Pennsylvania State Senate.

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Good morning, ladies and gentlemen. I am honored to be here today to testify on this important legislation, which would end the practice in Pennsylvania of detaining people in jail before trial simply because they do not have money.

I am speaking this morning as a representative of the Pretrial Justice Institute, a 40-year-old national organization that works with policymakers and justice system stakeholders from across the United States to advance safe, fair, and effective juvenile and adult pretrial practices. Over the past decade, PJI has led a national movement to raise awareness of the dual system errors in our existing pretrial justice system, which I will testify about today. We accomplish our work using a number of strategies. Primary among these is our leadership role in the Pretrial Justice Working Group, a consortium of national stakeholder organizations--including police, prosecutors, the judiciary, and others--who collaborate to support commonsense solutions to current pretrial challenges. We also created Smart Pretrial, a demonstration project funded by the U.S. Department of Justice's Office of Justice Programs which is working with three competitively selected sites--Denver; Yakima County, Washington; and the state of Delaware--to show how jurisdictions can develop, implement, and sustain pretrial risk assessment and supervision strategies that move away from money bail and its devastating outcomes.

I also come here today with some professional experience with the alternative to bail reform. Prior to joining PJI, I was a senior communications official at the New York City Department of Correction. You may know of this as the agency that runs the Rikers Island jail facility where, during my tenure, on any given day 85 percent of the roughly 11,000 inmates were unconvicted, pretrial detainees. As others have recently documented, many of those housed on Rikers Island are there simply due to lack of funding for money bonds. Technically released by the courts, they are caught in a trap that mainly affects people of color and those without financial resources.

New York City, and in fact New York State, are not alone in recognizing that we are using our jails now as de facto debtors prisons. From Pennsylvania to Guam, U.S. states and territories are turning their attention to the front door of mass incarceration -- what some have called pretrial injustice.

The legislation we are discussing today places Pennsylvania on the cutting edge of a national movement to address this challenge by replacing money bail with proven, common sense alternatives. In recent years, many jurisdictions, including the states of Kentucky and New Jersey, and parts of Colorado, have followed the lead of the District of Columbia in eliminating or sharply curtailing the use of money bail. Others are just now embarking on this path. Not long ago, for example, Connecticut's governor introduced legislation that would significantly limit use of money bail. Earlier this month, the legislature in New Mexico approved a referendum that promises to substantially curtail its use. And countless other jurisdictions are witnessing a growing interest and will to take on this issue. Just two weeks ago, in her State of the Judiciary Address, the Chief Justice of California's Supreme Court called upon legislators there to reconsider the use of money bail, saying, "...it's time for us to really ask the question whether or not bail effectively serves its purpose, or does it in fact penalize the poor."¹

The fundamental injustice of money bail has gained the attention of federal lawmakers as well. Legislation was introduced in Congress in February that would cut off certain funding to states that continue to allow defendants to be detained for lack of money bail.² The Department of Justice, too, has repeatedly stated its opposition to detention based on money. As recently as last week it sent a letter to state court judges and administrators warning that, "Courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release."³

All of this movement toward reform emerges from a growing awareness that while money bail may have been conceived of as a way to see defendants released while their cases were pending, in practice it has just the opposite effect. The United States sees nearly 12 million admissions to jail every year. As a result, nearly half a million unconvicted individuals are behind bars on any given day, at an aggregate cost of nearly \$14 billion each year. Most of these men and women are in jail for the simple reason that they are too poor to afford bail. For many, even modest amounts can be too much. Research from the Federal Reserve shows that nearly half of all Americans say they couldn't afford an unexpected \$400 emergency.⁴

Unnecessary pretrial detention can have devastating effects on low-risk incarcerated people and their families, and negative implications for the wider community as well. This is the first error in the dual system error I mentioned at the outset of my testimony. Pretrial incarceration can result in disrupted employment, housing, education, behavioral or medical health services, and even the loss of custody of children. Research shows that--perhaps as a result of these disruptions--even a few days in jail pretrial increases a low-risk defendant's chances of being

¹ <http://www.courts.ca.gov/34477.htm>

² The No Money Bail Act of 2016. <https://lieu.house.gov/media-center/press-releases/congressman-ted-w-lieu-introduces-no-money-bail-act-2016-0>

³ Dear Colleague Letter Regarding Law Enforcement Fees and Fines.

https://www.justice.gov/crt/file/832461/download?utm_content=buffer4f188&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer

⁴ "Report on the Economic Well-Being of U.S. Households in 2014" Board of Governors of the Federal Reserve System, <http://www.federalreserve.gov/econresdata/2014-report-economic-well-being-us-households-201505.pdf>.

rearrested during the pretrial period by almost 40%.⁵ Defendants who spend the *full* pretrial period in jail are substantially more likely to be sentenced to jail or prison, and for longer periods than similarly situated individuals who were able to secure release before trial--their jail sentences were three times as long and their prison sentences twice as long.⁶

While these negative consequences affect us all in one way or another, no one experiences the injustice of money bail more than communities of color—especially African Americans. A black American in the United States is two-and-a-half times more likely to be arrested than a white American⁷—and, consequently more likely to need to post bail at some time his or her life. The money bonds people of color are required to pay also happen to be higher than those required of similarly situated white defendants. Among African American men, money bond amounts are, on average, 35 percent more; Latino men pay a 19 percent premium.⁸ Small wonder, then, that our jails and prisons are so disproportionately filled with people of color.

The motivation for moving away from this unfair, ineffective, and discriminatory practice is now being augmented by legal developments within the courts. Over the past year, a series of class action lawsuits have successfully argued that the use of money bail--particularly the use of bond schedules that tie specific criminal charges to precise bond amounts--is a violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, which guarantees that all people accused of breaking the law will be treated equally by the courts. Many of these cases have resulted in high-profile settlements, with jurisdictions agreeing to stop requiring defendants to pay money to secure their release from jail pretrial.

Fortunately, there is a practical, increasingly well documented alternative to money bail: Release decisions based on risk. A high functioning pretrial justice system uses an empirically based and locally validated risk assessment tool that draws upon commonly collected administrative data to predict whether a defendant, if released, is likely to appear in court or be re-arrest while on pretrial status. My co-presenters from Washington DC Pretrial Services will speak at length about how a validated risk evaluation tool, combined with appropriate supervision when necessary, can ensure high rates of release without compromising appearance rates or public safety. What I want to add to their testimony is the fact that there is no evidence today to support the contention that requiring defendants to pay money in advance of their release leads to higher court appearance rates. Simply put: Defendants show up in court at the same high rates whether they pay money up front or not.⁹

⁵ Citation TK

⁶ "Pretrial Criminal Justice Research," Laura and John Arnold Foundation, November 2013. <http://www.pretrial.org/download/featured/Pretrial%20Criminal%20Justice%20Research%20Brief%20-%20LJAF%202013.pdf>

⁷ "State and County QuickFacts: USA," US Census Bureau, accessed December 1, 2013, <http://quickfacts.census.gov/qfd/states/00000.html>; "Crime in the United States 2012," Federal Bureau of Investigation, accessed December 1, 2013, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012>.

⁸ Harold Winter, *The Economics of Crime: An introduction to rational crime analysis* (Routledge, 2008).

⁹ "Unsecured Bonds, The As Effective and Most Efficient Pretrial Release Option," <http://www.pretrial.org/download/research/Unsecured%20Bonds,%20The%20As%20Effective>

This fact would likely come as no surprise to the public. Polls of likely voters conducted by PJI over the past several years show substantial support for risk-based release decisions. Our most recent polling, conducted last summer, found that 83% of respondents believed that people with money were able to buy their way out of jail while poorer people remained incarcerated. Nearly three-fourths of respondents said that risk, not money, should be the primary factor in pretrial release decisions. This high rate of support transcended political, racial, and ethnic divisions. It is worth noting that nearly a third of respondents mistakenly assumed that risk-based decision-making was already in use--even though, in practice, fewer than 10% of jurisdictions use an empirically derived assessment tool to guide pretrial decisions.

Much of my testimony so far has focused on the problem of low-risk defendants languishing in jail because they cannot afford money bail. Replacing money bail with release decisions based on risk can reduce this problem by reducing the number of low-risk people who are detained unnecessarily. In my final moments of my testimony, I want to turn briefly to the second of the dual system errors. An equally undesirable consequence of money bail--one that too often goes unmentioned--is the fact that currently nearly half of the most dangerous defendants exploit the same cash bail system to get out of jail pretrial by paying money¹⁰--even though we might all agree they should be held in custody in the interest of public safety. All too often, we learn the tragic consequences of these transactions from our local news.

Replacing money bail with court-based release decisions informed by validated risk assessment tools and, when appropriate, supervision, will ensure that the right people are in jail pretrial, and for the right reasons. The legislation you are considering today will eliminate pretrial detention of defendants who cannot afford money bail. In doing so, it will be an important step toward making Pennsylvania's pretrial justice system worthy of the name: pretrial justice.

Thank you.

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[%20and%20Most%20Efficient%20Pretrial%20Release%20Option%20-%20Jones%202013.pdf](#),

p. 4.

¹⁰ "Developing a National Model for Pretrial Risk Assessment," Laura and John Arnold Foundation, November 2013.

<http://www.pretrial.org/download/research/Developing%20a%20National%20Model%20for%20Pretrial%20Risk%20Assessment%20-%20LJAF%202013.pdf>, p. 1.