Beyond Bail: A Holistic Framework for Pretrial Justice

The first step to holistic, pro-human bail reform involves ending wealth-based detention. Our *Pretrial Policy Design Principles* is a guide to undertaking these reforms. But our efforts cannot end there. To build a new system that helps arrestees and their communities, we need a broad package of policy reforms.

1. Provide Pretrial Services That Help People Succeed

- **Redesign Summons Forms to Maximize Success.** Because missing court appearances is often unintentional, due either to forgetting a court date or not understanding its importance, some jurisdictions have used behavioral science to redesign summons forms and other documents so that the information is clear and addresses common misconceptions. We recommend enlisting a consulting firm specializing in behavioral economics, such as Ideas42, to help redesign the summons form.

  *Ideas42 and the University of Chicago Crime Lab collaborated on a project that redesigned the summons form for New York City. The redesigned form targeted the behavioral barriers, such as forgetfulness and ignoring the downstream consequences of missed appearances, that cause many people to miss their court dates. The behavioral redesign reduced the FTA rate by 13%, translating to roughly 17,000 arrest warrants per year.*

- **Contract for Reminder Services.** Reminder services can take many forms, including postcards, calls, and text messages. Some of the most effective interventions, namely text messages and calls, are both highly effective *and* extremely cheap. We recommend contracting with a company, such as Uptrust, which provides two-way text reminders. This simple intervention dramatically improves court-appearance rates, while costing just two dollars *per person* per year.

  *In New York City, Ideas42 and the University of Chicago Crime Lab tested various systems of text messaging. The most effective texts reduced FTA rates by 26%. Thirty days after the court date, the most effective messaging reduced open warrants by 32%, as compared to receiving no messages. Uptrust, a company providing two-way text messages, decreases the FTA rate by 75% and costs just $2 per year per person.*

  *In Coconino County, Arizona, a system of live calling reduced the FTA rate significantly, dropping a 25.4% failure to appear (FTA) rate to 5.9% when there was direct contact, 15% when the caller left a message with a third party, and 21% when the caller left a voicemail message. Coconino County estimated that this program, by reducing FTAs by 127 missed appearances per year, would save approximately $150,000. In Jefferson County, Colorado, a pilot program was so successful – for example, achieving a 92% appearance rate when the caller made direct contact – that it became a permanent Court Notification Program.*
• **Develop Partnerships for Transportation Assistance.** In many cases, transportation is a major barrier to court attendance. Especially in jurisdictions that lack public transportation, low-income individuals may miss court dates simply because their car broke down. We recommend partnering with taxis or rideshare companies, which can directly provide rides to court. Where public transportation is available, we recommend offering vouchers.

• **Assist with Childcare.** Court may take a back seat for many parents if asked to attend court or leave a child alone. To mitigate this issue, we recommend providing childcare to individuals who are attending court proceedings. In addition, we recommend revisiting court rules that may discourage attendance: allowing children in the courtroom is an easy way to help people make their appointments.

2. **Create “Off-Ramps” from the Criminal Legal System**

• **Develop or Expand “Cite and Release” Programs.** Programs of “cite and release” or “citation in lieu of arrest” (or “desk appearance tickets” in New York City) are designed to eliminate the arraignment process. Police, rather than arrest and detain an individual, can write tickets that specify when the individual must appear in court. These programs allow immediate release of individuals, reducing undue interaction with the criminal legal system. We recommend developing or expanding these programs, while offering strong systems of text message-based reminders.

• **Replace Arrests with Social Services.** Many prosecutions do not further, but actually undercut, public safety. To address this problem, and ensure that community residents have the social supports to thrive, we recommend “deflecting” certain crimes from the criminal legal system. Such programs acknowledge that social service referrals—not arrests—are the best option for maximizing community wellbeing. Referrals can be for social workers, health clinics, job coaches, housing coordinators, and other non-carceral actors.

   We recommend moving toward a model that is fully decarceral, meaning that there is no criminal sanction to noncompliance. These programs should make referrals to case managers and social programs without threatening formal charging. Where this model is impossible, we recommend robust, holistic pre-arrest programs that keep arrest rates vanishingly rare.

• **Expand Use of Community Courts.** Several jurisdictions have pioneered community-based, “alternative court” approaches, such as restorative justice and community courts. We recommend that jurisdictions pilot, expand, and institutionalize these programs, learning from what has worked and engaging the local community in program design.

• **Integrate Mental Health Workers.** Often, what people really need is not an arrest, but someone who can recognize and help address issues with mental health. But too often, police are not trained in recognizing and addressing incidents that are rooted in behavioral health. We recommend establishing a Crisis Intervention Team program, which trains police to recognize individuals who have severe issues. Having done so, police can call mental health-trained professionals, who can provide assistance on site, and make referrals to community-based mental health and social services rather than make arrests. Mental health-trained professionals also are often embedded in units, participating in routine patrols.
• **Create Wraparound Support Centers.** We recommend creating community-based centers that streamline resources for reentering individuals, as well as touch people before they have contact with the criminal system. These centers should offer referrals to social workers, housing coordinators, community health workers, employment coaches, and others who can direct people to the help that they need. The goal of these entities, much like medical centers that focus on preventative health or reducing hospital readmissions, should be to help people avoid recidivism or avoid the criminal system entirely. Whether serving a reentering individual looking for a job post-jail or post-prison, or someone who simply needs a helping hand, these centers should streamline available community resources and forge connections between seemingly disconnected, uncoordinated programs of social support.

3. **Reinvest Savings in Non-Carceral Community Programs**

• **Create a Pretrial Justice Reinvestment Fund.** As a jurisdiction reduces pretrial detention, it should create a Pretrial Justice Reinvestment Fund that injects these savings into non-carceral programs and services. The Fund should calculate the dollars saved from reducing pretrial detention, measuring progress against a baseline rate, and earmark these funds to support pretrial services (e.g., 15% of savings) and community grants (e.g., 85% of savings). Ideally, the state government should match local savings from reduced detention, reflecting the future state savings from reduced incarceration.

• **Establish a Pretrial Justice Reinvestment Board to Oversee the Fund.** To manage the Pretrial Justice Reinvestment Fund, jurisdictions should establish a Pretrial Justice Reinvestment Board that designs and manages a Community Justice Grant Program. This board should include prosecutors, police, public defenders, social workers, health professionals, local advocates, individuals who have been impacted by the criminal system, and members of the community.

• **Distribute Grant Dollars to Community-Led Programs.** The Pretrial Justice Reinvestment Fund should distribute Pretrial Justice Reinvestment Fund grant dollars to youth programs, anti-violence programs, two-generational poverty programs, afterschool programs, art, music, writing, and theater programs, sports leagues, daycare programs, health centers and community health workers, home visiting programs, treatment clinics, mental health services, services for individuals who have experienced domestic violence, or other programming that the community feels necessary to improve community safety and wellbeing.

4. **Invest in Indigent Defense**

• **Increase Resources for Public Defense.** Public defenders cannot zealously represent their clients when they are assigned 500 felony cases – and countless misdemeanor cases – each year. By a similar token, attorneys for the indigent cannot provide effective advocacy when they lack adequate compensation or supporting resources, such as investigators and translators. Fulfilling our Due Process and Sixth Amendment obligations requires not only a system of public defense, but also the funding for manageable caseloads, investigators, expert opinions, and language access. We recommend establishing an independent Public Defender Service wherever one does not already exist.

• **Support Programs of Early Representation.** Whenever a person stands at risk of losing his or her freedom, counsel should be present. Indeed, the National Institute of Corrections has identified having
counsel at the initial appearance as the “hallmark of an effective pretrial system.” And yet, only three states require that counsel be present when pretrial release is being decided – even though research indicates that having counsel at first appearance significantly improves case outcomes. Jurisdictions should explore “Early Representation” programs that alert public defenders when an arrest is made, meaning that they are present at first appearance and can help to divert unnecessary cases.

5. **Require Robust Monitoring, Evaluation & Program Coordination**

- **Establish Coordinating Committees to Select Goals and Metrics.** As jurisdictions roll out specific reforms, it is important that they think critically about their goals and metrics. What are they trying to achieve – Decarceration? Crime reduction? Something else? And how will they know if this goal has been achieved? Having established these goals and metrics, coordinating committees should ensure that the selected programs are furthering the goals selected.

- **Require Data Collection to Evaluate Progress.** Jurisdictions should require data collection on many issues that relate to the pretrial process. This should include demographic breakdowns, as well as data on arrest rates, pretrial decisions, detention rates, and recidivism. Data collected should reflect the metrics selected by the coordinating committees, allowing the committee to evaluate progress. In addition, jurisdictions should make anonymized data publicly available. Such publication allows for external accountability, giving public defenders and local advocates the tools to hold government actors accountable.

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2 See id. at 4.
3 See id.
4 See [http://www.uptrust.co/what-we-do/](http://www.uptrust.co/what-we-do/).
5 Pretrial Justice Center for Courts, *Use of Court Date Reminder Notices to Improve Court Appearance Rates*, Pretrial Justice Brief 10, 3 (2010).
6 See id. at 3.
7 See id. at 3.