County of Los Angeles Probation Department

BAIL REFORM, HUMPHREY AND ELECTRONIC MONITORING

HUMPHREY DECISION

The CA Supreme Court has found that Judges must take into consideration a defendant's ability to pay when setting bail.

Humphrey also reiterated that the Court must take into consideration the safety of the victim and the public, as well as flight risk, as factors in setting, reducing, or denying bail.

Finally, the Court found that alternatives to detention such as electronic monitoring, pretrial supervision, and connections to services in the community could mitigate the risks associated with pretrial release.

IMPACT

Given the findings in Humphrey, it is anticipated that the Court will increase orders for electronic monitoring (GPS) in Los Angeles County and will be more likely to release defendants if there a pretrial supervision component and a reliable network of community-based providers available to meet the needs of the defendant upon release.

The current PREP pilot provides Pretrial Supervision, GPS and alcohol monitoring and connections to a limited menu of services to defendants at the CJC, Antelope Valley and Pomona Court locations. None of the costs are borne by the defendant.

Funding for PREP ends on June 30, 2022 so if there is going to be a continuation or expansion of these programs, new funding sources need to be identified.

PENDING LEGISLATION

SB10 was the most ambitious legislation attempting to enact bail reform in California and although it was passed and signed by the Governor, it was stayed and eventually overturned by the voters in November 2020. Currently, SB 262 is being considered by the legislature. This bill would make the current $0 bail schedule permanent statewide, with some exceptions for serious and violent felonies and other charges.

WHAT OUR DATA SHOWS SO FAR

- 82% Of clients released on the Supervised Release Program are charged with felonies.
- The number of persons released into the SRP program continues to rise since the inception of the PREP pilot.
- FTA and rearrest rates for SRP clients are significantly lower than the overall population of persons released pretrial*
- An analysis of data on SRP clients indicates no exacerbation of racial disparities in this population.

**Based on CEO led Pretrial Data Analysis study*

IS ELECTRONIC MONITORING "ECARCERATION"

- EM is an option for judges to release defendants who they would otherwise remand to custody.
- There is no cost.
- Clients can go their job, place of worship, grocery shopping etc.
- Everyone carrying a cell phone is sharing more data with private and government entities than the ankle bracelet can share*

*https://reason.com/2021/02/26/so-long-as-you-carry-a-cellphone-the-government-can-track-you/

QUESTIONS?

CREATING A NEEDS-BASED PRE-TRIAL RELEASE SYSTEM:

THE FALSE DICHOTOMY OF MONEY BAIL VERSUS RISK ASSESSMENT TOOLS

2020

Authors: Alicia Virani, Rodrigo Padilla-Hernandez, Tali Gires, Kaitlyn Fryzek, Rachel Pendleton, Ethan Van Buren, & Máximo Langer*

UCLA School of Law, Criminal Justice Program

UCLA School of Law Bail Practicum, Fall 2019

Table of Contents

EXECUTIVE SUMMARY **1**

INTRODUCTION **2**

MONEY BAIL AND PRE-TRIAL DETENTION *2*

RISK ASSESSMENT TOOLS *3*

LESSONS FROM THE PANDEMIC *4*

NEEDS BASED FRAMEWORK *4*

PRE-TRIAL DETENTION HEARINGS **5**

TIMING OF HEARINGS *5*

PRESUMPTIONS AND EVIDENTIARY STANDARDS *5*

DUE PROCESS PROTECTIONS *7*

REVIEW OF DECISION *8*

OVERVIEW OF THE CASA **9**

WORKING WITH INDIVIDUALS OUT OF CUSTODY 9

WORKING WITH INDIVIDUALS IN CUSTODY 9

NEEDS AND STRENGTHS-BASED INTAKE PROCESS **10**

CASA EMPLOYEES AND CULTURE SHIFT **11**

SUPPORT OVER SUPERVISION *12*

TRAUMA-INFORMED CARE *12*

INDIVIDUAL EMPOWERMENT AND SELF-DETERMINATION 12

SUPPORT AND RESOURCES PROVIDED BY THE CASA **14**

RESOURCES TO ENSURE RETURN TO COURT *15*

Table of Contents (continued)

RESOURCES TO MEET INDIVIDUAL'S NEEDS *16*

SYSTEMS-IMPACTED SPONSORS 16

INVESTING IN THE CASA REQUIRES A PARADIGM SHIFT **16**

PROBATION SHOULD NOT BE INVOLVED IN PRE-TRIAL SERVICES *16*

THE CASA WOULD NOT IMPOSE SURVEILLANCE OR MONITORING CONDITIONS *17*

ADMINISTRATIVE NOT PUNITIVE RESPONSES *18*

CONFIDENTIALITY **19**

DATA COLLECTION AND OVERSIGHT **20**

DATA COLLECTION AND REPORTING *20*

RANDOMIZED CONTROL TRIALS *21*

MEETING VICTIMS/SURVIVORS NEEDS **21**

CONCLUSION **22**

ENDNOTES **23**

Executive Summary

This is a proposal by the UCLA School of Law Criminal Justice Program and the UCLA School of Law Bail Practicum that re-envisions the pre-trial release process. The proposal offers a pretrial release process that upholds the presumption of innocence and provides support to those subjected to the criminal process. In recent years, the debate about pre-trial release across the United States has been often limited to a debate between the money bail system and risk assessment tools (RATs). In contrast, this proposal—that was initially designed to be discussed with stakeholders and piloted in Los Angeles County—offers a pre-trial release framework for any jurisdiction that relies on neither money bail, nor RATs.[1]

The proposal comes at a time when pre-trial reform is one of the most widely discussed issues in criminal justice, with jurisdictions around the country tackling the issue of money bail and its adverse effects on low-income communities and communities of color. Reform efforts have taken shape in a variety of ways from community-led efforts in the form of bail funds, to court-led pre-trial pilot programs, to statewide legislation. Many of these efforts at reform have come under attack, like legislation in New York and California.

With the future of pre-trial reform up in the air, and a multiplicity of actors weighing in on the path forward, the fundamental question is what should a fair, humane pre-trial release system look like? While the answer to this question may differ for every jurisdiction, this policy proposal lays out a path forward that strives to enable a dramatic decrease in the use of pre-trial incarceration, relies on neither money bail nor risk assessment tools, and connects people to resources to improve the overall well-being and safety for all. Many of these recommendations and suggestions have applicability across many jurisdictions, and certainly many of these ideas are not new.[2]

This proposal expands the debate beyond a binary choice between money bail and risk assessment tools. The basic premise of this proposal is that the presumption of innocence afforded to all those in the pre-trial process can only be protected through a presumption of release. It puts the burden on prosecutors to meet an articulated standard regarding why an individual should be detained. The proposal does not use risk assessment tools, as there are concerns that these tools may result in greater numbers of people of color being subjected to pretrial detention, and rejects the notion that individuals should be viewed through a lens of risk. Instead, every person should be considered individually based on their strengths and self-identified needs and be offered the supports and resources they may need. The paradigms relied on in this proposal reflect a shift towards a public health approach to crime and violence.

This proposal also advocates for the establishment of a new body, the community care and support agency ("CASA") to serve as the agency that will provide support and resources to individuals pre-trial instead of law enforcement supervision. The implementation of this proposal in one or more jurisdictions, when compared to other models such as money bail systems or regimes that use risk assessment tools, would provide rich data for comparison and evaluation and would expand the range of possible pre-trial release frameworks. Resulting data would provide a foundation from which jurisdictions reforming their pre-trial justice systems could make an informed decision about the best path forward for pre-trial justice.

Given the dangers and collateral consequences of pre-trial detention—that have been ever more heightened for those incarcerated during the current deadly pandemic—this proposal forges a more just path forward.

I. Introduction

Money bail and pre-trial detention

Prior to the COVID-19 pandemic, on an average day, approximately 470,000 people were held in pre-trial detention across the United States.[3] A substantial number of these individuals will remain incarcerated simply because they cannot afford to pay their bail, leading to a system where people are locked up simply because they are poor.[4]

The money bail system impacts the most vulnerable communities across our nation. African American and Latinx people are disproportionately subject to pre-trial detention because of an inability to afford bail, particularly because bail for these two communities is often set at a much higher rate than the bail amount set for other racial groups for the same charges.[5] The money bail system is financially draining neighborhoods that already lack resources and investment. Million Dollar Hoods, a research center at the University of California, Los Angeles, that studies the human and fiscal cost of mass incarceration, found that residents in low-income zip codes in South Central Los Angeles paid approximately $16.9 million to bail bonds companies over a four-year period.[6] This is money they will never get back.

Awaiting trial in jail can adversely affect a person's mental and physical health. For some, the negative impact of the jail environment is so severe that even a few days in jail can prove life-threatening. Incarcerated people with urgent medical or mental health care needs, or who are experiencing withdrawal from drugs or alcohol, are at their highest risk of death within 72 hours of incarceration.[7] In fact, 26% of jail suicides are reported to happen within the first three days of pre-trial detention and 41% of jail deaths occur in the first week of pre-trial detention.[8]

Aside from placing people at extreme physical and psychological risk, pre-trial detention may erode constitutional protections by undermining the constitutional presumption of innocence and increasing the likelihood that an individual will be convicted without due process. Individuals held in pre-trial detention are more likely to accept plea deals as compared to those who are able to afford their freedom prior to trial.[9]

Pre-trial detention also negatively impacts an individual's economic well-being. Many individuals lose jobs,[10] housing[11] and/or personal property,[12] as a result of their pre-trial detention. Families with loved ones in jail pre-trial face both decreased household incomes and increased childcare costs.[13]

Requiring individuals to await trial in jail may cause them to miss crucial deadlines and appointments for school or employment and impedes their ability to take advantage of economic opportunities, trapping people in a cycle of poverty and repeated criminal legal involvement.[14] Individuals who are able to afford bail and thus released before their trial are less likely to be rearrested in the years following their case than those who remain detained pre-trial.[15] Indeed, a study mapping 18-month trajectories for hundreds of thousands of misdemeanor charges in Harris County, Texas, which controlled for a range of factors including charges and criminal history, concluded that those detained pre-trial saw a 9.7% increase in their likelihood of being charged with new misdemeanors, and a 32.2% increase in their likelihood of being charged with new felonies.[16]

Risk assessment tools

Under a money bail system, people who cannot afford bail are subject to the economic, psychological, and legal consequences listed above. While eliminating money bail must occur to avoid the disparate impacts of pre-trial detention, many jurisdictions, like California have considered or are considering put in motion a transition to a system that also presents dangers of racial and other unfair disparities and outcomes by relying on pre-trial systems that use risk assessment tools (RATs).

California's legislature passed Senate Bill 10 in 2018, which eliminates money bail and replaces it with a system that relies on law enforcement agencies (such as probation departments) for supervision of individuals released pre-trial and uses algorithmic RATs. Currently, the implementation of S.B. 10 is suspended by law due to a bail industry-sponsored ballot referendum seeking to overturn the bill; its fate will not be decided until November 2020. In the meantime, however, the policymaking body of the California courts, the Judicial Council, granted $68 million in taxpayer dollars to implement pre-trial release pilot programs in 16 counties. One of the requirements for jurisdictions to receive funding is that their pre-trial programs must utilize RATs conducted by probation departments.[17] Many of these counties have chosen to implement the Public Safety Assessment ("PSA"), a RAT created by The Arnold Foundation.

The decision to focus only on risk assessments as a possible reform to the exclusion of other models raises concerns. First, since RATs generally rely on data such as prior arrests, convictions, and failures to appear, the data may reflect the actions and biases of law enforcement, prosecutors and judges far more accurately than the "risk" of any given individual.[18] In addition, there have been very few studies evaluating the effectiveness of RATs,[19] and empirical studies have found mixed results in reforms that implemented RATs.[20]

Recently, prominent organizations, scholars, and corporations have expressed related concerns.[21] There are significant questions about the accuracy of RATs, including the PSA (the RAT currently being used in numerous jurisdictions across the country). For instance, the Cook County Circuit Court, which uses the PSA, released data that indicates that between October 2017 and December 2018, "99 percent of people flagged as high risk for violence who were released before trial were not charged with any new violent crimes during the release, a percentage virtually identical to the one for those deemed low to moderate risk."[22] There have also been concerns on whether risk assessments discriminate on the basis of age, race, ethnicity, and economic status. [23] The worry is that these tools can reproduce or even exacerbate the ways in which the criminal legal system already targets and affects communities of color and poor communities.[24]

Second, incapacitation as a theory of punishment and its underlying assumption that people can be classified as being dangerous/not dangerous or risky/not risky have contributed to dehumanizing those subjected to the penal system and been one of the driving forces of mass incarceration in the United States.[25] This is then another reason to explore other models that forgo the paradigm of risk in the pre-trial release decision-making process. There are examples of this paradigm shift in related settings. For instance, California passed A.B. 413 in 2019, that changed all language in the education and penal codes from "at-risk youth" to "at-promise youth".[26]

Finally, the on-going policy debate on pre-trial release and detention has often wrongly assumed that the only two available policy options are money bail and RATs. However, there is another alternative: a default or presumption of release on one's own recognizance. In the United States, there is a long history of pushback against money bail and the money bail industry and proposals to replace them with own recognizance release as the default decision without using RATs.[27] There have also been a few recent initiatives in the United States to give more support to the needs of those subjected to the criminal process as key to enable them to appear in court.[28] Internationally, the United States is one of the only few that have a money bail industry.[29] Instead, many countries rely on release on one's own recognizance as the default decision on pre-trial release without using RATs.[30]

Lessons from the pandemic

The global COVID-19 pandemic powerfully illuminates the dangers of pre-trial detention, with thousands of people who are presumed innocent facing deadly conditions inside of jails.[31] It also shows that many jurisdictions in the United States have been thinking too narrowly about pretrial detention and release. Many jurisdictions depopulated their jails, some reducing jail populations as much as 60%,[32] raising the question of why the people who were released due to the pandemic were even there in the first place. In reducing jail populations in response to the pandemic, justice system stakeholders across the country came together to reconsider who would be booked into custody and who should remain in custody pre-trial. Many jurisdictions have relied not on risk assessments to make these decisions, but instead on an individualized review of cases and agreements between prosecutors and defense attorneys. At the same time, there has been a more concerted effort to ensure that those released have access to supportive services. What this crisis has shown us is that other ways are possible and that local governments have the ability to support people out of custody to ensure their return to court and to mitigate the possibility of re-arrest.

These collaborations have laid the groundwork for a reimagined pre-trial system that avoids the false dichotomy of money bail and RATs, and instead builds systems of support.

Needs-based framework

In order to enrich the public policy and reform discussion, this paper proposes an alternative, needs-based pre-trial release framework.

The two pillars of this proposal are a pre-trial release hearing with substantial due process protections and the creation of a community care and support agency (CASA)[33] to provide support and resources to those released pre-trial instead of law enforcement supervision. Two keys assumptions of this framework are that maintaining the presumption of innocence and addressing the needs of those facing criminal prosecution are the best ways to advance the goals of pre-trial regulation. One of the primary reasons that people do not return to court is that they do not get the support that they need to do so. Providing such support is then a way to advance this crucial goal. The framework in this policy proposal could be empirically tested and compared to money bail and RATs so that policymakers can make empirically-based decisions. With the potential for the elimination of money bail nearing in so many jurisdictions, this paper proposes a model forward to ensure that people who are charged with crimes receive the support they need and are not unnecessarily and unfairly subjected to months of pre-trial detention and its devastating collateral consequences.

II. Pre-Trial Detention Hearings

This proposal puts forward the adoption of a timely pre-trial detention hearing where the burden of proof is on the prosecutor to prove the incarcerated individual's risk of flight and the risk to public safety. In a system where cash bail is eliminated and there is a possibility of overreliance on pre-trial detention, pre-trial detention should occur only in the most serious of cases and only when certain evidentiary burdens are met.

In the limited number of cases where prosecutors seek pre-trial detention, it is imperative that legal protections are provided to each individual going through this model. Once a prosecutor files a motion to request detention, a pre-trial detention hearing will be triggered. In these hearings, evidentiary rules will apply and the hearings should be governed by the following legal protections.

A. Timing of hearings

Within eight hours of a given person's arrest—at least in large and medium-size jurisdictions that have the human resources to do so,[34] the prosecutor may file a motion for pre-trial detention. If the prosecutor does not file a motion for pre-trial detention, the person will be released immediately. The prosecution's filing of the motion will trigger the pre-trial detention hearing, which must take place no later than 24 hours after the person is booked into custody. The 24-hour time limit for detention should not be tolled for weekends or holidays and courts should hold hearings where necessary to meet this time limit on nights, weekends and holidays. If a hearing is not held within 24 hours of booking, law enforcement will be required to immediately release the individual. This timeline requires that judges that are in place and available 24/7 to make release decisions.[35]

If the prosecutor chooses to file a motion, they must serve a copy on the individual and their defense attorney along with any evidence related to the filing. Evidence must be turned over to the defense twelve hours (at least for large and medium size jurisdictions) prior to the hearing and include any exculpatory or impeachment evidence as to guilt or innocence in the possession of the prosecution or law enforcement that has any tendency to exonerate the individual, to show lack of probable cause for the individual's arrest or to show that the individual's unrestricted liberty would not pose a specific risk to an identifiable person.

This quick turn-around will help preserve the presumption of innocence, prevent the deprivation of liberty for people who have not yet been convicted of a crime, and mitigate the collateral consequences that can result from even short periods of incarceration.

B. Presumptions and evidentiary standards

As an initial matter, the prosecutor must show that there exists probable cause to believe that the individual committed the crime alleged and that the alleged crime is one that is eligible for pretrial detention. This probable cause determination is for a narrow purpose and will not replace the requirements of a preliminary hearing or grand jury indictment. If they are unable to do so, the case does not need to be dismissed, but the individual must be released from custody.

Following that showing, in order to detain or continue detaining an individual, it is the prosecution's burden to show by clear and convincing evidence that the individual 1) poses a high risk of intentional nonappearance, or 2) will pose a risk of serious physical violence to an identifiable person and that no condition(s) of release could reasonably mitigate these two risks.[36] In cases where the interests at stake are both particularly important and more substantial than mere loss of money, the US Supreme Court has "mandated an intermediate standard of proof – 'clear and convincing evidence.'"[37] The US Supreme Court has recognized that an individual's interest in liberty pre-trial is fundamental,[38] and thus, the clear and convincing standard of proof should be applied in the pre-trial detention context, instead of a preponderance of the evidence standard that some jurisdictions, like California, have been using.[39] Additionally, the prosecutor must show that there are no less restrictive conditions that would ensure appearance and the safety of the person claimed to be "at risk". [40] If the prosecutor fails to meet this burden, the court must release the individual pre-trial.

Defense counsel (or the individual if they are representing themselves) will then have the opportunity to present information about the individual to the court. As explained above, pre-trial detention may cause seriously harmful effects, not just on the individual, but on their community. Courts should consider these collateral consequences in making pre-trial determinations. Since the COVID-19 outbreak, government actors have been clear that the consideration of these collateral consequences in this type of decisionmaking is a best practice; asserting that the risk to a person's health and safety posed by COVID-19 should be weighed as part of the pre-trial release determination.[41]

To this end, the court should weigh any evidence presented by the prosecutor about the risk of nonappearance and the risk of serious physical violence to an identifiable person against evidence presented regarding the effect of detention on:

> *i) any of the person's dependents;*
> *ii) the person's employment;*
> *iii) the person's public benefits;*
> *iv) immigration consequences for the individual;*
> *v) the person's parental rights;*
> *vi) the person's mental and/or physical health;*
> *vii) the person's current housing; and,*
> *viii) any other adverse impact that the person's detention will have on the person or the person's community.*

After reviewing the evidence, if the court chooses to detain the individual, the court must make case-specific, particularized findings on the record as to the clear and convincing evidence that exists to detain the individual and why no pre-trial condition(s) would allow for the individual's release.

When an individual is ordered released, the presumption should be of release without conditions. If the court does impose conditions, they should be the least restrictive, and should take into consideration the research cited below about the inconclusive nature of the efficacy of many pretrial conditions such as electronic monitoring, drug testing and mandatory check-ins with probation. The court should state this reasoning on the record as well including case-specific, particularized findings as why the conditions are being imposed.

A survey of seven bail funds throughout the country that use philanthropic dollars to pay individuals' bail amounts provides data to suggest that mandatory conditions are not necessary to ensure individuals' return to court. Only three of these funds provided any voluntary connections to services once they posted bail for the person, whereas the others posted bail for individuals and those individuals were free pending trial without any conditions imposed by the court.[42]

And yet, the funds studied had an 80% to 100% success rate, which is defined in this study by the number of bails that were not "lost" (forfeited).[43] These rates are about the same or better than the available data measured by the Bureau of Justice, which found that between 1994-2004 the failure to appear rate for people charged with felonies was between 21% and 24%.[44]

C. Due process protections

Given that a pre-trial detention hearing concerns a person's fundamental liberty interest, it should be accorded all the weight of any other court proceeding where liberty interests are at stake. Every individual should be entitled to counsel immediately post-booking so that counsel can be present when the CASA conducts its intake. It is well-established that unrepresented parties in court proceedings typically are not able to achieve the same positive outcomes as their represented counterparts.[45] In San Francisco, California, the public defender has established an early representation unit to cover the critical period between booking and arraignment as well as appear with the client at arraignment. As a result, the unit has reduced wealth-based disparities in case outcomes and pre-trial incarceration rates.[46] Individuals who receive early representation from the public defenders office are twice as likely to be released at arraignment when compared with similarly situated individuals without representation.[47] The implementation of this early representation unit within the public defender's office would save San Francisco County 11,253 jail-bed days per year.[48] The cost-savings from reducing the jail population would likely far outweigh the cost of implementing programs like this one in many jurisdictions.

The individual must not be shackled at any time during the hearing, unless the court makes a specific finding based on an individualized review that the individual poses imminent danger to any person in the courtroom.[49] Allowing an individual to present their case without restraint helps preserve the constitutionally mandated presumption of innocence, both by freeing the person to better and freely present their case, and by ensuring that the magistrate is not further prejudiced against the person by seeing them in shackles.[50] Additionally, the hearing should be administered in person, and not via video or phone, and should be conducted by a judge or magistrate.[51] The hearing should be open to the public.

The individual shall not be permitted to waive their right to a pre-trial detention hearing without first meeting with counsel. This provision is meant to ensure that prosecutors do not use the carrot of a "time-served" offer to coerce a guilty plea from the individual. Relatedly, prosecutors shall not request that a person be kept in pre-trial release to coerce a guilty plea.[52]

During the pre-trial detention hearing, the individual whose liberty is at stake shall have the following rights:

i) The right to remain silent;
ii) The right to testify and to present evidence;
iii) The right to counsel;
iv)The right to subpoena witnesses and evidence, and;
v) The right to confront and cross-examine witnesses against them

D. Review of decision

The accused person shall be entitled to de novo review (a review of all facts presented at the initial hearing rather than solely reviewing the original judge's legal conclusion or perspective of the facts) of any order for pre-trial incarceration or liberty restricting conditions.[53] The review will be conducted by a judge who did not participate in any way in the initial incarceration decision, based on the record of the initial hearing and on any supplemental evidence the individual facing charges, defense counsel, or prosecutor may supply. This hearing shall occur within 72 hours, unless the person being charged consents to an extension of time. The reviewing court may only order pre-trial incarceration if the initial court order details sufficient individualized facts from the admissible evidence to support pre-trial detention, and any evidence from the original hearing and new evidence presented does not mitigate those facts sufficiently. If the original order for incarceration does not have an adequate supporting record, including reference to specific facts in evidence overcoming the presumption of release, the reviewing court must order immediate release or remand for immediate entry of a further order. If the court order from the initial hearing is simply a boilerplate recitation of reasons to detain, the reviewing court must order immediate release.

III. Overview of the CASA

Under the model proposed in this paper, CASA will be part of this pre-trial process. The primary functions of the CASA are:

- Conducting a strengths and needs-based assessment at the jail of all individuals in custody to determine a plan of support if the individual is released pre-trial;
- Sending court date reminders to all individuals with pending court dates; and
- Coordinating services in order to connect individuals with supportive resources.

Ideally, a CASA should be housed under a public health or health department, which would align with evidence-based models that shift the approach to crime from a punitive one to a health/public health-based model. Each jurisdiction will have to determine if an agency exists that aligns with such a needs-based model already and whether the CASA should be housed there or housed independent of local government. The CASA should not be housed within any law enforcement department, as discussed in section VII.

The model proposed here envisions a system under which individuals who are taken into custody have a quick, fair process for securing their pre-trial freedom and under which they receive support to come back to court via the establishment of a new agency, the Community Care and Support Agency ("CASA"). This pre-trial system is explained at length in other sections of the report. However, in order to understand its basic mechanics, consider these two examples[54]:

A. Working with individuals out of custody

To illustrate how this process would work for out of custody individuals, consider this hypothetical case:

Alice is a 20-year-old community college student. She was stopped by law enforcement for an alleged assault, a misdemeanor, related to an altercation with another student. In this situation, the police officer who stopped her will issue her a citation and instruct her to appear in court for an arraignment. The officer will then collect Alice's phone number, email address or mailing address for the purpose of court-date reminders. The officer is required to provide Alice with information regarding the CASA, and the optional resources they provide and give Alice the contact information for the CASA. This ends the officer's interaction with Alice.

The officer passes Alice's contact information on to the CASA so they can provide Alice with court reminders. Any additional resources Alice chooses to receive from the CASA (e.g. support with locating housing, employment, or mental health resources to name a few) are voluntary and the CASA will otherwise only be in touch with Alice to remind her of her upcoming court date.

If Alice chooses to access the voluntary services provided by the CASA, the CASA will not share any information regarding Alice with anyone, not even the fact of her going through the CASA intake process.

B. Working with individuals in-custody

To illustrate how this process would work for in-custody individuals, consider this hypothetical case:

Jeremy was contacted by law enforcement for an alleged assault with a deadly weapon, a felony, after allegedly throwing a chair at his brother during an argument. The officer books Jeremy into jail. After the booking process is complete, Jeremy will meet first with his attorney and then with a CASA representative within eight hours of his arrest. The CASA will conduct a strengths and needs-based assessment with Jeremy and determine a plan together to support Jeremy's release. CASA employees will be available to respond to new arrests in the jails or local police stations 24 hours per day, 7 days per week to conduct the intake process. [55]

The prosecutor, after reviewing any documentation from law enforcement, may choose to file a motion for Jeremy's detention. If such a motion is filed, Jeremy would be represented by counsel and would go through the pre-trial hearing as laid out above. Jeremy is entitled to a pre-trial detention hearing within 24 hours of his booking. If the court chooses to release Jeremy, it can do so knowing that Jeremy has gone through CASA's intake process and will be supported by CASA upon release.

IV. Needs and Strengths-based Intake Process

This model chooses to use a needs and strengths-based intake. Such intake models ask questions about a person's employment situation, housing, community ties, transportation, public benefits, and responsibilities such as caring for dependents. Needs and strengths-based assessments are utilized to understand the holistic picture of someone's needs and what strengths and community connections they can draw on for support if released pre-trial. This approach emphasizes an individual's strengths and is premised in the belief that people are resilient and can overcome overwhelming odds—particularly when given the resources and support to do so.[56]

The needs-based portion of the intake involves creating an individualized, holistic plan for each individual to meet their needs to ensure return to court. This plan will remain confidential and not be submitted to the court unless the individual in consultation with their attorney agrees to some or all of the plan to be submitted. CASA will ensure that the individual is able to gain access to the resources and services laid out in their release plan.

The process of advocating for release with the pledged support of an agency for the individual has been working in Santa Clara, California through Silicon Valley De-Bug's Community Release Project ("CRP"). CRP has developed a community support identifying form, similar to needs and strengths-based assessments that family members fill out for their loved ones in custody. Public Defenders then make bail motions using the information from the form, describing the Community Release Project and the type of support they offer, and asserting that the individual will be supported by this Project. [57] ***While sometimes the court is made aware of the specific support or resources that will be provided to the individual, other times the court is simply aware that the individual will be supported by the Project and the pre-trial release is still facilitated. This model was considered so successful that in 2017 the County Board of Supervisors voted to scale it up to what it is today an example of a promising model that relies on community support instead of money bail or system supervision.***[58]

Needs and strengths-based models are already in use nationwide. For example, the Los Angeles County Youth Diversion and Development initiative uses a needs and strengths-based intake with every youth referred for diversion.[59] National bail funds that assess whether they will pay an individual's cash bail amount do not use risk assessments to make those decisions.[60] Instead, bail funds like The Bail Project, a national revolving bail fund, uses a "needs-focused approach" with their adult clients, which has resulted in bail being forfeited in only 2% of their cases.[61]

The strengths and needs-based intake would help the CASA worker to make an assessment in collaboration with each person as to the individual's needs and existing support networks to inform the appropriate support plan upon release.[62] This model differs from the use of RATs because this intake system does not generate a score nor does it categorize individuals in any way.

Here is an example of needs-based questions that can help assess how to support an individual's return to court and avoid re-arrest:

Part V. Please *circle* the number that best describes how much you agree or disagree with the statement.

	Strongly Disagree	Mostly Disagree	Slightly Disagree	Neutral	Slightly Agree	Mostly Agree	Strongly Agree
21. My family has reliable transportation.	1	2	3	4	5	6	7
22. An adult in my household has a steady job.	1	2	3	4	5	6	7
23. I could handle an unexpected expense.	1	2	3	4	5	6	7
24. It's very hard for me to cover all my expenses each month.	1	2	3	4	5	6	7
25. Over the previous 12 months, my family was able to pay the full amount of our rent or mortgage payments.	1	2	3	4	5	6	7

Taken from an intake form developed by the FRIENDS National Resource Center for Community-Based Child Abuse Prevention [63]

Such an assessment will not be used to punish an individual for not having reliable transportation, for example, but instead will be used to flag the areas in which the person needs support and work to meet the person's needs. CASA's plans for release should be individually tailored, achievable, and the least restrictive necessary to meet an individual's specific, expressed needs.

V. CASA Employees and Culture Shift

The CASA will be comprised of an intake team that is present in jails conducting evaluations, a peer support/navigator team that provides ongoing support to individuals, and administrative and supervisory staff. In hiring, priority will be given to employing systems-impacted people, people with experience working with systems-impacted people, and individuals with a strong understanding of mental health and substance use issues.

The focus in hiring and training staff will be to ensure that all staff are committed to the following principles:

A. Support over supervision

At its core, the CASA's goal is to support individuals' return to court; a mission which is antithetical to performing a supervision function. Supervision requires an oversight or "watching" of a person's behavior, which inherently implies a lack of trust and can subject individuals to feeling constrained as though they are in an open air prison.[64] Supervision that creates this type of criminalizing effect denies individuals the presumption of innocence, which should be afforded to everyone pre-trial. Several studies have found that public safety can be fully maintained, and even improved, with less supervision of those subjected to the penal system.[65]

A large part of CASA employees' function will be to build trust so that when people released pre-trial face issues returning to court or other challenges in their life (relapse for example) they have a safe place to come to for support without the threat of punishment or other negative consequences. Thus, CASA employees will be trained to provide support in a non-judgmental fashion such that individuals will learn to trust and rely upon the resources available to them so that they can thrive, meet their court dates, and remain in their communities.

B. Trauma-informed care

Individuals caught up in the criminal legal system have often experienced trauma at incredibly high rates in their lifetime.[66] In addition, interactions with law enforcement and periods of incarceration can have traumatic effects on individuals, which are then often exacerbated by the collateral consequences of the criminal legal system that can lead to homelessness, unemployment, and family separation.[67] CASA employees will need to understand how to identify trauma and how to meet the needs of individuals released pre-trial who are experiencing trauma. Everything from intake procedures to service referrals will need to be conducted with a trauma-informed approach. In the healthcare field, it is acknowledged that trauma-informed care has the potential to "improve patient engagement, treatment adherence, health outcomes, and provider and staff wellness" and there is research that tends to support this.[68] This would indicate that a trauma-informed approach has the potential to improve outcomes and actual reliance and use of services.

C. Individual empowerment and self-determination

People faced with the power of the state in the criminal legal system often feel disempowered and left out of their own case.[69] The CASA model turns the status quo on its head by placing each individual in the driver's seat, recognizing that only they are the expert of their own life. The assumption is that people are far more likely to follow through with services that they had a say in choosing and that they feel address their self-identified needs than when conditions are imposed upon them without individualized consideration.[70] While CASA employees are in a position to provide support, education, and resources, they would be trained not to impose their own judgment over and above the judgment of the individual seeking resources.[71]

Case load best-practices

People in "helping" professions often experience a high rate of compassion fatigue or burnout. While a trauma-informed ethos should pervade every aspect of CASA employees' work experience, there are also structural issues to pay attention to that could potentially lead to burnout if not addressed up front and systemically. One systemic way of creating a healthy work environment is to ensure a work-load that is not over burdensome. Existing pre-trial services models may assist in determining the ideal ratio of CASA employees to individuals.

The District of Columbia's Pre-trial Services Agency employs around 350 full-time employees each year.[72] In FY 2016, the agency worked with 15,275 people who were released pre-trial with supervision, and 6,496 who were released without supervision, for a total of 21,771 individuals.[73] This suggests an overall ratio of employee to individual of around 62:1.[74]

Santa Clara County's staffing levels can provide another data point on the number of pretrial services employees needed to operate a pre-trial release program. As of 2011, the Santa Clara County Pre-trial Services Agency was comprised of approximately 37 fulltime staff.[75] It was standard practice to have two employees staffing the Jail Division at all times, 24-hours per day, 7-days per week.[76] In 2010, the Jail Division of the Pre-trial Services Agency processed 17,738 bookings,[77] for a ratio of approximately 1529:1 for employees who screen for pre-trial release recommendations in the jail.[78] For supervision caseloads, it ranged from 65-90 individuals per employee, which they describe as high.[79]

In 2010, the San Diego pre-trial services had a supervision caseload of 25-30 people per full-time employee.[80] Virginia's pre-trial caseload standard is 40 cases per officer.[81] San Francisco has a ratio of 22 clients per staff member in the category for the clients who receive intensive case management.[82]

Because this model imagines a more involved level of support for some individuals, it may be helpful to consider caseload best practices in the social work field. Social work caseloads are highly variable, depending on the area of practice and the intensity of need of a particular individual.[83] For child welfare workers, for example, the average caseload is between 24-31 at any given time, although caseloads range from 10-100 children per worker.[84]

Based on a survey of these pre-trial services agencies as well as other standards for case managers, CASA should have an average caseload of 20-25 individuals for each employee engaged in the more intensive work of a peer navigator.

VI. Support and Resources Provided by the CASA

An essential part of what the CASA aims to offer is connecting people to community-based programming, that individuals do not have to pay for, to create positive support where appropriate, with the understanding that lasting intervention takes place in communities and not within facilities. The resource connection can occur in two areas: 1) resources to ensure return to court and 2) resources to meet individual's needs. In addition, the CASA will cultivate a team of "systems-impacted sponsors" who will be paired up with an individual released pre-trial upon request. While these resources may overlap in the goals they address, it is helpful to think about the support provided by CASA as divided in this way.

A. Resources to ensure return to court

Minimally intrusive non-monetary conditions like text message reminders can be highly effective and are often sufficient to ensure many individuals' return to court. Text, call, email, or postal mail court date reminders are now required under New York's 2019 Bail Elimination Act.[85] Prior to this, a 2018 University of Chicago Crime Lab study, partnering with the NYPD and the New York State Unified Court System Officer of Court Administration, employed behavioral science insights to design minimally intrusive pre-trial release conditions.[86] The study found that sending reminder text messages to people in advance of their court dates reduced New York City's failure to appear rate by twenty-six percent.[87] The study concluded that when people miss court dates it is often due to inattention and a "present bias" (meaning the immediate consequences of missing work to attend court, for example, outweigh the potential future consequence of arrest for a failure to appear). The messages—sent seven, three, and one day(s) before a scheduled court date—reduced failure to appear at a rate which would have avoided over 20,000 bench warrants per year if employed city-wide.[88]

This is what court date reminders can look like:

Photo: University of Chicago Crime Lab

Minimally intrusive conditions of release such as court date reminders maximize both the state's interest in ensuring an individual returns to court, and the substantial liberty interest held by those awaiting trial. The CASA will ensure that every individual released pre-trial will be sent these court date reminders, unless they opt out. If an individual does not have a phone, CASA will determine with the individual if there is a loved one they can contact instead or an alternative means to send reminders such as email or postal mail.

In addition to court date reminders, it is important to help individuals released pre-trial meet other needs that may arise as barriers to being able to return to court. As stated, a majority of individuals miss their court appearances due to "mundane reasons such as lack of reliable transportation, illness, or inability to leave work or find childcare, rather than out of a desire to escape justice."[89] Costs for transportation such as paying for a bus fare, gas, or parking fees can be barriers to individuals trying to keep their court dates. To address these issues, the CASA will have a transportation support team that can assist clients in arranging transportation to and from court on the day of their appearances and provide bus/train passes to those who use public transportation. Jurisdictions could also explore a potential partnership with rideshare companies in carrying out these goals.

Similar to transportation barriers, those who are responsible for children may miss court appearances due to lack of access to childcare. Even if free childcare is offered at courthouses this is sometimes not a well-documented service or there may be restrictions on the use of these services. The CASA will be available to connect people with childcare support and to troubleshoot these issues when they come up.

B. Resources to meet individuals' needs

Research has shown that treatment programs addressing specific mental health or substance abuse needs are likely to increase pre-trial success, defined as the likelihood that an individual will return to court and avoid contact with the criminal legal system while awaiting trial.[90] During intake, a CASA employee will identify whether an individual may be in need of a treatment program, and if so, will link the individual with an appropriate and available program on a voluntary basis. The CASA will help the individual to enroll in health care benefits or assist in finding programs where cost would not be a barrier to access.

Among the many consequences that result from pre-trial detention, being in jail for even a brief period of detention can lead to job loss and impede future employment.[91] The CASA will partner with community organizations to assist individuals facing loss of employment. These resources should include assistance with job searches and career placements when requested and providing support to those individuals who may lose their jobs if they take off work to appear at court dates.

Those who are in pre-trial detention also often were already facing housing insecurity or houselessness. The CASA should be committed to ensuring that individuals are connected with appropriate legal/social services if they are facing housing insecurity as a result of their pending criminal case. Further, the CASA will be able to assist individuals with securing transitional or permanent housing if the individual is currently houseless.

The loss of public benefits is another issue that people detained pre-trial could face. If individuals seek assistance in accessing or reinstating public benefits, the CASA team should have the skills and capacity to assist with this. Further, CASA will provide referrals for immigration attorneys for individuals who have concerns about the immigration consequences of criminal proceedings and convictions.

C. Systems-impacted sponsors

The CASA will offer each person the opportunity to be connected to a sponsor who can be a source of support through the criminal legal process. The sponsor will be an individual who has gone through the pre-trial process themselves.

A sponsor will provide the individual with support and encouragement throughout the pre-trial process. This model is similar to that of Los Angeles' Homeboy Industries where the "navigator" (sponsor) provides the "trainee" (new individual to the program) with a supportive relationship integral to a successful reentry process.[92] A sponsor who has already been through the pre-trial and CASA process can counsel and build trust with an individual that is new to the process in ways that will encourage the individual's growth and aspirations in achieving the goals they set out for themselves. Those who have gone through the pre-trial process with the CASA will have the opportunity to become sponsors for the following generations of incoming individuals. Sponsors should be paid a stipend for providing this mentorship service.

VII. Investing in the CASA Requires a Paradigm Shift

As already mentioned, to preserve the presumption of innocence, any services and resources offered by the CASA should be the least restrictive necessary to meet an individual's specific, expressed needs. It is important that the supportive resources are not akin to punishment, which is not appropriate prior to a conviction. Stringent and numerous pre-trial release conditions such as home confinement and electronic monitoring may not promote and may even undermine the government's interests in protecting the public and ensuring future court appearances. One study found that, "Release conditions that include alternatives to detention—with the exception of mental health treatment, when appropriate—generally decrease the likelihood of success for lower risk-defendants and should be required sparingly."[93] Studies suggest that the imposition of these types of conditions replicate the harms of pre-trial detention by restricting an individual's ability to work, maintain support networks, and tend to emergencies that may arise.[94] Thus, the following elements will not be included in this model upon implementation.

A. Probation should not be involved in pre-trial services

The CASA should be an organization, independent of law enforcement agencies, that focuses on supporting individuals pre-trial in obtaining needed community resources and to ensure their return to court. While some existing pre-trial services organizations in the country are housed within probation departments or within a law enforcement paradigm, this proposal advocates for the CASA to be located outside of the probation department.

This is because the aims of pre-trial service teams and probation departments do not align. Pretrial services agencies are typically tasked with helping people return to court and promoting public safety; in contrast, probation focuses on monitoring individuals' conditions of release and reporting them for failure to comply. While probation departments generally "work with adjudicated individuals who have fewer rights and protections", pre-trial services agencies work with individuals who are presumed innocent with "a limited mission of assuring court appearance and protecting public safety."[95] The goals and frameworks are different.

As one example, the Los Angeles Probation Department is ill-equipped to house the CASA. Among other things, a 2018 report found that while "the [Probation] Department is shifting its approach to focus more on client well-being," there are "challenges with data systems and insufficient training in structured decision-making, assessments, and case management" which must be addressed in order to support a more systematic approach to client services.[96] Probation has limited training and ability to interact with system-involved individuals without the mindset of punishment, particularly those with mental health and behavioral needs.[97] L.A. County Probation has come under scrutiny for its inappropriate use of force. In late 2019, a man in L.A. County was fatally shot in his residence by a probation officer who went to his residence to carry out an arrest warrant.[98] Also in 2019, the Board of Supervisors had to intervene because of Probation's overreliance on pepper spray, which they were using to "de-escalate" situations with youth detained in the County's juvenile halls.[99]

A study conducted by the L.A. County Executive Office states that "job descriptions within the Los Angeles County Probation Department do not reflect the values, mission, or vision of a Department whose main purpose is to further client well-being and reduce recidivism."[100] Exemplifying this is the job description for the position of a Detention Services Officer (DSO), which includes inherently disciplinary language such as "maintains order and control of the unit" and "controls and restrains combative or emotionally disturbed juveniles."[101] This indicates that the Probation Department's current structure and paradigm is likely inadequate for accomplishing the goals of a pre-trial services agency focused on supporting people in obtaining resources, creating relationships of trust, returning to court, and avoiding re-arrest.

As an entity distinctly separate from traditional law enforcement agencies, the CASA would be allowed to operate outside of the existing culture of mistrust and fear of law enforcement that exists amongst so many communities in the United States. This separation would also likely encourage individuals to actively seek out and take advantages of the resources that the CASA can offer.

B. The CASA would not impose surveillance or monitoring conditions

It is crucial for CASA to successfully cultivate trust between individuals and the CASA. Thus, the CASA cannot serve a traditional law enforcement function by creating release plans that require surveillance or monitoring that mirror police or probation departments. This is also important because many of these existing law enforcement systems of surveillance and monitoring in fact do not prevent failures to appear or re-arrest.[102] The conditions described below are not an exhaustive list, but a few illustrative types of release conditions that when imposed pre-trial have often resulted in negative consequences in various jurisdictions throughout the country. Under the CASA model, the courts would not impose these types of conditions as they would trust that connecting the individual with the CASA would provide appropriate, individualized support to prevent failures to appear and re-arrest.

i. No GPS/electronic monitoring

The evidence on the effectiveness of electronic monitoring is inconclusive and many of the available studies have concentrated on the postconviction setting or in comparing people released pretrial and subjected to electronic monitoring (EM) to those subjected to pretrial detention.[103] The studies comparing people subjected to EM versus those not subjected to EM during pretrial release have been limited in number and also inconclusive.[104] Further, EM comes with a whole host of technological issues that can result in the individual being re-incarcerated pretrial because of a technical glitch.[105] EM can also have significant collateral consequences: one study found that 22% of individuals were fired or asked to leave their job because of the electronic monitor.[106] In any case, since the point of the CASA is not supervision but support to ensure that individuals are able to thrive and maintain their own personal, financial, and housing security, electronic monitoring would be antithetical to these goals and would not be used by CASA.

ii. No mandatory drug testing

There is no empirical evidence that supports the idea that drug testing improves pre-trial outcomes.[107] Several empirical studies have been conducted in D.C., Maryland, Oregon, and Arizona on the efficacy of drug testing in improving pre-trial success.[108] None of the studies found any evidence to demonstrate that drug testing during pre-trial release effectively reduces pre-trial failure.[109] In fact, in Maricopa County, Arizona, researchers found that individuals in the study who were drug tested had a significant increase in pre-trial failure to appear and in rearrest.[110] Mandatory drug testing also can interfere in a person's employment, ability to pick up and drop off their children at school, and other essential tasks. Thus, the CASA would not be involved in assigning mandatory drug testing to individuals pre-trial.

iii. No required in-person check-ins

Requiring in-person check-ins with a CASA employee brings up similar obstacles to those associated with attending court, such as lack of transportation or childcare.[111] Further, mandatory check-ins might interfere with an individual's work schedule, and could undermine their ability to remain employed. Similar to GPS monitoring, reporting requirements can increase the number of violations incurred by an individual, which may result in severe consequences such as remand to custody.[112] Again, this type of condition would work against an individual's ability to provide for themselves and their families, can be overly burdensome in a context when each individual is entitled to the presumption of innocence, and CASA would not use it given its goal of supporting individuals in pretrial release to meet their court dates and beyond.

C. Administrative Not Punitive Responses

In order to preserve the presumption of innocence, in the limited numbers of cases where the court does impose pre-trial conditions, the court must take a different approach to "violations" of these conditions than currently exists. At present, failure to comply with a litany of conditions (such as regular check-ins with pre-trial services officers, drug tests, and electronic monitoring) often leads to the extreme consequences of re-incarceration pre-trial and potentially harsher sentences.[113] In fact, according to a 2019 report by The Council of State Governments, nearly 25% of all prison admissions nationwide are for a technical violation.[114] Re-incarcerating a person for a violation of pre-trial conditions, generally without an individualized consideration of the reason of the violation, flies in the face of the presumption of innocence.

To avoid extreme consequences for violation of pre-trial release conditions or failures to appear, the courts should attempt to handle violations of conditions administratively. The National Association of Pre-trial Services Agencies advocates for this approach stating that, "[i]n many instances, the violation of conditions can be handled administratively by the pre-trial services agency, without the necessity of initiating revocation proceedings."[115] Researchers from Harvard's Criminal Justice Policy Program also recommend that pre-trial services "attempt to handle violations of conditions of release administratively and invoke revocation proceedings only when the conduct actually interfered with the court's function or presented a risk to public safety."[116]

Because an individual's failure to appear or to continue with programming could be the result of an illness, emergency, or simple forgetfulness, the individual's defense attorney should be able to communicate this to the court without threat of re-incarceration. Further, if there is an issue with pre-trial condition compliance, the defense attorney and their client should be able to have a conversation with the CASA to determine whether the individual could use additional support from CASA in order to fulfill the court-imposed conditions.

VIII. Confidentiality

In order for the CASA to provide the necessary resources to each individual and to begin to build a relationship of trust, the information they gather must be deemed confidential. Whether this is through order of the court or via memoranda of understanding with the various prosecutors' offices in a given county, this is essential for any pilot or larger implementation of this model. Such agreements to confidentiality will ensure that the details of the strengths and needs-based assessment will not be shared with the court, prosecutor, probation, law enforcement, or anyone other than the individual going through the assessment process. In addition, if an individual opts out of court-date reminders, this information will also be protected and not discoverable. CASA employees will stress that the individual should not talk about the details and facts of their legal case during the intake process and ideally a public defender will be present during the intake. Any request for assistance to get to court, childcare, or any other information about help or services an individual requests will also be confidential.

The full assessment may be shared with the individual's defense attorney if the individual requests it to be and consents to the sharing. The person charged with a crime and the defense attorney would be permitted, but not required, to share elements of the CASA assessment and plan with the Court. No presumption of inadequacy will attach to the refusal to do so.

IX. Data Collection and Oversight

A. Data collection and reporting

The CASA will collect and regularly report on data with regards to all individuals who go through the intake process. There is very little information about the results of pre-trial release and detention programs as they relate to long-term public health outcomes for individuals. Merely looking at failures to appear and rates of re-arrest is too narrow a lens and does not tell us information about the other factors that could lead to negative outcomes for individuals in the criminal legal system. Thus, collecting a comprehensive set of data on outcomes of the CASA process is imperative. These data will include, but are not limited to:

- Number of motions filed by prosecutors for pre-trial detention hearings
- Number of pre-trial detention hearings
- Types of charges filed
- Results of pre-trial detention hearing
- Overall case disposition
- Demographic data including race, age, zip code, gender, language, income, household size, number of dependents, etc. (as reported by individuals)
- Rates of re-arrest and re-conviction
- Failures to appear
- Outcomes after resolution of cases, including housing stability, employment, educational achievement, etc.

Putting new systems in place does not necessarily mean that racial bias disappears. Having data collection to ensure that CASA services are not being limited to only certain groups of people will allow for an adjustment of practices to ensure effectiveness, fairness and the transparency required for communities to hold these systems accountable.

This data will be open and available to the public without breaching confidentiality. Further, the CASA will make direct reports to the court on the aggregate data. One of the issues echoed throughout the United States by the judiciary and other officials is the fear that a release decision will lead to some heinous act, which would then be blamed on the judicial officer. While there is no feasible way for the CASA to prevent this from ever occurring, the reporting of outcomes to the judiciary as well as the public can begin to shift the framework of fear often prevalent in our decisionmakers. If judges can see and show through systemic data gathering that their release decisions are leading to positive outcomes for everyone involved, this will reinforce these types of decisions and contribute to an even more successful program. Currently, it is rare that judges receive this type of information, and so understandably they often operate from a place of fear or caution. With this intentional feedback loop on all CASA cases, this mindset could begin to shift.

B. Randomized control trials

Developing an alternative to money bail and RAT based pre-trial systems presents an opportunity to create a randomized experiment with treatment and control groups. Individuals booked into custody would be randomly assigned between the two pilots/programs. The evaluations of these pilots would be focused not only on recidivism and failure to appear, but also other outcomes such as employment, housing, and other proxies for social well-being. Results would then be compared to the other pre-existing models in a given jurisdiction. Such studies would enable policymakers to make informed and evidence-based decision about which type of pre-trial framework produces the best outcomes for society and for all of those involved in criminal cases.

X. Meeting victims/survivors needs

Along with the need to ensure resources are provided to people facing criminal charges during the pre-trial phase of their case, there is both a need and an opportunity to ensure that pre-trial systems are immediately responsive to victims/survivors of crime. The impact of crime extends beyond the individual instance itself, with many victims/survivors left to deal with physical, psychological, and financial consequences of the crime without any support.[117] In order to adequately heal communities, there needs to be a focus on providing immediate crisis response, safety planning, and referrals for ongoing support to victims/survivors. This proposal is rooted in the understanding that communities most impacted by crime and violence are also often the communities most devastated by mass incarceration and pre-trial incarceration.[118]

This paper also proposes the development of a Community Response Center ("CRC"). The CRC is intended to provide support to victims/survivors in the immediate aftermath of an incident in the form of emergency response, resource referrals, and safety planning. A victim/survivor would be connected to the CRC by law enforcement with the victim/survivor's consent. Within four hours, the victim/survivor would be able to meet with someone from the CRC and gain support in safety planning and additional referrals. The CRC's goal is to ensure that victim/survivors feels safe and connected to resources in the immediate aftermath of the incident. The CRC would utilize a multidisciplinary staff to provide this range of resources including psychiatrists, psychologists, social workers and outreach workers. Thus, an individual would have access to immediate safety planning resources at the Center and would be referred to partnering community organizations for longer-term support.

Given that this proposal focused on pre-trial release and detention, a follow-up proposal could be developed with the input of those most impacted by violence to determine the scope of the CRC and how CASA and the CRC would interface.

XI. Conclusion

This paper has proposed an alternative to existing money-bail and RATs across the country. Founded on the acknowledgment of the current system's adverse impacts on the lives and rights of people most impacted by the criminal legal system, it proposes a structure that aims to broaden the definition of public safety. It honors the constitutional right to a presumption of innocence, accounts for the life-altering consequences of even short periods of incarceration on individuals and their families, and provides individuals with the supports they need.

In considering this proposal, jurisdictions stand at the door of an unprecedented opportunity to transform a system that has followed largely unevaluated and harmful logics for generations. At a time in which there are demands across the country to reimagine the criminal legal system and public and community safety following the killing of George Floyd and many others, a decision to implement the CASA model with rigorous evaluations, accountability, and transparency could change the present trajectory and provide an empirical basis to pursue a different path forward that keeps everyone safe and ensures greater fairness in the criminal process.

ENDNOTES

* We would like to thank Ivette Alé, Beth Colgan, Ingrid Eagly, Eunisses Hernandez, Aaron Littman, John Raphling, Titilayo Rasaki, and Andrew Whitcup for feedback on earlier drafts, and Karina Silva and Amy Munro for their research assistance.

[1] On February 5, 2019, the Board of Supervisors of the County of Los Angeles approved a motion on pre-trial release regulation that, among other things, aimed at generating proposals for pilots for bail reform that both included and did not include the use of risk assessment tools. This proposal was generated in response to this motion. These pilots were not implemented since after the Board of Supervisor's motion was passed the Judicial Council of California launched its own pre-trial pilot program that included only risk assessment tools. Hilda L. Solis & Sheila Kuehl, Developing Los Angeles County's Models for Pretrial Release, L.A. COUNTY (Feb. 5, 2019), http://file.lacounty.gov/SDSInter/bos/supdocs/132848.pdf.

[2] The work of community-led bail funds is at the foundation of proposals that do not include money bail or risk assessment tools. Many of these funds have been providing much needed re-entry support for individuals that they bail out, recognizing that when people are released pretrial they need support, access to resources, and not supervision or punishment. Many of the bail funds around the country in the National Bail Fund Network provide this support as do the bail sites established by The Bail Project.
See https://www.communityjusticeexchange.org/nbfn-directory; see also https://bailproject.org.

[3] Wendy Sawyer & Peter Wagner, Mass Incarceration: The Whole Pie 2020, PRISON POLICY INITIATIVE (Mar. 24, 2020), https://www.prisonpolicy.org/reports/pie2020.html.

[4] The Prison Policy Institute found that the national median income for people incarcerated in jails, in 2015 dollars, is $15,109. Nationally, they found that the median bail bond amount "represents eight months of income for the typical detained defendant." Bernadette Rabuy & Daniel Kopf, Detaining the Poor: How money bail perpetuates an endless cycle of poverty and jail time, PRISON POLICY INITIATIVE (May 10, 2016), https://www.prisonpolicy.org/reports/incomejails.html.

[5] Latinx people have their bail amounts set between 12% to 26% higher than their white counterparts depending on the type of crime. Traci Schlesinger, Racial and Ethnic Disparity in Pre-trial Criminal Processing, JUSTICE QUARTERLY, 170, 181-183 (2005), https://www.tandfonline.com/doi/pdf/10.1080/07418820500088929?casa_token=VDuaYBrPHcAAAAA:gNEZXExYSfZHW51gwR4dojNArU85F7yxLLs0XSNLi6F5jMimse6X6w8o7YlJM4BMqBrDPy5yh38M8A. A study completed of two jurisdictions, Miami-Dade and Philadelphia, found that Black people had bail amounts that were $14,376 more than their white counterparts. David Arnold et al., Racial Bias in Bail Decisions, NBER WORKING PAPER SERIES, 1 (2017), https://www.nber.org papers/w23421.pdf.

[6] Isaac Bryan et al., The Price of Freedom: Bail in the City of Los Angeles, UCLA BUNCHE CENTRE, https://ucla.app.box.com/s/fkocdbse6a80yktu3aczjo0jxoknhj2s.

[7] Nikie Johnson, Los Angeles County: World's largest jail system getting a health care overhaul, LOS ANGELES DAILY NEWS (Aug. 2, 2019), https://www.dailynews.com/2019/08/02/los-angeles-county-worlds-largest-jailsystem-getting-a-health-care-overhaul/.

[8] Bernadette Rabuy, The life-threatening reality of short jail stays, PRISON POLICY INITIATIVE (Dec. 22, 2016), https://www.prisonpolicy.org/blog/2016/12/22/bjs_jail_suicide_2016/. See also Reforming Money Bail: A Tool to Reduce the Number of Incarcerated People with Mental Health Conditions, ACLU (2017), https://www.aclunc.org/docs/20170414-bail_reform_mental_health.pdf.

[9] Kristian Lum et al., The Causal Impact of Bail on Case Outcomes for Indigent Defendants in New York City, 3 OBSERVATIONAL STUDIES 39 (2017), https://obsstudies.org/wp-content/uploads/2017/10/bellamy_redux_report.pdf; "Not in it for Justice": How California's Pretrial Detention and Bail System Unfairly Punishes Poor People, HUMAN RIGHTS WATCH (2017), https://www.hrw.org/sites/default/files/report_pdf/usbail0417_web_0.pdf.

[10] California Pretrial Reform: The Next Step in Realignment, HARVARD LAW SCHOOL CRIMINAL JUSTICE POLICY PROGRAM, 10 (2017), http://pretrialservicesca.org/wp-content/uploads/California-Pretrial-Reform-The-Next-Step-in-Realignment-Harvard-Law-School-2017.pdf.

[11] Id.

[12] Cf. Economic Impacts of Cash Bail on the City of Philadelphia, CITY OF PHILADELPHIA, 9 (2017), https://www.prisonpolicy.org/scans/philadelphiacontroller/cashbail.pdf.

[13] Id. at 8–9.

[14] Rabuy and Kopf, supra n. 4.

[15] Will Dobbie et al., The Effects of Pre-trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges, 108(2) AMERICAN ECONOMIC REVIEW 201 (2016), http://www.nber.org/papers/w22511; Christopher T. Lowenkamp et al., The Hidden Costs of Pretrial Detention, ARNOLD FOUNDATION, 19 (2013), https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf. ("Defendants detained pre-trial were 1.3 times more likely to recidivate compared to defendants who were released at some point pending trial.")

[16] This outcome of the study resulted from a comparison of individuals who had the same bail amounts set at their hearings, but who differed in detention status, with controls adjusted for the charged offense, age, race, gender, citizenship status, defendant build, skin color, nativity, indigence and prior misdemeanor and felony charges and convictions. Paul Heaton et al., Downstream Consequences of Misdemeanor Pre-trial Detention, 69 STAN. L. REV. 711, 767 (2017).

[17] Merrill Balassone, Judicial Council Funds 16 Pretrail Pilot Programs CALIFORNIA COURTS (Aug. 9, 2019), https://newsroom.courts.ca.gov/news/judicial-council-funds-16-pre-trial-pilot-programs.

[18] Justin Breaux et al., Could Risk Assessment Contribute to Racial Disparity in the Justice System?, URBAN INSTITUTE (Aug. 11, 2014), https://www.urban.org/urban-wire/could-risk-assessment-contribute-racial-disparityjustice-system; Bernard E. Harcourt, Risk as a Proxy for Race: The Dangers of Risk Assessment, 27 FED. SENT'G REP. 237 (2015); Beth Schwartzapfel, Can Racist Algorithms Be Fixed?, THE MARSHALL PROJECT (Jul. 1, 2019), https://www.themarshallproject.org/2019/07/01/can-racist-algorithms-be-fixed. On the challenges that this phenomenon presents in non-criminal-justice areas of law, see, e.g., Solon Barocas & Andrew D. Selbst, Big Data's Disparate Impact, 104 CAL. L. REV. 671(2016).

[19] See, e.g.,Colin Doyle et al., Bail Reform: A Guide for State and Local Policymakers, HARVARD LAW SCHOOL CRIMINAL JUSTICE POLICY PROGRAM, 13-21 (2019), http://cjpp.law.harvard.edu/assets/BailReform_WEB.pdf:(the true impact of pre-trial risk assessment tools is still unknown and using the tools does not guarantee lower pretrial incarceration rates or equal treatment); Megan Stevenson, Assessing Risk Assessment in

Action, 103 MINN. L. REV. 303, 306 (2018): "Somehow, criminal justice risk assessment has gained the near-universal reputation of being an evidence-based practice despite the fact that there is virtually no research showing that it has been effective."

[20] Stevenson, supra n. 19 at 303 (finding that the passing of HB 463 in Kentucky: 1) led only to a trivial increase in pre-trial release, matched by an uptick in failure-to-appear rates and pre-trial crime; 2) benefitted white defendants more than Black defendants due to regional differences about how judges responded to HB 463; 3) after a couple of years, the pre-trial release rate was lower than it was before the bill, and lower than the national average; and 4) the switch to the Laura & John Arnold Foundation risk assessment tool or PSA to replace Kentucky's local risk assessment tool did not bring any noticeable improvement in outcomes).

[21] See Report on Algorithmic Risk Assessment Tools in the U.S. Criminal Justice System, PARTNERSHIP ON AI (2019), https://www.partnershiponai.org/report-on-machine-learning-in-risk-assessment-tools-in-the-u-s-criminaljustice-system/ (The Partnership on AI is a non-profit that conducts research and provides leadership to advance the understanding of AI technologies. Their partners include tech companies like Google, Microsoft, Facebook and IBM. This report outlines a host of problems with jurisdictions that have adopted RATs in the pretrial space and suggests some ways of mitigating the host of harms that can be caused by RATs while also suggesting that there is no true way to implement RATs without sacrificing accuracy and equality of outcomes); see also Barabas et al., Technical Flaws of Pretrial Risk Assessments Raise Grave Concern, MIT MEDIA LAB (2019), https://www.media.mit.edu/posts/algorithmic-risk-assessment/ (an open letter signed by 27 prominent researchers from MIT, Harvard, Princeton, NYU, UC Berkeley and Columbia that puts forth evidence to indicate pretrial risk assessments have technical flaws that seriously undermine their accuracy, effectiveness, and validity); see also Updated Position on Pretrial Risk Assessment Tools. PRETRIAL JUSTICE INSTITUTE (2020), https://www.pretrial.org/wp-content/uploads/Risk-Statement-PJI-2020.pdf (after years of supporting the use of pretrial risk assessments to make decisions related to pretrial release conditions, PJI recently changed their position, acknowledged that they made a mistake, and withdrew support for RATs in any pretrial decisionmaking because RATs "are derived from data reflecting structural racism and institutional inequity…"); see also African American Ministers in Action et al., The Use of Pre-trial "Risk Assessment" Instruments: A Shared Statement of Civil Rights Concerns (2018), http://civilrightsdocs.info/pdf/criminal-justice/Pre-trial-Risk-Assessment-Full.pdf; Sari Horwitz, Eric Holder: Basing sentences on data analysis could prove unfair to minorities, THE WASHINGTON POST (August 1, 2014), https://www.washingtonpost.com/world/national-security/us-attorneygeneral-eric-holder-urges-against-data-analysis-in-criminal-sentencing/2014/08/01/92d0f7ba-1990-11e4-85b6-c1451e622637_story.html.

[22] Ethan Corey, How a Tool to Help Judges May be Leading Them Astray, THE APPEAL (Aug. 8, 2019), https://theappeal.org/how-a-tool-to-help-judges-may-be-leading-them-astray/.

[23] Melissa Hamilton, The Biased Algorithm: Evidence of Disparate Impact on Hispanics, 56 AMERICAN CRIMINAL LAW REVIEW 1553 (2019) (finding that COMPAS is not well-calibrated for Hispanics, fails to accurately predict actual outcomes in a linear manner and overpredicts risk for Hispanics, and thus presents evidence of disparate impact); Julia Angwin, et al., Machine Bias, PROPUBLICA (May 23, 2016), https://www.propublica.org/article/machine-bias-riskassessments-in-criminal-sentencing (finding bias against Black people of COMPAS risk tool used to predict future criminal activity); All Things Considered: The Hidden Discrimination In Criminal Risk-Assessment Scores, NPR (May 24, 2016), https://www.npr.org/2016/05/24/479349654/the-hidden-discrimination-in-criminal-risk-assessmentscores; Jaime Grierson, Predictive Policing Poses Discrimination Risk, Thinktank Warns, THE GUARDIAN (Sept. 15 2019), https://www.theguardian.com/uk-news/2019/sep/16/predictive-policing-poses-discrimination-risk-thinktankwarns; Melissa Hamilton, Justice Served? Discrimination in Algorithmic Risk Assessment, RESEARCH OUTREACH (2019), https://researchoutreach.org/articles/justice-served-discrimination-in-algorithmic-risk-assessment/. See also Thomas H. Cohen & Christopher T. Lowenkamp, Revalidation of the Federal TRAP. Testing the PTRA for Predictive Biases, 46 CRIMINAL JUSTICE AND BEHAVIOR 234 (2019) (finding that the PTRA predicted new criminal arrest activity equally well for non-Hispanic whites and Blacks, while for Hispanics and females, findings show the instrument validly predicting rearrest activity, with some evidence of overprediction depending upon the outcome being examined). For criticisms of Angwin et al., Machine Bias, supra, see, e.g., William Dieterich et al., COMPAS Risk Scales: Demonstrating Accuracy Equity and Predictive Parity, NORTHPOINTE, at 1, 8 (July 8, 2016), https://university.pre-trial.org/viewdocument/compas-risk-scales-demonstrating-a; Jennifer L. Doleac & Megan Stevenson, Are Criminal Risk Assessment Scores Racist?, BROOKINGS INST. (Aug. 22, 2016), https://www.brookings.edu/blog/up-front/2016/08/22/are-criminal-risk-assessment-scores-racist. For defenses of the use of RATs and artificial intelligence more generally, see, e.g., Richard Berk, An Impact Assessment of Machine Learning Risk Forecasts on Parole Board Decisions and Recidivism, 13 J. EXPERIMENTAL CRIMINOLOGY 193 (2017); Jon Kleinberg et al., Human Decisions and Machine Predictions, 133 Q. J. ECON. 237 (2018).; Arthur Rizer & Calel Watney, Artificial Intelligence Can Make Our Jail System More Efficient, Equitable and Just, 23 TEXAS REVIEW OF LAW & POLITICS (2019).

[24] BERNARD E. HARCOURT, AGAINST PREDICTION: PROFILING, POLICING, AND PUNISHING IN AN ACTUARIAL AGE (2007); Seth J. Prins & Adam Reich, Can we avoid reductionism in risk reduction?, 22 THEORETICAL CRIMINOLOGY 258, 259 (2018).

[25] See, e.g., FRANKLIN E ZIMRING & GORDON HAWKINS, INCAPACITATION: PENAL CONFINEMENT AND THE RESTRAINT OF CRIME (1995).

[26] AB-413 Education: at-promise youth (2019).

[27] E.g., The Manhattan Bail Project, by Vera Institute of Justice; Scott Kohler, Vera Institute of Justice: Manhattan Bail Project; Charles E. Ares et al, The Manhattan Bail Project: An Interim Report on the Use of Pre-Trial Parole, 38 N.Y.U. L. REV. 67 (1963); Jerome E. McElroy, Introduction to the Manhattan Bail Project, 24 FED. SENT. REP. 8 (2011).

[28] See, e.g., supra note 2.

[29] See, e.g. F.E. DEVINE, COMMERCIAL BAIL BONDING: A COMPARISON OF COMMON LAW ALTERNATIVES (1991); DAVID HIRSCHEL, ET AL., CRIMINAL JUSTICE IN ENGLAND AND THE UNITED STATES 209 (2ND ED. 2007).) (there are no professional bail bondsmen working in the English system); Timothy R. Schnacke, The History of Bail and Pre- Trial Release PRETRIAL JUSTICE INSTITUTE 6 (2010) (referring to the commercial money bail bondsman as "a profession unique to the field of American criminal justice.").

[30] See, e.g., Criminal Procedure Code, Article 321 (Law 23.984, Arg.).

[31] Jeffrey Pendleton was awaiting trial in Cook County Jail when he tested positive for COVID-19 and ultimately died on April 5, 2020. Megan Crepeau & Jason Meisner, Cook County Jail detainee dies of COVID-19, CHICAGO TRIBUNE (Apr. 7, 2020), https://www.chicagotribune.com/coronavirus/ct-coronavirus-cook-county-jail-death-20200406-42b3dkcqsbeyzflsmso6s2j4wi-story.html.

[32] Monitoring jail populations during COVID-19, VERA INSTITUTE OF JUSTICE (2020), https://www.vera.org/projects/covid-19-criminal-justice-responses/covid-19-data.

[33] There are other programs that use this acronym that authors are aware of; such as the Court Appointed Special Advocates Program and the U.S. District Court's Conviction and Sentence Alternatives Program. However, this proposed CASA is distinct and separate from these existing programs.

[34] Small jurisdictions that do not have a night court, or judicial services 24 hours a day, may have to adjust the proposed timing of hearings accordingly to their logistical capacity.

[35] In the case of LA County they are already in place as a result of the Judicial Council funding for the RAT pilot. Balassone, supra n. 17.
[36] The risk of tampering with evidence is a third ground for denying pre-trial release in many jurisdictions and could be added to this list. But it is at least partially covered by the risk of serious physical violence to an identifiable person that would include threats or other physical violence upon witnesses.
[37] Santosky v. Kramer, 455 U.S. 745, 756 (1982).
[38] U.S. v. Salerno, 481 U.S. 739, 750 (1987).
[39] The American Bar Association's Criminal Justice Standards has also articulated the clear and convincing evidence standard for pre-trial detention hearings. Pretrial Release, Standard 10-5.8 (a), ABA (2020), https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk/. See also Pretrial Detention and Release Act, CIVIL RIGHTS CORPS, https://cdn.buttercms.com/1ted5IrSx2ynPT8kitB5 (last visited Sept. 2, 2020).
[40] This standard also follows the constitutional model set out by the California Appellate Court in In re Humphrey, 19 Cal.App.5th 1006, 1034 (2018) and the US Supreme Court in United States v. Salerno, 481 U.S. 739, 742 (1987) both of which seek to elaborate on constitutional provisions and the Bail Reform Act of 1984. The court in In re Humphrey explained that:"Salerno and the cases that have followed it have recognized that 'freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.' Thus,'[t]he institutionalization of an adult by the government triggers heightened, substantive due process scrutiny... liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." Humphrey, 19 Cal.App.5th 1006, 1034 (quoting Salerno).Accordingly: "a court may not order pre-trial detention unless it finds either that the defendant has the financial ability but failed to pay the amount of bail the court finds reasonably necessary to ensure his or her appearance at future court proceedings; or that the defendant is unable to pay that amount and no less restrictive conditions of release would be sufficient to reasonably assure such appearance; or that no less restrictive nonfinancial conditions of release would be sufficient to protect the victim and the community." Salerno, 481 U.S. 739, 1026.
[41] E.g., the Mayor of New York City stated that people incarcerated at Rikers Island who were in "'immediate danger' of contracting COVID-19 should be immediately released." Jessy Edwards, Rikers Island Doctor Slams Das, Says Sick Inmates Will Need Hospitals, Ventilators, NBC NEW YORK (Mar. 23, 2020), https://www.nbcnewyork.com/news/local/jails-in-crisis-tri-state-prisoners-slowly-released-to-manage-covid-19-spread/2339878/; see also Letter from Joshua A. Klein, Deputy Solicitor General, for Xavier Becerra, Attorney General, to Jorge E. Navarette, Clerk of the Supreme Court, Supreme Court of California (Aug. 19, 2020), https://oag.ca.gov/system/files/attachments/pressdocs/Letter%20to%20Clerk%20of%20Court%20In%20re%20Kenneth%20Humphrey.pdf (in which California State Attorney General Xavier Becerra explicitly requested that the California Supreme Court make binding the Inre Kenneth Humphrey case that requires lower courts to make ability to pay determinations in bail hearings. Attorney General Becerra urged the California Supreme Court to reconsider on the grounds of the changed circumstances brought on by the threat of COVID-19 in jails.)
[42] Sarah Phillips, National Survey of Community Bail Funds, Report to the Community, SMART DECARCERATION INITIATIVE, 6 (2017), https://static1.squarespace.com/static/5a973b49ee1759a6e039e0f4/t/5c0666d1575d1fefff9645f2/1543923411576/national+survey.071417.pdf.
[43] Id. The study acknowledges that bond can be forfeited for a number of reasons unrelated to failures to appear in court, including re-arrest.
[44] Thomas Cohen and Brian Reaves, Pretrial Release of Felony Defendants in State Courts, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT (Nov. 2007), https://www.bjs.gov/content/pub/pdf/prfdsc.pdf.
[45] Alena Yarmosky, The Impact of Early Representation: An Analysis of the San Francisco Public Defender's Pre-Trial Release Unit, CALIFORNIA POLICY LAB (2018), https://www.capolicylab.org/wpcontent/uploads/2018/06/Policy-Brief-Early-Representation-Alena-Yarmosky.pdf.
[46] Id.
[47] Id.
[48] Id.
[49] Pretrial Detention and Release Act, supra n. 39.
[50] In a recent decision, the Ninth Circuit held that the Southern District of California's practice of uniformly shackling individuals pre-trial violated the Sixth Amendment's right to freedom from bodily restraint. Although the decision was overturned on procedural grounds, its reasoning relied on the Supreme Court case affirming the constitutional right to be free from restraints before a jury. In holding this way, the Supreme Court reasoned that shackling might lead to prejudice to the jury, diminishing of the presumption of innocence, impairment of the individual's mental capabilities, interference with the individual's ability to communicate with counsel, detraction from the dignity and decorum of the courtroom and physical pain. United States v. Sanchez-Gomez, 859 F.3d 649, 660 (9th Cir. 2017).
[51] See, Diamond, et al., Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions, 100 J. OF CRIM. L. AND CRIMINOLOGY 869 (2010), https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7365&context=jclc (discussing ten years of data from bail hearings in Cook County, IL that showed significant disadvantage resulting from a switch to videoconference testimony; bond cost amounts increased an average of 51% overall; between 54% and 90% for six major felonies; and, no significant change for sexual assault or homicide cases). See also Ingrid V. Eagly, Remote Adjudication in Immigration, 109 NW. U. L. REV. 933, 938 (2015) (showing that in the immigration context, televideo litigation led to depressed participation in the adversarial process, with non-televideo litigants 90% more likely to seek relief than televideo litigants).
[52] On the risks of coercion in plea bargaining and guilty pleas, see, e.g., Máximo Langer, Rethinking Plea Bargaining: The Practice and Reform in Prosecutorial Adjudication in American Criminal Procedure, 33 AMERICAN JOURNAL OF CRIMINAL LAW 223 (2006).
[53] The standard of de novo review is also similar to that proposed by Civil Rights Corps. Pretrial Detention and Release Act, supra n. 39.
[54] These case studies are fictional, not based on real people, and serve only to illustrate aspects of this report.
[55] This is similar to Santa Clara County's model in which a pre-trial services officer (PSO) meets with the detained individual shortly after their arrest and initial booking. A PSO is present 24 hours per day, seven days per week.
Office of Pretrial Services Overview, COUNTY OF SANTA CLARA (2020), https://www.sccgov.org/sites/pretrial/AboutUs/Overview/Pages/Overview.aspx.
[56] Elsie J. Smith, The Strength-Based Counseling Model, 34 THE COUNSELING PSYCHOLOGIST 13 (2006).
[57] Raj Jayadev, The Future of Pretrial Justice is not Money Bail or System Supervision – It's Freedom and Community, DE-BUG (Apr. 4, 2019), https://siliconvalleydebug.org/stories/the-future-of-pretrial-justice-is-notmoney-bail-or-system-supervision-it-s-freedom-and-community.

[58] Doyle et al., supra n. 19 at 61.
[59] The Countywide Criminal Justice Coordination Committee, Youth Diversion Subcommittee and the Los Angeles County Chief Executive's Office, A Roadmap for Advancing Youth Diversion in Los Angeles County, LOS ANGELES COUNTY (2017), http://ccjcc.lacounty.gov/LinkClick.aspx?fileticket=958nu4vfXQQ%3D&portalid=11.
[60] Phillips, supra n. 42 at 5.
[61] Fiscal Year 2019 Annual Report, THE BAIL PROJECT (2019), https://bailproject.org/wpcontent/uploads/2019/12/TBP_Annual_Report_2019.pdf.
[62] Id. at 21.
[63] On file with the authors.
[64] Michelle Alexander, The Newest Jim Crow, THE NEW YORK TIMES (Nov. 8, 2018), https://www.nytimes.com/2018/11/08/opinion/sunday/criminal-justice-reforms-race-technology.html.
[65] See, e.g.,Jennifer L. Doleac, Study after study shows ex-prisoners would be better off without intense supervision, BROOKINGS INSTITUTE (July 2, 2018), https://www.brookings.edu/blog/up-front/2018/07/02/study-after-studyshows-ex-prisoners-would-be-better-off-without-intense-supervision/ (summarizing five studies) (Doleac cites:Hennigan, et al., Five Year Outcomes in a Randomized Trial of a Community-Based Multi-Agency Intensive Supervision Juvenile Probation Program, NCJRS (Dec. 2010), https://www.ncjrs.gov/pdffiles1/nij/grants/232621.pdf; Barnes, et al., The effects of low-intensity supervision for lower-risk probationers: updated results from a randomized controlled trial, 35 J. CRIM. JUSTICE 200 (2012); Boyle, et al., An Evaluation of Day Reporting Centers for Parolees, 12(1) CRIMINOL. PUBLIC POLICY 119 (2013); Georgios Georgiou, Does increased post-release supervision of criminal offenders reduce recidivism? Evidence from a statewide quasi-experiment, 37 INT'L REV. L. & ECON. 221 (2014); Jordan M/ Hyatt & Geoffrey C. Barnes, An Experimental Evaluation of the Impact of Intensive Supervision on the Recidivism of High-Risk Probationers, 63(1) J. RES. CRIME DELINQ. 3 (2017)).
[66] One study looked at data collected by Kaiser Permanente and the Center for Disease Prevention and Control that measured how many adverse childhood experiences ("ACE") people convicted of crimes had experienced. This study found that "every negative event queried by the ACE questionnaire, with the exception of a history of neglect, was found at significantly higher rates in the histories of our offenders." James A Reavis et al., Adverse Childhood Experiences and Adult Criminality: How Long Must We Live before We Possess Our Own Lives?, 17(2) THE PERMANENTE J. 44 (2013) (women who are incarcerated have been found to have significant complex trauma and higher rates of post-traumatic stress disorder ("PTSD") than individuals who are not incarcerated). One study showed that individuals who reported four or more traumatic events were four times as likely to be arrested and five times as likely to suffer a conviction as compared to individuals who had never experienced a traumatic event. Lena J. Jäggi et al., The Relationship between Trauma, Arrest, and Incarceration History among Black Americans: Findings from the National Survey of American Life, 6(3) SOC. MENT. HEALTH 187 (2016).
[67] Mika'il DeVeaux, The Trauma of the Incarceration Experience, 48 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES L. REV. 257 (2013).
[68] Christopher Menschner and Alexandra Maul, Key Ingredients for Successful Trauma-Informed Care Implementation, CENTER FOR HEALTH CARE STRATEGIES (April 2016), https://www.chcs.org/resource/keyingredients-for-successful-trauma-informed-care-implementation/; see Hales et. al., Trauma-Informed Care Outcome Study, 29(5) RES. SOC. WORK PRACT. 529 (2019) (after the implementation of trauma-informed care in a residential substance abuse treatment program, the number of clients who remained in and completed the program increased.)
[69] See, e.g., MALCOM FEELEY, THE PROCESS IS THE PUNISHMENT (1992); ALEXANDRA NATAPOFF, PUNISHMENT WITHOUT CRIME (2018).
[70] See, e.g., TOM R. TYLER, WHY PEOPLE OBEY THE LAW (2006).
[71] For people with mental illness issues, CASA employees could refer them to appropriate mental health services and, more generally, establish specific protocols to work with them.
[72] Congressional Budget Justification and Performance Budget Request, Fiscal Year 2019, PRE-TRIAL SERVICES AGENCY FOR THE DISTRICT OF COLUMBIA 6 (2019), https://www.csosa.gov/wp-content/uploads/bsk-pdfmanager/2018/07/FY2019-PSA-CBJ-Performance-Budget-02122018-1.pdf. There are a number of subdivisions within the Agency, some focusing on treatment, IT, forensic toxicology, drug testing and compliance, supervision, and court services (including the release services unit, which conducts evaluations of accused individuals for pretrial release). Id. at 19–25. For FY 2019, the Agency requested funding for 66 full-time employees for its goal of "Risk Assessment," and 112 full-time employees for "Appropriate Treatment;" 172 full-time employees were requested for "Risk-Based Supervision." Id. at 28.
[73] Outcomes for Last Four Years, PRE-TRIAL SERVICES AGENCY FOR THE DISTRICT OF COLUMBIA, https://www.psa.gov/?q=node/558 (lsat visited Sept. 2, 2020).
[74] This number might be more appropriately broken down by subdivision, as the DC program involves a branch that is also supervisory in nature. Also, there does not appear to be arrest data released for FY 2019.
[75] This information is obtained from an audit of FY 2011-2012. Management Audit of the Office of Pre-Trial Services, COUNTY OF SANTA CLARA BOARD OF SUPERVISORS MANAGEMENT AUDIT DIVISION, 6 (2012),https://www.sccgov.org/sites/bos/Management%20Audit/Documents/PTSFinalReport.pdf.
[76] Id. at 21.
[77] Id.
[78] It is important to note that the Jail Division staff, under the Santa Clara County model, are charged only with evaluating accused individuals at the time of their booking, running their basic information through a risk assessment tool, and making a recommendation for release to the judge, but are not involved in further social service provision. See Id. at 20.
[79] See Id. at 76.
[80] Id. at 9.
[81] Id. at 76.
[82] Alicia Virani, INTERVIEW WITH DAVID MAUROFF (2020).
[83] Tracy Whitaker et al., "If You're Right For the Job, It's the Best Job In the World," NATIONAL ASSOCIATION OF SOCIAL WORKERS, 15 (2004), https://www.socialworkers.org/LinkClick.aspx?fileticket=Mr2sd4diMUA%3D&portalid=0.
[84] Id.
[85] S2101-A, codified at NY CPL § 510.40
[86] Brice Cooke, et al., Using Behavioral Science to Improve Criminal Justice Outcomes, UNIVERSITY OF CHICAGO CRIME LAB, 1 (2018).
[87] Id. at 4.

[88] Id. at 18.
[89] See County of Santa Clara Bail and Release Work Group, Final Consensus Report on Optimal Pre-trial Justice(2016), https://www.sccgov.org/sites/ceo/Documents/final-consensus-report-on-optimal-pretrial-justice.pdf (last visited Sep. 3, 2020).
[90] See Marie VanNostrand & Gena Keebler, Pretrial Risk Assessment in the Federal Court, 73(2) FED. PROBATION J. 3, 11, 22 (2009); see also Rachel Smith, Condemned to Repeat History?, 25 GEO. J. ON POVERTY L. & POL'Y 451, 467, 472 (2018) (describing how the availability of drug treatment contributed to a 90% pre-trial success rate in Kentucky and explaining how targeted drug treatment reduces the risk of pre-trial rearrest).
[91] Carla Vasquez-Noriega, et al., Supporting Individual Agency in the Pretrial Release Process, URBAN INSTITUTE (Oct. 2018), https://www.urban.org/sites/default/files/publication/99166/supporting_individual_agency_in_the_pretrial_release_ process.pdf; Collateral Costs: Incarceration's Effect on Economic Mobility, PEW CHARITABLE TRUSTS (2010), https://www.pewtrusts.org/-/media/legacy/uploadedfiles/ pcs_assets/2010/collateralcosts1pdf.pdf.
[92] Case Management, HOMEBOY INDUSTRIES, https://homeboyindustries.org/services/case-management/ (last visited Jan. 4, 2020).
[93] See VanNostrand, supra n. 90 at 6.
[94] Punishment is Not a "Service": The Injustice of Pretrial Conditions in Cook County, CHICAGO COMMUNITY BOND FUND, 1-10 (Oct. 24, 2017), https://chicagobond.org/docs/pretrialreport.pdf.
[95] Brook Hopkins et al., Principles of Pre-trial Release: Reforming Bail Without Repeating Its Harms, 108 J. CRIM. L. & CRIMINOLOGY 679, 691 (2018).
[96] Patricia Marrone Bennett et al., Los Angeles Probation Governance Study, LOS ANGELES COUNTY EXECUTIVE'S OFFICE, 48 (2018), http://file.lacounty.gov/SDSInter/probation/1033765_LAPGS_FinalMergedReport_20180206.pdf.
[97] Susan Abram, Los Angeles Wants to Turn More Probation Officers into Social Workers, THE CHRONICLE OF SOCIAL CHANGE (Nov. 20, 2019), https://chronicleofsocialchange.org/justice/juvenile-justice-2/los-angeles-wantsto-turn-more-probation-officers-into-socialworkers/ 39278?fbclid=IwAR2VL4kiyOaLdAn_glD3tyc_wHpgC1I9RTxo0KXO_T1IZqo5ju1eTNVsvXI.
[98] Erika Martin, Man fatally shot during confrontation with probation officer in Carson, KTLA 5 (Oct. 22, 2019), https://ktla.com/2019/10/22/man-dies-after-confrontation-with-probation-officers-serving-warrant-in-carson/.
[99] Jeremy Loudenback, Los Angeles Tackles an Overreliance on Pepper Spray in its Juvenile Halls, THE CHRONICLE OF SOCIAL CHANGE (Feb. 6, 2019), https://chronicleofsocialchange.org/justice/juvenile-justice-2/los-angeles-tacklesan-overreliance-on-pepper-spray-in-its-juvenile-halls/33730.
[100] Bennett et al., supra n. 96.
[101] Id., at 40.
[102] Hopkins, et al., supra n. 95 at 688-689.
[103] See, e.g., Jyoti Belur et al., A Systematic Review of the Effectiveness of the Electronic Monitoring of Offenders, 68 J. CRIM. JUSTICE 5 (2017); Rafael Di Tella & Ernesto Shargrodsky, Criminal Recidivism after Prison and Electronic Monitoring, 121 JOURNAL OF POLITICAL ECONOMY 28 (2013).
[104] See, e.g., Karla Dhungana Sainju et al., Electronic Monitoring for Pretrial Release: Assessing the Impact, 82 FED. PROBATION 3 (2018); Keith Cooprider & Judith Kerby, Practical Application of Electronic Monitoring at the Pretrial Stage, 54 FED. PROBATION 28, 33 (1990); Edna Erez et al., GPS monitoring technologies and domestic violence: An evaluation study, NCJRS (June 2012), https://www.ncjrs.gov/pdffiles1/nij/grants/238910.pdf; Kevin T. Wolff, The impact of location monitoring among U.S. pretrial defendants in the District of New Jersey. 81 FEDERAL PROBATION 8 (2017).
[105] Paige St. John, Parolee GPS ankle monitors: Major flaws found in vendor's system, LOS ANGELES TIMES, (Mar. 31, 2013), https://www.latimes.com/local/lanow/la-xpm-2013-mar-31-la-me-ln-major-flaws-found-in-parolee-gpsmonitoring-devices-20130331-story.html; Jack Karsten & Darrell M. West, Decades later, electronic monitoring of offenders is still prone to failure, BROOKINGS (Sept. 21, 2017), https://www.brookings.edu/blog/techtank/2017/09/21/decades-later-electronic-monitoring-of-offenders-is-stillprone-to-failure/.
[106] Karsten et al., supra n. 105.
[106] Id.
[107] Id
[108] Marie VanNostrand et al., State of the Science of Pretrial Release Recommendations and Supervision, PRETRIAL JUSTICE INSTITUTE (June, 2011), https://www.courts.ca.gov/partners/documents/pdr-nat-research32state_of_the_science_pretrial_recommendations_and_supervision.pdf#:~:text=STATE%20OF%20THE%20SCIENCE%20OF%20PRETRIAL%20RELEASE%20RECOMMENDATIONS,trial.%20The%20term%20LEBP%20is%20intended%20to%20reinforce.
[109] Id. at 21-24.
[110] Id.
[111] Id.
[111] Hopkins, et al., supra n. 95 at 685.
[112] Id. at 682; Patrick C. Jackson, Some Effects of Parole Supervision on Recidivism, 23 THE BRITISH JOURNAL OF CRIMINOLOGY 17 (1983); see also Alan Greenblatt, Probation and Parole Violations Are Filling Up Prisons and Costing States Billions, GOVERNING (2019), https://www.governing.com/topics/public-justice-safety/gov-paroleprobation-report-criminal-justice.html.
[113] Pre-trial Detention Reform Workgroup, Pre-trial Detention Reform: Recommendations to the Chief Justice JUDICIAL BRANCH OF CAL. 44 (2017), http://www.courts.ca.gov/documents/PDRReport-20171023.pdf; Hopkins et al., supra n. 95 at 691–692.
[114] Confined and Costly: How Supervision Violations are Filling Prisons and Burdening Budgets, COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER (Jun. 18, 2018), https://csgjusticecenter.org/confinedandcostly/.
[115] See also The Board of Directors of the National Association of Pretrial Services Agencies, Standards on Pretrial Release, Commentary § 4.3, NAT'L ASS'N OF PRETRIALL SERVS. AGENCIES, 84 (2004).
[116] Hopkins et al., supra note 95 at 692.
[117] See About Trauma Recovery Centers, ALLIANCE FOR JUSTICE AND SAFETY, https://www.traumarecoverycentermodel.org/about-trauma-recovery-centers/ (last visited Sept. 2, 2020).
[118] David Rogers & Kerry Naughton, Moving Beyond Sides: The Power and Potential of a New Public Safety and Policy Paradigm, PARTNERSHIP FOR SAFETY AND JUSTICE (2011), https://www.prisonpolicy.org/scans/Moving_Beyond_Sides_Report_Final.pdf.