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Good afternoon, ladies and gentlemen. I am honored to be here today to provide testimony on the problem of money bail and growing support across America for commonsense alternatives.

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

My testimony is also informed by my previous professional experience. Prior to joining PJI, I was a senior communications official at the New York City Department of Correction. You may recognize this as the agency that runs the Rikers Island jail facility where, during my tenure, 85 percent of the roughly 11,000 people in custody on any given day were unconvicted—meaning, they were being held in jail pretrial while pending charges were being resolved, sometimes for weeks, months, or even years. As others have recently documented, many of those men and women were detained simply due to lack of funding for money bonds. Technically released by the courts, they were caught in a trap that disproportionately affects people of color and those without financial resources.

To its credit, New York City has recognized that its jails have become de facto debtors prisons, and it is exploring and implementing ways to fix this. It is not alone. All across America, state and local officials are focusing as never before on the pretrial portion of the criminal justice system, which is increasingly recognized as the front door of mass incarceration.

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The leader, of course, is the District of Columbia, which moved away from reliance on money bail long ago and is now a model for what is possible. Over the past five years, an average 88% of the District's pretrial defendants were released pending trial—of those, 88% made all scheduled court appearances and 89% remained arrest-free.[1] Partly because of these successes, pretrial detainees make up only about 12% of the District's jail population.[2]

In recent years, many other jurisdictions, including the states of Kentucky and New Jersey, parts of Colorado, and even Pennsylvania's Allegheny County, have followed the District's lead in moving toward release decisions that are based on risk, rather than money. Others are just now embarking on this path. Earlier this year, for example, officials in New Mexico approved a referendum that, if passed by voters, promises to substantially curtail the use of money bail across the state. Last month, Alaska's governor signed sweeping legislation that includes measures authorizing a state-wide pretrial services division that would administer pretrial risk assessments and provide varying levels of pretrial supervision.

In Texas, where Sandra Bland died a year ago after three days in pretrial custody, arrested for failing to signal a lane change and unable to make $500 bail, a special committee formed in 2105 by the state's Chief Justice is poised to present proposals for reform, and several legislators have vowed to make bail reform a priority in the coming session.

The Chief Justice of California's Supreme Court has also put money bail reform on the agenda, too. In her annual State of the Judiciary Address earlier this year she called upon legislators there to reconsider the use of money bail, saying, "...it's time for us to really ask the question whether or not bail effectively serves its purpose, or does it in fact penalize the poor."[3]

The fundamental injustice of money bail has gained the attention of federal lawmakers as well. Legislation has been introduced in Congress that would cut funding to states that continue to allow defendants to be detained for lack of money bail.[4] The Department of Justice, too, has repeatedly stated its opposition. In March, for example, it sent a letter to state court judges and administrators warning that, "Courts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release."[5]

All of this movement toward reform emerges from a growing awareness that while money bail may have been conceived of as a way to see defendants released while their cases were pending, in practice it has just the opposite effect. The United States sees nearly 12 million admissions to jail every year. As a result, nearly half a million unconvicted individuals are behind bars on any given day, at an aggregate cost to taxpayers of nearly $14 billion each year. Most of these men and women are in jail for the simple reason that they are too poor to afford bail. For many, even

[1] http://www.psa.gov/?q=node/499
[2] ibid
[3] http://www.courts.ca.gov/34477.htm
[4] The No Money Bail Act of 2016. https://lieu.house.gov/media-center/press-releases/congressman-ted-w-lieu-introduces-no-money-bail-act-2016-0
[5] Dear Colleague Letter Regarding Law Enforcement Fees and Fines. https://www.justice.gov/crt/file/832461/download?utm_content=buffer4f188&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer

modest amounts can be too much. Research from the Federal Reserve shows that nearly half of all Americans say they couldn't afford an unexpected $400 emergency.[6]

Unnecessary pretrial detention can have devastating effects on low-risk incarcerated people and their families, as well as negative implications for the wider community. This is the first error in the dual system error I mentioned at the outset of my testimony. Pretrial incarceration can disrupt a person's employment, housing, education, behavioral or medical health, and even lead to lost custody of children. Research shows that even three days in jail increases a low-risk defendant's chances of being rearrested during the pretrial period by almost 40%.[7] When compared to similarly situated people who are able to secure release before trial, those who spend the *full* pretrial period in jail are more likely to be sentenced to jail or prison, and for longer times—their jail sentences are three times as long; their prison sentences twice as long.[8]

These negative consequences affect us all, one way or another, but no one experiences the injustice of money bail more than communities of color—especially African Americans. A black person in the United States is two-and-a-half times more likely to be arrested than a white person[9]—and, consequently, more likely to need to post bail. The money bonds people of color are required to pay are higher than those required of similarly situated white defendants. Among African American men, money bond amounts are, on average, 35 percent more; Latino men pay a 19 percent premium.[10] As a Philadelphia researcher recently concluded, "If wealth or race influence the likelihood of being detained pretrial—and both previous research as well as evidence presented in this paper suggest that they do—then pretrial detention exacerbates socio-economic inequalities in the criminal justice system."[11]

The motivation for moving away from this unfair, ineffective, and discriminatory practice is now being augmented by legal developments within the courts. Over the past year, a series of class action lawsuits have successfully argued that the use of money bail is a violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, which guarantees that all people accused of breaking the law will be treated equally by the courts, since two people alike in every other way may experience different outcomes—one incarceration, the other freedom—if one has access to money and the other does not.

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[6] "Report on the Economic Well-Being of U.S. Households in 2014" Board of Governors of the Federal Reserve System, http://www.federalreserve.gov/econresdata/2014-report-economic-well-being-us-households-201505.pdf.
[7] "Pretrial Criminal Justice Research," Laura and John Arnold Foundation, November 2013. http://www.pretrial.org/download/featured/Pretrial%20Criminal%20Justice%20Research%20Brief%20-%20LJAF%202013.pdf
[8] Ibid
[9] "State and County Quick Facts: USA," US Census Bureau, accessed December 1, 2013, http://quickfacts.census.gov/qfd/states/00000.html; "Crime in the United States 2012," Federal Bureau of Investigation, accessed December 1, 2013, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.- 2012.
[10] Harold Winter, The Economics of Crime: An introduction to rational crime analysis (Routledge, 2008).
[11] "Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes," https://www.law.upenn.edu/cf/faculty/mstevens/workingpapers/Distortion-of-Justice-April-2016.pdf

Fortunately, there is a practical, increasingly well-documented alternative to money bail: Release decisions based on risk, combined with effective oversight of those whose risk is determined medium or high. Instead of using money bail, court officials in well-functioning pretrial justice systems make release and supervision decisions informed by an empirically based and locally validated risk assessment tool that predicts whether a defendant is likely to appear in court or be re-arrested while on pretrial status. The success of this model forcefully refutes the often-heard assertion that requiring defendants to pay money in advance of their release is needed to ensure they show up in court. Moreover, the federal Bureau of Justice Statistics has issued a data advisory highlighting the limits of research claiming a causal relationship between money bail and court appearance.[12] The only credible research to date shows defendants appearing in court at the same high rates whether they pay money up front or not.[13]

Polls commissioned by PJI over the past several years show substantial support for risk-based release decisions. The most recent, conducted last summer, found that 83% of likely voters believed that people with money were able to buy their way out of jail while poorer people remained incarcerated. Yet, nearly three-fourths of respondents said that risk, not money, should be the primary factor in pretrial release decisions. This high rate of support transcended political, racial, and ethnic divisions. It is worth noting that nearly a third of respondents assumed that risk-based decision-making was already in use—even though, in practice, fewer than 10% of jurisdictions use an empirically derived assessment tool to guide pretrial decisions.

Much of my testimony so far has focused on the problem of low-risk defendants languishing in jail because they cannot afford money bail. In the final moments, I want to turn briefly to the second of the dual system errors I alluded to at the outset. An equally undesirable consequence of the current system—one frequently overlooked—is that nearly half of the most dangerous defendants exploit the money bail system to get out of jail pretrial[14]—even though we might all agree they they should be held in custody in the interest of public safety. All too often, we learn the tragic consequences of letting people purchase their freedom from our local news.

In summary, emerging practices show that replacing money bail with court-based release decisions informed by validated risk assessment tools and, when appropriate, effective supervision, ensures that the right people are in jail pretrial, and for the right reasons, while those who can be trusted to go home, be safe, and show up in court, are allowed to do so.

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[12] "State Court Processing Statistics Data Limitations," http://www.pretrial.org/download/law-policy/BJS%20SCPS%20Advisory%20Memo%202010.pdf

[13] "Unsecured Bonds, The As Effective and Most Efficient Pretrial Release Option," http://www.pretrial.org/download/research/Unsecured%20Bonds,%20The%20As%20Effective%20and%20Most%20Efficient%20Pretrial%20Release%20Option%20-%20Jones%202013.pdf, p. 4.

[14] "Developing a National Model for Pretrial Risk Assessment," Laura and John Arnold Foundation, November 2013. http://www.pretrial.org/download/research/Developing%20a%20National%20Model%20for%20Pretrial%20Risk%20Assessment%20-%20LJAF%202013.pdf, p. 1.

The solution to the problem of money bail is evidence-based and common sense—it is also, according to the experts, entirely affordable. Implementing this solution, however, is unlikely to be easy. Changing laws, court rules, and ingrained ways of thinking and acting, is never a simple matter—particularly when special interests with a financial incentive lobby to extend the status quo. As you continue to study this issue, questions will arise, assertions will be made. Many of the answers will be apparent upon consideration. Others may be impossible to prove where the data does not exist or has not been collected. But the plight of men and women detained unnecessarily, the personal costs suffered by their families and communities—not to mention the burden on taxpayers—coupled with the uncertainty associated with letting the small number of genuinely high-risk defendants purchase their freedom, makes this an urgent issue that demands persistence.

I wish you good luck in this endeavor and thank you for inviting me to provide this testimony.

Thank you.

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