# A New Vision for Pretrial Justice in the United States

ACLU SMART JUSTICE

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In recent years, pretrial justice reform has become a priority of the movement to end mass incarceration. The cruelty of our criminal legal system is on full display in the pretrial context. Every day, thousands of people are subject to its inhumanity.

In 2016, there were 10.6 million admissions into local jails and an average of 731,300 people in jail on any given day.[1] Remaining in jail before trial has devastating effects on people facing charges and their families. And this crisis disproportionately affects Black and brown people and those without economic resources.

Much public discourse has centered around "ending cash bail," which is over-relied on and leaves people languishing in jail simply because they cannot afford to pay. In addition to that reform, much more needs to change to create a fairer, smarter pretrial system. In other words, while we want to decrease the reliance on cash bail, it could be eliminated tomorrow and we would still have a pretrial system that is fundamentally unfair and puts too many people behind bars.

We envision a system where at least 95 percent of people are released before trial, whether immediately after arrest or within 48 hours, regardless of charge. The ACLU's goals in the pretrial context are to dramatically reduce pretrial detention, eliminate wealth-based detention, and combat bias and systemic racism. We can do this through decriminalization and diversion, strong due process protections, the expansion of the right to counsel during pretrial proceedings, and procedural reforms that adhere to constitutional principles and fundamental fairness.

There is no room for private profiteering by such system actors as for-profit bail agents or privatized pretrial supervision. The ACLU also rejects the use of risk assessment instruments to inform or support decisions about who loses their liberty after an arrest.[2] Risk assessment instruments have not been shown to fix bias in pretrial decision-making, even as a supplement to decisions made by judges.

The proposals described in this document are informed by federal constitutional principles, empirical research, and extensive conversation both within the ACLU and with partners in other organizations and other disciplines.[3] As advocates push to bring this vision to life in their jurisdictions, they should do so in partnership with stakeholders, including people and communities who are impacted by the harms of the pretrial system.

## I. Reduce the harms of the pretrial process.

The stage after an arrest but before trial is referred to as the pretrial process. This time is critical to the arrested person's case and personal outcomes. In the period following arrest, there is often little transparency as to what the process involves. This can be traumatic for people awaiting release or formal charges, as well as to their families. Here

are recommendations designed to reduce the harms and externalities of the pretrial process:

- Encourage legalization or decriminalization efforts, defelonization, and alternatives to incarceration that further divest from the system of mass incarceration, such as doing an audit of annual cost savings and investing in community-based supports, including expanded funding for comprehensive public defense. Specifically, we must ensure that diversionary programs are not implemented in a way that allows for biased decision-making and discretion to divert white people while continuing to funnel Black, Latino, and Indigenous people into the criminal legal system.

- Create a system that allows people to call or go online to reschedule their court dates. Pretrial systems should allow for as much flexibility in rescheduling without burdensome procedures as possible. This system, as with all elements of the process, should be accessible to people with disabilities and people who speak languages other than English.

- Reduce required court dates for people who have been arrested; allow people to use their court summons as a free pass on public transportation on court dates; allow people to waive in-person appearances through counsel for certain pretrial hearings; enable people who have been arrested to appear via phone or video for post-release court dates, particularly process-related hearings in which the person may not be expected to speak and during which key elements of their case are not being adjudicating (for example, scheduling conferences).

- Eliminate employment discrimination against individuals who must miss work due to required court dates.

- Provide compensation for individuals detained whose cases are later dismissed or end in acquittal.

- Provide on-site, non-mandatory childcare for people who need to attend court dates. Courts should relax any policies that disallow children, or people other than the person arrested, in courthouses and courtrooms.

## II. **Eliminate pretrial profiteering**.

Pretrial profiteering refers to the unethical and unjust manner in which government and/or private actors make money off people navigating the pretrial period. This usually occurs through the imposition of secured monetary bonds, allowance of commercial surety companies (often referred to as the for-profit bail industry) that contract with

individuals to post their bond, the levying of fees associated with a person's pretrial supervision, or the imposition of administrative fees and surcharges associated with release. This section highlights two recommendations to eliminate pretrial profiteering.

1. **Ban for-profit bail.**

   The for-profit bail industry is exploitative by nature. The industry is designed to take advantage of families in their most vulnerable moments by charging high, non-refundable premiums for services and requiring people who have been arrested and their loved ones to enter into abusive contracts. These contracts are typically entered by people as their only way out of jail, and they are often subjected to additional fees, arrest, monitoring, and even violence under contract terms. The for-profit industry has demonstrated that it will use any tactic to protect its bottom line, and its abusive practices cannot be eliminated through better regulations. As such, jurisdictions should eliminate the use of commercial sureties, adopt alternatives to for-profit bail, and work to expand the release of people on non-monetary conditions.

2. **Bar for-profit pretrial supervision companies.**

   Virtually all people who are arrested should be released pretrial, though sometimes such a release will be subject to conditions, including supervision. Pretrial supervision may sometimes involve periodic check-ins or electronic monitoring, for example, which may carry attendant costs. The cases where pretrial supervision is deemed necessary should be rare. Regardless of the type of supervision required, any associated costs should not be passed on to people released pretrial. In short, people should not have to bear the costs of their own supervision, and certainly companies should not be able to profit off people being released pretrial.

## III. Create a wide net of people eligible for mandatory and presumptive pre-booking release with no conditions.

1. Encourage decriminalization efforts or alternatives to incarceration. These alternatives should advance decarceration goals without compounding or exacerbating disparities resulting from bias and systemic racism.

2. Institute mandatory citation/summons (immediate release) practices, instead of booking, for as large a number of people as possible. We generally suggest triggering mandatory pre-booking release based on charge level, though advocates should work strategically to best ensure diversion practices are widespread.

i. The "least-serious"[4] charges that qualify for mandatory citation/summons (immediate release) should be informed by the data in the jurisdiction on who is arrested and jailed pretrial, and for what charges, including by race, gender, and other demographics of interest.

ii. Jurisdictions should engage in testing to ensure that sorting metrics are not manipulated to trigger booking and to gauge the general efficacy of this pre-booking sorting practice.

3. In addition to a range of charges for which diversion is mandatory, jurisdictions should also utilize presumptive citation/summons (instead of booking) for all other non-serious charges. This is an additional category of pre-booking release, at the discretion of arresting officers, beyond the mandatory booking diversion outlined above. Those subject to this discretionary release would still receive release immediately in lieu of booking and would not need to proceed to a further hearing as outlined below.

4. "No conditions" means that people who are released under this protocol should only be required to appear for necessary court appearances and to cooperate with the criminal legal process. Release agreements for people under this protocol should not include *any* additional terms, such as reporting requirements or any liberty-restricting condition,[5] including a person's agreeing not to travel out of state (with or without court permission).

5. Court date reminders should be offered to all who are released, regardless of the mechanism of release (i.e., citation or release on conditions).

## IV. Facilitate speedy individualized release hearings — distinct from "detention hearings" — with necessary due process protections.

1. Everyone not provided a citation/summons (released without booking) shall be provided individualized release hearings[6] within no more than 24 hours,[7] with counsel, and with a strong presumption of release without conditions (see "no conditions" definition above).

2. At these hearings, people who have been arrested shall have the right to discovery and to present and cross-examine any witnesses. Available discovery will likely be limited as compared with discovery in detention hearings, due to time constraints.

3. The bases or "risks" upon which the court can impose individualized conditions shall be limited to imminent and willful flight or imminent serious physical harm to a reasonably identifiable person.[8] Harm to a "specific" or "reasonably identifiable" person may encompass persons whose exact identities are unknown. (For example, upon a credible and specific threat that an arrested person will return to a place of business with the intent to hurt customers or employees there, those customers/employees may be considered "reasonably identifiable," even if specific names are unknown).

    i. The court may not impose any liberty-restricting conditions unless there is specific evidence that the person poses an imminent risk of willful flight or imminent threat of serious physical harm to a reasonably identifiable person.[9] Any liberty-restricting conditions set must be determined, by clear and convincing evidence, to be the least restrictive necessary to mitigate a specific identified threat.[10]

    ii. Liberty-restricting conditions trigger heightened speedy trial rights. Those released with liberty-restricting conditions should be on a shorter clock than those released without liberty-restricting conditions, but they may be on a longer clock than for persons detained. (*See* Part VI, below).

    iii. Where the court sets other (i.e. not "liberty-restricting") conditions (e.g. telephonic check-ins), they must still be the least restrictive necessary and the presumption is release with no conditions. The imposition of these other conditions must be based on the court's finding that the condition will substantially increase the person's likelihood of success upon release, and it still requires a specific finding of a risk of flight or serious physical harm to another.

    iv. Jurisdictions should offer pretrial supports, such as reminder calls/texts ahead of a court date and transportation assistance.

4. The judicial officer shall not set an unaffordable bail and must engage in an ability-to-pay inquiry to ensure that any bail condition set will not lead to continued incarceration. Further, no one shall be required to pay for pretrial release conditions (see Part VI below for more on "ability to pay"). Jurisdictions shall not impose a fee to facilitate a person's release.

5. The imposition of *any* condition must be narrowly tailored to the individual (no blanket conditions).

6. Courts shall not impose conditions that are substantially likely to interfere with a person's ability to fulfill the role of primary caregiver or primary household supporter, where applicable.

## V. Narrowly limit who can be jailed before conviction.

1. When a person is arrested and accused of an extremely serious charge (e.g., first degree murder), and the government moves for — and the court grants — a detention hearing[11] based on evidence of serious, articulable threat of physical violence to specific persons or the community or of willful flight to avoid prosecution,[12] the individual may proceed to a distinct detention hearing. The court must review a motion for a detention hearing, and it may grant the motion if it presents sufficient facts to create reasonable likelihood that the person poses a serious, articulable risk of physical violence to specific persons or willful flight.

2. If the court grants the motion, the detention hearing shall take place within 48 hours[13] of the government's motion. All people arrested should be afforded the presumption of release at the detention hearing. At the hearing, the evidentiary standard is increased from the standard for setting a hearing to "clear and convincing evidence," meaning a court may only impose detention if it finds by clear and convincing evidence that no condition/combination of conditions can mitigate a specific, imminent threat of serious physical harm to a reasonably identifiable person or of willful flight.[14]

    i. Courts shall be required to enter their findings with respect to the detention decision on the record.

3. Once again, "public safety" must be defined clearly and narrowly. For example, "the court finds based on clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to a reasonably identifiable person."[15] The potential harm identified must be serious, specific, and supported by evidence.

4. Any detention hearing must include the right to counsel, to discovery, to present evidence, and to cross-examine witnesses.

5. Jurisdictions must eliminate all categories of mandatory detention as well as detention based on lower evidentiary standards, such as "proof evident or presumption great," including for capital offenses. The standard of evidence to support a court's decision to detain should always be at least "clear and convincing."

6. A violation of a condition of release or a subsequent arrest, for people who are currently released pretrial, must not create a 'short-cut' to detention. People who violate conditions or who are rearrested should be entitled to the same process, outlined in this document, as those who are first arrested.

7. Accusation of a serious crime alone should not be considered a sufficient basis for detention.

## VI. Ensure robust appeal rights and speedy trial protections for persons who are jailed as well as for those released on liberty-restricting conditions.

Detention or conditions decisions should never be absolute. People should be able to appeal detention decisions, and people released on conditions should be able to file motions to reconsider those conditions of release. The greater the restriction on a person's liberty, the stronger a person's speedy trial rights should be.

1. An order imposing detention, or an order of release on liberty-restricting conditions, must be appealable as a matter of right, with a right to counsel on appeal.

    i. An appeal should not automatically pause the speedy trial clock, discussed below.

2. The appellate court must review *de novo*, or anew, the trial court's justifications for detention.

3. The appellate court must render a decision within 10 days of the perfected appeal.

4. Even after exhausting the appeal process, a person either released on liberty-restricting conditions or detained should not be prevented from filing a later motion for the court to reconsider detention or to modify conditions. Courts should review motions to reconsider or modify conditions to determine whether new evidence[16] or improper delay justifies a modification of the original detention or conditions order. A motion to modify conditions or revisit a pretrial detention order shall not pause the speedy trial clock.

5. People who are jailed pretrial shall be afforded stronger speedy trial rights. They shall be entitled to immediate release — not necessarily dismissal of the indictment or conviction — if the government fails to make a formal

charging decision within 14 days of jailing, and, absent pausing the clock for good causes articulated in speedy trial statute, if the government does not proceed to trial within 30 days.

i. Excludable time must be limited as extensively as possible to protect against prosecutorial manipulation and/or systemic court delays.

6. People who are released on liberty-restricting conditions shall be afforded strong speedy trial rights. A formal charging decision should occur within 30 days of release on conditions, and — absent tolling for good causes articulated in speedy trial statute — a trial should occur within 60 days of release on conditions, or the person shall be entitled to have the conditions removed.

7. Under no circumstances should a person be detained longer than the maximum sentence allowable if convicted of the charges.

## VII. Actuarial algorithms should play no role in pretrial systems.

While some existing tools are worse than others and there is a broad range of algorithmic tools currently used by criminal justice agencies, the ACLU has significant concerns about actuarial algorithms' potentially detrimental racial impact, lack of transparency, and limited predictive value. Moreover, algorithmic tools do not provide the specific, individualized information required to justify limiting a person's pretrial liberty.

Even with improvements they are unlikely to be able to safely and accurately predict willful flight or commission of violence. Thus, these tools should not be used to inform decision-making that could result in an infringement of a person's fundamental rights, such as those involving detention or imposing other liberty-restricting conditions. There is no role for algorithmic tools in our pretrial vision.[17]

This position should not be misconstrued as support for the for-profit bail industry, maintaining dependence on money bail, or over-incarceration pretrial. As stated throughout the remainder of this document, we believe a dramatic reworking of current practice is urgently necessary.

## VIII. Eliminate wealth-based discrimination.

Wealth-based discrimination in the pretrial context refers to a court's approach to pretrial release and the setting of monetary bail in a manner that deprives people of

their liberty simply because they are too poor to pay. This discrimination often results from the use of bail schedules and the absence of meaningful presumptions of indigence or standards for inquiries into a person's ability to pay.

1. Any bail amount set (whether secured or unsecured) must be in an amount that the person is able to afford based on their affidavit and/or testimony, subject to any rebuttal evidence the government may have, at the release hearing.[18] In determining what a person is "able to afford," courts should proceed in two steps:

    i. First, the judge shall exclude from consideration any income derived from public benefits (i.e. SSI, SSDI, TANF) and any income up to the federal poverty level. If the person has no income outside of public benefits or a household income below the federal poverty level, that person shall be assumed unable to pay <u>any</u> bail amount.

    ii. If the person has household income above the federal poverty level that is not derived from public benefits, the judge shall consider what the individual could reasonably pay within 24 hours of arrest, subject to the exclusions in (i).

2. Rebuttal evidence regarding ability to pay should be limited to substantiated income or inflows of cash or liquid assets from other sources. The government must be able to establish that this income or other money is not allocated to household necessities, considering an individual's circumstances.

3. A person who has been arrested cannot be required to pay for any conditions of release.

4. Jurisdictions must eliminate all fees on monetary bonds, whether secured or unsecured.

## Conclusion

These proposals constitute our vision for pretrial justice. As advocates engage in discrete areas of the system – most notably, cash bail, pretrial services, and risk assessments – it is crucial that we not lose sight of the bigger picture. While each element is important, we cannot actualize justice without vigilant attention to the system as a whole. We believe that collective investment and advocacy around these proposals, implemented in tandem, can produce the 95% vision of release and deliver on a more just system for people pretrial.

## Appendix A: Glossary of Terms

**Ability to pay:** Because it is unconstitutional (and bad policy) to incarcerate people based on their inability to pay a certain amount of money, any reform system that retains a role for money bail must incorporate determinations of an arrestee's "ability to pay" a given amount of bail. A person's "ability to pay" should ideally be construed to mean their "present ability to pay the full amount" of any bond – secured or unsecured – that is set. This can be measured as the amount the person could reasonably pay within 24 hours, excluding any public benefits and any income up to the federal poverty level. In other words, an individual should not be deemed "able" to pay a bond (therefore making the bond "affordable") through borrowing money from others, including a for-profit bail bondsman. Moreover, a person's "ability to pay" should not contemplate prospective employment or selling personal or real property that would significantly hinder their ability to meet their needs. Some state statutes already define "ability to pay" in other contexts, but advocates should carefully review any existing definitions to determine if they are appropriate to repurpose in the bail setting context.

**Bail:** "Bail" is a mechanism for pretrial release, often with conditions, that traditionally has the goal of ensuring defendants return to court. The ACLU's basic position is simple: Most people should be released without conditions, and when courts need to assure a person's return to court, they should employ the least restrictive means necessary to reach that aim. *Affordable* money bail (secured or unsecured) is not inherently problematic, but money bail may never be used to enforce a system of wealth-based detention. *See also* secured bond, surety bond, unsecured bond.

**Conditions** (of release): "Conditions" can mean almost anything, including phone call check-ins from arrestees to a pretrial services agency, or something more serious like an order of no contact with certain persons, drug or mental health treatment, or location monitoring. Money bail is often called a "financial condition of release," and other conditions (supervision, no contact orders, treatment, etc.) are often called "non-financial conditions of release." Advocates must ensure that "nonfinancial" conditions really do not come at a cost to the released person, as many jurisdictions charge handsomely for these forms of pretrial release (often referred to as "user-funded" or "pay to play" regimes). *See also* liberty-restricting conditions.

**Flight** (as distinct from "failure to appear")**: "**Flight" is a deliberate decision to avoid prosecution. It is generally associated with leaving the jurisdiction in which the criminal case is pending. While it is often approximated by using failure to appear data, true flight is different than failure to appear. Where criminal history data is used to approximate a risk of flight, an individual should only be considered to have willfully failed to appear or "fled" if she failed to appear for a required court hearing and did not subsequently appear in court for any reason — and was not in custody or hospitalized elsewhere — within the next six months.[19]

**Forfeiture** (of a bond)**: "**Forfeiture" is a process that initiates after an arrestee who has posted bond (or promised to pay unsecured bond) fails to appear for a required court date. In some minority states, such as New Jersey, bond can be forfeited for new arrests or failure to abide by pretrial release conditions, but in the majority of states, forfeiture is only allowed for failure to appear. Forfeiture is not automatic, but sets off its own chain of legal proceedings. In many places forfeiture laws favor for-profit bail agents who have lobbied for these protections.

**Imminent** (as in, an "imminent threat" of harm): "Imminent" means likely to occur in the immediate future, defined in other legal contexts as within 24-48 hours. While the threshold for imminence requires line-drawing that is best left to local stakeholders and community members, advocates should define it as narrowly as possible. In no circumstances should the temporal scope of any potential public safety threats be measured beyond time constraints imagined under the relevant speedy trial clock.

**Liberty-restricting conditions**: "Liberty restricting conditions" are conditions of release that will cause moderate to serious hardship in an individual's ability to engage in their regular life activities (such as work, child care, or other responsibilities). Restrictions on travel, no-contact orders, orders imposing house arrest, a third-party custodian, a curfew, drug or alcohol monitoring, or GPS monitoring should all be considered "liberty-restricting conditions," though this need not be an exhaustive list.

**Secured bond:** A "secured bond" is one in which cash or property is posted up front, as a prerequisite for release.

**"Serious" charge:** Under the metric contemplated in this document, a person accused of a "non-serious" charge receives quick mandatory pretrial release without requiring booking into a jail. By contrast, a person charged with something "serious" could be put through booking and either a release hearing (where release is still the presumption) or a detention hearing if the district attorney brings a successful motion for a detention hearing. Defining something "serious" enough to warrant the possibility of onerous release conditions or detention requires line-drawing that is best left to local stakeholders and community members, but advocates should define it as narrowly as possible. Generally speaking, however, a "serious" charge should involve an element of serious physical harm (not merely a "threat" of any physical harm) to another. This line-drawing should be informed by data keeping in mind our decarceration and racial equity goals. We want to make sure as many people as possible qualify for mandatory pretrial release, while keeping in mind that the distribution of charges is not even across populations, and so pursue release/diversion metrics that do not inordinately benefit white people to the detriment of Black, Latino, and Indigenous people.

**Surety bond:** A "surety bond" is a money bond that requires a third party to sign for an arrestee. Often this "surety" is a private, for-profit bail bond agent (typically backed by an insurance company), who files a bond with the court to guarantee a person's appearance in court or pay of the bond in full. The fee paid to the bail agent (often 10 percent but sometimes more) is not returned to the arrestee regardless of their compliance or the ultimate outcome of the case — even if charges are dismissed.

**Threat of serious physical harm:** A "threat of serious physical harm" means a likelihood, established by individualized facts, of either (1) imminent serious bodily injury to a specifically identifiable person or persons in the community or (2) specific evidence of an imminent, credible threat of serious violence to unknown but reasonably identifiable persons, such as through credible threats of acts of terrorism. The mere possibility of some physical harm or the presence of violence as a technical element of a pending charge should not be taken to satisfy this criteria.

**Unsecured Bond:** An "unsecured bond" is a bond in which the cash or property is only due if an arrestee fails to appear for court.

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[1] Bureau of Justice Statistics, "Jail Inmates in 2016" (Feb. 2018), https://www.bjs.gov/content/pub/pdf/ji16_sum.pdf.

[2] *See* Leadership Conference on Civil and Human Rights, "The Use of Pretrial "Risk Assessment" Instruments: A Shared Statement of Civil Rights Concerns," (n.d.), http://civilrightsdocs.info/pdf/criminal-justice/Pretrial-Risk-Assessment-Full.pdf. The ACLU is a signatory to this statement.

[3] While considerable research and deliberation went into this document, it is meant to be thought of as a "living document" subject to update as we learn more; for instance, further empirical research or developments in legal precedent may lead us to modify this document.

[4] This document refers to terms such as the "least serious" or "non-serious" charges and does not define those terms. The idea is to divert as many people from being booked into jail as possible, but local advocates should engage in the line-drawing of what charges they can put into this automatic citation/summons category.

[5] The term "liberty-restricting conditions" (e.g., travel restrictions, no-contact orders, GPS monitoring) is defined in the appendix attached.

[6] Release hearings are solely to determine what conditions, if any, are necessary: detention (including detention on unaffordable money bail) is not an option for a court to impose. As discussed below and illustrated in the visualizations, when a sufficient evidentiary basis exists, a prosecutor may move for a detention hearing, in which case a release hearing would not be necessary.

[7] If a jurisdiction has additional, speedier ways to facilitate release such that individuals can be released from custody without waiting to see a judge, this provision is not meant to disrupt any such system, but rather intended to provide a ceiling of 24 hours to bring anyone not otherwise released before a judge to make a release order.

[8] There are few 'risks' that are serious enough to justify restrictions on a person's liberty, even in the context of a release. The goal here is to limit any catch-all categories of 'risk' that are used to justify both conditions of release and detention, and to narrow the types of evidence that may be proffered to

support a determination of the presence of such a 'risk.' If your jurisdiction already limits the relevant "risks" more narrowly than this (i.e. New York which only considers flight, not dangerousness), this document is not intended to encourage jurisdictions to widen those considerations.

[9] In the glossary in Appendix A, terms such as "imminent," "flight risk" and "serious threat of physical harm" are defined with more specificity.

[10] Again, note that the relevant "risks" under this model are (1) flight (not just failure to appear); and (2) imminent threat of serious physical harm to a reasonably identifiable person (not just rearrest for any new offense). Avoid undefined, vague terms such as "community safety."

[11] By design, these motions need to be filed before the default release hearing.

[12] As discussed in note 10, *supra*, the goal here is to limit the categories of 'risk' that are used to justify detention. If your jurisdiction already limits the relevant "risks" more narrowly than this (i.e. California does not consider flight, or New York which does not consider dangerousness), this document is not intended to encourage jurisdictions to widen those considerations.

[13] Accused persons may request a short (no more than three days) continuance of this hearing in order to prepare based on a finding of good cause. The government may only request a continuance (no more than one day) in the case of unforeseen circumstances.

[14] Given technological realities, the possibility of flight is remote. Thus, where the identified "threat" is flight, there shall be an added rebuttable presumption that conditions will mitigate the possibility of successful flight.

[15] Consider CA Constitutional language allowing pretrial detention when, *inter alia*, a person arrested is in one of the following scenarios: Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

[16] "New evidence" could include (a) a third-party custodian has been identified such that the court should reconsider release on conditions instead of detention, or (b) a new job requires reconsideration of a travel restriction condition.

[17] We recognize that for some jurisdictions, risk assessment tools are a current or impending reality. As noted above, a companion document will provide guidance to advocates in such jurisdictions.

[18] The ACLU does not oppose money bail in and of itself (in many instances, an affordable bond or an affordable unsecured bond may prove to be the least restrictive and most liberty-promoting arrangement); we oppose wealth-based detention and pretrial profiteering.

[19] The window of time during which a person would have to not be recovered or voluntarily appear in court may be calibrated differently depending on local tolerance (for instance, six months may seem too generous a margin to not yet trigger an instance of "flight"). The point is to define "flight" as narrowly as we can, and emphasize that failures to appear are usually innocuous and very often preventable.