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WHITE PAPER

Using Data and Multiple Systems to Elevate the Pretrial Process



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Introduction

We have developed this white paper to examine the pretrial process, its challenges, and potential solutions to help alleviate some of those challenges. The solution we'll explore is bringing data together from multiple systems to help judges make more informed decisions — instead of solely relying on a risk assessment tool and/or the judge's own background and expertise. This solution will help evolve the pretrial process to benefit defendants, courts, counties, municipalities, and citizens.

In this paper, we'll define what pretrial is and the challenges many defendants and jurisdictions face with this process, including the current state of the cash bail bond industry and its effects on pretrial release.

We'll explore how the bond system's injustices and inefficiencies came to light, leading to a bond reform movement with work by organizations such as the Arnold Institute, which created a widely used assessment tool to assist with the pretrial process. We'll also provide more details on the role of technology in helping pretrial become more efficient and less costly, as well as some of the issues associated with assessment tools.

We'll then look at what the future vision of pretrial could look like with the assistance of technology that can tie together multiple systems across separate agencies. Bringing together various data sets from multiple justice agencies can provide a wider variety of data leading

to better informed decision making for the pretrial process. As we explore this vision, we'll cover topics that demonstrate how our vision of pretrial could work, including how technology could improve workflow and efficiency, and help increase the chances of a successful pretrial outcome.

Lastly, we'll talk about how continuously tracking the data from these multiple systems can help courts assess pretrial program effectiveness, address further pretrial issues, and continuously improve the pretrial process to help reduce the bail/bond burden that holds many defendants in the jail population even though they haven't been charged or convicted of a crime.



75%



of defendants held in jails haven't been convicted or sentenced

Pretrial Processes and the Challenges That Come With Them

Typically, after an arrest, a party is incarcerated and awaits a detention hearing to determine if they will wait for their trial in jail or out of custody. Pretrial release processes evaluate the incarcerated person to determine if they are a risk to society and if they have a good chance of showing up to court, with the judge then deciding if a pretrial release from jail should happen or not.

In a non-digital world, the pretrial process can take days or weeks, putting the incarcerated party's livelihood for employment and living standards at risk. This process can also be complex with an abundance of paper being shuffled between the court, bond company, magistrate and other agencies. While this process works itself out to get to a release hearing, the defendant remains incarcerated and the jurisdiction incurs significant expenses to house these detainees.

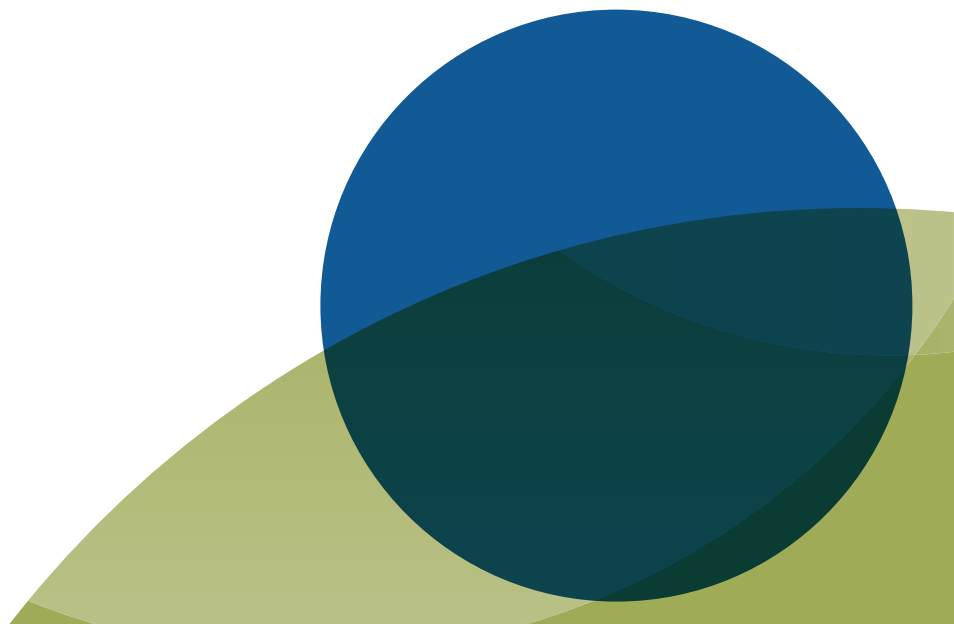
\$14^{BILLION}

Taxpayer costs to house these defendants

According to a recent study¹, more than 75% of defendants held in jails, just over 500,000 people, haven't been convicted or sentenced. Many are detained in local jails awaiting pretrial because they can't afford the bail amount set to secure their release. Housing these defendants costs the American tax payers, on average, \$14 billion annually.²

These incarcerations also come at a great cost and operational impact to facilities that house these inmates. The large inmate population awaiting pretrial at times leads to overcrowding and means that these facilities have to deal with a need for more staff, more space, and more funding just to maintain a secure space.

The decisions made during the pretrial stage have a domino effect on a defendant's future and, consequently, on costs to the community. Individuals incarcerated pretrial, with all other factors being equal, are more likely to be sentenced to prison, and more likely to receive a longer sentence. Prison costs are high, and a significant



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percentage of offenders who are released from prison commit a new crime within three years, beginning the cycle again.³ Incarcerated defendants also experience what are called “collateral consequences” resulting from their separation from family and community.

Defendants in jail during pretrial often lose their jobs, creating costs for the defendants and the employers, along with the risk of losing healthcare benefits and housing. Jailed defendants may be unable to care for their families or maintain marriages and may lose custody of children. These social and economic costs can persist beyond the defendant's court involvement, and in the case of children, can have a multi-generational effect.

There are also issues with how race impacts who is detained or released during the pretrial process. As of 2002⁴ (the last time the government collected this data nationally), about 29% of people in local jails were unconvicted — that is, locked up while awaiting trial or another hearing. Nearly 7 in 10 (69%) of these detainees were people of color, with Black (43%) and Hispanic (19.6%) defendants especially overrepresented compared to their share of the total U.S. population.⁵

Since then, according to a recent PrisonPolicy.org article, pretrial populations have more than doubled in size⁶, and unconvicted defendants now make up about two-thirds⁷ (65%) of jail populations nationally. With far more people exposed to the harms of pretrial detention than before, the question of racial justice in the pretrial process is an urgent one — but the lack of national data has made it hard to provide a definitive answer.

Evolving to Digital Pretrial Assessments

The vision of evolving how pretrial processes could work and benefit all involved parties started with using automated, evidence-based pretrial risk assessment tools to predict the risk of releasing a defendant prior to the trial. These assessments produce numerical scores as predictors of pretrial success and pretrial failure instead of relying on the bail system and the defendant's ability to pay. Use of these success factors resulted in higher release rates of low-risk defendants, higher detention rates of high-risk defendants, and lower failure-to-appear (FTA) rates.





In its 2012-2013 Policy Paper on Evidence-Based Pretrial Release, the Conference of State Court Administrators (COSCA) advocated the presumptive use of non-financial release conditions and suggested that court leaders adopt evidence-based risk assessment to set pretrial release conditions. The Conference of Chief Justices endorsed COSCA's policy position in 2013, and subsequently, several state and local courts have engaged in pretrial justice reform efforts.

In a 2016 paper by the Joint Technology Committee (JTC), which is comprised of representatives from COSCA, the National Association for Court Management (NACM) and the National Center for State Courts (NCSC), it stated that a pretrial assessment tool would ideally be

automated and integrated with existing systems that house relevant data needed to complete the risk assessment.⁸

In addition to creating time-saving efficiencies for the court, automation also reduces the potential of human error during data entry. With so many data sources to consider for the risk assessment, data may need to be collected manually from other local, state, and federal databases.

The JTC identified at least two technology components in an automated pretrial risk assessment process: the pretrial risk assessment tool and the pretrial case management system, which houses all relevant

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information regarding the defendant. A pretrial risk assessment system automates the process of evaluating the defendant's charging document and criminal history to create a risk assessment score.

Data for pretrial assessment comes from multiple sources including charging documents; local, state, and federal criminal history databases; and directly from the defendant.

Many of the key factors most predictive of pretrial failure⁹ can be obtained from a defendant's criminal history and charging documents:

- Prior FTA
- Prior Convictions
- Presently Charged with a Felony
- Being Unemployed
- History of Drug Abuse
- Having a Pending Case

Data may also be collected for other factors that are often thought to be predictive of pretrial failure, including conditions of release and results of drug testing. Most states also have statutory factors that may be considered, such as community ties and seriousness of the offense.

This is all part of a more recent shift in many states across the country, supported by legislation such as SB10 in California, that is looking to replace the cash bond process with these types of assessments.

In addition to using software to administer and manage these assessments in an objective fashion, technology can be used to help keep track of defendants on pretrial release and restrict their movements. Supervision management software such as Tyler Supervision™ allows pretrial release clients to check-in remotely instead of driving into the office and taking time off of work, ensuring they keep up with the conditions of their release. With most of these clients living paycheck to paycheck, one afternoon off of work can have major financial impacts on their lives.



Examples of How Tech Has Improved Pretrial for Some States

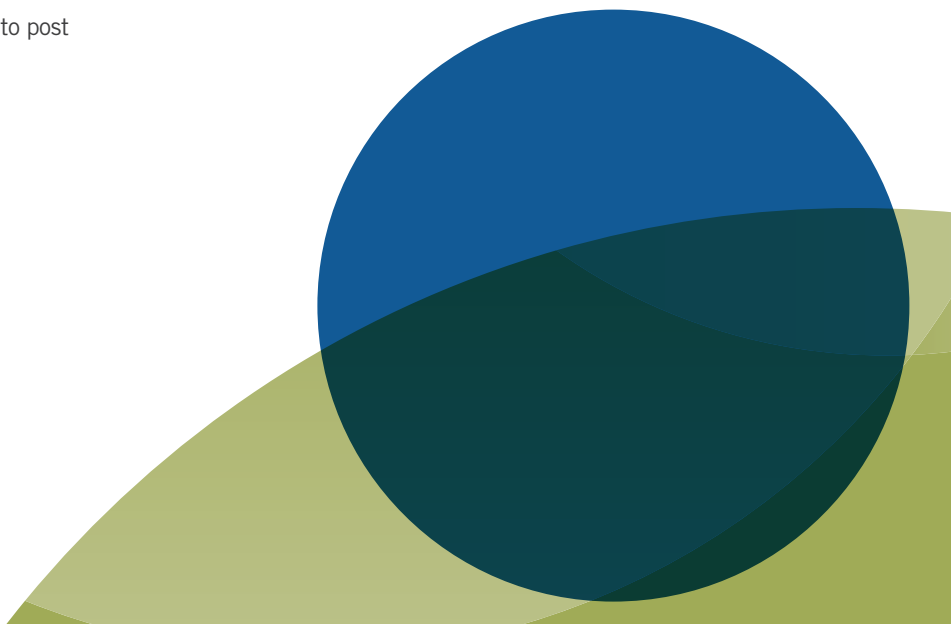
According to a 2018 report from New Jersey's Criminal Justice Reform (CJR), New Jersey has moved away from a system that relied heavily on monetary bail. Two years into its existence, CJR has begun to remove many of the inequities created by the prior approach to pretrial release. At the same time, court appearance rates for defendants released pretrial under the CJR program remain high while the rate of alleged new criminal activity for those defendants remains low.

CJR defendants are no more likely to be charged with a new crime or fail to appear in court than defendants released on bail under the old system. Under the risk-based system of CJR, monetary bail is rarely used. Lower-risk individuals no longer spend weeks and months in jail because they lack the financial resources to post

relatively small amounts of bail. More than 70% of CJR defendants are released on a summons pending the disposition of their cases — without first being sent to jail. And a majority of defendants arrested on complaint warrants are released on conditions that pretrial services officers monitor.

Of the 135,009 defendants charged with a summons or a warrant in 2018, 93.5% received pretrial release. This is part of a release trend that has reduced their pretrial jail population from 8,899 in 2015 to 4,995 at the end of 2018, a 43.9% decrease in that three-year span.¹⁰

On the other end of the spectrum, higher-risk individuals who pose a danger to the community or a substantial risk of flight are no longer able to secure their release simply because they have access to funds.



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Another example is Fulton County, Georgia (Atlanta), which had booked more than 24,000 inmates in 2016. Fulton County's pretrial process involves gathering and collecting information for all arrestees charged with criminal offenses and booked into Fulton County jail. They track compliance success rates versus the general populations.

Fulton County automated much of the data collection process and automatically populates forms, helping to streamline the process and make better decisions. The data is also shared with other agencies, which helps to improve their processes. For example, the county's pretrial process facilitates referrals to the public defender's office, as well as produces summary documents to facilitate a judge's final release decision.

After leveraging technology as part of its pretrial release process, the county court determined that 14,000 of the 24,000 inmates booked in 2016 were eligible for an interview as part of the court's pretrial process. Of those inmates, 3,500 were recommended for pretrial release, while more than 2,000 release recommendations were granted.

At the same time, the Fulton Pretrial Program has maintained low FTA rates of approximately 3%, in comparison to greater than 10% for defendants on other types of release.

Fulton County Pretrial Process Results

25%

eligible inmates
recommended
for release

14%

individuals
released to
pretrial services

\$7.4 MILLION

pretrial program
annual savings
(\$77 per inmate, per day)



Issues Associated With Pretrial Assessments

Pretrial assessment tools, such as the Arnold Assessment, provide judges a great deal of data they may not have had in one place before, which could lead to better, more informed decision-making. But, the data and algorithms that comprise these assessment tools shouldn't stand alone, and that data should be part of a judge's full knowledge base when deciding between detention or release.

In his presentation at the 2019 Court Technology Conference (CTC), David Robinson, managing director at Upturn – a nonprofit organization that addresses equity and justice in the design, governance, and use of digital technology – and visiting scientist at Cornell University, noted that risk assessment tools learn from, predict, and reinforce long standing racial disparities. So even though the risk assessment tool may have access to more data, relying on that one tool still has the potential of introducing a biased view of the party in question as part of the pretrial process.

Bringing Multiple Data Sources Together to Improve Results

Using data that lives in multiple systems, across a variety of agencies, to make pretrial decisions should be the ultimate goal. Whether the data is pulled individually from each system for review or is all analyzed at once through automated assessment algorithms, utilizing data from multiple sources — like jail records and court case management systems to see what kind of criminal history may exist, and public records databases to explore employment history, tax records, and even if the defendant is a homeowner or not — allows judges to get a more complete picture of the defendant's situation when deciding upon pretrial release. Having access to multiple systems that supply a broad range of information about risk factors helps judges make the best decision about pretrial release of an individual.

Another major opportunity that comes with using multiple data sources is that jurisdictions can track and measure outcomes of pretrial release programs across court, jail, supervision, and other systems. Collecting and sharing data at the end of the process on those released pretrial (relative to FTAs, recidivism, drug use, employment history, etc.) allow jurisdictions to measure the impact of their pretrial programs.

Data on risk factors is typically available in case management and criminal history systems. Some jurisdictions may also collect data from the defendant directly on employment status, residence, community ties, mental health, and self-reported substance abuse. By linking together multiple systems, as Tyler is able to do across court, supervision, public safety, and correction systems, judges can gain access to a broader and deeper view of criminal history on the front end.



Once data is collected and consolidated about as many risk factors as possible, then statistical analyses can reveal the combination of factors that are the most accurate predictor of a defendant's pretrial risk. Moreover, when analyses show which information is not predictive, the fact that it is not predictive information is valuable to stakeholders who may have assumed or practiced as if these factors were predictive. In both cases, being able to consolidate information across a variety of systems is required.

Measuring outcomes requires access to data across systems in order to determine whether pretrial release programs are having their desired effect. Data analysis and insights can be obtained by looking across court, public safety, and Health and Human Services databases, and even across jurisdictions, with tools like Socrata. This helps judges and court administrators make better decisions about which pretrial programs are working and how to make adjustments.

Ultimately, the goal of the pretrial process is to keep communities safer by incarcerating people that pose a real risk or harm, and people that don't pose a threat and can be released don't lose their jobs, homes, and families due to being held awaiting their hearing.

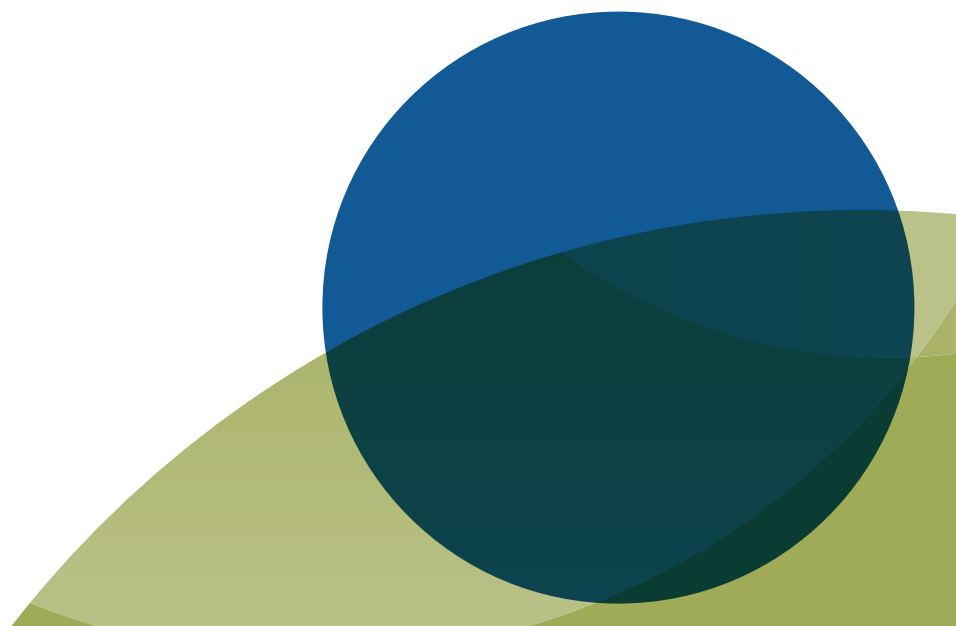
At the same time, a highly performing pretrial process will lead to lower numbers of people in jail or prison, less disruption to the lives of defendants, and a lower burden on taxpayers, with the money that usually is spent on housing inmates awaiting hearings shifting into other, more impactful programs that benefit the community.

This type of shift in processes doesn't happen overnight. Bringing this data together requires multiple stakeholders and a company like Tyler, that already has multiple systems as part of its network, to bring this vision to life. It's also a vision and process that's ever evolving. So as technology and legislation change, this process can adjust and adapt to ensure the systems are optimized to provide the information needed for the pretrial process.

With the right tools in place, we can create and maintain a pretrial process that reduces the burden on defendants and taxpayers and helps jurisdictions develop an efficient, successful pretrial that works for all involved parties. This helps reduce jail populations, improve appearance rates, reduce recidivism, and positively impact low-income and otherwise underserved communities that are the most impacted by pretrial services that don't take advantage of bringing multiple data sources and systems together for pretrial.

Sources

- 1 PrisonPolicy.org <https://www.prisonpolicy.org/reports/pie2019.html>)
- 2 PRETRIAL JUSTICE INST., *PRETRIAL JUSTICE: HOW MUCH DOES IT COST?* 2 (2017)
- 3 National Institute of Justice (n.d.). *Impact of Prison experience on Recidivism*. <http://www.nij.gov/topics/corrections/recidivism/pages/prison-experience.aspx>
- 4 <https://www.bjs.gov/content/pub/pdf/pji02.pdf>
- 5 <https://www2.census.gov/programs-surveys/popest/tables/2000-2010/intercensal/national/us-est00int-02.xls>
- 6 <https://www.prisonpolicy.org/reports/jailsovertime.html>
- 7 <https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow1/1>
- 8 JTC Resource Bulletin: *Using Technology to Improve Pretrial Release Decision Making*, Feb. 2016.
- 9 Cynthia A. Mamalian, Ph.D., "The State of the Science of Pretrial Risk Assessment." Pretrial Justice Institute. Bureau of Justice Assistance, Department of Justice. March 2011. Web. Accessed 6 November 2015.
- 10 <https://www.njcourts.gov/courts/assets/criminal/2018cjrannual.pdf>



About Tyler Technologies, Inc.

Tyler Technologies (NYSE: TYL) provides integrated software and technology services to the public sector. Tyler's end-to-end solutions empower local, state, and federal government entities to operate more efficiently and connect more transparently with their constituents and with each other.

By connecting data and processes across disparate systems, Tyler's solutions are transforming how clients gain actionable insights that solve problems in their communities. Tyler has more than 26,000 successful installations across more than 10,000 sites, with clients in all 50 states, Canada, the Caribbean, Australia, and other international locations.

A financially strong company, Tyler has achieved double-digit revenue growth every quarter since 2012. It was also named to Forbes' "Best Midsize Employers" list in 2019 and recognized twice on its "Most Innovative Growth Companies" list. More information about Tyler Technologies, headquartered in Plano, Texas, can be found at [tylertech.com](https://www.tylertech.com).

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