

# Implications Tutorial: Building Community Governance of Risk Assessment

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## THE TEAM

**Hannah Sassaman**, policy director of the Philadelphia-based Media Mobilizing Project, is a longtime grassroots organizer working at the intersection of technology and racial and economic justice. As a 2017-2018 Soros Justice Fellow, she worked to help communities engage with risk assessment algorithms in the criminal justice system, including in pretrial and sentencing contexts. She led the development of the recent national statement of opposition to pretrial risk assessment instruments. She continues to partner with local communities engaging in bail and pretrial incarceration reform as it relates to risk assessment decision-making and other issues.

**Reuben Jones** is the Philadelphia Campaign Director of JustLeadershipUSA's #CLOSEthecreek campaign. He is a Philadelphia native, father, social justice advocate, educator, motivational speaker, poet, published author, and entrepreneur. He serves as Executive Director of Frontline Dads Inc., a 501(c)3 non-profit organization that provides mentoring, leadership development and comprehensive support to "at-risk" youth, single fathers, and formerly incarcerated citizens. Reuben Jones served 15 years in prison for a 1986 robbery and was released in 2002.

**David Robinson** is Managing Director of Upturn, a Visiting Scientist at Cornell's AI Policy and Practice Initiative, and a co-director of the MacArthur Foundation's Pretrial Risk Management Project. David, through Upturn, provided advice and support to the coalition of civil rights organizations that developed the recent Statement of Concern. David's scholarship and policy work in this area center on the difficult choices involved in real world use of risk assessment.

## IMPACT STATEMENT

We will build shared understanding of the experiences, needs and goals of individuals and communities affected by pretrial risk assessment algorithms, as reflected in the recent national Statement of Concerns, which we helped draft and which reflects the considered perspective of more than 120 advocacy organizations. We will then engage attendees to begin to collaboratively co-develop the feasible specifics of a community-driven, socially informed and scientifically rigorous independent auditing and validation process for pretrial risk assessment instruments.

## DESCRIPTION

"We believe that jurisdictions should not use risk assessment instruments in pretrial decision-making.

[A]lthough they may seem objective or neutral," such tools "threaten to further intensify unwarranted discrepancies in the justice system and to provide a misleading and undeserved imprimatur of

impartiality for an institution that desperately needs fundamental change." [1]

With these words, over 120 U.S. civil rights and racial justice organizations – including the ACLU, NAACP, the Leadership Conference on Civil and Human Rights, and dozens of other major legal, immigration justice, racial justice, and community groups – earlier this year announced their opposition to the use of algorithmic risk assessments in pretrial decision-making. Many of the signatories also object to other applications of automated risk assessment in criminal justice, such as at sentencing.

At the same time, the recent statement also makes clear that where pretrial risk assessment algorithms remain in use, the civil rights community expects specific steps to be taken for harm reduction: specifically, that these tools be designed in ways that address the unwarranted racial disparities that still pervade the U.S. justice system; that such tools can and must be designed in ways that support large-scale decarceration, without making it easier to send anyone to jail; that such tools must be "transparent, independently validated, and open to challenge by an accused person's counsel," and that such tools "must be developed with community input, revalidated regularly by independent data scientists with that input in mind, and subjected to regular, meaningful oversight by the community."

Thus, the racial justice movement envisions a vitally important collaborative role for data scientists in the urgent work of addressing longstanding inequities in the criminal justice system. This proposed FAT\* tutorial is a rare and valuable opportunity to bring the voice and needs of impacted communities into conversation with data scientists and researchers who are closely studying – and proposing new designs for – this type of instrument.

Specifically, there are opportunities for two key impacts: First, to build shared understanding of the experiences of individuals and communities affected by these algorithmic systems. Second, building on that foundation of shared understanding, there is an opportunity to begin to co-design the feasible specifics of a community-driven, socially informed and scientifically rigorous independent auditing and validation process for pretrial risk assessment instruments.

Why did the racial justice movement of the United States raise its voice in opposition to these tools - especially in an environment where policymakers have said that we must "exchange bail for risk assessment," [3] and where some system actors have claimed that risk assessment is "a necessary component of a fair pretrial release system"? [2]

In any case, in situations where risk assessment is fully enshrined in the criminal justice apparatus of a city or state, how can communities directly participate in the oversight, auditing, calibrating, and

control of such tools and their use, to reduce the systemic impact of bias in these systems? What rights do and should people judged by algorithmic tools have to challenge them in criminal justice and other contexts? And how can designers and analysts of these algorithms—both in the pretrial context and in other high-stakes decision-making contexts—respond to a public push to abolish and control tools of this nature?

In this tutorial, we will walk attendees through the Statement of Concern, and will describe how it is being used in live organizing efforts to reduce bail and pretrial incarceration.

We will ground the discussion with deep dives into concrete examples of situations where the impact of risk assessment has differed from the intent, and will describe direct ways communities are attempting to hold accountable, revalidate, audit, and calibrate tools and their uses, in pursuit of a broadly shared set of anti-racist and decarceral goals. Examples that will be discussed include:

- (1) The Research Advisory Council, consisting of leading researchers in algorithmic fairness and seasoned practitioners of criminal justice, that is overseeing the redesign of the pretrial risk assessment tool in New York City.
- (2) The community organizing of the #no215jail coalition and #CLOSEthecreek in Philadelphia, who are working in conversation with City partners, the Defenders Association and the District Attorney's Office to stop the deployment of pretrial risk assessment and, in the event that it is implemented, to cement principles to audit and oversee it.
- (3) The court-watching projects of Cook County, led by community bond funds and people impacted by money bail and incarceration, which in concert with transparency policies of the District Attorney, have helped community members to collect their own participatory data about the impact of risk assessment as applied in bond decisions in Chicago.
- (4) The community organizing that took place around the opposition to the unfettered use of risk assessment in California's bail reform bill, SB10.

## TIMELINE

We request a total duration of 90 minutes, and propose to use it as follows:

- **0.00 - 5.00** *Introductions/late arrivals*
- **5.00 - 10.00** *Initial level-setting (David)* Where are we in the social, legal, and scientific debate on risk assessments in pretrial decision-making? And what brought a broad coalition of advocates together 18 months ago to begin to develop the Statement of Concern?
- **10.00 - 25.00** *How we came to abolition (all)* Reuben talks about his leadership and that of other formerly incarcerated leaders in stopping the implementation of a risk assessment tool in PA sentencing. Hannah talks about how the transparency, public validation, and direct ability for communities to comment on the tool was a piece of why it was stopped - and now the PA Sentencing Commission is taking public proposals for how to meet the state mandate on sentencing risk assessment. David describes the long debate within the advocacy community that led to the Statement of Concern. We now have more independent research studying the

impact of pretrial tools in use by judges,[4] as well as on-the-ground understanding in myriad jurisdictions of some of the strengths and pitfalls of what happens when tools like this get introduced into systems. We will review a few systems where there was uptick in pretrial incarceration that happened alongside the introduction of pretrial risk assessment tools, and a lack of reduction of pretrial incarceration, including those in Kentucky's state courts, Richmond VA, Spokane WA and Las Vegas NV. We will convey the advocacy community's bottom line: until there is extraordinary proof and power that tools like this are always transparent, always accountable to community definitions of risk, harm, and violence, and not making judgements biased against people of color and poor people, that we shouldn't introduce them into pretrial decision-making.

- **25.00 - 45.00** *Walk through of the statement (David, Hannah, and Reuben)* We will review the statement of concern and its specific harm reduction principles, giving examples of how communities can use those principles in instances where risk assessment has been introduced. We will take questions during this time, and may use an interactive "choose your own adventure" exercise to encourage audience engagement.
- **45.00 - 55.00** *Developing "community validation"* We will dig deep into what we mean by "community validation," and discuss early experiences starting to implement it in the field, sharing contacts and resources from the active organizations doing the community oversight and organizing work.
- **55.00 - 65.00** *Questions and discussion with the audience,* focused on clarification and the following open questions:
  - (a) How can we do community validation in practice? The governance structures are hard to build and hard to explain.
  - (b) How can we track successes and challenges of community control in a national way?
  - (c) What continued dialog and learning is necessary between designers of these tools and impacted communities?
- **65.00 - 85.00** *Collaborative vision exercise* Attendees and organizers together will mock up, from a data scientist's perspective, how communities judged by risk assessment tools can be a part of a design, auditing, validation, or revalidation process.
  - (a) We will ask people to get up and write on the wall possible processes that would work and possible hurdles to this working
  - (b) Then we will have people indicate reactions visually to the proposed steps, leading into a whole group discussion.
  - (c) Finally, we will identify people interested in continuing to work to develop and implement these ideas — paving the way for continued momentum after the tutorial.
- **85.00 - 90.00** *Final questions and next steps*

## REFERENCES

- [1] Leadership Conference on Civil and Human Rights. 2018. The Use of 'Risk Assessment' Instruments: A Shared Statement of Civil Rights Concerns. <http://civilrightsdocs.info/pdf/criminal-justice/Pretrial-Risk-Assessment-Full.pdf>
- [2] National Association for Public Defenders. 2017. Joint Statement in Support of Pretrial Risk Assessment Instruments. [http://www.publicdefenders.us/blog\\_home.asp?Display=563](http://www.publicdefenders.us/blog_home.asp?Display=563)

- [3] Senator Kamala Harris. 2018. Tweet. <https://twitter.com/kamalaharris/status/989705948120911872>
- [4] Megan T. Stevenson. 2018. Assessing Risk Assessment in Action. *Minnesota Law Review* (2018). [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3016088](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3016088)