



CRIME SURVIVORS

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Matt Alsdorf
Vice President of Criminal Justice
Laura and John Arnold Foundation
2800 Post Oak Blvd., Ste. 225.
Houston, TX United States 77056-8809

Dear Mr. Alsdorf:

I am writing to express concerns and serious questions regarding the Public Safety Assessment (PSA) tool, which is a risk assessment tool being used in numerous jurisdictions to determine the pretrial release of criminal defendants, in terms of its ability to accurately predict who is going to commit new crimes or fail to appear while on pretrial release.

I believe the Foundation is attempting to avoid answering serious questions that have arisen about the stated intent of the Foundation to “money-ball” the criminal justice system.¹ In particular, I’m concerned that the tool is being criticized as not accurately predicting risk, leading judges and public officials to wrongly believe people are safe when, in fact, they are dangerous, reckless, and creating more persons who face the impact of this crime in our communities. In light of all of these concerns, the Foundation issued a curiously timed press release yesterday, touting the success of the PSA while not mentioning the recent criticisms against the tool that have been made public.

First, I noticed that the Arnold Foundation is currently being sued in federal court in New Jersey for products liability and wrongful death in the State of New Jersey because the tool allegedly informed a judge that a person who was a prior felon in possession of a firearm was “low risk,” and thus should be released on a promise to appear. That defendant, a Mr. Jules Black, was promptly released on a promise to appear, only to murder a 26 year old man in broad daylight by firing 22 fatal shots some two days later. I have attached a copy of that complaint for your review, and I would be curious to know the response of the Foundation as to how this can happen, and then generally how the tool can ever classify a prior felon in possession of a firearm as “low risk.”

¹ I found this quote in a recent news article that I am enclosing quite interesting: “It’s important to note that John Arnold, one of the founders of the foundation, was a hedge fund manager. Eric Siddall, vice president of the Los Angeles Association of Deputy District Attorneys, told the Chron that hedge fund math shouldn’t be used in criminal cases. ‘We’re trying to use a method that hedge funds use to make money to make a determination of whether someone should be in custody or not,’ said Siddall. ‘The problem is if a hedge fund makes a mistake, they lose money. If we make a mistake, someone dies.’”

Second, I noticed that almost the exact same thing happened in San Francisco last week. I have attached a news article that suggests that the tool recommended the release of another prior felon in possession of a firearm, who upon release, according to the article, then robbed two people at gunpoint and used a firearm to fatally wound a 71 year old man in a restaurant. Again, I think you owe people, in particular the persons who faced the consequences of these crimes and the jurisdictions using the PSA tool, an explanation as to how these deadly situations can happen with a tool that is supposed to be “validated” and “evidenced based.” I think you also owe judges, prosecutors, and the public some insight as to how many of these serious cases, which to the human eye are obviously dangerous, are instead classified by the tool as “low risk.” Your stated response that people like Jules Black would simply have bonded out under the old system and done the crime anyway gives people little comfort that the PSA actually works.

Third, serious criticisms have been made of the PSA tool, and it appears those concerns remain largely unaddressed. In fact, New Jersey Attorney General Christopher Porrino recommended to New Jersey Acting Administrative Judge Glenn Grant on April 7, 2017 that the Arnold Foundation’s PSA tool must be “modified.” The Attorney General informed Judge Grant that absent modification of the PSA tool *“our communities will face the dangers of those who choose, among other things, to terrorize others by pointing firearms at them, engage in illegal drug trade with firearms at their ready, and possess firearms when their prior illegal conduct has rendered them ineligible to possess them.”* The letter from the Attorney General goes on to list other areas where there are concerns with how the Arnold Foundation’s PSA tool weighs various crimes. I have attached this letter in case you haven’t seen it. I’d be curious as to whether you still believe the tool was valid at the time and if it is valid now in light of these concerns, and I’d ask whether in fact you have modified the tool to address these concerns and what modifications may be made to suit political purposes while maintaining the integrity of the tool. Finally, I think it is important to look at other crimes, like sex offenses and others where the tool may be treating people as less risky than they really are and what the Foundation is doing about that. I have seen some news articles about sex offenders in New Jersey being classified as low risk on the tool, and I’d be curious as to what your response is in those cases.

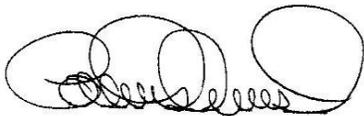
Fourth, I received a copy of a contract that it is signed by the Arnold Foundation and the various entities around the country that are using this tool. I am sure you are familiar with it, but I am attaching a sample of one in case you don’t have it. While it appears the Foundation has released itself from all legal liability when something goes awry due to the tool getting it wrong, what really concerns me is that the Foundation is concealing everything that was used to build the tool. Again, the Foundation touts itself as being transparent because the factors and the weights are disclosed, however, when it comes to looking at the hundreds of thousands of cases that informed the building of the tool, the integrity of the information used to build the tool, and a simple check of the Foundation’s math, that information is all held behind a curtain and not available for inspection by a crime survivor, the public, the defendant, judges, prosecutors, or the

police, all of whom will have their rights and futures decided by this computer program. In fact, in a news story, which I am attaching, it notes that the **Arnold Foundation “won't reveal exactly how they came up with the algorithm.”** So I must ask, what does the Foundation have to hide? Since the Foundation is a non-profit, why don't you open up all of the information and assumptions used to build the tool in the first place and let other experts not chosen by you take a look at it? I think you owe that to everyone who's lives will be impacted by this tool, and I think each jurisdiction that is using this tool should immediately demand a local, third-party, independent audit of the tool. Due to the serious nature of what is at stake, I think that it is fair to assume that the people who use the tool should have confidence in it, since they are allowing you to walk away unscathed when the tool gets it wrong and someone is killed, raped, or seriously injured.

Finally, in your recent blog post, you suggest that judges consider the PSA report “when deciding whether a person should be released or detained.” I think that contradicts nearly every State Constitution in the land because people have a right to bail and judges are required to set bail that is not excessive. There is generally little preventative detention in this country making the decision purely about release or detention. I am quite concerned with this trend of trying to change the constitutions regarding bail because the overlay of the rights of crime survivors in bail pre-supposes the existing state constitutional provisions, and I think how crime survivors' issues would be handled is not well thought out in that regard. Thus, I would ask you to clarify your position as to whether the Arnold Foundation is advocating the changing of State Constitutions when it comes to bail? It seems to me that you can't have it both ways.

Candidly, I think you owe it the survivors of crime, defendants, taxpayers, and the public to answer these serious questions that have recently come out. I do not have confidence at this time that this tool adequately protects the public, the survivors of crime, or accurately predicts criminal behavior. Nonetheless, by writing, I am giving you the benefit of the doubt that you have answers to these serious questions, and that you are prepared to now answer these questions. I look forward to your response.

Sincerely,



Founder CEO
Crime Survivors

CC: all judges, prosecutors within the United States of America

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN DIVISION

JUNE RODGERS, individually)
and as administrator of the Estate of)
Christian Phillip Nolan Rodgers,)
Plaintiff,)

v.)

Civil Action No. _____

CHRISTOPHER JAMES)
CHRISTIE and)
CHRISTOPHER S. PORRINO,)
in their individual and official)
capacities, and)

JURY TRIAL DEMANDED

THE LAURA AND JOHN)
ARNOLD FOUNDATION,)
and)

ANNE MILGRAM)
Defendants.)

COMPLAINT FOR MONETARY DAMAGES AND INJUNCTIVE RELIEF

NOW COMES June Rodgers, as the administrator of the Estate of Christian Rodgers, and individually as Christian Rodgers's mother and survivor, and files this action under 42 U.S.C. § 1983 and state laws of New Jersey to vindicate her rights and the rights of her son under the Fourteenth Amendment of the Constitution of the United States and the Constitution of the State of New Jersey.

PRELIMINARY STATEMENT

1.

Christian Phillip Nolan Rodgers, was fatally shot on the street in cold blood by a man released just days earlier on New Jersey's "Bail Reform" initiative. Jules Black, the man arrested and charged with Mr. Rodgers murder, had been arrested on April 5, 2017 by New Jersey State Police. That arrest stemmed from charges that Black, a convicted felon, was carrying a 9mm pistol in his car during a traffic stop. Black was released after that arrest without having to post bond and with zero accountability due to the New Jersey "Bail Reform" initiative, championed and passed by Governor Christie. Black shot Rodgers 22 times.

2.

The Criminal Justice Reform Act ("CJRA"), passed in 2014, requires courts and prosecutors to use a "scoring system" known as the Public Safety Assessment ("PSA"), which was developed by the Laura and John Arnold Foundation ("Arnold Foundation" or "Arnold"). Instead of setting bail, judges are – by law – required to consider and exhaust a laundry list of other conditions of release before even considering bail, and the judges' decisions are required to be based upon the PSA. The problem is, when the PSA came into effect in January 2017, it didn't work, and throngs of violent criminals were released into

the streets of New Jersey's neighborhoods. Rodgers was but one victim of Christie's so-called "progress."

3.

Christie claims the CJRA is designed to keep people out of jail because they are poor and cannot afford bail, but in reality, Christie's goal was to save money on the costs of incarceration in the state. While the costs of incarceration are high, and the demand for reform is nearly universal, to knowingly employ a system with dangerous risks that would impact – and did impact – the lives of 8.9 Million people who live in the state of New Jersey was unconscionable. Christie and Porrino's actions amounted to deliberate indifference of June Rodgers's substantive due process rights guaranteed by the Fourteenth Amendment, including the right to companionship with her son. Governor Chris Christie and Attorney General Porrino knew that by using the new PSA system the number of criminals on the street would skyrocket – but Christie and Porrino disregarded that risk because they wanted to save money (and gain political traction to aid in various campaigns). As a direct result of Christie and Porrino's deplorable apathy, Christian Rodgers was fatally shot 22 times by a man who would have been locked up but for Christie and Porrino's use of the deadly "public safety" system, based upon this flawed PSA.

4.

Judge Ernest Caposela, who helped implement the use of the PSA in the state, claims that “we did not institute criminal justice reform to put bail bondsmen out of business and to empty out the jails, we did it to respect the presumption of innocence and design a system that is fair and honest.” But there was nothing fair about Christian Rodgers being shot 22 times in cold blood by a villain that should have been behind bars. It isn’t good enough to have positive intentions, and both Christie and Porrino have a responsibility to protect and defend the Constitutional rights of the citizens of New Jersey, including June Rodgers and her son.

5.

Rodgers was African American, and it is no coincidence that the tragic and violent end of his life occurred in a predominantly African American neighborhood. In New Jersey, African American residents are incarcerated at a rate *twelve times* that of white residents, despite comprising only 15 percent of the population, and thus releasing tens of thousands of defendants into communities by using the fatally flawed PSA tool impacted African American neighborhoods at an unprecedented scale of magnitude. Christie knew this would happen, and he let it happen. Christie’s disparate treatment of African Americans is no secret to those paying attention. As a result, New Jersey Bail

reform created a system where African Americans in New Jersey are placed at a much higher risk of crime being perpetrated against them, as dangerous and violent offenders are cut loose from jails and shoved into communities where innocent people suffer, just like Christian Rodgers. In a sick twist, Christie's Bail Reform, in the name of helping minority communities, actually makes those communities more dangerous and is eliminating bail bond companies in New Jersey altogether – a significant number of which are owned by African Americans.

6.

The PSA system was developed by the Laura and John Arnold Foundation, which lobbied for its use and continue to parade its positive “results” around the country. The PSA that Arnold designed fails every test for safety, and Arnold failed to mention the extreme dangers that its PSA product would and does present to those who use it. And thanks to considerable lobbying efforts by Arnold Foundation and its Vice President of Criminal Justice and former Attorney General of New Jersey, Anne Milgram (the PSA's chief architect), the PSA is now forced onto New Jersey residents by law in the CJRA. Placing this product into New Jersey communities and the resulting brutal murder of Christian Rodgers make Arnold liable as well. As such, June Rodgers,

as Christian's survivor and as the administrator of his estate, is pursuing all available remedies against these Defendants.

JURISDICTION AND VENUE

7.

Jurisdiction is proper under 28 U.S.C. § 1331 and 1343(a)(4), as well as under 42 U.S.C. § 1983. And Venue is proper under 28 U.S.C. § 1391(b) and on the supplemental jurisdiction of this Court to adjudicate claims arising under state law pursuant to 28 U.S.C. § 1367(a).

RELEVANT FACTS

I. The Parties

A. June Rodgers, Plaintiff

8.

June Rodgers is the surviving mother of Christian Rodgers, who was killed by Jules Black after he was released under the CJRA. Ms. Rodgers is suing on her own behalf and as the administrator of Christian Rodgers's estate.

B. Christopher James Christie, Defendant

9.

Christopher James Christie is the Governor of New Jersey, and the state's chief decision-maker. He can be served personally at his place of business.

C. Christopher S. Porrino, Defendant

10.

Christopher S. Porrino is the Attorney General of the state of New Jersey who is charged with executing the laws of the state, including the CJRA and its PSA. He can be served personally at his place of business.

D. Arnold Foundation and Anne Milgram, Defendants

11.

Laura and John Arnold Foundation is a philanthropic organization incorporated in Houston, TX and doing business in the state of New Jersey. Arnold designed the PSA and provided/provides it to New Jersey for determining the release of incarcerated criminal defendants. Arnold can be served at the address of its registered agent as provided to the Texas Secretary of State.

Anne Milgram is the Vice President of Criminal Justice policy with the Laura and John Arnold Foundation and is the former Attorney General of New Jersey

II. Appointment of Personal Representative of Probate Estate and Issuance of Letters of Administration

12.

On April 9, 2017, Christian Rodgers, a resident of Cumberland County, New Jersey, died, owning assets in the State of New Jersey.

13.

In July of 2017, the Surrogate Court of Cumberland County, New Jersey appointed June Rodgers as Personal Representative of Mr. Rodgers's probate estate.

14.

On the same date, the Surrogate Court issued Letters of Administration to Ms. Rodgers (Letters, Exhibit 1).

III. A History of Arnold's PSA assessment tool

15.

Prior to the passage of the CJRA, Arnold Foundation designed an algorithm for the specific purpose of replacing monetary bail with a "risk assessment" tool. This algorithm was used to create its own Public Safety Assessment tool (PSA) to introduce to jurisdictions across the United States.

16.

In 2015, after two years of testing, the formula, developed at a cost of \$1.2 million by the Laura and John Arnold Foundation, rolled out to multiple jurisdictions.

17.

Anne Milgram, the vice president for criminal justice for the Arnold Foundation and the former attorney general of New Jersey, helped push New Jersey to adopt the formula.

18.

For several years, Arnold Foundation lobbied New Jersey legislators and Governor Chris Christie to adopt its PSA.

19.

After years of lobbying efforts, the Arnold Foundation got what they wanted and Governor Chris Christie and Attorney General Chris Porrino agreed to adopt Arnold Foundation's PSA tool whole cloth in the state of New Jersey and use it as the motherboard of the CJRA.

20.

The CJRA was written specifically for the application of Arnold Foundation's PSA to all eligible pretrial criminal defendants.

IV. The CJRA and its mandated use of the PSA

21.

In 2012, Governor Christie called for a state constitutional amendment to reverse New Jersey's historic bail practice and permit pre-trial detention of defendants deemed likely to commit future crimes.

22.

New Jersey's Chief Justice then established and chaired the Joint Committee on Criminal Justice, which included members from all three branches of state government. In March 2014, the committee produced a report recommending that the state authorize pre-trial detention based on a defendant's perceived dangerousness and that the state replace the traditional system of release on monetary bail with a new "risk-based instrument" that would "aid judges as they craft conditions of release ... like electronic monitoring, house arrest, and reporting." N.J. Judiciary, Report of the Joint Committee on Criminal Justice 2-3 (Mar. 10, 2014), available at <http://bit.ly/2pyNFUV> ("Joint Committee Report").

23.

Soon after publication of the Joint Committee Report, the New Jersey legislature passed (in a special session, through procedurally deficient mechanisms) and Governor Christie signed the CJRA, which dramatically changed the state's pretrial detention and release procedures, largely in keeping with the committee's recommendations. See P.L. 2014, c.31, §1 (codified at N.J.S.A. 2A:162-15 et seq.).

24.

The CJRA creates a five-stage, hierarchical process for courts to follow in making pre-trial custody determinations for defendants charged with offenses through a complaint-warrant. N.J.S.A. 2A:162-16d(1); see State v. Robinson, No. 078900, 2017 WL 1908548, at *6 (N.J. May 10, 2017) (describing this “hierarchy”).

25.

First, the court “shall order” the pre-trial release of the defendant on personal recognizance or execution of an unsecured appearance bond (in essence, a promise to appear) when the court finds that such a release would “reasonably assure the eligible defendant’s appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.” N.J.S.A. 2A:162-17a.

26.

Second, if the court finds at stage one that release on personal recognizance or an unsecured appearance bond will not provide the requisite assurance, the court “may order” pre-trial release subject to the conditions that the defendant “not commit any offense during the period of release ... avoid all contact with an alleged victim of the crime ... [and] avoid all contact with” witnesses who may testify concerning the offense. N.J.S.A. 2A:162-17b(1).

The court may then add “the least restrictive condition, or combination of conditions, that the court determines will reasonably assure the eligible defendant’s appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.” N.J.S.A. 2A:162-17b(2); see Robinson, 2017 WL 1908548 at *6. Those conditions “may include,” inter alia:

- remaining “in the custody of a designated person”;
- restrictions “on personal associations, place of abode, or travel”;
- reporting “on a regular basis to a designated law enforcement” or other government agency;
- complying “with a specified curfew”;
- refraining from possessing a firearm;
- undergoing medical or psychological treatment;
- returning “to custody for specified hours following release for employment, schooling, or other limited purposes”;
- placement “in a pretrial home supervision capacity with or without the use of an approved electronic monitoring device,” including at the defendant’s expense; and

- “any other condition” necessary to provide the requisite assurances.

N.J.S.A. 2A:162-17b(2).

28.

Third, if the court “does not find, after consideration” at stage two of all the conditions described above that release subject to any combination of these conditions “will reasonably assure the eligible defendant’s appearance in court when required,” the court then, and only then, “may order the pretrial release of the eligible defendant on monetary bail.” N.J.S.A. 2A:162-17c(1). In other words, “[m]onetary bail may be set for an eligible defendant only when it is determined that no other conditions of release will reasonably assure the eligible defendant’s appearance in court when required.” N.J.S.A. 2A:162-15 (emphasis added).

29.

In addition, the court “may only impose monetary bail ... to reasonably assure the eligible defendant’s appearance.” N.J.S.A. 2A:162-17c(1). “The court shall not impose the monetary bail to reasonably assure the protection of the safety of any other person or the community or that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, or for the purpose of preventing the release of the eligible defendant.” *Id.*

30.

Fourth, if the court “does not find, after consideration” that either nonmonetary conditions alone (as assessed at stage two) or monetary bail alone (as assessed at stage three) will provide the requisite assurances, the court may order pre-trial release subject to a combination of non-monetary conditions and monetary bail. N.J.S.A. 2A:162-17d(1).

31.

Finally, if the prosecutor seeks pre-trial detention and the court finds by “clear and convincing evidence that no amount of monetary bail, non-monetary conditions of pretrial release or combination of monetary bail and conditions would reasonably assure the eligible defendant’s appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process,” the court can order pre-trial detention. N.J.S.A. 2A:162-18a(1).

32.

At every stage, the process includes consideration of the result of a statutorily mandated “pretrial risk assessment” conducted by the Pretrial Services Program for the purpose of making recommendations to the court concerning an “appropriate pretrial release decision.” N.J.S.A. § 2A:162-25(b).

33.

The “pretrial risk assessment” must be conducted using “a risk assessment instrument approved by the Administrative Director of the Courts” that purportedly meets certain requirements, including that the instrument be “objective, standardized, and developed based on analysis of empirical data and risk factors relevant to the risk of failure to appear in court when required and the danger to the community while on pretrial release.” N.J.S.A. § 2A:162-25(c)(1).

34.

The requirements of the risk assessment instrument were written specifically based on Arnold Foundation’s description of the PSA it designed.

35.

Under the CJRA, the risk assessment must be completed and presented to the court so that the court can, “without unnecessary delay, but in no case later than 48 hours after the eligible defendant's commitment to jail, make a pretrial release decision.” N.J.S.A. § 2A:162-25(b).

36.

Under the new bail system, judges are required to base their decisions on the PSA scores.

37.

As part of the CJRA's implementation, New Jersey's courts are instructed in their own rules to prioritize non-monetary conditions of pre-trial release over monetary bail. Under the New Jersey Rules of Court, a court has *no authority to consider monetary bail unless and until it considers and rejects non-monetary pre-trial release options based on the PSA*. See, e.g., Rule 3:26-1(a)(1) (“[M]onetary conditions may be set for a defendant but only when it is determined that no other conditions of release will reasonably assure the defendant’s appearance in court when required.”).

38.

In November 2014, New Jersey voters approved a constitutional amendment replacing the centuries-old guarantee that “[a]ll persons shall ... be bailable by sufficient sureties,” except in some capital cases, with a provision that “[p]retrial release may be denied to a person if the court finds that no amount of monetary bail, non-monetary conditions of pretrial release, or combination of monetary bail and non-monetary conditions would reasonably assure the person’s appearance in court when required, or protect the safety of any other person or the community, or prevent the person from obstructing or attempting to obstruct the criminal justice process.” N.J. Const. art. I, §11.

39.

In sum, the CJRA “changed the landscape of the State’s criminal justice system,” replacing a system that guaranteed a monetary bail determination to all defendants except those in certain capital cases with a system that authorizes pretrial detention based on perceived dangerousness and imposition of severely restrictive conditions such as electronic monitoring and home detention without any opportunity to post monetary bail. Robinson, No. 078900, 2017 WL 1908548, at *4.

40.

Defendant Porrino has confirmed that the “Bail Reform Law is intended to end New Jersey’s historical reliance on monetary bail.” Christopher S. Porrino, Attorney General of New Jersey, Attorney General Law Enforcement Directive No. 2016-6, at 55 (Oct. 11, 2016), available at <http://bit.ly/2pjHDeP>.

41.

According to Defendant Porrino, under the CJRA, monetary bail is “a last resort” that is reserved only for “limited situations” – i.e., “when the court finds that release on non-monetary conditions will not reasonably assure the defendant’s appearance in court when required.” Christopher S. Porrino, Attorney General of New Jersey, Attorney General Law Enforcement Directive No. 2016-6, at 55 (Oct. 11, 2016), available at <http://bit.ly/2pjHDeP>. In other

words, “there shall be a presumption against seeking monetary bail.” *Id.* at 56.

The CJRA clearly limits consideration of monetary bail, but by reserving it for the most difficult pretrial release situations the CJRA, and through their advocacy Christie and Porrino, acknowledge the superior effectiveness of monetary bail in guaranteeing the appearance of criminal defendants.

V. The PSA’s effect, in numbers

42.

New Jersey’s new pre-trial release and detention procedures under the CJRA took effect January 1, 2017.

43.

Although New Jersey appears not to have issued official statistics on the number of defendants released on monetary bail under the new law, one prominent newspaper reported that of “the 3,382 cases statewide that were processed in the first four weeks of January, judges set bail only three times.”

Lisa W. Foderaro, *New Jersey Alters its Bail System and Upends Legal Landscape*, N.Y. Times (Feb. 6, 2017), <http://nyti.ms/2llmeMR>. Thus, while bail remains a theoretical option, “the reality is that judges have nearly done away with it.” *Id.*

44.

According to the state's preliminary statistics, in the first six months of 2017, New Jersey courts granted 3,307 pre-trial detention motions from prosecutors – a procedural mechanism that allows detention without the consideration of bail and that did not exist before the new law. N.J. Courts, Criminal Justice Reform Statistics: January 2017-June 2017, Chart A, <http://bit.ly/2q68u9Y>.

45.

According to the same statistics, approximately 18,000 individuals were released subject to non-monetary conditions in the first six months of 2017. Id.

46.

In Cumberland County, between January 1 and June 1, 2017, 2,195 defendants were released into the community, while only 287 received detention.

47.

Between January 1, 2017 and June 1, 2017, the overall pretrial jail population decreased by 19.8% state-wide, from 7,337 to 5,884 pretrial detainees. In Cumberland County, where Rodgers and his family live, the decrease was 24.3%. While reducing jail populations is a noble goal, this case underscores that sometimes pretrial detention keeps us all safe. Had Jules Black been detained as a felon carrying a gun, Christian Rodgers would be alive today.

VI. The PSA and the Decision-Making Formula

48.

Arnold Foundation's PSA gives defendants two scores – one for their likelihood of committing a crime and one for their risk of failing to appear in court. Both are scaled 1 to 6, with 1 being the lowest risk and 6 being the highest risk.

49.

Arnold Foundation claims that the PSA flags those with an elevated risk of violence.

50.

Certain factors used to produce each PSA score, and these factors are plugged into a Decision-Making Formula ("DMF"). According to Arnold Foundation, these factors are:

- Whether the current offense is violent
- Whether the person had a pending charge at the time of the current offense
- Whether the person has a prior misdemeanor conviction
- Whether the person has a prior felony conviction
- Whether the person has prior convictions for violent crimes

- The person's age at the time of arrest
- How many times the person failed to appear at a pretrial hearing in the last two years
- Whether the person failed to appear at a pretrial hearing more than two years ago
- Whether the person has previously been sentenced to incarceration.

51.

A juvenile record is not included in calculating the scores.

VII. The Problem: By using the PSA, droves of violent criminals were cut loose into New Jersey's communities on Christie and Porrino's watch

52.

Law enforcement professionals across the state of New Jersey have expressed their serious concerns about the dangers of this PSA.

53.

Under the current DMF, the charges of escape (N.J.S.A. 2C:29-S.a), murder, aggravated manslaughter, or manslaughter (N.J.S.A. 2C:11-3, 11-4), aggravated sexual assault or sexual assault (N.J.S.A. 2C:14-2a, b, c.l), and robbery or carjacking (N.J.S.A. 2C:15-1, 15-2) will result in an automatic recommendation from Pretrial Services of "No Release Recommended" – regardless of an individual defendant's PSA scores.

54.

In addition, if the PSA resulted in a New Violent Criminal Activity (“NVCA”) flag and the current charge is violent, the Pretrial Services recommendation also will be against release.

55.

Much of the criticism from law enforcement of the PSA and DMF has focused on cases involving weapons – predominantly firearms – particularly cases in which a defendant has a prior conviction for one or more specified offenses that make him/her a "certain person not to possess firearms" under N.J.S.A. 2C:39-7b and those charges which subject a defendant to the mandatory sentencing provisions of the Graves Act, N.J.S.A. 2C:43 - 6c.

56.

The PSA's risk factors and formula and the DMF undervalue the danger posed by defendants in Graves Act cases involving unlawful possession of a firearm (N.J.S.A. 2C:39-5), possession of a firearm for an unlawful purpose (N.J.S.A. 2C:39-4a1), possession of a firearms in the course of committing a CDS distribution offense (N.J.S.A. 2C:39-4.1a), and/or certain persons not to have firearms (N.J.S.A. 2C:39-7b).

57.

Under the current system, none of these charges – absent a significant prior criminal history or an additional qualifying charge – triggers a NVCA flag or a Pretrial Services recommendation against a defendant's release.

58.

In the case of State v. Shakor Twitty (W-2017-000159-1602 Passaic), the defendant fled an area which police were canvassing after a burglary. While fleeing, the defendant discarded a backpack that he had in his possession. The backpack was recovered, and a .45 caliber Ruger semiautomatic handgun and a high capacity magazine were found inside. The defendant was charged with, among other offenses, Possession of a Weapon for Unlawful Purpose (N.J.S.A. 2C:39-4a1), Possession of Prohibited Weapons and Devices -Large Capacity Magazine (N.J.S.A. 2C:39-3j), Unlawful Possession of a Weapon (N.J.S.A. 2C:39-5b1), and Certain Persons Not to Have Weapon (N.J.S.A. 2C:39-7b1).

59.

The defendant's PSA scores were FTA 3, NCA 3 with no NVCA flag.

60.

The Pretrial Services recommendation was "Release with Conditions – Monthly Reporting," and the judge so ordered.

61.

In State v. Austin Chaoya (W-2017-000093-1607 Passaic), the defendant pointed a handgun at the victim (the boyfriend of his step-daughter) while stating "I have this for you." The defendant was charged with Aggravated Assault – Knowingly Pointing a Firearm at Another (N.J.S.A. 2C:12-1b4), Terroristic Threats (N.J.S.A. 2C:12-3b), Possession of a Weapon for an Unlawful Purpose (N.J.S.A. 2C:39-4a1) and Unlawful Possession of a Weapon without a Permit (N.J.S.A. 2C:39-5b1).

62.

The PSA scores were FTA 2, NCA 3, with no NVCA flag. The recommendation of Pretrial Services was "Release with Conditions – Monthly Reporting."

63.

The judge accepted Pretrial Services recommendation and ordered monthly telephonic reporting.

64.

In State v. Kenneth Price (W-2017-000591-1608 Passaic), the defendant was observed by undercover officers operating a motor vehicle with dark tinted windows and no front license plate in a high crime area in Paterson. The vehicle was stopped, and multiple glassine wax folds were observed on back seat. The

defendant was ordered out of the vehicle, and he admitted to having a weapon (a handgun loaded with hollow point bullets) in his possession. An occupant of the vehicle admitted that he visited Paterson for the purpose of buying heroin. The defendant was charged with Possession of a Weapon for an Unlawful Purpose (N.J.S.A. 2C:39-4a1), Unlawful Possession of a Weapon (N.J.S.A. 2C:39-Sb1), and Prohibited Weapons and Devices (N.J.S.A. 2C:39-3f1).

65.

The defendant's PSA scores were FTA 1, NCA 1, with no NVCA flag.

66.

The judge ordered defendant released on his own recognizance in accordance with the Pretrial Services recommendation.

67.

In the each of the above matters, the State – despite the obvious severity of the conduct – did not file motions for pretrial detention because, according to Elie Honig, Director of the Division of Criminal Justice for the Defendant Attorney General, “in those cases, the low PSA scores and Pretrial Services recommendations for release posed significant practical obstacles to detention.”

68.

In another case, Anishalee Cortes, 22, went to a Newark police station at 3 a.m. on April 8, 2017 to report Dominick Richards, 49, had broken into her

home in Newark and assaulted her at gunpoint. Officers arrested Richards at his home and seized a Glock handgun, where after he was charged with aggravated assault with a firearm, unlawful possession of a weapon, possession of a weapon for an unlawful purpose, criminal restraint risking seriously bodily injury to the victim, criminal trespass, and a disorderly persons offense.

69.

The Essex County Prosecutor's Office on April 10, 2017 filed a motion for pre-trial detention of Richards, but considering Richards's low PSA score, Judge Alfonse Cifelli denied that motion April 13, and Richards was released from jail the same day.

70.

Richards killed Cortes on his driveway two months later, and then he killed himself.

71.

In another case, on Jan. 19, 2017 Christopher Wilson was arrested in Little Egg Harbor, NJ after authorities say he tried to get a 12-year-old girl to perform sexual favors for him by offering her a gaming system. He was also convicted in 2010 of attempted sexual assault and endangering the welfare of a child.

72.

Wilson too was given a low score in the PSA.

73.

At a detention hearing on Jan. 25, Judge Wendel E. Daniels found no reason for Wilson to be detained, but simply ordered him to stay away from that particular 12-year-old girl and to wear a GPS bracelet.

VIII. The Slaying of Christian Rodgers by Jules Black

74.

On April 5, 2017, Jules Black was arrested by New Jersey State Police.

75.

That arrest stemmed from charges that Black, a convicted felon, was carrying a 9mm pistol in his car during a traffic stop.

76.

Black has been a guest of the county jails in New Jersey 28 times, dating back to 2004.

77.

Black has had multiple felony convictions on various charges, including Resisting Arrest, Manufacturing Distribution of Drugs (Heroin/Meth - 1.5 years in prison), Burglary/Breaking Entering, Eluding Police Officers, Hindering Apprehension, and Possession and Distribution in a School Zone.

78.

Under New Jersey's CJRA, Mr. Black was assigned a score using Arnold Foundation's PSA predicting the likelihood that he will commit a new crime if released pending trial.

79.

The next day, as a result of this score, Black was released back into the Millville community by Superior Court Judge Cristen D'Arrigo.

80.

On April 9, 2017, Christian Phillip Nolan Rodgers was shot to death 22 times by Jules Black while walking down the street in Vineland, NJ, a city adjacent to Millville.

81.

When Police arrived on the scene, officers saw blood on the ground and followed the trail to the backyard of 1018 East Chestnut Ave., where they found Rodgers dead.

82.

Rodgers suffered agonizing pain and emotional distress as he died.

83.

Rodgers was 26 years old at the time of his death and is survived by his mother.

84.

Black is now charged with the murder of Rodgers. His charges include first-degree murder, second-degree possession of a weapon for an unlawful purpose, and second-degree unlawful possession of a weapon.

IX. Porrino back-peddles (too late)

85.

Approximately six weeks after Rodgers's murder, Defendant Attorney General Porrino apparently recognized that the PSA was so obviously flawed – producing fatal results – Defendant Porrino released new guidelines for when prosecutors should seek to detain defendants before trial.

86.

The amended rules Porrino issued direct prosecutors to push for detention more frequently in a number of cases, such as for sex offenders, *for people who commit crimes in which a gun is used, and for those with a history of being a threat to public safety.*

87.

Porrino's office said the new, stronger guidelines should better ensure that dangerous and recidivist criminals are kept behind bars while awaiting trial.

88.

Elie Honig, director of the state Division of Criminal Justice, said in a statement: “These revisions to our law enforcement directive reflect a renewed confidence that our new system enables us to protect the public by detaining the most dangerous offenders, while avoiding the costs, both fiscal and social, of warehousing indigent non-violent offenders in jail pending trial.”

X. **Arnold Foundation’s responsibilities under strict liability and duties as manufacturers of the PSA**

89.

Arnold Foundation was the designer and manufacturer of the PSA tool, the product that was used in New Jersey at all relevant times to this Complaint.

90.

The intended purpose of the Arnold Foundation’s PSA was to cause judges to release pretrial defendants from jail based on a risk assessment of the danger that a released defendant would be to the community.

91.

As the manufacturer of the PSA, Arnold Foundation was required, subject to strict liability, to design its PSA tool so that it would be reasonably fit, suitable or safe for its intended purpose. N.J. Stat. Ann. § 2A:58C-2.

92.

As the manufacturer of the PSA, Arnold Foundation also had a *duty* to design its PSA tool so that it would be reasonably fit, suitable or safe for its intended purpose.

93.

Arnold Foundation failed to design its PSA product so that it would be fit, suitable, or safe for its intended purpose, as evidenced by the release of violent defendants into the community, resulting in, inter alia, the vicious murder of Christian Rodgers.

XI. Christie and Porrino's knowledge of the particular risk to Christian and June Rodgers's predominantly African American neighborhood

94.

As Governor of New Jersey since 2010, Christie knew, at all relevant times to this Complaint, that there is a high ratio of African American to White pretrial criminal defendants that get incarcerated in New Jersey (12-1, according to a study released in 2016). See The Color of Justice: Racial and Ethnic Disparity in State Prisons, The Sentencing Project, 2016. Accessible at <http://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.

95.

As Attorney General of New Jersey since 2016, Porrino also knew, at all relevant times to this Complaint, that there is a high ratio of African American to White pretrial criminal defendants that get incarcerated in New Jersey. See Id.

96.

As Governor of New Jersey since 2010, Christie knew, at all relevant times to this Complaint, that in New Jersey, like much of the country, the racial makeup of its neighborhoods is clustered geographically, producing, *inter alia*, predominantly African American neighborhoods. See, e.g., This Map Shows the Racial Makeup of Every Block in N.J. NJ Advance Media, 2015. Accessible at http://www.nj.com/news/index.ssf/2015/10/this_map_shows_a_racial_break_down_of_every_person.html.

97.

As Attorney General of New Jersey since 2016, Porrino also knew, at all relevant times to this Complaint, that in New Jersey, like much of the country, the racial makeup of its neighborhoods is clustered geographically, producing, *inter alia*, predominantly African American neighborhoods. See Id.

98.

Christie further knew that when the PSA was implemented, the numbers of African American defendants who would be released would be much higher

than the number of White defendants, and that the majority of these African American defendants would be released into predominately African American neighborhoods.

99.

Porrino further knew that when the PSA was implemented, the numbers of African American defendants who would be released would be much higher than the number of White defendants, and that the majority of these African American defendants would be released into predominately African American neighborhoods.

XII. Chris Christie's history of disparate treatment of African Americans motivating his policies

100.

Since becoming Governor, Christie has overseen a state that has the largest disparity in the rate of which African Americans are incarcerated of any other state in the country. In New Jersey, blacks are incarcerated at a rate of twelve to one over whites.

101.

For years, beginning in 2010 and up through 2017, Christie has pushed a hostile agenda towards funding public education in predominantly African American communities, as evidenced by his relentless efforts to break with 30-

years of New Jersey Supreme Court precedent to freeze state aid to special-needs school districts (which he calls “failure factories”) and use his new “fairness formula” that would provide the same amount of money for every public-school pupil in the state.

102.

Fully armed with the statistics in his state that demonstrate that under-aided schools are predominantly made up of African American children, Christie pushed his “fairness formula” and advocated for eliminating funding to thousands of African American inner-city youngsters while offering an enormous windfall to their wealthier, predominantly White neighbors in the suburbs.

103.

In July 2016, Christie vetoed a long-awaited law that would have eliminated the “Family Cap” on welfare recipients, claiming that it was unfair to non-welfare recipients who do not receive increased income when they have children. Christie knew that research has repeatedly found that family caps don’t serve much purpose other than increasing hardship for already poor families. Fully armed with the knowledge that the majority of welfare recipients in his state are African American, Christie chose to effectively punish African American families for having more children.

COUNT I

**DELIBERATE INDIFFERENCE
IN VIOLATION OF FOURTEENTH AMENDMENT
SUBSTANTIVE DUE PROCESS RIGHTS
UNDER 42 U.S.C. § 1983**

104.

Plaintiff hereby incorporates facts 1 through 98 to support this Count I.

105.

Based on the incorporated facts, Defendants Christie and Porrino knew, as the leaders of the state of New Jersey for many years, that droves of violent offenders would be released once the PSA was implemented under the CJRA, and they knew that this would create a substantial – outrageous – risk of serious harm to the residents of New Jersey. Due to the well-known fact that there is a 12-1 ratio of African American to White pretrial criminal defendants that get locked up in in New Jersey in the first place, and that Christie and Porrino knew that racial demographics in New Jersey reflect that a disproportionately high number of African American defendants would return to predominantly African American neighborhoods when released, Christie knew that the outrageous risk would be borne by predominantly African American neighborhoods, in particular.

106.

Despite this knowledge, Defendants installed the PSA into the criminal justice system of the state, and those droves of violent defendants were let loose into New Jersey's many communities. Despite three months of data between January 1 and April 9, Christie and Porrino ignored the risk of deadly harm ultimately suffered by Mr. Rodgers because they wanted to save money. June Rodgers's son – with whom June Rodgers has a constitutionally guaranteed, substantive due process right to companionship under the Fourteenth Amendment – was slain by one of those criminal defendants because the PSA that judges are required by law to rely on indicated that Mr. Black, Rodger's killer, had a "low risk" of being a danger to the community, and was released into Ms. Rodgers's neighborhood to terrorize its inhabitants.

107.

Ms. Rodgers is entitled to all damages permissible under controlling law, as well as attorney fees and cost regarding this lawsuit.

COUNT II

PRODUCTS LIABILITY: DESIGN DEFECT

(Against Arnold and Milgram)

108.

Plaintiff hereby incorporates facts 1 through 108 to support this Count II.

109.

Based on the incorporated facts, Arnold Foundation failed to design the PSA that it manufactured such that it was reasonably suitable, fit, or safe for its intended purpose, as evidenced by New Jersey's use of the PSA and the subsequent release of Mr. Black into Mr. Rodgers's neighborhood where Black savagely shot Rodgers 22 times and took his life.

110.

Alternatively, based on the incorporated facts, considering the number of other violent defendants that have been released into New Jersey's communities, the danger presented by Arnold Foundation's PSA is inherent in the product provided to New Jersey because that danger, as a public policy matter, is greater than can be justified by the PSA's utility in releasing supposedly non-violent offenders and saving the state of New Jersey the expensive costs of incarceration.

111.

Ms. Rodgers is entitled to all damages permissible under controlling law, as well as attorney fees and cost regarding this lawsuit.

COUNT III

PRODUCTS LIABILITY: FAILURE TO WARN

(Against Arnold and Milgram)

112.

Plaintiff hereby incorporates facts 1 through 112 to support this Count III.

113.

Based on the incorporated facts, Arnold Foundation failed to provide the residents of New Jersey with an adequate warning or instruction that its PSA came with severe danger and failed to otherwise communicate adequate information on the dangers and safe use of the product at any time relevant to this Complaint, considering the characteristics of, and the ordinary knowledge common to, the persons by whom the product is intended to be used.

114.

The PSA that Arnold provided was a dangerous product, as evidenced by New Jersey's use of the PSA and the subsequent release of Mr. Black into Mr. Rodgers's neighborhood where Black savagely shot Rodgers 22 times and took his life.

115.

Ms. Rodgers is entitled to all damages permissible under controlling law, as well as attorney fees and cost regarding this lawsuit.

COUNT IV

CLAIM UNDER THE SURVIVOR'S ACT

DUE TO NEGLIGENCE OF MANUFACTURER

(Against Arnold and Milgram)

116.

Plaintiff hereby incorporates facts 1 through 116 to support this Count IV.

117.

Based on the incorporated facts, because Arnold Foundation supplies a New Jersey product, its PSA, Arnold Foundation had a duty to use reasonable care to give warning of the dangerous condition of the product or of facts which make it likely to be dangerous to those whom the supplier expected to use the product. After considerable lobbying efforts by Arnold Foundation, under New Jersey's CJRA New Jersey residents have no choice but to use Arnold's PSA, and Arnold failed in its duty to give warning to New Jersey residents of the PSA's dangerous nature. Arnold's failure to fulfill that duty is considered negligence, and that negligence was the proximate cause of Christian Rodgers's violent death.

118.

Ms. Rodgers is entitled to all damages permissible under controlling law, as well as attorney fees and cost regarding this lawsuit.

COUNT V

ALTERNATIVE CLAIM UNDER THE SURVIVOR'S ACT

DUE TO NEGLIGENCE OF MANUFACTURER OF A COMPONENT PART

(Against Arnold and Milgram)

119.

Plaintiff hereby incorporates facts 1 through 119 to support this Count V.

120.

Based on the incorporated facts, Arnold Foundation, as the maker of a component part which was, at the very least, incorporated into the PSA product finished or assembled by the State of New Jersey, had the same duty of care as to such component parts as it would if it were the sole manufacturer of the PSA. As such, Arnold Foundation had a duty to use reasonable care to give warning of the dangerous condition of the product or of facts which make it likely to be dangerous to those whom the supplier expected to use the product. After considerable lobbying efforts by Arnold Foundation, under New Jersey's CJRA New Jersey residents have no choice but to use Arnold's PSA, and Arnold failed in its duty to give warning to New Jersey residents of the PSA's dangerous nature. Arnold's failure to fulfill that duty is considered negligence, and that negligence was the proximate cause of Christian Rodgers's violent death.

121.

Ms. Rodgers is entitled to all damages permissible under controlling law, as well as attorney fees and cost regarding this lawsuit.

COUNT VI

WRONGFUL DEATH ACT

(Against Arnold)

122.

Plaintiff hereby incorporates facts 1 through 122 to support this Count VI.

123.

Based on the incorporated facts, Arnold Foundation, as the maker of the PSA or, at the very least, the maker of a component part which was incorporated into the PSA product finished or assembled by the State of New Jersey, had a duty to use reasonable care to give a warning of the dangerous condition of the PSA or of facts which make it likely to be dangerous to those whom the Arnold expected to use the product. After considerable lobbying efforts by Arnold Foundation, under New Jersey's CJRA New Jersey residents have no choice but to use Arnold's PSA, and Arnold failed in its duty to give warning to New Jersey residents of the PSA's dangerous nature. Arnold's failure to fulfill that duty is considered negligence, and that negligence was the proximate cause of Christian Rodgers's violent death.

124.

As Ms. Rodgers was dependent on Mr. Rodgers's support, Ms. Rodgers suffered damages due to the loss of his life, caused by Arnold. As such, Ms.

Rodgers is entitled to all damages permissible under controlling law, including pecuniary damages, as well as attorney fees and cost regarding this lawsuit.

COUNT VII

INJUNCTIVE RELIEF

*(Against Defendants Christie and Porrino in their official capacities
and against Defendant Arnold)*

125.

Plaintiff hereby incorporates facts 1 through 125 to support this Count VII.

126.

Based on the incorporated facts, Plaintiff prays that this Honorable Court issue an injunctive order and permanently enjoin Defendants Christie and Porrino to (1) refrain from using the PSA, (2) order the Pretrial Program and all prosecutors in the state of New Jersey to refrain from using the PSA, (3) modify the PSA such that it includes sufficient criminal offenses, criminal propensities, and all other relevant data in order to prevent its use from releasing dangerous and violent defendants into New Jersey's precious communities.

127.

Alternatively, based on the incorporated facts, Plaintiff prays that this Honorable Court issue an injunctive order and permanently enjoin Arnold from providing the state of New Jersey access to the PSA until Arnold demonstrates that the PSA is redesigned such that it includes sufficient criminal offenses,

criminal propensities, and all other relevant data in order to prevent its use from releasing dangerous and violent defendants into New Jersey's precious communities.

128.

Alternatively, based on the incorporated facts, Plaintiff prays that this Honorable Court declare the CJRA unconstitutional and issue an injunctive order and permanently enjoin Defendant Porrino from enforcing it.

COUNT VIII

PUNITIVE DAMAGES

(Against all Defendants individually)

Based on the facts alleged in this complaint, Plaintiff is entitled to punitive damages, under all applicable laws, because, *inter alia*, Defendants acted with a willful and conscience indifference to the laws that protect Christian Rodgers and June Rodgers's Constitutional rights.

COUNT IX

ATTORNEY FEES

Based on the facts alleged in this Complaint, Ms. Rodgers is entitled to attorney fees, under all applicable laws.

WHEREFORE, Ms. Rodgers prays for a trial by jury of twelve and judgment against Defendants as follows:

- (a) That process issue and service be had on each Defendant;
- (b) That declaratory judgment be granted in favor of Plaintiff against Defendants, jointly and severally, for the injuries of Plaintiff;
- (c) That a permanent injunction be ordered declaring the PSA and the CJRA be immediately modified to prevent violent individuals from being released into New Jersey's communities, or, *alternatively*, that the CJRA and its use of the PSA be declared unconstitutional, in whole or in part, and that this Court permanently enjoin Defendants Christie and Porrino from enforcing the CJRA;
- (d) That Plaintiff recover, under the New Jersey Wrongful Death Act, all pecuniary damages for the death of her son, including, but not limited to, all expenses of Mr. Rodgers's funeral and all his future earnings that would have supported Ms. Rodgers;
- (e) That Plaintiff recover, under the New Jersey Survivor's Act, compensatory damages for the agony, terror, pain, and suffering of her son in the final moments of his life;
- (f) That Plaintiff be awarded all other expenses in an amount to be determined at trial, including attorney fees;
- (g) That Plaintiff recover all costs of this litigation;
- (h) That a jury trial be had on all issues so triable;

- (i) Plaintiff have Judgment against Defendant for punitive damages; and
- (j) That Plaintiff receives such other and further relief as the Court deems just and proper.

Respectfully submitted on this 31st day of July 2017,

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Suspect in Twin Peaks killing released from jail days earlier

By Vivian Ho Updated 5:24 pm, Tuesday, August 8, 2017



IMAGE 1 OF 4

Lamonte Mims, 19, is accused of killing 71-year-old Edward French in an attempted robbery on San Francisco's Twin Peaks on July 16, 2017.



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One of two people accused of killing a 71-year-old film scout and photographer on San Francisco's Twin Peaks last month had been arrested days earlier in the city for allegedly being a felon in possession of a gun, but was released from jail through a pretrial diversion program, records show.

City officials are now questioning the release of Lamonte Mims, a 19-year-old former resident of Patterson (Stanislaus County), who was on probation for burglarizing cars on Twin Peaks.

Mims was booked Monday and appeared in Superior Court on Tuesday to face charges including murder in the July 16 shooting of the film scout, Edward French, which occurred in the early morning during an apparent robbery attempt. A second

suspect, 20-year-old Fantasy Decuir of San Francisco, did not appear in court after being hospitalized for an undisclosed reason, Assistant District Attorney Michael Swart said in court.

ALSO



2 arrested in Twin Peaks killing of film scout, 71

Defense attorney Randall Knox, who was appointed to represent Mims, and Public Defender Jeff Adachi, who is representing Decuir, declined to comment outside court.

Swart said there is video evidence that Decuir pulled the trigger and that Mims, who had been barred from Twin Peaks by a court order, "made admissions of robbing French of his belongings" to police.

Mims was previously arrested July 7 on suspicion of being a felon with a gun, according to court documents, and appeared in court July 11. Investigators reported finding him July 4 in a car on Fitzgerald Avenue, along with another man, a 9mm Ruger pistol and a .38-caliber revolver — an alleged violation of his probation.

Mims had been arrested in November on suspicion of committing three car break-ins on Twin Peaks and possessing burglary tools. On March 28, records show, he pleaded guilty to burglary and receiving stolen property, both misdemeanors. He was sentenced to three years of probation and a 90-day suspended sentence.

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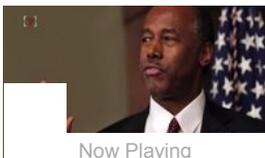
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The district attorney's office moved to revoke his probation July 11, but a judge ruled he should be released on what is known as assertive case management, a pretrial program that requires routine check-ins. The judge had followed a recommendation by the San Francisco Pretrial Diversion Project, a nonprofit group funded by the sheriff's department and the mayor's office.

In May 2016, San Francisco began experimenting with a computer algorithm that seeks to improve on the system of setting bail based on alleged crimes, taking into consideration whether a defendant might pose a public safety or flight risk.

The risk-assessment tool, developed by the Texas-based Laura and John Arnold Foundation, weighs a number of factors including the pending charges, the person's age and rap sheet, and their record of showing up to court. The tool then makes a recommendation for or against release, which is sent to a judge who can follow or ignore the advice.

Though District Attorney George Gascón was a proponent of the tool, prosecutors and defense attorneys said they have seen assessments with which they did not agree. Alex Bastian, a spokesman for the district attorney's office, said Tuesday there have been "many instances of contention."

“As it relates to this case along with many other cases, we have a disagreement with how that risk assessment is being calculated,” Bastian said. “They suggested release with certain conditions, and the judge carried out that recommendation and this defendant was released.”

The Pretrial Diversion Project and the Arnold Foundation did not immediately return requests for comment Tuesday.

In addition to the San Francisco offenses, Mims was on felony probation in San Mateo County. He pleaded no contest to felony car burglary and misdemeanor identity theft on July 21, 2016, said San Mateo County District Attorney Steve Wagstaffe.

His arrest at Twin Peaks in November was a violation of Mims’ probation in San Mateo County, and he returned to court there in January, Wagstaffe said. Mims admitted the probation violation on Jan. 20, Wagstaffe said, and was sentenced to six months in jail. He served three months, with another three months of credit for good behavior.

San Francisco police said they linked Decuir and Mims to French’s killing while investigating a separate armed robbery that occurred near the Cathedral of St. Mary of the Assumption at Geary and Gough streets on the morning of July 28. A 53-year-old man and a 33-year-old woman had been robbed of their cameras and wallets at gunpoint.

In court Tuesday, Swart argued against Judge Donna Hitchens’ decision to set bail for Mims and Decuir at \$5 million, calling it “an insult.” He asked for \$10 million, citing Mims’ prior convictions and the murder charges against them. Hitchens kept the bail at \$5 million.

Vivian Ho is a San Francisco Chronicle staff writer. Email: vho@sfgchronicle.com Twitter: @VivianHo

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CHRISTOPHER S. PORRINO
Attorney General

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

ELIE HONIG
Director

April 7, 2017

Dear Judge Grant:

As we have discussed at our regular monthly meetings, over the past several months, my Office has remained in close contact with law enforcement officers across the State to elicit feedback on the early phases of Criminal Justice Reform implementation. Specifically, we have asked prosecutors and police for their assessment of the factors and processes employed in the Public Safety Assessment (“PSA”). The responsive commentary has been thoughtful and instructive. My purpose in writing is to share this information and request that the Courts consider making certain modifications to the PSA and the Decision Making Framework (“DMF”) employed by the Pretrial Services Program in formulating its pretrial release/detention recommendation.

Specifically, law enforcement’s position is that the PSA should be modified to include the firearms and eluding offenses identified below among those offenses already categorized as “violent” by the risk factor and outcome definitions. Moreover, the DMF should be modified so that these firearms and eluding offenses, along with those cases in which an individual offends while he is on pretrial release or post-conviction supervision, automatically will trigger a Pretrial Services recommendation against release, regardless of an individual defendant’s PSA scores.

Firearms Cases

Much of the criticism from law enforcement of the PSA and DMF has focused on cases involving weapons—predominantly firearms. Perhaps the best examples are those cases in which a defendant has a prior conviction for one or more specified offenses that make him/her a “certain person not to possess firearms” under N.J.S.A. 2C:39-7b and those charges which subject a defendant to the mandatory sentencing provisions of the Graves Act, N.J.S.A. 2C:43-6c.

The PSA’s risk factors and formula and the DMF appear to undervalue the danger posed by defendants in Graves Act cases involving unlawful possession of a firearm (N.J.S.A. 2C:39-5), possession of a firearm for an unlawful purpose (N.J.S.A. 2C:39-4a1), possession of a firearms in the course of committing a CDS distribution offense (N.J.S.A. 2C:39-4.1a), and/or



certain persons not to have firearms (N.J.S.A. 2C:39-7b). Under the current system, none of these charges—absent a significant prior criminal history or an additional qualifying charge—triggers a New Violent Criminal Activity (“NVCA”) flag or a Pretrial Services recommendation against release. Considering the serious nature of these crimes, the danger unlawful firearms pose to the community, and the significant penalties associated with these offenses—including mandatory sentences of imprisonment with mandatory minimum terms—we strongly recommend that the PSA (in particular, the Violent Offense List Appendix)¹ and/or the DMF be supplemented and modified.

As Your Honor is aware, under the current DMF, the charges of escape (N.J.S.A. 2C:29-5.a), murder, aggravated manslaughter, or manslaughter (N.J.S.A. 2C:11-3, 11-4), aggravated sexual assault or sexual assault (N.J.S.A. 2C:14-2a, b, c.1), and robbery or carjacking (N.J.S.A. 2C:15-1, 15-2) will result in an automatic recommendation from Pretrial Services of “No Release Recommended”—regardless of an individual defendant’s PSA scores. In addition, if the PSA resulted in a NVCA flag and the current charge is violent, the Pretrial Services recommendation also will be against release. We respectfully submit that the above-referenced firearms offenses likewise should trigger an NVCA flag or an automatic recommendation against release. For example, a defendant who is a “certain person” under the law not to possess a firearm and who is now charged with possession of such a weapon should automatically receive a recommendation of “No Release Recommended,” regardless of his PSA score.

Prosecutor’s offices throughout New Jersey overwhelmingly have identified as a grave concern the PSA’s undervaluing of the danger associated with criminal firearms cases. The following case summaries illustrate how the PSA and DMF underestimate the danger posed by defendants charged with firearms offenses:

State v. Shakor Twitty (W-2017-000159-1602 Passaic): Defendant fled an area which police were canvassing after a burglary. While fleeing, defendant discarded a backpack that he had in his possession. The backpack was recovered, and a .45 caliber Ruger semiautomatic handgun and a high capacity magazine were found inside. Defendant was charged with, among other offenses, Possession of a Weapon for Unlawful Purpose (N.J.S.A. 2C:39-4a1), Possession of Prohibited Weapons and Devices - Large Capacity Magazine (N.J.S.A. 2C:39-3j), Unlawful Possession of a Weapon (N.J.S.A. 2C:39-5b1), and Certain Persons Not to Have Weapon (N.J.S.A. 2C:39-7b1). Defendant’s PSA scores were FTA 3, NCA 3 with no NVCA flag. The Pretrial Services recommendation was “Release with Conditions – Monthly Reporting,” and the judge so ordered.

State v. Agustin Chagoya (W-2017-000093-1607 Passaic): Defendant pointed a handgun at the victim (the boyfriend of his step-daughter) while stating “I have this for you.” Defendant was charged with Aggravated Assault – Knowingly Pointing a Firearm at Another (N.J.S.A. 2C:12-1b4), Terroristic Threats (N.J.S.A. 2C:12-3b), Possession of a Weapon for an Unlawful Purpose (N.J.S.A. 2C:39-4a1) and Unlawful Possession of a Weapon without a Permit (N.J.S.A. 2C:39-5b1). The PSA scores were FTA 2, NCA 3, with no NVCA flag. The recommendation of Pretrial Services was “Release with

¹ This list is annexed to the document entitled “Public Safety Assessment New Jersey Risk Factor and Outcome Definitions Effective 3-1-2017.”

Conditions – Monthly Reporting.” The judge accepted Pretrial Services recommendation and ordered monthly telephonic reporting.

State v. Kenneth Price (W-2017-000591-1608 Passaic): Defendant was observed by undercover officers operating a motor vehicle with dark tinted window and no front license plate in a high crime area in Paterson. The vehicle was stopped, and multiple glassine wax folds were observed on back seat. Defendant was ordered out of the vehicle, and he admitted to having a weapon (a handgun loaded with hollow point bullets) in his possession. An occupant of the vehicle admitted that he visited Paterson for the purpose of buying heroin. Defendant was charged with Possession of a Weapon for an Unlawful Purpose (N.J.S.A. 2C:39-4a1), Unlawful Possession of a Weapon (N.J.S.A. 2C:39-5b1), and Prohibited Weapons and Devices (N.J.S.A. 2C:39-3f1). Defendant’s PSA scores were FTA 1, NCA 1, with no NVCA flag. The judge ordered defendant released on his own recognizance in accordance with the Pretrial Services recommendation.

It bears noting that in the each of the above matters, the State—despite the obvious severity of the conduct—did not file motions for pretrial detention. In those cases, the low PSA scores and Pretrial Services recommendations for release posed significant practical obstacles to detention. Without modification of the PSA and/or DMF, our communities will face the dangers of those who choose, among other things, to terrorize others by pointing firearms at them, engage in illegal drug trade with firearms at their ready, and possess firearms when their prior illegal conduct has rendered them ineligible to possess them.

2nd Degree Eluding Cases

Another offense meriting consideration for enhanced treatment for PSA and DMF purposes is 2nd degree Eluding an Officer while Operating a Motor Vehicle with a Risk of Death or Injury to any Person (N.J.S.A. 2C:29-2b). For law enforcement, it is disconcerting that a defendant who has engaged in a dangerous police chase, which puts lives in jeopardy, ordinarily would not be subject to pretrial detention.

A matter out of Union County serves as an example. In State v. David Crooks (W-2017-000065-2019), a police officer observed a motor vehicle with the driver’s side door lock hanging out of the cylinder. After being advised by dispatch that the vehicle was stolen, the officer began to follow the vehicle as it pulled off of a state highway and into the parking lot of a retail establishment. When the driver of the vehicle noticed the marked patrol car behind him, he exited the parking lot onto the state highway westbound, drove perpendicular in heavy traffic across all lanes of travel, entered a gas station located in the center median, and exited the lot onto the state highway eastbound. The officer then activated his overhead lights and audible siren, in an attempt to conduct a stop of the vehicle. At this point, the defendant began to accelerate, reaching speed of approximately 60 MPH when the posted speed limit was 45 MPH. Another officer entered the pursuit, during which the driver passed multiple cars on the shoulder and served around and cut off multiple cars—all of this during heavy traffic on the state highway. While fleeing, the driver struck a sign at the entrance to the Garden State Parkway. The sign subsequently flew into the roadway, almost striking one officer’s vehicle. During the

pursuit, the driver lost control of his vehicle on multiple occasions. Ultimately, the vehicle hit a curb and careened across all lanes of travel of the state highway, spun out of control, slid backwards, and came to rest against the curb on the shoulder near another commercial establishment on the state highway.

Among other offenses, the defendant was charged with 2nd degree Eluding (N.J.S.A. 2C:29-2b). The defendant had numerous indictable and disorderly persons convictions with a bevy of prior sentences to incarceration. The PSA scores were FTA 3, NCA 4 with no NVCA flag. The recommendation of Pretrial Services was "Release with Conditions - Bi-Weekly Reporting." The judge released the defendant and ordered telephonic and in-person reporting, each once per month.

Again, in light of the dangerousness of defendant's actions it is proposed that the offense of 2nd degree Eluding be considered a "violent" offense for PSA risk factor and outcome purposes and that the DMF be modified to include this offense as one which would automatically trigger a Pretrial Services recommendation of "No Release Recommended."

Crimes Committed While on Pretrial Release, Probation or Parole

The PSA's risk factors and outcome definitions and the DMF also fail to account for the significance of crimes that are committed by an individual when he is on pretrial release for another offense or while he is on some form of post-conviction supervision. Where an individual chooses to ignore the most fundamental condition of pretrial release or post-conviction supervision (*i.e.*, not to commit any additional offenses), it appears axiomatic that there exists exceptionally strong evidence that no conditions of release will ensure the protection of the safety of the community, thus necessitating the individual's pretrial detention.

The following case summaries are offered to illustrate the lack of significance that the PSA and DMF place upon those who offend while on pretrial release or post-conviction supervision:

State v. Juan M. Almonte-Peralta (W-2017-000265-102 Passaic): Defendant was arrested on February 24, 2017, and charged with, among other offenses, Burglary (N.J.S.A. 2C:18-2a1), Theft (N.J.S.A. 2C:20-3a), Impersonating a Law Enforcement Officer (N.J.S.A. 2C:28-8), and Resisting Arrest (N.J.S.A. 2C:20-3a). At the time of this arrest, defendant was out on monetary bail for pending charges from 2016 that included, among others, 1st degree Robbery (N.J.S.A. 2C:15-1) and Aggravated Assault (N.J.S.A. 2C:12-1b2). Defendant also was on probation at the time of arrest. The PSA scores were FTA 3, NCA 4, with no NVCA flag. Pretrial Services recommended "Release with Conditions – Bi-Monthly Reporting (Twice per Month)." The State's motion for pretrial detention was denied, and the judge released defendant on home supervision with electronic monitoring.

State v. Denzel W. Johnson (W-2017-000064-1429 Morris): On February 4, 2017, Defendant was charged with Burglary (N.J.S.A. 2C:18-2a1), Theft (N.J.S.A. 2C:20-3a), and Hindering (2C:29-3b1). At the time of his arrest, defendant was on pretrial release

for crimes including Receiving Stolen Property (N.J.S.A. 2C:20-7a), Possession of CDS (N.J.S.A. 2C:35-10a1), Possession of CDS with Intent to Distribute (N.J.S.A. 2C:35-5b5), and Possession with Intent to Distribute within 500 Feet of Public Property (N.J.S.A. 2C:35-7.1a). Those crimes were allegedly committed on January 20, 2017. Defendant was also on probation in Passaic and Morris Counties for prior offenses including Resisting Arrest/Eluding (N.J.S.A. 2C:29-2b), Possession of CDS with Intent to Distribute (N.J.S.A. 2C:35-5b11), and Receiving Stolen Property (N.J.S.A. 2C:20-7). Those offenses took place in 2014 and 2016. Defendant's PSA scores were FTA 3, NCA 5, with no NVCA flag. The Pretrial Services recommendation was "Release with Conditions – Weekly Reporting." Defendant was released at first appearance with a requirement that he report to Pretrial Services telephonically once every other week.

State v. Alize D. Nulls (W-2017-003411-0714 Essex): 21 year old Defendant committed a robbery upon a victim and inflicted a deep laceration wound over victim's eye which caused profuse bleeding. Defendant was on parole for an offense of Unlawful Possession of a Weapon (handgun) (N.J.S.A. 2C:39-5b) out of Essex County (he was sentenced on January 22, 2016). Defendant has an extremely extensive juvenile history. Defendant's PSA scores were FTA 2, NCA 4, with no NCVA flag. Pretrial Services recommended "Release with Conditions – Weekly Reporting (NERA)". The State's motion for pretrial detention was denied, and defendant was released and required to report to Pretrial Services telephonically every other week.

State v. William C. McNeal (W-2017-000180-0514 Cape May): During the course of a narcotics investigation, a search warrant was executed at Defendant's residence. Marijuana packaged for distribution was located in the house. Defendant admitted to being the owner/possessor of the marijuana. Among other offenses, defendant was charged with 3rd degree Possessing/Distributing within 500 Feet of Certain Public Property (N.J.S.A. 2C:35-7.1). Defendant has prior indictable convictions dating back to 1992, including two prior violent convictions for Aggravated Assault on a Police Officer (N.J.S.A. 2C:12-1b5a). At the time of this arrest, defendant was on parole for prior offenses. Defendant's PSA scores were FTA 3, NCA 4, with no NVCA flag. The recommendation from Pretrial Services was "Release with Conditions – Bi-Monthly Reporting (Twice Per Month)." The State's motion for pretrial detention was denied, and defendant was released and required to report telephonically every other week.

Again, that an individual would choose to re-offend while on pretrial release monitoring or post-conviction supervision serves as a clear indicator that he is a significant risk to the safety of the community. Accordingly, modifying the DMF to require an automatic Pretrial Services recommendation against release is reasonable and appropriate.

We respectfully suggest that the modifications outlined above will enhance the ability of law enforcement and the courts to identify and manage risk moving forward.

I would like to thank Your Honor and Chief Justice Rabner for your ongoing partnership in this vital reform effort.

Sincerely yours,



Elie Honig, Director
Division of Criminal Justice

cc: Richard T. Burke, President, County Prosecutors Association of New Jersey
William Parenti, President, New Jersey State Association of Chiefs of Police
Joseph E. Krakora, Public Defender
Alexander Shalom, Senior Staff Attorney, ACLU of New Jersey

**MEMORANDUM OF UNDERSTANDING BETWEEN
LAURA AND JOHN ARNOLD FOUNDATION
AND BERNALILLO COUNTY STAKEHOLDERS**

This Memorandum of Understanding (“*MOU*”) documents the understanding between the Second Judicial District Court, the Bernalillo County Metropolitan Court, and Bernalillo County (collectively referred to as the “*Bernalillo County Stakeholders*”) and the Laura and John Arnold Foundation (the “*Foundation*”), a tax-exempt private foundation dedicated to producing substantial, widespread, lasting reforms that will transform the criminal justice system. This *MOU* concerns the collaboration between the parties on a project to implement the Public Safety Assessment™ court-based pretrial risk assessment tool developed by the Foundation (the “*Tool*”).

The Foundation and the Bernalillo County Stakeholders share the goals of increasing public safety, reducing crime, and improving the cost-effectiveness and fairness of the criminal justice system. The Bernalillo County Stakeholders and the Foundation intend to collaborate on the implementation of the Tool, as well as the collection and evaluation of related data, in order to enhance the administration of criminal justice in Bernalillo County, New Mexico and nationally. In furtherance of this goal, the Foundation grants to the Bernalillo County Stakeholders a nonexclusive, non-transferable right and license to install, implement, and use the Tool free of charge in Bernalillo County, New Mexico, provided that the Bernalillo County Stakeholders abide by all the terms and conditions of this *MOU*.

In consideration of the mutual understanding and goals of the parties to this *MOU*, the parties agree to the following:

I. MUTUAL AGREEMENTS

1. **Term.** This *MOU* shall commence upon execution by all parties and will remain in effect until terminated by any one party. Any party may terminate this *MOU* upon providing thirty (30) days written notice to the other parties. Upon termination, all rights and licenses to the Tool granted under this *MOU*, including the right to use the Tool and/or related materials, shall cease. The non-disclosure obligations in Section II.6, however, shall survive termination of this *MOU*.
2. **Modifications.** Any and all amendments, changes, and/or modifications to this *MOU* will be made in writing, signed and dated by all parties before becoming effective.
3. **Assignment of rights.** No party may assign its rights under this *MOU* without the express written permission of the other parties. Any assignment that does not comply with this provision will be deemed null and void.
4. **Warranty.** The Tool is provided “as is” without warranty.
5. **Implementation Plan.** It is the intent of the parties to administer the Tool to all defendants booked into the Metropolitan Detention Center on open misdemeanor and

felony charges. To that end, the parties agree to mutually develop and adopt an implementation plan that sets forth a timetable for the Tool's rollout throughout Bernalillo County and, at the conclusion of the rollout, the Tool's county-wide administration, as set forth above.

6. **Third Parties.** Nothing in this MOU, express or implied, is intended to confer any rights, remedies, claims or interests upon a person not a party to this MOU.
7. **Independent Contractor; No Monetary Compensation.** The Foundation and the Bernalillo County Stakeholders are independent contractors, and neither party, nor their agents or employees, are employees of the other party. Neither party, nor its agents or employees, shall accrue leave, retirement, insurance, bonding, or any other benefits or privileges afforded to employees of the other party as a result of this MOU. The parties acknowledge that no sums are to be paid to either party by the other party under this MOU.
8. **Notice.** Notice may be provided via electronic mail with confirmation of delivery or via certified mail to each party at the respective addresses:

Bernalillo County Stakeholders:

District Court:

James Noel, Court Executive Officer
Second Judicial District Court
400 Lomas Blvd. NW
Albuquerque, NM 87102
albdjan@nmcourts.gov

Metropolitan Court:

Robert L. Padilla, Court Executive Officer
Bernalillo County Metropolitan Court
P.O. Box 133
Albuquerque, New Mexico 87103
metrrlp@nmcourts.gov

With a copy to:

Bernalillo County Metropolitan Court
Attention: Dana L. Cox, General Counsel
P.O. Box 133
Albuquerque, New Mexico 87103
metrdlc@nmcourts.gov

Bernalillo County:

Julie Morgas Baca
Bernalillo County Manager
One Civic Plaza NW

Albuquerque, NM 87102
jmorgasbaca@bernco.gov

Foundation:

Matthew Alsdorf
Vice President of Criminal Justice
Laura and John Arnold Foundation
3 Columbus Circle, Suite 1601
New York, New York 10019
malsdorf@arnoldfoundation.org

II. THE BERNALILLO COUNTY STAKEHOLDERS

- 1. Fidelity to the Tool.** The Bernalillo County Stakeholders agree to use the Tool in a manner consistent with instructions, templates, or other guidance provided by the Foundation regarding: inclusion or exclusion of risk factors; definition of risk factors; weighting of risk factors; scoring or calculation of risk level; categorization of defendants by level of risk for failure to appear, new criminal arrest, and new violent criminal arrest; the prohibition of scoring or categorization overrides by pretrial services entities; visual or other presentation of results generated by the Tool; and other issues related to the use and implementation of the Tool. Pretrial services units within the Bernalillo County Metropolitan Court and the Second Judicial District Court will use the same Decision Making Framework—defined as a guide developed by the Bernalillo County Stakeholders to help decision-makers interpret the PSA risk scores and decide how to manage each level of risk—and PSA results report format for county-wide application.
- 2. System improvements.** Subject to the parties' implementation plan, as discussed above in Section I.5, the Bernalillo County Stakeholders agree to administer the Tool to all defendants who are in custody at the earliest possible point following arrest on open misdemeanor and felony charges. The results of the risk assessment will be presented and considered at a defendant's first court appearance (which shall take place no more than 24 hours after arrival in any Bernalillo County jail) and any appearance during which a defendant is in custody and a release/detention determination is made or bail is set or adjusted.
- 3. Provision of data and access to staff.** The Foundation is engaged in ongoing research regarding the Tool, including research on the impact of adopting the Tool in jurisdictions and the development of data linkages across systems. The Bernalillo County Stakeholders agree that, upon request from the Foundation, they will promptly provide the Foundation or individuals it designates, including third party researchers or consultants, with data relevant to these research and evaluation efforts, including but not limited to data related to pretrial release and detention, pretrial arrest, pretrial failure to appear, and case processing. The Bernalillo County Stakeholders agree that the Foundation may use this data and information for further development and evaluation of the Tool. Access shall be granted to any and all data used to apply the Tool in Bernalillo County, as well as any other demographic and

offense-related variables collected in the normal course of operations. In complying with the terms of this MOU, the parties agree that anonymized data may be required to comply with certain privacy laws or corresponding orders of the court, and nothing in this MOU shall be construed to require the Foundation or the Bernalillo County Stakeholders to disclose information in violation of those laws or orders.

4. **License limitations.** Except for the limited rights and licenses expressly granted in this Agreement, no other license is granted, and no other use is permitted. The Bernalillo County Stakeholders agree not to use the Tool or any information presented by the Tool to create any similar software; or decompile, disassemble or otherwise reverse engineer the Tool. The licenses are solely for academic, non-profit or federal, state or local government use. No commercial use or use by a commercial entity is permitted by this Agreement.
5. **Ownership.** The Foundation and its licensors shall retain all right, title and interest (including patents, copyrights, trade secrets and trademarks) in and to the Tool. Any improvements to the Tool arising out of any feedback or data provided by the Bernalillo County Stakeholders shall be solely owned by the Foundation.
6. **Non-disclosure.** The Bernalillo County Stakeholders agree to refrain from disclosing the formula for calculating the risk scores generated by the Tool to any third parties without prior written approval from the Foundation. This provision shall survive termination of this MOU and remain in effect until withdrawn in writing by the Foundation.

III. THE FOUNDATION

1. **Research, development, and sharing of findings.** The Foundation will engage in ongoing research and development efforts based on data and input from the Bernalillo County Stakeholders as well as other jurisdictions that implement the Tool. The Foundation agrees to share with the Bernalillo County Stakeholders the key findings from this and other research related to the Tool. In addition, the Foundation will provide the Bernalillo County Stakeholders with any modifications made to improve the precision, accuracy, or usability of the Tool.
2. **Privacy and confidentiality.** In obtaining and storing data from the Bernalillo County Stakeholders, the Foundation agrees to comply with all applicable privacy and data protection laws and not to make any disclosures to third parties in violation of these laws. The Foundation will not disseminate or disclose any personally identifiable information to any other organization or individual, other than the Bernalillo County Stakeholders and the Foundation's staff, researchers, contractors, or consultants. Any and all reports or publications produced as a part of this project will present data and findings in aggregated form. This confidentiality provision shall survive the termination of this MOU.

3. **Ownership, publication, and release of research and Tool instructions.** The Foundation shall own all right, title, and interest (including, but not limited to, patent, trademark, and copyrights) in the Tool and any related inventions and works of authorship related to or derived in any way from the research. Accordingly, without further notice to or consent from the Bernalillo County Stakeholders, the Foundation may reproduce, distribute, and/or produce derivative works based on any reports, findings, instruction manual(s) for the Tool, anonymized, aggregated data or other data in accordance with Section III.2 above, and other related documentation.
4. **LIMITATION OF LIABILITY.** THE BERNALILLO COUNTY STAKEHOLDERS AGREE THAT THE FOUNDATION SHALL NOT BE LIABLE IN ANY EVENT FOR ANY CAUSE WHATSOEVER REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) ARISING OUT OF THE BERNALILLO COUNTY STAKEHOLDERS' USAGE OF THE TOOL, INCLUDING WITHOUT LIMITATION FOR (A) ANY INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR (B) ANY OTHER DAMAGES IN THE AGGREGATE IN EXCESS OF \$500.00.
5. **Covenant Not to Sue.** The parties covenant not to sue or otherwise institute or cause to be instituted or in any way participate in legal or administrative proceedings against the other party for any claims, demands, actions, causes of action, suits, rights, debts, damages and other obligations of every kind and nature, known or unknown, in law, equity or otherwise arising out of or in connection with the Bernalillo County Stakeholders' usage of the Tool.
6. **Public Records Act; Disclosures.** The Foundation recognizes and understands that the Bernalillo County Stakeholders are governmental agencies and are subject to certain reporting requirements to other State Agencies (such as the New Mexico State Auditor, the Administrative Office of the Courts, the New Mexico Taxation and Revenue Department, and the New Mexico Department of Finance and Administration) and is further subject to disclosure requirements as set forth in the New Mexico Inspection of Public Records Act ("*IPRA*"), NMSA § 14-2-1 et seq., and the Sunshine Portal Transparency Act ("*Sunshine Portal*"), NMSA 1978, § 10-16D-1 et seq. Therefore, nothing contained in this Agreement is intended to restrict the Bernalillo County Stakeholders' ability to comply with IPRA and the Sunshine Portal, and other applicable laws and reporting obligations. Notwithstanding the foregoing, if the Bernalillo County Stakeholders are presented with a request for documents or other information by any State Agency, or with an application for a court order compelling production of documents or other information, the Bernalillo County Stakeholders will immediately give notice to the Foundation of the request, pursuant to Section I.8 above, including by email to Matt Alsdorf at masldorf@arnoldfoundation.org, and, to the extent possible, facilitate the Foundation's opportunity to contest such process by any legal means available to it before the information is submitted to a court or other third party. If the Bernalillo County Stakeholders are presented with a court order compelling production of

documents or information that has already been entered without prior notice to the Bernalillo County Stakeholders, the Bernalillo County Stakeholders shall seek to apply to the ordering court to vacate or modify its order prior to turning over the documents or information that the Bernalillo County Stakeholders were ordered to produce. The Bernalillo County Stakeholders, however, are not obligated to withhold the delivery of the requested information beyond the time ordered by a court or State Agency, unless the applicable subpoena or request is quashed or the time to produce is otherwise extended. This provision shall survive termination of this MOU and remain in effect until withdrawn in writing by the Foundation.

[Signature Page Follows.]

THE FOREGOING IS UNDERSTOOD, ACCEPTED, AND AGREED TO BY THE BERNALILLO COUNTY STAKEHOLDERS AND THE FOUNDATION.

THE BERNALILLO COUNTY STAKEHOLDERS

Second Judicial District Court

Name: Honorable Nan Nash

Title: Chief Judge, Second Judicial District Court

Signature: Nan Nash

Date: 11/1/16

Name: James Noel

Title: Court Executive Officer, Second Judicial District Court

Signature: James Noel

Date: 10.31.16

Approval as to Legal Sufficiency:

Signature: Elyse G. G. G.

Date: October 27, 2016

Bernalillo County Metropolitan Court

Name: Honorable Henry A. Alaniz

Title: Chief Judge, Bernalillo County Metropolitan Court

Signature: Henry A. Alaniz

Date: 11-7-2016

Name: Robert L. Padilla

Title: Court Executive Officer, Bernalillo County Metropolitan Court

Signature: Robert L. Padilla

Date: 11-7-2016

2016-0699

Name: Dana L. Cox (certifying legal sufficiency)

Title: General Counsel, Bernalillo County Metropolitan Court

Signature: Dana L. Cox

Date: 11/3/16

Bernalillo County

Name: Julie Morgas Baca

Title: Bernalillo County Manager

Signature: Julie Morgas Baca

Date: 10-21-16

Bernalillo County Attorney (Approval as to Legal Sufficiency):

Signature: [Signature]

Date: 10.21.2016

LAURA AND JOHN ARNOLD FOUNDATION

Name: Matt Alsdorf

Title: Vice President of Criminal Justice

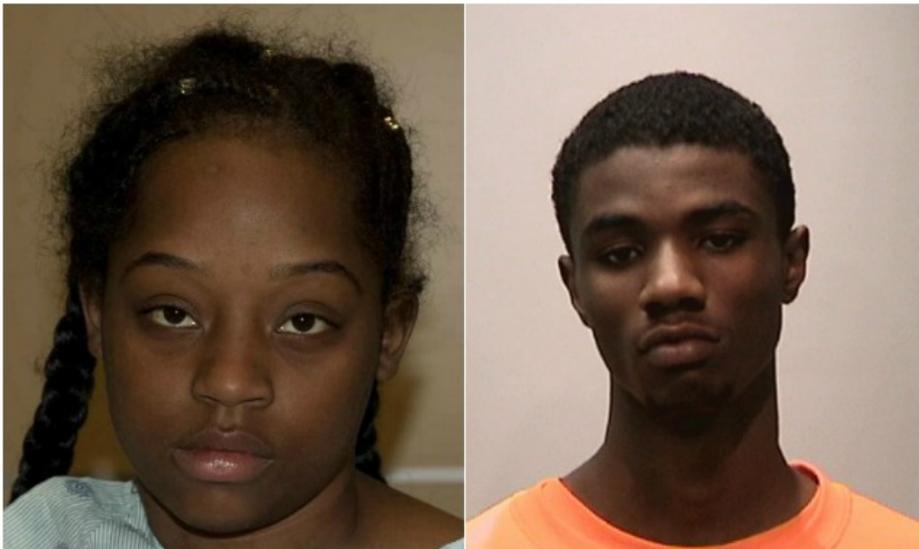
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Date: Oct 17 2016

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A New Law Enforcement Algorithm Helped Free Twin Peaks Shooting Suspect 5 Days Before The Crime

by [Beth Spotswood](#) in [News](#) on Aug. 14, 2017, 1:39 pm



Fantasy Decuir (l) and Lamonte Mims stand accused in the fatal shooting of San Francisco resident Edward French.

Can math determine who'll commit a crime while out on bail and who won't?

In an experiment that's been underway since May 2016, San Francisco has adopted an algorithm designed by a Texas-based judicial reform non-profit to help determine if a suspect can be released on their own recognizance or should be kept in jail while awaiting trial. One of those suspects recently released by the algorithm is now implicated in the murder of 71-year-old Edward French last month.

[The San Francisco Chronicle reports](#) that 19-year-old Lamonte Mims was arrested on charges of possessing a gun while on probation. When determining whether or not Mims should be released before his trial, the courts factored his results in the algorithm — which said Mims was a medium public safety and flight risk. Judge Sharon Reardon decided to release Mims provided he checked in regularly with the city's pretrial diversion unit.

(In San Francisco, the defendant's results in the algorithm are used as a tool to help the judge make a final decision on whether or not to release him or her.)

Five days later, Mims and 20-year-old Fantasy Decuir allegedly shot French. They were caught in connection with another crime, in which Mims and Decuir reportedly robbed a pair of victims near St. Mary's Cathedral at gunpoint. According to San Francisco prosecutors, it was [Decuir who was the shooter](#) in French's murder.



40 [Like](#) [Share](#) [Tweet](#) *im, Edward French. Courtesy photo via ABC 7*

Why had he even been given one chance and put on probation, and then another chance and put on probation, and now he's caught in possession of a... "Why would he even be considered for release?" asked Bill Fazio, a former prosecutor and candidate for District Attorney.

The algorithm is currently in use in San Francisco, New Jersey, and New Mexico. It was created by the Laura and John Arnold Foundation to mathematically predict which defendants might re-offend once released. Basically the algorithm aims to be more fair than the current bail system, which requires the accused to have access to a lot of money. The foundation won't reveal exactly how they came up with the algorithm, but it apparently involved studying 1.5 million criminal cases and how those suspects behaved upon release.

It's important to note that John Arnold, one of the founders of the foundation, was a hedge fund manager. Eric Siddall, vice president of the Los Angeles Association of Deputy District Attorneys, told the Chron that hedge fund math shouldn't be used in criminal cases. "We're trying to use a method that hedge funds use to make money to make a determination of whether someone should be in custody or not," said Biddall. "The problem is if a hedge fund makes a mistake, they lose money. If we make a mistake, someone dies."

A lawsuit has been filed in New Jersey over a case similar to that of Mims and French. A suspect released based on his algorithm results allegedly killed an innocent victim.

"Our country's pretrial justice system relies on judges to determine who stays in jail pending trial and who is released. There is no perfect, foolproof way to make this determination. But we believe that as a society we can adopt practices that provide better information for judges to make more informed decisions — decisions that are likely to reduce the risk to our communities," said foundation spokesperson David Herbert in a statement reported by the Chronicle.

San Francisco officials don't think major changes should be made to the court's use of the algorithm over one tragic case. "If we are trying to enhance public safety and want to do so in an equitable way, then custody decisions based on risk are going to be better than those based on financial means," San Francisco District Attorney spokesperson Alex Bastian said. "However, it is vital that risk is calculated as accurately as possible. That is why the system needs to constantly push itself to do the best it can in taking on the difficult task of predicting human behavior."

Public Defender Jeff Adachi agreed, saying "I've been around a long time and there are cases where people had been released and something happened that nobody anticipated. While it's certainly tragic, we shouldn't make any assumptions here."

[Edward French](#) was a longtime photographer and film location scout. He was reportedly being robbed of his camera when he was shot on July 16.

Related: [Prosecutors Say SF Woman Pulled Trigger In Twin Peaks Slaying](#)

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