



**Testimony for the House Judiciary Committee
January 21, 2020**

**HB 49 Criminal Procedure - Pretrial Release - Pretrial Risk Assessment
Instruments**

FAVORABLE WITH AMENDMENT

The ACLU of Maryland, Job Opportunities Task Force, and Out For Justice support HB 49, which would require that jurisdictions who use a risk assessment tool validate these tools within certain time frames.

Several years ago, over 100 national civil rights organizations signed a statement raising concerns regarding the use of algorithms in making pretrial determinations.¹

Among other concerns documented in that statement, the co-signatories recognized that some risk-assessment tools may employ factors that have little predictive value about an individual's propensity to recidivate or abscond. Even worse, these factors (with possibly little predictive value) may bear a disparate impact on persons of color, thereby legacy'ing, possibly worsening, the racial disparities of judicial subjectivity which preceded these tools.

We also have concerns about the implementation and deployment of risk assessment tools. For example, it is unclear how/whether individual judges and Commissioners are appropriately and uniformly guided in relying on these tools and whether the tools are to be relied on in setting conditions of release.

Amendment

Finally, we respectfully propose that HB 49 be amended to require that the revalidation process (1) be transparent and open to public comment; and (2) take into consideration the expertise of a person who has been directly impacted by the criminal legal system.

¹ "The Use of Pretrial "Risk Assessment" Instruments: A Shared Statement of Civil Rights Concerns" (available at <http://civilrightsdocs.info/pdf/criminal-justice/Pretrial-Risk-Assessment-Full.pdf>).