

BAIL PROJECT

EVALUATION AS PART OF BUSINESS STRATEGY

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Most Americans recognize that the use of cash bail to detain people pretrial must change.¹ That is because there is no place in the criminal legal system where money more clearly buys justice than bail. A person accused of a crime where bail is set pays the entire bail amount set by a judicial officer or a deposit in exchange for their liberty. Tying freedom to financial ability upends the presumption of innocence, tears lives apart, and perpetuates racial and economic disparities. But while there is growing consensus that reform is needed in pretrial systems, a shared vision for what this looks like is less clear.

Founded by Robin Steinberg in 2017, The Bail Project (TBP) is using data and on-the-ground experience to create a tangible model for what a world without cash bail can look like. In this world, there is a default presumption of release and strong procedural protections to protect a person's rights and liberty if the government seeks pretrial detention. In this world, people have access to community-based resources to help them get back to court and meet other essential health, housing, and employment needs. Finally, crimes of poverty are decriminalized, and people are not subject to burdensome pretrial conditions and surveillance like electronic monitoring.

To get to this place, TBP seeks nothing less than broad adoption of its needs-based and community-based model as the foundation for reimagining pretrial justice.

In 2019, I was hired as the chief impact officer, along with chief data officer, Tara Watford, with a mandate to codify TBP's evidence-building practices to show our model is a more effective and just alternative to cash bail. We were fortunate to be joining a nonprofit with a pedigree for evidenced-based leadership. TBP is the offspring of two other start-ups founded by Steinberg that demonstrated results for reducing incarceration for marginalized individuals in the criminal legal system. Starting in 1997, The Bronx Defenders pioneered an innovative model of public defense that approached the legal representation of low-income people through a holistic lens, identifying the underlying causes of a person's criminal justice involvement and deploying interdisciplinary teams of attorneys, social workers, and advocates to address them. In 2018, a RAND study found that, over the course of ten years, this holistic model prevented over 1 million days of incarceration.²

But while holistic defense proved effective on many fronts, Steinberg knew that cash bail remained the decider of many people's cases, and that is where The Bronx Freedom Fund came in. Using philanthropic dollars, the Freedom Fund, created in 2007, was able to post bail for people who could not afford it, leveling the playing field and preventing pretrial incarceration. After ten years, the results spoke for themselves: not only did the vast majority of individuals return to court without having any money on the line, but over 50 percent of the cases were dismissed when people could defend themselves from a position of liberty. The resulting stories and data were critical in pushing the case for bail reform into the mainstream, and Steinberg utilized those lessons and strategies to launch The Bail Project.

After four years, this simple model, which we call Community Release with Support, is operating in twenty-seven metro areas in sixteen states across the United States. The model is defined by four essential components: 1) an individualized needs assessment conducted by TBP client advocates that documents what the client, as well as their support network, voluntarily identifies as their needs to return to court; 2) automated and personal court reminders for clients as well as free transportation assistance to and from court; 3) connections to community resources

for clients to help them address self-identified needs surfaced during the intake process; and 4) community capacity building to facilitate collaboration between CBOs, and, in some cases, seed funding for local organizations that can continue the work after TBP exits a jurisdiction. These efforts allow individuals to regain their freedom and resolve their court cases with improved outcomes while reducing jail populations and mitigating the harms of wealth-based detention on low-income people and communities of color.

Since its inception, TBP staff have helped over 25,000 people return to their jobs, homes, and communities, preventing more than one million days in jail and saving almost \$2 million in pretrial detention costs. We have supported clients' attendance at more than 85,000 court dates, with a court appearance rate of 92 percent, even though they have no financial obligation to us. A staggering 32 percent of TBP clients have all of their charges dismissed, and of the clients who reach a final disposition, 92 percent are not required to spend any additional time incarcerated. In short, TBP is proving that cash bail is unnecessary and unjust. Steinberg's demonstrated leadership to inextricably connect mission to results cannot be overemphasized as a driver for these outcomes. It is a vital ingredient in the recipe for creating social change and the reason Tara and I were so excited to join TBP's cause to disrupt the money bail system and challenge a system that criminalizes race and poverty.

Our evidence-building objectives were clear: 1) create a user-centered platform to reliably collect client and jurisdictional data; 2) nurture data practices with staff to optimize bailouts and improve service quality to clients, and 3) generate rigorous proof points that demonstrate our model is an effective alternative to cash bail and motivates change in pretrial systems. Tara and I were not starting this work with a blank slate. Both of us had experience at our previous organizations pursuing similar goals, and we also had the benefit of an existing business plan created by senior TBP staff and the Bridgespan Group in 2018. The business plan exhibited the DNA of all Robin Steinberg's start-ups: a deep commitment to acting on a learning agenda and building a dataset to demonstrate why the criminal legal system should change.

The business plan laid out aggressive milestones for program expansion: dramatically increasing clients served and building a rigorous evidence base over a five-year period.

Sidebar: Based on our theory of change, TBP's learning agenda is to create strong proof points to challenge prevailing counter-narratives and show that:

- Individuals can be released pretrial and will return to court without: a) putting up any of their own money for bail, or b) restrictive release conditions such as electronic monitoring.
- Our model results in fairer case outcomes for individuals than the current system of unaffordable cash bail.
- Our model will not, in aggregate, pose an increased threat to public safety, and through positive impact on clients' outcomes, may actually *improve* public safety over the long term.
- Our model will reduce the bias and racial disparities that are part and parcel of the criminal legal system and disproportionately impact low-income communities and people of color.
- Our model is more cost effective for jurisdictions than unaffordable cash bail or other alternatives.

The evidence strategy centered around two core sets of activities: first, build a strong internal capacity for data collection, measurement, and research; and second, embark on a multi site external impact evaluation. While the business plan provided a template for defining this work, it also posed a challenge because Tara and I were not participants in its development. We also quickly learned that TBP had secured funding to study the feasibility for conducting a multi site evaluation and had selected an evaluation firm to partner on the research. Still early in our tenure at TBP, Tara and I grew concerned about the organizational capacity to coordinate both sets of activities simultaneously. It would be difficult to expand sites rapidly and implement TBP's program with fidelity while conducting an impact evaluation. Presented with these circumstances, we chose not to slow down the planning process but to become more involved in the feasibility work and participate in the design of the proposed impact evaluation.

The feasibility study was completed in collaboration with the evaluator in late 2019. It achieved its purposes of identifying several TBP sites eligible for an impact evaluation and selecting a methodology for determining impact. The criteria we considered included the scale required to generate an

RCT sample, the strength of local stakeholder relationships, the accessibility of court outcomes data, the ability to generate subgroups, the status of policy context that could interrupt operations, and the capacity of the site to optimize bailouts with fidelity. Given the developing maturity of TBP sites, Tara and I insisted the design of the evaluation include a robust formative stage to test program fidelity with an implementation study and provide ample time to optimize data automation and a process for generating a randomized sample. Applying a “toll gate” approach, we would proceed with the impact stage of the evaluation only if a site could reach scale without risk to client reach and program quality, and could demonstrate an efficient and equitable client randomization process.

With our feasibility study in hand, we presented our evaluation plan to a funder interested in the impact of cash bail on case and life outcomes of people incarcerated before trial. Different perspectives quickly surfaced about the purpose of the evaluation. Our desire was to test our theory of change: If we bail out clients *who meet our eligibility criteria* and provide them with court reminders, transportation, and connections to voluntary support services, they are more likely to meet their court obligations and resolve their court cases more favorably while saving county governments millions of dollars in jail and court costs.

Conversely, the perspective of the funder and evaluator was to evaluate outcomes from an intervention that effectively eliminates the impact of cash bail. This type of study would require bailing out a significant portion of detainees awaiting trial in the county jail; however, as originally designed, TBP’s model does not allow for this level of system penetration. Additionally, it is challenging for an experiment implemented at this scale to adequately support the needs of individuals released from jail and their successful return to court given existing social service infrastructure at the local level.

While TBP strives to provide bail assistance to as many people as possible, we are acutely aware that the existing network of community supports and other social resources, which we do not manage or control, is not yet designed to fully address all clients’ needs. Thus, TBP client advocates are diligent about applying decision criteria (that is, client needs, contacts, court history, case history, bail amounts) about who we can bail out and actively support during the court case.

Despite limitations on who TBP can serve, we believed our theory of change was the most practical and systematic implementation of an

intervention that models the future of a just and humane pretrial justice system and could meaningfully contribute to growing research on the ineffectiveness of cash bail. Ultimately, we could not reconcile the key research questions with the funder's expectations. Expanding TBP's target population could potentially compromise the effectiveness of our model for clients and add unsustainable risk and operational stress to our organization. After a good deal of dialogue with the funder and evaluators, we respectfully decided to part ways—on good terms, I might add—and reconsider our evaluation strategy.

Months after this decision, the pandemic took hold, fundamentally changing the context for how every organization pursued its mission. TBP temporarily paused its operations so it could adapt to a remote environment and assess the impact of COVID-19 on the criminal legal system. Jail decarceration temporarily became an emerging national trend due to the compassionate release of detainees and the slowdown of police activity. Jail populations now included more people with serious charges and higher needs. TBP bailouts declined in the early stage of the pandemic, as did the potential to generate robust research samples.

Pursuing evaluative work during this uncertain period seemed risky and operationally challenging. Instead, TBP saw an opportunity to double down on improving data quality and driving up model fidelity. We introduced a new user-centered version of our database, codified and trained staff on quality standards, and rolled out program monitoring tools that encouraged staff learning from collected data. We considered how we could leverage our existing SMS platform to collect and respond to clients' perceptions about our model's effectiveness. Finally, TBP realized its goal of ending cash bail in Illinois when the legislature passed the Pretrial Fairness Act in 2021 eliminating bail setting in January 2023. TBP is now partnering with a local organization to implement a community release with support program and will rigorously evaluate the model's fidelity and effectiveness for clients over a one-year period. In these topsy-turvy times TBP is clearly following the adage: inside every crisis there is also opportunity.

As Tara and I reflect back on almost two years at TBP, an external evaluation strategy is a difficult undertaking. As defined by our business plan, our initial timetable to execute on internal and external research goals was too ambitious. Second, as is mentioned throughout this book, it is vitally important for practitioners to drive their evaluation strategy and remain an equal partner in the workflow and data sensemaking. From the start, TBP

designed its own evaluation strategy as part of its business planning and hired a data team, including me and Tara, who could work alongside evaluators and produce our own internal research. Third, never stray too far from your theory of change, no matter how tempting the research question. All nonprofits have limits on the people they can serve, and these limitations are necessary to run an effective and efficient program without creating harm for participants. Finally, senior leadership focused on results and supportive of research and staff learning is a critical ingredient for an organization that wants to meaningfully contribute to systemic change.

Emerging from Robin Steinberg's long-standing commitment to generating evidence, TBP's leadership team embodies a mindset that continually links our mission to results. And these results will, ultimately, lead to the dismantling of the cash bail system in America and create a world where people's needs are addressed by community led institutions rather than carceral systems.

NOTES

1. Pretrial Justice Institute and Charles Koch Institute. Lake Research Partners conducted a nationwide survey of 1,400 registered voters, including oversamples of 200 African American and 200 Latino registered voters (MoE + 3.1%), May 2–17, 2018.

2. James A. Anderson, Maya Buenaventura, and Paul Heaton, "The Effects of Holistic Defense on Criminal Justice Outcomes," *Harvard Law Review* 132, no. 3 (January 2019): 819.