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## Billionaire-Funded Criminal Justice Reform Actually Expands Carceral System



Arnold Ventures-backed reforms are undermining radical efforts to end mass incarceration in the U.S.

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**A**s debate over how much influence the über-rich should have over U.S. public policy heats up, Texas billionaire John Arnold recently stepped in with a curious defense of fellow billionaire Bill Gates of Microsoft fame.

Gates, the second-richest person in the world, [according to Forbes](https://www.forbes.com/billionaires/#111e7507251c) (<https://www.forbes.com/billionaires/#111e7507251c>), with a net worth of \$96.5 billion, came under scrutiny for his [prickly, even defensive comments](https://www.nytimes.com/2019/11/08/opinion/sunday/bill-gates-warren-tax.html?fbclid=IwAR2zCxtRydfhf3a4JlQr6ZHiGFSSfhl39Em7wexvoXCX2LGmDQXOpJzQ_G4) ([https://www.nytimes.com/2019/11/08/opinion/sunday/bill-gates-warren-tax.html?fbclid=IwAR2zCxtRydfhf3a4JlQr6ZHiGFSSfhl39Em7wexvoXCX2LGmDQXOpJzQ\\_G4](https://www.nytimes.com/2019/11/08/opinion/sunday/bill-gates-warren-tax.html?fbclid=IwAR2zCxtRydfhf3a4JlQr6ZHiGFSSfhl39Em7wexvoXCX2LGmDQXOpJzQ_G4)) on presidential hopeful Elizabeth Warren's plan for a new tax on the super-wealthy. He said it would stifle business innovation. Gates later hedged queries about his presidential preference, saying he would vote for "the most professional" candidate.

As the Twitterverse exploded with criticism of Gates, [Arnold rushed to defend him](https://twitter.com/JohnArnoldFndtn/status/1192531613269266432) (<https://twitter.com/JohnArnoldFndtn/status/1192531613269266432>), tweeting, in part, "To ensure continuity across administrations, Gates has deliberately chosen not to endorse or be big political donors [sic]." Bill Gates is a well-known business mogul. But relatively few people know the name of Arnold, unless they are insiders in the realms of Big Energy, Big Philanthropy, and [bipartisan criminal justice reform](https://www.politicalresearch.org/2017/06/06/endgame-how-bipartisan-criminal-justice-reform-institutionalizes-a-right-wing-neoliberal-agenda) (<https://www.politicalresearch.org/2017/06/06/endgame-how-bipartisan-criminal-justice-reform-institutionalizes-a-right-wing-neoliberal-agenda>).

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Gates's criticisms of Warren and Arnold's rush to defend his fellow billionaire prompt some basic questions: Should public policy be shaped, funded and implemented by a wealthy elite that is essentially accountable to no one but itself? Can billionaire philanthropy produce social and economic justice?

# Who Is John Arnold?

In our forthcoming book, *Prison Break: Navigating the Deceptive Terrain of Criminal Justice Reform* (University of California Press, 2021) we look at the main elements of reform agendas and how they are evolving. We also identify the influence of the super-rich — along with wealthy foundations, corporations, mega-nonprofits, universities, newly minted organizations, and a narrow spectrum of the punditocracy with whom they partner — not only in shaping the content, confines and implementation of specific reform agendas, but also in institutionalizing them.

John Arnold is by no means the only billionaire helping to craft and underwrite criminal justice reform: His peers include Charles Koch, George Soros, Mark Zuckerberg, and many more. But Arnold occupies a uniquely powerful position in the reform universe.

Arnold's trajectory from high-stakes energy futures trader in a large corporation to criminal justice reform magnate helps to reveal the neoliberal impulse powering bipartisan reform agendas. Essentially, that impulse is a pro-market, pro-privatization, pro-individual entrepreneurship approach that strengthens rather than challenges structural racial and economic inequality. It focuses on managerial strategies, procedures and "evidence-based" methodologies. It speaks of "bias" instead of structural racism, failing to address the raced, classed, gendered and ableist violence of the policing that initially sweeps people into the system. It's an approach that blurs ideological chasms, creating a focused neoliberal political project that brings together actors from libertarian/right to liberal/progressive sectors in a narrowly defined common cause.

Just days before Enron filed for bankruptcy following disclosure of a massive accounting fraud scheme, John Arnold was given an \$8 million bonus.

In 2001, just days before Enron, a Houston-based energy corporation filed for bankruptcy following disclosure of a massive accounting fraud scheme, John Arnold was given an **\$8 million bonus** (<https://www.nytimes.com/2002/06/18/business/officials-got-a-windfall-before-enron-s-collapse.html>). Top executives and some

members of the firm's board of directors protected themselves ahead of time, selling their shares of company stock. But Enron's bankruptcy sent **thousands of employees** (<https://www.marketwatch.com/story/enron-workers-lost-everything-in-collapse-they-say>) and about \$1 billion of their 401(k) retirement funds into freefall. Arnold was never implicated in wrongdoing.

He left Enron in 2002 to create a new hedge fund, Centaurus Advisors LLC, betting on natural gas prices and making his billions. A few years later, he closed Centaurus, and he and his wife established the Houston-based Laura and John Arnold Foundation (LJAF). Laura Arnold, a former mergers and acquisitions attorney, also previously held the position of executive vice president and general counsel for Houston-based Cobalt International Energy.

It would not be entirely accurate to characterize the Arnolds as right-wing. After all, they say they are Democrats. In 2013, they gave \$10 million to help keep Head Start open in the event of a GOP threat to shut down the federal government. They are supporters of **The Innocence Project** (<https://www.innocenceproject.org/disciplines/founders/>). At the same time, they are major donors to the **KIPP network of charter schools** (<https://www.kipp.org/kipp-foundation/kipp-national-partners/>), created by alumni of **Teach for America** (<https://www.propublica.org/article/how-teach-for-america-evolved-into-an-arm-of-the-charter-school-movement>), and have supported **other charter advocacy** ([https://ballotpedia.org/Support\\_Our\\_Public\\_Schools](https://ballotpedia.org/Support_Our_Public_Schools)).

LJAF also prioritized an effort cast as public employee pension reform. Organized labor and other critics described it differently, as an effort **to loot** (<https://www.rollingstone.com/politics/politics-news/looting-the-pension-funds-172774/>) and **gut defined-benefit plans** ([https://www.huffpost.com/entry/pew-trusts-pensions\\_n\\_3983654](https://www.huffpost.com/entry/pew-trusts-pensions_n_3983654)) with weaker, 401(k)-styled plans. In 2015, *Inside Philanthropy* ([paywalled link \(https://www.insidephilanthropy.com/home/2015/3/27/niche-control-how-this-funder-dominates-the-pension-reform-d.html\)](https://www.insidephilanthropy.com/home/2015/3/27/niche-control-how-this-funder-dominates-the-pension-reform-d.html)) noted that LJAF had, in recent years, become "the dominant philanthropic player on public pension issues." It still is, and in this effort, has enjoyed a long relationship with Pew Charitable Trusts, which is also a major actor in bipartisan criminal justice reform. According to **Influence Watch** (<https://www.influencewatch.org/non-profit/laura-and-john-arnold-foundation/>), a conservative watchdog group, the Arnold Foundation has given large grants to support pension-related work, including almost

\$10 million to [Pew Charitable Trusts \(https://www.pionline.com/article/20130930/PRINT/309309973/pew-s-pension-reform-activism-drawing-critics\)](https://www.pionline.com/article/20130930/PRINT/309309973/pew-s-pension-reform-activism-drawing-critics) for its Public Sector Retirement Systems Project for research promoting reform through 2019, and over \$3.5 million to the libertarian Reason Foundation for pension reform advocacy work. The current Republican [governor of Texas \(https://www.texastribune.org/2015/12/04/analysis-taking-position-without-saying-word/\)](https://www.texastribune.org/2015/12/04/analysis-taking-position-without-saying-word/) relies on the Arnold/Pew partnership. The Arnold mantra driving all of this is [“evidence-based” change \(https://www.tvc.texas.gov/6-6-million-grant-from-arnold-foundation-to-fund-texas-policy-lab-at-rice-u/\)](https://www.tvc.texas.gov/6-6-million-grant-from-arnold-foundation-to-fund-texas-policy-lab-at-rice-u/), referring to the production of data and research, much of which they fund themselves. The implied promise: political, racial, economic and other forms of bias can be eliminated through seemingly objective methodologies. But while the production of “evidence-based” methodology seems to be an objective way of unraveling inequalities in the criminal justice system, it is not. Research and reports are focused only on narrow questions and procedural issues. They do not acknowledge or address the structural nature of racism and poverty in systems of policing and punishment. For many years, so-called [“data-driven” strategies \(https://urbanomnibus.net/2018/06/policing-is-an-information-business/\)](https://urbanomnibus.net/2018/06/policing-is-an-information-business/) have only reinforced, not dismantled, structural inequality.

## “Unlikely Allies” and Predictive Risk Assessments

LJAF’s interest in long-term criminal justice reform coincided with and helped expand the work of the [right-wing \(https://www.sourcewatch.org/index.php/Texas\\_Public\\_Policy\\_Foundation\)](https://www.sourcewatch.org/index.php/Texas_Public_Policy_Foundation) (and [influential \(https://www.desmogblog.com/texas-public-policy-foundation\)](https://www.desmogblog.com/texas-public-policy-foundation)) [Texas Public Policy Foundation \(https://www.texasobserver.org/revealed-the-corporations-and-billionaires-that-fund-the-texas-public-policy-foundation/\)](https://www.texasobserver.org/revealed-the-corporations-and-billionaires-that-fund-the-texas-public-policy-foundation/) (TPPF). In 2010, as LJAF’s work was gearing up, TPPF launched the organization Right on Crime as the public face of conservative-right perspectives on criminal justice reform. In 2015, the [Arnold Foundation \(https://www.nytimes.com/2015/02/19/us/politics/unlikely-cause-unites-the-left-and-the-right-justice-reform.html?smid=tw-share&r=0\)](https://www.nytimes.com/2015/02/19/us/politics/unlikely-cause-unites-the-left-and-the-right-justice-reform.html?smid=tw-share&r=0) played a key role in bringing “unlikely allies” together to create much-heralded [Coalition for Public Safety \(https://www.americanprogressaction.org/progress-reports/coalition-on-public-safety/\)](https://www.americanprogressaction.org/progress-reports/coalition-on-public-safety/) (CPS). In addition to the Arnolds, initial funders

included Koch Industries, the Ford Foundation, and the John D. and Catherine T. MacArthur Foundation. Organizational partners included the ACLU, NAACP, Center for American Progress, Leadership Conference Education Fund, Right on Crime, FreedomWorks, Americans for Tax Reform, and the Faith and Freedom Coalition. (By 2019, the ACLU, still a central player in bipartisan reform, had discontinued membership in CPS, but did not reply to inquiries from Whitlock regarding its reasons.)

The data rely primarily on information about a person's prior encounters with police and the courts. The unspoken assumption is that all of those "encounters" are untainted by racism.

In addition to seeding/supporting various reform organizations, LJAF focused on development and testing of a new "evidence-based" risk assessment tool for use in pre-trial judicial decisions. **Risk assessments are algorithm-based decision-making tools (<https://theappeal.org/the-danger-of-automating-criminal-justice/>)** utilized in many courtrooms throughout the United States to, in the words of **ProPublica (<https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>)**, "inform decisions about who can be set free at every stage of the criminal justice system, from assigning bond amounts ... to even more fundamental decisions about defendants' freedom." *ProPublica* has confirmed routine ways in which one well-known instrument perpetuates foundational racial and class biases.

The reach and impact of such assessments is extensive, and their use over the past decade has expanded rapidly. About **70 percent (<https://www.prisonpolicy.org/reports/incomejails.html>)** of people, legally presumed innocent and who have not yet been tried and convicted, are held in U.S. jails; most of them can't afford bail.

The consequences can be devastating: brutality in jail, loss of jobs, loss of housing, loss of child custody, spiraling indebtedness and poverty. And, they can be lethal, as with the premature deaths of **Sandra Bland (<https://www.theguardian.com/us-news/2019/may/07/sandra-bland-video-footage-arrest-death-police-custody-latest-news>)** and **Kalief Browder (<https://www.newyorker.com/magazine/2014/10/06/before-the-law>)**.

The Arnold Foundation set out to create a new, “bias-free” pre-trial risk assessment, the **PSA or Public Safety Assessment**. (<https://www.psapretrial.org/about>) It purports to predict whether a person will show up in court, as required, before trial, whether that person is likely to engage in “new criminal activity” — that is, be arrested — and may generate “a flag” if there are warning signs that a person will commit a new violent crime before trial. The Arnold PSA is now in use in four states and a growing number of heavily populated counties.

A steadily growing national movement comprised of national and local **advocacy organizations** (<https://nationalbailout.org/>) and **community-based revolving bond funds** (<https://www.communityjusticeexchange.org/nbfn-directory>) has emerged to call for the abolition of money bail — and with it, **strong resistance** (<https://civilrights.org/2018/07/30/more-than-100-civil-rights-digital-justice-and-community-based-organizations-raise-concerns-about-pretrial-risk-assessment/>) to the use of risk assessments for determining eligibility for money bail. But even the objections of the ACLU, NAACP, and more than one hundred different organizations, some of them active members in bipartisan networks, have not put a dent in their use. That’s almost entirely the result of aggressive promotion of the Arnold PSA. The result: outright opposition to risk assessment tools — **which still exists** (<http://civilrightsdocs.info/pdf/criminal-justice/Pretrial-Risk-Assessment-Full.pdf>) — has been blunted for the moment. Instead, we see vaguer demands for new oversight, transparency and accountability procedures. Even the Arnold PSA project has rolled out complex **implementation guidelines** (<https://www.psapretrial.org/implementation/guides>) and tools (the **Decision Framework** (<https://www.psapretrial.org/implementation/guides/managing-risk/guide-to-the-pretrial-decision-framework>) and **Release Conditions Matrix** (<https://www.psapretrial.org/implementation/guides/managing-risk/guide-to-the-release-conditions-matrix>)) to help “local stakeholders” integrate the PSA into judicial decision-making.

Do the risk assessments “work”? **Three experts** (<https://www.nytimes.com/2019/07/17/opinion/pretrial-ai.html>) in risk assessment tools say they “are virtually useless for identifying who will commit violence if released pretrial.” The Arnold PSA has streamlined some pretrial processes by throwing out any requirement for personal interviews with the people being assessed. It is true that in some, not all, jurisdictions in which the Arnold tool is used, more people are out on bail before trial. But that may well be as much the result of the growing movement to abolish money bail — which

provides invaluable **educational resources** (<https://nationalbailout.org/untilfreedomcomes/>), **bails people out** (<https://chicagobond.org/>) and **mobilizes** (<https://endmoneybond.org/>) significant community political pressure — than of the tool's use.

The centrality of policing and carceral control are not questioned but rather embellished.

Are assessment tools harmless? In purporting to reduce “bias” in pre-trial outcomes, the data they use still rely primarily on information about a person's prior encounters with police and the courts. The unspoken assumption is that all of those “encounters” are untainted by racism or other structural factors that predetermine who is most likely to be presumptively criminalized. This, in turn, legitimates the structural violence of policing.

And risk assessments are not always used as intended. In a 2019 **“Scan of Pretrial Practices,”** (<https://university.pretrial.org/viewdocument/scan-of-pretrial-practices-pji-20>) a report from the **Pretrial Justice Institute** (<https://www.pretrial.org/>), funded by the **MacArthur Foundation** (<https://www.macfound.org/grantees/961/>) to the tune of \$11.2 million between 2011 and 2019, also revealed widespread use of the pretrial tools for purposes not intended, including for release and **post-conviction sentencing decisions** (<https://theappeal.org/the-danger-of-automating-criminal-justice/>).

## “Maximizing Opportunity, Minimizing Injustice”

The Arnold shorthand for describing its mission is “Maximizing Opportunity, Minimizing Injustice.” In 2019, the LJAF changed its structure, forming Arnold Ventures, a limited-liability company, in order to be able to engage more directly in political and public policy advocacy. The LLC structure encompasses the Arnolds' private foundation, a donor-advised fund, and a 501(c)(4) organization that permits greater lobbying activity than a traditional nonprofit. This change follows the lead of the **Chan Zuckerberg Initiative** (<https://chanzuckerberg.com/>) and others who seek

greater political and policy impact than traditional grantmaking allows. An **LLC** (<https://www.nytimes.com/2015/12/03/technology/zuckerbergs-philanthropy-uses-llc-for-more-control.html>) is “a structure that can function in part as a corporation and also as a business partnership.”

It is also harder to track who donates and how funds are spent. Beyond criminal justice, Arnold Ventures’s funding priorities continue to include “retirement policy” (“pension reform”) and (privatizing) education, along with tax policy and health.

A decade after the Arnolds created their original philanthropy, there is scarcely a single area of the bipartisan criminal justice reform consensus that Arnold Ventures has not had a hand in crafting.

For example, the new **Council on Criminal Justice** (<https://counciloncj.org/>) (CCJ), an “independent and nonpartisan” membership organization and think tank, headed by Adam Gelb, former director of public safety initiatives at the Pew Charitable Trusts, “is a center of gravity and incubator of policy and leadership for the criminal justice field.” Co-chairs of the board of trustees are Mark Holden, general counsel for Koch Industries, and Sally Yates, former deputy U.S. attorney general. Other trustees include former California governor Jerry Brown, Kentucky Gov. Matt Bevin, and criminal justice gadfly DeRay Mckesson, a social media celebrity who often portrays himself as a lead Black Lives Matter organizer, though he is not.

Through agreements with other funders, institutions and organizations, Arnold Ventures has taken a lead role in institutionalizing a privately funded reform industry.

**Arnold Ventures** (<https://www.arnoldventures.org/work/criminal-justice>) also has an expanding **pretrial justice** (<https://www.forbes.com/sites/kristinstoller/2019/03/19/texas-billionaire-john-arnold-gives-39-million-to-reform-americas-broken-bail-system/#423b448f1c13>) vision and prison reform vision (“Safe, Small, and Humane”), with **multimillion dollar grants** (<https://philanthropynewsdigest.org/news/arnold-ventures-awards-17-million-for-new-prison-reform-initiative>) going to the Urban Institute and the Vera Institute for Justice. It has a community policing vision, community supervision vision, a reintegration vision, and more. All of these visions require more training and the creation of new institutional capacity to

accommodate reforms. All are bundled with offers of technical assistance to help jurisdictions introduce new practices. The use of risk assessments creates technological measurements of “dangerousness” and produces new criminal justice records. New kinds of jails and prisons are envisioned. The centrality of policing and carceral control are not questioned but rather embellished.

All of this expands rather than reduces the carceral system. Through brokered agreements with a host of other funders, institutions and organizations, Arnold Ventures has taken a lead role in institutionalizing a privately funded reform industry. Controlled by Big Money, this industry constitutes a **shadow criminal justice system** (<http://sfoonline.barnard.edu/navigating-neoliberalism-in-the-academy-nonprofits-and-beyond/ruth-wilson-gilmore-in-the-shadow-of-the-shadow-state/>) that not only tries to co-opt radical analysis and protest, but might even “ensure continuity across administrations.”

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