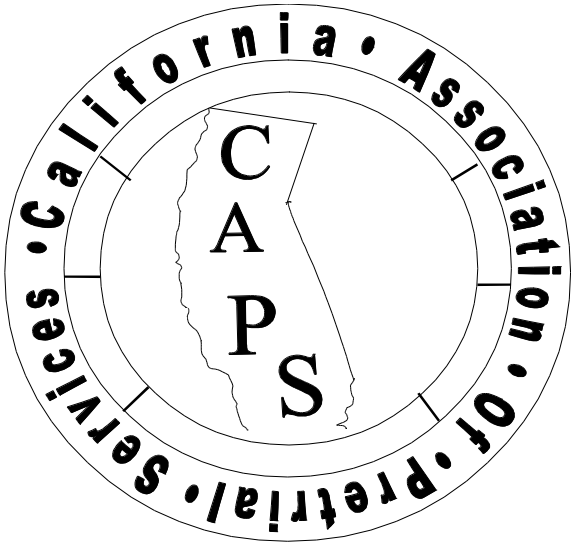
CALIFORNIA ASSOCIATION OF PRETRIAL SERVICES



RELEASE STANDARDS AND RECOMMENDED PROCEDURES

Approved: February 2007

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CALIFORNIA ASSOCIATION OF
PRETRIAL SERVICES

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FOREWORD

The California Association of Pretrial Services (CAPS) is a membership organization of professionals founded in 1985. Our mission is to promote professional competence; to encourage the exchange of ideas; to sponsor training and education programs for professionals and the public; to support expansion of pretrial services in California; to promote research; and to develop standards.

This is the association's first effort to develop standards and to recommend program practices and procedures. It grew out of a desire on the part of the CAPS Board of Directors to make a statement as to who we are as professionals and what we stand for. We are establishing guiding principles for our profession and present practical standards that are relevant to the State's many jurisdictions. They are intended as a benchmark, a tool to measure progress of a pretrial services agency. The Standards also serve as a guideline for districts without pretrial services. They are designed to conform to California's statutes and criminal justice practices.

The process of developing these Standards included a review of those published by the National Association of Pretrial Services Agencies (NAPSA) in 2004, the American Bar Association (ABA) in 2002, and the State of New York in 2003. The committee made an early decision to draw heavily from these Standards. Wherever relevant, we refer to those standards in the text.

The CAPS Standards Committee, comprised of the Board of Directors and four pretrial practitioners, has met regularly since November 2004. The committee members have extensive knowledge and varied experience within the criminal justice field. The committee is to be commended for the long hours of discussion, the time and money spent on travel to the meetings, and their tireless dedication to this endeavor. Susan Bookman, CAPS President, has contributed greatly to this effort, bringing with her thirty-five years of experience in the field of pretrial services. Frank McCormick, CAPS Treasurer and Western Regional Director of NAPSA, provided valuable insight from both the local and national perspective.

We owe a debt of gratitude to those who have come before us and have shown us the way. We are grateful to Carol Oeller, Director of the Harris County Pretrial Services Agency in Houston, Texas, and D. Alan Henry, former Executive Director of the Pretrial Services Resource Center in Washington, D.C., for their helpful comments and feedback.

Diana Cunningham, Chair
CAPS Release Standards Committee

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INTRODUCTION

The movement to reform the bail system began in the 1950's. It grew out of the civil rights struggles and social equality concerns addressed during the "War on Poverty" in the 1960's and early 1970's. More directly, the movement got its push when the first "bail project" developed as a reaction to severe crowding and rioting in the New York City jails. Investigation into the causes of these riots showed that a large proportion of the inmates were in custody solely because they could not afford to post bail. Some had been in custody for a year or more awaiting trial. The investigation findings dramatically demonstrated the inequities of the bail system and how the system unfairly discriminated against people without financial resources.

In New York City, the use of the own recognizance (OR) release process was seen as a way to relieve the inequities of the bail system and to relieve the immediate problems of crowding in the city jails. The assumption was that people with strong ties to the community could safely be released from jail on their own recognizance - a written promise to appear. The Manhattan Bail Project was initiated in 1961 as a three-year experiment with OR release. Students from local law schools interviewed defendants in the jails. They asked questions about the defendant's current address, length of time in the community, location of family members and education or employment status. The information was verified by calling references, such as family, friends, and employers. A written report was prepared for the court, detailing the results of the investigation. Using an objective point scale, they recommended release for those defendants scoring above an established number of points. These defendants were determined to be reliable for making court appearances. The experiment proved to be very successful; failures to appear were low and the jail population decreased.

This was not an issue that sprung up without serious thought and study. There were books and articles written, and many studies conducted that pointed out problems with the bail system. In 1927, sociology professor Arthur L. Beeley's study of the bail system in Chicago showed there were serious flaws and corruption in the surety bail system.[1] He was the first to suggest using alternatives to the money bail system. In 1954 Professor Caleb Foote's seminal study, "*Compelling Appearance in Court: Administration of Bail in Philadelphia"* shed a spotlight on the inequities and corruption of the surety bail system in Philadelphia.[2] In his later

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[1] Beeley, Arthur, The Bail System in Chicago, (*Chicago: University of Chicago Press, 1927*: reprinted 1966)

[2] Foote, Caleb, "Compelling Appearance in Court: Administration of Bail in Philadelphia" (*University of Pennsylvania Law Review*, vol. 102, 1954, pp 1031-1079)

articles he suggested that the use of money bail might in fact be unconstitutional.[3] Paul Wice, in his book *Freedom for Sale: A National Study of Pretrial Release* when commenting on the bail system stated, "…blatant economic discrimination inherent in this system seems to clearly contradict the equal protection clause of the 14th amendment. Our courts have permitted a system of justice which allows one's freedom to be put up for sale and those defendants unable to pay must suffer the consequences."[4]

Within a few years the successes of the Manhattan Bail Project generated a great deal of interest across the country. Programs were started in Los Angeles, Chicago, and Des Moines. The concern for equal rights sparked a nationwide movement to reform the bail system. Within months after the 1964 National Conference on Bail Reform and Criminal Justice in Washington D.C., most large metropolitan jurisdictions had started their own "Bail Projects." In California, programs were started in Oakland and San Francisco. The Ford Foundation and the federal government's Office of Economic Opportunity (OEO) provided much of the initial funding.

Pretrial services programs in California were some of the first in the nation. Los Angeles started an own recognizance bail project through the Superior Court in 1963. The city of Oakland received a Ford Foundation grant in 1963 and operated a two-year experimental own recognizance program through the probation department. The program in San Francisco was started in 1964 through the local bar association with funding from OEO. By 1971, programs were fully operational in the counties of San Diego, Riverside, Orange, Santa Clara, Santa Barbara, San Francisco, San Mateo, Los Angeles, Santa Cruz and the city of Berkeley.

Currently, pretrial services programs are operated by the courts in Alameda, San Diego, Sacramento, Santa Barbara, Orange, and Riverside counties. The probation department operates programs in Los Angeles, San Mateo, and Santa Cruz counties. A non-profit agency funded by the county operates the pretrial services program in San Francisco. The program in Santa Clara County is a stand-alone county agency. The sheriff's department operates the programs in San Bernardino and Butte counties. Although they do not operate as separate and distinct programs, some pretrial services functions are performed by probation departments and sheriff's departments in most California counties.

The need for pretrial services programs because of jail crowding is clear in California. Timely reports are important to the judicial officers making release decisions. The sooner that decision can be made, the less stress there is on jail

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[3] Foote, Caleb, "The Coming Constitutional Crisis in Bail", (*University of Pennsylvania Law Review*, vol. 113, 1965)

[4] Wice, Paul, Freedom for Sale: A National Study of Pretrial Release (*Lexington, Massachusetts: D.C. Heath & Co. 1974* Pg 160)

crowding. Pretrial services programs have become an integral part of the California criminal justice system providing critically important information and services. The release determination is perhaps the most important decision made at the beginning of a criminal case. Pretrial services programs provide the court with important information in a timely manner in order to protect the rights of the accused and the safety of the community.

Programs in California interview recently arrested defendants in the jails and in the courts. They provide information to judicial officers about the defendant's ties to the community and reliability for future court appearances. The information is used to determine a defendant's eligibility and/or suitability for release from jail without posting bail. Pretrial services programs make recommendations for release using an objective risk assessment instrument. Pretrial services programs supervise defendants while they are out of custody on conditional OR release, provide referral services for defendants with substance abuse and mental health problems, and make referrals to community social services programs. Pretrial services programs remind defendants of their upcoming court dates, conduct drug tests and report the results to the court, and recommend electronic monitoring when appropriate. These programs contact defendants who have failed to appear and make every effort to have the defendant's case reinstated to the court calendar. In some jurisdictions, pretrial services programs have been granted release authority by the local judiciary. In those jurisdictions, the pretrial programs release defendants charged with non-violent misdemeanor and felony offenses.

The right to a reasonable bail and the presumption for release pending trial was upheld in two U.S. Supreme Court cases. In *Stack v. Boyle* 342 U.S. 1 (1951) the court held that the purpose of bail is to assure the presence of the defendant in court and that any bail amount set higher than an amount reasonably calculated to fulfill this purpose is excessive under the Eighth Amendment of the U.S. Constitution. In *U.S. v. Salerno* 481 U.S. 739 (1987) the court upheld a presumption for release. In that opinion Chief Justice William Rehnquist wrote, "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception". In a California Supreme Court decision, *Van Atta v. Scott* 166 Cal. Rptr. 149 (1980) the court held that the burden of proof to show why a defendant should not be released is the responsibility of the prosecution.

Statutory authority for pretrial services programs can be found in the California Penal Code. Section 1318 authorizes the courts, with the concurrence of the local board of supervisors, to employ an investigative staff for the purpose of recommending whether or not a defendant should be released on his or her own recognizance. It states that a written report to the court shall include information on the defendant's ties to the community, outstanding warrants, prior failures to appear, and criminal record. Section 1318 also states that a report shall be prepared in all cases involving a violent felony.

The presumption for release of defendants charged with a misdemeanor offense is enumerated in Section 1270 of the California Penal Code. It states that a defendant charged with a misdemeanor shall be entitled to an own recognizance release unless the court makes a finding on the record in accordance with Section 1275 that an OR release will compromise public safety or will not reasonably assure the appearance of the defendant as required.

In the consideration of setting bail or an own recognizance release, Section 1275 states the judicial officer shall take into consideration the protection of the public, the seriousness of the offense charged, the defendant's previous record, and the probability of the defendant appearing in court if released. Section 1275 states that public safety shall be the primary consideration.

In the process of development of these Standards, the committee borrowed heavily from standards published by the National Association of Pretrial Services Agencies (NAPSA) and the American Bar Association (ABA). Wherever relevant, we refer to those standards in the text.

> **The publication in 1978 of NAPSA's *Performance Standards and Goals for Pretrial Release* was a major contribution to the emerging field of pretrial services and to the larger criminal justice community. The 1978 Standards articulated clear goals for pretrial release/detention decision-making and provided guidance for pretrial services program personnel, judges and other practitioners in developing fair and effective pretrial processes. They also provide a sound framework for organizing pretrial release programs and for conducting basic operations including gathering information about detained persons, monitoring released defendants' compliance with release conditions, and responding to violations of conditions.[5]**

The NAPSA Standards, first published in 1978, were revised in 2004. The ABA Standards on Pretrial Release were first published in the mid 1970's and revised in 2002.

The following Pretrial Services Standards and Recommended Procedures are organized into three parts:

Part I - *Standards Governing the Pretrial Process* sets out the core values underlying the basic operation of pretrial services programs. In this section the Standards include a statement on the importance of the pretrial release decision, the presumption in favor of release, and release using the least restrictive conditions necessary to insure the defendant will appear for all court proceedings. This section highlights the importance of impartial and equal treatment. All defendants should be interviewed regardless of the nature of the offense charged. This section

[5] National Association of Pretrial Services Agencies, Standards on Pretrial Release, Third Edition, (2004) Introduction Pg 1

recommends that every jurisdiction in California should have a fully functional pretrial services program.

Part II- *Recommended Program Procedures* focuses on basic program operations and roles in the criminal justice system. It recommends that each program use a standardized interview format to collect defendant information. The information should be verified and a written report be provided to the court. The report should contain objective information, an assessment of risk potential for failure to appear or rearrest, and a recommendation for or against release based on an objective, validated risk assessment instrument. When setting conditions for release or supervision, the program should recommend the least restrictive conditions for ensuring the defendant's appearance in court and the safety of the community. The information gathered should remain confidential and should be used only to determine a defendant's eligibility and/or suitability to be released from custody. The Standards recommend that a pretrial services representative be present in court during the release decision-making process.

Part III - *Recommended Administrative Procedures* deals with organizational and administrative procedures. It states that programs should develop policies and procedures to establish effective working relationships with the courts and other criminal justice agencies. This section recommends the development of program goals and objectives consistent with the recommended general principles as set forth in Part I. Programs should design a management information system to monitor program effectiveness relative to the established goals and objectives. Programs should incorporate a quality assurance component to ensure staff productivity and the quality of the services provided. A program should also establish policies to ensure effective staff recruitment, training, and performance evaluations. Finally, this section recommends that programs should become involved in educating other criminal justice agencies and the public regarding their policies and procedures.

PART I

STANDARDS GOVERNING THE PRETRIAL PROCESS

Standard 1.1 The Pretrial Release Process

The purposes of the pretrial release decision include ensuring due process to those accused of crime, maintaining the integrity of the judicial process by encouraging the defendant's appearance for trial, minimizing the unnecessary use of secure detention, and protecting victims, witnesses and the community from threat, danger or interference. The judge or judicial officer decides whether to release a defendant on personal recognizance or unsecured appearance bond, release a defendant on a condition or combination of conditions, or temporarily detain a defendant. Legal precedents favor the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support.

Related Standards

NAPSA (2004), Standard 1.1
ABA Standards on Pretrial Release (2002), Standard 10-1.1

Standard 1.2 Presumption in Favor of Release

In making the pretrial release decision, a presumption in favor of release on a simple promise to appear (i.e., release on own recognizance) should apply to all persons arrested and charged with a crime. When release on own recognizance is deemed inappropriate, the judicial officer should assign the least restrictive conditions of release that will provide reasonable assurance that the defendant will appear for court proceedings and will protect the safety of the community, victims, and witnesses pending trial. Although in some cases confinement is acceptable, it must be the carefully limited exception.

Related Standards

NAPSA (2004), Standard 1.2
ABA Standards on Pretrial Release (2002), Standard 10-1.2

Standard 1.3 Establishment of Pretrial Services Agencies or Programs

Every jurisdiction in the state of California should have the services of a pretrial agency or program to help ensure equal, timely, and just administration of the laws governing pretrial release. The pretrial services agency or program should provide information to assist the court in making release/detention decisions, provide monitoring and supervisory services in cases involving released defendants, and perform other functions as set forth in these Standards.

Related Standards

NAPSA (2004), Standard 1.3
ABA Standards on Pretrial Release (2002), Standard 10-1.1; 4.2(b)

Standard 1.4 Conditions of Release

Consistent with these Standards, each agency or program should adopt procedures designed to promote the release of defendants on personal recognizance. Additional conditions should be imposed only when the facts of the individual case demonstrate that such conditions are necessary to provide reasonable assurance that the defendant will appear at court proceedings and/or that such conditions are needed in order to protect the community, victims, witnesses, or any other person.

Pretrial services agencies or programs making recommendations for release should base these recommendations on an established validated risk assessment instrument and recommend the least restrictive conditions necessary to ensure the defendant's appearance in court without jeopardizing public safety.

Standard 1.5 Impartial and Equal Treatment of Defendants

There should be impartial and equal treatment of all defendants. Those accused of crimes should be afforded due process and equal access to the opportunity for pretrial release. Pretrial practitioners should actively guard against and repudiate any act of discrimination or bias based on race, gender, age, religion, national original, language, appearance, or sexual orientation.

Financial bail should be an option only when no other conditions will ensure appearance. Setting a high financial bail should not be used solely for the purpose of detaining a defendant. If a defendant is thought to be a danger to the community or to individuals, that defendant is entitled to a fair and open hearing to determine eligibility or suitability for release.

Standard 1.6 Nature of Charge Consideration

There should be no discrimination as to charge except in a capital case or non-bailable offense. Although the charge itself may be a predicate to pretrial detention proceedings, the pretrial practitioner should exercise care not to give inordinate weight to the nature of the present charge in evaluating factors for the pretrial release decision.

Related Standards

NAPSA (2004), Standard 1.6
ABA Standards on Pretrial Release (2002), Standard 10-1.7

PART II

RECOMMENDED PROGRAM PROCEDURES

Standard 2.1 Purposes of Pretrial Services Agencies and Programs

Pretrial services agencies and programs perform functions that are critical to the effective operation of local criminal justice systems by assisting the court in making prompt, fair, and effective release/detention decisions, and by monitoring and supervising released defendants to minimize risks of nonappearance at court proceedings and risks to the public safety and to individual persons. In doing so, the agency or program also contributes to the fair and efficient use of detention facilities. In pursuit of these purposes, the agency or program collects and presents information needed for the court's release/detention decision prior to first appearance, makes assessments of risks posed by the defendant, develops strategies that may be used for supervision of released defendants, makes recommendations to the court concerning release options and/or conditions in individual cases, and provides monitoring and supervision of released defendants in accordance with conditions set by the court. When defendants are held in detention after first appearance, the agency or program periodically reviews their status to determine possible eligibility for conditional release and provides relevant information to the court. When released defendants fail to comply with conditions set by the court, the pretrial services agency or program takes prompt action to respond, including notifying the court of the nature of the noncompliance.

Related Standards

NAPSA (2004), Standard 3.1
ABA Standards on Pretrial Release (2002), Standard 10-1.10

Standard 2.2 Screening of the Pretrial Defendant and Eligibility for Release

(a) Initial eligibility screening should be conducted at booking or at the earliest point thereafter.

(b) Defendants charged with offenses enumerated in Penal Code Sections 1319(A) and 1319.5 are ineligible for pre-arraignment own recognizance release. (See Appendix I) Those defendants excluded under these sections are not precluded from consideration for release at a later point in the judicial proceedings.

(c) Those in-custody defendants over whom the court has no jurisdiction (e.g. fugitive holds, Immigration and Customs Enforcement holds, parole holds, out of county formal probation holds and felony warrants) will be eliminated from further consideration for own recognizance release.

(d) All defendants remaining eligible for release consideration should not be excluded from the release process merely due to factors such as the instant charge or prior criminal history.

(e) A defendant should not be automatically eliminated from consideration for own recognizance release based simply upon the fact that another criminal case is pending. Each defendant will be considered in the screening process, independent of the instant charge.

Standard 2.3 Delegated Release Authority

The authority to release a defendant who has been arrested and charged with a crime resides with the court. The court should not delegate this authority to a pretrial services agency, program, or officer without specific guidelines, consistent with the laws and rules concerning judicial authority in the jurisdiction that govern the exercise of delegated authority. Pretrial programs with delegated release authority should have detailed specific guidelines for making the release decision provided or approved by the court.

Related Standard

NAPSA (2004), Standard 1.4; 1.9

Standard 2.4 The Defendant Interview

(a) An eligible defendant should be interviewed through a standard interview format. Each agency or program's format should utilize an established, validated risk assessment instrument that correlates to the agency or program's release criteria.

(b) The interview of the defendant should not include any direct questions concerning the alleged instant offense.

(c) The introduction to the interview, the content of the interview and the manner in which the information obtained in the interview is to be used should be consistent with the Confidentiality Provisions as set forth in Part II, Standard 2.10 of these Standards.

Related Standards

NAPSA (2004), Standard 1.3
ABA Standards on Pretrial Release (2002), Standard 10-4.2

Standard 2.5 Verification of Defendant Information

(a) The pretrial agency or program staff should inform the defendant that the interviewer will seek to verify the information obtained during the interview. The interviewer should ask the defendant to provide the names, relationships and telephone numbers of reliable verification sources. At a minimum, agency or program staff shall seek to verify the following information:

- **(i) residence;**
- **(ii) length of time in the community;**
- **(iii) family ties;**
- **(iv) employment or education;**
- **(v) prior performance in any pretrial program; and**
- **(vi) prior criminal history.**

(b) Agency or program staff should seek to verify any other information directly affecting the program's assessment of the defendant's risk potential. Verification may be achieved through interviews with third party contacts (e.g., relatives or friends), and need not require direct contact with employers, schools or other primary sources. Agency or program staff should respect the defendant's wishes not to contact certain potential verification sources (e.g., employers and schools).

(c) Agency or program staff should continue to seek verification in those instances where release is not secured due to the absence of verification. Inability to verify information should not necessarily result in a negative eligibility determination.

(d) Agencies or programs should establish policies and procedures governing the reporting of unverified information to the court. Pretrial release policies and procedures regarding unverified information may vary. Common practices include:

- **(i) utilizing a separate category, such as "qualified (based on interview information), not verified";**
- **(ii) finding the defendant eligible for release based on interview information while requiring the defendant to provide proof of address to the agency or program within 24 hours;**
- **(iii) continuing verification efforts, if the defendant is detained, and reporting immediately to the court once the information is verified; and**
- **(iv) developing separate statistical categories for defendants released without verified information.**

Related Standards

NAPSA (2004), Standard 1.3
ABA Standards on Pretrial Release (2002), Standard 10-4.2

Standard 2.6 Victim Input

In cases of domestic violence, those pretrial agencies or programs that include "victim input" should follow a standardized interview format. At a minimum, information should be obtained regarding the relationship between the victim and the defendant and any substance abuse issues. The victim should be advised that the information provided might be shared with other criminal justice and social service agencies. In addition, referrals should be provided to social service and other governmental agencies that provide victim assistance.

Standard 2.7 Pretrial Services Report

(a) The pretrial services agency or program should compile reliable and objective information relevant to the court's determination concerning pretrial release or detention. The report should include information obtained through the interview of the defendant and other information obtained through its investigation. A written report should be prepared that organizes the information, presents an assessment of risk posed by the defendant and recommends ways of responding to the risk and identifying appropriate release options. (A verbal report may be provided upon the request of the judicial officer.) The information gathered in the pretrial services investigation should be demonstrably related to the purposes of the pretrial release decision and should include factors shown to be related to the risk of nonappearance or of potential threat to the safety of any person or the community and to the selection of appropriate release conditions. The report may include information regarding factors such as:

(i) the defendant's community and family ties (including length of state and local residency), employment status and history, financial resources, physical and mental conditions, substance abuse history, criminal history, including bench warrants, failures to appear and any pending cases;

(ii) the defendant's status relative to probation, parole, or other release pending trial, sentencing, appeal, or completion of sentence for an offense;

(iii) the availability of persons who could verify information and who may assist the defendant in attending court at the proper time;

(iv) other information relevant to successful supervision in the community;

(v) any facts justifying a concern that the defendant will violate conditions of release;

(vi) the nature and circumstances of the offense when relevant to determining release conditions; and

(vii) the appropriateness of conditional release and various supervision options, including participation in available medical, drug, mental health or other treatment, diversion or alternative adjudication release options.

(b) The pretrial services report should link assessments of failure to appear risk potential and public safety to appropriate release options responsive to the specific risks and identified supervision needs. The recommendations should be supported by objective, consistently applied criteria set forth in agency or program policies developed in consultation with the judiciary. The conditional release options and treatment program information should be provided to the defendant prior to release.

(c) Pretrial services agencies or programs making recommendations for release and conditions of release should base these recommendations on an objective, verifiable risk assessment instrument.

Related Standards

NAPSA (2004), Standard 3.4
ABA Standards on Pretrial Release (2002), Standard 4.2(g) and (h)

Standard 2.8 Monitoring and Supervision

(a) If a defendant is not qualified for release on own recognizance, imposition of conditions of release should be considered. Any pretrial services agency or program that provides supervised release services should recommend the least restrictive release conditions necessary to assure the defendant's appearance in court, to protect the safety of the community, and to safeguard the integrity of the judicial process. These may include:

(i) directing the defendant to report to a pretrial services agency or program for supervision;

(ii) releasing the defendant into the custody or care of some other qualified organization or person responsible for supervising the defendant and assisting the defendant in making all court appearances;

(iii) imposing reasonable restrictions on the activities, movements, associations, and residences of the defendant, or other conditions

necessary to ensure future court appearance, prevent recidivism and protect the community or any person during the pretrial period;

(iv) prohibiting the defendant from possessing any dangerous weapons and ordering the defendant to immediately surrender all firearms and other dangerous weapons as designated by the court;

(v) prohibiting the defendant from engaging in certain described activities relevant to the risks of non-appearance or criminal activity, including use of intoxicating liquors or certain drugs;

(vi) requiring the defendant to be evaluated for substance abuse treatment, drug testing, eligibility screening for drug court, drug treatment or mental health programs. Defendants may be required to participate in appropriate treatment programs;

(vii) imposing any other reasonable restriction designed to ensure the defendant's appearance, to protect the safety of the community and to prevent intimidation of witnesses or interference with the orderly administration of justice; and

(viii) imposing financial conditions only when no other conditions of release will provide reasonable assurance that the defendant will appear in court.

(b) Pretrial Services agencies and programs should establish appropriate policies and procedures to facilitate the effective supervision of defendants who are released prior to trial under conditions set by the court. The agency or program should:

(i) monitor the defendant's compliance with court ordered release conditions;

(ii) inform the court promptly of all apparent violations of release conditions and of any subsequent arrest;

(iii) recommend modifications of release conditions as appropriate, consistent with agency or program policy;

(iv) maintain a record of the defendant's compliance with conditions of release;

(v) assist defendants in securing employment and in obtaining any drug or mental health treatment, medical, legal or other social services that would promote successful compliance with conditions of release;

(vi) notify released defendants of their court dates; and

(vii) facilitate the return to court of defendants who fail to appear for their scheduled court dates.

(c) In cases in which the court's release order has been modified, the pretrial services agency or program should promptly notify the defendant of any such modifications and the reason(s) for the modification. A record should be kept of all modifications.

(d) The pretrial services agency or program should assist other jurisdictions by providing courtesy supervision for released defendants who reside in its jurisdiction.

(e) A proceeding for revocation of a release order may be initiated by a judicial officer, the prosecutor, or a representative of the pretrial services agency or program. A judicial officer may issue a warrant for the arrest of a person charged with violating a release condition. Once apprehended, the person should be brought before a judicial officer for review of the alleged violation. Modified conditions should only be imposed after a hearing and determination of just cause.

(f) When released defendants fail to comply with conditions set by the court, the pretrial services agency or program should take prompt action to render assistance to the defendant to assure compliance. Depending on individual circumstances, modification of conditions may be warranted and approved by the court.

(g) A record of the defendant's compliance history should be maintained by the pretrial services agency or program. Information relevant to the defendant's progress as it relates to program attendance or completion should be contained in written reports. Reports of this nature are confidential and should only be shared in accordance with these Standards.

Related Standards

NAPSA (2004), Standard 3.5
ABA Standards on Pretrial Release (2002), Standard 10-1.10

Standard 2.9 Failures to Appear

A person who has been released on OR and who has failed to appear in court could be subject to a warrant of arrest, modification of release conditions, revocation of release, or an order of detention. In considering what actions to recommend, the pretrial services agency or program should take into account the seriousness of the violation, whether it appears to have been willful, or caused an increased risk to public safety.

Upon notification of a failure to appear, the pretrial services agency or program should notify the defendant that a bench warrant is either pending or has been issued. The pretrial services agency or program should advise the defendant that he or she is responsible for contacting the court to resolve the matter.

Standard 2.10 Role of Staff in the Courtroom

Pretrial services agencies or programs should provide staff representatives in court to answer questions concerning the pretrial services investigation report, to explain conditions of release and sanctions for non-compliance to the defendant, and to facilitate the speedy release of defendants.

Standard 2.11 Confidentiality

(a) Each pretrial services agency or program should develop written guidelines setting agency policy concerning the collection and distribution of information obtained during the pretrial services process. The guidelines should provide for confidentiality of information obtained during the course of the pretrial investigation and during post-release monitoring and supervision of the defendant.

(b) Subject to applicable limitation on disclosure of information, the policy guidelines should provide for disclosure as follows:

(i) The pretrial agency or program should maintain confidentiality of pretrial program records.

(ii) Information obtained during the course of the pretrial release investigation and during post-release supervision should remain confidential and should not be disclosed unless authorized by these Standards and California State/Federal laws that regulate the release of medical information (e.g. HIPAA - Health Insurance Portability and Accountability Act). Any disclosure of pretrial services information should be limited to the minimum information necessary to carry out the purpose of such disclosure.

(iii) At the time of the initial interview, a defendant should be clearly advised of the potential uses of the information offered so that he or she may make a voluntary decision whether to participate in the pretrial release interview.

(iv) The pretrial agency or program's reports used to determine eligibility/suitability for release should be made available to the court and, upon request, to the prosecutor and the defense counsel in the instant criminal action. Reports related to defendant compliance issues should be made available to the court, the prosecutor and the defense counsel.

(d) The program may disclose information under the following circumstances:

(i) to the court for the purposes of setting conditions of release, providing notification of court appearances, or notifying the court of violations

of conditions of release, including orders of protection and failures to appear;

(ii) to other service programs to which the defendant has been referred by the court or the pretrial agency or program, or to another pretrial program, provided the defendant consents to disclosure;

(iii) to law enforcement authorities, upon reasonable cause to believe that such information is necessary to assist in apprehending an individual for whom a warrant has been issued for failure to appear or for the commission of a crime while on own recognizance release;

(iv) to a probation department for use in any court ordered investigation such as a pre-sentence report or to assist in the supervision of a pretrial defendant who is subsequently convicted and placed on probation; and

(v) to individuals or agencies designated by the defendant, upon specific written authorization of the defendant.

(e) In cases in which pretrial agency or program staff has specific information leading to a good faith belief that the defendant intends to harm law enforcement authorities, particular individuals (e.g. victims), or the community at large, the agency or program should inform the court of the nature of the potential harm. The agency or program should disclose only such information as is necessary to fully advise the court of the nature and source of potential harm, and to assist in locating the defendant.

(f) All contracts and written communications between the pretrial agency or program and individuals or organizations agreeing to provide supportive services for the custody or care of pretrial defendants must contain a nondisclosure clause. No person or public or private agency receiving information from a pretrial program may re-disclose such information, except as is necessary to accomplish the purpose for which such information was disclosed by the pretrial program.

(g) Information contained in pretrial program files may be made available for research purposes to qualified personnel pursuant to a written research agreement which states the terms and conditions of each information transfer. Such an agreement should, at a minimum, address the following matters:

(i) the purpose of the research;

(ii) the characteristics of the cases for which information is sought;

(iii) the manner in which cases will be selected;

(iv) the specific pieces of information on each case that will be extracted from the files of the pretrial agency or program;

(v) the estimated length of time during which the researcher will maintain the information in a manner that permits the personal identification of a case;

(vi) the specific plan for removing personal identifiers from the research database after the designated time period expires; and

(vii) the procedures to be used by the researcher to protect the security and confidentiality of all personally identifiable research data.

(h) All research agreements concerning access to information in the files of any pretrial agency or program should assure that the identity of any defendant is not revealed in research publications, reports or any other materials distributed to anyone who is not a member of the research team.

(i) The research agreement should describe the procedure to be used by the researchers to protect the security and confidentiality of all personally identifiable research.

Related Standards

NAPSA (2004), Standard 3.8
ABA Standards on Pretrial Release (2002), Standard 10-4.2 (b)

Standard 2.12 Subpoena Procedures

(a) Pretrial agency or program staff and their files should not be subject to subpoena for purposes of providing defendant information gathered during the agency or program's investigation or post-release monitoring of the defendant. No information obtained by pretrial services should be used to determine guilt or innocence in the instant case and should not to be used in any other criminal or civil investigation except in those instances set forth in these Standards. A request for information concerning the role of the pretrial services agency or program and their policies and procedures during the interview or supervision of a defendant is appropriate to provide under subpoena. This issue should be specifically covered by written agency or program policy.

(b) If a subpoena is received for information that is considered confidential under agency or program policy, efforts should be made to have the subpoena withdrawn or quashed. This may be as simple as explaining policy to the issuing agency or as complex as making a formal request of a judicial officer to review the policy and information for the appropriateness of the subpoena. Those agencies or programs that have legal representation (county counsel, city attorney, etc.) may find it beneficial to ask for assistance from those entities.

(c) A subpoena is a legal order to produce information or documents and cannot be ignored. If a judge, after review of the policy or documents, orders the pretrial agency to honor the subpoena, the information must be provided. The reasons for providing defendant information under subpoena should be documented in the defendant/supervision files.

PART III

ADMINISTRATIVE PROCEDURES

Standard 3.1 Organization and Management of Pretrial Services Agency or Program

(a) The pretrial services agency or program should have an administrative structure that will provide guidance and support for the achievement of agency or program goals. This framework should facilitate effective interaction with the court and other criminal justice agencies, while ensuring substantial independence in the performance of its core functions.

(b) The pretrial services agency or program should have policies and procedures that enable it to function as an effective partner in the criminal justice system. More specifically, the agency or program should:

(i) develop and update written policies and procedures relative to the performance of key functions;

(ii) develop and update strategic plans designed to accomplish established policies and procedures; and

(iii) establish specific goals for effectively assisting in the pretrial release decision-making process and the supervision of pretrial defendants.

Related Standard

NAPSA (2004), Standard 3.7

Standard 3.2 Program Objectives

Every pretrial services agency or program should establish program objectives consistent with the following guidelines:

(i) maximize the use of non-financial alternatives to pretrial incarceration, by promoting the use of citation release, own recognizance release, release with conditions, release with supervision and release to halfway houses or residential treatment centers;

(ii) maximize appearance rates;

(iii) minimize the unnecessary use of detention;

(iv) provide services and supervisory resources for defendants released with conditions;

(v) facilitate the release decision by providing information in a timely manner;

(vi) develop a broad range of practical and enforceable conditions of release suitable for defendants whose risks and needs vary widely so that the presumption for release can be realized in practice; and

(vii) provide support, make referrals and encourage participation in appropriate treatment programs.

Standard 3.3 Resources

The pretrial services agency or program should have policies and procedures that enable it to effectively manage and account for its financial resources and budgetary requirements. More specifically, the agency or program should:

(i) develop strategic plans aimed at identifying resources essential to achieving the agency's mission; and

(ii) maintain financial systems that enable the program to manage its resources, account for expenditures and receipts, stay within budget, and support requests for funding of future operations.

Standard 3.4 Information Gathering and Data Collection

The pretrial agency or program should:

(i) develop and maintain an information management system to monitor the effectiveness of its program's operations relative to these Standards, and adherence to or compliance with these Standards;

(ii) promote research;

(iii) conduct periodic reviews to assess the need for modifications with regard to pretrial program practices;

(iv) collect statistical data to determine failure to appear rates and other critical success factors; and

(v) develop and maintain an automated data system to support defendant identification, risk assessment, determination of appropriate release conditions, compliance monitoring, detention review functions, and other data collection essential for the effective management and operation of the pretrial release agency or program.

Standard 3.5 Quality Assurance

The pretrial agency or program should incorporate a comprehensive quality assurance component to ensure that both new and established procedures are being followed. Quality reviews should be conducted to affirm that compliance is consistently achieved. Accountability is essential to the achievement of measurable performance objectives in terms of staff productivity and the quality of the work product.

Standard 3.6 Job Description and Qualifications

The pretrial services agency or program should develop its own policies and procedures for staff recruitment, selection, compensation, management, training and career advancement.

All investigative staff should conduct defendant reviews, and gather information to prepare reports or assessments for the court. This process includes access and interpretation of criminal records, contacts with personal references and interested agencies, and a validated risk assessment instrument. Investigative staff should provide recommendations to the court as to the suitability of conditional or unconditional release from custody.

Standard 3.7 Training and Professional Development

(a) The pretrial services agency or program should ensure that employees are sufficiently trained to perform the duties and responsibilities of the program. Training should include timely orientation of all program staff regarding these Standards and specific operational requirements; and should ensure that all employees perform their duties consistent with the provisions of these Standards, state laws and other regulations.

(b) The pretrial agency or program should:

- **(i) encourage staff to participate in available certification processes for pretrial services practitioners; and**
- **(ii) provide staff with periodic performance evaluations to acknowledge the accomplishments and address the deficiencies of employees.**

Standard 3.8 Criminal Justice Collaboration

The pretrial services agency or program should:

- **(i) develop, in collaboration with the court, other criminal justice entities, and community service groups, appropriate policies for the delivery**

and management of services to minimize the potential risk to public safety; and

(ii) develop procedures to measure both the pretrial services agency's performance relative to their established program goals and these Standards.

Standard 3.9 Community and Other Agency Outreach

The pretrial agency or program should:

(i) establish an effective outreach program to build support and awareness for their services;

(ii) prepare and distribute materials to inform the public and other affected agencies of the policies, procedures and achievements of the pretrial release agency or program;

(iii) provide copies of an annual report on program operations to both criminal justice officials and the public;

(iv) initiate training to educate other members of the criminal justice system regarding the policies and practices of the pretrial release program; and

(v) meet regularly with community representatives to discuss program practices and issues.

Standard 3.10 Collateral Services

(a) Pretrial services agencies and programs should provide supportive services to criminal justice partners. Collateral services can function through various programs to assist the court and other law enforcement agencies in the administration of justice. These collaborative efforts emphasize the relevance of the pretrial services role within the criminal justice community and serves to support the individual agency or program's main mission.

Examples of these services include:

(i) criminal history records research for grants and statistical purposes;

(ii) electronic monitoring assessments;

(iii) criminal history record interpretation for special programs within the court, such as "drug court," "early disposition," "protective order investigation" and "civil name change"; and

(iv) training of other agencies on pretrial related functions.

(b) Pretrial services agencies should develop procedures relative to the criteria of the specific criminal record search.

APPENDIX I

STATUTORY AUTHORITY

Various sections of the California Penal Code authorize judges or magistrates of the criminal courts to release defendants on their own recognizance while their case is pending. Additionally, numerous court decisions have established guidelines and limitations in setting of specific release conditions for those defendants released under the supervision of the Pretrial Services Agency or Program.

The following are the relevant California Penal Code sections:

Penal Code Section 1269c notes circumstances where bail may be set higher or lower than what is listed in the local bail schedule, or the court "…may authorize the defendant's release on his or her own recognizance."

Penal Code Section 1270 states that a defendant is entitled to a possible release on own recognizance:

"Any person who has been arrested for, or charged with, an offense other than a capital offense may be released on his or her own recognizance by a court or magistrate who could release a defendant from custody . . . . A defendant . . . shall be entitled to an own recognizance release unless the court makes a finding on the record, in accordance with Section 1275, that an own recognizance release will compromise public safety or will not reasonably assure the appearance of the defendant as required. Public safety shall be the primary consideration . . . "

Penal Code Section 1318 generally notes the contents of an order authorizing the defendant to be released from custody on his or her own recognizance. The defendant shall not be released from custody on own recognizance until the defendant files with the clerk of the court or other person authorized to accept bail a signed release order agreement that includes the following:

- **(i) the defendant's promise to appear at all times and places as ordered by the court or magistrate before whom the charge is subsequently pending;**
- **(ii) the defendant's promise to obey all reasonable conditions imposed by the court or magistrate;**
- **(iii) the defendant's promise not to depart this state without leave of the court;**
- **(iv) an agreement by the defendant to waive extradition if the defendant fails to appear as required and is apprehended outside the State of California; and**

(v) the acknowledgement of the defendant that he or she has been informed of the consequences and penalties applicable to violation of the conditions of release.

Penal Code section 1318.1 provides the statutory authorization to create a Pretrial Services Agency or Program. Specifically, "A court, with the concurrence of the board of supervisors, may employ an investigative staff for the purpose of recommending whether a defendant should be released on his or her own recognizance."

What criteria may the court consider in deciding whether or not to release a defendant on his/her own recognizance? This issue was decided in a landmark State Supreme Court decision in *Van Atta v. Scott* (1980 166 Cal Rptr 149, 613 P2d 210). The court held that: (1) the prosecution must bear the burden of producing evidence of a defendant's record of nonappearance at prior court hearing and of the severity of the sentence the defendant faces; (2) the defendant must bear the burden of producing evidence of community ties; and (3) the prosecution must bear the burden of proof concerning the defendant's likelihood of appearing at future court proceedings.

The California Penal Code limits the pre-arraignment release of some defendants on own recognizance until a hearing is held in open court with the District Attorney present. Section 1319 prohibits the release of individuals charged with a violent felony, as delineated in Section 667.5. In addition, defendants who are on formal probation or parole at the time of booking, or who have failed to appear on three or more occasions in the past three years, are prohibited from pre-arraignment release pursuant to Penal Code Section 1319.5

The release of defendants under supervision with conditions, often termed "conditional release" or "supervised own recognizance," is a concept that has been used by several Pretrial Services Agencies in California. Although the goal of using specified conditions is generally to reduce the incidence of failure to appear or arrest, the use of urine testing and warrantless searches was challenged in 1995. The California Supreme Court decided unanimously in the case of *In re York*, S032327 that conditions such as urine testing or search and seizure do not violate the defendant's presumption of innocence. According to the Court, conditions such as urine testing and warrantless searches were "reasonable" conditions.

The court further noted that, while such conditions may have little to do with a defendant appearing for future court hearings, the conditions " . . .do relate to the prevention and detection of further crime and thus to the safety of the public." While the Court of Appeal found that specialized conditions were warranted if "a magistrate or trial court makes an individualized determination that an arrestee will probably use and/or possess drugs while released pending trial, then a pertinent search or drug testing condition should be found reasonable," the State Supreme

Court did not elaborate on that issue. The only guidance offered by the Justices to lower courts was in a footnote: "…nothing in this opinion should be construed as providing approval of random drug testing and warrantless search and seizure conditions in all cases wherein the defendant requests OR release . . .the reasonableness of a conditions necessarily depends upon the relationship of the condition to the crime or crimes with which the defendant is charged and to the defendant's background, including his or her prior criminal conduct."

APPENDIX II

CRIMINAL OFFENDER RECORD INFORMATION (CORI)

Pretrial Services Agencies or Programs are defined as "Criminal Justice Agencies" pursuant to Penal Code Section 13101 and Code of Federal Regulations (28 CFR Part 20, especially 20.3,) and therefore, often have access to local, state (Criminal Identification and Information), federal (National Crime Information Center) and/or interstate (National Law Enforcement Telecommunication System) and the Department of Motor Vehicle computer systems. Whether criminal history is viewed on a screen or printed out and attached to an eventual court report, laws, policies and procedures exist, on the State and Federal level, on how that information is to be used and disseminated. Computerized criminal history information is often referred to in statutes as Criminal Offender Record Information or CORI.[6]

Statutes that control the use and sanctions for the misuse of CORI include:

- **(i) Penal Code Section 13100 provides the authority to establish regulations for the use of CORI and defines what is "criminal offender record information."**
- **(ii) Penal Code Section 13300 describes who may have access, and under what conditions, to criminal offender record information.**
- **(iii) Penal Code Sections 13301-13304 establish penalties for misuse of criminal history information.**
- **(iv) Penal Code Section 502 sets forth computer-related crimes and their penalties.**

The California Department of Justice, California Law Enforcement Telecommunications System's (CLETS) *Policies, Practices, Procedures, (and Statutes)* provide agency personnel with guidance in these areas. Some of the basic policies include that personnel accessing various databases be trained on the proper access and interpretation of the data received, and its proper distribution and ultimate disposal. Two basic principles that guide the access of any criminal history are that the access is being done on a "right to know" and a "need to know" basis. Specifically, the "right to know" is the right to obtain CORI pursuant to court order, statute, or decisional law. Employees of pretrial services agencies have the "right to know" to carry out their official duties. "Need to know" is the necessity to

[6] U.S. Department of Justice, Federal Bureau of Investigation (1998), *National Crime Information Center Operating Manual Interstate Identification Index*

obtain CORI in order to execute official responsibilities. In simple terms, an employee is authorized to access the CORI only on an individual for which an official function is being conducted, i.e. investigation for own recognizance release agency functions. The principles of "need to know" and "right to know" are to be extended when CORI is released from Pretrial Services Agencies to outside criminal justice agencies or individuals.