

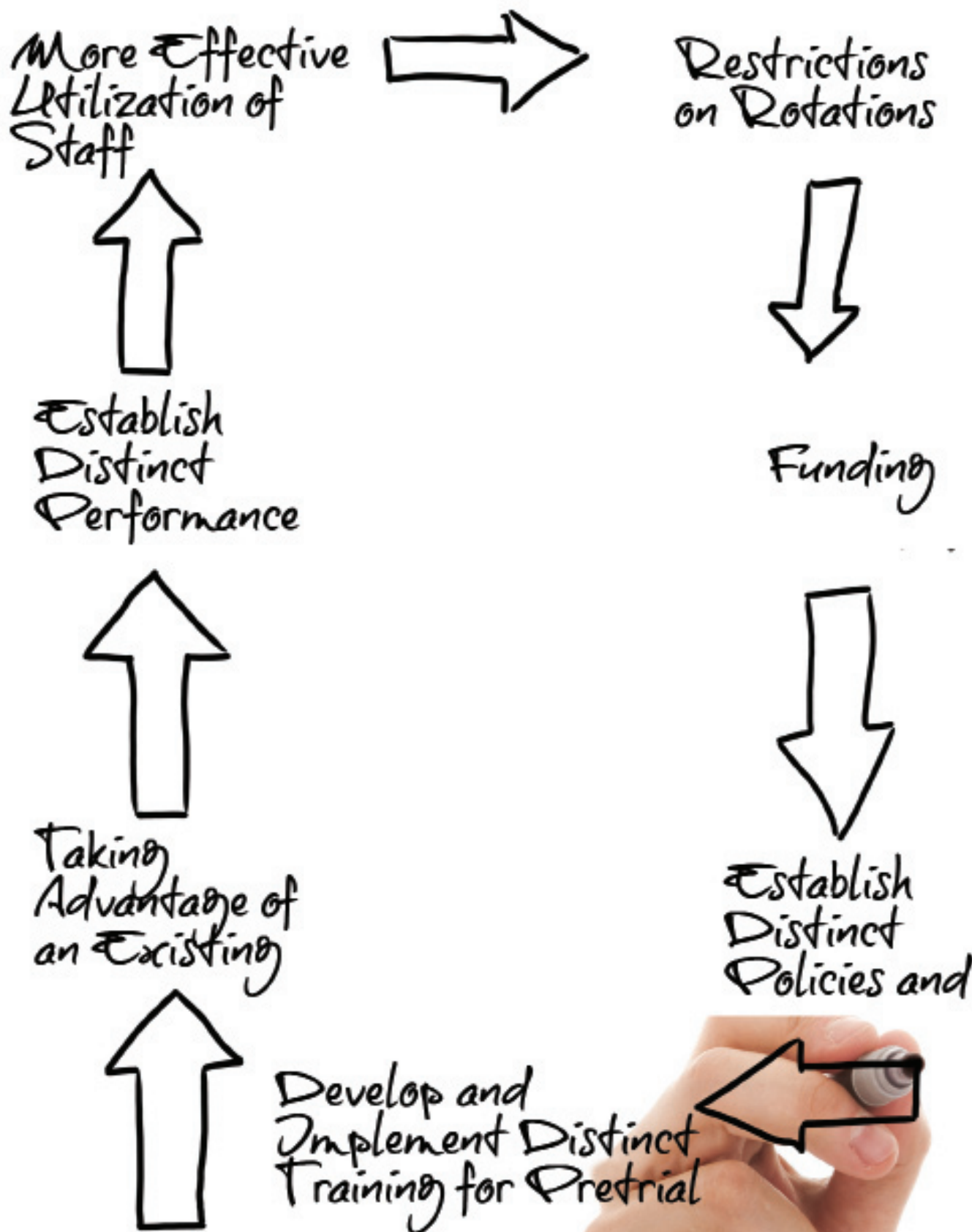
**PROMISING PRACTICES IN  
PROVIDING PRETRIAL SERVICES  
FUNCTIONS WITHIN PROBATION  
AGENCIES A USERS GUIDE**



A Force for Positive  
CHANGE







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A Force for Positive CHANGE.

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# RESOLUTION

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P.O. Box 11910  
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## Pretrial Supervision

Enacted: Jun 2010

**WHEREAS**, pretrial supervision services exist to evaluate the jail population to ensure those who should be in custody remain in custody and those who do not pose a significant risk to the community can be released, allowing for better utilization of our justice resources;

**WHEREAS**, a vast majority of pretrial supervision activities are carried out as subdivisions of state or local probation agencies, while depending on jurisdiction, others are standalone agencies;

**WHEREAS**, the bond industry serves as the de facto decision maker of who is released from jail and these decisions are based on monetary considerations whereby pretrial supervision agencies' decisions are based on likelihood of court appearance and community safety considerations.

**WHEREAS**, the majority of our jails are filled with those awaiting trial with a large percentage of these crimes being misdemeanors and low-level nonviolent felonies while the cost for housing these individuals is borne by taxpayers;

**WHEREAS**, pretrial supervision has been proven a safe and cost effective alternative to jail for many individuals awaiting trial;

**WHEREAS**, pretrial supervision divisions in the United States employ professionally trained officers who use tools to assess the risk of offenders prior to release from jail and make recommendations for release to the appropriate court or office;

**WHEREAS**, pretrial supervision officers conduct assessments to determine the need for treatment (i.e., substance abuse, mental health) and help offenders access these services more quickly thereby reducing costs associated with jail incarceration and potential future crimes;

**WHEREAS**, pretrial supervision officers compile reports on those they supervise noting compliance with conditions that can be useful to the court if individuals convicted are then released on probation;

**NOW THEREFORE BE IT RESOLVED**, that the Board of Directors of the American Probation and Parole Association supports the role of pretrial supervision services to enhance both short-term and long-term public safety, provide access to treatment services and reduce court caseloads, and submit that such a role cannot be fulfilled as successfully by the bail bond industry.



# **PREFACE**

As counties face significant budget crises, which are projected to last for years, jurisdictions are looking for ways to retain or implement evidence-based practices in a way that provides the most efficient use of criminal justice resources without sacrificing public safety. The Pretrial Justice Institute (PJI) and the American Probation and Parole Association (APPA) have partnered to assist jurisdictions with the effective and efficient support of a pretrial services function within a post-trial environment – the probation department. While pretrial services programs and probation departments often are working with the same clientele, they have different cultures, different missions, and supervise individuals for different lengths of time.

In September 2010, at the annual conference of the National Association of Pretrial Services Agencies, PJI's Executive Director Tim Murray and APPA's Executive Director Carl Wicklund held a workshop for participants to talk about the challenges and opportunities presented by administratively locating pretrial services functions within a probation department. This was followed in December of 2010 with a focus group comprised of leaders from high-functioning pretrial services programs operating within probation departments. With their input and ideas, PJI and APPA are pleased to offer this Guide.



# INTRODUCTION

Pretrial is the phase of the processing of a criminal case that occurs between the arrest and booking of an individual into custody until their case has been decided either by a plea deal, a trial, or the dropping of charges. One of the first decisions to be made after a custodial arrest is the suitability of the defendant for pretrial release, and under what conditions, if any. This is called the pretrial release decision.<sup>1</sup>

Federal and state statutes specify the factors that judicial officers must consider when making this decision. These factors typically include: the nature of the offense(s); the defendant's community ties; length of time in the area; residence; employment; drug, alcohol, and mental health history; prior criminal history; and any current status on probation, parole or pretrial release. The release options that are available range from release on own recognizance, or the defendant's promise to appear in court, release with increasingly restrictive non-financial conditions to match the potential risks posed by the defendant, setting a money bond, and detention without bond. Most of these statutes call for judicial officers to release people on the least restrictive conditions reasonably calculated to assure the defendant's appearance in court and to protect the safety of the community.

In perhaps no more than 15% of the nation's 3,065 counties (making up a good majority of the 150 most populous counties), judicial officers are aided by pretrial services programs in this important balancing act between the presumption of innocence and public safety. Pretrial services programs interview criminal defendants to gather information relevant to the pretrial release decision. They contact references to verify the community ties and substance abuse or mental health information provided by the defendant, as well as conduct investigations into each defendant's prior criminal history, prior record of appearance in court, and current status with the criminal justice system (e.g., on probation, parole or pretrial release). Compiling all this information, pretrial services programs then make an assessment of the risks of danger to the community or of failure to appear in court posed by each defendant. Optimally, this risk assessment is an actuarial tool, rather than a subjective 'gut feeling' of individual staff or program managers. Pretrial services programs then submit a report, along with the risk assessment and a recommendation regarding release, to the judicial officer presiding at the initial appearance. All of this occurs within hours of arrest.

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<sup>1</sup> According to the American Bar Association, the purposes of the "pretrial release decision" are: "providing due process for those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threats, danger, or interference." *American Bar Association Standards on Pretrial Release, Third Edition, 2002, Standard 10-1.1.*



Most pretrial services programs also make available to the court a range of options to help manage the potential risks presented by defendants. Making a full menu of options available allows the court to order conditions of release that are individualized to the risks posed by each defendant, as required by law. Pretrial services programs then provide supervision of the court-ordered conditions. Many have established systems to remind defendants of their upcoming court dates.

The first pretrial services program was established in New York City in 1961. By 1965, pretrial services programs were serving most of the nation's largest cities.<sup>2</sup> From the outset, programs have been housed successfully in a number of administrative locations, including:

- Under the court administration
- Within the jail or sheriff's department
- Within a probation department
- As an independent government agency
- Within a private, non-profit organization.

Of all these entities, the courts housed more pretrial services programs that were started through the 1980s. In the past two decades, a shift in the administrative placement of pretrial services has been occurring. A 2009 national survey of pretrial services programs found that half of all pretrial programs begun since 1990 were housed administratively within probation departments.<sup>3</sup> As a result of this trend, the overall percentage of pretrial services programs now housed in probation departments is on the rise. In a survey conducted in 1989, 24 percent of all programs were administratively located within probation departments, compared to 31 percent in a 2001 survey and 38 percent in the 2009 survey.<sup>4</sup>

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A 2009 national survey of pretrial services programs found that half of all pretrial programs begun since 1990 were housed administratively within probation departments.

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Most of the recently established pretrial services programs are serving smaller jurisdictions: 44 percent of programs started between 2000 and 2009 are in rural jurisdictions. In these communities, there are economies of scale realized by placing pretrial services programs within probation departments. And, probation-based pretrial services programs have fewer staff than other administratively located programs.<sup>5</sup>

Over the past 50 years, local situations and resources have dictated the most appropriate administrative location for pretrial services programs. This Guide does not advocate for any particular administrative location for a pretrial services function, only that each county have such a function to adequately assure that the individual risks presented by each custodial defendant are assessed

<sup>2</sup> The cities included New York, Los Angeles, Chicago, Philadelphia, Washington, D.C., San Francisco, Atlanta, Miami, Denver, Baltimore, Cleveland, Pittsburgh, Houston, Seattle, Boston, Minneapolis, Kansas City, St. Louis, and Milwaukee, among dozens of others. Wayne H. Thomas, Jr., *Bail Reform in America*, University of California Press, Berkeley, 1976, pp. 24-25.

<sup>3</sup> All survey data referred to in this and the following paragraph are from the *2009 Survey of Pretrial Services Programs*, Pretrial Justice Institute, 2009.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

and pretrial release or detention decisions are made fairly and objectively based on this assessment. The administrative location of pretrial services programs should have no bearing on their ability to achieve their goals of "assisting the court in making prompt, fair, and effective pretrial release/detention decisions, and ...monitoring and supervising released defendants to minimize risks of nonappearance at court proceedings and risks to the safety of the community and to individual persons."<sup>6</sup>

The fact that the delivery of pretrial services functions can thrive in a variety of different administrative settings gives local decision makers the flexibility to match local needs and circumstances with the most appropriate placement of pretrial services. When circumstances suggest that the probation department is the best location for a new pretrial services function, this User's Guide is designed to help jurisdictions achieve maximum effectiveness of that function.

This document is not a "how to" guide on implementing a pretrial services program. PJI has produced another document for that purpose - *Pretrial Services Program Implementation: A Starter Kit*.<sup>7</sup> Officials seeking to implement a new pretrial services function within probation should refer to the *Starter Kit* for basic implementation information and to this Guide for information on addressing the specific issues of implementing a probation-based pretrial services function.

## Advantages of Providing Pretrial Services Functions in a Probation Department

The National Association of Counties (NACo) recommends that "all counties" establish procedures to screen all arrestees booked into county jails to assist judicial officers in making the pretrial release decision, and to provide the court with a range of pretrial release options.<sup>8</sup> The American Bar Association (ABA) calls on "every jurisdiction" in the country to establish a pretrial services program to gather information about all arrestees before their initial appearance in court, assess their risks of danger to the community and failure to appear in court, make recommendations to the court based on the risk assessment, and supervise release conditions imposed by the court.<sup>9</sup> NAPSA, the professional association of pretrial practitioners, makes the same recommendation.<sup>10</sup> The APPA has passed a resolution supporting "the role of pretrial supervision services to enhance both short-term and long-term public safety, provide access to treatment and reduce court caseloads."<sup>11</sup> The International Association of Chiefs of Police recently released a document stating that pretrial release decisions should be based on "rational criteria," using information provided by pretrial services programs, and that once released into the community, defendants should be monitored and supervised by pretrial services programs.<sup>12</sup>

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<sup>6</sup> National Association of Pretrial Services Agencies, *Standards on Pretrial Release*, Third Edition, 2004, Standard 3.1.

<sup>7</sup> Available at [www.pretrial.org](http://www.pretrial.org).

<sup>8</sup> NACo 2009-2010 Justice & Public Safety Platform & Resolutions

<sup>9</sup> ABA Pretrial Release Standard 10-1.10.

<sup>10</sup> NAPSA Pretrial Release Standard 3.

<sup>11</sup> The resolution is available at: [http://www.appa-net.org/eweb/Dynamicpage.aspx?site=APPA\\_2&webcode=IB\\_Resolution&wps\\_key=3fa8c704-5ebc-4163-9be8-ca48a106a259](http://www.appa-net.org/eweb/Dynamicpage.aspx?site=APPA_2&webcode=IB_Resolution&wps_key=3fa8c704-5ebc-4163-9be8-ca48a106a259).

<sup>12</sup> Law Enforcement's Leadership Role in the Pretrial Release and Detention Process, International Association of Chiefs of Police, February 2011.

As indicated previously, only about 15% of counties have a pretrial services program. In fact, no more than about 300 pretrial services programs have ever been identified.<sup>13</sup> Probation offices, however, can be found in every jurisdiction. This section describes the advantages to introducing a pretrial services function within probation departments in jurisdictions where pretrial services do not currently exist.

## Taking Advantage of an Existing Infrastructure

The most obvious advantage is that an infrastructure to support a pretrial services function is already in place within a probation agency. It may be possible to physically house the new pretrial services staff in the existing probation department office space, negating the need to find additional space. In addition, probation departments are likely to have access to monitoring and supervision tools, such as drug testing supplies and electronic supervision tools, and may have case management software and information sharing capabilities. Due to economies of scale, these items, as well as other supplies and equipment, can be leased or purchased at lower rates than if a small pretrial services program tried to acquire them on its own. Many probation departments have existing training facilities that pretrial services staff could use.

## Taking Advantage of Existing Relationships

The probation department likely has long-standing relationships with service providers in the community, such as drug, alcohol, and mental health assessment and treatment programs, which would be important to the monitoring and supervision provided by pretrial services staff.

The probation department also likely has good working relationships with judges, prosecutors, public defenders, and jail administrators. The cooperation and support from these stakeholders is crucial in implementing a new pretrial services function.

## More Effective Utilization of Staff

There can be a number of staffing advantages. It may be possible to share staff, such as administrative, human resources, and information technology. Staff with special skills, such as fluency in sign language or Spanish, could be shared more easily. While separate management or supervisory staff may be needed for the pretrial services function, there can be one overall administrator – resulting in cost savings. In the smallest jurisdictions, one officer may be responsible for all pretrial services and probation work, including preparing pre-sentence investigation reports.

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No more than about 300 pretrial services programs have ever been identified. Probation offices, however, can be found in every jurisdiction.

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<sup>13</sup> Although a few, Kentucky and Delaware, for example, serve the entire state.

Having pretrial services functions incorporated with probation also provides opportunities for cross training of all staff. There are two benefits to cross training pretrial and probation staff. First, the two units gain a better understanding of the roles, responsibilities, and challenges of each other. For example, they will be able to see how risk assessment and supervision strategies work in the pretrial services and probation settings. Second, staff will be able to fill in for each other during vacations, sick leave, and other absences, and assist each other when needed, e.g., on days when there are a larger than normal number of arrests.

With cross-training it may be easier to rotate staff between pretrial services and probation assignments. This can improve staff morale by varying the work that they are required to do, giving them the chance to learn new skills, which in turn can increase their job satisfaction, potentially provide chances for promotion or career advancement opportunities.

Where skills required for pretrial services and probation overlap – for example, learning how to check criminal histories through the various available databases, the use of mental health and substance abuse screening and assessment tools or officer safety courses – training can be done together and the same quality control measures employed.

### **Increased Standing and Increased Understanding**

If pretrial services and probation functions are small and separate within a jurisdiction, their influence with other criminal justice system stakeholders may be limited. Having one entity responsible for the risk assessment and supervision of all persons from the point of arrest to the end of probation can increase its standing among the other stakeholders. This can be particularly important in attempts to address system-wide issues such as jail crowding or the need to make across-the-board cuts in correctional budgets. It may also serve to increase all of the stakeholders' understanding of the critical need for risk assessment and appropriate supervision of individuals during both the pretrial and post-adjudication stage of the criminal case.


### **Enhanced Coordination between Pretrial Services and Probation**

In agencies that have both a pretrial services and probation function, there are times when coordination on a case is vital to an effective and efficient criminal justice system. For example, when a probationer is arrested on a new charge, there must be a decision regarding the recommendation for pretrial release in the new charge. The input from probation may guide the recommendation made by pretrial services staff.

It is not uncommon for individuals to be on both probation and pretrial release at the same time. When this occurs, the individual may need to report to two separate individuals – a probation officer and a pretrial services officer. Through coordination between pretrial services and probation, arrangements could be made to have the individual report to just one of the entities for both purposes. This may have the effect of increasing the likelihood of the individual remaining in compliance with both pretrial and probation conditions, as well as being a more economical use of supervision staff and resources. In addition, good coordination between pretrial services and probation staff is important in assuring the continuation of

any services that began during the pretrial period and that are also part of the probation conditions. For example, it may be easier to have face-to-face meetings between pretrial and probation staff to discuss case nuances. Of course, all this coordination can, and often does, occur in jurisdictions where pretrial services programs and probation are separate entities, but it may be simplified where both report to the same administrator.

Coordination between pretrial services and probation can also be enhanced if the two entities share the same case management system.



## Pretrial Services and Probation in the Federal System

**In 1974, Congress authorized the Director of the Administrative Office of the U.S. Courts to establish ten pilot pretrial services programs in federal districts. Based on the successes of those pilots, in 1982 Congress authorized the expansion of pretrial services from the ten pilot districts to all districts. Each district was given the option of implementing pretrial services programs within the existing probation department or to implement a separate pretrial program. About half the districts chose to set up separate pretrial services programs.**

**In recent years, many of those separate programs have merged with probation, leaving only 22 of the 94 federal districts where pretrial services and probation are separate. In districts where they are separate there are two chiefs, one for pretrial services and one for probation. In districts where they are combined, there is just one chief for the two.**





# CHALLENGES IN PROVIDING PRETRIAL SERVICES FUNCTIONS IN PROBATION AGENCIES

A number of challenges have been encountered by jurisdictions that have provided pretrial services functions under the administrative locus of probation.

## **Understanding the Different Legal Statuses of the Clientele: Not Just Semantics**

There is much that pretrial services and probation have in common. Both involve gathering information on persons involved in the criminal justice system, assessing their risks, and supervising conditions imposed by the court. The conditions themselves are often the same – report in, refrain from the use of drugs or alcohol, undergo drug or alcohol assessment or treatment, don't possess firearms, maintain or obtain employment, reside at a particular address, stay away from a particular location or persons, electronic monitoring. Both pretrial services and probation address non-compliance with those conditions through both administrative sanctions and sending violation notices to the court. Because of all these commonalities, it may be easy to forget how pretrial services and probation are different.

Maintaining a constant focus on the different missions of pretrial services and probation can be a challenge where pretrial functions coexist with probation. Probation officers are responsible for *adjudicated individuals*, persons who have pled guilty to or been convicted of a crime. Pretrial services officers have responsibility for *defendants*, persons who have been *accused* of committing a crime. The goals of probation, is two-fold and may appear at times to be incongruent. On one hand, they take a short-term view of public safety while ensuring through enforcement that a probationer complies with the conditions of supervision as directed by the court. On the other hand probation is to rehabilitate or bring about behavior change in the individual so that the he or she will not recidivate which is a long-term view of public safety.

The goals of pretrial services programs have a much more limited timeframe. Their only legal charge is to monitor a defendant to reasonably assure his/her appearance in court and the safety of the community while his/her case is pending adjudication. In addition, given the different legal status of defendants, pretrial services officers may not discuss (and try to prevent the defendant from discussing) the current charge. Those conversations are to be between the defendant and his lawyer. Probationers, however, by the nature of their adjudicated status have had some of their rights either suspended or reduced – e.g. probable cause and a warrant may not be required for a search of probationer or his or her home. Rather reasonable grounds for the search is all that is required.

The challenge of differentiating these goals can be particularly difficult when the same officer may do both pretrial services and probation functions in the normal course of a day.

### **Assuring that Pretrial Services Is Not Being Overshadowed by Probation**

Participants in both the workshop and the focus group noted that a perception may exist in many places, correctly or not, that a probation officer is seen as a higher status, or at least more desired, position than a pretrial services officer. A reason for this may be that probation officers are usually better able to plan their schedules, while the daily workload of pretrial services officers is subject to how many arrests have to be processed each day. It is not uncommon for a pretrial services officer to see the appointment as a probation officer as a career advancement.<sup>14</sup>

In addition, a more limited pretrial services function in a larger probation office can leave pretrial services staff feeling overshadowed by the daily operations of probation and under-appreciated through limited resource allocations and attention from administration. Additionally, on the topic of pretrial services being overshadowed by probation, a common concern voiced by pretrial services staff housed within probation is that training is geared primarily toward probation, with pretrial services-specific training given little or no attention.

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Probation officers are responsible for *adjudicated individuals*, persons who have pled guilty to or been convicted of a crime. Pretrial services officers have responsibility for *defendants*, persons who have been *accused* of committing a crime. The goal of probation, to rehabilitate the individual so that the he or she will not recidivate, takes a long-term view. The goals of pretrial services programs have a much more limited timeframe. Their only legal charge is to monitor a defendant to reasonably assure his appearance in court and the safety of the community while his case is pending adjudication.

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<sup>14</sup> Focus group participants were also quick to point out, however, that many staff find their niche in pretrial services after experiences in both pretrial and probation settings.



Success for probation officers is often defined as the closing of a case when the sentence of probation is completed and the probationer met all his or her obligations. During the time on a probation caseload, a probationer is often referred to services and may complete their GED, drug or alcohol treatment, anger management classes, gain employment, etc. Probation officers often take pride in helping probationers be successful under supervision and have sometimes long periods of time in which to achieve that success. Additionally, for those that want to “make a difference” a probation officer is seen as a “change agent” and they often get to see people make life changes whereas pretrial officers are not afforded this ability. Probation officers also are afforded the opportunity to develop longer term relationships with those on their caseloads.

Within pretrial services, not only are the supervision periods shorter, the legal status of the defendant limits the right of the state to impose conditions that are anything other than the least restrictive to assure appearance and community safety. Thus, the successful end of pretrial supervision is, in most cases, simply a step on a path that takes the individual from being a defendant to being an adjudicated offender, sentenced to jail, prison, or probation – or, from being a defendant to having no obligation to the criminal justice system when the case is dismissed or the defendant acquitted.

## **Restrictions on Rotations**

Department administrators may not have the options to rotate staff between pretrial services and probation assignments especially if these duties are classified differently. This can occur where collective bargaining agreements or county regulations specify that any job rotations be voluntary and based on seniority.

## **Funding**

It can be challenging when there are different funding streams for pretrial services and probation. If the probation function is funded by the state and the pretrial services function by the county, difficulties may arise when one entity's percentage allocation is disparate to the other or if one entity gives staff a raise and the other does not.

If both are county-funded and the county must reduce spending, the pretrial services expenses as a line in the probation budget may be vulnerable to cuts in order to maintain levels of the probation function, or vice-versa.



# STRATEGIES FOR SUCCESSFULLY PROVIDING PRETRIAL SERVICES FUNCTIONS IN PROBATION AGENCIES

As the December 2010 focus group members discussed the advantages and challenges of providing an effective pretrial services function within a probation department, they indicated that they exploit the advantages and mitigate the challenges within their own organizations. They presented a number of strategies for mitigating the challenges.

## **Establish Distinct Mission/Vision Statements**

According to the 2009 survey of pretrial services programs, only 49 percent of pretrial services programs housed within probation have a mission statement specific to pretrial services. This compares to 83 percent for court-based pretrial programs, 78 percent for jail-based, 96 percent for independent agencies, and 85 percent for pretrial services programs run through non-profit agencies.<sup>15</sup> Given the very different missions of pretrial services programs and probation, it is important pretrial services programs housed in probation have their own mission statements.

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<sup>15</sup> Supra, note 3, p. 68.

## **Vision and Mission Statements of the Travis County, Texas Pretrial Services\***

### **Vision Statement**

*We envision (see) a pretrial system that honors and upholds the presumption of innocence for defendants we serve by employing evidence based practices and innovative technology to drive our internal operation, and by practicing the highest standard of professionalism in the service we provide.*

### **Mission Statement**

*Travis County Pretrial Services is a dynamic organization with the mission to assist in the administration of justice and to promote community safety by working collaboratively, ensuring fairness and equality in the pretrial process and empowering defendants with the resources necessary to successfully comply with court requirements.*

\*Travis County Pretrial Services is located within the Adult Probation Department.

The Policy Manual of U.S. Probation and Pretrial Services has the following Statement of Philosophy:

*As the component of the federal judiciary responsible for community corrections, the Federal Probation and Pretrial Services System is fundamentally committed to providing protection to the public and assisting in the fair administration of justice. While maintaining the presumption of innocence and working under the guidance of the court, pretrial services seeks to effectively supervise persons released to its custody and thereby promote public safety, facilitate the judicial process, and reduce unnecessary detention.*

*Pretrial services is the front door to the federal criminal justice system and has a unique opportunity to lay the foundation for each defendant's success, not only during the period of pretrial supervision, but even beyond that time. Officers strive to work with each defendant in such a manner that this contact with the criminal justice system will be his/her last and so prevent the front door of the system from becoming a revolving door.*

*While pretrial services has no authority over a defendant beyond the period of pretrial services supervision, it can help to lay the foundation for success by:*

- (1) Adhering to the highest standards of professional ethics;*
- (2) Employing effective supervision practices; and*
- (3) Creating effective partnerships with other criminal justice components and with the community.<sup>19</sup>*

<sup>19</sup> Supervision of Federal Defendants (Monograph 111), Guide to Judiciary Policy: Volume 8, Probation and Pretrial Services, Part C, §140

## **Establish Distinct Titles: Again, Not Just Semantics**

In many jurisdictions where the pretrial services function is housed within probation, staff responsible for pretrial services have the title of “probation officers.” This can create confusion with defendants when someone identifying himself or herself as a probation officer approaches them for an interview before the initial appearance. For county job classification purposes, it may be necessary to have the same title apply to both pretrial services and probation staff. Some departments have chosen a more generic term calling their staff court services officers or community supervision officers. It may also be helpful to adjust job descriptions to include both functions. At the very least, when staff are doing pretrial services work there should be flexibility to call themselves “pretrial services officers.” When possible, it would be highly recommended that distinct job titles and job descriptions be established to distinguish between a probation officer and a pretrial services officer. Consideration should be given to allow shift differential pay compensation to pretrial services officer positions working non-traditional work schedules.

A related issue is the ease with which both defendants and probationers were referred to as “offenders” by attendees of the NAPSA workshop and the PJI/APPA focus group. As stated before, this is not simply a matter of semantics – there are legal status differences requiring different rights considerations that are in need of protection. It is important that a culture is maintained whereby the pretrial services officers refer to defendants as defendants and not offenders. Should one term be preferred for generic purposes, terms like justice involved individuals may be used.

## **Establish Distinct Policies and Procedures**

There should be a separate set of policies and procedures for the pretrial services functions. They should cover such areas as the target population for pretrial interviews, timing of the interviews, information collected in the interviews, verification, criminal record checks, risk assessment and recommendations, and supervision of pretrial release conditions. The policies and procedures should also address the dissemination of information by pretrial services at various points, including when a probationer is arrested on a new charge and when a defendant has been convicted and is awaiting sentencing.

## **Establish Distinct Performance Measures**

The primary outcomes of interest of pretrial services programs are traditionally court appearance rates and arrest-free rates. The 2009 survey of pretrial services programs found that probation-based pretrial services programs are the least likely of any of the administrative locations for pretrial services to collect data on these outcomes. This can be problematic at budget time or if annual performance measures are reported to the county. When there are no separate outcome measures for the pretrial unit, it is nearly impossible to demonstrate the value of the unit to the overall operation of the criminal justice system.

Pretrial services programs within probation departments must collect and report their own set of performance measures, both outputs and outcomes. Output measures include the number of defendants

interviewed and assessed for risk, the number of recommendations made to the court (if this is part of the jurisdiction's practice, as not all programs make recommendations), pretrial release and detention rates by risk type, the number of defendants supervised, and the number who successfully complete pretrial supervision. Outcome measures are, minimally, court appearance rates and community safety rates (pretrial arrest-free rates).

Pretrial service program performance measures should be reported regularly and separately from probation performance measures to ensure that the function of pretrial services is not presumed to be the same as probation.

## **Develop and Implement Distinct Training for Pretrial Officers**

Staff responsible for pretrial services functions must receive training specifically geared toward their duties. The training should include the historical and legal framework for pretrial release decision making, as well as the specific skill sets pretrial staff will need to complete their interviews and investigations and supervise defendants on pretrial release.

The 2009 survey of pretrial services programs found that only 38 percent of probation-based pretrial programs send staff to the annual conference of NAPSA. By comparison, 51 percent of court-based, 56 percent of jail-based, 62 percent of non-profit-based, and 82 percent of independent agencies send their staffs to the pretrial association's conference. This annual conference can be an effective way to expose pretrial staff to best pretrial practices from around the country. Another training opportunity is through workshops offered at the APPA training institutes. Pretrial services staff working in probation departments should suggest to APPA the kind of workshops that would be helpful to them. The National Institute of Corrections also offers a bi-annual Pretrial Executives Orientation, to which pretrial services supervisors and managers can apply. This weeklong course is an intense exposure to the fundamentals of pretrial justice and an opportunity to think critically about one's own program and possible improvements that can be made.

In addition, pretrial services staff may be certified as NAPSA Certified Pretrial Professionals. This on-line exam offered several times a year can serve as both an important educational complement to on-the-job training and a morale booster.

All of these measures are focused on assuring that pretrial services staff have their own identity. There are other measures that can be taken. For example, one jurisdiction seeks to reinforce the separate contributions made by probation and pretrial services by having separate awards for Probation Officer of the Year and Pretrial Services Officer of the Year. Another makes sure that the sign outside the office that probation and pretrial services share includes both names. While these steps may seem small, they can be meaningful and help to ensure effective and appreciated services.

## **CONCLUSION**

Research has demonstrated that the pretrial release decision, controlling for all other factors, has the largest impact on the outcome of a case. Defendants who are detained during the pretrial period are more likely to be convicted and more likely to be sentenced to incarceration than defendants who obtain pretrial release. Yet in a majority of the nation's 3,065 counties, the pretrial release decision is not viewed as an important aspect of the criminal process. The release decision is made quickly, based primarily on the most serious charge, and the actual release happens only if the person to be released can afford to pay for the bond that is set.

While elected county officials, judges, district attorneys, and others are realizing the importance of a pretrial services function not just for pretrial risk assessment and supervision, but as a tool to safely reduce jail populations, they often do not know how to get started. They often cannot imagine starting a new government program or agency in the tight budget climate. This is especially true for small to mid-sized jurisdictions.

Hopefully this Guide lays out the benefits of one potential strategy – integrating a pretrial services function within a probation department. Even if it were one individual from a probation department, trained in the elements of pretrial risk assessment and providing this information to the court, it would be a substantial improvement in pretrial release decision-making. Charge-based bond schedules usually do not distinguish between low, medium and high-risk individuals. Only someone trained to conduct evidence-based risk assessment, that provides this information to the court, can help communities distinguish among defendants of varying risk levels. And that someone just might be working in your county probation department today.





# **APPENDIX**

## **Probation-Based Pretrial Services Programs (From 2009 National Survey of Pretrial Programs)**

### **Arizona**

Maricopa County Adult Probation, Pretrial Services Division  
Pinal County Pretrial Services

### **California**

Los Angeles County Probation Department, Pretrial Services Division

### **Iowa**

5<sup>th</sup> Judicial District Department of Corrections, Pretrial Services  
6<sup>th</sup> Judicial District Department of Corrections, Pretrial Services  
7<sup>th</sup> Judicial District Department of Corrections, Pretrial Services

### **Idaho**

Bonneville County Pretrial Services  
Kootenai County Pre-Trial Services

### **Illinois**

Coles County Probation and Court Services  
Lake County Pretrial Services  
Macon County Pretrial Services  
Ogle County Pretrial Services  
Rock Island County Court Services  
Winnebago County Court Services

### **Michigan**

Monroe County First District Court Pretrial Services

## **Minnesota**

Brown County Probation Pretrial  
Freeborn County Court Services  
Kandiyohi County Community Corrections  
Mille Lacs Probation Department  
Meeker County Community Corrections  
Otter Tail County Probation  
Sherburne County Court Services  
Stearns County Community Corrections  
Wright County Court Services

## **New York**

Allegany County Probation Department  
Broome County PreTrial Release  
Columbia County Pretrial Release  
Clinton County Department of Probation  
Cortland County Pretrial Services  
Dutchess County Pretrial Services  
Lawrence County PreTrial  
Nassau County Pretrial Screening  
Rensselaer County Probation Department  
Schuyler County PreTrial Release

## **Ohio**

Cuyahoga County Court of Common Pleas  
Franklin County Court of Common Pleas  
Lorain County Court Supervision  
Marion County Adult Probation  
Williams County Adult Probation

## **Oregon**

Multnomah County Pretrial Services

## **Pennsylvania**

Cambria County Adult Probation  
Franklin County Pretrial Release  
Indiana County Pretrial Services  
Northumberland County Supervised Release  
Somerset County Probation Bond  
Westmoreland County Pretrial Services  
Wyoming County Bail Supervision

## **Texas**

Travis County Adult Probation & Pretrial Services

## **Virginia**

Blue Ridge Court Services  
Chesterfield County Community Corrections Services  
Colonial Community Corrections  
Fauquier County Office of Adult Probation  
Halifax/Pittsylvania Court Services  
Hampton-Newport News Pretrial Services  
Hanover County Community Corrections  
Henrico County Community Corrections  
Lynchburg Community Corrections  
Middle Peninsula Local Probation  
New River Community Corrections  
Norfolk Criminal Justice Services  
Piedmont Court Services  
Prince William County Probation  
Riverside Criminal Justice Agency  
Rockingham-Harrisonburg Court Services  
Southside Community Corrections  
Virginia Beach Community Corrections

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# RELEVANT EXCERPTS FROM NATIONAL STANDARDS

## AMERICAN BAR ASSOCIATION PRETRIAL RELEASE STANDARD 10-1.10.

### The role of the pretrial services agency

Every jurisdiction should establish a pretrial services agency or program to collect and present the necessary information, present risk assessments, and, consistent with court policy, make release recommendations required by the judicial officer in making release decisions, including the defendant's eligibility for diversion, treatment, or other alternative adjudication programs, such as drug or other treatment courts. Pretrial services should also monitor, supervise and assist defendants released prior to trial, and to review the status and release eligibility of detained defendants for the court on an ongoing basis.

The pretrial services agency should:

- (a) conduct pre-first appearance inquiries;
- (b) present accurate information to the judicial officer relating to the risks defendants may pose of failing to appear in court or of threatening the safety of the community or any other person and, consistent with court policy, develop release recommendations responding to risk;
- (c) develop and provide appropriate and effective supervision for all persons released pending adjudication who are assigned supervision as a condition of release;
- (d) develop clear policy for operating or contracting for the operation of appropriate facilities for the custody, care or supervision of persons released and manage a range of release options, including but not limited to, residential half-way houses, addict and alcoholic treatment centers, and counseling services, sufficient to respond to the risks and problems associated with released defendants in coordination with existing court, corrections and community resources;

(e) monitor the compliance of released defendants with the requirements of assigned release conditions and develop relationships with alternative programs such as drug and domestic violence courts or mental health support systems;

(f) promptly inform the court of all apparent violations of pretrial release conditions or arrests of persons released pending trial, including those directly supervised by pretrial services as well as those released under other forms of conditional release, and recommend appropriate modifications of release conditions according to approved court policy. The pretrial services agency should avoid supervising defendants who are government informants, when activities of these defendants may place them in conflict with conditions of release or compromise the safety and integrity of the pretrial services professional;

(g) supervise and coordinate the services of other agencies, individuals or organizations that serve as custodians for released defendants, and advise the court as to their appropriateness, availability, reliability and capacity according to approved court policy relating to pretrial release conditions;

(h) review the status of detained defendants on an ongoing basis for any changes in eligibility for release options and facilitate their release as soon as feasible and appropriate;

(i) develop and operate an accurate information management system to support prompt identification, information collection and presentation, risk assessment, release conditions selection, compliance monitoring and detention review functions essential to an effective pretrial services agency;

(j) assist persons released prior to trial in securing any necessary employment, medical, drug, mental or other health treatment, legal or other needed social services that would increase the chances of successful compliance with conditions of pretrial release;

(k) remind persons released before trial of their court dates and assist them in attending court; and

(l) have the means to assist persons who cannot communicate in written or spoken English.

## **ABA Pretrial Release Standard 10-4.2**

### **Investigation prior to first appearance: development of background information to support release or detention determination**

(a) In all cases in which the defendant is in custody and charged with a criminal offense, an investigation to provide information relating to pretrial release should be conducted by pretrial services or the judicial officer prior to or contemporaneous with a defendant's first appearance.

(b) Pretrial services should advise the defendant that:

(i) the pretrial services interview is voluntary;

(ii) the pretrial services interview is intended solely to assist in determining an appropriate pretrial release option for the defendant;

(iii) any responsive information provided by the defendant during the pretrial services interview will not be used in the current or a substantially-related case either to adjudicate guilt or to arrive at a sentencing decision;

(iv) the voluntary information provided by the defendant during the pretrial services interview may be used in prosecution for perjury or for purposes of impeachment.

(c) Release may not be denied solely because the defendant has refused the pretrial services interview.

(d) The pretrial services interview should include advising the defendant that penalties may be imposed for providing false information.

(e) The pretrial services interview of the defendant should carefully exclude questions relating to the events or the details of the current charge.

(f) The pretrial services investigation should include factors related to assessing the defendant's risk of flight or of threat to the safety of the community or any person, or to the integrity of the judicial process. Information relating to these factors and the defendant's suitability for release under conditions should be gathered systematically and considered by the judicial officer in making the pretrial release decision at first appearance and at subsequent stages when pretrial release is considered.

(g) The pretrial services investigation should focus on assembling reliable and objective information relevant to determining pretrial release and should be organized according to an explicit, objective and consistent policy for evaluating risk and identifying appropriate release options. The information gathered in the first appearance investigation should be demonstrably related to the purpose of the pretrial release decision and should include factors shown to be related to the risk of flight or of threat to the safety of any person or the community and to selection of appropriate release conditions, and may include such factors as:

(i) the nature and circumstances of the charge when relevant to determining release conditions, consistent with subsection (e) above;

(ii) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;

(iii) whether at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of a sentence for an offense;



(iv) the availability of persons who agree to assist the defendant in attending court at the proper time and other information relevant to successful supervision in the community;

(v) any facts justifying a concern that a defendant will fail to attend court or pose a threat to the safety of any person or the community; or

(vi) factors that may make the defendant eligible and an appropriate subject for conditional release and supervision options, including participation in medical, drug, mental health or other treatment, diversion or alternative adjudication release options.

(h) The presentation of the pretrial services information to the judicial officer should link assessments of risk of flight and of public safety threat during pretrial release to appropriate release options designed to respond to the specific risk and supervision needs identified. The identification of release options by pretrial services for the consideration of the judicial officer should be based on detailed agency guidelines developed in consultation with the judiciary to assist in pretrial release decisions. Suggested release options should be supported by objective, consistently applied criteria contained in the guidelines. The results of the pretrial services investigation and recommendations of release options should be promptly transmitted to relevant first-appearance participants before the hearing, including information relevant to alternative release options, conditional release treatment and supervision programs, or eligibility for pretrial detention, so that appropriate actions may be taken in a timely fashion.

## **NATIONAL ASSOCIATION OF PRETRIAL SERVICES AGENCIES PRETRIAL RELEASE STANDARDS**

### **Standard 3.1 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 safety of the community 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 the risks posed by the defendant, develops strategies that can 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.

### **Standard 3.2 Essential functions to be performed in connection with the defendant's first court appearance**

Prior to the first appearance in court of persons who have been arrested and charged with a crime, the pretrial services agency or program should:

- (a) collect, verify, and document information about the defendant's background and current circumstances that are pertinent to the court's decision concerning release or detention of the defendant;
- (b) present written, accurate information to the judicial officer relating to the risk a defendant may pose of failing to appear in court or of threatening the safety of the community or any other person, and recommend conditions that could be imposed to respond to the risk;
- (c) identify members of special populations that may be in need of additional screening and specialized services;
- (d) 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 whose release has been ordered by the court; and
- (e) develop supervision strategies that respond appropriately to the risks and needs posed by released defendants.

### **Standard 3.3 Interview of the defendant prior to first appearance**

- (a) In all cases in which a defendant is in custody and charged with a criminal offense, an investigation about the defendant's background and current circumstances should be conducted by the pretrial services agency or program prior to a defendant's first appearance in order to provide information relevant to decisions concerning pretrial release that will be made by the judicial officer presiding at the first appearance.
- (b) The representative of the pretrial services agency or program who conducts the interview of the defendant should inform the defendant of his or her name and affiliation with the agency or program, and should advise the defendant:
  - (i) that the interview is voluntary;
  - (ii) that the pretrial services interview is intended to assist in determining an appropriate pretrial release decision for the defendant, and
  - (iii) of any other purposes for which the information may be used.

(c) The pretrial services interview should seek to develop information about the defendant's background and current living and employment situation, including the identity of persons who could verify information provided by the defendant. It should focus on questions relevant to the judicial officer's decision concerning release or detention as set forth in Standards 2.3, 2.8 and 3.4. The interview should not include questions relating to the details of the current charge or the arrest.

(d) Following the interview of the defendant, the pretrial services agency or program should seek to verify essential information provided by the defendant.

### **Standard 3.4 Presentation of information and recommendations to the judicial officer concerning the release/detention decision**

(a) The pretrial services agency or program should assemble reliable and objective information relevant to the court's determination concerning pretrial release or detention, drawing on information obtained through its investigation. It should prepare a written report that organizes the information, presents an assessment of risks posed by the defendant and recommends ways of responding to the risks through use of appropriate conditions of release. The assessment and recommendations should be based on an explicit, objective, and consistent policy for evaluating risks and identifying appropriate release options. 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 threat to the safety of any person or the community and to selection of appropriate release conditions. The report may include information on factors such as:

(i) the defendant's age, physical and mental condition, family ties, employment status and history, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;

(ii) whether at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of a sentence for an offense;

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

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

(v) facts justifying a concern that the defendant will violate the law if released without restrictions;

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

(vii) whether there are specific factors that may make the defendant an appropriate subject for conditional release and supervision options, including participation in available medical, drug, mental health or other treatment, diversion or alternative adjudication release options.

(b) The presentation of the pretrial services information and the recommendations made to the judicial officer should link assessments of risk of flight and of public safety to appropriate release options designed to respond to the specific risk and supervision needs identified. The identification of release options and the recommendations made by pretrial services for the consideration of the judicial officer should be based on detailed agency or program policies developed in consultation with the judiciary. Suggested release options or conditions should be supported by objective, consistently applied criteria set forth in these policies, and should be the least restrictive conditions necessary to assure the defendant's appearance for scheduled court events and protect the safety of the community and individual persons. The results of the pretrial services investigation, including information relevant to alternative release options, conditional release treatment and supervision programs, or eligibility for pretrial detention, should be presented to relevant first appearance participants before the hearing so that appropriate actions may be taken in a timely fashion.

### **Standard 3.5 Monitoring and supervision of released defendants**

(a) Pretrial services agencies or programs should establish appropriate policies and procedures to enable 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 compliance of released defendants with assigned release conditions;
- (ii) promptly inform the court of facts concerning compliance or noncompliance that may warrant modification of release conditions and of any arrest of a person released pending trial;
- (iii) recommend modifications of release conditions, consistent with court policy, when appropriate;
- (iv) maintain a record of the defendant's compliance with conditions of release;
- (v) assist defendants released prior to trial in securing employment and in obtaining any necessary medical services, drug or mental health treatment, legal services, or other social services that would increase the chances of successful compliance with conditions of pretrial release;
- (vi) notify released defendants of their court dates and when necessary assist them in attending court; and
- (vii) facilitate the return to court of defendants who fail to appear for their scheduled court date.

(b) In cases in which the court's release order has authorized the pretrial services agency or program to modify conditions initially set by the judicial officer pursuant to Standard 2.6, the agency or program may modify conditions within the range set by the court order and in accordance with the jurisdiction's laws and rules governing the exercise of judicial authority. The court, the prosecutor, and the defendant's attorney should be notified promptly of any such modifications and of the reason(s) for them. The pretrial services agency or program should keep a record of any such modifications.

(c) The pretrial services agency or program should coordinate the services of other agencies, organizations, or individuals that serve as third party custodians for released defendants, and advise the court as to their appropriateness, availability, reliability, and capacity according to approved court policy relating to pretrial release conditions.

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

### **Standard 3.6 Responsibility for ongoing review of the status of detained defendants**

The pretrial services agency or program should review the status of detained defendants on an ongoing basis to determine if there are any changes in eligibility for release options or other circumstances that might enable the conditional release of the defendants. The program or agency should take such actions as may be necessary to provide the court with needed information and to facilitate the release of defendants under appropriate conditions.

### **Standard 3.7 Organization and management of the pretrial services agency or program**

(a) The pretrial services agency or program should have a governance structure that provides for appropriate guidance and oversight of the agency's staff in the development of operational policies and procedures and for effective internal administration of the agency or program. The governance structure should enable effective interaction of the program with the court and with other criminal justice agencies, and with representatives of the community served by the program. To enable the performance of its functions in a neutral fashion, the agency should be structured to ensure substantial independence in the performance of its core functions.

(b) The pretrial services agency or program should develop and implement appropriate policies and procedures for the recruitment and selection of staff, and for the compensation, management, training, and career advancement of staff members.

(c) The pretrial services program should have policies and procedures that enable it to function as an effective institution in its jurisdiction's criminal justice system. In particular, the program or agency should:

- (i) establish goals for effectively assisting in pretrial release decision-making and supervision

of defendants on pretrial release in the jurisdiction and for the operations of the pretrial services agency or program;

(ii) develop and regularly update strategic plans designed to enable accomplishment of the goals that are established;

(iii) develop and regularly update written policies and procedures describing the performance of key functions;

(iv) develop and maintain financial management systems that enable the program to account for all receipts and expenditures, prepare and monitor its operating budget, and provide the financial information needed to support its operations and requests for funding to support future operations;

(v) develop and operate an accurate management information system to support the prompt identification of defendants, and the information collection and presentation, risk assessment, identification of appropriate release conditions, compliance monitoring, and detention review functions essential to an effective pretrial release agency or program;

(vi) establish procedures for regularly measuring the performance of the jurisdiction and of the pretrial services agency or program in relation to the goals that have been set;

(vii) have the means to assist persons with disabilities and persons who have difficulty communicating in written or spoken English;

(viii) meet regularly with community representatives to ensure that program practices meet the needs of the community served; and

(ix) develop, in collaboration with the court, other justice system entities, and community groups, appropriate policies for the delivery and management of services needed to respond to the risks posed by released defendants, including strategies for use of substance abuse treatment programs, health and mental health services, employment services, other social services, and half-way houses.

## Footnotes

<sup>1</sup> Marie VanNostrand, *Legal and Evidence-Based Practices: Applications of Legal Principles, Laws, and Research to the Field of Pretrial Services*, National Institute of Corrections, 2007.

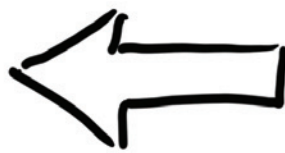
<sup>2</sup> Thomas H. Cohen and Tracey Kyckelhahn, *Felony Defendants in Large Urban Counties*, 2006, U.S. Department of Justice, Bureau of Justice Statistics, 2010.

<sup>3</sup> *Rothgery v. Gillespie County, Texas*, 554 U.S. 191 (2008).

<sup>4</sup> *Supervision of Federal Defendants (Monograph 111)*, *Guide to Judiciary Policy: Volume 8, Probation and Pretrial Services*, Part C, §140.



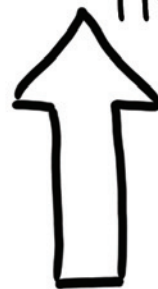
no Restrictions  
on Rotations



Staff Utilization  
more effective



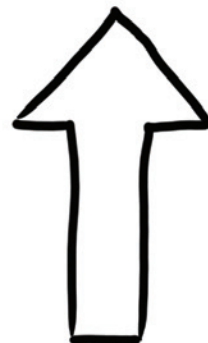
Funding



Performance  
Distinct  
Establish



Policies and  
Distinct  
Establish



Advantage of  
existing  
initiating



Training for  
Development  
and Distinct

