

Pretrial Services Operating at the Optimum: A Self Assessment Guide

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I. INTRODUCTION

Since the birth of the pretrial services profession,¹ an issue that has plagued program administrators is how to assess their program's operations. How do they compare with similar programs and with national standards? What measurements should they be using in making such comparisons?

In any effort to assess the effectiveness of a program — no matter the type — the usual process is to compare the program's practices with a model, based on professional standards developed for the particular field. The pretrial field has developed such standards under the auspices of the National Association of Pretrial Services Agencies.² These standards detail the operational procedures that pretrial programs should apply.

Too often, however, pretrial program administrators gauge their program's effectiveness solely by using system wide factors, such as failure to appear, rearrest, or pretrial detention rates. While these are the critical measurements that local justice systems use to assess their effectiveness, they are not satisfactory measures of pretrial program activity. This is so because the outcomes measured are based on decisions made by others, and not pretrial program staff.³

¹ For the purposes of this paper, "pretrial services" refers to programs that help judicial officers with the bail decision by providing information, assessments of risk, and supervision.

² *Performance Standards and Goals for Pretrial Release*, Approved by the Board of Directors, National Association of Pretrial Services Agencies, July 1978.

³ Pretrial programs provide information and options to the judicial officer making the pretrial release decision. The judicial officer then incorporates other information, such as the facts and circumstances of the alleged offense, in reaching a decision.

The purpose of this document is to provide pretrial program administrators with another, more agency-specific, tool to measure effectiveness. The document presents a self-administered assessment instrument that lists the key practices of pretrial programs, describing how each can be optimized. Using the charts provided, program administrators rate their programs' effectiveness at carrying out each practice listed by giving it a score of from 1-5. When finished, pretrial managers will have identified those program practices they believe are operating at an optimal level as well as those where improvements are needed.

As the instrument is a subjectively scored, self-administered tool, it should not be used to compare pretrial programs across jurisdictions. Neither does the instrument prioritize or give weights to the practices listed because the priorities and limitations of pretrial programs are usually established for them by others, such as funding sources, the courts, and legislatures. What the instrument will do is provide pretrial managers a tool or instrument to help them with program development and targeting procedures and policies that require attention.

II. OPTIMAL PRACTICES IN PRETRIAL SERVICES

In 1988, with input from pretrial practitioners and other criminal justice professionals, and drawing on national standards, the Pretrial Services Resource Center developed criteria for an "Enhanced Pretrial Services" (EPS) program.⁴ The model that follows is based on those program criteria, listing each function that an "enhanced" pretrial program should perform. The discussion provides an explanatory commentary about each function and all its component tasks.

The functions are divided into three categories: Information Gathering and Assessment Process; Monitoring and Follow-Up; and Management.

INFORMATION GATHERING AND ASSESSMENT PROCESS

Population Targeting

The pretrial services program interviews prior to the initial appearance before a judicial officer everyone arrested or charged with an offense over which the court(s) that it serves has jurisdiction, with the following possible exceptions:

- 1) **Those arrested solely on a probation or parole violation;**
- 2) **Those arrested for charges that are statutorily excluded from consideration by the pretrial services program;**
- 3) **Where the defendant is released by other means before the initial court appearance; and,**
- 4) **System factors preclude interviews of certain defendants, such as imminent release by virtue of disposition at the initial court appearance.**

Discussion: The optimal pretrial program conducts a full investigation in all cases where a bail decision can be made. Many programs, however, do not interview persons charged with certain offenses (beyond those statutorily excluded) or those with extensive criminal backgrounds based on the premise that they are unlikely to be released by the judge on non-financial conditions. This might be a logical approach, especially when resources are limited. Yet it is precisely in the serious cases that the judicial officer most needs

⁴ This effort was funded by the Bureau of Justice Assistance (BJA) of the U.S. Department of Justice under grant number 88-DD-CX-K007.

complete information about the defendant to make a bail decision. It is a disservice to the judicial officer not to supply information that is related to pretrial misconduct. Because pretrial misconduct is not directly correlated to the seriousness of the offense, relying exclusively on type of charge to assess risk would be a mistake. Moreover, the original charges may be reduced when reviewed by the prosecutor. What is considered to be an extensive criminal background is not unambiguous. A criminal record with an extensive number of arrests but no or few convictions is less serious than one with an extensive number of convictions for serious offenses.

Pretrial Interview

The interview elicits information concerning the defendant's community ties, criminal history, and mental health or substance abuse problems.

Discussion: Pretrial programs collect information for two purposes: (1) to fashion an assessment of risk of pretrial misconduct, and (2) to contact the defendant if released. All information collected in the interview should be geared toward one or both of these two purposes. All other information is extraneous.

Records Check

Both in and out of county criminal records are checked, including arrests and dispositions. Also checked are the defendant's present criminal justice status (e.g., whether or not the arrestee has a pending charge or hold) and history of failure to appear.

Discussion: Risk assessment validation studies consistently have shown that prior criminal history and prior history of failure to appear are related to higher risk of pretrial misconduct. With the growing mobility of society, it is increasingly likely that many defendants will have records in multiple jurisdictions. Assuring that the bail-setting judicial officer receives a complete criminal record, including dispositions, is one of the most important functions of a pretrial services program.

Verification

Verification consists of confirming the information provided by the defendant by contacting references, and when discrepancies arise, re-interviewing defendants. Programs attempt to verify as much information as possible prior to the initial appearance. If the defendant is not released because of unverified information, the program continues verification efforts until the pertinent information is verified. The court is immediately notified when such verification occurs.

Discussion: Much of the information used to assess risk of pretrial misconduct and to contact released defendants relies upon the accuracy of the information provided by the defendant. If the information provided by the defendant during the interview is inaccurate, the risk assessment may be invalid and it may be difficult to locate the defendant after release. Additionally, since many bail setting judicial officers know the importance of verification, they may be reluctant to release defendants for whom information has not been verified.

Risk Assessment

The pretrial program uses a risk assessment scheme that in a consistent and equitable fashion assesses the defendant's risks of failing to appear at future court hearings or posing a risk to community safety, where statutorily prescribed. The assessment scheme is the product of local research and evaluated or reviewed periodically, but not less than every five years.

The assessment should place the defendant in a risk level and should identify any condition or combination of conditions designed to address the identified risks. A range of options is available, such as release on recognizance, restrictive non-financial conditions, and as the last resort, financial conditions (financial conditions are only imposed to assure appearance). Conditions are recommended on a graduated basis from least to most restrictive. Where applicable (i.e., in states with preventive detention legislation), recommendations indicate if preventive detention is appropriate.

Discussion: With its risk assessment scheme, the pretrial program collects the interview information, record check, and verification, and presents that information in a way that allows the bail decision-maker to best use it. The risk assessment instrument should be validated periodically since circumstances in the jurisdiction change over time (i.e. crime patterns, law enforcement practices, drug usage, population demographics).

Submission of Report to Court

The program submits a report to the court and provides defense counsel and prosecution access to the report. Pretrial staff are either present in court or are readily available to the court during the release/detention hearing.

Discussion: The prosecutor and defense counsel need a copy of the pretrial report so that they are better able to make informed representations regarding the pretrial release/detention status of the defendant. The judicial officer needs the report, along with the police arrest report, to make an informed decision. The optimal pretrial program has a staff person in court to answer questions about information in the report or how the recommendation was derived.

Review of Investigation Tasks

Rate how closely your program meets the criteria for each task listed using the scale of 1 to 5. (1 refers to the program not performing the task at all, and 5 refers to the program fully meeting the criteria of task performance.)

Date Review Completed

Review Completed By

Target Population <ul style="list-style-type: none"> • Any case where bail may be set 	1	2	3	4	5
Notes:					
Interview <ul style="list-style-type: none"> • All questions relate to risk • Done before initial court appearance 	1	2	3	4	5
Notes:					
Records Check <ul style="list-style-type: none"> • Complete record, with dispositions 	1	2	3	4	5
Notes:					
Verification <ul style="list-style-type: none"> • All relevant information verified • Place where defendant can be reached 	1	2	3	4	5
Notes:					
Risk Assessment <ul style="list-style-type: none"> • Objective • Validated 	1	2	3	4	5
Notes:					
Report Submission <ul style="list-style-type: none"> • Written • Given to all parties 	1	2	3	4	5
Notes:					

MONITORING AND FOLLOW-UP

Supervision of Release Conditions

Supervision includes contact supervision and referral to or provision of services. Compliance of defendants in supervision is monitored. Supervision is individualized and based on a scheme of graduated contacts and level of supervision dependent on conditions imposed. If adjudicated guilty, a final report on the defendant's compliance with release conditions is prepared to assist in the compilation of pre-sentence report information. The effectiveness and reliability of services provided by any agency to which defendants are referred is regularly monitored by the program.

Discussion: As noted in the discussion of risk assessment, an optimal pretrial services program will have a range of options, or conditions of pretrial release, available to match the range of risks posed by defendants. For those conditions to be credible, they must be supervised in a meaningful way. That supervision could come from either the pretrial program staff or from an agency or treatment center to which a defendant was referred, depending on the condition. For release conditions to be meaningful there must also be a system to address violations. Such a system will include administrative sanctions (i.e., increasing contact levels) for minor or first time violations, and notification to the court for more serious or ongoing violations.

Court Date Notification System

The program carries out or supplements court date reminders to all defendants except those released on surety bail. The reminder specifies the date, location, and time of appearance before each subsequent court appearance. When no court date is issued at the time of the court appearance, the program provides written notification of the telephone number and name of a person to call who will provide such information (i.e., the date, time, and exact location of the court appearance).

Discussion: Many defendants fail to appear because they simply forget their court dates or are confused about the date. The optimal pretrial services program ensures that the defendant is aware of all court dates and of the person and place to call if there are any questions about the date, place or time.

Location and Return of Defendants Who Fail to Appear

The program has procedures for attempting to locate and return defendants to court to preclude the issuance of a failure to appear warrant as well as procedures for resolving the warrant if issued.

Discussion: In many cases, defendants will have valid reasons for not being able to make a court appearance. The defendant may be hospitalized, in jail on another charge, have had a death in the family, etc. In these cases, the pretrial program can alert the court and other parties before the court appearance that the defendant will not be present, lessening the disruption of court proceedings, and preventing warrants from being issued.

There are two ways to resolve an FTA warrant once issued — arrest by law enforcement officers, or the defendant’s self-surrender to the court. Execution of the warrant by arrest in most instances will result in at least one night’s stay in jail until the defendant can be brought before the judge who issued the warrant. Self-surrender by the defendant, however, can lead to a direct resolution of the warrant and a new date set, without jail. The optimal pretrial services program can save the court time and jail space by facilitating the defendant’s self-surrender.

Review of Pretrial Custody Population

The program reviews the case of each pretrial detainee at least weekly to determine if factors associated with the initial detention decision still apply and reports new findings to the court.

Discussion: The pressure to prepare the current day’s arrestees reports for the initial court appearance is common to all pretrial services programs. When the day ends, defendants who were not released because information was not available or not verified at the time their case was called are often forgotten — even though they might be good candidates for pretrial release. Likewise, defendants who were detained because they had no address to which to return but who later secured a place to stay, may also be candidates for release. The optimal pretrial program

regularly reviews the jail's pretrial detainee population to identify defendants and, where appropriate, submit an amended recommendation to the court.

Review of Monitoring and Follow-up Tasks

Rate how closely your program meets the criteria for each task listed using the scale of 1 to 5. (1 refers to the program not performing the task at all, and 5 refers to the program fully meeting the criteria of task performance.)

Date Review Completed

Review Completed By

Supervision <ul style="list-style-type: none"> • Contact supervision • Referral to services • Compliance reported 	1	2	3	4	5
Notes:					
Court Date Notification <ul style="list-style-type: none"> • All court dates for all defendants (except those release on surety bail) 	1	2	3	4	5
Notes:					
FTA Activities <ul style="list-style-type: none"> • Prevention of warrants before issued • Resolution of warrants once issued 	1	2	3	4	5
Notes:					
Review of custody population <ul style="list-style-type: none"> • Systematic review of pretrial detainee population 	1	2	3	4	5
Notes:					

MANAGEMENT

Mission Statement

The pretrial program has a concise, written mission statement. The mission statement is more than the statutory language incorporating the program; it reflects the program's aims and purposes.

Discussion: A mission statement sets the direction of any organization. Pretrial program staff work in an environment where it is sometimes difficult to remain focused on the aims and purposes of the program they represent. A mission statement will help maintain that focus.

Operations Manual

The pretrial program has a written, up-to-date "how to" manual that explains in detail the procedures that must be followed in performing each function of pretrial operations. The manual explicitly details the procedures for the pretrial interview, records check and verification, risk assessment, supervision, and use of information systems.

Discussion: Aside from having a clear sense of the aims and purposes of the program, staff also need consistent direction on how to complete the work of the program effectively and efficiently. A comprehensive Operations Manual provides that direction.

Training

The enhanced program has a structured orientation and training program for new staff, ongoing training for line staff, and management training for supervisory staff.

Discussion: The necessity of thoroughly training staff cannot be overstated. Training of new staff should be thought of as an investment that gives them a firm grounding in the mission, policies, and procedures of the program. Similarly, line staff benefit from ongoing training that covers changes in policies and procedures. Finally, providing management training for supervisory staff can assure that personnel issues and external mandates are addressed equitably and appropriately.

Checks for Consistency

Procedures exist to ensure that program staff use the risk assessment scheme accurately and consistently. A supervisor checks every report before it is presented to the court. In the case of a one-person office, a supervisor reviews reports on a regular basis after submission to the court. In addition, a supervisor checks all reports sent to the court regarding compliance with conditions of release.

Discussion: Many of the criteria presented to this point address whether and to what extent the program performs a particular function; what they do not address is how well the program is performing those functions. One way to assess performance is to institute quality control checks. These checks can be performed after investigations have been completed and the initial bail-setting reports prepared for court, and when compliance or violation reports have been sent to the court. For the bail-setting report, the check should include: a review of the interview to assure that it is complete; a review of the criminal record to assure that every arrest is accompanied by a disposition and every local and national source for records has been checked; a review of the verification, especially attempts made when verification was unsuccessful; and a review of the risk assessment to assure that the assessment was calculated correctly and the recommendation complied with procedures. In reviewing supervision reports, supervisors should check to make sure that all procedures for administratively sanctioning non-compliant defendants have been followed.

Information System

The program maintains a systematic automated case tracking and information system for the following purposes: monitoring defendant pretrial performance, measuring program performance/effectiveness, validating program practices, diagnosing problems, and testing the impact of implemented or proposed changes. Two types of information are needed to accomplish these: defendant-based and aggregated numbers. The latter should be compiled on a regular basis in reports.

A. Defendant-based data elements:

defendant characteristics, including: age, sex, race/ethnicity, length of residence in county, marital status, drug use, and other factors deemed to be appropriate in the county;

prior record information, including: the number of previous arrests/convictions X felony and misdemeanor X number of previous failures to appear, number with previous parole/probation revocation, number with previous pretrial release revocation, number previously incarcerated;

current defendant criminal justice information, including arrest date, initial appearance date, pretrial release date (if different from initial appearance date), date(s) when defendant failed to appear, date defendant was returned to court, date of final adjudication, sentencing date.

B. Regularly generated reports:

aggregate program data, including the number of persons interviewed, the number of persons recommended for release by type of conditions, reasons for not recommending release;

court actions and final outcome information, including release decision, adjudication, and sentence, lengths of sentences imposed (by charge and form of release or detention), time between arrest, initial release from detention, and case disposition; and,

current criminal justice information, including the number of persons arrested and charged with a criminal offense (misdemeanors and felonies, the number of persons released prior to trial on each form of release, the number of persons detained prior to trial according to charge and length of detention, the number of persons who failed to appear at a scheduled court appearance (by charge and form of release), and the number of persons rearrested (by initial charge and rearrest charge and form of release).

Information is reviewed periodically to evaluate program practices and for planning.

Discussion: There are a myriad of benefits of having an information system that captures the data elements described above. For the program, it provides critical data to identify the factors that are associated with defendant “failures.” From this, the administrator is able to update the program’s risk assessment scheme. The aggregate reports that can be generated with the above data can be of assistance to treatment centers (by charting increases or decreases in drug use in the community), court planners (by charting variations in judicial decision- making) and virtually

every other system participant, since the data collection begins when defendants first enter the system.

The optimal pretrial services program, in addition to having such information at its disposal, uses the information to improve program practices and suggest systemwide improvements.

System Interaction

The program has regular meetings with its supervising body, and with judicial officers. The program has regular contact with the community, including the media.

Discussion: The pretrial services program is an integral part of the criminal justice system. As such, it is important that it interact regularly with the rest of the system and the public so that those parties know the purposes — and needs — of the program. This interaction will also give the program the opportunity to seek feedback from and provide critical program information to key system actors, especially the judiciary. Finally, it is incumbent upon the pretrial program to regularly respond to concerns of the community, through community forums and the local media.

Review of Management Tasks

Rate how closely your program meets the criteria for each task listed using the scale of 1 to 5. (1 refers to the program not performing the task at all, and 5 refers to the program fully meeting the criteria of task performance.)

Date Review Completed

Review Completed By

Mission Statement <ul style="list-style-type: none"> • Concise statement of program mission 	1	2	3	4	5
Notes:					
Operations Manual <ul style="list-style-type: none"> • Written how-to manual for all program procedures 	1	2	3	4	5
Notes:					
Training <ul style="list-style-type: none"> • Structured training for new staff • On-going for current staff • Management training 	1	2	3	4	5
Notes:					
Checks for consistency <ul style="list-style-type: none"> • Work checked by supervisor 	1	2	3	4	5
Notes:					
Information System <ul style="list-style-type: none"> • Monitor program performance • Measure program effectiveness • Validate program practices • Test impact of changes 	1	2	3	4	5
Notes:					
System Interaction <ul style="list-style-type: none"> • Proactive strategy to interact with all system actors and the general public 	1	2	3	4	5
Notes:					

The self-assessment charts should provide program administrators with guidance for identifying program areas needing improvement. Where assistance is needed to improve specific practices, please see the resources listed in the appendices.

APPENDIX A

For further information, contact:

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APPENDIX B

Suggested Readings:

(The following publications are available from the Pretrial Services Resource Center)

Pretrial Release and Supervision Program Training Supplement

This manual is designed to help in training pretrial services staff on basic program functions and responsibilities and is intended to supplement existing agency instruction. The manual discusses the history of bail reform and provides an overview of pretrial services agencies, interviewing, risk assessment, pretrial supervision, and confidentiality of pretrial services agency information. It also includes a suggested bibliography for pretrial training.

The Pretrial Services Reference Book

This document is designed to assist administrators in starting a new pretrial services program or making enhancements to an existing program. It reviews the current challenges facing pretrial program administrators and provides examples of how other pretrial programs have addressed those issues. Examples of interview and risk assessment forms used by other programs appear in the appendix.

Integrating Drug Testing into a Pretrial Services System: 1999 Update

This monograph is an updated version of a 1992 document describing the steps for implementing a pretrial drug testing program, including setting up chain of custody, selecting a testing technique, and using test results.

Pretrial Drug Testing: An Overview of Issues and Practices

This document discusses the evolution of drug testing in the criminal justice system, describes the latest developments in drug testing technologies and costs, and reviews current applications of drug testing by both federal and local pretrial programs.