

Pretrial Justice:

Principles and Practice

By Kenneth J. Rose

On June 30, 2005, 62 percent of the nation's jail inmates were awaiting court action on their current charge.¹ In almost any jurisdiction, one can find new arrestees in custody pending an initial hearing and the adjudication of charges. Managing this population presents a unique challenge for sheriffs and administrators. In part, the cost of housing and providing services for pretrial defendants, especially those who pose little risk to community safety and little risk of nonappearance, contributes to extraneous jail costs and crowding. Unnecessary detention impedes defendants' ability to defend themselves, strips defendants of their liberties, and exposes them to economic and psychological hardship that, in many cases, deprives their families of support.² Unnecessary pretrial detention may subject some defendants to harsher sentencing than would have been handed down if the defendants had been released to the community pending the adjudication of charges.³

Money bail continues to prevail as the primary mechanism for releasing or detaining arrestees. This form of release weighs heavy on defendants with little financial resources. Often, a lack of verifiable information about the defendant at the initial bail hearing makes it difficult for judicial officers and other system participants to make informed pretrial release decisions. The problems resulting from uninformed bail decisions are many, including the social and economic costs of a high pretrial detention population in the local jail.

Developing Pretrial Release Standards

Pretrial release agencies have been in existence for more than 40 years. In 1961, the first pretrial services program, the Manhattan Bail Project, was established in New York City. Its purpose was to help judges make consistent release decisions that were less dependent on a defendant's financial status.⁴ The Manhattan Bail Project brought to light the inequities of the money bail system and demonstrated that if judicial officials had authenticated information on a defendant's living situation, employment and ties to the community, then the courts could safely release many defendants on their own recognizance.⁵ Closely following the Manhattan Bail Project, many pretrial services agencies took root nationwide using a variety of release standards for new arrestees.

In 1978, the U.S. Department of Justice granted an award to the National Association of Pretrial Services Agencies (NAPSA) to develop a set of national professional standards for guiding pretrial services agencies and local justice systems in making pretrial release decisions. Rooted in the Constitution and supported by case law, the intentions of the NAPSA Standards on Pretrial Release are to provide a framework for equitable pretrial decision-making and for monitoring and supervising defendants on pretrial release. The NAPSA standards are divided into four parts and contain standard guidelines for governing the pretrial process; addressing the nature of first appearance and release decision-making; identifying the purposes, roles and functions of pretrial services agencies; and managing and

overseeing pretrial processes following the initial decisions concerning releasing or detaining a defendant.⁶

Since the first edition of the NAPSA standards were released in 1978 and later reissued with minimum editing in 1998, much has been learned about administering pretrial release service programs. To date, the standards, which include the third edition released in 2004, have remained consistently written toward cultivating a "more rational and better-informed pretrial release/detention decision-making process, one that is open and accountable and that does not discriminate amongst defendants on the basis of their financial circumstances."⁷ The third edition of the NAPSA standards is available on the NAPSA Web site at www.napsa.org.

Utilizing Pretrial Release Agencies

The purposes of a pretrial release decision include providing due process for individuals accused of a crime, maintaining the integrity of the judicial process by ensuring defendants are available for trial and safeguarding public safety (e.g., protecting victims, witnesses and the community from threat, danger or interference).⁸ According to NAPSA, "Every jurisdiction should have the services of a pretrial services agency or program to help ensure equal, timely and just administration of the laws governing pretrial release."

Because the functions of pretrial release agencies tend to be misunderstood, these agencies are frequently overlooked as an integral component of the criminal justice system and are

underutilized. From a public policy perspective, pretrial release agencies offer a verifiable means for making informed pretrial release decisions that help balance a defendant's risk of nonappearance and threat to the community with the benefits of release. Their primary functions are to gather and present information, supervise defendants under the conditions of their release pending trial, and ensure that defendants appear for scheduled court appearances.

Pretrial release agencies gather information about a defendant (e.g., length of residence, employment history, financial status, family ties, prior criminal history, and physical and mental conditions), assess a defendant's level of risk,⁹ identify release options and, consistent with court policy, make release recommendations that include eligibility for diversion or treatment (e.g., drug or other treatment courts).¹⁰ Acquiring valid information on the defendant is first achieved by interviewing defendants held in confinement pending their first judicial appearance. Quality pretrial services include verifying that information by contacting references, running criminal record checks and utilizing validated risk assessment instruments.

Performing prerelease services well helps judicial officers make sound pretrial release decisions, minimizes unnecessary pretrial detention and reduces the likelihood of jail crowding. Moreover, judicial officers armed properly with verifiable information are apt to make better pretrial release decisions than judicial officers who are not. Decisions should match the conditions of release with the risks and needs of a defendant, safeguard the presumption of innocence, reduce the potential for disparity in bail decision-making, and expedite court processing with outcomes that help manage local jail space and community resources efficiently.¹¹

Teaching Pretrial Principles and Practices

In an effort to bring an awareness of the benefits and functions of pretrial release agencies to the field of corrections, the National Institute of Corrections is developing an

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informational program titled *Pretrial Justice: Principles and Practice*. During the program, a panel of professionals (e.g., judge, jail administrator, prosecutor, public defender and pretrial service agency directors), who are well acquainted with the functions and role of pretrial services, demonstrate in a mock scenario effective pretrial practices and release decision-making from the onset, so that viewers can observe the initial arrest of a defendant and follow the defendant through pretrial supervision. The goals of this program are to understand the role of pretrial release agencies, examine the impact of a pretrial decision to release or detain a defendant on public safety, and promote fair and just pretrial decision-making. In addition, best practices consistent with the pretrial release standards of NAPSA are demonstrated during the program, highlighting the need for collaboration throughout the process and the important role of pretrial services within the local justice system.

Pretrial Justice: Principles and Practice will be available in DVD format free of charge from the National Institute of Corrections in late fall 2007. At that time, a copy of the DVD can be ordered on the NIC Web site, www.nicic.org, or through the NIC Information Center at 1-800-877-1461.

ENDNOTES

¹ Harrison, P.M. and A.J. Beck. 2006. *Prison and jail inmates at midyear 2005*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

² American Bar Association. 2002. *ABA standards on pretrial release, third edition*. Retrieved Jan. 26, 2007, from the American Bar Association: Criminal Justice Section Web site; www.abanet.org/

crimjust/standards/pretrialrelease_blk.html#10-1.1.

³ Williams, M.R. 2003. The effect of pretrial detention on imprisonment decisions. *Criminal Justice Review*, 28(2):299-316.

⁴ Clark, J. and D.A. Henry. 2003. *Pretrial services programming at the start of the 21st century: A survey of pretrial programs*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance.

⁵ National Association of Pretrial Services Agencies. 2004. *Standards on pretrial release, third edition*. Retrieved Feb. 22, 2007, from the National Association of Pretrial Services Agencies Web site: www.napsa.org.

⁶ National Association of Pretrial Services Agencies, 2004.

⁷ National Association of Pretrial Services Agencies, 2004.

⁸ American Bar Association, 2002.

⁹ Mahoney, B., B.D. Beaudin, J.A. Carver, D.B. Ryan and R.B. Hoffman. 2001. *Pretrial services programs: Responsibilities and potential*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

¹⁰ American Bar Association, 2002.

¹¹ Mahoney et al., 2001.

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