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NEW YORK STATE PRETRIAL RELEASE SERVICES STANDARDS

FOREWORD

These standards for Pretrial Release Services are based upon the laws of New York State, which direct the use of pretrial release in accordance with the defendant's likelihood of appearance in court and his/her capacity to satisfy other court-imposed conditions of release. These Standards define how pretrial services should operate in providing judges with an alternative to the use of money bail or other forms of financial surety to ensure the defendant's appearance in court.

The actions taken in the initial stages of any criminal case—in particular, the decisions concerning the release of an arrested person—can have a significant bearing on the disposition of an individual case. These Standards show that the pretrial release assessment and recommendation, based upon universal screening, embrace commonly understood elements of New York State law and ensure fair and equitable consideration of due process.

Toward that end, every jurisdiction should establish a pretrial services agency or program to help ensure equal, timely, and just administration of the laws governing pretrial release. The pretrial services agency or program should collect and provide information on the defendant's community ties and likelihood of future court appearance to assist the court in making release decisions. They should also make release recommendations, provide monitoring and supervisory services, and perform other functions consistent with the law and these Standards.

The need for pretrial standards that address important operational and criminal justice issues and identify best practices, has been the focus of several Division of Probation and Correctional Alternatives (DPCA) established workgroups of pretrial practitioners since the mid-1980's. Their common goal has been to examine current procedures, best practices, and related issues confronting pretrial service delivery and create minimum standards under the auspices of DPCA of important pretrial principles and procedures. A final draft of these Pretrial Standards was distributed in July 1995 and there was considerable ongoing review by various state agencies as to content.

In December 2002, DPCA established a Pretrial Standards Committee to revisit the Standards and review whether they should reflect certain concepts presented in other contemporary national and state documents in this area by professional associations. Additionally, it reviewed the original work and last revised draft with an eye toward addressing criminal history concerns and the need for best practices that reduce unnecessary dependence on money bail. Subsequently in November 2003, DPCA issued revised Pretrial Release Services Standards embracing best practices to provide guidance and promote uniformity in the management of defendants consistent with law and sound professional practice.

DPCA continues to acknowledge that recent laws have been enacted to provide greater protection to ensure victim and witness safety. Due to heightened sensitivity with regard to these issues, temporary orders of protection are routinely issued and where applicable, contemporaneous with release decisions. Consideration is given by the courts to the defendant's compliance with past orders, prior incidents of abuse, the extent of past or present injuries, threats, evidence of drug or alcohol abuse and access to weapons. Additionally, there exist statutory provisions governing mandatory and permissive suspension/revocation of firearms licenses, as well as the surrender of all weapons possessed or carried.

At the time these Standards were issued, it was deemed appropriate that the Committee would meet periodically to review and discuss the issues that may be of consequence since the last edition of the Standards. It was hoped that the document be maintained and useful to pretrial policy makers in fashioning programs that are vital to the administration of justice.

Consequently in 2006, DPCA reconvened the Pretrial Release Committee to update the Standards and promote greater consistency and clarity in practice. Much of their work concentrated on the last revised Standards as an agenda and guide for internal discussion. Additionally, the Committee reviewed recent Pretrial Release Standards issued by the American Bar Association (ABA 2002) and the National Association of Pretrial Services (NAPSA 2004). It was found that New York State's Pretrial Standards issued by DPCA are consistent with much of what was promulgated by both the ABA and NAPSA Standards. The NAPSA Standards had, in fact, included some wording of DPCA's Standards recognizing principles especially in the area of confidentiality of pretrial information.

These new 2007 Pretrial Release Services Standards support the importance of having pretrial services in all jurisdictions, promote statewide utilization, and continue to incorporate pertinent laws, rules, and sound local practices that have been enacted or adopted in recent years relative to release decision-making and public safety. Overall, these 2007 Standards offer expanded Commentary to provide greater guidance to pretrial programs in New York State, achieve more uniformity in the management of defendants and enhance sensitivity to victim and safety issues consistent with law and sound professional practice.

PRETRIAL RELEASE SERVICES STANDARDS

I. OVERVIEW

Jail population patterns in New York State reveal that a large majority of those admitted are pretrial detainees, most of whom are confined (for fewer than ten days) for want of relatively low bail. Such current practices often reveal an unnecessary, inefficient and inequitable use of confinement. Consequently, most of the counties in New York State operate some form of pretrial release programs. These programs facilitate release without financial conditions by identifying appropriate defendants for release on recognizance (ROR) or release under supervision (RUS). As used here, ROR refers to the release of a defendant on his or her promise to appear. RUS refers to the release on a promise to appear with other condition(s) which restrain the defendant's behavior and movements that are monitored by the pretrial service.

Pretrial release programs interview defendants and provide information to judges to determine if they are appropriate candidates for non-financial release. These programs are based on the principle that the money bail system imposes a disadvantage upon the poor. Research indicates that non-financial conditions can be as effective as money bail in ensuring the appearance in court of appropriate populations of defendants. Though the specifics of the programs vary, most pretrial release efforts recognize a positive correlation between meaningful community ties and high court appearance rates. Typically, programs seek to strengthen this correlation through various additional services, including notification to defendants of pending court dates, periodic reporting requirements, or more extensive supervision and monitoring of release conditions.

These Pretrial Standards have been established consistent with DPCA's statutory authority to regulate, assist and fund community corrections programs. These Standards are for pretrial release activities and provide a model for program operations consistent with state laws and constitutional principles that have an impact on this area of criminal justice decision-making. In establishing these Standards, the DPCA seeks to reduce disparities in the delivery of these services, to maximize effectiveness and to increase fairness and equity with regard to pretrial release and detention while insuring public safety.

Pretrial program practices have evolved over the years. Consequently, these Standards are part of an ongoing process of development and will be modified as the dictates of law, time and practice require.

Pretrial release services are intended to accomplish at least the following goals:

1. To help facilitate judicial release decisions by providing the courts with standardized information about defendants in the most timely manner possible;

2. To identify defendants who are appropriate for release without financial conditions;

3. To facilitate the release of defendants who would otherwise be incarcerated for want of financial resources, reduce unnecessary incarceration and associated costs, and relieve overcrowding in local correctional facilities; and,

4. To maximize appearance rates of defendants released to these programs.

A. Important Principles:

1. Pretrial release services are empowered to provide the courts with relevant and critical information about persons charged and held in custody at local detention facilities. Judges are responsible for setting bail, releasing individuals on recognizance, issuing Orders of Protection, ordering the surrender of weapons and the suspension or revocation of firearms licenses, and establishing other reasonable conditions of pretrial release. Pretrial release programs, by providing information and using standardized approaches to assess the likelihood of a defendant's appearance, assist judges to release defendants who are good appearance risks and thereby lessen reliance on money bail.

2. Defendants are entitled to a presumption of innocence. Therefore, defendants should not be precluded from pretrial screening based on the current charge. However, for purposes of assessing flight risk, the instant charge may be an appropriate consideration as to the release recommendation.

3. New York State law does not authorize the imposition of conditions of release or preventive detention on the basis of predictions of future dangerousness. Therefore, pretrial release programs should provide assessments and recommendations to the courts based on the defendant's likelihood to appear in court.

4. Every jurisdiction should establish and maintain a pretrial release agency or program consistent with these Standards.

Pretrial service programs should conduct universal screening using a standardized interview format and objective approach (e.g., point scale) to determine eligibility for release. Information collected through the interview should be verified, and together with the program's recommendation or eligibility determination, should be provided to the court of jurisdiction in an expeditious manner.

Defendants found ineligible for ROR should be assessed for RUS. Recommendations for RUS by pretrial release programs should identify those defendants either found ineligible for ROR through the program's initial interview and assessment or not released by the court, even though recommended by the program. RUS may involve additional investigatory steps and recommendation of restrictive conditions for release. The conditions recommended to the Court should only be as restrictive as needed to achieve court appearance.

II. STATUTORY AUTHORITY

Various articles of the Criminal Procedure Law (CPL)[1] authorize criminal courts to release defendants on their own recognizance during the pendency of the criminal action or proceeding, upon the condition that they appear whenever attendance is required and will at all times render themselves amenable to the orders and processes of the court. These Articles also establish other legal parameters, prerequisites, and limitations governing criminal court jurisdiction and authority to release certain defendants. Specifically, Section 510.30 of the CPL requires the court to consider the kind or degree of control that is necessary to secure court attendance.

Article 510 provides the legal parameters which a judge should employ in determining whether to release a defendant on his/her own recognizance, or to set bail. The following are statutorily recognized factors which a court must consider and take into account in determining the nature of the control necessary to ensure a defendant's attendance:

1. Character, reputation, habits and mental condition;

2. Employment and financial resources;

3. Family ties and the length of residence in the community;

4. Prior criminal record;

5. Record of previous adjudication as a juvenile delinquent as retained pursuant to Section 354.2 of the Family Court Act, or of pending cases where fingerprints are retained pursuant to Section 306.1, or a youthful offender, if any;

6. Previous record in responding to court appearances when required, or record with respect to flight to avoid criminal prosecution;

7. Weight of evidence in the pending case and any other factor indicating the probability of conviction. If the application is made pending appeal, the merit or lack of merit of the appeal should be considered; and

8. The sentence which may be or has been imposed upon conviction.[2]

[1] See Criminal Procedure Law, Articles 510, 530 and 540.

[2] A Superior court may not order recognizance or bail or permit a defendant to remain at liberty pursuant to an existing order, after conviction of a Class A felony and no intermediate appellate court judge may grant such an order where the defendant received a Class A felony sentence. Similarly, when charged with a felony, a superior court may not order recognizance or bail unless and until the district attorney has had the opportunity to be heard and the judge has been furnished with a report on the defendant's criminal record.

Commentary

Criminal history includes any known violation(s) of Orders of Protection.

In a pending appeal from a judgment of conviction, the court must also consider the likelihood of ultimate reversal of the judgment.[3]

All persons released by the court are expected to appear as required by the court, and to avoid criminal activity. The factors mentioned above are to be considered by the court in estimating the likelihood of the defendant's appearance and in setting conditions to assure it. A court is not authorized to weigh the likelihood of a defendant's engaging in criminal activity in determining his/her release status. The court can revoke an order of bail or recognizance for a defendant charged with a felony charge, if there is reasonable cause to believe that the defendant has committed one or more specified Class A or Violent Felony Offenses while at liberty. The court may also revoke bail if a defendant has intimidated a victim or witness in violation of applicable Penal Law provisions. Further, where bail or recognizance is ordered, the court must inform any defendant charged with a felony that release is conditional and that the court may revoke the order of release upon commission of a subsequent felony. The court must order recognizance or bail when a defendant is charged with an offense of less than a felony.[4]

Safety may be taken into account under provisions which grant a judge statutory authority to issue an order of protection as a condition of pretrial release or as a condition of bail in order to protect victims. Similarly, any threat made by a defendant to a victim or witness after release is further recognized as sufficient to warrant a decision revoking bail or ROR.

A pretrial release program has the responsibility to provide objective, relevant, factual information on the defendant obtained through the course of the interview which relates to these statutory factors. In particular, pretrial release programs routinely collect information relating to statutory factors including character, reputation, habits, employment and financial conditions, family ties, and length of residence in the community. Additionally, programs may consider prior criminal record and the related history of appearance solely for the purpose of predicting the likelihood of flight.

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[3] A determination that the appeal is palpably without merit alone justifies, but does not require a denial, regardless of any determination made with respect to the aforementioned factors listed above.

[4] A city court, town court, or village court cannot order recognizance or bail when a defendant is charged with a Class A felony or if it appears that the defendant has two previous felony convictions. The local criminal court cannot order recognizance or bail when a defendant is charged with a felony unless and until the district attorney has been afforded a reasonable opportunity to be heard or he/she waived the right to do so, and the court has been furnished with the defendant's criminal case history if any, or with a police department report with respect to prior arrest record. Where neither is available, the court, with consent of the district attorney, may dispense with this requirement. When a criminal action is pending in a local criminal court, other than one consisting of a superior court judge sitting as such, a judge of a superior court holding a term in the county may order recognizance or bail when the local criminal court lacks authority to issue such an order, has denied release, or has fixed bail which is excessive.

The decision to release a defendant on his/her recognizance or to grant or deny bail rests solely with the judiciary. The pretrial agency shall remain independent from, and avoid bias toward, either defense or prosecution in conducting program operations.

III. REGULATORY AUTHORITY

Section 243 of the Executive Law authorizes the State Director of Probation and Correctional Alternatives to exercise general supervision over correctional alternative programs throughout New York State. The Director further exercises general supervision over the administration and implementation of alternative-to-incarceration (ATI) service plans under the provisions of Article 13-A of such law. Eligible programs are defined under Section 261(1)(b) to include pretrial release programs. The State Director is authorized to adopt general rules and regulations to regulate methods and procedures in the administration and funding of ATI programs. Such rules and regulations are binding upon all counties and eligible programs and, when duly adopted, have the force and effect of law.

The authority given to the State Director maintains a statewide oversight system for local pretrial programs. The State's responsibilities include, but are not limited to:

- Maintenance of program standards through the monitoring of local program performance in relation to the adopted standards;

- Assessment, refinement, development, and enforcement of statewide standards;

- Provision of technical assistance to local programs.

IV. PROGRAM OBJECTIVES

Pretrial release services shall strive to achieve the following objectives:

1. **Provide relevant, objective information to assist courts in making release decisions;**

2. **Help reduce unnecessary pretrial detention by identifying the defendants most likely to appear in court;**

3. **Help maximize the number of defendants released under non-financial conditions;**

4. **Help ensure speedy release from custody or detention of persons awaiting trial through timely program intervention;**

5. **Help recommend the least restrictive conditions deemed necessary to ensure court appearance;**

6. **Help minimize failures to appear; and,**

7. **Help reduce costs of pretrial detention incurred by the community.**

Programs should assess specific policies and procedures to determine if program objectives are being achieved and to make appropriate modifications.

V. PROCEDURAL STANDARDS

A. Screening and Interviewing

1. **All defendants in custody shall be screened by pretrial release services programs to identify those ineligible by law for release.**

2. **All defendants eligible for release shall be given the opportunity to be interviewed by pretrial release programs.**

3. **Individuals eligible for release consideration shall not be excluded from the interview process merely because of factors such as instant charge or prior criminal history. Reasonable accommodation shall also be made to interview individuals with mental or physical disabilities or language barriers.**

Commentary

Following the screening process, all eligible defendants shall be afforded the opportunity to be interviewed by the pretrial release program. Exclusions shall not be made based upon charge alone. All defendants shall be deemed eligible for a pretrial release interview except those over whom the court has no jurisdiction to effect release (e.g., federal detainees, boarding inmates, state parole violators, and Interstate Compact violators who are detained pending retaking by the sending state[5]). To the extent that resource availability may preclude universal interviewing, the program should give priority attention to those cases the service is most critical to achieving a release and that are most likely to be detained without pretrial release intervention.

B. Timely Intervention

1. **Screening and interviewing shall take place at the earliest possible time after arrest. If the program has access to defendants before arraignment, the interview should take place before the initial court appearance to provide information to effect the earliest possible release decision. Absent such ability, interviews shall take place within twenty-four hours of detention on weekdays and within seventy-two hours of detention on weekends.**

2. **Verification and reporting to the courts shall occur as soon as possible after the initial interview.**

3. **Programs shall deploy staff and services in a manner consistent with achieving the earliest possible intervention and release.**

[5] See Interstate Compact for Adult Offender Supervision Rule 5.111.

Commentary

Effective delivery of pretrial release services requires that every possible effort be made to intervene and determine release eligibility at the earliest possible time in the court process. Failure to intervene promptly may result in unnecessarily long periods of detention.

Ideally, pretrial interviewing, verification and assessment should occur between arrest and arraignment so that the judicial officer making the first release decision has the most complete and relevant information concerning each defendant. However, frequently pre-arraignment intervention is impossible due to insufficient resources. Consequently, it is often necessary to conduct the pretrial release interview only after the defendant has had an initial court appearance and has been confined to the jail.

These Standards call for daily interviews of all newly detained defendants so that defendants confined during the past twenty-four hours are contacted by the program. Since staff may not be available to conduct interviews on weekends, the Standards indicate that defendants arrested from Friday through Sunday will be contacted no later than Monday morning (hence within seventy-two hours after detention). Legal holidays are excluded from the calculation.

In seeking the most efficient means to deploy staff and intervene at the earliest possible time, each pretrial program should undertake a careful examination of arraignment caseloads in the various courts within its jurisdiction. This analysis will assist programs in maximizing early intervention. For example, in many jurisdictions a single city court may handle most of the arraignments. Consequently, the pretrial release programs may deploy staff so that pre-arraignment interviewing is conducted for the high volume court, while all other defendants are interviewed post-arraignment, but within the time periods specified by these Standards.

Early intervention requires more than interviews and verifications at the earliest possible time following arrest. It must include expeditiously communicating the information gathered and the program's eligibility determination to the court. Procedures should be developed, and arrangements made to communicate the results of the pretrial investigation to the decision-making court promptly following completion of the interview and verification phases.[6] Some programs communicate the information by telephone, fax or other electronic communications directly to the judge. Other programs hand-deliver their report and recommendation to the court. The sole use of mail to convey this vital information, or waiting until the next formal court appearance, are unsatisfactory methods, resulting in unnecessary delays in effecting release.

[6] Procedures for maintaining prompt communications with the court should be part of the program's adopted Policies and Procedures.

C. The Interview

1. **Program staff shall conduct a structured interview with each eligible defendant.**

2. **Through a standard interview format, programs shall collect objective and verifiable information that is directly related to the program's criteria for release eligibility.**

3. **The interview of the defendant shall not include any direct questions concerning the alleged instant offense or the arrest.**

4. **The introduction to the interview, the content of the interview, and manner in which the interview information is used will be consistent with the confidentiality provisions as set forth in Section VI of these Standards.**

Commentary

Standardized interviews help ensure that eligibility determinations are based on clearly identified criteria which are uniformly applied to all defendants. Such an approach prevents interviewer bias from contaminating the basic purpose of the pretrial investigation, which is to identify those defendants who are likely to return to court when required.

The use of a standardized interview by pretrial release programs is common practice across the country, though the specific elements of the interview may vary by jurisdiction. This approach provides pretrial programs with a rapid, routine and easy-to-apply method for collecting relevant information. It also serves to simplify verification. The information gathered through the standardized interview must address factors directly related to the likelihood of appearance. Insofar as these factors are statistically valid predictors of appearance, they provide the rationale for the program's eligibility determinations. Finally, standardized interview formats can provide pretrial programs with a convenient form with which to report findings to court and a reference for judicial officers to those factors deemed important by the program in making its determinations.

The pretrial interview shall not include direct questions or discussions concerning the alleged instant offense or the arrest. Such questions may cause defendants to incriminate themselves. Such questions or discussions may also impede the program's ability to conduct an impartial inquiry regarding release. Finally, gathering such information may subject the program to unanticipated and unintended court actions (e.g., prosecutorial subpoenas). This practice may also result in defendants declining to participate in the interview.

D. Verification

1. **Defendants shall be informed that the program will seek to verify the information obtained during the interview. The defendant shall be asked to provide the name, relationship and phone number of reliable verification sources.**

2. **At a minimum, program staff shall seek to verify the following information:**

    - **address;**
    - **length of time in community;**
    - **family ties;**
    - **employment or schooling;**
    - **prior performance in any pretrial release program; and,**
    - **criminal history.**

3. **Program staff shall seek to verify any other information directly affecting the program's determination of eligibility for release.**

4. **Verification may be achieved through interviews with third party contacts (e.g., relatives or friends) and need not require direct contact with employers, schools or other primary sources.**

5. **Program staff shall respect the defendant's wishes not to contact certain potential verification sources (e.g., employers and schools).**

6. **Program staff shall continue to seek verification of information in those instances where release is not secured due to the absence of verification.**

7. **Inability to verify information shall not necessarily result in a negative eligibility determination. Programs shall establish policies and procedures governing the reporting of unverified information to court.**

Commentary

The rationale for verifying pretrial release interviews is based on the following:

- it allows the interviewer to check the accuracy of information gathered from the defendant;
- it may serve as a notification to family and/or friends of the arrest, answer their questions regarding time and place of arraignment or future court appearances, and gain their assistance in returning the defendant to court;
- it may also provide useful information to the court (e.g. possible misidentification, mental or physical illness that may require immediate attention by the court and/or jail personnel); and
- it adds credibility to the interview information;
- it better enhances the program’s ability to contact the defendant should he or she fail to appear.

Effective verification can be accomplished by phone or in person. Program staff needs to explain the purpose of the inquiry. "Blind interviews", which do not reveal the answers already given by the defendant, are preferable since they are the most efficient and effective

tools for verification. This method involves asking the same questions in the same manner as was used in the interview with the defendant. This is a quick informative procedure and does not require presentation of official documents (e.g., birth certificates, pay stubs, etc.). Careful, non-directive, non-judgmental questions asked of both the defendant and verification source minimize the possibility of discrepancies. Skillful interviewing ensures that the responding person is not giving answers that he/she thinks are expected by the program.

Verification inquiries to employers or schools may needlessly jeopardize a defendant's job or enrollment. Permission to make these inquiries should come from the defendant. Under most circumstances, family and friends can verify these facts satisfactorily. Verification through victims and/or complainants should be avoided where practicable.

E. Unverified Information

Pretrial release procedures and policies regarding unverified information may vary. Common practices include:

1. **Utilizing a separate category such as "qualified (based on interview information), not verified".**

2. **Finding defendant eligible for release based on interview information, but requiring such defendant to produce proof of address to the program within 24 hours.**

3. **Continuing verification efforts if the defendant is detained, and immediately reporting to the court once the information is verified.**

4. **Developing separate statistical categories for defendants released without verified information.**

F. Release Eligibility Determinations and the Risk Assessment Instrument

1. **Criteria for release eligibility shall be based on valid, reliable predictors of the defendant's return to court.**

2. **Age, race, creed (e.g. religion), color, national origin, gender, sexual orientation, disability, or marital status shall not be used as predictors because such use is considered unconstitutional or unlawful discrimination.**

3. **A system for objectively assessing risk of flight should be established in each jurisdiction, and reviewed periodically. In seeking predictors that would be valid for its jurisdiction, a pretrial release program should consider the following factors which research has shown to be related to risk of flight in other jurisdictions:**

    - **Family and community ties, such as**

-- length of time in the community;
-- current availability of a place to live in the community; or
-- stable means of support.

- **Prior record of failures to appear in court; and**
- **Prior criminal history.**

4. **Programs shall establish policies and procedures consistent with these Standards for cases where the risk assessment instrument is overridden.**

5. **Reasons for deviating (i.e., overrides) from the risk assessment shall be recorded in each case.**

Commentary

Criteria for release eligibility should be well-defined in order to promote consistent and equitable application. Studies reveal that a prior record of failure to appear is a strong predictor of risk of flight and/or non-appearance in court. History of prior criminal convictions, in particular felony or violent felony convictions, increases the severity of the potential sentence and may create a higher risk of flight. Charge type and severity level should be statistically validated as predictors of failure-to-appear before they are included in risk assessment instruments.

The use of objective, statistically valid predictive risk assessment instruments is recommended because:

- objective measures provide the judiciary with standardized criteria as an aid in the decision-making process;
- by basing predictions on actual past performance, risk assessment instruments help to reduce biases in the pretrial release process; and
- validated instruments predict group responses (i.e., return-to-court behavior) rather well.

Although objective risk assessments have proven to be valuable tools in the pretrial screening process, it is important to understand their limitations so that their proper use is assured. They do not predict individual behavior. Rather, they classify a defendant according to a group (i.e., "good risk" or "bad risk"), and then predict how members of that group will behave. Prediction of future behavior is based on past group experiences. Because they are based on past group experiences, these instruments do not provide an absolute prediction regarding individual behavior. Rather, they simply indicate that an individual is similar in some respects to others who have performed well (i.e., appeared in court) or poorly (i.e., failed-to-appear) and therefore, the individual should be considered for release based on these similarities.

Consequently, the potential for overriding the predicted outcome should exist in each system. To ensure that such overrides are based upon reasonable grounds, each program should establish clear criteria for those instances where an override is to be considered, and the reasons for each should be explicitly recorded in the case record. Policies regarding override procedures should be reviewed periodically to guard against arbitrary application. Moreover, frequent and valid overrides are a sign that the validity and reliability of the risk assessment instrument should be re-examined. Occurring reasons for overrides should be subjected to statistical validation. If a reason is not validated, its use should be discontinued; if it is, it should be incorporated into the risk assessment system.

G. Release Eligibility and Report

1. **Programs shall establish a format for reporting eligibility determinations and/or recommendations that include, at a minimum, the following categories:**

    - **eligibility based on verified information;**
    - **eligibility based on unverified (qualified) information; and**
    - **not eligible.**

2. **The program shall report its determination of release eligibility to the court in a timely manner, in accordance with these Standards.**

3. **The report should include all verified and unverified information received relevant to release eligibility criteria as specified in these Standards.**

4. **Any information relevant to the release criteria that is unavailable at the time of the report shall be specified as such.**

5. **When appropriate, the report should include information about special circumstances concerning the defendant's situation that result in an override.**[7]

Commentary

Each program shall provide the courts with explicit findings of eligibility based upon the programmatic release criteria. Program eligibility determinations may be expressed through

[7] Responsible circumstances that may be considered "special" are those that assess or are related to the defendant's risk of flight. This may include, for example, (a) information is not available such as the NYSID report, or the inability of the interviewer to perform an interview; (b) the defendant speaks a language where an interpreter is needed to collect the information; (c) the category of charge is such that the court has determined that the recommendation is not necessary, such as defendants charged with committing a crime while incarcerated; (d) the category of defendant is such that the validated assessment instrument does not include them at this time (i.e., juveniles being processed as adults); or (e) there is a conflict between the information that the defendant gives, and the information that a verifier (family member, friend or employer) provides. "Special Circumstances" that are <u>not</u> reportable would include those related to (a) incriminating evidence or statements proffered by the defendant; (b) defendant-supplied facts surrounding the instant charge; (c) physical or medical conditions not related to the ability of the court to properly arraign the person or fashion a RUS or Alternative to Incarceration option.

different terminologies. For example, some programs indicate that defendants have been found "eligible" for release; some report that the defendant is "qualified" for release; and others "recommend" the defendant for release. Programs may utilize whatever language or terminology is more suitable to their locality, provided that an explicit statement regarding eligibility is clearly communicated. This should be incorporated into the procedures for each program.

The eligibility determination shall be communicated to the court. Such reports may include the release eligibility determination. Additionally, it may include any other information that the program deems relevant to release decisions.

H. Types of Release

1. **There shall be a presumption in favor of Release on Recognizance (ROR), and programs shall adopt procedures to maximize the number of eligible ROR defendants.**

2. **Where the initial eligibility determination was not acted upon favorably or the defendant does not initially qualify for release, then the program should be prepared to make recommendations for the least restrictive release conditions reasonably necessary to assure the defendant's appearance in court.**

3. **The recommendations for imposition of conditions should be reasonably related to any risks of nonappearance that have been identified as being posed by the individual defendant.**

4. **When conditions are imposed, the pretrial program should monitor the defendant's compliance with the non-financial conditions and make reports to the court concerning such compliance.**

5. **When money bail is imposed and the defendant is unable to post a required money bail amount at first appearance, the pretrial program should make attempts to contact the defendant's family and personal associates to expedite the posting of such an amount as soon as possible.**

6. **For those cases where release was not obtained or the defendant was initially found ineligible, a system of monitoring and review should be established. The circumstances of the pending criminal matter may change, specifically relating to eligibility for pretrial release and the program should respond accordingly.**

7. **Conditions of release are imposed by the court and may not be altered without court authorization. The court may include adherence to the terms and conditions of court approved programs.**

Commentary:

Continuous review for release as the criminal matter progresses is desirable, as the initial determination of ineligibility was dependant upon data that was obtained at a fixed point in time and much of that data is of a dynamic nature. Circumstances such as availability of a suitable residence, additional positive information about the defendant's background or the accessibility of family members – unavailable at the initial screen – who can participate in assuring the defendant's appearance in court, directly relate to eligibility and can change. Additionally, circumstances relative to the pending matter are not necessarily static.

I. Notification

1. **Programs shall provide notice of all scheduled court dates to defendants released through their intervention.**

2. **Programs shall encourage their local court systems to establish a procedure that all defendants can follow (e.g., a telephone number to call) in case of a question or problem regarding court appearance.**

3. **Programs shall provide to all defendants released through program efforts, a procedure to follow in case a question or problem regarding court appearance arises.**

Commentary

At a minimum, pretrial release programs should provide notice of all pending court dates to each defendant released through their intervention. Practical considerations may make such a comprehensive notification service difficult to achieve. Notification may be accomplished by the program, the court, or through a combination of efforts by letter, telephone, other electronic means, or by written notice given to the defendant. Where courts do not provide written notice of the next court date, the program should establish a procedure.

J. Monitoring

1. **Programs shall establish a system to monitor court appearances of those defendants released through program intervention.**

2. **Programs shall establish procedures to assist defendants released through their intervention to comply with release conditions, including orders of protection, and to keep court appearances.**

3. **Programs shall establish procedures to monitor, investigate and report the compliance of defendants released under supervision of the program.**

Commentary

In order to determine whether the pretrial release program is operating effectively, it is essential for the program to monitor defendants' court appearances. Absent such monitoring, programs cannot determine whether individuals released through program intervention are appearing in court. The program's failure-to-appear (FTA) rate that is generated through such monitoring is one of the most important measures of program effectiveness and serves to demonstrate the viability of non-financial conditions of release.

Monitoring court appearances does not require daily program attendance in court. Rather, programs are expected to establish an efficient method for obtaining information regarding the scheduled and actual appearances of those released through program intervention.

In computing failure to appear rates, two approaches are most common. Appearance-based FTA rates are computed by dividing the number of failures to appear by the number of scheduled appearances for the program population. Defendant-based FTA rates are computed by dividing the number of defendants who failed to appear (at any time during their case) by the total number of defendants released through program intervention. Because most cases involve multiple appearances, appearance-based FTA rates will always be lower than defendant-based rates.

Experience indicates that many defendants who miss court appearances are not demonstrating contempt for the authority of the court. Reasons for non-appearance range from changes in the appearance date that are not communicated to the defendant to medical emergencies that prevent his or her appearing as scheduled. In fact, research indicates that only one-third of the missed appearances are due to the defendant's intentional decision not to appear. Another third are due to system failures to effectively communicate the required time and place, and the last third are due to unavoidable events that prevent the defendant from appearing. While the first third may be deemed willful failures, the other two-thirds are clearly not willful. Research findings are based on years of staff experience in working with defendants.

It is important for pretrial service programs to distinguish between willful and non-willful failures in order to: educate the court and other system actors on the real nature of failures-to-appear; identify strategies which the program might use to reduce the non-willful FTA rate; and offer the system and the public more accurate and realistic information to account for the program's effectiveness.

K. Violations of Terms of Release

1. Programs shall attempt to contact defendants who are released through program intervention and fail to appear in court, or who are not complying with court-ordered conditions of release in order to encourage voluntary return or compliance before the court is notified.

2. Programs shall establish procedures to inform courts of defendants' non-compliance with court-ordered conditions of release, including orders of protection.

Commentary

Programs shall develop procedures to inform the courts of violations of court-ordered conditions of release. Program procedures should include notification to the defendant of any violations and provide an opportunity for the defendant to respond to such violations. It is the court's responsibility to establish and impose appropriate responses to such violations.

Court-ordered conditions of release include Orders of Protection. Alleged violations of Orders of Protection should be brought immediately to the attention of the court, without notifying the defendant because such notification may imperil the victim and/or complainant.

A distinction should be made between court-ordered release conditions and the routine requirements of participation in a court-ordered program. Routine program requirements are not court imposed, but are utilized by the program to maximize court appearances. Consequently, a defendant's failure to strictly adhere to the program's requirements should not be grounds for a negative report if the defendant appears in court as scheduled. However, in instances where a defendant exhibits a continued disregard for, or is unable to fulfill program requirements, the program should inform the court of these failures.

VI. CONFIDENTIALITY

A. The program shall maintain confidentiality of pretrial program records.

B. Information obtained during the course of the pretrial release services investigation and during post-release supervision shall remain confidential and shall not be disclosed unless authorized by these Standards, New York State/Federal Law (e.g. HIPAA - Health Insurance Portability and Accountability Act) or regulations. Any disclosure of pretrial release services information shall be limited to the minimum information necessary to carry out the purpose of such disclosure.

C. The program shall establish a written policy regarding the limited access to any defendant's[8] files. Such policy shall include provisions permitting access, upon request, by the defendant or his/her attorney. This policy may provide for appropriate exceptions from such disclosure, including information which has been secured from sources upon a promise of confidentiality of information which if disclosed, would endanger the life or safety of any person, or would constitute an unwarranted invasion of personal privacy. This policy shall not deny access by defendants and their attorneys to any statements made by such defendants.

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

E. The pretrial program's report relative to a determination of eligibility for release shall be made available to the court and, upon request, to the prosecutor and the defense counsel in the instant criminal action.

F. The program may disclose information under the following circumstances:

1. **To the court for the purpose of setting conditions of release, providing notification of court appearances, or notifying the court of violations of conditions of release, including Orders of Protection, and failure-to-appear;**

2. **To other service programs to which the defendant has been referred by the court or the pretrial program, or to another pretrial program to which the defendant is referred by the court or the original pretrial program, provided the defendant consents to disclosure;**

[8] "Defendant" shall mean any individual who is receiving or has previously received services from a pretrial program.

3. **To law enforcement authorities[9], upon reasonable cause to believe that such information is necessary to assist in conducting a criminal or child protective investigation, apprehending an individual, serving process for failure to appear or otherwise executing a warrant;**

4. **To a probation department for use in any court ordered investigation and report;**

5. **To parole for use in any local conditional release or other investigation and report; or**

6. **To individuals or agencies designated by the defendant, upon specific written authorization of the defendant.**

G. In cases in which pretrial program staff has specific information leading to a belief that the defendant intends to harm law enforcement authorities, particular individuals (e.g. victims), or the community at-large, the program shall inform the court[10] of the nature of the potential harm. Such notification is subject to any restrictions imposed by law (i.e., Public Health Law Section 2785 governing court authorization for disclosure of confidential HIV related information). The program shall disclose only such information as is necessary to fully advise the court of the nature and source of the potential harm and to assist in locating the defendant.

H. No person or public or private agency receiving information from a pretrial program may re-disclose such information, except as is necessary to accomplish the purpose for which such information was disclosed by the pretrial program. All contracts and written communications between the pretrial program and individuals or organizations agreeing to provide supportive services for the custody or care of pretrial defendants must contain a non-disclosure clause. This clause shall obligate such individual or organization to adhere to the confidentiality provisions of this section.

[9] "Law Enforcement Authorities" shall mean any agencies or departments which have responsibility for enforcing applicable laws including, but not limited to, police agencies, probation departments, sheriff's offices, district attorneys and child protective services.

[10] "Court" shall mean a court making a determination as to whether to release a defendant on recognizance, set bail, release a defendant under supervision under specified conditions, or issue a securing order.

I. Information contained in files of pretrial programs may be made available for research purposes to qualified personnel[11] pursuant to a written research agreement which states the terms and conditions of each information transfer. Such an agreement shall address at least the following matters:

1. **The purpose of the research;**

2. **The characteristics of the cases on which information is sought;**

3. **The manner in which cases will be selected;**

4. **The specific pieces of information on each case which will be extracted from the files of the pretrial program;**

5. **The estimated length of time during which the researchers will maintain the information in a manner that permits the personal identification of a case;**

6. **The specific plans for removing personal identifiers from the research database after the designated time period expires; and**

7. **The procedures to be used by the researchers to protect the security and confidentiality of all personally identifiable research data.**

All research agreements concerning access to information in the files of any pretrial program shall assure that the identity of any defendant is not revealed in research publications, reports or any other materials distributed to anyone who is not a member of the research team. Finally, the research agreement shall describe the procedure to be used by the researchers to protect the security and confidentiality of all personally identifiable research.

[11] "Qualified personnel" shall mean those persons who are determined by the pretrial program to possess training and experience which are appropriate to the research in which they propose to engage and who will perform such research with adequate administrative safeguards against the unauthorized disclosure of confidential information.

VII. ADMINISTRATIVE STANDARDS

A. Training

1. **Programs shall ensure that their employees are sufficiently trained to undertake the duties and responsibilities of the program.**

2. **Training shall include timely orientation of all program staff regarding these Standards, and shall seek to ensure that all employees perform their duties consistent with the provisions of these Standards, applicable laws and regulations.**

3. **Programs shall, where feasible, initiate training to educate other members of the criminal justice system regarding the policies and practices of pretrial release programs.**

B. Information Gathering and Data Collection

1. **Programs shall develop and maintain an information system that will facilitate ongoing monitoring of the effectiveness of the program in relation to statewide standards.**

2. **Programs shall conduct periodic reviews to determine whether any pretrial program practices need to be adjusted.**

3. **Programs shall collect statistical information to determine failure-to-appear rates and other indicators of programmatic success.**

C. Collaboration and Education

1. **Programs shall take steps to ensure that the criminal justice community is informed as to pretrial services offered in their jurisdiction. This information may be disseminated through the establishment of a task force, forums, circulars or any other means which formally accomplish the goal of informing the criminal justice community of pretrial services.**

2. **Programs shall collaborate with the criminal justice community including their alternative to incarceration advisory boards or criminal justice coordinating councils in promoting greater usage of pretrial services, refining policies and practices with respect to program services, and expanding referral sources to assist defendants in securing release.**

3. **Programs shall have regular meetings with community representatives to ensure program practices address concerns of the community on matters involving pretrial populations such as monitoring and referral of those released, handling of substance**

abuse treatment, health services (physical, mental health, disabilities), employment services, language barriers, and social services.

Commentary

The collaborative policy development is especially important for successful implementation of the basic approach called for by these Standards, which provides for detention of defendants in jail only under very limited circumstances. If many defendants formerly held in secure detention are to be conditionally released during the pretrial period, a broad range of supervision strategies will have to be developed to respond to needs and risks posed by factors such as substance abuse, mental illness, physical ailments, homelessness, poor job skills, and illiteracy. The pretrial services agency or program will almost surely not be able to supervise and provide needed services for all of these defendants itself, though it should have a role in coordinating the supervision and direct services provided by other agencies and organizations. To function effectively and meet the needs of released defendants, it is important that pretrial service programs have sound policies that are developed on a jurisdiction-wide basis, involving a broad range of agencies and organizations.

VIII. Organizational Structure

A. Organization and management of the pretrial release agency or program

1. **The pretrial release 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, as well as with representatives of the community served by the program. To ensure objectivity and professionalism, the agency should be structured to ensure substantial independence in the performance of its core functions.**

2. **The pretrial release agency or program should develop and implement appropriate policies and procedures for the recruitment and selection of staff, and for compensation, management, training, and career advancement.**

3. **The pretrial release 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:**

    a) **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 release agency or program;**

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

    c) **develop and regularly update written policies and procedures describing the performance of key functions;**

    d) **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;**

    e) **develop and operate an accurate management information system to support the prompt identification of defendants, 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;**

    f) **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; and**

g) have the means to assist persons with disabilities and persons who have difficulty communicating in written or spoken English.

Commentary

This Section provides a general framework for the organization and operation of a pretrial release agency or program. The basic principles and guidelines set forth in the Standards should be applicable regardless of the size or location of the agency or program.

Regardless of where it is housed for administrative or budgetary purposes, it is important for a pretrial services agency or program to function as a neutral component of the jurisdiction's criminal justice system, conveying reliable and unbiased information to the court, and providing copies of relevant reports and recommendations to the prosecutor and defense counsel.

A1 calls for a governance structure that will provide guidance and support for the achievement of agency goals. No specific governance structure is suggested, understanding that circumstances will differ considerably across jurisdictions. The point is to have a governance structure that will help to ensure the requisite neutrality, will support the adoption and implementation of appropriate staffing policies and operational procedures, and will assist the agency or program in its work with the court, other criminal justice agencies, and the community.

A2 recognizes that the circumstances and needs of different jurisdictions vary widely. These Standards therefore, contain no specific provisions concerning the qualifications of staff. Rather, A2 calls for each agency or program to develop its own policies and procedures for staff recruitment, selection, compensation, management, training, and career advancement. In some instances, policies and procedures concerning these matters will be set by human resources management of larger probation departments, sheriff's offices, or courts. Regardless of the organizational location, the functions of recruitment, selection, training, and career advancement should be oriented to the basic principles of non-financial release and the unique mission of pretrial services agencies and programs.

A3 provides a basic checklist of organizational characteristics and activities for pretrial services agencies or programs to function effectively within their jurisdictions. Subparagraphs (a) through (d) focus on aspects of operations that should be found in well-functioning organizations:

- Organizational goals – especially goals that relate directly to the functions of providing information to judicial officers, the effective monitoring and supervision of released defendants, and the agency's own operations.

- Strategic plans aimed at organizing resources to help achieve the goals that are set.

- Written operational policies and procedures to guide staff in day-to-day operations in interviewing, monitoring and supervising released defendants with conditions.[12]

- Financial management systems for the program to manage its resources, account for expenditures and receipts, and support requests for funding of future operations.

Subparagraphs (e) through (g) focus on agency or program operations that relate specifically to core functions:

- Developing and using a management information system that will help agency staff perform core functions of providing information to judicial officers about newly arrested defendants, making risk assessments, crafting recommendations concerning appropriate conditions and tracking defendant compliance with release conditions.

- Developing procedures for measuring agency performance and measuring the performance of the jurisdiction concerning pretrial release.[13]

- Providing assistance to persons with disabilities (i.e., visual or hearing impairments or mental illness) and persons who cannot read, speak, or understand English.[14]

[12] For examples of operations manuals and directives concerning specific operational procedures, see the New York City Criminal Justice Agency publications entitled Completing the ROR Interview and Verification Calls (New York: NYC Criminal Justice Agency, June 2003).

[13] For a useful outline of a performance measurement system, see Appendix C of the 1978 NAPSA Standards. Suggestions concerning data collection and evaluation designs may also be found in Barry Mahoney et al., "An Evaluation of Policy Related Research on the Effectiveness of Pretrial Release Programs" (Denver: National Center for State Courts, 1975), pp. 90-102 (Appendix A).

[14] There are a variety of ways in which such assistance can be provided, including establishing linkages with persons who have the requisite knowledge and skills to provide the needed assistance (e.g., qualified interpreters, mental health specialists). In jurisdictions where there are significant populations that cannot read or understand English, the use of forms and instructions in the native language can be helpful. For discussion of the role of pretrial services agencies in interviewing and developing recommendations concerning cases involving persons with mental illness, see e.g., Council of State Governments, Criminal Justice/Mental Health Consensus Project (Lexington, KY: Council of State Governments, 2002), pp. 90-100.

IX. REVISION OF STANDARDS

1. **The Division of Probation and Correctional Alternatives shall periodically review and revise these Standards based upon changes in law, and other informed sources of information.**

2. **Revised standards shall be issued by the State Director of Probation and Correctional Alternatives and shall take effect upon issuance, unless otherwise specified.**

Issued: _____

_____
Robert M. Maccarone
State Director