A Framework for Pretrial Justice

Elements of an Effective Pretrial System and Agency

The Framework
Goal: To Maximize Court Appearance, Public Safety, and Release rates. All other essential elements flow from this defining principle.

Appearance: Bail set at a figure higher than an amount reasonably calculated to [ensure court appearance] is ‘excessive’ under the Eighth Amendment.” *Stack v. Boyle* 342 U.S. 1 (1951).

Safety: Detention may be authorized when defendants are found “after an adversary hearing to pose a threat to the safety of individuals or to the community which no condition of release can dispel.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).

Release: “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *Salerno*.

Risk-based Decisions: Maximizing the “3M’s”

Legal Foundation

The proper legal framework greatly facilitates maximizing the 3M’s, and includes:

1. A presumption of nonfinancial release on the least restrictive conditions necessary to ensure future court appearance and public safety.
2. Prohibition or restrictions on the use of secured financial conditions.
3. Provisions for detention without bail for a clearly defined and limited population of defendants who pose an unmanageable risk to public safety. Detention without bail must include robust due process protections for detention-eligible defendants and those detained.

All three of these components are interrelated and must exist within a legal framework to achieve maximized rates of release, appearance, and public safety.
Legal Principles: The Foundation

- Presumption of Innocence
- Right to Bail
- Release is the norm, detention the carefully limited exception
- Due Process
- Equal Protection

Legal Principles: Bail

- Bail is a process of release (Stack)
- Bail is not Money
- The purpose of bail is to release
- The purpose of “no bail” is to detain
The legal principle of release on the least restrictive conditions starts with the initial contact with law enforcement. High functioning jurisdictions use citation releases or summonses by law enforcement in lieu of custodial arrests for non-violent offenses when the individual’s identity is confirmed and no reasonable cause exists to suggest the individual may be a risk to the community or miss the ensuing court date.

The Multnomah Example: Delegated Authority

- **Excluded:**
  - Murder
  - Treason
  - Person crime w/ prior person crime
  - 3rd DUI
  - Weapons
  - Burg I
  - Sex Offender Registry
  - Meth Man/Deal (4,389/12%)

- **Arrest and Booking** (35,965)

- **Eligible Defendants Screened by Recognizance Unit**

- **Pre Initial Appearance ROR or Referral to Pretrial Supervision** (13,289/37% of total)

- **Defendant scores 0-9 on Recognizance Risk Assessment** (4,935/14%)

- **Traffic or Non-person Misdemeanor** (8,355/23%)

- **Police and Recognizance Unit have override authority**
Early Criminal Case Screening

Trained and experienced prosecutors screen arrest filings before initial appearance to determine the most appropriate charge or action. Early screening helps:

- reduce needless pretrial detention based on bail decisions made using arrest charges;
- aid prosecution in determining the most appropriate recommendations for pretrial release or detention;
- dispose of weaker cases sooner and target resources to higher level cases; and
- identify defendants eligible for diversion and other alternatives to adjudication.

Screening outcomes range from dismissing or reducing charges, offering defendants referrals to diversion or problem-solving courts or preparing the best bail recommendations at the initial court appearance.

Active Defense Counsel

Defense counsel engaged before initial appearance and prepared to represent the defendant regarding pretrial release/detention.

- The U.S. Supreme Court ruled in *Rothgery v Gillespie County*, 554 U.S. 191 (2008) that the initial bail hearing is a critical stage in the criminal case because liberty is at stake. Therefore, this decision point requires legal representation.

- The American Bar Association’s “Ten Principles of a Public Defense Delivery System” recommend that clients are screened for eligibility and defense counsel assigned as soon as feasible after clients’ arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention, or request, and usually within 24 hours thereafter.
Inter-agency coordination that help allocate scarce resources efficiently, reduce jail overcrowding, and increase public confidence in and support for criminal justice processes, enhancing system performance and, ultimately, the integrity of the law.

Coordinating bodies include all three branches of government and other relevant stakeholders and address specific and systemic issues. Within the pretrial context, coordinating bodies analyze current performance (e.g., of detain/release decisions), and suggest opportunities for improvement.


Characteristics of Highly Effective Teams

1. A CLEAR AND ELEVATING GOAL
2. RESULTS-DRIVEN STRUCTURE
3. COMPETENT TEAM MEMBERS
4. UNIFIED COMMITMENT
5. COLLABORATIVE CLIMATE
6. STANDARDS OF EXCELLENCE
7. EXTERNAL SUPPORT AND RECOGNITION
8. PRINCIPLED LEADERSHIP

A dedicated pretrial services agency ensures that management of essential functions occurs under a single organization goal and better coordination among elements—f

Preferably, the pretrial services agency should be a separate, independent entity. Jurisdictions may incorporate pretrial services agencies within a larger “parent” organization, if that component has:

1. a clearly-defined, pretrial service related function as its purpose;
2. staff assigned only to pretrial-related work with pretrial defendants; and
3. management that can make independent decisions on budget, staffing, and policy.

Pretrial Services Agency Functions

- **Risk Assessment**
  - Screening
  - Validated Assessment
  - Recommendations

- **Risk Management**
  - Supervision
  - Monitoring
  - Support

- **Service Integration**
  - Substance Abuse
  - Mental Health

- **Performance Measurement**
  - Metrics
  - Satisfaction
  - Feedback
## Gap Analysis: Pretrial System

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<tr>
<th>Element</th>
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<th>Improved</th>
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<tbody>
<tr>
<td>Guiding Principle of Risk Based Decisions</td>
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<td>Presumption of Non-Financial Release</td>
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<td>Release Options following release</td>
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<tr>
<td>Delegated Release Authority</td>
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<td>Early Prosecutorial Case Screening</td>
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<td>Defense Counsel at Initial Appearance</td>
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<tr>
<td>Dedicated Pretrial Services Agency</td>
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### Operationalized Mission

A mission statement identifies a program’s desired outcomes, importance, and focus, outlines its management, and describes why the agency is the best option to achieve the desired result.

1. Tells the world who you are, what you do, and why you’re important.
2. Guides strategic and day-to-day operational decisions.
3. Provides a “brand” and focuses Leadership, Staff and Customers on goals and principles.
5. Helps define agencies within a larger organization.
Effective pretrial systems and agencies use validated assessment criteria to gauge a defendant’s likelihood of FTA and rearrest. The assessment is empirical and preferably based on local research to ensure that its factors are proven as the most predictive of pretrial failure.

Separate instruments also may be used to predict the likelihood of new violent offenses, domestic violence charges, substance use disorders and mental health needs.

Validated Pretrial Risk Assessments

Sequential Review of Defendant Population

1. Screening, assessment and recommendation at multiple decision points from initial appearance to adjudication.
2. Subsequent screening, assessment and recommendation that focus on new or updated information about the defendant.
3. Recommendations appropriate to newly assessed risk level.
4. Restrictions against conditions more stringent than the defendant’s risk level suggests to “encourage” release.
5. Changes in supervision levels (more/less restrictive) as a defendant’s record of appearance, arrest-free behavior and condition compliance warrants.
Supervision levels tied to assessed risk levels greatly improve outcomes. Conversely, improper supervision produces poor outcomes and wastes resources. (The “risk principle”).

According to available research, effective pretrial supervision includes:

- Notification to defendants of upcoming court dates
- Early and meaningful responses to defendant conduct
- Notification to the Court of defendant conduct and the possible need for supervision adjustment

Performance Measurement

High-Functioning Pretrial Agencies collect and publish performance and outcome measures related to their core functions. Pretrial Services Agencies should at least measure and report:

1. Appearance Rate
2. Safety Rate
3. Release Rate
4. Concurrence Rate

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## Gap Analysis: Pretrial Agency

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<tr>
<th>Element</th>
<th>Present</th>
<th>Missing</th>
<th>Improved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dedicated Pretrial Services Functions</td>
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<tr>
<td>Operationalized Mission</td>
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<td>Universal Screening</td>
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<td>Validated Assessment Instrument</td>
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<td>Sequential Review of Release/Diversion Eligibility</td>
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<td>Supervision to Match Risk</td>
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<td>Performance Measurement</td>
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Additional Information

National Institute of Corrections
www.nicic.gov
Technical Assistance Program
www.nicic.gov/TA

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Mapping

Essential Elements of a
Pretrial System and Agency
Arrest and Processing (Pre Initial Appearance)
Initial Appearance Processing

- Prosecutorial Charge Screening
- Appointment of Counsel
- Risk Assessment
Decisions and Outcomes

- Initial Appearance
  - Release
    - Release, No Supervision
    - Differentiated Supervision
  - Initial Detention Pending Release
    - Sequential Review of Detained Population