



**JUDICIAL OFFICER'S  
REFERENCE ON  
ALTERNATIVES TO  
DETENTION AND  
CONDITIONS OF RELEASE**

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THE JUDICIAL OFFICER’S REFERENCE ON ALTERNATIVES TO DETENTION AND  
CONDITIONS OF RELEASE: MONOGRAPH 110  
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## **FOREWARD**

The judicial officer is constantly challenged with striking a balance between honoring the rights of the accused and protecting the safety of the community. Former Chief Justice William H. Rehnquist reminded us in *U.S. v. Salerno*, 481 U.S. 739 (1987), that, as it relates to pretrial defendants, “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” Pretrial services officers strive to assist judicial officers by identifying those defendants who can safely be released to the community pending trial with the least restrictive conditions necessary to assure court appearances and the safety of the community. It is the hope of the Criminal Law Committee of the Judicial Conference that this Monograph will be frequently referenced and that each alternative and/or combination of alternatives to detention will be carefully considered before any defendant is ordered detained.

## CHAPTER I. INTRODUCTION

*Judicial Officer's Reference to Alternatives to Detention and Conditions of Release* is designed to provide judicial officers with an updated list and description of the most current alternatives to detention and conditions of release. It is intended to provide judicial officers with the framework for considering specific alternatives to detention and conditions of release when determining which, if any, condition(s) of release can sufficiently mitigate the risk of nonappearance and/or danger to any other person or the community. The document is structured to provide identical information for each alternative to detention and condition of release. It is hoped that this format will ease the reader's task of identifying relevant information for each alternative and condition.

This document identifies new alternatives to detention that are available as a result of emerging technologies (*e.g.*, location and computer monitoring) as well as more current descriptions and considerations for previously existing alternatives to detention. This monograph also differentiates between mandatory conditions of release, alternatives to detention, and conditions of release. Chapter IV addresses alternatives to detention, from least to most restrictive, that are intended to mitigate the more serious risks posed by defendants. Chapter V addresses conditions of release that are intended to be imposed alone or in conjunction with alternatives to detention to provide structure and/or restrictions that may assist in mitigating the less serious risks posed by defendants.

In essence, the alternatives to detention require more resources to implement than the conditions of release and are generally more intrusive. Moreover, each alternative to detention is meant to address a specific, thematic need (*e.g.*, mental illness and/or substance abuse) within the life of the defendant, whereas the conditions of release are more general parameters and are intended to address episodic or more easily corrected behavior (*e.g.*, carrying a weapon and/or unemployment). Neither the alternatives to detention nor the conditions of release can guarantee the presence of the defendant as required or the safety of the community. However, when used individually and in combination to address identified risks, both have been shown to enhance the likelihood of appearance and community safety. The cost to implement these programs and supervise defendants is substantially lower than the cost of pretrial detention.

The pretrial detention rate has substantially increased since the 1982 passage of the Pretrial Services Act. Given the rising costs of pretrial detention, these alternatives and conditions provide a significant opportunity to ensure cost effective service to the public. Thus, by imposing conditions of release and alternatives to detention, judicial officers are able to promote the responsible use of public funding to protect the rights of defendants and to reasonably ensure the appearance of the defendant and the safety of the community as required.

## CHAPTER II. MANDATORY CONDITIONS OF RELEASE

Under 18 U.S.C. § 3142(c)(1)(A), if the judicial officer determines release is appropriate for a defendant charged with a federal offense, there are two mandatory conditions that must be imposed: [1] “the person not commit a Federal, State, or local crime during the period of release”, [2] “the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to Section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).”

The DNA collection provision was entered into law pursuant to the *DNA Fingerprint Act of 2005* (which is Title X of the *Violence Against Women Act and Department of Justice Reauthorization Act of 2005*).

The *Adam Walsh Child Protection and Safety Act of 2006* revised 18 U.S.C. § 3142(c)(1)(B) to require additional conditions of pretrial release in any case involving a defendant alleged (1) to have committed one of 20 specified sex offenses involving a minor victim or (2) to have failed to register as a sex offender, in violation of 18 U.S.C. § 2250. The mandatory conditions the court must impose when releasing a defendant charged with an offense defined under 18 U.S.C. § 3142(c)(1)(B), are as follows: electronic monitoring and (iv) abide by specified restrictions on personal associations, place of abode, or travel; (v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense; (vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency; (vii) comply with a specified curfew; and (viii) refrain from possessing a firearm, destructive device, or other dangerous weapon.

With the exception of the mandatory conditions stated above, all other conditions imposed on defendants released under 18 U.S.C. § 3142(c)(1)(B) should be the least restrictive conditions to reasonably assure appearance at court and the safety of the community.

## CHAPTER III. ALTERNATIVES TO DETENTION

### Types of Bonds 18 U.S.C. § 3142(a)(1), (b), and 18 U.S.C. § 3142(c)(1)(B)(xii)

#### **Personal Recognizance Bond: 18 U.S.C. § 3142(a)(1), (b)**

**Description:** 18 U.S.C.<sup>1</sup>

The purpose of the P.R. bond is to facilitate the defendant's release on the least restrictive conditions necessary to reasonably assure the appearance of the defendant at court proceedings and/or protect the safety of the community. Release on a P.R. bond prevents the use of unnecessary financial bonds or the unnecessary use of public funding.

**Appropriate Use:** Judicial officers should consider the P.R. bond if, based on information received from the U.S. attorney's office, defense counsel, and pretrial services, they believe that no other conditions are required to reasonably assure the defendant's appearance at court proceedings and ensure the safety of the community.

**Role of Pretrial Services:** The officer is expected to diligently obtain and succinctly present all pertinent information to the court and make sound recommendations regarding the defendant's release decision. If the defendant does not pose a danger to the community or seem to pose a risk of nonappearance, further pretrial involvement (*i.e.*, supervision) may be unnecessary.

**Impact on Appearance:** The P.R. bond has no impact on appearance. The judicial officer is reasonably sure that the defendant will appear at all future court proceedings as required.

**Impact on Community Safety:** The P.R. bond has no impact on community safety. It can be used when the judicial officer can be reasonably sure that the defendant will not engage in criminal activity while released on bond.

**Considerations:** If there are no identified risk factors of nonappearance or danger to the community, a P.R. bond should be strongly considered.

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<sup>1</sup>John L. Weinberg, *Federal Bail and Detention Handbook* [6-3], Release No. 7 (New York April 1995).

## Financial Bonds:

**Description:** Financial bonds may be categorized as: 1) Unsecured Appearance Bonds or 2) Secured Appearance Bonds.

### 1) Unsecured Appearance Bond: 18 U.S.C. § 3142(b)

**Description:** A judicial officer shall order the pretrial release of the person:

...upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release...and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a), unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.<sup>2</sup>

The unsecured appearance bond also may be used in conjunction with a third-party cosigner (*e.g.*, family member/friend or community organization). The third-party cosigner is responsible for assuring the court that the defendant will appear. If the defendant does not comply with the release order, the third-party cosigner may be subject to a finding of contempt of court under 18 U.S.C. § 401(3).

### 2) Secured Appearance Bonds: 18 U.S.C. § 3142(c)(1)(B)(xi), (xii)

Secured appearance bonds include the following types of security agreements:

a) **Property Bond:** A property bond requires the execution of an agreement to forfeit designated property or other assets to the court. The court should be given some assurance, formally or informally, by testimony or by the posting of a deed, that the property posted is legitimately available and offered. The court may allow a third party to execute an agreement of forfeiture; however, the judicial officer should first ascertain whether the prospect of forfeiture by the third party would be sufficient to assure the appearance of a defendant.<sup>3</sup>

b) **Cash Bond:** A cash bond requires the defendant to post with the clerk of court the total amount in cash.

c) **Percentage Bond:** A percentage bond requires the defendant to post with the clerk of court a percentage in property or cash of the total amount ordered (*e.g.*, 10 percent-90 percent). This allows for release without the use of a bail bondsman and requires the defendant to pay the balance amount if he or she defaults.

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<sup>2</sup> 18 U.S.C. § 3142(b)

<sup>3</sup> 18 U.S.C. § 3142(g)(4)

Secured appearance bonds may include forfeiture agreements and solvent sureties.

d) **Forfeiture Agreement:** As part of a financial bond, under 18 U.S.C. § 3142(c)(1)(B)(xi), the court may require a defendant to execute an agreement to forfeit, upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of a person as required, and post with the court such proof of ownership of the property or such percentage of the money as the judicial officer may specify.

If a defendant does not appear before the court as required, the judicial officer may, whether the person has or has not been charged with an offense under this section, declare any property designated pursuant to that section to be forfeited to the United States.

e) **Bond with Solvent Surety:** Under 18 U.S.C. § 3142(c)(1)(B)(xii), the court may require a person to execute a bail bond with solvent sureties. A surety can be either a person or a commercial entity, such as a bail bondsman, who must satisfy the court that there are sufficient unencumbered assets that can be used to pay the amount of the bail bond in the event of nonappearance.

Courts should consider requiring solvent sureties for defendants with a documented history of failing to appear at judicial proceedings or who have failed to report while under any form of criminal justice supervision. A solvent family member or friend may provide the defendant with a strong incentive to make all court appearances and comply with the conditions of pretrial release.

When considering the use of a bail bondsman as a solvent surety, it is important to note that the relationship between the defendant and the bondsman is usually limited to the bond transaction. In some jurisdictions, bail bondsmen may supplement pretrial supervision in monitoring the defendant's activities since they have a pecuniary interest in the defendant's appearance. However, a pretrial services officer and a bail bondsman may have conflicting interests in a defendant's pretrial outcome, with the bondsman primarily concerned with the defendant's appearance, while the pretrial services officer also has a concern with the safety of the community.

**Purpose:** Financial conditions may only be used to address the issue of appearance. A judicial officer may not impose a financial condition that results in the pretrial detention of a person (18 U.S.C. § 3142(c)(2)).

**Appropriate Use:** This alternative is for defendants whose appearance may only be reasonably assured with an imposition of a financial condition. Examples include defendants with a history of nonappearance; defendants with limited or nonexistent family or community ties; defendants with sizable, liquid assets available to assist in their flight; and defendants with ties to foreign countries or who frequently travel to foreign countries.

**Role of the Officer:** During the investigation, the pretrial services officer may request documents such as federal income tax returns; lease agreements; bankruptcy documents; utility bills; earning statements; court orders; tax assessment records; and bank, loan, credit card, and mortgage statements to verify financial resources.

**Impact on Appearance:** Posting a secured appearance bond can reasonably assure the appearance of the defendant. Cash, collateral or percentage bonds provide incentive for the defendant to appear, as the property/money posted with the court is refunded upon resolution of the case. However, pursuant to the provisions of 28 U.S.C. § 2044, upon motion of the U.S. attorney, the court shall hold bail money, after a determination of the defendant's guilt, posted with the court that belongs to and was deposited by or on behalf of the defendant. This money is then to be paid over to the U.S. attorney for payment of any assessment, fine, restitution, or penalty upon the defendant, unless a financial penalty cannot be imposed for the offense or the defendant would suffer an undue hardship.

The use of a cosigner may reasonably assure the defendant's appearance when a close relationship exists between the defendant and a cosigner (*e.g.*, family member or close friend).

In order to reasonably assure appearance, the court may require the defendant to execute a forfeiture agreement, or pay a specified amount or percentage of a specified amount of cash to the clerk of court.

**Impact on Community Safety:** Financial bonds, by statute, do not address community safety.

**Considerations:** (1) An unsecured bond does not require immediate financial obligation; (2) Use of third-party cosigners who fail in their sworn obligation can require additional motions and hearings if they are to be held responsible for the inadequate fulfillment of their role; (3) Many defendants lack the financial means necessary to post a secured bond; (4) Percentage bonds are refundable as long as the defendant complies with all conditions set forth by the court; (5) Funds paid to a commercial bondsman to secure a defendant's release are generally not refundable, which eliminates a valuable incentive for appearance; (6) When considering a property bond, judicial officers should consider that the value of a property and the amount of equity in that property are not always equivalent; (7) Efforts to ensure the character of the surety and that surety's relationship to the defendant should be made by the judicial officer and pretrial services office prior to considering a surety bond.

## **Pretrial Services Supervision**

### **18 U.S.C. § 3142(c)(1)(B)(vi)**

**Description:** A pretrial services officer monitors a defendant's compliance with conditions of release through personal and/or telephone contact with the defendant and other individuals. Supervision may include residential halfway house placement, drug and alcohol treatment, and counseling services. While under supervision, the officer may assist the defendant to secure employment, medical, legal or social services. Any apparent violation of release conditions should be reported to the court and the U.S. attorney office and should include appropriate modifications of release conditions.<sup>4</sup>

**Purpose:** The purpose of pretrial services supervision is to assure compliance with conditions of release and to provide the defendant with services as needed.

**Appropriate Use:** Supervision should address identifiable risks. If risks of nonappearance and/or community safety are indicated in the assessment section of the pretrial services report, supervision should reduce these risk factors. Supervision could be the sole condition, but it most often is used in conjunction with other conditions.

**Role of Pretrial Services:** The officer is expected to clarify all court orders, develop and thoroughly explain reporting expectations based on the orders of the court, provide referrals to community services (if necessary), monitor compliance throughout supervision, and report all infractions of the conditions of release to the court and U.S. attorney's office.

**Impact on Appearance:** The defendant's appearance is reasonably assured through supervision contacts.

**Impact on Community Safety:** Supervision activities reduce the likelihood that a defendant may commit crime while on release.

**Considerations:** Pretrial services supervision: (1) reduces jail overcrowding; (2) avoids the greater costs of detention; (3) increases the court's and counsel's accessibility to the defendant; (4) allows the officer to address problems that could affect the defendant's appearance and/or community safety; and (5) enables any apparent violation of release conditions to be immediately reported to the court and the U.S. attorney. However, the imposition of supervision, absent any risk to community safety or of nonappearance, is an inefficient use of resources (*i.e.*, pretrial services staff and public funding).

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<sup>4</sup>18 U.S.C. § 3154(5)

## **Third-Party Custody**

### **18 U.S.C. § 3142(c)(1)(B)(I)**

**Description:** This alternative places a defendant “in the custody of a designated person, who agrees to assume supervision and to report any violation of release conditions to the court.<sup>5</sup> The designated person must be able to reasonably assure the judicial officer that the defendant will appear as required and will not pose a danger to the safety of any other person or the community.

**Purpose:** Third-party custody is used to assist the court in monitoring conditions of release to reasonably assure the defendant’s appearance in court and safety of the community.

**Appropriate Use:** Third-party custody is effective when used with pretrial services supervision. This alternative is appropriate with defendants who may have good community or family ties. It also is appropriate when used with other alternatives, such as outpatient treatment and home confinement with location monitoring to monitor the defendant’s behavior and/or compliance with release conditions. The court may order release directly to third-party custodians such as parents, siblings, other relatives, friends or employers.

It is not intended by this provision that the custodian be held liable if the person to be supervised absconds or commits crimes while under the custodian’s supervision. Rather it is intended to alert the judicial officer to the necessity of inquiring into the ability of the proposed custodian(s) to supervise their charges and to impress on the custodian(s) the duty they owe to the court and to the public to report any violations to the court.<sup>6</sup>

However, third-party custodians who willfully fail to comply with the release order may be subject to the provisions of 18 U.S.C. § 401 (Contempt of Court).

**Role of Pretrial Services:** The court may direct the pretrial services office to provide a report to the court that describes the third-party custodian’s suitability. To prepare such a report, an officer will have to investigate the custodian’s employment, family/community ties, financial condition, and criminal history.

**Impact on Appearance:** Supervision by third-party custodian and a pretrial services officer may reasonably assure the defendant’s appearance. The personal relationship between the defendant and the third-party custodian deters violations of release conditions that would jeopardize that relationship. Third-party custodians deter but do not prevent nonappearance.

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<sup>5</sup> 18 U.S.C. § 3142(c)(B)(i)

<sup>6</sup> S. Report No. 98-225 at 14 (1983).

**Impact on Community Safety:** The defendant and third-party custodian usually have a personal relationship. This relationship and the fact that the defendant's activities are monitored, both by the custodian and the pretrial services officer, combine to reduce the likelihood that the defendant will commit criminal offenses or pose a danger to the community.

**Considerations:** (1) This alternative reduces jail overcrowding and cost to the Government; (2) With third-party oversight, the defendant is more accessible to the court and defense counsel; (3) A defendant will have the opportunity to maintain employment or education, thereby remaining self-supporting. (4) However, third-party custodians cannot guarantee compliance with conditions of release; and (5) Custodians may, because of the personal relationship with the defendant, be reluctant to report violations of conditions of release.

## Substance Abuse Testing

### 18 U.S.C. § 3142(c)(1)(B)(ix),(x),(xiv)

**Description:** Substance abuse testing makes use of technology to detect ingestion of alcohol or illicit substances. This monitoring may be performed by testing the urine, sweat, breath, and/or through other detection methods. Additionally, national procedures exist for comprehensive laboratory analysis if the defendant denies or contests illicit substance usage. Often, this alternative will be paired with substance abuse treatment.

**Purpose:** Through continual, randomly administered testing, the defendant is monitored for the use of banned substances that may contribute to being a greater risk of nonappearance and/or danger to the community.

**Appropriate Use:** This alternative will likely be combined with pretrial services supervision and will usually be ordered for defendants with an identified substance abuse history. The imposition of this alternative helps minimize concerns that the defendant will continue to abuse substances while on pretrial release and thereby pose a risk of nonappearance or danger to community safety.

**Role of Pretrial Services:** After ensuring that the defendant comprehends the court's order, the officer will test the defendant randomly. As an alternative or additional method of testing, an officer can refer a defendant for participation in substance abuse testing through a certified vendor. In either case, the officer is expected to continually monitor the results of these random tests and inform the court of the defendant's compliance. Moreover, the officer is expected to make changes to the testing frequency based on the identified risks of the defendant.

**Impact on Appearance:** Substance abuse testing does not prevent nonappearance but it may reduce or eliminate behavior that would interfere with appearance (*i.e.*, drug and alcohol usage).

**Impact on Community Safety:** Substance abuse testing does not prevent criminal activity or dangerous behavior but it may reduce safety concerns often associated with alcohol abuse and/or drug usage.

**Considerations:** (1) Substance abuse detection testing is widely accepted and can be easily performed; (2) Through substance abuse testing, officers can better gauge the true level of substance abuse and to make referrals or recommendations for substance abuse treatment if necessary; (3) This alternative is less expensive and monitors the sobriety of defendants more effectively than counseling alone; (4) Testing can be seen as invasive; (5) Defendants may attempt to alter the test results through the use of prosthetic urinary devices or by ingesting various test-altering substances; (6) Confirmatory laboratory results for tests in which the defendant denies or contests the initial results are not immediately available; (7) A chain of custody record must be maintained with the use of confirmatory testing; (8) By maintaining sobriety, a defendant may participate more fully in his/her defense; (9) A testing regimen may be limited by the defendant's area of residence and the availability of substance abuse testing vendors.

## **Substance Abuse Treatment**

### **18 U.S.C. § 3142(c)(1)(B)(x)**

**Description:** Community-based treatment consists of residential programs, outpatient sessions, and self-help groups, and is appropriate for defendants whose substance abuse can most effectively be treated in a residential or outpatient setting. Although more costly than an outpatient approach, inpatient treatment may be the most effective modality for those exhibiting particularly severe addiction. Typically, these treatment options also include court-approved substance abuse testing.

**Purpose:** Substance abuse treatment is an alternative to detention for defendants with substance abuse problems if their appearance and the community's safety can reasonably be assured with the imposition of this alternative.

**Appropriate Use:** This alternative should always be used with pretrial services supervision as the pretrial services office has access to treatment providers and can monitor the defendant's progress and compliance with treatment.

**Role of Pretrial Services:** The officer can explore different treatment options and recommend the most appropriate one. The officer will maintain contact with the treatment provider to monitor the defendant's compliance and progress. Furthermore, the officer can determine the defendant's ability to make treatment co-payments and, if applicable, facilitate those payments.

**Impact on Appearance:** Substance abuse treatment does not prevent nonappearance, but it may reduce or eliminate behavior that would interfere with appearance. When, as part of pretrial services supervision, a defendant is referred to and participates in substance abuse treatment, the pretrial services office is able to notify the court about the defendant's compliance.

**Impact on Community Safety:** Substance abuse treatment does not prevent criminal activity or dangerous behavior, but it may reduce or eliminate safety concerns often associated with alcohol and drug use/abuse.

**Considerations:** (1) Substance abuse treatment can help the defendant to be a productive member of the community; (2) Although treatment can be costly, it is often less costly than detention; (3) The defendant may have insurance or other financial means to pay for a portion or all of the cost of treatment; (4) This alternative reduces jail overcrowding; (5) Through counseling, a defendant may be able to participate more effectively in his or her defense; (6) The defendant may live in an area with limited or no treatment facilities. (7) Treatment, in conjunction with pretrial services supervision, enables the pretrial services office to monitor the defendant's compliance with release condition; (8) Pretrial services offices often have contracts with treatment providers that assure immediate access to treatment.

## **Mental Health Treatment**

### **18 U.S.C. § 3142(c)(1)(B)(x)**

**Description:** Community-based treatment is appropriate for defendants whose mental health problems can most effectively be treated in an outpatient environment. Treatment may include, but is not limited to, psychiatric/psychological evaluation, counseling and/or therapy, medication and/or medical treatment. This condition may be modified based on treatment progress.

**Purpose:** Outpatient mental health treatment is an alternative to detention for defendants with mental health problems whose appearance and/or the community's safety can reasonably be assured with imposition of this alternative.

**Appropriate Use:** This alternative is most effective when combined with pretrial services supervision as the pretrial services office has access to treatment providers and can monitor the defendant's progress and compliance with treatment. This condition is appropriate for defendants with an identified mental health issue.

**Role of Pretrial Services:** The pretrial services officer can explore different treatment options and recommend the most appropriate one. The officer will maintain contact with the treatment provider to monitor the defendant's compliance and progress. Furthermore, the officer can determine the defendant's ability to make treatment co-payments and, if applicable, facilitate those payments. The pretrial services office will notify the court about the defendant's compliance, provide for needed treatment, and assist with daily functioning.

**Impact on Appearance:** Similar to substance abuse treatment, mental health treatment does not prevent nonappearance but it may reduce or eliminate behavior that interferes with appearance.

**Impact on Community Safety:** Mental health counseling and/or medication may reduce or eliminate safety concerns associated with some mental health problems.

**Considerations:** (1) Mental health treatment can help the defendant to be a more productive member of the community; (2) Although treatment can be costly, it is often less costly than detention; (3) The defendant may have insurance or other financial means to pay for a portion or all of the cost of treatment; (4) This alternative reduces jail overcrowding; (5) Through counseling, a defendant may be able to participate more effectively in his or her defense; (6) The defendant may live in an area with limited or no treatment programs; (7) Treatment, in conjunction with pretrial services supervision, enables the pretrial services office to monitor the defendant's compliance with release conditions; (8) Pretrial services offices often have contracts with treatment providers that assure immediate access to treatment.

## **Sex Offender Counseling**

## 18 U.S.C. § 3142(c)(1)(B)(x)

**Description:** Outpatient (individual or group) sex offender counseling is an alternative to detention that requires defendants to attend counseling sessions aimed at the reduction of inappropriate sexual urges and behavior.

**Purpose:** Sex offender counseling attempts to enhance the safety of the community by addressing the underlying causes of inappropriate sexual desires and behaviors.

**Appropriate Use:** This alternative can be ordered for defendants charged with, or having a history of, sexual offenses.

**Role of Pretrial Services:** The pretrial services officer makes a referral to an approved vendor for treatment. Alternatively, the defendant may contract his or her own counselor, so long as this professional meets the criteria of the judicial officer. In either case, the officer is expected to monitor the defendant's progress through regular contact with the treatment provider and adjust the treatment plan as necessary throughout the period of supervision.

**Impact on Appearance:** Sex offender counseling does not address risks of nonappearance.

**Impact on Community Safety:** When a defendant attends sex offender counseling, the risks that are associated with criminal behavior are addressed, but not removed. Thus, although new criminal activity cannot be prevented through the use of this alternative, it assists in the deterrence of this behavior.

**Considerations:** (1) The defendant may have insurance or other financial means to pay for a portion or all of the cost of treatment; (2) Although treatment can be costly, it is often less costly than detention; (3) This alternative reduces jail overcrowding; (4) Treatment, in conjunction with pretrial services supervision, enables the pretrial services office to monitor the defendant's compliance with release conditions; (5) Although attendance can be compulsory, active participation in the sessions that require self-incriminating statements prior to plea cannot be required due to the presumption of innocence; (6) Treatment providers may not be readily available in all areas; (7) Pretrial services offices often have contracts with treatment providers that assure immediate access to treatment.

## **Computer Monitoring**

### **18 U.S.C. § 3142(c)(1)(B)(xiv)**

**Description:** Computer restrictions may be appropriate for defendants who have been charged with use of a computer or other access device to commit an alleged offense. Cybercrimes generally involve the use of a computer as an object, victim, target, subject, storage device, intrusion device, instrument, or tool in criminal activity. Some examples of the types of charges where computer restriction or monitoring may be appropriate are fraud, forgery, counterfeiting, and Internet sex offenses, including child pornography cases.

**Purpose:** A computer restriction is intended to minimize computer related risk factors to reasonably assure the safety of the community.

**Appropriate Use:** The court may order a defendant to satisfy any other condition that is necessary to reasonably assure the appearance of the person as required and to assure the safety of any other person and the community. Case law provides additional guidance on the appropriate restrictions to place on computer and Internet use.

**Role of Pretrial Services:** The pretrial services officer's supervision strategy to these types of conditions may vary from plain view searches to the installation of computer monitoring software. The supervision activities implemented by officers will depend on the degree of discretion provided in the judicial officer's order for this special condition. The officer will reasonably assure that the defendant complies with the conditions imposed through field contacts or other means supported by the technologies available to them.

**Impact on Appearance:** The computer monitoring condition does not directly impact appearance rates.

**Impact on Community Safety:** Imposing limitations on computer access may prevent potential criminal activity during the period of supervised pretrial release.

**Considerations:** (1) The availability of computer monitoring software or technologies can vary and may not be completely reliable; (2) Limiting a defendant's access to computers may impact other household members; (3) Computer use may be legitimately required for work purposes and as a result the condition may be difficult to implement in a professional setting; (4) Internet access devices, chat rooms, e-mail, and file storage devices continuously change.

# Location Monitoring

## 18 U.S.C. § 3142(c)(1)(B)(iv),(vii),(xiv)

**Description:** The location monitoring (LM) program can be ordered to restrict a defendant’s movements in the community and may consist of three basic types of restrictions, ranging from least to most restrictive: curfew, home detention, and home incarceration:

### Location Restriction Types (From Least to Most Restrictive)

#### **Curfew**

Curfew requires the participant to remain at home during set time periods of the day. For example, the defendant would be required to remain in his or her home during the hours of 8:00 p.m. to 6:00 a.m. This can be monitored with or without location monitoring technology.

#### **Home Detention**

Home detention requires a participant to remain at home at all times except for pre-approved and scheduled absences for employment, education, treatment, attorney visits, court appearances, court-ordered obligations, or other activities as approved by the officer.

#### **Home Incarceration**

Home incarceration is the most restrictive component of the LM program. It requires 24-hour-a-day monitoring except for court appearances and other activities specifically approved by the court.

**Methods of Monitoring:** An array of LM technologies can be used to verify program compliance, ranging from the least intrusive to the most intrusive. Methods of monitoring should be determined based on identified risks and imposed location restriction conditions. The methods of monitoring are as follows:

Methods of Monitoring	Selection Considerations	Limitations
<p><b><u>Voice Verification System</u></b> Automated systems place and/or receive calls to verify presence.</p>	<p>(1) Home confinement or curfew can be verified without traditional LM equipment, although a telephone line is still needed.</p> <p>(2) Provides a cost effective solution for monitoring home incarceration, home detention and curfew compliance.</p> <p>(3) Provides an alternative for when a physical condition prohibits traditional LM equipment.</p>	<p>(1) Some physical or environmental factors may affect the voice recognition system (<i>i.e.</i>, colds, noise, barking, etc.).</p> <p>(2) The random verification phone calls may interfere with the defendant’s sleep.</p>

<b>Methods of Monitoring</b>	<b>Selection Considerations</b>	<b>Limitations</b>
<p><b><u>Radio Frequency (RF) Technology</u></b></p> <p>Defendant’s presence is verified at an authorized location using a transmitter and receiver; 24-hour electronic surveillance is designed to alert an officer when a defendant leaves a specific location (usually the residence), returns home late (or leaves early) from a pre-approved schedule, or tampers with the electronic monitoring equipment</p>	<p>(1) RF is appropriate when there is a reduced/no need for surveillance component outside the authorized location.</p> <p>(2) Provides a cost effective solution for monitoring home incarceration, home detention and curfew compliance</p>	<p>(1) The defendant’s whereabouts are electronically monitored only when the transmitter is in range of the receiver (<i>i.e.</i>, home; employment).</p> <p>(2) Violations cannot be detected electronically when the defendant is out of range of the receiver.</p> <p>(3) Environment factors (<i>e.g.</i>, presence of mirrors, etc.) may interfere with the RF technology.</p>
<p><b><u>GPS (Passive)</u></b></p> <p>Records a defendant’s location from the time leaving the residence until the defendant’s return.</p> <p>While at the residence, the defendant is required to dock the GPS monitor.</p> <p>The information pertaining to defendant movement is downloaded to the vendor’s management system which includes a mapping system.</p>	<p>(1) Most effective when there is no identified 3<sup>rd</sup>-party risk (<i>i.e.</i>, the defendant does not pose a threat of harm to another person or the community).</p> <p>(2) This technology relies on compatible cellular service which may not be offered in particular areas.</p> <p>(3) Provides a form of surveillance, but not in “real-time.”</p>	<p>(1) Requires cellular coverage at all times.</p> <p>(2) Satellite and cellular service can be affected by wind, weather, structures and foliage.</p> <p>(3) Information on the defendant’s activities can only be retrieved when the person returns to their residence.</p>
<p><b><u>GPS (Active)</u></b></p> <p>Including Hybrid location monitoring technology permits moving between active and passive systems without an equipment change. Active GPS continuously monitors defendants’ movements, through an active tracking device which may contain a GPS receiver, a cellular modem, a radio frequency receiver/ dialer, or motion sensor.</p>	<p>(1) Provides enhanced monitoring when there is an identified 3<sup>rd</sup>-party risk.</p> <p>(2) Results in immediate notification of exclusion/inclusion zone violation.</p> <p>(3) A telephone land line not required.</p> <p>(4) Creates the ability to immediately determine the defendant’s whereabouts as a form of surveillance.</p> <p>(5) Provides enhanced surveillance of defendants with a history of crimes involving violence, identified as a sexual predator, or posing a risk to a particular person in the community.</p>	<p>(1) Requires cellular coverage at all times.</p> <p>(2) Satellite and cellular service can be affected by wind, weather, structures and foliage.</p> <p>(3) Requires close monitoring by supervising officer including the requirement to consistently respond to and investigate all key alerts.</p> <p>(4) While there is the ability to monitor a defendant 24/7, there is the reality that an officer will not have the resources to track a defendant in absolute “real time.”</p>

**Purpose:** Location monitoring technology provides officers with the capability to enforce and monitor a defendant’s compliance with one or more conditions of release. The various types of location monitoring technologies should be considered tools that may be utilized to:

1. Monitor court-imposed conditions.
2. Manage or mitigate identified defendant risks (such as the risk a defendant may present to a specific person).
3. Verify approved defendant locations at home or in the community; and/or provide information about the defendant's movement in the community.

**Appropriate Use:** This alternative will likely be combined with pretrial services supervision and will usually be ordered for defendants with identified histories issues like failing-to-appear, sexual deviance, weapons possession, and violence. A location restriction condition should be recommended or selected if a defendant poses such a risk that his or her presence in the approved home or their location in the community needs to be verified via location monitoring technology. The level of location restriction should always depend on the risk level of the defendant; the higher the level of risk, the greater the need for a more restrictive location restriction. Furthermore, the least invasive type of technology to address the level of risk should always be considered.

**Role of Pretrial Services:** The pretrial services officer will monitor the defendant's location and provide a schedule of approved leave based on the parameters set forth in the court order. The officer will notify the court and U.S. attorney's office of location infractions.

**Impact on Appearance:** The defendant will be informed that failure to be at the designated location at the designated time will be quickly detected. Location monitoring technology deters, but does not prevent, nonappearance.

**Impact on Community Safety:** Location monitoring systems allow officers to track and verify a defendant's presence in the community, thereby reducing the likelihood that the defendant will pose a danger to the community.

**Considerations:** (1) Location monitoring systems provide information regarding a defendant's whereabouts. However, the timeliness and manner in which the officer receives the information (*e.g.* alerts) and responds will vary and should be specified in a local location monitoring policy; (2) To effectively and consistently verify the defendant's compliance in the location monitoring program, the officer's efforts are labor intensive, particularly in the monitoring of defendants subjected to GPS tracking; (3) Although location monitoring technology has advanced considerably over the past five years, electronic malfunctions (*e.g.* technical problems) do occur and must be fully investigated before determining if a violation of program rules has occurred; (4) The court may designate the type of location monitoring technology to be utilized for monitoring the defendant or may give the officer the discretion to select the monitoring method.

## **Halfway House**

### **18 U.S.C. § 3142(c)(1)(B)(xiii)**

**Description:** A halfway house is a community facility that may provide such services as drug and alcohol testing and counseling, employment counseling and referral, residence and other services.

**Purpose:** Halfway house placement is an alternative to detention for defendants whose appearance cannot be reasonably assured and/or who may pose a danger to the community under less restrictive conditions.

**Appropriate Use:** This alternative is only effective in conjunction with pretrial services supervision as defendants are typically in need of the services noted above, which cannot be effectively monitored in a non-custodial environment.

**Role of Pretrial Services:** Pretrial services officers assess a defendant's needs and make referrals for placement. Officers are further obliged to monitor a defendant's progress through effective supervision practices and to inform the court if the defendant's situation improves so that a less restrictive alternative is appropriate.

**Impact on Appearance:** Placement at a halfway house can deter but not prevent nonappearance.

**Impact on Community Safety:** Placement at a halfway house can deter but not prevent criminal or dangerous behavior.

**Considerations:** (1) Halfway houses may cost less than detention; (2) Halfway houses may require payment by defendants to reduce the expense to the district; (3) Placement in a halfway house reduces jail overcrowding; (4) Halfway houses are not usually secured facilities; (5) Bed space may be limited; (6) Halfway house staff assist the officer in monitoring the defendant's activities in an effort to ensure compliance with release conditions and reduce violations; (7) The defendant may be able to be self-supporting through continued employment; (8) Halfway house placement may not be appropriate for all defendants (*e.g.*, defendants with prior poor adjustment to residential settings, mental health issues, or sexual offenses).

## CHAPTER IV. CONDITIONS OF RELEASE

### Employment 18 U.S.C. § 3142(c)(1)(B)(ii)

**Description:** In accordance with 18 U.S.C. § 3142(c)(1)(B)(ii), the court may specify that a defendant maintain employment, or, if unemployed, actively seek employment.

**Purpose:** The court may impose this condition to ensure that the defendant's time is occupied in responsible activity to reduce the risks of nonappearance and criminal activity. This condition also assists in providing defendants with a legitimate source of income and with the further development of job skills.

**Appropriate Use:** The court could consider this condition if it determines that employment might reduce the risk of nonappearance and danger to the community.

**Role of Pretrial Services:** The pretrial services officer instructs the defendant to obtain legitimate, verifiable employment. Various forms of assistance (*e.g.*, referral to a community resource, job search log, employment assessment) may be offered by the officer to assist the defendant in obtaining employment. Once employed, the officer will verify this employment through earning statements, contact with the employer if aware of the defendant's pretrial status, and/or on-site employment visits.

**Impact on Appearance:** Obtaining and maintaining employment increases the number of ties a defendant has to the community. Additionally, the condition promotes responsible behavior necessary for a defendant to appear at all proceedings.

**Impact on Community Safety:** When defendants obtain and maintain a legitimate source of income, their risk of committing a new criminal offense while on pretrial release due to financial motive is reduced. Moreover, the potential for future criminal acts may be averted through the development of job skills.

**Considerations:** (1) Defendants may lack job skills and will be substantially limited in the kind of jobs they will be able to obtain; (2) Some defendants possess criminal histories that may limit potential employment; (3) Depending upon the length of time the defendant is placed on pretrial release and the outcome of legal proceedings, the defendant may not be able to obtain and maintain consistent employment; (4) Defendants may pose a third-party risk to their employer; (5) Defendants may be retired and/or physically incapable of working; (6) Defendants may warrant special consideration (*e.g.*, a single parent that is the sole caretaker of dependants that make it difficult to maintain employment).

## **Education**

### **18 U.S.C. § 3142(c)(1)(B)(iii)**

**Description:** In accordance with 18 U.S.C. § 3142(c)(1)(B)(iii), the court may specify that a defendant maintain or commence an educational program. Educational programs may be full or part time and may be technical, vocational, or academic in nature.

**Purpose:** The court may impose this condition to ensure that the defendant's time is occupied in responsible activity to reduce the risks of nonappearance and criminal activity.

**Appropriate Use:** This condition may be appropriate for defendants who lack necessary educational skills to succeed in life. This characterization will likely encompass young defendants who have failed to complete secondary education or obtain a graduate equivalency degree (GED). However, the condition of education can be expanded beyond basic educational knowledge to include parental education, financial planning education, or other educational programs offered by local community resources.

**Role of Pretrial Services:** The pretrial services officer can assist the defendant by referral to local community agencies that provide the required services. Once this enrollment occurs, the officer should verify program participation as well as monitor progress while attending the educational program.

**Impact on Appearance:** Attending educational programs increases the number of ties a defendant has to the community. Additionally, the condition promotes responsibility and encourages the defendant's appearance at all proceedings.

**Impact on Community Safety:** Attending educational programming encourages the development of life skills that may reduce the defendant's perceived need for involvement in criminal activities.

**Considerations:** Depending upon the length of time the defendant is placed on pretrial release and the outcome of legal proceedings, the defendant may not be able to complete or make progress in an educational program.

## **Restricted Association, Place of Abode, Passport, or Travel** **18 U.S.C. § 3142(c)(1)(B)(iv)**

**Description:** In accordance with 18 U.S.C. § 3142(c)(1)(B)(iv) the court may order a defendant to abide by specified restrictions on personal associations, place of abode, passport or travel.

**Purpose:** In order to reasonably assure the defendant's appearance and the community's safety, the court may impose this condition to restrict or prohibit the defendant from having any contact with specified persons or organizations (*e.g.*, victims, potential witnesses, and commercial establishments); specify where the defendant is to reside (*e.g.*, residence of record, county of residence); require surrender of the defendant's passport; and/or restrict the defendant's travel to a specific geographic area (*e.g.*, county, state, judicial district, or continental United States).

**Appropriate Uses:** The various restrictions may be appropriate as follows: (1) Restriction of association when necessary to prevent the defendant's contact with co-defendants or unindicted co-conspirators, victims, witnesses, and/or any other specified persons; (2) Restriction of abode to address defendants with itinerant living arrangements or promote stable residences; (3) Surrender passport when necessary to reduce risk of international flight; (4) Restrictions on travel of defendants whose alleged offense involved travel or who maintain ties outside of the judicial district; (5) Mandatory application for defendants charged with sexually based offenses under the Adam Walsh Act.

**Role of Pretrial Services:** The pretrial services officer may rely on random inquiries and/or information from third parties to verify the defendant's compliance. Additionally, officers may serve as intermediaries and investigators when a requested change of residence, travel, or association has been submitted to the judicial officer.

**Impact on Appearance:** By requiring defendants to maintain specified residence or limiting travel to a given area, the supervising officer can more easily monitor the defendant's whereabouts. Thus, these conditions may contribute to a lower nonappearance rate.

**Impact on Community Safety:** Reducing the area of travel, imposing residential restrictions, and limiting associations can help deter criminal activity. Additionally, restrictions on association may limit the ability of defendants to conspire to impact their court proceedings in an illegal fashion. Thus, this condition can help protect the integrity of the judicial process.

**Considerations:** (1) Limitations on travel, association, and residency are often less costly conditions than the alternative of location monitoring and they achieve some of the same goals, with a lesser degree of intensity; (2) Imposition of these conditions is sometimes difficult to monitor and officers must rely to a great degree on self-reported information from the defendants that they are remaining in compliance; (3) Third-party information and/or inquiries can produce false information; (4) Restrictions on association can be mandatory for defendants charged with sexually based offenses under the Adam Walsh Act.

## **Victim and Witness Contact**

### **18 U.S.C. § 3142(c)(1)(B)(v)**

**Description:** In accordance with 18 U.S.C. § 3142(c)(1)(B)(v) the court may order the defendant to avoid all contact with an alleged victim and with potential witnesses who may testify concerning the offense.

**Purpose:** The condition should be considered when there is information that the defendant has intimidated or may attempt to intimidate a victim or witness, or that the defendant has interfered with the prosecution of the case, or may interfere in the future.

**Appropriate Use:** A condition restricting contact with a victim or witness is appropriate when the court can identify a victim or witness and there is at least the potential for intimidation and when required under the Adam Walsh Act.

**Role of Pretrial Services:** If a specific victim or witness is identified, the pretrial services officer should periodically contact the appropriate third parties and victim or witness to assess the defendant's compliance.

**Impact on Appearance:** Restrictions on victim and witness contact do not address appearance.

**Impact on Community Safety:** A victim and/or witness contact restriction may reduce the possibility that prosecution could be hampered based on the intimidation of a victim and/or witness. This condition may also protect the victim and/or witness from any direct physical or financial harm as a result of their participation in the case.

**Considerations:** (1) Victims and witnesses are not always easily identifiable and the officer may not be able to contact them to verify compliance; (2) Even if an officer does contact the victim and/or witness, they may be too afraid to admit that the defendant has already made contact and that intimidation has occurred; (3) Location monitoring may assist in assessing compliance with this condition; (4) Mandatory application under the Adam Walsh Act.

## **Weapons Restriction**

### **18 U.S.C. § 3142(c)(1)(B)(viii)**

**Description:** In accordance with 18 U.S.C. § 3142(c)(1)(B)(viii), the court may order the defendant to refrain from possessing a firearm, destructive device, or other dangerous weapon.

**Purpose:** This condition may reduce the possibility that a defendant will engage in violent activities.

**Appropriate Use:** A weapons restriction may be an appropriate condition for a defendant with a history of weapons offenses, violent behavior, and relevant mental health issues. The condition is mandatory in Adam Walsh Act cases. This condition should also be considered when a defendant is charged with a weapons offense or with a crime of violence.

**Role of Pretrial Services:** The pretrial services officer clarifies for the defendant which items are restricted and instructs the defendant to transfer these weapons to a responsible third party such as a family member, law enforcement agency in accordance with applicable state or federal law. The officer confirms their surrender and instructs the custodian of the weapon(s) not to return them to the defendant without authorization from the officer. Monitoring of this condition can occur through routine officer contacts with a third-party custodian or family member, unannounced home visits, and plain view residential inspections.

**Impact on Appearance:** A weapons restriction does not address the issue of nonappearance.

**Impact on Community Safety:** A weapons restriction can reduce, but does not eliminate, the possibility that a defendant will engage in criminal activity and violent behavior that would present a danger to the community.

**Considerations:** (1) Weapons will not be readily available to the defendant to cause harm to others; (2) A weapons restriction is difficult to thoroughly monitor because search conditions are discouraged for pretrial defendants; (3) Although pretrial services officers are authorized to make "plain view" seizures of contraband, they have limited law enforcement authority, and may lack training in search and seizure law and procedures for handling seized evidence.

## **Refrain From Excessive Use of Alcohol And/Or Illegal Use of Controlled Substances 18 U.S.C. § 3142(c)(1)(B)(ix)**

**Description:** In accordance with 18 U.S.C. § 3142(c)(1)(B)(ix), the court may order the defendant to “refrain from excessive use of alcohol or from any use of a narcotic drug or other controlled substance, as defined in Section 102 of the Controlled Substances Act (21 U.S.C. § 802), without a prescription by a licensed medical practitioner.”

**Purpose:** This condition may reduce the possibility that a defendant will consume mood-altering substances that may impact both the defendant's risk of danger to the community and appearance in court.

**Appropriate Use:** The court may impose this condition when the defendant is charged with an alcohol or drug related offense; has a criminal history of alcohol or drug related charges; is identified as having current risk factors (nonappearance and/or danger to the community) that relate to substance abuse; tests positive for illegal drugs; and has a history of substance abuse.

This condition is most effectively monitored by use of pretrial services supervision that incorporates substance abuse and breathalyzer testing.

**Role of Pretrial Services:** The pretrial services officer verifies legally prescribed medication(s) the defendant is consuming and determines the impact on drug test results. Drug and alcohol tests are administered randomly in the office and remotely in the community. Regular contacts with a third-party custodian and family members, as well as through observation of the defendant in the community, can further monitor compliance with this restriction.

**Impact on Appearance:** Defendants who maintain sobriety are more likely to be responsible and appear in court as required. This condition also helps ensure that the defendant is mentally and physically capable of understanding the court proceedings.

**Impact on Community Safety:** This condition reduces the possibility of the defendant committing an alcohol-or drug-induced crime such as driving under the influence, possession/sale of illegal drugs, and theft offenses to obtain funds to support the substance abuse. It also protects the community from work and personal accidents caused by drug or alcohol impairment.

**Considerations:** (1) Legally reliable drug detection testing and breathalyzer technology is readily available; (2) Testing procedures have been utilized for many years and are well established in the judicial system; (3) This condition should be ordered in conjunction with drug and alcohol testing conditions so as to insure effective monitoring of this restriction. Community observation, third-party custodian and family contacts would not be sufficient strategies, as substance abusers can be highly manipulative and often secretive in their substance abusing activities.