

THE INTERNATIONAL ASSOCIATION *of* CHIEFS *of* POLICE



Law Enforcement's Leadership Role in the Pretrial Release and Detention Process

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1. Introduction

On November 29, 2009, Maurice Clemmons, a convicted felon with a lengthy criminal record that included numerous violent offenses, executed four police officers¹ in Lakewood, Washington while they were preparing for their shifts. Rather than being a rare and isolated incident, the events that led up to this tragedy are not that uncommon in our criminal justice system.

Previously classified by the Washington State Department of Corrections as at a “high risk to reoffend,” on May 9, 2009, Clemmons assaulted two Pierce County sheriff’s deputies after exclaiming, “I’ll kill all you bitches.” He was released from jail the following day, without ever having seen a judge, after posting \$1,700 with a local bail bondsman to satisfy his \$40,000 bond on these assault charges. Two days later, on May 11, 2009, Clemmons raped a 12 year-old girl. Upon his arrest for the rape, a court-ordered mental health evaluation deemed him to be “dangerous” and said that he “presented an increased risk of future criminal acts.” A Pierce County judge set bail on the rape charges at \$150,000, ultimately allowing the release of Clemmons and his dangerous behavior into society. On November 23, 2009, Clemmons again paid only a fraction of his bond, this time \$8,000 to Jail Sucks Bail Bonds. On November 26, 2009, Clemmons told several people that he planned to murder police officers. Three days later, he did . . . (*New York Times*, “Tacoma Suspect Said to Threaten to Shoot Officers,” December 1, 2009).

The safety of these slain officers and the community at large may not have been jeopardized if the criminal system had taken into account the danger that the defendant posed to the community rather than simply his financial means to post bail. The killings in Lakewood are just one example of crimes, including the shooting of other police officers,² committed by defendants who were released on financial bond without consideration for whether or not they pose a danger to society or whether or not they will return for their court appearances. As a result of the Clemmons case, Washington State legislators, local prosecutors, and the bail bond industry have teamed up to change the “largely unregulated bail-bond business” (*Seattle Times*, “Lax Bail System Helped Clemmons Get Out of Jail,” June 6, 2010).

A suspect’s release or detention pending trial currently is not based on an informed assessment of whether or not he or she is a danger to society and or is likely to return to court for trial, but on whether the suspect has enough money to bail himself or herself out of jail. (*Pretrial Justice Institute* website at www.pretrial.org.)

“We are allowing dangerousness rather than assessing dangerousness.”
- PJI Executive Director Timothy Murray at the April 14, 2010 Focus Group

The Maurice Clemmons incident is just one example of how across the United States, law enforcement has had little, if any, role in determining whether a defendant should be released back into the community pending trial. Surprisingly, in only a handful of jurisdictions does law enforcement play a role in helping a judge determine who should and should not be released back into society. Public and officer safety and defendant accountability are the foremost considerations in the issue of pretrial release. Considering this significant gap, various leaders in the justice field felt that the time has come for law enforcement to become a part of the dialogue on pretrial release and eventually to take its appropriate leadership role in improving the pretrial system.

1. The officers who were killed were Tina Griswold, Ronald Owens, Mark Renninger and Greg Richards.

2. A Detroit police officer was killed by a suspect with a lengthy criminal record, including battling with law enforcement, and who was recently released on a \$30,000 bond. (*The Detroit News*, “Suspect Has Long Record of Probations,” May 4, 2010). Two police officers were killed and one was wounded by a man who was released on \$33,000 bond for an earlier carjacking in a neighboring jurisdiction. (*Washington Post*, “Officer Fatally Shot Outside Police Station,” May 9, 2006; and *Washington Post*, “A Year Later, Sully Station Still Healing,” May 8, 2007. See also, *Orlando Sentinel*, “Flaws Allow Accused to Escape Justice,” January 8, 2001 (Two defendants out on pretrial release for stabbing an elderly man killed a police officer in a barrage of bullets.); and *New York Times*, “Two Pentagon Police Officers Shot; Gunman Killed,” March 4, 2010.)

In response, on April 14, 2010, the International Association of Chiefs of Police (IACP), in collaboration with the Bureau of Justice Assistance (BJA), Office of Justice Programs, U.S. Department of Justice and the Pretrial Justice Institute (PJI), convened a focus group of criminal justice professionals to discuss the issue of setting bail and supervising suspects released into the community pending trial. The group consisted of police executives from large, medium, and small jurisdictions; prosecuting attorneys; academic researchers and scholars; judges; and defense attorneys. (The complete list of attendees is attached as Appendix A.) The consensus among the group was that law enforcement can and should play a leadership role in addressing the issues relative to the pretrial process, particularly those that directly affect public and officer safety and defendant accountability.

“They are letting the scariest people out. It is more dangerous than it needs to be right now.”
Orlando Sentinel, “Flaws Allow Accused to Escape Justice,” January 8, 2001

2. Background

Across the country, police officers often complain that a suspect is back on the street before the officer completes the arrest paperwork. When citizens see the “bad guy” who was just arrested back on the street, they often ask law enforcement why. The answer is often simply because the defendant was able to pay his or her way out of jail. This issue and many others relevant to pretrial recourse were the reasons for the IACP to convene the pre-trial focus group meeting.

Before documenting the work of focus group participants, the concerns they articulated, and the final recommendations they offered, it is first important to set the stage with pertinent background information on bail, the bail bond industry, pretrial release programs, and the relevant case law and statutes that govern these activities.

A Brief History of the Bail System

Rooted in English common law, bail was intended to ensure that a defendant returned to court for trial. However, beginning in the early 1900s, scholars and practitioners began to reevaluate the financial bail process. They started to question a system that bases pretrial release or detention on whether the suspect can pay money (often obtained through ill-gotten means), without regard to the danger the suspect may present to the community (Beeley, Arthur L., *The Bail System in Chicago*, Chicago: University of Chicago Press, 1927: reprinted, 1966).

In 1961, the Vera Institute of Justice was established to study the effectiveness of a bail system that based a suspect’s liberty solely on financial status. Vera created the first pretrial screening program in the country, the Manhattan Bail Project, which demonstrated that a defendant could be released and return to court for trial based on factors that included strong ties to the community rather than his or her ability to pay the bail amount. In 1966, the United States Congress passed the Bail Reform Act, which set forth conditions of release based on appearance risks rather than money (The Bail Reform Act of 1966, 18 U.S.C. § 3146, et. seq.). Finally, in 1984, Congress expanded the 1966 Act by adding whether a suspect poses a danger to the community as a determination of bail (The Bail Reform Act of 1984, 18 U.S.C. § 3141, et.seq.).

The Current Pretrial System

**“Using only monetary bail is basically like rolling the dice at the cost of public safety.”
– Senior Judge Truman A. Morrison at the April 14, 2010 Focus Group**

The bail laws in the United States are not typical of those throughout the rest of the world. Many U.S. jurisdictions use preset fees arranged by the type of charge (e.g., \$2,500 for burglary or \$5,000 for manslaughter in Orange County, Florida) to determine whether a suspect should or should not be released back into the community. Accused felons, therefore, are often released on bail with little or no attention paid to their criminal histories, their danger to society, or whether they are likely to become fugitives. According to the American Bar Association’s (ABA) *Standards for Criminal Justice for Pretrial Release*, 3rd edition, 2007, bail is generally set in “a routinely haphazard fashion” (ABA Standards, Introduction commentary, p. 31) and “when bail amounts are fixed solely on the basis of the charge, information relevant to assessing the real risk of nonappearance or pretrial crime is never considered” (ABA Standard 10-1.7 commentary, p. 51). In addition to the ABA, the Association of Prosecuting Attorneys, the National District Attorneys Association, and the National Association of Counties have formally called for rational, safe, and transparent pretrial release based on a risk assessment rather than on the suspect’s financial means.

Overview of Case Law, Statutes and Studies

**“We cannot continue to operate without a rational and transparent pretrial system.”
– Police Chief Margaret Ryan at the April 14, 2010 Focus Group**

Case Law

The seminal case on the issue of bail and pretrial release is *United States v. Salerno*, 481 U.S. 739 (1987), which held that detaining a suspect based on the suspect’s potential danger to the community if released is appropriate and outweighs the suspect’s individual right to liberty (*Salerno*, p. 748). Prior to the U.S. Supreme Court’s decision in *Salerno*, courts were not allowed to consider a defendant’s dangerousness or the community’s safety when setting bail. If a judge felt that a defendant was too dangerous to be released, the judge would be forced to set an inordinately high bail amount, hoping that the defendant would not be able to meet such a financial burden. It is important to note, however, that many states have not followed the Supreme Court’s *Salerno* decision to allow danger to be considered in denying release.

Another important case is *Stack v. Boyle*, 342 U.S. 1 (1951) in which the U.S. Supreme Court held that someone “arrested for a non-capital offense shall be admitted to bail . . .” and that bail cannot be set at a sum higher than an amount reasonably calculated to ensure that the defendant gives “adequate assurance that he will stand trial and submit to the sentence if found guilty” (*Stack*, p. 2). Furthermore, in *Carlson v. Landon*, 342 U.S. 524 (1952), the United States Supreme Court held that bail is not an absolute right and may be denied if there is a “reasonable foundation” to do so (*Carlson*, p.541).

State Statutes

The bail laws in each state and territory vary widely, except for one commonality: they all accept cash as a condition of pretrial release. As a matter of fact, a small number of jurisdictions set financial bail as the only condition of pretrial release. Approximately 40 jurisdictions allow a court to consider the dangerousness of the defendant.³ Of those, fewer provide the court with pertinent information about the defendant, including prior criminal history or fugitive status.

3. For a complete listing of the laws, log on to the Pretrial Justice Institute’s website at www.pretrial.org.

Pretrial Release Studies and Financial Bail

"It's hard to explain to citizens when someone out on bail commits another crime. They often ask, 'Why was this guy out when he already committed a crime?'"
– James C. Quinn, Senior Executive Assistant District Attorney, at the April 14, 2010 Focus Group

In 1985, a study conducted by the National Council on Crime and Delinquency found that supervised pretrial release programs (i.e., those that include governmental oversight of defendants released from pretrial custody) are the most effective ways to ensure that defendants appear for all of their court hearings and do not commit additional crimes while back in the community. The study also found that, in the longrun, these types of programs save jurisdictions money on the costs of pretrial detention (Austin, James, et. al. "The Effectiveness of Supervised Pretrial Release," *Crime and Delinquency*, Vol. 31, No. 4, October 1985, pp. 519-537). Subsequently, other studies have suggested that financial bail is not a reliable predictor of whether a defendant will appear in court or remain free of crime while out on bail. Rather, a defendant's prior criminal history; prior court appearances; and interviews of defendants, witnesses, and arresting officers are the best predictors. (Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, *Pretrial Release of Felony Defendants in State Courts*, Special Report, November 2007; and Goldkamp, John, et. al., *Personal Liberty and Community Safety: Pretrial Release in the Criminal Court*, New York: Plenum Publishing, 1995).

According to the ABA, "financial bail is not an appropriate response to concerns that the defendant will pose a danger if released. Money bail should not be used for any reason other than to respond to a risk of flight" (ABA Standard 10-1.4(d) commentary, p.44). ABA Standard 10-1.4 strictly proscribes the practice of setting very high financial bail when a defendant poses a risk of dangerousness (ABA Standard 10-1.4, p 42). The commentary to Standard 10-5.3(a) furthers the philosophy of the ABA that financial bond should be severely restricted to "when no less restrictive, nonfinancial release condition will suffice to ensure a defendant's appearance in court" and "prohibits the setting of financial conditions of release in order to prevent future criminal conduct or protect public safety" (ABA Standard 10-5.3(a) commentary, p. 111).

Based on these studies, various national organizations have determined that financial bail has little or no bearing on whether a defendant will return to court and remain crime-free. Yet, many jurisdictions continue to use it as a litmus test for release. The reason may simply be due to the fact that financial bail has been in place for centuries with little public sentiment for changes to the existing system.

The Commercial Bail Industry

"In England, Canada, and other countries [Australia, India, South Africa], agreeing to pay a defendant's bond in exchange for money is a crime akin to witness tampering or bribing a juror – a form of obstruction of justice."
New York Times, "Illegal Globally, Bail for Profit Remains in the U.S.," January 29, 2008

According to BJS, two million defendants are released annually from pretrial detention by approximately 14,000 commercial bail agents throughout the United States (BJS, *Pretrial Release of Felony Defendants in State Courts*, Special Report, p. 4). Only the United States and the Philippines allow the use of private bail bondsmen (*Orlando Sentinel*, "Flaws Allow Accused to Escape Justice"). Despite the recommendations of the ABA to abolish commercial bail (ABA Standard 10-1.4 commentary, pp. 42-47), only four states (Illinois, Kentucky, Oregon, and Wisconsin) have done so thus far. The District of Columbia, Maine, and Nebraska have limited the use of commercial bail activity as well (BJS, *Pretrial Release of Felony Defendants in State Courts*, Special Report, p.4).

How the Commercial Bail System Works

A commercial bail bondsman, usually with the backing of an insurance company, promises to pay a defendant's bail to the court in the event that the defendant does not appear in court. The bondsman charges the defendant a nonrefundable fee of usually 10 percent.⁴ The bondsman's focus, from a purely business model, is on how much money will be made to profit the company versus broader concerns like public safety. One bail bondsman admitted that he will not accept \$500 bond cases (usually set in cases involving lesser offenses) because it is not financially worth his while (*Orlando Sentinel*, "Flaws Allow Accused to Escape Justice").

If a defendant, while out on bail, is arrested for another crime, the bondsman no longer owes the court the original bail amount, and the bondsman can also choose to post bail in the second case. Accordingly, defendants with a high bond amount because of their risk of committing another crime before trial are often of more interest to bail bondsmen ("The Truth about Commercial Bail Bonding in America," The National Association of Pretrial Services Agencies, *Advocacy Brief*, Vol. 1, No. 1, August 2009, p. 3).

"It's really the only place in the criminal justice system where a liberty decision is governed by a profit-making entity that will or will not take your business," said Temple University Professor of Criminal Justice John Goldkamp (*New York Times*, "Illegal Globally, Bail for Profit Remains in the U.S."). Because of this, the ABA set forth the following rationale for abolishing compensated sureties: (1) A defendant's ability to post financial bail "through a compensated surety is completely unrelated" to public safety risks, as a commercial bondsman is not obligated to try to prevent criminal behavior. (2) Decisions "regarding which defendants will actually be released move from the court to the bondsmen. It is the bondsmen who decide which defendants will be acceptable risks – based to a large extent on the defendant's ability to pay" (3) Decisions of bondsmen are "made in secret, without any record of the reasons for these decisions." (4) Compensated sureties unfairly burden those who cannot afford the nonrefundable fees, while cash-rich drug dealers, robbers, and gang members can easily pay for their freedom (ABA Standard 10-1.4(f) commentary, pp. 44-47).

Accordingly, in many instances, the commercial bail industry is making the decisions about who should or should not be released. However, any system that makes pretrial release decisions should, at least, ensure public safety and hold defendants accountable and, at best, save taxpayer money. It is therefore important that law enforcement review and discuss the advantages and disadvantages of various pretrial release mechanisms and pretrial services programs.

4. Like any for-profit business, some bail bondsmen put their products "on sale," requiring the defendant to pay as little as one percent of the set bail, with a promissory note for the remaining money. Thus, a suspect with a \$500,000 bond for a violent offense can be released for as little \$5,000. Baltimore, Maryland, State's Attorney Patricia Jessamey called this a mockery of the justice system. ("The Truth about Commercial Bail Bonding in America," The National Association of Pretrial Services Agencies, *Advocacy Brief*, Vol. 1, No. 1, August 2009, p. 3) See also, *Baltimore Sun*, "In Maryland, Many Get Discount on Bail: Cut Rate Bonds Set Dangerous People Loose, Critics Say," February 20, 2008.

3. Pretrial Services Programs

As supervised pretrial release programs have grown and developed over the past several decades, their vision has clarified. The goals and objectives of effective pretrial released programs include

- ❑ ensuring the safety of the public and the officers entrusted to protect the public,
- ❑ providing supervision to defendants awaiting trial,
- ❑ ensuring that defendants return to court, and
- ❑ reducing jail overcrowding, thereby reducing costly expenditures of public resources for construction and maintenance of new jail facilities.

Supervision of Defendants and Safety of the Public

In the mid 1960s, a handful of jurisdictions around the country began to look at factors other than financial ability to determine whether or not to release a suspect prior to trial. In 1968, the first pretrial services program, which still exists today, was developed in Washington, D.C. “In addition to interviewing, collecting background information, verifying information, producing reports, and making recommendations to the court, the pretrial services program began supervising defendants on various release conditions” (*Pretrial Justice Institute* website, “History of Pretrial Services Programs,” www.pretrial.org).

Government run and publicly funded, a properly planned and operated pretrial services program can assess the risks associated with releasing (or not releasing) a defendant and supervising that individual throughout the entire pretrial process. These programs can help judges make informed release decisions by providing comprehensive and important information on each defendant. Through research-based tools that assess a defendant’s likelihood of appearing in court and remaining crime-free while on pretrial release, “pretrial programs provide a cost-effective and safe method for recommending release into the community” (*Jail Population Management: Elected County Officials’ Guide to Pretrial Services*, National Association of Counties, September 2009, pp. 7-8). According to the ABA, these agencies “should perform an information, collection, and analysis function, a recommendation function, and a monitoring function” (ABA Standard 10-1.10(a) commentary, p. 56).

Pretrial programs consist of the following five operational elements:

- (1) The screening of everyone arrested and booked into the jail;
- (2) The interviewing and investigation⁵ of a defendant prior to the defendant’s first appearance before a judicial officer;
- (3) The use of research-based risk assessment tools to guide appropriate release decisions that ensure public safety and the defendant’s return to court;
- (4) The supervision of, and regular reporting on, any defendant who has been placed on pretrial release; and
- (5) Reminders to defendants of upcoming court appearances and other appointments (*Jail Population Management*, National Association of Counties, p. 8; and ABA Standard 10-4.2 commentary, p. 86). Appointments may include drug testing, counseling, or evaluations (National Association of Counties’ website, “Pretrial Services Reduce Costs, Improve Public Safety,” www.naco.org).

5. The investigation includes a defendant’s prior criminal record; prior behavior on bond; community ties; and employment history, among other things.

According to the ABA, the decision to release or detain a suspect prior to trial “should have defined goals, clear criteria, adequate and reliable information, and fair procedures” (ABA Standards, General Principles commentary, p. 5). Through pretrial services, pretrial release can be tailored to the circumstances of each individual defendant, providing valuable information on whether or not to release a defendant. Those who can safely be released will be released; and those who pose a risk will be detained.

Pretrial services programs can provide for public safety by monitoring defendants awaiting trial. While protecting the community and the police officers that serve it, pretrial programs also can save tax money spent on unnecessary pretrial incarceration.

Minimizing Fugitive Status

Once an individual fails to appear, he or she moves to fugitive status. Warrants are issued for the individual’s arrest. While many defendants simply fail to appear and continue about their day-to-day affairs, others become fugitives bent on avoiding the justice system entirely. They become mobile and opportunistic, preying on innocent citizens by committing additional crimes against persons and property in order to sustain their flight from justice. Unable to hold jobs, they become even more dangerous, supporting their existence through the commission of more crimes, leaving additional victims in their wake.

Critical to the law enforcement community, the investigative resources to rearrest and in some cases extradite these fugitives is costly, both to the law enforcement agencies and their governments. In fact, not all law enforcement agencies are financially able to extradite fugitives who are located and arrested outside their jurisdictions, causing problems for the original arresting agency, the rearresting agency, and, of course, the public if the fugitive cannot be detained and is released. Effective pretrial screening and, in many cases, preventive detention addressed next can help reduce this problem.

Preventive Detention

In circumstances in which pretrial incarceration is deemed necessary, preventive detention needs to be imposed to uphold community safety because of the potential risk of reoffending by those defendants who pose such risk. Participants at the April 2010 focus group commented that the failure of the current system in many states was most acute when it came to the release of such dangerous defendants due to their ability to make bond.

Preventive detention legislation provides a safer approach than attempting to use money bond to address the pretrial dangers of defendants awaiting trial. Preventive detention laws empower the court to consider pretrial danger when making release decisions, and enable the prosecutor to seek detention without bail for select defendants after an evidentiary hearing in which the court assesses the strength of the case coupled with the defendant’s past behaviors. The court must find that no condition or combination of conditions of supervision will provide reasonable assurance of community safety in order to grant detention. For example, statutes in the District of Columbia, and even federal courts, call upon an array of supervision conditions — including preventive detention — designed to protect the community. As a result of these laws, money bond is no longer used in the hope that the defendant, especially a dangerous one, will not be able to post it. The result can lead to a decrease in a defendant reoffending, deterrence in bail-jumping, and ultimately the protection of the community

Defendant Accountability

*“Accused criminals by the thousands escape justice.”
-- Orlando Sentinel, “On the Run: Florida’s Fugitives,” January 7, 2001*

The April 2010 focus group suggested that regardless of the pretrial release modality in any given case, the defendant must be held accountable in terms of supervision. The participants expressed interest in the notion that complete forfeiture be ordered in money bond cases when a substantive violation of the terms of a defendant’s release has occurred, such as the defendant’s failure to appear in court or his or her rearrest for a new offense.

Similarly, participants felt that defendants released to supervision conditions should be held accountable in regard to those conditions, and that sanctions be applied by the court for any violations to those terms.

Pretrial services programs can provide defendant accountability, in comparison with financial bond where the sole determining factor as to whether or not a defendant is released back into the community is money. Many police chiefs and criminal justice experts have noted that people of varying levels of dangerousness are being let out on financial bond, and essentially, nothing is being done to monitor these suspects who are released into the community. This can ultimately lead to law enforcement having to “do the job twice,” by first making the original arrest and then by having to apprehend the defendant again when he or she becomes a fugitive through willful failure to appear in court. BJS found that one in four defendants who failed to appear in court remained a fugitive one year later (BJS, *Pretrial Release of Felony Defendants in State Courts*, Special Report, p. 8). Moreover, BJS data show that supervised pretrial release programs produce favorable re-arrest and appearance rates (BJS, *Pretrial Release of Felony Defendants in State Courts*, Special Report, p. 10).

Defendants currently released on financial bond often commit additional crimes or become fugitives. Presumably, because there are so many perceived holes in the existing pretrial justice system, they feel that they can commit other crimes or fail to appear in court with little or no consequences. Effective pretrial services programs, however, can provide swift and certain consequences to those who do not comply with the conditions of their pretrial release. Also, jurisdictions that ensure that bail-jumping statutes, which make willful failure to appear a separate crime, are enacted and vigorously prosecuted, which can help deter and bring appropriate punishment to those defendants who do fail to appear in court. With rapid sanctions for noncompliance of these conditions, pretrial services programs can send a message to violating defendants and to the community at large that no one will be allowed to flee justice.⁶

Cost Savings

Pretrial services programs can not only promote defendant accountability, but also cost savings. Estimates show that the American tax system supports pretrial detention at a rate of \$25 million per day or \$9 billion per year (“The Truth about Commercial Bail Bonding in America,” The National Association of Pretrial Services Agencies, *Advocacy Brief*, pp. 8-9). Community-based supervision has proven to be less costly than secure detention. It is, however, not without its own costs. Therefore, jurisdictions must decide whether to spend money on building and operating more jails or shift a portion of those resources to the implementation and operation of a comprehensive pretrial services program. Individual state and county cost benefit analyses suggest that pretrial services programs can, in the long-run, save taxpayer money.

A study of 10 counties with pretrial services programs in North Carolina found that, among other things, each county spent approximately \$6.04 per defendant per day on pretrial release, but would spend approximately \$57.30 per defendant per day to keep those same defendants detained. The total cost savings of pretrial services versus pretrial incarceration amounted to a little more than \$1,050,000 per county per year (*Jail Population Management*, National Association of Counties, p. 9). Similarly, Maine conducted a study that demonstrated that one pretrial services staff member, who costs taxpayers \$50,000 per year saves between \$250,000 and \$1,320,000 per year on detention costs (National Association of Counties’ Website, “Counties Look for Money, Alternatives to Bail,” www.naco.org). Lastly, the *Miami Herald* reported that Broward County, Florida, would save taxpayers approximately \$110 per defendant per day if it had a pretrial services program (*Miami Herald*, “In Tallahassee, Broward-inspired Bail-bond Bailout Could Break Us,” April 17, 2010).

6. See *Seals v. United States*, No. 03-CO-51, slip. op. (D.C. Feb. 11, 2004). (The Appellate court upheld a three-year sentence for contempt of court for not following the conditions of pretrial release, based on the defendant’s criminal history and non-compliance with the court).

4. Law Enforcement's Role in the Pretrial Release Process

The April 14, 2010, focus group began its dialogue on the role that law enforcement should play in the discussion and development of pretrial services. The first and overriding observation was that it is imperative that police executives continue to address this issue. At the conclusion of the meeting, the group suggested that the IACP, PJI, and BJA convene a national summit to discuss further actions and to resolve the issues addressed by the focus group members. This national summit can bring national and local law enforcement leaders together to develop best practices and model legislation on the issue of pretrial release.

It is important to note that the group arrived at the summit recommendation after a full day of careful and thoughtful dialogue on all pretrial release, detention, and bond issues. One observation that carried through most of the day's work was the incredible complexity of the pretrial detention and release issues facing the U.S. justice system. Many of the issues raised and debated fueled the idea for a larger summit, since participants quickly realized that there were no quick, simple answers to the complex problems being discussed. Some examples of those issues, and potential courses of action, include the following:

- ❑ The balancing of release decisions versus detention decisions; e.g., what set of criteria will ensure that the right people are released (those assessed unlikely to fail to appear and/or commit new crimes while on bond) and that the wrong people (those assessed as likely fail to appear and to commit new crimes) are detained until trial
- ❑ The varying size, budgets, and resources of the some 18,000 local law enforcement agencies in the United States as they attempt to gather information pertinent to pretrial release and detention decisions by the courts, particularly the many smaller agencies with less than 25 officers
- ❑ The potential for regional, unified central processing center models where all arrestees can be effectively evaluated for release or detention status, and how these centers could function in a more cost-effective manner to support local law enforcement agencies and their respective local justice systems
- ❑ Determination of consequences (beyond financial) for those who fail to return to court on their court date, in particular, "bail jumping" laws that allow charging defendants with an additional crime 30 days after their failure to appear
- ❑ The need for shared wisdom from the many other professional organizations representing the law enforcement community, in particular, leadership organizations like the National Sheriff's Association, police unions, and all others with a stake in bail/pretrial release reform
- ❑ The impact of pretrial release and detention decisions on public and officer safety, and also on public and officer perception, including potential witness or victim intimidation before trial when the defendant is allowed to return to the community inappropriately
- ❑ Balancing current bond system decisions with the urgent need for dangerousness assessment and, in particular, looking at the many variations across the U.S. on how (or whether) dangerousness is assessed

Based on the discussions from the IACP focus group, members felt that many questions remain unanswered and need to be addressed with respect to pretrial matters before law enforcement can take a position on the subject. Some of those questions include the following:

- (1) What level of involvement should law enforcement leaders provide in these pretrial services programs, and how can they help to support an effective pretrial system so that there are no backlogs?
- (2) How can we ensure that pretrial release decisions are based upon the individual risks posed by each defendant, rather than on a bond schedule that merely takes into account the title of the charge?
- (3) Is it feasible to insist that pretrial program outcomes, such as appearance, rearrest, and completion rates, be published regularly?
- (4) How can the arresting officers involved work more closely with the local prosecutor to ensure appropriate release conditions that are designed to minimize failure-to-appear rates and future crimes?
- (5) How can we advocate for state bail legislation that takes into account officer and public safety and provides the court with safe alternatives in dealing with defendants whose potential danger to the community cannot be reasonably assured through supervision and monitoring?

These are just a few of the many issues that law enforcement leaders would take up at any future national policy summit on this topic.

The ideas that emerge from a summit can then be presented to a wide variety of audiences that are examining criminal justice issues. For example, Congress is currently considering legislation (S.714) originally proposed by the IACP and now being supported by Senator Jim Webb (D-VA)⁷ to establish a National Criminal Justice Commission. If enacted, this legislation will task the commission with conducting a comprehensive examination of various aspects of the criminal justice system, including pretrial processes. The views and expertise on pretrial issues expressed at the national summit would provide the commission with critically needed information and direction as it undertakes its review.

Focus group members felt that law enforcement's attention to pretrial release issues is timely and critical. Police executives have not always been involved in the pretrial services dialogue. Yet, as the major stakeholder in protecting the community and the officers that serve it, the members realized that now is the time for law enforcement leadership to meaningfully discuss how to help improve the pretrial process. As with any new endeavor, the members acknowledged that some in the profession may be uncomfortable with, and perhaps resist, the change that may come with the dialogue. However, as we learned through the transition to community policing more than 30 years ago, different can also mean better.

7. The IACP has advocated for the creation of such a commission for more than two decades, similar to that of the 1965 Presidential Commission on Law Enforcement and the Administration of Justice, which built the framework for many of the highly effective law enforcement and public safety initiatives that have been in place for almost the last half century.

5. Conclusion

Given the number of issues discussed at the focus group and the difficulty of each, participants realized that arriving at conclusive findings or consensus recommendations at the end of the focus group was not a viable option, but that a call for a much more in-depth effort and a national law enforcement policy summit made a great deal of sense. Given that the primary duty of law enforcement is to protect the community, it makes sense for law enforcement leaders to be contributing members in pretrial release policy and procedure development that would ensure that a defendant's danger to society and the likelihood of his/her appearance in court are equally considered. Law enforcement's voice in pretrial system development can help to create rational and transparent release programs.

Throughout the U.S. justice system, defendants will continue to be released after their arrests and before their trials. Because of this release, their next actions and decisions may directly affect officer and citizen safety. Focus group members had a clear vision that in the future, law enforcement should and can play a critical role in supporting and guiding rational criteria for pretrial release and in helping to reduce system failures. This future role can only occur if law enforcement leaders are 1) aware of and fully understand the laws, policies, and practices of pretrial release in their jurisdictions, and 2) appreciate their role as critical stakeholders in helping to influence pretrial policy. Law enforcement leaders also can improve community and officer safety and defendant accountability by elevating the discussion of these issues to the national level. BJA, IACP, and PJI are committed to the issue and support the concept of a national policy summit to ensure that law enforcement can significantly contribute to this important topic.

At the time of publication of this report, the United States Department of Justice, Office of Justice Programs, with the principle support of the Bureau of Justice Assistance (BJA), has inaugurated plans for a National Policy Summit on Pretrial Justice slated for early 2011. From this early information, it is clear that DOJ's intent is to address pretrial issues on a global scale. To support this important work, IACP and PJI will continue to work closely with our BJA counterparts to ensure that the national law enforcement summit called for in this report is designed and held after the larger policy summit so that it can further the recommendations that will doubtless emerge from the DOJ/OJP systemwide effort.

The ultimate goal of each of these efforts will be identical: to make certain that another tragedy like the one in which four Lakewood, Washington, police officers were slain by an individual at high risk for reoffending, who was nonetheless out on bail, will never happen again.

APPENDIX A

IACP/BJA/PJI PRETRIAL ISSUES FOCUS GROUP MEETING

WEDNESDAY, APRIL 14, 2010

IACP HEADQUARTERS

515 NORTH WASHINGTON STREET

ALEXANDRIA, VA 22314



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