

PJI Webinar (12/6/2011)

Pretrial Decision Making What Victims and Victim Advocates Should Know

Q. Who supervises defendants on pretrial release?

A. In jurisdictions where pretrial services programs exist, they would do the supervision. As noted in the webinar, pretrial services programs interview defendants before their first appearance in court where the pretrial release decision is made, gather the information about each defendant that statutes say the court must consider in making a decision, conduct a risk assessment, and make a recommendation to the court about pretrial release based upon that risk assessment. They also supervise any condition of release imposed by the court. Not all jurisdictions have such a program. Where they do not exist, the probation department may be able to supervise some cases for the court. There may be other organizations or entities in the community that may be able to help watch the defendant - such as churches or other faith-based groups - when no formal entity exists.

Q. Is there any case law concerning an advocate for a domestic violence shelter speaking on behalf of the victim of domestic violence at a pre-trial release hearing? Since there is no evidence being gathered at the hearing would that enable the advocate to make a victim statement if the victim waives her confidentiality in the statements made to the advocate.

A. We're not aware of any case law that addresses any representations from any party at the pretrial release hearing. There may, however, be something in your local court rules that describe how the pretrial release decision process is supposed to occur, and whether there are any restrictions on who can make representations. Certainly prosecutors can and often do make representations on behalf of victims at this hearing, We'd suggest checking with your prosecutor's office to see what they say about whether your program would be able to do this.

Q. Why are bail schedules still being used?

A. Bail schedules have been in existence so long that they are simply viewed as being the way that things are done, and few question the wisdom of using these tools for releasing criminal defendants - at least until something goes terribly wrong. Unfortunately, such a thing happened in Washington state a couple of years ago - a man was arrested for assaulting two law enforcement officers and used a bail schedule to bail himself out before seeing a judge. He later walked into a restaurant where four police officers were having breakfast after coming off the midnight shift

and shot and killed them. As a result of this incident, Washington passed a law prohibiting the use of bail schedules for persons charged with felonies.

Q. In what kind of cases does detention without bail apply to? Domestic violence?

A. Detention statutes vary by jurisdiction, but generally to be detained the defendant must be charged with a serious felony. Some domestic violence cases can certainly fall into this category, but any misdemeanor DV case - which most are - would not. So in the vast majority of domestic violence cases conditions of release can be set to help assure the safety of the victim. When the risk to the victim is high, such conditions can include electronic monitoring, including with GPS tracking, to make sure that the defendant stays away from the victim.