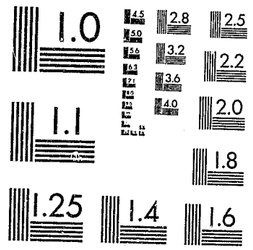

TYPOLOGY OF STATE LAWS WHICH PERMIT THE CONSIDERATION OF DANGER IN THE PRETRIAL RELEASE DECISION

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INTRODUCTION

A number of inquiries addressed to the Resource Center in recent months have been focused on the consideration of potentially dangerous or criminal behavior in the pretrial release decision-making process. These have included:

- How many states allow preventive detention?
- How many jurisdictions allow denial of bail to defendants rearrested while already free on pretrial release?
- How many statutes authorize the consideration of community safety in the pretrial release decision-making process? 1/

An increasing number of these inquiries come from researchers, theoreticians, journalists, jurists, and legislators. As more questions are raised about crimes which may have been committed by people at liberty awaiting disposition of a previous charge, some have called for pretrial release procedures which would permit the future/potential criminal activity of a defendant to be considered. 2/

Pretrial release decisions which take into account the "dangerousness" or future "dangerous" activity of a criminal defendant have raised questions and concern because they deviate from the traditional purpose of bail which limits itself to assuring the appearance of the accus . As other objectives are being put forward, the question of whether appea ance is or should be the only purpose is increasingly the subject of questions and arguments among legal scholars and policy-makers and, thus, is a matter of debate.

1/ The answers to these questions have not, to our knowledge, been compiled. It is difficult to provide current answers because release laws are so frequently amended. (Nearly all of the measures cited have been passed within the last decade; several have been enacted within the last two years, e.g., New York, Illinois, Hawaii, Tennessee. In the first half of this year, Florida, Massachusetts, and Wisconsin enacted major changes in release laws; Vermont voters amended the bail clause of their consitution). Some states are currently considering proposals which, if adopted, would require updating the materials presented herein. An insert indicating corrections/updates will be prepared periodically.

2/ For example, in 1981 Chief Justice Warren Burger called for changes in release laws to permit courts to consider the safety of the community in pretrial release decision-making. The President's Violent Crime Task Force made similar recommendations in the same year.

Nonetheless, the function of a pretrial release decision which takes into account a defendant's future criminal or dangerous activity is fundamentally different from that function which relates to his future appearance. Crucial to that difference is the fact that when bail is set to ensure appearance, the decision relates only to people who have been arrested and whose cases are being processed through the courts. The fact of their arrest subjects them to particular regulation, necessary in order for the court to carry out its role. Pretrial release processes related to the defendant's appearance (or compliance with rules necessary to the integrity of the court's processes), therefore, serve a basic "court control" function. The prevention of crime, on the other hand, is a generalized public goal, which theoretically applies equally and evenly to the entire population. Society has a stake in preventing every crime, whether or not the perpetrator is presently under arrest or has previously been convicted of a crime. Pretrial release procedures which attempt to prevent future criminal or dangerous activity by persons already charged with a crime reflect a "crime control" function.

Questions about present pretrial release decision-making practices cannot be answered without separating the "court control" and "crime control" functions. This separation of functions, while necessary, is not sufficient to adequately reflect the complex status of pretrial "crime control" laws. Elements of vagueness, in particular, contribute to an intricate typology. Among the factors which preclude a simple response on existing legislation are:

1. <u>There is no standard or generally agreed-upon definition of "danger" or "community safety."</u>

Some states clearly indicate in their pretrial release laws an intent to utilize the pretrial release process to reduce the risk of danger to any person or to the community. Even for those states which have cited such an intention, there is no clarification or definition of "community safety" included in the statutes. Many jurisdictions fail to state any such purpose or affirmatively deny such an intent in their statutory schemes, asserting that the purpose of bail is appearance. Some do not state any purpose at all. Yet several of these mandate consideration of criteria or conditions which are apparently unrelated to appearance or relate specifically to future criminal conduct of the defendant.

2. <u>There is no uniformity in the techniques by which pretrial release laws and rules are used to limit criminal activity</u>.

Some states authorize the imposition of <u>release conditions</u> to regulate the activity of persons on release for the purpose of precluding "dangerous" behavior. Other states permit actual <u>detention</u> for this purpose. Some jurisdictions give authority for such consideration in their constitutions; others, in statutes or court rules. Some states allow "danger" to be considered upon an initial arrest; others, only after a person is alleged to have commited a new offense while on pretrial release.

Therefore, any listing or discussion of jurisdictions which "allow the consideration of danger" must offer an operational definition as well as some discussion of the structure of laws to simplify the identification of pretrial release processes which appear to meet this definition.

The material which follows is intended to be a reference piece, a description and summary of what the "danger" laws say. These laws do not exist in a vacuum but, in fact, themselves raise important questions concerning their feasibility, effectiveness, and constitutionality. The purpose in presenting this information is to aid those who wish to legislate, debate, or determine these questions with an accurate account of the existing laws. It is hoped that this account can provide the first step in the determination of whether utilization of or change in the pretrial process can control or reduce crime.

DEFINITIONS

For the purpose of this material, a jurisdiction is considered to allow for the consideration of danger if its pretrial release laws (constitution, statutes, or rules) contain language which appears to have as its purpose the control of violent, illegal, or dangerous behavior by a person who has been arrested. We can refer to these states as those in which crime control appears to be one of the purposes of pretrial release decision-making.

In addition to states which have laws that express a conscious intention to utilize pretrial release decisions to assure community safety, this definition includes states where crime control is an implied but not express purpose of the release laws. It also includes states in which "preventive detention" is not specifically authorized as a means of controlling future behavior and states which permit the pretrial detention of defendants on grounds of "dangerousness". 3/

3/ This definition excludes those states in which "danger" considerations are specifically authorized, but where such considerations are not for the purpose of crime control. E.g. Pennsylvania, Ohio and New Hampshire permit the consideration of "danger", but by limiting such considerations to misdemeanors or similar restrictions, it is clear that the legislative intent was to safely process persons who were intoxicated or mentally disordered to such a degree that their immediate release would create problems of personal safety, primarily to themselves. (These statutes do, however, illustrate the need for an operational definition which goes beyond identifying those states statutes which simply utilize the word "danger".) The term "states" in this definition includes the District of Columbia.

STRUCTURE

The pretrial release process is governed by a combination of federal and state constitutional requirements, statutes (codes, criminal procedure laws, etc.), and/or court rules.

State constitutions affect bail practices in two primary ways:

- Prohibition against excessive bail appears in all state constitutions except Illinois and is binding on all states through the Eighth and Fourteenth Amendments of the United States Constitution. 4/

- A right to have bail set in all non-capital offenses is guaranteed by most state constitutions. The prototypic language, that all persons before conviction "shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or presumption great," limits the extent to which lawmakers can restrict bail eligibility. 5/ Some constitutions authorize the denial of bail for certain defendants charged under other circumstances as well. These include defendants accused of:

  -- Offenses for which a life sentence may be imposed. 6/

  -- Murder, treason, or other enumerated felonies. 7/

4/ The Eighth Amendment to the United States Constitution provides that, "Excessive bail shall not be required..." The Fourteenth Amendment prohibits the states from denying a right which is "fundamental to the American scheme of Justice," Duncan v. Louisiana, 391 U.S. 145, 149 (1968). In Schilb v. Kuebel, 404 U.S. 357, 365 (1971), the Supreme Court stated that "bail...is basic to our system of law...and the Eighth Amendment's proscription of excessive bail has been assumed to have application to the States through the Fourteenth Amendment."

5/ This language appears in the state constitutions of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Montana, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Washington, Wyoming.

6/ Nevada, Rhode Island, South Carolina. Delaware excepts capital offenses or those which at any time during the history of the state's constitution were capital offenses.

7/ Indiana, Nebraska, New Mexico, Oregon, Vermont.

-- Crimes committed while out on pretrial or post-conviction release. 8/

-- Crimes committed by persons previously convicted of certain crimes. 9/

State bail statutes also present a wide variation of formats, but most follow one of two basic structures.

- The "older" statutes, which have not been rewritten since the bail reform movement of the 1960's, authorize the setting of bail in permissible cases and regulate financial and clerical aspects of setting and posting bail.

- The "modern" statutes, loosely or strictly modeled after the federal Bail Reform Act of 1966, usually include at least four sections relevant to this discussion: 10/

  a. The statute defines who is eligible for bail, as a matter of right or in the discretion of the court (this may replicate the wording of the state's constitution).

  b. The statute defines the purpose of pretrial release, i.e., whether it is to assure appearance only or appearance and community safety.

  c. The statute provides criteria (list or description of factors) which the court is to consider in determining the likelihood of the defendant complying with the purpose of pretrial release.

  d. The statute suggests conditions, financial and nonfinancial, on which a person may be released in order to best insure that the purpose of pretrial release is satisfied.

8/ Arizona, Texas, Utah, Michigan. This approach is discussed more fully in the text as Category G.

9/ Texas, Michigan, Wisconsin, This approach is discussed more fully in the text as Category E.

10/ A portion of the Bail Reform Act, 18 U.S.C. §3146 - 3151, is set forth in Appendix C. A definition of who is eligible for bail and the purpose appears in §3146 (a). The criteria or factors to be considered in the determination is are in §3146 (b). The release conditions are listed in §3146 (a) (1) through (5).

CATEGORIES

The definition of states whose laws appear to be aimed at reducing or avoiding violent, illegal, or dangerous behavior by people at liberty awaiting disposition of charges against them leads to the identification of several states. Because the methods utilized by these states vary considerably, it is misleading to simply list them. However, despite significant differences in wording, most state efforts fit within one or more of eight categories of "pretrial crime control" measures:

A. STATES WHERE CERTAIN CRIMES ARE EXCLUDED FROM AUTOMATIC BAIL ELIGIBILITY

B. STATES WHERE THE PURPOSE OF BAIL IS STATED TO BE APPEARANCE AND SAFETY

C. STATES WHERE CRIME CONTROL FACTORS MAY BE CONSIDERED IN RELEASE DECISION

D. STATES WHERE CONDITIONS OF RELEASE MAY INCLUDE THOSE RELATED TO CRIME CONTROL

E. STATES WHERE PRIOR CONVICTIONS LIMIT RIGHT TO BAIL

F. STATES WHERE DEFENDANT'S RELEASE MAY BE REVOKED UPON EVIDENCE THAT HE HAS COMMITTED A NEW CRIME

G. STATES WHERE DEFENDANT'S RIGHT TO BAIL FOR CRIME ALLEGEDLY COMMITTED WHILE ON PRETRIAL RELEASE IS LIMITED

H. STATES WHERE PRETRIAL DETENTION MAY BE IMPOSED FOR CRIME CONTROL PURPOSES

In viewing the listing and description of state laws within these categories, some clarification may be required:

- A category may include states which meet the criteria because of language in their constitution and those which do so by virtue of statute or court rule. 11/
- States often fit into more than one category.
- Some statutory language appears unclear or inconsistent. 12/ For this reason, the jurisdiction may not have intended a "crime control purpose," and the state may not be correctly listed in this context. In marginal cases, a state is included with a note indicating the uncertainty and the basis for this view. Wherever possible, legislative or public debate has been examined to determine intent.
- The laws referred to are accompanied, in some jurisdictions, by important procedural safeguards including provisions concerning hearings, speedy trial requirements, the appropriate use of financial conditions when considering "danger," etc. These provisions are not generally listed in the text, but are explained in footnotes where possible.
- The laws reflect two different approaches to the appropriate use of pretrial release processes in crime control. One use, as expressed in the National Association of Pretrial Services Agencies (NAPSA) Standards, permits the consideration of future dangerous behavior at the initial arrest of the defendant. 13/ The other, which is endorsed by the American Bar Association (ABA) Standards, distinguishes prediction from previous action and permits danger to be considered in setting conditions of release or detention only when a defendant is found to have committed a crime while already on pretrial release. 14/ BOTH THE NAPSA AND ABA STANDARDS REQUIRE SPECIFIC SAFEGUARDS IN ANY LAWS WHICH PURPORT TO FULFILL A CRIME CONTROL FUNCTION UPON FIRST ARREST OR REARREST. NONE OF THE LAWS DESCRIBED HEREIN FULLY MEET THOSE STANDARDS.

11/ Court rules here refer to rules which are not necessarily codified or approved by the legislature, but are initiated by the courts. Many states also have comprehensive codified Rules of Criminal Procedure within their statutory schemes which are legislatively enacted. Both types of rules are referred to in the text and appendices under the term "statutes".

12/ Some lack of clarity may be due to the fact that many statutes have been amended over the last decade to reflect a desire to use the pretrial release process for crime control purposes. Piecemeal changes in a statute may cause more confusion than the careful drafting which often accompanies a comprehensive writing--or re-writing--of a chapter. Where an amendment simply adds the phrase "and to assure the safety of the community" to the purpose of bail, but leaves intact a section which permits the imposition of conditions of release "to assure the appearance" of the accused, the result is confusing, if not contradictory. See, e. g. Minnesota Rules of Criminal Procedure, Rule 6.02, Subd. 1.

13/ Standard VII. National Association of Pretrial Services Agencies' Performance Standards and Goals for Release and Diversion: Release, Approved 1978. This Standard appears in Appendix E. NAPSA has stressed that its Standards should be viewed as a "package," and that pretrial detention statutes should be accompanied by the elimination of many bail.

14/ Standard 10-5.9 American Bar Association Standards Relating to the Administration of Criminal Justice, Chapter 10, Pretrial Release, 1978 This Standard is set forth fully in Appendix F.

A. STATES WHERE CERTAIN CRIMES ARE EXCLUDED FROM AUTOMATIC BAIL ELIGIBILITY 15/

EXAMPLE:

"... All persons shall, before conviction, be bailable by sufficient sureties, except that bail may be denied for the following persons when the proof is evident or the presumption great:

"...(c) A person who is indicted for, or arraigned on a warrant charging criminal sexual conduct in the first degree, armed robbery, or kidnapping with intent to extort money or other valuable thing thereby, unless the court finds by clear and convincing evidence that the defendant is not likely to flee or present a danger to any other person..."

Constitution of Michigan
Article 1, Section 15.

15/ This category does not include states in which the right to bail is withheld for capital cases, murder, treason, or cases which carry sentences of life imprisonment. One interpretation of the history of the "capital case exception" suggests that it was appearance-related. (See, e.g. Foote, "The Coming Constitutional Crisis in Bail," (pt. 1) 113 U. Pa. L. Rev. 959 (1965). The belief was that a person facing the ultimate penalty would have little incentive to appear, and therefore the denial of bail might be necessary to assure appearance. Since the declining use of the death penalty in some jurisdictions, the capital case exception has often been applied to the most serious crimes which previously were capital offenses.

As indicated in the above example, jurisdictions may specify that persons charged with certain serious crimes have no right to bail. Where the charge is not capital or cannot result in life imprisonment, the exclusion is probably related to considerations of danger. The laws of the following states single out particular felonies which, alone or in combination with other factors, allow or require a judge to detain a defendant pretrial: 16/

District of Columbia (S)

Georgia (S)

Michigan (C)

Nebraska (C) 17/

Wisconsin (C) (S) 18/

C = Constitution

S = Statute

16/ Georgia's statute renders bail discretionary for a number of felonies (murder, treason, rape, armed robbery, aircraft hijacking, perjury and narcotic sales). Not all of these offenses carries a life sentence or death penalty. However, the statute does not otherwise suggest that these exclusions are for crime control (as opposed to appearance) purposes; it is therefore not clear whether Georgia should be viewed as a "danger" state.

17/ Unlike the other states in this Category in which denial of bail is discretionary, detention is mandatory in Nebraska. Nebraska amended its constitution in 1978 to require the denial of bail to defendants charged with forcible sex offenses when the proof is evident or the presumption of guilt is great. The amendment was upheld by Nebraska's highest court in 1979 (Parker v. Roth, 278 NW2d 106), but was found unconstitutional by the United States Court of Appeals for the Eighth Circuit in 1981 (Hunt v. Roth, 648 F.2d 1148). This year, the Supreme Court declared the Eighth Circuit's ruling moot (legally dead), without ruling on the issue of the amendment's constitutionality. The high court's decision nonetheless vacated the appeals court's decision, and the vitality of the amendment was thereby restored. (Murphy v. Hunt, No. 80-2165, 30 CrL 3075, decided March 2, 1982).

18/ Wisconsin amended its constitution in 1981 to authorize the enactment of laws which would permit the detention of some persons charged with certain crimes. The constitutionality of the ratificiation procedure was challenged, and no laws were enacted pursuant to the enabling clause. However, the Wisconsin Supreme Court recently upheld the amendment, and preventive detention legislation was passed in April, 1982. [Laws of 1981, Chapter 183.]

B. STATES WHERE THE PURPOSE OF BAIL IS STATED TO BE APPEARANCE AND SAFETY

> EXAMPLE:
>
> "A person charged with an offense shall, at his first appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required, or will pose a danger to other persons and the community..."
>
> Alaska Statutes §12.30.30 (a)

These laws specifically provide for consideration of danger to the community: 19/

Alaska (S)
Delaware (S)
District of Columbia (S)
Florida (S)
Hawaii (S)
Minnesota (S)
South Carolina (S)
South Dakota (S)
Vermont (S)
Virginia (S)
Wisconsin (C) (S)

19/ The precise wording varies among the statutes. Some states refer to "danger to any person or the community", or "safety of the community". A purpose of the Wisconsin release procedure is to "protect members of the community from serious bodily harm." [Wisc. Stat. 969.01(1), as amended Laws of 1981, Chapter 183.] Minnesota is concerned with behavior "inimical of public safety". [Minnesota Rules of Criminal Procedure, Rule 6.02 Subd. 1.]

C. STATES WHERE CRIME CONTROL FACTORS MAY BE CONSIDERED IN RELEASE DECISION 20/

> EXAMPLES:
>
> "...In determining which conditions of release will reasonably assure such appearance, the judge, judicial officer or court shall on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, his record of appearance at court proceedings or flight to avoid prosecution, and the safety of any other person or of the community."
>
> Minnesota Rules of Criminal Procedure Rule 6.02 Subd. 2.

This example is similar to Florida and South Dakota, requiring an assessment of the risk the defendant's release poses to the safety of the community; no guidance is provided suggesting how this assessment should be made. In Wisconsin and Alabama, the statutes are more specific, requiring the court to consider whether the crime was violent. 21/

Alabama (S)
Florida (S)
Minnesota (S)
South Dakota (S)
Wisconsin (S)

20/ Arkansas [Rules Crim. P. Rule 8.5], [Colo. Rev. Stat. §16-4, 105 (j)], Idaho [Idaho Crim. Rules, Rule 46 (a) (8)], and Oregon [Or. Rev. Stat. §135.230 (6) (g)] authorize the court to consider "any facts indicating the possibility of violations of law if the defendant is released without restrictions." Maine requires the court to consider the fact that the defendant was already on pretrial release for "another felony offense as a reason for requiring more stringent bail." [Maine Rev. Stat. tit. 15, §942.] Because most of these statutes (Oregon, Idaho, Maine) define future court appearance as the goal of the pretrial release process, the purpose of such language is apparently not "crime control". It seems to reflect the reasoning that a person who is or may be facing trial on two (or more) cases is less likely to appear for trial because of the greater likelihood of conviction or incarceration.

21/ Wisconsin and Alabama should perhaps not be considered "danger" states on the basis of this category. Although it is not clear how this factor (use of violence in the alleged commission of the crime) relates to appearance, Alabama's release laws reflect a clear intention to utilize pretrial release procedures for appearance only. Therefore, Alabama and Wisconsin are perhaps not properly in this category.

D. STATES WHERE CONDITIONS OF RELEASE MAY INCLUDE THOSE RELATED TO CRIME CONTROL

> **EXAMPLE:**
>
> "...If a judicial officer determines...that the release of a person will not reasonably assure the appearance of the person, or will pose a danger to other persons and the community, the judicial officer may:
>
> (1) place the person in the custody of a designated person or organization agreeing to supervise him; (2) place restrictions on the travel, association, or place of abode of the person during the period of release; (3) require the person to return to custody after daylight hours on designated conditions; (4) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security, a sum not to exceed 10 percent of the amount of the bond; the deposit to be returned upon the performance of the condition of release; (5) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash; or (6) impose any other condition considered reasonably necessary to assure the defendant's appearance as required and the safety of other persons and the community."
>
> Alaska Statutes §12.30.020 (b)

This category includes wide variations on permissible conditions. For example, North Carolina requires that money bond be imposed if the defendant is found to pose a danger, whereas D.C. permits only nonfinancial conditions for crime control purposes (see Appendix D). 22/ In most states, as in the Alaska statute, the conditions which may be imposed to insure appearance are the same as those for controlling dangerous behavior.

22/ Arkansas, Hawaii, and Washington also specify non-financial conditions of release for allegedly dangerous defendants.

It is important to note that the authority to impose release conditions for "danger" is not the same as "preventive detention." Most states which allow for the consideration of danger in the setting of release conditions do NOT authorize detention for crime control purposes: 23/

Alaska (S)	New Mexico (S)
Arkansas (S)	North Carolina (S)
Delaware (S)	South Carolina (S)
District of Columbia (S)	Vermont (S)
Hawaii (S)	Virginia (S)
Illinois (S)	Washington (S)
Minnestoa (S)	Wisconsin (C) (S)

23/ Vermont's Supreme Court ruled specifically that detention was not a permissible "condition" to impose for crime control purposes. State v. Pray 346 A. 2d 227 (1965). Nearly all the other states in this category follow the same philosophy. Only Hawaii specifically lists "detention" under the list of permissible conditions to impose on allegedly dangerous defendants. (D.C., Virginia and Wisconsin authorize detention, but procedurally these provisions are set forth in separate sections of their laws and not among the list of release conditions; these jurisdictions, along with other states, are included in Category H.

E. STATES WHERE PRIOR CONVICTIONS LIMIT RIGHT TO BAIL

> **EXAMPLE:**
>
> "Any person (1) accused of a felony less than capital in this State, who has been theretofore twice convicted of a felony...or (2) accused of a felony less than capital in this State involving the use of a deadly weapon after being convicted of a prior felony, after a hearing and upon evidence substantially showing the guilt of the accused of the offense...may de denied bail pending trial..."
>
> Constitution of Texas
> Article 11, Section 11a

Five jurisdictions permit the denial of bail for defendants who have been previously convicted of a certain crime or crimes and are presently charged with certain serious crimes. With the exception of Hawaii, denial of bail is discretionary and may occur only after a hearing. In addition, trial for such defendants must be held within a short period. 24/

District of Columbia (S)

Hawaii (S)

Michigan (C)

Texas (C)

Wisconsin (C) (S)

24/ In D.C. and Texas, defendants detained under these provisions must be brought to trial within 60 days. The time limit in Michigan is 90 days.

F. STATES WHERE DEFENDANT'S RELEASE MAY BE REVOKED UPON EVIDENCE THAT HE HAS COMMITTED A NEW CRIME

> **EXAMPLE:**
>
> "Every release on bail with or without security is conditioned upon the defendant's good behavior while so released, and upon a showing that the proof is evident of the presumption great that the defendant has committed a felony during the period of release, the defendant's bail may be revoked, after a hearing, by the magistrate who allowed it or by any judge of the court in which the original charge is pending..."
>
> Nevada Revised Statutes
> §178.487

In these states, the defendant's initial release is--explicitly or impliedly--conditioned upon his lawful behavior. 25/ A subsequent arrest may, therefore, be grounds for revoking the release on a violation of the condition of good behavior. However, there is considerable variation among the states concerning (1) the standard of proof that the defendant actually violated the condition, 26/ (2) the procedures required for revocation, and (3) the length of time after revocation within which the defendant must be tried. 27/

Arkansas (S)

Colorado (S)

Illinois (S)

Indiana (S)

Massachusetts (S)

Nevada (S)

New York (S)

Rhode Island (S)

Virginia (S)

Wisconsin (S)

25/ In all the states listed in this category except Wisconsin and Indiana, the defendant's "good behavior" while on release is a mandatory release condition. South Carolina includes a "good behavior" condition, but specifies no procedure for revoking release in case such condition is violated, and therefore is not included in this category.

26/ In Illinois, Indiana and Wisconsin, the prosecutor must prove by clear and convincing evidence that the defendant committed the specified crime while on release; in Arkansas, Colorado, Massachusetts, and New York, the standard is reasonable cause or probable cause. Nevada adheres to the "proof is evident or presumption great" standard, while in Rhode Island, the evidence must "reasonably satisfy that there had been a violation". This requires the state to go beyond probable cause. Mello v. Sup. Ct., 370 A.2d 1262 (1977). Virginia specifies no standard of proof.

27/ Illinois, Massachusetts and Wisconsin require trial within 60 days; Colorado and New York allow detention following revocation for 90 days. No time limit is specified in the pretrial release laws of the remaining states.

G. STATES WHERE DEFENDANT'S RIGHT TO BAIL FOR OFFENSE ALLEGEDLY COMMITTED WHILE AT LIBERTY ON PRETRIAL RELEASE IS LIMITED.

> EXAMPLE:
>
> " All persons charged with crimes shall be bailable by sufficient sureties, except for capital offenses and felony offenses committed when the person charged is already admitted to bail on a separate felony charge and where the proof is evident or the presumption great as to the present charge."
>
> Constitution of Arizona
> Article 2, Section 22

This category includes states in which the pretrial release process for "crime on bail"--offenses allegedly committed by persons already released on an initial offense--differs for that prescribed for initial arrests. The procedures required to deny bail in such cases differ significantly. 28/

Arizona (C)	Michigan (C)
Colorado (S)	Nevada (S)
District of Columbia (S)	Tennessee (S)
Hawaii (S)	Texas (C)
Maryland (S)	Utah (C) (S)

28/ For example, bail for a second offense requires the approval of the District Attorney in Colorado. [Colo. Rev. Stat. §16-4-105(1)(n)]. In Tennessee, bail for the subsequent offense must be "double the amount of bail customarily set." [Tenn. Code §40-1201 et seq. (amended Acts 1981, ch.351)]. In addition to its constitutional provision quoted in the text, Arizona recently passed legislation requiring that a person convicted of a felony while on bail or own recognizance release on a separate felony shall be sentenced to imprisonment for two years longer than would otherwise be imposed (and in addition to any enhanced punishment that may otherwise be applicable.) [Ariz. Rev. Stat. §13-604, Laws of 1981, ch. 165 (repealing §13-3970).]

H. STATES WHERE PRETRIAL DETENTION MAY BE IMPOSED FOR CRIME CONTROL PURPOSES.

> EXAMPLE:
>
> "(5) A pretrial detention hearing is a hearing before a court for the purpose of determining if the continued detention of the defendant is justified. A pretrial detention hearing may be held in conjunction with a preliminary examination under §970.03 or a conditional release revocation hearing under §969.08(5)(b), but separate findings shall be made by the court relating to the pretrial detention, preliminary examination and conditional release revocation. The pretrial detention hearing shall be commenced within 10 days from the date the defendant is detained or brought before the court under sub. (4) the defendant may not be denied release from custody in accordance with §969.03 for more than 10 days prior to the hearing required by this subsection.
>
> (6) During the pretrial detention hearing:
>
> (a) The state has the burden of going forward and proving by clear and convincing evidence that the defendant committed an offense specified under sub. (2)(a), or that the defendant committed or attempted to commit a violent crime subsequent to a prior conviction for a violent crime.
>
> (b) The state has the burden of going forward and proving by clear and convincing evidence that available conditions of release will not adequately protect members of the community frim serious bodily harm or prevent the intimidation of witnesses.
>
> (c) The evidence shall be presented in open court with the right of confrontation, right to call witnesses, right to cross-examination and right to representation by counsel. The rules of evidence applicable in criminal trials govern the admissibility of evidence at the hearing...
>
> (8) If the court makes the findings under sub. (6) (a) and (b), the court may deny bail to the defendant for an additional period not to exceed 60 days following the hearing. If the time period passes and the defendant is otherwise eligible, he or she shall be released from custody with or without conditions in accordance with §969.03...
>
> (11) A person who has been detained under this section is entitled to placement of his or her case on an expedited trial calendar and his or her trial shall be given priority."
>
> Wisconsin Statutes
> §969.035

This category includes states which explicitly authorize "preventive detention" of allegedly dangerous defendants. (The statutory scheme of the District of Columbia is set forth in Appendix D). In Michigan, Wisconsin and D.C., the court is required to follow a comprehensive procedure (including hearing and expedited trial). 29/ Several states and the federal government are currently considering legislation which would be within this category. 30/'

District of Columbia (S)

Hawaii (S)

Michigan (C)

Virginia (S)

Wisconsin (C) (S)

29/ In the District and Wisconsin, defendants so detained must be tried in 60 days; in Michigan, 90 days. Neither Virginia nor Hawaii specify time limits. Hawaii permits a denial of bail in any case "upon a showing that there exists a danger that the defendant will commit a serious crime", Haw. Rev. Stat. §804-7.1, and requires the denial of bail in cases "where the charge is for a serious crime where the proof is evident and the presumption great", if the offense is punishable by life imprisonment without possibility of parole, the defendant has been convicted of a serious crime within ten years, or the defendant is already on bail on a felony charge, §.804.3 Virginia Code §19.2-120 provides that an accused "shall be admitted to bail...unless there is probable cause to believe that...liberty will constitute an unreasonable danger to himself or the public."

30/ Several bills amending the federal Bail Reform Act to permit the consideration of "dangerousness" and the denial of bail to allegedly dangerous defendants are now pending in Congress, e.g. S.1554, S.1630, S.440, S.482, §.1253. California and Illinois voters will be asked to ratify amendments to their constitutions' bail clauses this year.

APPENDIX A

CONSTITUTIONAL AND STATUTORY PROVISIONS RELATING TO PRETRIAL RELEASE

The following listing includes each state referred to in the text. The constitutional provision granting a right to bail is listed beneath the column for State Constitution. (States which have no "right to bail" clause are blank. All states except Illinois prohibit excessive bail; these references are not included). In the column labeled State Code, the controlling statute or rule is listed. In some states, pretrial release laws are reflected in several statutes, or in statutes and court rules.

STATE	STATE CONSTITUTION	STATE CODE
ALABAMA	Article 1, Section 16 (A)	Ala. Code §15-13-1 et seq. Ala. Rules Jud. Admin. 2
ALASKA	Article 1, Section 11 (A)	Alaska Stat. §12.30.010 et seq.
ARIZONA	Article 2, Section 22	Ariz. Rev. Stat. §13-604 §13-3961 et seq. [as amended Laws 1981, ch. 165] Ariz. Rules Cr. P. 7
ARKANSAS	Article 2, Section 8 (A)	Ark. Stat. Ann. §43-701 et seq. Ark. Rules Cr. P. 8.4 et seq. and et seq.
COLORADO	Article 2, Section 19 (A)	Colo Rev. Stat. §16-4-101 et seq. Colo. Rules Cr. P. 46 (a)
DELAWARE	Article 1, Section 12 (A)	Del. Code tit. 11, §2101 et seq. Del. Common Pleas Ct. Cr. R. 46
D.C.	--	D.C. Code §23:1321 et seq.
FLORIDA	Article 1, Section 14	Fla. Stat. §903.02 - 903.046 [as amended Laws 1982, ch. 82-175] Fla. Rules Cr. P. 3.130

GEORGIA	--	Code of Georgia §27-901 et seq.
HAWAII	--	Haw. Rev. Stat. §660-30 et seq. §804-1 et seq.
ILLINOIS	Article 1, Section 9 (B)	Ill. Rev. Stat. Ch. 38, §110-1 et seq. [as amended Laws 1981, P.A. 82-3531]
INDIANA	Article 1, Section 17 (B)	Ind. Code §35-1-18-1 et seq.
MARYLAND	--	Md. Ann. Code Art. 27, §§638A; 638B; 616 1/2 Md. R. of Proc. Rule 721
MASSACHUSETTS	--	Mass. Gen. Laws Ann. Ch. 276, §42.58 et seq. [as amended Acts of 1981, ch. 802]
MICHIGAN	Article 1, Section 15	Mich. Comp. Laws §765.1 et seq.; 780.61 et seq. Mich. Gen. Ct. Rules 1963, R. 790
MINNESOTA	Article 1, Section (7) (A)	Minn. Stat. §629.44 et seq. Minn. Rules Cr. P. 6.02, 6.03
NEBRASKA	Article 1, Section 9	Neb. Rev. Stat. §29-901 et seq.
NEVADA	Article 1, Section 7	Nev. Rev. Stat. §173.175; 178.484 et seq.
NEW MEXICO	Article 2, Section 13 (A)	N.M. Stat. Ann. §44-1-1 et seq. N.M. Cr. P. Rule 22
NEW YORK	--	N.Y. [Cr. P.] Law (McKinney's) §500.10; 510.30 [as amended Laws 1981, ch. 788]
NORTH CAROLINA	--	N.C. Gen. Stat. §15A-534
NORTH DAKOTA	--	N.D. Code §29-08 N.D. Rules Cr. P. 46
RHODE ISLAND	Article 1, Section 9 (B)	R.I. Gen. Laws §12-13-1 et seq.
SOUTH CAROLINA	Article 1, Section 15 (B)	S.C. Code §17-15-10 et seq.
SOUTH DAKOTA	Article VI, Section 8 (A)	S.D. Comp. Laws Ann. §23A-43-1 et seq.
TENNESSEE	Article 1, Section 16 (A)	Tenn. Code Ann. §40-1201 et seq.
TEXAS	Article 1, Section 11a	Tex. [Cr. P.] Code Ann. tit. 17, §01 et seq.
UTAH	Article 1, Section 9	Utah Code Ann. §77-20-1 et seq.
VERMONT	Chapter 2, Section 40 (B)	Vt. Stat. Ann. tit. 13, §7551 et seq.
VIRGINIA	--	Va. Code §19.2-120 et seq.
WASHINGTON	Article 1, Section 20 (A)	Rev. Code Wash. Ann. §10.19.010 et seq. RCWA Sup. Ct. Cr. R. 3.2
WISCONSIN	Article 1, Section 6	Wisc. Stats. §969.001 et seq. [as amended Laws of 1981, ch. 183]

LEGEND:

(A) - Right to bail in all non-capital cases
(B) - Right to bail in all non-capital cases except offenses which carry a life sentence, life without possibility of parole, murder or treason (wording varies depending on statute).

APPENDIX B

TABLE OF STATES ACCORDING TO CATEGORY*

STATE	A	B	C	D	E	F	G	H
ALABAMA			X†					
ALASKA		X		X				
ARIZONA							X	
ARKANSAS				X		X		
COLORADO						X	X	
DELAWARE		X		X				
D.C.	X	X		X	X		X	X
FLORIDA		X	X					
GEORGIA	X†							
HAWAII		X		X	X		X	X
ILLINOIS				X		X		
INDIANA						X		
MARYLAND							X	
MASSACHUSETTS						X		
MICHIGAN	X				X		X	X
MINNESOTA		X	X	X				
NEBRASKA	X							
NEVADA						X	X	
NEW MEXICO				X				
NEW YORK						X		
NORTH CAROLINA				X				
RHODE ISLAND						X		
SOUTH CAROLINA		X		X				
SOUTH DAKOTA		X	X					
TENNESSEE							X	
TEXAS					X		X	
UTAH							X	
VERMONT		X		X				
VIRGINIA		X		X		X		
WASHINGTON				X				
WISCONSIN	X	X	X†	X	X	X		X

*A - *Certain crimes excluded from automatic bail eligibility (see p. 10)*
B - Purpose of bail stated to be appearance and safety (see p. 12)
C - Crime control factors may be considered in release decision (see p. 13)
D - Conditions of release may include those related to crime control (see p. 14)
E - Prior convictions limit right to bail (see p. 16)
F - Defendant's release may be revoked upon evidence committed new crime (see p. 17)
G - Defendant's right to bail for offense allegedly committed on release limited (see p. 18)
H - Pretrial detention may be imposed for crime control purposes (see p. 19)

† indicates state in which "crime control" purpose may not be intended, despite statute which appears to meet definition of category.

APPENDIX C

BAIL REFORM ACT (1966)
18 U.S.C. §3146-3151

§3146. Release in Noncapital Cases Prior to Trial

(a) Any person charged with an offense, other than an offense punishable by death, shall at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) place the person in the custody of a designated person or organization agreeing to supervise him;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) require the execution of an appearance bond in a specified amount an the deposit in the registry of the court, in cash or other security as directed, of a sum not of exceed 10 percentum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(4) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(5) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(b) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, and length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

APPENDIX D

DISTRICT OF COLUMBIA
COURT REFORM AND CRIMINAL PROCEDURES ACT OF 1970
(D.C. Code §23-1321 et seq.)

§23-1321. Release in noncapital cases prior to trial

(a) Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required or the safety of any other person or the community. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or the safety of any other person or the community, or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the person in the custody of a designated person or organization agreeing to supervise him.

(2) Place restrictions on the travel, association, or place of abode of the person during the period of release.

(3) Require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release.

(4) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof.

(5) Impose any other condition, including a condition requiring that the person return to custody after specified hours of release for employment or other limited purposes.

No financial condition may be imposed to assure the safety of any other person or the community.

(b) In determining which conditions of release, if any, will reasonably assure the appearance of a person as required or the safety of any other person or the community, the judicial officer shall, on the basis of available information, take into account such matters as the nature and circumstances of the offense charged, the weight of the evidence against such person, his family ties, employment, financial resources, character and mental conditions, past conduct, length of residence in the community, record of convictions, and any record of appearance at court proceedings, flight to avoid prosecution, or failure to appear at court proceedings...

§23-1322. Detention prior to trial

(a) Subject to the provisions of this section, a judicial officer may order pretrial detention of--

(1) a person charged with a dangerous crime, as defined in section 23-1331 (3), if the Government certifies by motion that based on such person°s pattern of behavior consisting of his past and present conduct and on other factors set out in section 23-1321 (b), there is no condition or combination of conditions which will reasonably assure the safety of the community;

(2) a person charged with a crime of violence, as defined in section 23-1331 (4), if (i) the person has been convicted of a crime of violence within the ten-year period immediately preceding the alleged crime of violence for which he is presently charged; or (ii) the crime of violence was allegedly committed while the person was, with respect to another crime of violence on bail or other release or on probation, parole, or mandatory release pending completion of a sentence; or

(3) a person charged with any offense if such person, for the purpose of obstructing or attempting to obstruct justice, threatens, injures, intimidates, or attempts to threaten, injure, intimidate any prospective witness or juror.

(b) No person described in subsection (a) of this section shall be ordered detained unless the judicial officer --

(1) holds a pretrial detention hearing in accordance with the provisions of subsection (c) of this section;

(2) finds--

(A) that there is clear and convincing evidence that the person is a person described in paragraph (1), (2), or (3) of subsection (a) of this section;

(B) that --

(i) in the case of a person described only in paragraph (1) of subsection (a), based on such person's pattern of behavior consisting of his past and present conduct, and on other factors set out in section 23-1321 (b), or

(ii) in the case of a person described in paragraph (2) or (3) of such subsection, based on factors set out in section 23-1321 (b),

there is no condition or combination of conditions of release which will reasonably assure the safety of any other person or the community and

(C) that except with respect to a person described in paragraph (3) of subsection (a) of this section, on the basis of information presented by proffer or otherwise to the judicial officer there is a substantial probability that the person committed the offense for which he is present before the judicial officer; and

(3) issues an order of detention accompanied by written findings of fact and the reasons for its entry.

(c) The following procedures shall apply to pretrial detention hearings held pursuant to this section:

(1) Whenever the person is before a judicial officer, the hearing may be initiated on oral motion of the United States attorney...

(4) The person shall be entitled to representation by counsel and shall be entitled to present information by proffer or otherwise, to testify, and to present witnesses in his own behalf.

(5) Information states in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(6) Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but such testimony shall be admisibile in proceedings under sections 23-1327, 23-1328, and 23-1329, in perjury proceedings, and for the purposes of impeachment in any subsequent proceedings....

(d) The following shall be applicable to person detained in this section:

(1) The case of such person shall be placed on an expedited calendar and, consistent with the sound administration of justice, his trial shall be given priority.

(2) Such person shall be treated in accordance with section 23-1321

(A) upon the expiration of sixty calendar days, unless the trial is in progress or the trial has been delayed at the request of the person other than by the filing or timely motions (excluding motions for continuances); or

(B) whenever a judicial officer finds that a subsequent event has eliminated the basis for such detention...

§23-1328. Penalties for offenses committed during release.

(a) Any person convicted of an offense committed while on release pursuant to section 23-1321 shall be subject to the following penalties in addition to any other applicable penalties:

(1) A term of imprisonment of not less than one year and not more than five years if convicted of committing a felony while so released; and

(2) A term of imprisonment of not less than ninety days and not more than one year if convicted of committing a misdemeanor while so released....

(b) Any term of imprisonment imposed pursuant to this section shall be consecutive of any other sentence of imprisonment.

APPENDIX E

PERFORMANCE STANDARDS AND GOALS FOR RELEASE AND DIVERSION: RELEASE, NAPSA 1978

VII. IF THE COURT, USING PROCEDURES AND CRITERIA CONSISTENT WITH THIS STANDARD, FINDS THAT NO CONDITION(S) OF RELEASE WILL REASONABLY MINIMIZE RISK OF FLIGHT TO AVOID PROSECUTION OR RISK OF DANGER TO THE COMMUNITY, IT MAY ORDER THE DEFENDANT DETAINED PRIOR TO TRIAL.

A. In Order To Invoke Pretrial Detention Provisions, The Court Should Find That There Is Substantial Probability That The Defendant Committed The Offense For Which He Is Before The Court And Must Find By Clear And Convincing Evidence That:

1. The defendant is charged with a felony in the instant case, poses a substantial risk of flight to avoid prosecution, *and:*

(a) has been convicted of, or has a pending charge of, unlawful flight to avoid prosecution; *or*
(b) has expressed intent to flee the jurisdiction; *or*
(c) has committed overt acts which reasonably infer an intent to flee the jurisdiction; *and,*

there is no condition or combination of conditions of release which will reasonably minimize the substantial risk of flight; *or*

2. The defendant is charged with a crime of violence[1] in the instant case, poses a substantial threat to the safety of the community; *and*

(a) has been convicted of a crime of violence within the past ten years; *or*
(b) is on probation, parole or pretrial release for a crime of violence; *or*
(c) has exhibited a pattern of behavior consisting of present and past conduct which, although not necessarily the subject of criminal prosecution and/or conviction, poses a substantial threat to the safety of the community; *and,*

there is no condition or combination of conditions of release which will reasonably minimize the substantial risk of danger to the community; *or*

[1] Although each jurisdiction is free to make its own determination of what constitutes a crime of violence, these Standards define the term "crime of violence" as murder, forcible rape, taking indecent liberties with a child under the age of sixteen years, mayhem, kidnapping, robbery, burglary of any premises adapted for overnight accommodation of persons, voluntary manslaughter, extortion accompanied by threats of violence, arson, assault with intent to commit any offense, assault with a dangerous weapon, or an attempt or conspiracy to commit any of the foregoing offenses as defined by any Act of Congress or any State law, if the offense is punishable by imprisonment for more than one year. (This definition is adapted from that included in the Court Reform and Criminal Procedure Act of 1970, 23 D.C. Code § 1331 (1970)).

3. The defendant poses a threat to the integrity of the judicial process by threatening or intimidating witnesses or jurors or by concealing or destroying evidence and there is no condition or combination of conditions of release which will reasonably minimize that threat to the integrity of the judicial process.

B. Detention Prior To Trial May Only Be Ordered After A Hearing Before A Judicial Officer.

1. Upon motion by the prosecutor with notice to the defendant and his counsel, the court may hold a pretrial detention hearing at any time the defendant is before the court. The prosecutor should submit with the motion an affidavit setting forth the facts showing probable cause for pretrial detention. A continuance sought by the defendant may be granted for up to five calendar days; a continuance sought by the prosecutor may be granted upon good cause shown for up to three calendar days. The defendant may be detained pending the hearing.

If the defendant is not in custody, the court may issue a warrant for the arrest of the defendant and a hearing should be held within three calendar days after the defendant is taken into custody unless the defendant seeks a continuance. The continuance, if granted, should not exceed five calendar days. The defendant may be detained pending the hearing.

2. At the detention hearing, the defendant should be represented by counsel, have the right to disclosure of evidence, to confront and cross-examine witnesses, the opportunity to appear in person and by counsel, and to present witnesses and evidence. The burden of going forward and the burden of proof by clear and convincing evidence should rest with the prosecutor. Rules for admissibility of evidence should be the same as are in effect at a preliminary hearing.

3. Testimony of the defendant given during the pretrial detention hearing should not be admissible on the issue of guilt in any other judicial proceeding.

4. A verbatim record of the hearing and written statement of the reasons for detention and the evidence relied upon should be included in the court record which should establish the need for detention by clear and convincing evidence.

C. The Status Of All Persons Detained Pretrial Longer Than Ten Days Should Be Reviewed Biweekly By A Judicial Officer Who Should Release The Defendant On The Least Restrictive Conditions Possible If He Finds That A Subsequent Event Has Eliminated The Basis For Such Detention. Information Provided For the Review Should Include The Date And Location Of The Detention Hearing, The Reason For Detention And The Current Status Of The Defendant.

D. All Persons Ordered Detained Prior To Trial Should Have The Right To An Expedited Appeal Of The Detention Order.

E. All Persons Ordered Detained Prior To Trial Should Have Priority On The Court Trial Calendar. The Case Of A Detained Defendant Should Be brought To Trial Within 60 Calendar Days Of The Detention Order Or Within 90 Calendar Days Of Arrest, Whichever Is Less, Unless The Trial Is In Progress Or The Trial Has Been Delayed At The Request Of The Defendant Other Than By The Filing Of Timely Motions (Excluding Motions For Continuances). If The Above Time Limits Have Expired, The Defendant Should Be Released From Custody On The Least Restrictive Conditions Possible.

F. To The Maximum Extent Practicable, Persons Subject To Pretrial Detention Should Be Confined In A Place Other Than That Designated For Convicted Persons. Conditions Of Pretrial Detention Should Be Adjusted To Minimize The Punitive Aspects Of Detention. Persons Detained Pretrial Should Be Entitled To The Same Rights As Persons Convicted Of Crime. In Addition, The Following Procedures Should Be Implemented To Reduce The Detrimental Effects Of Pretrial Detention:

1. Persons in detention should have access to their attorneys during regular working hours.
2. Detainees should have liberal visitation rights with family and friends, including contact visits.
3. The detention facility should permit the greatest possible privacy for each defendant.
4. Each defendant should have access to social, employment, psychiatric, or medical treatment and other services.

G. Time Spent In Dentention Prior To Trial Should Be Credited Against Any Minimum And Maximum Term Imposed Upon Conviction.

APPENDIX F

STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE, Pretrial Release
ABA 1978

Standard 10-5.9. Pretrial detention

(a) A judicial officer shall convene a pretrial detention hearing whenever:

(1) a defendant has been detained for five days pursuant to standards 10-5.4, 10-5.7(a)(ii), or 10-5.8; or

(2) the prosecutor, a law enforcement officer, or a representative of the pretrial services agency alleges, in a verified complaint, that a released defendant is likely to flee, threaten or intimidate witnesses or court personnel, or constitute a danger to the community.

(b) At the conclusion of the pretrial detention hearing, the judicial officer should issue an order of detention if the officer finds in writing by clear and convincing evidence that:

(1) the defendant, for the purpose of interfering with or obstructing or attempting to interfere with or obstruct justice, has threatened, injured, or intimidated or attempted to threaten, injure, or intimidate any prospective witness, juror, prosecutor, or court officer or;

(2) the defendant constitutes a danger to the community because:

(i) the defendant has committed a criminal offense since release, or

(ii) the defendant has violated conditions of release designed to protect the community and no additional conditions of release are sufficient to protect the safety of the community; or

(3) the defendant is likely to flee and:

(i) the defendant is presently detained because he or she cannot satisfy monetary conditions imposed pursuant to standard 10-5.4 and no less stringent conditions will reasonably assure defendant's reappearance, or

(ii) the defendant has violated conditions of release designed to assure his or her presence at trial and no additional nonmonetary conditions or monetary conditions which the defendant can meet are reasonably likely to assure the defendant's presence at trial.

(c) The judicial officer shall not issue an order of detention unless the officer first finds that the safety of the community, the integrity of the judicial process, or the defendant's reappearance cannot be reasonably assured by advancing the date of trial or by imposing additional conditions on release. In lieu of an order of detention, the judicial officer may enter an order advancing the date of trial or imposing additional conditions on release.

(d) Notwithstanding the order of detention, any defendant detained pursuant to standard 10-5.9(b)(3)(i) shall be released whenever the defendant meets the original monetary conditions set upon release.

(e) Pretrial detention hearings shall meet the following criteria:

(1) The pretrial hearing should be held within five days of the events outlined in standards 10-5.4, 10-5.7(a)(ii), 10-5.8, or 10-5.9(a)(2). No continuance of the pretrial detention hearing should be permitted except with the consent of the defendant in hearings held pursuant to standards 10-5.4, 10-5.7(a)(ii), and 10-5.8 or the consent of the prosecutor in hearings held pursuant to standard 10-5.9(a)(2).

(2) In order to provide adequate information to both sides in their preparation for a pretrial detention hearing, discovery prior to the hearing should be as full and free as possible, consistent with the standards in the chapter on discovery and procedure before trial.

(3) The burden of going forward at the pretrial detention hearing should be on the prosecution. The defendant should be entitled to be represented by counsel, to present witnesses and evidence on his or her own behalf, and to cross-examine witnesses testifying against him or her.

(4) No testimony of a defendant given during a pretrial detention hearing should be admissible against the defendant in any other judicial proceedings other than prosecutions against the defendant for perjury.

(5) Rules respecting the presentation and admissibility of evidence at the pretrial detention hearing should be the same as those governing other preliminary proceedings, except that when the defendant's detention is premised upon the commission of a new criminal offense, the rules respecting the presentation and admissibility of evidence should be the same as those governing criminal trials.

(f) A pretrial detention order should:

(1) be based solely upon evidence adduced at the pretrial detention hearing;

(2) be in writing;

(3) be entered within twenty-four hours of the conclusion of the hearing;

(4) include the findings of fact and conclusions of law of the judicial officer with respect to the reasons for the order of detention and the reasons why the integrity of the judicial process, the safety of the community, and the presence of the defendant cannot be reasonably assured by advancing the date of trial or imposing additional conditions on release;

(5) include the date by which the detention must terminate pursuant to standard 10-5.10.

(g) Every pretrial detention order should be subject to expedited appellate review.

END