

# Best Practices in Pretrial: Moving to a Release Conditions Matrix

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# Best Practices in Pretrial

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## What We Will Cover

- Legal and evidence-based practices
- Responsible use of the PSA
- Translating these principles into practice
- APPR resources

# Law: Right to Pretrial Release

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The U.S. Supreme Court has held that the vast majority of people arrested are entitled to release before trial.

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

*U.S. v. Salerno*, 281 U.S. 739 (1987)

Absent a right to pretrial release, “the presumption of innocence... would lose its meaning.”

*Stack v. Boyle*, 342 U.S. 1 (1951)

# Law: Right to Pretrial Release

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Why is the presumption of pretrial release so strong?

1. **Physical freedom** is at the core of the Constitution's liberty interests
2. **Presumption of innocence** before trial: The state holds people accountable for past—not future—actions

# Law: Limits on Pretrial Detention

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- The U.S. Constitution does not directly address when a judge can order someone **detained** before trial.
- But courts have established **limits**, based largely on principles of due process:
  - **Flight** and **public safety** are the only constitutional reasons for detention
  - Detention is a **last resort**—and only permitted when no conditions of release will provide a reasonable assurance that the person will not flee or commit a serious offense
  - Detention is permitted only after **full due process**

# Law: Limits on Pretrial Detention

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- **Full due process** includes:
  - Representation by counsel
  - A prompt hearing
  - The right to testify on one's own behalf and to examine witnesses
  - The judicial officer using constitutionally and statutorily enumerated factors to determine whether detention is necessary
  - The use of a “clear and convincing evidence” standard
  - Written findings of fact and statement of reasons for any decision to detain
  - The right to expedited appellate review

# Research: Impacts of Pretrial Detention

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- People detained pretrial—even for just a few days—may be more likely:
  - to plead guilty or be convicted
  - to receive harsher sentences: greater likelihood of incarceration, and longer periods in jail or prison
  - to lose jobs, family, or housing
  - to be rearrested both before and after their cases are resolved
  - to fail to appear for court
- In addition, state and county governments spend at least \$14 billion annually detaining people before trial

# Law: Pretrial Release Conditions

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- For the vast majority of people who are legally entitled to pretrial release, how should a judge set conditions?

**Remember:** Most people will succeed on pretrial release without any conditions other than a promise to return to court and stay out of legal trouble.

# Law: Pretrial Release Conditions

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- Two main legal principles:
  - If any conditions are imposed, they must be the **least restrictive necessary** to provide reasonable assurance of court appearance and public safety
  - Any pretrial release conditions must be **individualized**

# Research: Pretrial Release Conditions

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- **Court date notification systems** can increase court appearance rates
- **Pretrial supervision** can improve court appearance but does not appear to reduce pretrial arrests
- There is no clear association between **pretrial location monitoring** (often called “EM”) and improved court-appearance or arrest-free rates
- There is no clear association between **pretrial drug testing** and improved court-appearance or arrest-free rates

# *Financial Release Conditions*

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- Financial conditions of pretrial release are extremely common across the country—and sometimes are a default applied to nearly everyone who is arrested.
- But this is beginning to change through litigation, legislation, and local policy improvement.

# Law: *Financial* Release Conditions

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- Three main legal principles :
  - Financial conditions may not be used to **intentionally detain**
  - **Unaffordable financial conditions** will be subject to increased scrutiny
  - A person's **ability to pay** must be assessed before setting financial conditions

# Research: *Financial* Release Conditions

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- Are financial conditions of release effective at promoting court appearance?
- Are financial conditions of release effective at promoting public safety?

**“The reliable, credible evidence in the record from other jurisdictions shows that release on secured financial conditions does not assure better rates of appearance or of law-abiding behavior before trial.”**

*O'Donnell v. Harris County*, 251 F. Supp. 3d 1052 (S.D. Tex. 2017)

# Responsible Use of the PSA

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1. Do not include recommendations of detention in any matrix
2. Do not include recommendations of financial release conditions in any matrix
3. Replace DMF with RCM and eliminate charge-based “bump-ups”
4. Avoid using colors (esp. orange or red) in any matrix

# Release Conditions Matrix

## Grid of Release Levels

	New Criminal Activity (NCA) Scaled Score					
Failure to Appear (FTA) Scaled Score	1 91% Likely Arrest-Free	2 85% Likely Arrest-Free	3 78% Likely Arrest-Free	4 68% Likely Arrest-Free	5 55% Likely Arrest-Free	6 47% Likely Arrest-Free
1 89% Likely to Appear	Release Level 1	Release Level 1				
2 85% Likely to Appear	Release Level 1	Release Level 1	Release Level 1	Release Level 1	Release Level 2	
3 81% Likely to Appear		Release Level 1	Release Level 1	Release Level 1	Release Level 2	Release Level 3
4 73% Likely to Appear		Release Level 1	Release Level 1	Release Level 1	Release Level 2	Release Level 3
5 69% Likely to Appear		Release Level 2	Release Level 2	Release Level 2	Release Level 2	Release Level 3
6 65% Likely to Appear				Release Level 3	Release Level 3	Release Level 3

## Table of Release Conditions

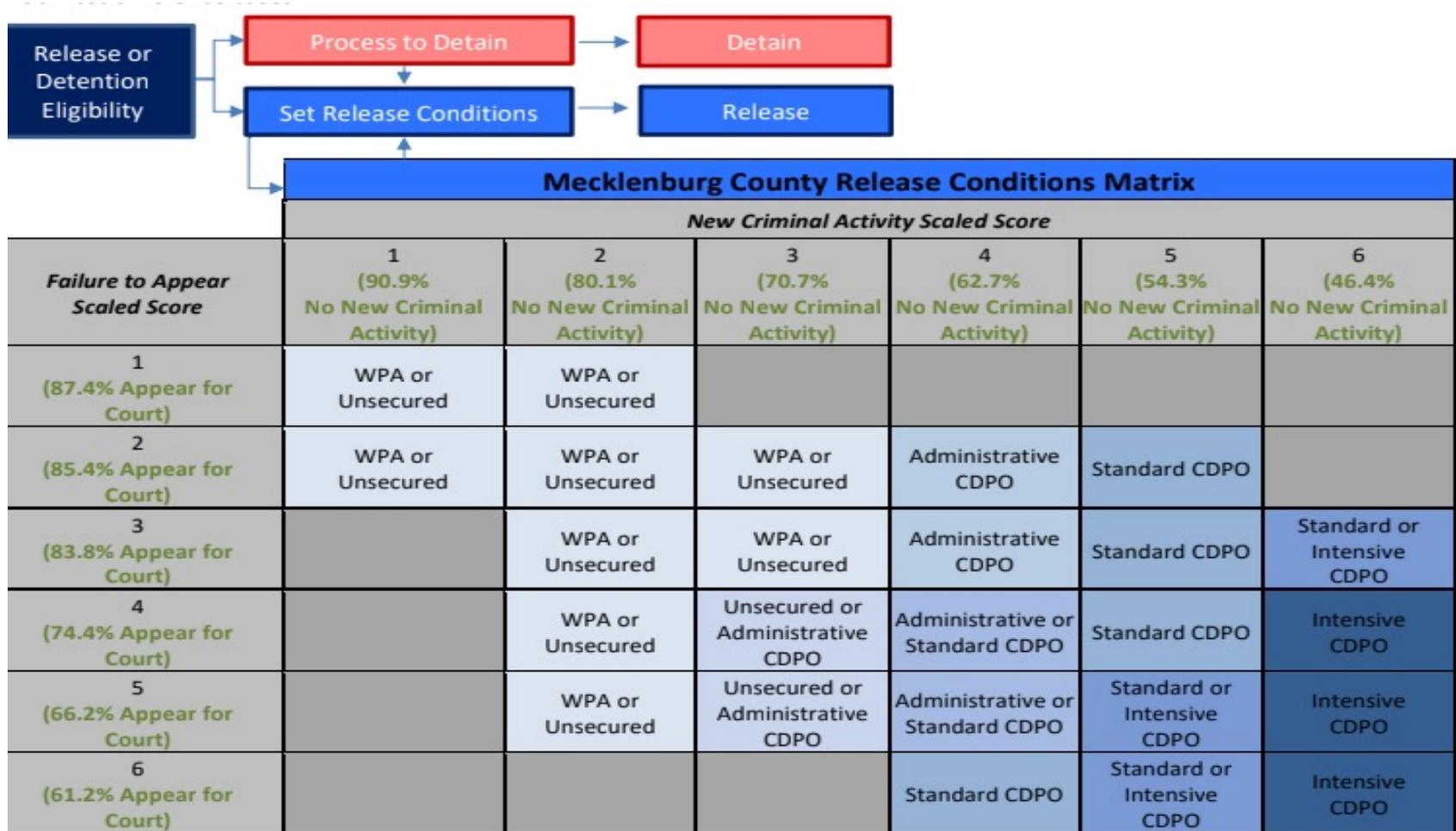
	Pretrial Release Level		
Release Activities and Conditions	1	2	3
Mandatory Statutory Conditions	Yes	Yes	Yes
Court Date Notifications	Yes	Yes	Yes
Criminal History Checks Once per Month		Yes	Yes
Check-in Once per Month			Yes
Other Case-Specific Conditions			If court-ordered

# Practical Application

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1. Create a subcommittee
  - Judges, prosecutors, defense lawyers, pretrial services
2. Items for subcommittee to discuss:
  - Legal principles
  - Research
  - Inventory pretrial resources
  - Local data (if available)
3. Prepare the matrix (grid and table)
4. Monitor implementation

# RCM Example



WPA-Written Promise to Appear; CDPO- Place in the Custody of Designated Person or Organization

# APPR Resources

- [Advancing Pretrial Policy and Research](#)
- [APPR Community](#)



## Advancing Pretrial Justice

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# QUESTION

