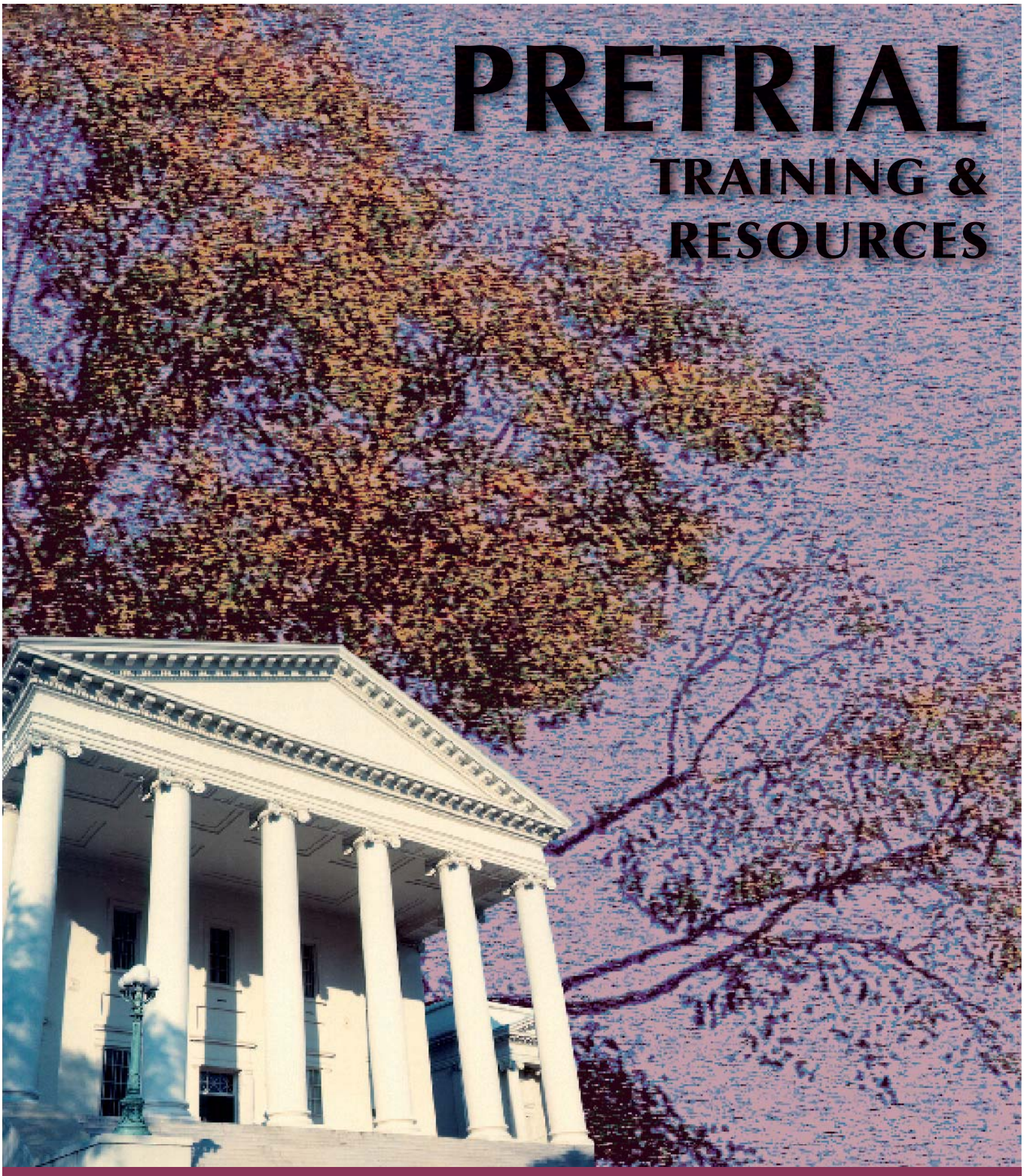
# PRETRIAL

## TRAINING & RESOURCES



# VIRGINIA PRETRIAL SERVICES
# TRAINING & RESOURCE MANUAL

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# INTRODUCTION

The Virginia Pretrial Services Training and Resource Manual is intended to serve as an instruction manual for new pretrial officers as well as an informative reference for existing staff. The manual contains all of the critical information and resources pretrial officers need to perform their duties as they relate to Pretrial Services.

On a local level, pretrial officers must maintain a comprehensive knowledge of their specific program including the legal authority, mission, goals, and objectives. On a state level, pretrial officers working in any Virginia locality must be educated in state laws that relate to pretrial services as well as Department of Criminal Justice Services guidelines, standards, and policies. It is also imperative that each officer have a national perspective of pretrial services therefore, pretrial officers must be familiar with standards set forth by national associations such as the National Association of Pretrial Services Agencies and the American Bar Association. In addition, it is particularly advantageous for all pretrial professionals to be aware of, and understand how to utilize, the many resources available to them.

The pretrial services field is continuously evolving and growing as is the wealth of information available about the field. Although this manual provides a solid foundation for pretrial officers, it is essential that they pursue further professional development via the publications and additional resources listed in this manual as well as their own exploration of the field.

# OVERVIEW

## Virginia Pretrial Services

Pretrial Services programs began operating in Virginia on a small scale in the mid 1970s, a few of which are still in operation. By 1995, there were 14 programs in operation and, after the Pretrial Services Act became effective on July 1, 1995, the number increased to 24 programs. There are currently 30 Pretrial Services programs serving 80 of the 134 Virginia localities (cities and counties).

All Virginia Pretrial Services programs operate under the authority of the Pretrial Services Act and are funded in whole or part by the Virginia Department of Criminal Justice Services (DCJS). DCJS administers general appropriation funds designated for the purpose of supporting the Pretrial Services Act (PSA) as discretionary grants to local units of government.

## Legal Authority

The Pretrial Services Act §19.2-152.2 of the Code of Virginia states: "It is the purpose of this article to provide more effective protection of society by establishing programs that will assist judicial officers in discharging their duties pursuant to Article 1 (§19.2-119 et seq.) of Chapter 9 of this title. Such programs are intended to provide better information and services for use by judicial officers in determining the risk to public safety and the assurance of appearance of persons age 18 or over or persons under the age of 18 who have been transferred for trial as adults held in custody and charged with an offense, other than an offense punishable by death, who are pending trial or hearing. Any city, county or combination thereof may establish a pretrial services program and any city, county or combination thereof required to submit a community-based corrections plan pursuant to §53.1-82.1 shall establish a pretrial services program.(1994, 2nd Sp. Sess., cc. 1, 2; 1999, cc. 829, 846; 2004, c. 378.)."

## Mission Statement

The mission of pretrial services programs in Virginia is to provide information to the Courts to assist with the bail decision and to provide supervision and services as ordered by a judicial officer (for this purpose a Judge or Magistrate) to pretrial defendants that will promote public safety and court appearance. These efforts are intended to honor the Constitutional presumption of innocence, provide protections for the community, assist in the fair administration of justice, and to promote equitable treatment of defendants.

## Program Goals

The goals of pretrial services programs in Virginia include the following:

- to assist judicial officers in making initial bail release decisions or in reviewing and amending the conditions of release on bail at subsequent hearings and
- to provide supervision of defendants placed in the custody of the program and assure compliance with the conditions of release imposed by a judicial officer.

## Program Objectives

- To expedite release and improve judicial decision making through the provision of defendant background information and recommendations for use by judicial officers in determining or reconsidering the risk to public safety and appearance in court pending trial.

- To reduce failures to appear in court and improve public safety by providing custody and supervision for pretrial defendants.
- To alleviate jail overcrowding, thereby reducing jail operating costs and future capacity needs of local jails, caused by the unnecessary detention of certain pretrial defendants.
- To improve the efficiency and effectiveness of local criminal justice systems.

## Primary Program Resources

***Virginia Department of Criminal Justice Services***

Since their inception pretrial services programs in Virginia have been funded in whole or part by or through DCJS. Their mission is to provide comprehensive planning and state of the art technical and support services for the criminal justice system to improve and promote public safety in the Commonwealth. DCJS is charged with planning and carrying out programs and initiatives to improve the functioning and effectiveness of the criminal justice system as a whole. The Correctional Services Section of DCJS is involved with a broad range of corrections issues affecting state prisons; local and regional jails; state probation and parole; local probation; and community-based corrections, pretrial services, and diverse correctional programs and services - public and private. This section is responsible for administering PSA funds through grants to localities and for monitoring program performance and grant compliance (http://www.dcjs.virginia.gov).

***Virginia Community Criminal Justice Association***

VCCJA is the state association for pretrial services and community corrections. Their mission is to enhance public safety through the development and expansion of pretrial, community corrections and other criminal justice programs in the Commonwealth of Virginia, by providing a forum for the discussion and communication of ideas (http://www.vccja.org).

***National Association of Pretrial Services Agencies (NAPSA)***

NAPSA is the national professional association for the pretrial release and pretrial diversion fields. NAPSA was incorporated in 1973 in the District of Columbia as a not-for-profit corporation and serves as a national forum for ideas and issues in the area of pretrial services. NAPSA consists primarily of pretrial practitioners; however, others interested in pretrial issues such as judges, lawyers, researchers, and prosecutors, comprise its five-hundred plus membership from forty-four states, the District of Columbia, and Puerto Rico (http://www.napsa.org).

***Pretrial Services Resource Center (PSRC)***

The Pretrial Services Resource Center, an independent, non-profit clearinghouse for information on pretrial issues, provides technical assistance to pretrial practitioners, criminal justice officials, academicians, and community leaders nationwide. Since its inception in 1977, the Resource Center has helped criminal justice professionals achieve the often conflicting goals of maintaining the rights of defendants, ensuring public safety, and maintaining the integrity of the criminal justice system by providing information, publications, training, and on-site assistance on decision-making at the front-end of the criminal justice system (http://www.pretrial.org).

The mission of the Pretrial Services Resource Center is to improve the quality, fairness, and efficiency of the criminal justice system at the pretrial stage by promoting systemic strategies that improve court appearance rates, reduce recidivism, provide appropriate and effective services, and enhance community safety.

## VIRGINIA LAWS RELATING TO PRETRIAL SERVICES

### *§19.2-152.2. Purpose; Establishment of Program*

It is the purpose of this article to provide more effective protection of society by establishing programs that will assist judicial officers in discharging their duties pursuant to Article 1 (§19.2-119 et seq.) of Chapter 9 of this title. Such programs are intended to provide better information and services for use by judicial officers in determining the risk to public safety and the assurance of appearance of persons age 18 or over or persons under the age of 18 who have been transferred for trial as adults held in custody and charged with an offense, other than an offense punishable by death, who are pending trial or hearing. Any city, county or combination thereof may establish a pretrial services program and any city, county or combination thereof required to submit a community-based corrections plan pursuant to §53.1-82.1 shall establish a pretrial services program. (1994, 2nd Sp. Sess., cc. 1, 2; 1999, cc. 829, 846; 2004, c. 378.)

### *§19.2-152.4:3 Duties and Responsibilities of Local Pretrial Services Officers*

A. Each local pretrial services officer, for the jurisdictions served, shall:

1. Investigate and interview defendants arrested on state and local warrants and who are detained in jails located in jurisdictions served by the program while awaiting a hearing before any court that is considering or reconsidering bail, at initial appearance, advisement or arraignment, or at other subsequent hearings;

2. Present a pretrial investigation report with recommendations to assist courts in discharging their duties related to granting or reconsidering bail;

3. Supervise and assist all defendants residing within the jurisdictions served and placed on pretrial supervision by any judicial officer within the jurisdictions to ensure compliance with the terms and conditions of bail;

4. Conduct random drug and alcohol tests on any defendant under supervision for whom a judicial officer has ordered testing or who has been required to refrain from excessive use of alcohol or use of any illegal drug or controlled substance or other defendant-specific condition of bail related to alcohol or substance abuse;

5. Seek a capias from any judicial officer pursuant to §19.2-152.4:1 for any defendant placed under supervision or the custody of the agency who fails to comply with the conditions of bail or supervision, when continued liberty or noncompliance presents a risk of flight, a risk to public safety or risk to the defendant;

6. Seek an order to show cause why the defendant should not be required to appear before the court in those cases requiring a subsequent hearing before the court;

7. Provide defendant-based information to assist any law-enforcement officer with the return to custody of defendants placed on supervision for which a capias has been sought; and

8. Keep such records and make such reports as required by the Commonwealth of Virginia Department of Criminal Justice Services.

B. Each local pretrial services officer, for the jurisdictions served, may provide the following optional services, as appropriate and when available resources permit:

1. Conduct, subject to court approval, drug and alcohol screenings, or tests at investigation pursuant to subsection B of §19.2-123 or following release to supervision, and conduct or facilitate the preparation of screenings or assessments or both pursuant to state approved protocols;

2. Facilitate placement of defendants in a substance abuse education or treatment program or other education or treatment service when ordered as a condition of bail;

3. Sign for the custody of any defendant investigated by a pretrial services officer, and released by a court to pretrial supervision as the sole term and condition of bail or when combined with an unsecured bond;

4. Provide defendant information and investigation services for those who are detained in jails located in jurisdictions served by the program and are awaiting an initial bail hearing before a local magistrate;

5. Supervise defendants placed by any judicial officer on home electronic monitoring as a condition of bail and supervision;

6. Prepare, for defendants investigated, the financial statement-eligibility determination form for indigent defense services; and

7. Subject to approved procedures and if so requested by the court, coordinate for defendants investigated, services for court-appointed counsel and for interpreters for foreign-language speaking and hearing-impaired defendants. (2003, c. 603.)

***§19.2-152.4:1 Form of Oath of Office for Local Pretrial Services Officer; Authorization to Seek Capias or Warrant***

Every pretrial services officer who is an employee of a local pretrial services agency established by any city, county or combination thereof or operated pursuant to this article shall take an oath of office as prescribed in §49-1 and to provide services pursuant to the requirements of this article before entering the duties of his office. The oath of office shall be taken before any general district or circuit court judge in any county or city which has established services for use by judicial officers pursuant to this article.

In addition, any officer of a pretrial services agency established or operated pursuant to this article may seek a warrant or capias from any judicial officer for the arrest of any person under the agency's custody and supervision for failure to comply with any conditions of release imposed by a judicial officer, for failure to comply with the conditions of pretrial supervision as established by a pretrial services agency, or when there is reason to believe that the person will fail to appear, will leave, or has left the jurisdiction to avoid prosecution. (2000, c. 1040.)

***§19.2-152.4 Mandated Services***

Any city, county or combination thereof which elects or is required to establish a pretrial services program shall provide all information and services for use by judicial officers as set forth in Article 1 (§19.2-119 et seq.) of Chapter 9 of this title. (1994, 2nd Sp. Sess., cc. 1, 2; 1999, cc. 829, 846.)

***§19.2-119 Definitions***

As used in this chapter:

"Bail" means the pretrial release of a person from custody upon those terms and conditions specified by order of an appropriate judicial officer.

"Bond" means the posting by a person or his surety of a written promise to pay a specific sum, secured or unsecured, ordered by an appropriate judicial officer as a condition of bail to assure performance of the terms and conditions contained in the recognizance.

"Criminal history" means records and data collected by criminal justice agencies or persons consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations or other formal charges, and any deposition arising therefrom.

"Judicial officer" means, unless otherwise indicated, any magistrate within his jurisdiction, any judge of a district court and the clerk or deputy clerk of any district court or circuit court within their respective cities and counties, any judge of a circuit court, any judge of the Court of Appeals and any justice of the Supreme Court of Virginia.

"Person" means any accused, or any juvenile taken into custody pursuant to §16.1-246.

"Recognizance" means a signed commitment by a person to appear in court as directed and to adhere to any other terms ordered by an appropriate judicial officer as a condition of bail. (Code 1950, §19.1-109.1; 1973, c. 485; 1974, c. 114; 1975, c. 495; 1984, c. 703; 1991, c. 581; 1993, c. 636; 1999, cc. 829, 846.)

***§19.2-120 Admission To Bail***

Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to the extent feasible, obtain the person's criminal history.

A. A person who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to believe that:

1. He will not appear for trial or hearing or at such other time and place as may be directed, or

2. His liberty will constitute an unreasonable danger to himself or the public.

B. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

1. An act of violence as defined in §19.2-297.1;

2. An offense for which the maximum sentence is life imprisonment or death;

3. A violation of §§18.2-248, 18.2-248.01, 18.2-255 or §18.2-255.2 involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is 10 years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as defined in §18.2-248;

4. A violation of §§18.2-308.1, 18.2-308.2, or §18.2-308.4 and which relates to a firearm and provides for a mandatory minimum sentence;

5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1 or 2, whether under the laws of the Commonwealth or substantially similar laws of the United States;

6. Any felony committed while the person is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or conviction;

7. An offense listed in subsection B of §18.2-67.5:2 and the person had previously been convicted of an offense listed in §18.2-67.5:2 and the judicial officer finds probable cause to believe that the person who is currently charged with one of these offenses committed the offense charged;

8. A violation of §§18.2-46.2, 18.2-46.3, 18.2-46.5 or §18.2-46.7; or

9. A violation of §§18.2-36.1, 18.2-51.4, 18.2-266, or §46.2-341.24 and the person has, within the past five years of the instant offense, been convicted three times on different dates of a violation of any combination of these Code sections, or any ordinance of any county, city, or town or the laws of any other state or of the United States substantially similar thereto, and has been at liberty between each conviction.

C. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is being arrested pursuant to §19.2-81.6.

D. The court shall consider the following factors and such others as it deems appropriate in determining, for the purpose of rebuttal of the presumption against bail described in subsection B, whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of the public:

1. The nature and circumstances of the offense charged;

2. The history and characteristics of the person, including his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, membership in a criminal street gang as defined in §18.2-46.1, and record concerning appearance at court proceedings; and

3. The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

E. The judicial officer shall inform the person of his right to appeal from the order denying bail or fixing terms of bond or recognizance consistent with §19.2-124. (1975, c. 495; 1978, c. 755; 1979, c. 649; 1987, c. 390; 1991, c. 581; 1993, c. 636; 1996, c. 973; 1997, cc. 6, 476; 1999, cc. 829, 846; 2000, c. 797; 2002, cc. 588, 623; 2004, cc. 308, 360, 406, 412, 461, 819, 954, 959.)

***§19.2-121 Fixing Terms of Bail***

If the person is admitted to bail, the terms thereof shall be such as, in the judgment of any official granting or reconsidering the same, will be reasonably fixed to assure the appearance of the accused and to assure his good behavior pending trial. The judicial officer shall take into account (i) the nature and circumstances of the offense; (ii) whether a firearm is alleged to have been used in the offense; (iii) the weight of the evidence; (iv) the financial resources of the accused or juvenile and his ability to pay bond; (v) the character of the accused or juvenile including his family ties, employment or involvement in education; (vi) his length of residence in the community; (vii) his record of convictions; (viii) his appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings; (ix) whether the person is likely to obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness, juror, or victim; and (x) any other information available which the court considers relevant to the determination of whether the accused or juvenile is unlikely to appear for court proceedings.

In any case where the accused has appeared and otherwise met the conditions of bail, no bond therefor shall be used to satisfy fines and costs unless agreed to by the person who posted such bond. (1975, c. 495; 1978, c. 755; 1980, c. 190; 1991, c. 581; 1992, c. 576; 1993, c. 636; 1999, cc. 829, 846.)

***§19.2-123 Release of Accused on Secured or Unsecured Bond or Promise to Appear; Conditions of Release***

A. Any person arrested for a felony who has previously been convicted of a felony, or who is presently on bond for an unrelated arrest in any jurisdiction, or who is on probation or parole, may be released only upon a secure bond. This provision may be waived with the approval of the judicial officer and with the concurrence of the attorney for the Commonwealth or the attorney for the county, city or town. Subject to the foregoing, when a person is arrested for either a felony or a misdemeanor, any judicial officer may impose any one or any combination of the following conditions of release:

1. Place the person in the custody and supervision of a designated person, organization or pretrial services agency which, for the purposes of this section, shall not include a court services unit established pursuant to §16.1-233;

2. Place restrictions on the travel, association or place of abode of the person during the period of release and restrict contacts with household members for a period not to exceed seventy-two hours;

   a. Require the execution of an unsecured bond;

3. Require the execution of a secure bond which at the option of the accused shall be satisfied with sufficient solvent sureties, or the deposit of cash in lieu thereof. Only the actual value of any interest in real estate or personal property owned by the proposed surety shall be considered in determining solvency and solvency shall be found if the value of the proposed surety's equity in the real estate or personal property equals or exceeds the amount of the bond;

   a. Require that the person do any or all of the following: (i) maintain employment or, if unemployed, actively seek employment; (ii) maintain or commence an educational program; (iii) avoid all contact with an alleged victim of the crime and with any potential witness who may testify concerning the offense; (iv) comply with a specified curfew; (v) refrain from possessing a firearm, destructive device, or other dangerous weapon; (vi) refrain from excessive use of alcohol, or use of any illegal drug or any controlled substance not prescribed by a health care provider; and (vii) submit to testing for drugs and alcohol until the final disposition of his case; or

4. Impose any other condition deemed reasonably necessary to assure appearance as required, and to assure his good behavior pending trial, including a condition requiring that the person return to custody after specified hours or be placed on home electronic incarceration pursuant to §53.1-131.2.

Upon satisfaction of the terms of recognizance, the accused shall be released forthwith.

In addition, where the accused is a resident of a state training center for the mentally retarded, the judicial officer may place the person in the custody of the director of the state facility, if the director agrees to accept custody. Such director is hereby authorized to take custody of such person and to maintain him at the training center prior to a trial or hearing

under such circumstances as will reasonably assure the appearance of the accused for the trial or hearing.

B. In any jurisdiction served by a pretrial services agency which offers a drug or alcohol screening or testing program approved for the purposes of this subsection by the chief general district court judge, any such person charged with a crime may be requested by such agency to give voluntarily a urine sample, submit to a drug or alcohol screening, or take a breath test for presence of alcohol. A sample may be analyzed for the presence of phencyclidine (PCP), barbiturates, cocaine, opiates or such other drugs as the agency may deem appropriate prior to any hearing to establish bail. The judicial officer and agency shall inform the accused or juvenile being screened or tested that test results shall be used by a judicial officer only at a bail hearing and only to determine appropriate conditions of release or to reconsider the conditions of bail at a subsequent hearing. All screening or test results, and any pretrial investigation report containing the screening or test results, shall be confidential with access thereto limited to judicial officers, the attorney for the Commonwealth, defense counsel, other pretrial service agencies, any criminal justice agency as defined in §9.1-101 and, in cases where a juvenile is screened or tested, the parents or legal guardian or custodian of such juvenile. However, in no event shall the judicial officer have access to any screening or test result prior to making a bail release determination or to determining the amount of bond, if any. Following this determination, the judicial officer shall consider the screening or test results and the screening or testing agency's report and accompanying recommendations, if any, in setting appropriate conditions of release. In no event shall a decision regarding a release determination be subject to reversal on the sole basis of such screening or test results. Any accused or juvenile whose urine sample has tested positive for such drugs and who is admitted to bail may, as a condition of release, be ordered to refrain from use of alcohol or illegal drugs and may be required to be tested on a periodic basis until final disposition of his case to ensure his compliance with the order. Sanctions for a violation of any condition of release, which violations shall include subsequent positive drug or alcohol test results or failure to report as ordered for testing, may be imposed in the discretion of the judicial officer and may include imposition of more stringent conditions of release, contempt of court proceedings or revocation of release. Any test given under the provisions of this subsection which yields a positive drug or alcohol test result shall be reconfirmed by a second test if the person tested denies or contests the initial drug or alcohol test positive result. The results of any drug or alcohol test conducted pursuant to this subsection shall not be admissible in any judicial proceeding other than for the imposition of sanctions for a violation of a condition of release.

C. [Repealed.]

D. Nothing in this section shall be construed to prevent an officer taking a juvenile into custody from releasing that juvenile pursuant to §16.1-247. If any condition of release imposed under the provisions of this section is violated, a judicial officer may issue a capias or order to show cause why the recognizance should not be revoked. (Code 1950, §19.1-109.2; 1973, c. 485; 1975, c. 495; 1978, cc. 500, 755; 1979, c. 518; 1981, c. 528; 1984, c. 707; 1989, c. 369; 1991, cc. 483, 512, 581, 585; 1992, c. 576; 1993, c. 636; 1999, cc. 829, 846; 2000, cc. 885, 1020, 1041; 2001, c. 201.)

***§19.2-124 Appeal From Order Denying Bail or Fixing Terms of Bond or Recognizance***

A. If a judicial officer denies bail to a person, requires excessive bond, or fixes unreasonable terms of a recognizance under this article, the person may appeal

therefrom successively to the next higher court or judge thereof, up to and including the Supreme Court of Virginia or any justice thereof where permitted by law.

B. If a court grants bail to a person or fixes a term of recognizance under this article over the objection of the attorney for the Commonwealth, the attorney for the Commonwealth may appeal therefrom successively to the next higher court or judge thereof, up to and including the Supreme Court of Virginia or any justice thereof. (Code 1950, §§19.1-109.3, 19.1-112; 1960, c. 366; 1973, cc. 130, 485; 1975, c. 495; 1978, c. 755; 1984, c. 703; 1991, c. 581; 1999, cc. 829, 846.)

***§19.2-130 Bail in Subsequent Proceeding Arising out of Initial Arrest***

Any person admitted to bail by a judge or clerk of a district court or by a magistrate shall not be required to be admitted to bail in any subsequent proceeding arising out of the initial arrest unless the court having jurisdiction of such subsequent proceeding deems the initial amount of bond or security taken inadequate. When the court having jurisdiction of the proceeding believes the amount of bond or security inadequate, it may increase the amount of such bond or security or require new and additional sureties. (Code 1950, §19.1-111.1; 1972, c. 366; 1975, c. 495; 1978, c. 755; 1991, c. 581.)

***§19.2-132 Motion To Increase Amount of Bond Fixed By Magistrate or Clerk; When Bond May Be Increased***

A. Although a person has been admitted to bail, if the amount of any bond is subsequently deemed insufficient, or the security taken inadequate, or if it appears that bail should have been denied, the attorney for the Commonwealth of the county or city in which the person is held for trial may, on reasonable notice to the person and to any surety on the bond of such person, move the court, or the appropriate judicial officer to increase the amount of such bond or to revoke bail. The court may, in accordance with subsection B, grant such motion and may require new or additional sureties therefor, or both or revoke bail. Any surety in a bond for the appearance of such person may take from his principal collateral or other security to indemnify such surety against liability. The failure to notify the surety will not prohibit the court from proceeding with the bond hearing.

B. Subsequent to an initial appearance before any judicial officer where the conditions of bail have been determined, no person, after having been released on a bond, shall be subject to a motion to increase such bond or revoke bail unless (i) the person has violated a term or condition of his release, or is convicted of or arrested for a felony or misdemeanor, or (ii) the attorney for the Commonwealth presents evidence that incorrect or incomplete information regarding the person's family ties; employment; financial resources; length of residence in the community; record of convictions; record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings; whether the person is likely to obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness, juror, or victim; or other information relevant to the bond determination was relied upon by the court or magistrate establishing initial bond. (Code 1950, §19.1-120; 1960, c. 366; 1975, c. 495; 1978, c. 755; 1989, c. 519; 1991, c. 581; 1999, cc. 829, 846.)

***§19.2-80.2 Duty of Arresting Officer; Providing Magistrate or Court With Criminal History Information***

In any case in which an officer proceeds under §§19.2-76, 19.2-80 and 19.2-82, such officer shall, to the extent possible, obtain and provide the magistrate or court with the arrested person's criminal history information prior to any proceeding under Article 1 (§19.2-

119 et seq.) of Chapter 9 of this title. A pretrial services program established pursuant to §19.2-152.4 may, in lieu of the arresting officer, provide the criminal history to the magistrate or court. (1999, cc. 829, 846.)

***§19.2-152.4:2 Confidentiality of Records of and Reports on Adult Persons Under Investigation by or In the Custody or Supervision of a Local Pretrial Services Agency; No Right of Review or Correction By Subject of Record or Report***

A. Any pretrial investigation report prepared by a local pretrial services officer is confidential and is exempt from the Virginia Freedom of Information Act (§2.2-3700 et seq.). Such reports shall be filed as a part of the case record. Such reports shall be sealed upon receipt by the court and made available only by court order; except that such reports shall be available upon request to (i) any criminal justice agency, as defined in §9.1-101, of this or any other state or of the United States; (ii) any agency where the accused is referred for assessment or treatment; or (iii) counsel for the person who is the subject of the report.

B. Any report on the progress of an accused under the supervision or custody of a pretrial services agency and any information relative to the identity of or inferring personal characteristics of an accused, including demographic information, diagnostic summaries, records of office visits, medical, substance abuse, psychiatric or psychological records or information, substance abuse screening, assessment and testing information, and other sensitive information not explicitly classified as criminal history record information, is exempt from the Virginia Freedom of Information Act (§2.2-3700 et seq.). However, such information may be disseminated to criminal justice agencies as defined in §9.1-101 in the discretion of the custodian of these records. (2002, c. 769.)

***§2.2-3706 Disclosure of Criminal Records; Limitations***

A. As used in this section:

"Criminal incident information" means a general description of the criminal activity reported, the date and general location the alleged crime was committed, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen.

B. Law-enforcement agencies shall make available upon request criminal incident information relating to felony offenses. However, where the release of criminal incident information is likely to jeopardize an ongoing investigation or prosecution, or the safety of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information. Nothing in this subsection shall be construed to prohibit the release of those portions of such information that are not likely to cause the above-referenced damage.

C. Information in the custody of law-enforcement agencies relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest shall be released.

D. The identity of any victim, witness or undercover officer, or investigative techniques or procedures need not but may be disclosed unless disclosure is prohibited or restricted under §19.2-11.2.

E. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.

F. The following records are excluded from the provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law:

1. Complaints, memoranda, correspondence, case files or reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident information as defined in subsection A;

2. Adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation;

3. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to §53.1-16 or §/n 66-3.1, and (iii) campus police departments of public institutions of higher education established pursuant to Chapter 17 (§23-232 et seq.) of Title 23;

4. Portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity;

5. Records of local law-enforcement agencies relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such agencies under a promise of anonymity;

6. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment;

7. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public;

8. All records of adult persons under (i) investigation or supervision by a local pretrial services agency in accordance with Article 5 (§19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation, probation supervision or monitoring by a local community-based probation program in accordance with Article 9 (§9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or supervision by state probation and parole services in accordance with Article 2 (§53.1-141 et seq.) of Chapter 4 of Title 53.1; and

9. Records of a law-enforcement agency to the extent that they disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties.

G. Records kept by law-enforcement agencies as required by §15.2-1722 shall be subject to the provisions of this chapter except:

1. Those portions of noncriminal incident or other investigative reports or materials containing identifying information of a personal, medical or financial nature provided to a law-enforcement agency where the release of such information would jeopardize the safety or privacy of any person;

2. Those portions of any records containing information related to plans for or resources dedicated to undercover operations; or

3. Records of background investigations of applicants for law-enforcement agency employment or other confidential administrative investigations conducted pursuant to law.

H. In the event of conflict between this section as it relates to requests made under this section and other provisions of law, this section shall control. (1999, cc. 703, 726, §2.1-342.2; 2000, c. 227; 2001, c. 844; 2002, cc. 393, 715, 769, 830; 2004, cc. 685, 735.)

***§19.2-389 Dissemination of Criminal History Record Information***

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by §9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of §53.1-136 shall include collective dissemination by electronic means every 30 days;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction

record would be compatible with the nature of the employment, permit, or license under consideration;

8. Public or private agencies when and as required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual with whom the agency is considering placing a child on an emergency, temporary or permanent basis pursuant to §63.2-901.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

9. To the extent permitted by federal law or regulation, public service companies as defined in §56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in §9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America, (ii) a volunteer fire company or volunteer rescue squad, (iii) the Volunteer Emergency Families for Children, (iv) any affiliate of Prevent Child Abuse, Virginia, or (v) any Virginia affiliate of Compeer;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in §63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to §63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes approved by family day-care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§63.2-1719 to 63.2-1721, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to §19.2-83.1;

14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§58.1-4000 et seq.);

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to §32.1-126.01, hospital pharmacies pursuant to §32.1-126.02, and home care organizations pursuant to §32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to §63.2-1720, in licensed district homes for adults pursuant to §63.1-189.1, and in licensed adult day-care centers pursuant to §63.2-1720, subject to the limitations set out in subsection F;

17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in §4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions;

19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services for those individuals who are committed to the custody of the Commissioner pursuant to §§19.2-169.2, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8 and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under §46.2-360, (ii) interventions with first offenders under §18.2-251, or (iii) services to offenders under §§18.2-51.4, 18.2-266 or §18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Mental Health, Mental Retardation and Substance Abuse Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Mental Health, Mental Retardation and Substance Abuse Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to §22.1-296.3, the governing boards or administrators of private or parochial elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

25. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment pursuant to §37.1-197.2;

26. Executive directors of behavioral health authorities as defined in §37.1-243 for the purpose of determining an individual's fitness for employment pursuant to §37.1-197.2;

27. The Commissioner of the Department of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending

paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

28. Authorized officers or directors of agencies licensed pursuant to Chapter 8 (§37.1-179 et seq.) of Title 37.1 by the Department of Mental Health, Mental Retardation and Substance Abuse Services for the purpose of determining if any applicant who accepts employment in any direct consumer care position has been convicted of a crime that affects their fitness to have responsibility for the safety and well-being of persons with mental illness, mental retardation and substance abuse pursuant to §§37.1-183.3 and 37.1-197.2;

29. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for a motor carrier certificate or license subject to the provisions of Chapters 20 (§46.2-2000 et seq.) and 21 (§46.2-2100 et seq.) of Title 46.2;

30. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

31. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to §2.2-1201.1. Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures; and

32. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by §15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision 15 of subsection A shall be limited to the convictions on file with the Exchange for any offense specified in §§32.1-126.01, 32.1-126.02 and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day-care centers pursuant to subdivision 16 of subsection A shall be limited to the convictions on file with the Exchange for any offense specified in §63.1-189.1 or §63.2-1720. (Code 1950, §19.1-19.2; 1966, c. 669; 1968, c. 537; 1970, c. 118; 1975, c. 495; 1976, c. 771; 1977, c. 626; 1978, c. 350; 1979, c. 480; 1981, c. 207; 1985, c. 360; 1987, cc. 130, 131; 1988, c. 851; 1989, c. 544; 1990, c. 766; 1991, c. 342; 1992, cc. 422, 641, 718, 746, 791, 844; 1993, cc. 48, 313, 348; 1994, cc. 34, 670, 700, 830; 1995, cc. 409, 645, 731, 781, 809; 1996, cc. 428, 432, 747, 881, 927, 944; 1997, cc. 169, 177, 606, 691, 721, 743, 796, 895; 1998, cc. 113, 405, 445, 882; 1999, cc. 383, 685; 2001, cc. 552, 582; 2002, cc. 370, 587, 606; 2003, c. 731.)

***§19.2-389.1 Dissemination of Juvenile Record Information***

Record information maintained in the Central Criminal Records Exchange pursuant to the provisions of §16.1-299 shall be disseminated only (i) to make the determination as provided in §§18.2-308.2 and 18.2-308.2:2 of eligibility to possess or purchase a firearm, (ii) to aid in the preparation of a pretrial investigation report prepared by a local pretrial services agency established pursuant to Article 5 (§19.2-152.2 et seq.) of Chapter 9 of this title, a presentence or post-sentence investigation report pursuant to §19.2-264.5 or §19.2-299 or in the preparation of the discretionary sentencing guidelines worksheets pursuant to subsection C of §19.2-298.01, (iii) to aid local community-based probation programs established pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§9.1-173 et seq.) with investigating or serving adult local-responsible offenders and all court service units serving juvenile delinquent offenders, (iv) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System (AFIS) computer, (v) to attorneys for the Commonwealth to secure information incidental to sentencing and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing guidelines worksheets pursuant to subsection C of §19.2-298.01, (vi) to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, for purposes of the administration of criminal justice as defined in §9.1-101, and (vii) to the Division of Forensic Science to verify its

authority to maintain the juvenile's sample in the DNA data bank pursuant to §16.1-299.1. (1993, cc. 468, 926; 1996, cc. 755, 870, 914; 2002, c. 701; 2003, cc. 107, 432.)

***§16.1-300 Confidentiality of Department Records***

A. The social, medical, psychiatric and psychological reports and records of children who are or have been (i) before the court, (ii) under supervision, or (iii) receiving services from a court service unit or who are committed to the Department of Juvenile Justice shall be confidential and shall be open for inspection only to the following:

* the following sections were intentionally removed:

A 1-7

8. Any attorney for the Commonwealth, any pretrial services officer, local community-based probation officer and adult probation and parole officer for the purpose of preparing pretrial investigation, including risk assessment instruments, presentence reports, including those provided in §19.2-299, discretionary sentencing guidelines worksheets, including related risk assessment instruments, as directed by the court pursuant to subsection C of §19.2-298.01 or any court-ordered post-sentence investigation report; and

* the following sections were intentionally removed:

A9 and B

If any person authorized under subsection A to inspect Department records requests to inspect the reports and records and if the Department withholds from inspection any portion of such record or report pursuant to the preceding provisions, the Department shall (i) inform the individual making the request of the action taken to withhold any information and the reasons for such action; (ii) provide such individual with as much information as is deemed appropriate under the circumstances; and (iii) notify the individual in writing at the time of the request of his right to request judicial review of the Department's decision. The circuit court (a) having jurisdiction over the facility where the child is currently placed or (b) that had jurisdiction over the original proceeding or over an appeal of the juvenile and domestic relations district court final order of disposition concerning the child if such child is no longer in the custody or under the supervision of the Department shall have jurisdiction over petitions filed for review of the Department's decision to withhold reports or records as provided herein. (1977, c. 559; 1978, cc. 738, 740; 1981, c. 487; 1988, c. 541; 1989, c. 733; 1994, c. 19; 2000, c. 212; 2002, c. 735; 2003, cc. 108, 143.)

***§16.1-305 Confidentiality of Court Records***

A. Social, medical and psychiatric or psychological records, including reports or preliminary inquiries, predisposition studies and supervision records, of neglected and abused children, children in need of services, children in need of supervision and delinquent children shall be filed with the other papers in the juvenile's case file. All juvenile case files shall be filed separately from adult files and records of the court and shall be open for inspection only to the following:

1. The judge, probation officers and professional staff assigned to serve the juvenile and domestic relations district courts;

2. Representatives of a public or private agency or department providing supervision or having legal custody of the child or furnishing evaluation or treatment of the child ordered or requested by the court;

3. The attorney for any party, including the attorney for the Commonwealth;

4. Any other person, agency or institution, by order of the court, having a legitimate interest in the case or in the work of the court. However, for the purposes of an investigation conducted by a local community-based probation agency, preparation of a pretrial investigation report, or of a presentence or postsentence report upon a finding of guilty in a circuit court or for the preparation of a background report for the Parole Board, adult probation and parole officers, including United States Probation and Pretrial Services Officers, any officer of a local pretrial services agency established or operated pursuant to Article 5 (§19.2-152.2 et seq.) of Chapter 9 of Title 19.2, and any officer of a local community-based probation program established or operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§9.1-173 et seq.) shall have access to an accused's or inmate's records in juvenile court without a court order and for the purpose of preparing the discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by the court pursuant to subsection C of §19.2-298.01, the attorney for the Commonwealth and any pretrial services or probation officer shall have access to the defendant's records in juvenile court without a court order;

5. Any attorney for the Commonwealth and any local pretrial services or community-based probation officer or state adult probation or parole officer shall have direct access to the defendant's juvenile court delinquency records maintained in an electronic format by the court for the strictly limited purposes of preparing a pretrial investigation report, including any related risk assessment instrument, any presentence report, any discretionary sentencing guidelines worksheets, including related risk assessment instruments, any post-sentence investigation report or preparing for any transfer or sentencing hearing.

A copy of the court order of disposition in a delinquency case shall be provided to a probation officer or attorney for the Commonwealth, when requested for the purpose of calculating sentencing guidelines. The copies shall remain confidential, but reports may be prepared using the information contained therein as provided in §§19.2-298.01 and 19.2-299.

* the following sections were intentionally removed:

B-G

(Code 1950, §16.1-162; 1956, c. 555; 1958, c. 353; 1971, Ex. Sess., c. 228; 1975, c. 334; 1977, c. 559; 1979, c. 605; 1983, c. 389; 1984, c. 34; 1988, c. 541; 1989, c. 182; 1990, c. 258; 1992, c. 547; 1994, c. 603; 1995, c. 430; 1996, cc. 755, 870, 914; 1998, cc. 278, 521; 2002, cc. 701, 735, 741; 2003, c. 143; 2004, c. 446.)

### *§16.1-307 Circuit Court Records Regarding Juveniles*

In proceedings against a juvenile in the circuit court in which the circuit court deals with the child in the same manner as a case in the juvenile court, the clerk of the court shall preserve all records connected with the proceedings in files separate from other files and records of the court as provided in §16.1-302. Except as provided in §§19.2-389.1 and 19.2-390, such records shall be open for inspection only in accordance with the provisions of §16.1-305 and shall be subject to expungement provisions of §16.1-306. In proceedings in which a juvenile, fourteen years of age or older at the time of the offense, was adjudicated

delinquent in juvenile court on the basis of an act which would be a felony if committed by an adult, or was found guilty of a felony in the circuit court, any court records, other than those specified in subsection A of §16.1-305, regarding that adjudication or conviction and any subsequent adjudication of delinquency or conviction of a crime, shall be available and shall be treated in the same manner as adult criminal records. (1977, c. 559; 1990, c. 258; 1993, cc. 468, 926; 1996, cc. 755, 914.)

***§19.2-152.5 Community Criminal Justice Boards***

Each city, county or combination thereof establishing a pretrial services program shall also establish a community criminal justice board pursuant to §9.1-178. (1994, 2nd Sp. Sess., cc. 1, 2.)

***§9.1-178 Community Criminal Justice Boards***

A. Each county or city or combination thereof developing and establishing a local pretrial services or a community-based probation program pursuant to this article shall establish a community criminal justice board. Each county and city participating in a local pretrial services or a community-based probation program shall be represented on the community criminal justice board. In the event that one county or city appropriates funds to the program as part of a multijurisdictional effort, any other participating county or city shall be considered to be participating in a program if such locality appropriates funds to the program. Appointments to the board shall be made by each local governing body. In cases of multijurisdictional participation, unless otherwise agreed upon, each participating city or county shall have an equal number of appointments. Boards shall be composed of the number of members established by a resolution or ordinance of each participating jurisdiction.

B. Each board shall include, at a minimum, the following members: a person appointed by each governing body to represent the governing body; a judge of the general district court; a circuit court judge; a juvenile and domestic relations district court judge; a chief magistrate; one chief of police or the sheriff in a jurisdiction not served by a police department to represent law enforcement; an attorney for the Commonwealth; a public defender or an attorney who is experienced in the defense of criminal matters; a sheriff or the regional jail administrator responsible for jails serving those jurisdictions involved in the local pretrial services and community-based probation program; a local educator; and a community services board administrator. Any officer of the court appointed to a community criminal justice board pursuant to this subsection may designate a member of his staff approved by the governing body to represent him at meetings of the board. (Code 1950, §53-128.19; 1980, c. 300; 1982, c. 636, §53.1-183; 1983, c. 344; 1988, c. 557; 1994, 2nd Sp. Sess., cc. 1, 2; 1995, cc. 502, 574, 768; 1996, c. 342; 1997, c. 339; 2000, c. 1040; 2001, c. 593; 2001, c. 844; 2002, c. 491; 2004, c. 395.)

***§9.1-180 Responsibilities of Community Criminal Justice Boards***

On behalf of the counties, cities, or combinations thereof which they represent, the community criminal justice boards shall have the responsibility to:

1. Advise on the development and operation of local pretrial services and community-based probation programs and services pursuant to §§19.2-152.2 and 9.1-176 for use by the courts in diverting offenders from local correctional facility placements;

2. Assist community agencies and organizations in establishing and modifying programs and services for offenders on the basis of an objective assessment of the community's needs and resources;

3. Evaluate and monitor community programs, services and facilities to determine their impact on offenders;

4. Develop and amend the criminal justice plan in accordance with guidelines and standards set forth by the Department and oversee the development and amendment of the community-based corrections plan as required by §53.1-82.1 for approval by participating local governing bodies;

5. Review the submission of all criminal justice grants regardless of the source of funding;

6. Facilitate local involvement and flexibility in responding to the problem of crime in their communities; and

7. Do all things necessary or convenient to carry out the responsibilities expressly given in this article.

(Code 1950, §53-128.21; 1980, c. 300; 1982, c. 636, §53.1-185; 1983, c. 344; 1991, c. 43; 1992, c. 740; 1994, 2nd Sp. Sess., cc. 1, 2; 1995, cc. 502, 574; 2000, c. 1040; 2001, c. 844; 2002, c. 491.)

### *§19.2-152.3 Department of Criminal Justice Services to Prescribe Standards; Biennial Plan*

The Department of Criminal Justice Services shall prescribe standards for the development, implementation, operation and evaluation of programs authorized by this article. The Department of Criminal Justice Services shall develop risk assessment and other instruments to be used by pretrial services programs in assisting judicial officers in discharging their duties pursuant to Article 1 (§19.2-119 et seq.) of Chapter 9 of this title. Any city, county or combination thereof which establishes a pretrial services program pursuant to this article shall submit a biennial plan to the Department of Criminal Justice Services for review and approval. (1994, 2nd Sp. Sess., cc. 1, 2; 1999, cc. 829, 846.)

### *§18.2-251.4 Defeating Drug and Alcohol Screening Tests; Penalty*

A. It is unlawful for a person to:

   1. Sell, give away, distribute, transport or market human urine in the Commonwealth with the intent of using the urine to defeat a drug or alcohol screening test;

   2. Attempt to defeat a drug or alcohol screening test by the substitution of a sample;

   3. Adulterate a urine or other bodily fluid sample with the intent to defraud a drug or alcohol screening test.

B. A violation of this section is a Class 1 misdemeanor. (2001, c. 379.)

### *§18.2-55 Bodily Injuries Caused By Prisoners, State Juvenile Probationers and State and Local Adult Probationers or Adult Parolees*

A. It shall be unlawful for a person confined in a state, local or regional correctional facility as defined in §53.1-1; in a secure facility or detention home as defined in §16.1-228 or in any facility designed for the secure detention of juveniles; or while in the custody of an employee thereof to knowingly and willfully inflict bodily injury on:

   1. An employee thereof, or

2. Any other person lawfully admitted to such facility, except another prisoner or person held in legal custody, or

3. Any person who is supervising or working with prisoners or persons held in legal custody, or

4. Any such employee or other person while such prisoner or person held in legal custody is committing any act in violation of §53.1-203.

B. It shall be unlawful for an accused, probationer or parolee under the supervision of, or being investigated by, (i) a probation or parole officer whose powers and duties are defined in §16.1-237 or §53.1-145, (ii) a local pretrial services officer associated with a program established pursuant to Article 5 (§19.2-152.2) of Chapter 9 of Title 19.2, or (iii) a local probation officer associated with a program established pursuant to Article 9 (§9.1-173 et seq.) of Chapter 1 of Title 9.1, to knowingly and willfully inflict bodily injury on such officer while he is in the performance of his duty, knowing or having reason to know that the officer is engaged in the performance of his duty.

Any person violating any provision of this section is guilty of a Class 5 felony. (1975, cc. 14, 15; 1977, c. 553; 1982, c. 636; 1985, c. 508; 1996, c. 527; 1999, cc. 618, 658; 2001, cc. 818, 848.)

***§18.2-64.2 Carnal Knowledge of an Inmate, Parolee, Probationer, Detainee or Pretrial or Post-trial Offender; Penalty***

An accused shall be guilty of carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial or post-trial offender if he or she is an employee or contractual employee of, or a volunteer with, a state or local correctional facility or regional jail, the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, as defined in §16.1-228, a state or local court services unit, as defined in §16.1-235, a local community-based probation program or a pretrial services program; is in a position of authority over the inmate, probationer, parolee, detainee, or a pretrial or post-trial offender; knows that the inmate, probationer, parolee, detainee, or pretrial or post-trial offender is under the jurisdiction of the state or local correctional facility, a regional jail, the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, as defined in §16.1-228, a state or local court services unit, as defined in §16.1-235, a local community-based probation program, or a pretrial services program; and carnally knows, without the use of force, threat or intimidation (i) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail or (ii) a probationer, parolee, detainee, or a pretrial or post-trial offender under the jurisdiction of the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, as defined in §16.1-228, a state or local court services unit, as defined in §16.1-235, a local community-based probation program, a pretrial services program, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial services program. Such offense is a Class 6 felony.

For the purposes of this section, "carnal knowledge" includes the acts of sexual intercourse, cunnilingus, fellatio, anallingus, anal intercourse and animate or inanimate object sexual penetration. (1999, c. 294; 2000, c. 1040; 2001, c. 385.)

***§18.2-67.4 Sexual Battery***

A. An accused shall be guilty of sexual battery if he or she sexually abuses, as defined in §18.2-67.10, (i) the complaining witness against the will of the complaining witness,

by force, threat, intimidation or ruse, or through the use of the complaining witness's mental incapacity or physical helplessness, or (ii) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail, and the accused is an employee or contractual employee of, or a volunteer with, the state or local correctional facility or regional jail; is in a position of authority over the inmate; and knows that the inmate is under the jurisdiction of the state or local correctional facility or regional jail, or (iii) a probationer, parolee, or a pretrial or post-trial offender under the jurisdiction of the Department of Corrections, a local community-based probation program, a pretrial services program, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial services program and the accused is an employee or contractual employee of, or a volunteer with, the Department of Corrections, a local community-based probation program, a pretrial services program or a local or regional jail; is in a position of authority over an offender; and knows that the offender is under the jurisdiction of the Department of Corrections, a local community-based probation program, a pretrial services program or a local or regional jail.

B. Sexual battery is a Class 1 misdemeanor. (1981, c. 397; 1997, c. 643; 1999, c. 294; 2000, cc. 832, 1040.)

***§19.2-3.1 Personal Appearance by Two-Way Electronic Video and Audio Communication; Standards***

A. Where an appearance is required or permitted before a magistrate, intake officer or, prior to trial, before a judge, the appearance may be by (i) personal appearance before the magistrate, intake officer or judge or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, a magistrate, intake officer or judge may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by electronically transmitted facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures.

B. Any two-way electronic video and audio communication system used for an appearance shall meet the following standards:

1. The persons communicating must simultaneously see and speak to one another;

2. The signal transmission must be live, real time;

3. The signal transmission must be secure from interception through lawful means by anyone other than the persons communicating; and

4. Any other specifications as may be promulgated by the Chief Justice of the Supreme Court. (1991, c. 41; 1996, cc. 755, 914.)

***§19.2-157 Duty of Court When Accused Appears Without Counsel***

Except as may otherwise be provided in §§16.1-266 through 16.1-268, whenever a person charged with a criminal offense the penalty for which may be death or confinement in the state correctional facility or jail, including charges for revocation of suspension of imposition or execution of sentence or probation, appears before any court without being represented by counsel, the court shall inform him of his right to counsel. The accused shall

be allowed a reasonable opportunity to employ counsel or, if appropriate, the statement of indigence provided for in §19.2-159 may be executed. (Code 1950, §§19.1-241.1, 19.1-241.7; 1964, c. 657; 1966, c. 460; 1973, c. 316; 1975, c. 495; 1978, c. 362.)

***§19.2-158 When Person Not Free on Bail Shall be Informed of Right to Counsel and Amount of Bail***

Every person charged with an offense described in §19.2-157, who is not free on bail or otherwise, shall be brought before the judge of a court not of record, unless the circuit court issues process commanding the presence of the person, in which case the person shall be brought before the circuit court, on the first day on which such court sits after the person is charged, at which time the judge shall inform the accused of the amount of his bail and his right to counsel. The court shall also hear and consider motions by the person or Commonwealth relating to bail or conditions of release pursuant to Article 1 (§19.2-119 et seq.) of Chapter 9 of this title. If the court not of record sits on a day prior to the scheduled sitting of the court which issued process, the person shall be brought before the court not of record.

No hearing on the charges against the accused shall be had until the foregoing conditions have been complied with, and the accused shall be allowed a reasonable opportunity to employ counsel of his own choice, or, if appropriate, the statement of indigence provided for in §19.2-159 may be executed. (Code 1950, §§19.1-241.2, 19.1-241.8; 1964, c. 657; 1966, c. 460; 1973, c. 316; 1975, c. 495; 1998, c. 773; 1999, cc. 829, 846.)

***§19.2-159 Determination of Indigency; Guidelines; Statement of Indigence; Appointment of Counsel***

If the accused shall claim that he is indigent, and the charge against him is a criminal offense which may be punishable by death or confinement in the state correctional facility or jail, subject to the provisions of §19.2-160, the court shall determine from oral examination of the accused or other competent evidence whether or not the accused is indigent within the contemplation of law pursuant to the guidelines set forth in this section.

In making its finding, the court shall determine whether or not the accused is a current recipient of a state or federally funded public assistance program for the indigent. If the accused is a current recipient of such a program and does not waive his right to counsel or retain counsel on his own behalf, he shall be presumed eligible for the appointment of counsel. This presumption shall be rebuttable where the court finds that a more thorough examination of the financial resources of the defendant is necessary. If the accused shall claim to be indigent and is not presumptively eligible under the provisions of this section, then a thorough examination of the financial resources of the accused shall be made with consideration given to the following:

1. The net income of the accused, which shall include his total salary and wages minus deductions required by law. The court also shall take into account income and amenities from other sources including but not limited to social security funds, union funds, veteran's benefits, other regular support from an absent family member, public or private employee pensions, dividends, interests, rents, estates, trusts, or gifts.

2. All assets of the accused which are convertible into cash within a reasonable period of time without causing substantial hardship or jeopardizing the ability of the accused to maintain home and employment. Assets shall include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit, and tax refunds. All personal property owned by the accused which is readily convertible into cash

shall be considered, except property exempt from attachment. Any real estate owned by the accused shall be considered in terms of the amounts which could be raised by a loan on the property. For purposes of eligibility determination, the income, assets, and expenses of the spouse, if any, who is a member of the accused's household, shall be considered, unless the spouse was the victim of the offense or offenses allegedly committed by the accused.

3. Any exceptional expenses of the accused and his family which would, in all probability, prohibit him from being able to secure private counsel. Such items shall include but not be limited to costs for medical care, family support obligations, and child care payments.

The available funds of the accused shall be calculated as the sum of his total income and assets less the exceptional expenses as provided in paragraph 3 above. If the accused does not waive his right to counsel or retain counsel on his own behalf, counsel shall be appointed for the accused if his available funds are equal to or below 125 percent of the federal poverty income guidelines prescribed for the size of the household of the accused by the federal Department of Health and Human Services. The Supreme Court of Virginia shall be responsible for distributing to all courts the annual updates of the federal poverty income guidelines made by the Department.

If the available funds of the accused exceed 125 percent of the federal poverty income guidelines and the accused fails to employ counsel and does not waive his right to counsel, the court may, in exceptional circumstances, and where the ends of justice so require, appoint an attorney to represent the accused. However, in making such appointments, the court shall state in writing its reasons for so doing. The written statement by the court shall be included in the permanent record of the case.

If the court determines that the accused is indigent as contemplated by law pursuant to the guidelines set forth in this section, the court shall provide the accused with a statement which shall contain the following:

"I have been advised this . . . . day of . . . . . ., 20 . ., by the (name of court) court of my right to representation by counsel in the trial of the charge pending against me; I certify that I am without means to employ counsel and I hereby request the court to appoint counsel for me."

_____

***(signature of accused)***

The court shall also require the accused to complete a written financial statement to support the claim of indigency and to permit the court to determine whether or not the accused is indigent within the contemplation of law. The accused shall execute the said statements under oath, and the said court shall appoint competent counsel to represent the accused in the proceeding against him, including an appeal, if any, until relieved or replaced by other counsel.

The executed statements by the accused and the order of appointment of counsel shall be filed with and become a part of the record of such proceeding.

All other instances in which the appointment of counsel is required for an indigent shall be made in accordance with the guidelines prescribed in this section.

Except in jurisdictions having a public defender, counsel appointed by the court for representation of the accused shall be selected by a fair system of rotation among members of the bar practicing before the court whose names are on the list maintained by the Indigent Defense Commission pursuant to §19.2-163.01. (Code 1950, §19.1-241.3; 1964, c. 657; 1966, c. 460; 1975, c. 495; 1976, c. 553; 1978, c. 720; 1984, c. 709; 2004, cc. 884, 921.)

***§19.2-125 Release Pending Appeal From Conviction in Court Not of Record***

A person who has been convicted of an offense in a district court and who has noted an appeal shall be given credit for any bond that he may have posted in the court from which he appeals and shall be treated in accordance with the provisions of this article. (Code 1950, §19.1-109.4; 1973, c. 485; 1975, c. 495; 1978, c. 755; 1999, cc. 829, 846.)

***§19.2-128 Penalties for Failure to Appear***

A. Whoever, having been released pursuant to this chapter or §19.2-319 or on a summons pursuant to §19.2-73 or §19.2-74, willfully fails to appear before any court or judicial officer as required, shall, after notice to all interested parties, incur a forfeiture of any security which may have been given or pledged for his release, unless one of the parties can show good cause for excusing the absence, or unless the court, in its sound discretion, shall determine that neither the interests of justice nor the power of the court to conduct orderly proceedings will be served by such forfeiture.

B. Any person (i) charged with a felony offense or (ii) convicted of a felony offense and execution of sentence is suspended pursuant to §19.2-319 who willfully fails to appear before any court as required shall be guilty of a Class 6 felony.

C. Any person (i) charged with a misdemeanor offense or (ii) convicted of a misdemeanor offense and execution of sentence is suspended pursuant to §19.2-319 who willfully fails to appear before any court as required shall be guilty of a Class 1 misdemeanor. (Code 1950, §19.1-109.7; 1973, c. 485; 1975, c. 495; 1981, c. 382; 1982, c. 271; 1999, c. 821.)

***§19.2-129 Power of Court to Punish For Contempt***

Nothing in this chapter shall interfere with or prevent the exercise by any court of the Commonwealth of its power to punish for contempt, except that a person shall not be sentenced for contempt and under the provisions of §19.2-128 for the same absence. (Code 1950, §19.1-109.8; 1973, c. 485; 1975, c. 495.)

***§19.2-135 Commitment for Trial; Recognizance; Notice to Attorney for Commonwealth; Remand On Violation of Condition***

When a judicial officer considers that there is sufficient cause for charging the accused or juvenile taken into custody pursuant to §16.1-246 with a felony, unless it be a case wherein it is otherwise specially provided, the commitment shall be for trial or hearing. Any recognizance taken of the accused or juvenile shall be upon the following conditions: (1) that he appear to answer for the offense with which he is charged before the court or judge before whom the case will be tried at such time as may be stated in the recognizance and at any time or times to which the proceedings may be continued and before any court or judge thereafter in which proceedings on the charge are held; (2) that he shall not depart from the Commonwealth unless the judicial officer taking recognizance or a court in a subsequent proceeding specifically waives such requirement; and (3) that he shall keep the peace and be of good behavior until the case is finally disposed of. Every such recognizance shall also include a waiver such as is required by §49-12 in relation to the bonds therein mentioned and though such waiver be not expressed in the recognizance it shall be deemed to be

included therein in like manner and with the same effect as if it was so expressed. The judge shall return to the clerk of the court wherein the accused or juvenile is to be tried, or the case be heard as soon as may be, a certificate of the nature of the offense, showing whether the accused or juvenile was committed to jail or recognized for his appearance; and the clerk, as soon as may be, shall inform the attorney for the Commonwealth of such certificate.

The court may, in its discretion, in the event of a violation of any condition of a recognizance taken pursuant to this section, remand the principal to jail until the case is finally disposed of, and if the principal is remanded to jail, the surety is discharged from liability.

When a recognizance is taken of a witness in a case against an accused or juvenile, the condition thereof shall be that he appear to give evidence in such case and that he shall not depart from the Commonwealth without the leave of such court or judge. (Code 1950, §§19.1-125, 19.1-128, 19.1-133; 1960, c. 366; 1968, c. 639; 1975, c. 495; 1977, c. 287; 1978, c. 755; 1979, c. 735; 1988, c. 688; 1992, c. 576.)

# DEPARTMENT OF CRIMINAL JUSTICE SERVICES GUIDELINES, STANDARDS & POLICIES

## Minimum Standards For Local Community Corrections and Pretrial Services (2004)

### *PART I General Provisions*

§1.1 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Administrative and fiscal agent" means the county or city government responsible for agencies, or for contracting for services, as authorized in Article 5 (§19.2-152.2 et seq.) of Chapter 9 of Title 19.2 and Article 9 (§9.1-173 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia for a single jurisdiction or in the behalf of a combination of cities and counties.

"Agency" or agencies means any program, or service organization operating as part of the local government or on behalf of local government for the provision of defendant and offender supervision under the authority of Article 5 (§19.2-152.2 et seq.) of Chapter 9 of Title 19.2 or Article 9 (§9.1-173 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia.

"Bail" means the pretrial release of a person from confinement upon those terms and conditions specified by order of a judicial officer (Reference §19.2-119 of the Code of Virginia.)

"Basic Skills" means the mandatory weeklong training given to new professional employees covering those topics deemed essential to equip them with the knowledge to perform the duties of their position.

"Board" or "boards" means the Community Criminal Justice Board (CCJB) of the locality or combination of localities established in accordance with Article 9 (§9.1-178) of Chapter 1 of Title 9.1 of the Code of Virginia.

"Bond" means the posting by a person or his surety of a written promise to pay a specific sum, secured or unsecured, ordered by an appropriate judicial officer as a condition of bail to assure performance of the terms and conditions contained in the recognizance. (Reference §19.2-119 of the Code of Virginia.)

"Capias" means an order issued by a judicial officer the court requiring the arrest of the person to ensure their appearance before the court in answer to a violation.

"Case" means a defendant or an offender entered into the PTCC case management information system established by the Department.

"Chief Executive Officer" means the County Administrator, County Executive, City Manager or designated Assistant responsible for public safety issues of the administrative and fiscal agent.

"Citizen Complaint" means a serious objection regarding agency operations or staff conduct.

"Collateral Contact" means verification, as determined by program staff, of a defendant or offender's participation in services not provided by the Local Community-based Probation and Pretrial programs. These services may include, but are not limited to, alcohol and drug testing, substance abuse education, counseling and treatment, other counseling, community service work sites, and educational, family or employer contacts.

"Community Service Work" means unpaid work done for public and private non-profit agencies performed by offenders as directed by the court. The imposition of community service may be those hours calculated in lieu of fines or court costs, a condition of supervision, or as a punitive or intermediate sanction.

"Condition of Bail" means any requirement or requirements included on the recognizance or set by any judicial officer with which a defendant agrees following release on bail that to assures a defendant's appearance in court and good behavior.

"Condition of Supervision" means a rule and/or a regulation imposed by a judicial officer, local probation officer and/or pretrial officer that an offender or defendant must follow while on local probation or pretrial.

"Contractor" means an individual or organization agreeing, in writing, to provide direct offender or defendant supervision.

"Convicted" indicates a court action where there has either been an accepted plea or a finding of guilt.

"Costs" means a fixed fee assessed by the court after a finding of guilt or a deferred judgment.

"Criminal History Record Check" means an inquiry to VCIN, CAIS, NCIC, DMV and other similar databases on each defendant/offender investigated and/or supervised by the agency.

"Curfew" means a judicially ordered condition of supervision, which allows a defendant/offender to be out of the home only for specified periods of time.

"Custody" means that a person is under the care or control and under the supervision of, a pretrial services officer.

"Defendant" means an individual charged with a criminal offense or against whom a legal action is brought and is being investigated.

"Deferred Judgment" is a case in which the court, without entering a judgment of guilt and with the consent of the accused, defers further proceedings and places the individual on probation (Reference authority in §19.2-303.2 of the Code of Virginia).

"Department" means the Department of Criminal Justice Services.

"Direct Placement" means a placement into pre- or post-trial supervision by a judicial officer without program investigation made prior to that placement.

"Electronic Monitoring" means the process of using electronic equipment to verify that a defendant or offender is at a pre-specified, fixed location.

"Fee" (see Intervention Fees)

"Felony" means an offense which, if convicted, can result in a period of incarceration in prison, a fine of up to $100,000 (unless otherwise specified in the Code), either or both, or death.

"Fine" means a monetary penalty within a range set by statute, and imposed on a person who has been found guilty of a crime.

"Freedom of Information Act or FOIA" is the primary state law governing citizens access to records of public entities (including criminal justice agencies) and their meetings. (Reference 2.2-3706, Subsection F.8 of the Code of Virginia). Local program records are exempted from public disclosures.

"Home incarceration" means a judicially or administratively imposed condition requiring a defendant or an offender to remain at home for all or some portion of the day with approved absences for work, treatment, counseling, education, or medical appointments.

"Inservice Training" means professional training which is related to one's job duties that a program employee must have after the first year of employment.

"Intake" means the processing of defendants or offenders following placement, the entry of minimum, mandatory information into PTCC and assessment of defendant/offender needs through a face-to-face interview and other means.

"Intermediate Sanctions" means any punitive measure taken to encourage offender compliance with supervision requirements.

"Intervention Fees" means the cost of certain intervention and supervision services charged to an offender. (Reference §9.1-182)

"Interview" means a formal face-to-face procedure for gathering background information from a defendant or offender for the purpose of assessing suitability or risk.

"Investigation for pretrial services" means a formal procedure which includes the preparation of a court report summarizing the verified results of an interview, the defendant's family and community ties, financial resources, residence, history of employment, history of or current abuse of alcohol or controlled substances, and criminal history including the record of convictions from VCIN/NCIC, DMV AND CAIS and the completion of a Virginia Pretrial Risk Assessment Instrument (VPRAI).

"Judicial Officer" means magistrates within their own jurisdictions, district and circuit court judges, clerks or deputy clerks of district and circuit courts within their respective cities and counties, judges of the Court of Appeals, and justices of the Supreme Court. (Reference Article 1 (§19.2-119) of Chapter 9 of Title 19.2 of the Code of Virginia.)

"Local Community-based Probation Agency" means any agency, program, or service organization operating as part of the local government or on behalf of local government for the provision of offender supervision under the authority of Article 9 of §9.1-173 et seq. of Chapter 1 of Title 9.1 of the Code of Virginia for a single jurisdiction or in the behalf of a combination of cities and counties.

"Locality" or "Localities" means any city or county government establishing, operating, or contracting for agencies under the authorization of Article 5 (§19.2-152.2 et seq.) of Chapter 9 of Title 19.2 and Article 9 (§9.1-173 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia either as a single jurisdiction or in combination with other cities or counties.

"Misdemeanor" means an offense which, if convicted, can result in a penalty not exceeding a sentence to incarceration of twelve months, a fine of up to $2500 or both.

"Monitoring" means

1. Pretrial: A process of notifying, by phone or mail, defendants released on any summons or recognizance, of the first and future court appearances.

2. Post-trial: Providing basic assistance to the court by tracking an offender's compliance with a court order. This is not the same as an appropriate supervision placement. Offenders in this status are not subject to standard supervision requirements.

"Non-Violent Felony" means any felony offense which is not one of the following: murder, manslaughter, kidnapping, sexual assault, malicious wounding, robbery, or any attempt to commit any of these crimes (Reference §19.2-297.1 of the Code of Virginia).

"Offender" means an individual who has been found guilty of violating a law or has received a deferred judgment.

"Placement" means an action by a judicial officer as a result of a bail determination or by court order requiring a defendant or an offender to be supervised by an agency for one or more offenses or charges. If confined, this requires an actual release from confinement.

"Placement Closure" means an action of a court, or judicial officer, which ends the requirement for continued supervision of a placement and results in a successful, unsuccessful, or other placement closure.

"Policy" means a statement or statements of guiding principles which should be followed in directing activities toward the attainment of objectives.

"Pretrial Services Agency" means any agency, program, or service organization operating as part of the local government for the provision of defendant supervision under the authority of Article 5 (§19.2-152.2 et seq.) of Chapter 9 of Title 19.2 of the Code of Virginia.

"Procedure" means detailed and sequential actions that must be executed to ensure that a policy is fully implemented. A procedure differs from a policy in that it directs action in a particular situation to perform a specific task within the guidelines of policy.

"PTCC" means the Pretrial and Community Corrections Case Management Information System developed under the auspices of the Department of Criminal Justice Services and which use is mandated for all local probation and pretrial service agencies.

"Receiving Agency" means the program that ultimately accepts the responsibility of supervising a local probation or pretrial case sent from another local probation or pretrial agency.

"Recognizance" means a signed commitment by a person to appear in court as directed and to adhere to any other terms ordered by an appropriate judicial officer as a condition of bail (Reference §19.2-119 of the Code of Virginia).

"Recommendation" means any term and condition of bail made by a pretrial services officer, for each defendant investigated, to a judicial officer to assure public safety, the safety of the person, appearance in court following release, and to address defendant needs.

"Restitution" means monetary reparation to the victim by the offender for damages or loss caused by the offense.

"Risk Assessment" - see VPRAI.

"Screening" is the process of determining the number of detained defendants available for pretrial investigation, awaiting an initial or subsequent bail hearing at first appearance.

"Sending Agency" means the program that begins the procedure for transfer of supervision to another local community corrections or pretrial agency.

"Sentenced" means an action by the court which includes an active sentence to incarceration, a suspended sentence, or probation.

"Serious incident" means any incident involving a defendant, offender, or staff member, directly or indirectly, in which there has been serious personal injury to the public (including the defendant, offender, or staff member), public safety endangered, or public concern is or may be expressed.

"Serious Incident Report" means an official record documenting a serious incident and sent to the appropriate authorities, including but not limited to, DCJS, referring courts, and applicable local government officials.

"Show Cause" means a summons to court for a person to appear on his own behalf to answer charges why the terms of bail or conditions of probation should not be revoked.

"Substance Abuse Assessment" means any extensive formal interview and assessment procedure utilizing any valid instrument that elicits the nature and severity of a person's substance use, abuse, dependency or addiction and related behaviors and which indicates whether education or treatment is necessary.

"Substance Abuse Screening" means a brief formal interview procedure using any valid instrument that elicits the probability of a substance abuse problem and that indicates when further assessment for substance abuse is necessary.

"Substance Abuse Testing" means any valid alcohol or drug testing procedure that determines the presence and/or percentage of alcohol or drugs in a person's system. Procedures include those for on-site testing and validation.

"Supervised Release" means a term of bail involving the release of a defendant to the custody and supervision of a pretrial services agency (Reference §19.2-123A)

"Supervision" means the formal procedure involving the active management of an offender's or defendant's compliance with the terms and conditions of his release.

"Supervision Fees" (See Intervention Fees)

"Term of Bail" means the condition(s) under which a defendant is released to bail.

"Termination of supervision" means an action of the agency when all placements associated with a defendant or an offender have been closed.

"Training" means an organized, planned, and evaluated activity designed to achieve specific learning objectives. Training may occur on site, at an academy or training center, at an institution of higher learning, through contract service, at professional meetings or through closely supervised on-the-job activities. Meetings of professional associations are considered training when there is clear evidence of the above elements.

"Transfer Case Monthly Progress Report" means the written report that must be sent from a receiving agency to the sending agency describing the verified progress during the entirety of the preceding month of an offender/defendant whose supervision has been transferred.

"Transfer of Supervision" means a process by which an agency may transfer the responsibility of supervision of a defendant or offender to another Local Community-based Probation or Pretrial program after meeting certain criteria.

"Transfer Request Form" means the request made by a sending agency to a receiving agency when an offender's supervision is being transferred.

"VPRAI" means Virginia Pretrial Risk Assessment Instrument, which is the standardized objective instrument developed to assist pretrial services agencies in providing better information and services to judicial officers and for determining the level of, and facts contributing to, the defendant's risk for failure to appear or threat to public safety if released on bail pending trial.

"Warrant of Arrest" means an order requiring the placement of a person into the control of a law enforcement official or other agent who has the authority for arrest.

§1.2 Legal Authority

These regulations are established in accordance with Article 5 (§19.2-152.3) of Chapter 9 of Title 19.2 and Article 9 (§9.1-173 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia authorizing the Department of Criminal Justice Services to establish standards for the development, implementation, operation, and evaluation of programs and services authorized in Article 5 (§19.2-152.2 et seq.) of Chapter 9 of Title 19.2 and Article 9 (§9.1-173 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia.

***PART II Administration of Agencies***

§2.1 Mission Statement

Each agency shall have a mission statement.

§2.2 Table of Organization

Each agency shall maintain an organizational chart which clearly illustrates the relationship to the administrative and fiscal agent, localities other than the administrative and fiscal agent, and the agency's lines of authority.

§2.3 Fiscal Management

A. Fiscal management shall be provided in accordance with Article 9 (§9.1-183) of Chapter 1 of Title 9.1 of the Code of Virginia.

B. Each agency shall follow the procurement procedures established by the designated administrative and fiscal agent.

C. All funds utilized for the purpose of providing defendant services as outlined in Article 5 (§19.2-152.2 et seq.) of Chapter 9 of Title 19.2 or offender services as outlined in Article §9.1-173 et seq. of Chapter 1 of Title 9.1 of the Code of Virginia shall be subject to audit in accordance with the Virginia Auditor of Public Accounts guidelines.

§2.4 Personnel Policies and Procedures

A. Each agency shall follow the personnel policies and procedures established by the designated administrative and fiscal agent. Upon request of any employee, the agency head shall make available any of these manuals.

B. Each agency shall develop and follow a procedure for conducting background checks on prospective employees which shall include, but not be limited to, a criminal history record check. A criminal history check includes, but is not limited to, obtaining information from the National Crime Information Center (NCIC), Virginia

Criminal Information Network (VCIN), and the Virginia Department of Motor Vehicles (DMV).

C. Each agency shall develop a policy prohibiting any staff from accepting any gift or gratuity from an offender or defendant or engaging in any personal business transaction with an offender or defendant under supervision of the agency.

D. Each agency that uses volunteers and interns shall develop and follow policies and procedures for their recruitment, screening, training, supervision, and termination.

E. Each agency shall develop a policy regarding the carrying and use of firearms and chemical agents during the performance of official duties. Each agency authorizing the carrying and use of firearms or chemical agents shall ensure that staff successfully complete appropriate training covering the use, safety, care, and constraints of any allowable firearms and chemical agents.

F. Each agency shall develop a procedure regarding the Oath of Office in accordance with guidelines published by the Department as authorized.

§2.5 Standard Operating Procedures

A. Each agency shall develop and maintain written standard operating procedures for the conduct of business. These procedures shall, at a minimum, address and comply with all components of this regulation and any guidelines published by the Department for agencies established under the authority of Article 5 (§19.2-152.2 et seq.) of Chapter 9 of Title 19.2 or Article 9 (§9.1-173 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia and any applicable state and federal laws.

B. Standard operating procedures and substantive revisions shall be approved in writing by the chief executive officer of the administrative and fiscal agent and made available to agency staff, all board members, the local judiciary, and the department. For purposes of this regulation, substantive revisions are any modifications that result in a change in procedure.

C. Standard operating procedures shall be reviewed, at a minimum, annually by agency administrative staff. For purposes of this regulation, agency administrative staff means the individual(s) responsible for the oversight and daily operation of the agency.

§2.6 Records Management

A. Each agency shall develop and follow a procedure that complies with guidelines published by the Department to maintain an individual record for each offender and defendant referred, investigated, or supervised.

B. Each agency shall develop and follow a procedure to collect records on each defendant and offender. At a minimum this shall include:

1. Full name
2. Alias
3. Sex
4. Race or national origin
5. Date of birth
6. Social Security Number

7. Address, length of residence, and current living situation
8. Telephone number(s)
9. Marital and family status
10. Financial status
11. Employment, education, and other community activity
12. Mental health, substance abuse, and medical status and history
13. Instant offense, current charges, and known dispositions
14. Prior criminal record to include: any known offenses, charges; or dispositions; record of outstanding warrants, capiases, detainers, and holds; any known record of failures to appear and violations of community supervision; and any known record of flights to avoid prosecution, escapes from custody or confinement, and absconding from community supervision
15. For pretrial services agencies only, amounts and types of bonds imposed as conditions of bail
16. Victim relationship to defendant or offender
17. Referral documentation
18. Signed Conditions of release and supervision
19. Supervision and investigation activity
20. Signed authorization for release of information

C. Each agency shall develop and follow a procedure to ensure the security, safeguarding, and confidentiality of defendant and offender records which shall at a minimum comply with Criminal History Record Use and Security (VAC20-120-10 through 120-160) and the requirements of §§9.1-133 B, 9.1-177.1, and 19.2-152.4:2 of the Code of Virginia.

D. Each agency shall comply with current records retention and disposal schedules as established by the Library of Virginia, Archives and Records Division.

E. Each agency shall fully utilize the PTCC case management software provided by the Department. Full implementation is defined by the guidelines published by the Department.

F. Each agency shall develop and follow a procedure related to public access of defendant and offender information in compliance with §2.2-3706 F.8 of the Freedom of Information Act (FOIA).

§2.7 Serious Incidents and Citizen Complaints

A. Each agency shall develop and follow a procedure to respond to and document serious incidents. The procedure shall include requirements for reporting to appropriate authorities, and the Department.

B. Each agency shall develop and follow a procedure to respond to and provide for the investigation of citizen complaints.

§2.8 Performance Data and Information

Each agency shall develop and follow a procedure for the collection and dissemination of performance data and information. At a minimum, this procedure shall include the following:

A. The collection and maintenance of defendant and offender data which, at a minimum, complies with the department's data collection guidelines.

B. A written report, including performance data, provided, at a minimum, annually, to the board of that locality and the local judiciary.

C. Assurances of cooperation with requests for performance data and information from the Community Criminal Justice Board, the department, and other criminal justice agencies.

* The following section was intentionally removed:

Part III - Local Probation Supervision

***PART IV Pretrial Services***

§4.1 Scope of Services

Each pretrial services agency established pursuant to Article 5 (§19.2-152.2) of Chapter 9 of Title 19.2 of the Code of Virginia shall provide screening, investigating, reporting, recommendations, and supervision for the release of defendants into the custody of a pretrial services agency.

§4.2 Defendant Assessment

A. Each pretrial services agency shall develop and follow a procedure for the screening of eligible defendants scheduled to appear before any judicial officer served by the agency for an initial or subsequent hearing to establish or reconsider bail.

B. Each pretrial services agency shall develop and follow a procedure for the investigation of defendants appearing before any judicial officer served by the agency for an initial or subsequent hearing to establish or reconsider bail. The procedure should, at a minimum, comply with guidelines set forth by the department.

C. Each pretrial services agency shall develop and follow a procedure for interviewing defendants appearing before any judicial officer served by the agency for a first appearance or subsequent hearing on an issue of bond. The interview shall not include questioning the defendant on the nature and circumstances of the current offense(s), whether a firearm was used, or the weight of the evidence.

D. Each pretrial services agency shall complete the risk assessment developed by the department for interviewed defendants.

E. Each pretrial services agency shall develop and follow a procedure for presenting a written report with release recommendations on each defendant investigated to the appropriate judicial officer. The procedure shall, at a minimum, comply with guidelines set forth by the department.

§4.3 Judicial Officer Placement

Each pretrial services agency shall develop and follow a procedure for the placement of defendants on pretrial supervision. These procedures shall, at a minimum, require the defendant to report to program staff no later than the next working day following referral or release from custody.

§4.4 Defendant Intake

A. Each pretrial services agency shall develop and follow a procedure for conducting a criminal history record check on each defendant supervised by the agency which, at a minimum, includes an inquiry to the Virginia Criminal Information Network.

B. Each pretrial services agency shall develop and follow a procedure for investigating and interviewing all defendants directly placed from a judicial officer without the benefit of an assessment as defined in this regulation (§4.2). This investigation and interview shall be completed no later than the next working day following referral or release from custody.

C. Each pretrial services agency shall develop and follow a procedure for informing defendants of standard and special conditions of supervision imposed by the judicial officer. Defendants shall be informed of this no later than the next working day following referral or release from custody.

§4.5 Defendant Management

A. Supervision

1. Each pretrial services agency shall develop standard conditions of supervision which shall be provided to all defendants.

2. Each pretrial services agency shall develop and follow a procedure for the assurance of the defendant's compliance with any standard and special conditions of supervision ordered by a judicial officer.

3. Defendants shall have face-to-face contacts with appropriate program staff, at a minimum, once every other week. Each pretrial services agency shall develop a policy and procedure for handling extenuating circumstances which may prohibit the required face-to-face contacts.

4. The length of supervision shall not extend beyond trial and sentencing of the defendant.

5. Each pretrial services agency shall develop and follow a policy and procedure regarding the supervision of defendants who move or reside out-of-state or in areas not served by an agency.

B. Each pretrial services agency shall develop and follow a procedure for responding to violations of standard or special conditions of supervision, including failures to make initial contact as directed.

C. Each pretrial services agency shall develop and follow a procedure for reporting violations of standard or special conditions to the court. Sanctions for a violation shall only be imposed by a judicial officer pursuant to Article 1 (§19.2-123.B) of Chapter 9 of Title 19.2 of the Code of Virginia.

D. Each pretrial services agency shall develop and follow a procedure for placement closure.

E. Each pretrial services agency shall develop and follow a procedure for termination of supervision.

§4.6 Fees

Supervision or intervention fees may not be collected from defendants for the provision of pretrial services.

***PART V Transfer of Supervision***

§5.1 Transfer Procedures

A. Each community-based probation agency shall develop and follow a procedure for sending offenders to and receiving offenders from other community-based probation agencies for supervision in accordance with Department guidelines.

B. Each pretrial services agency shall develop and follow a procedure for sending defendants to and receiving defendants from other pretrial services agencies for supervision in accordance with Department guidelines.

C. The receiving agency shall sign and return the transfer request form to the sending agency within the time period specified in the Transfer Guidelines.

D. Supervision of defendants and offenders shall be provided in accordance with the standard operating procedures of supervision of the receiving agency.

E. The receiving agency shall provide the sending agency with a Transfer Case Monthly Progress Report in writing on each transferred defendant or offender on a monthly basis. These reports shall be completed and mailed or faxed to the sending agency in accordance with the Transfer Guideline.

F. The receiving agency shall notify the sending agency of a serious incident involving the transferred defendant or offender by the next working day after the receiving agency becomes aware of the incident.

G. Transfer procedures shall comply with guidelines published by the Department.

* The following section was intentionally removed:

*PART VI Contracting for Supervision*

***PART VII Training & Staff Development***

§7.1 Training and Staff Development

A. All professional, clerical and volunteer staff shall complete orientation as per guidelines published by the Department.

B. All professional staff shall, within the first six months of employment, satisfactorily complete Basic Skills training as provided by the Department.

C. All clerical staff shall, within the first six months of employment, satisfactorily complete training deemed appropriate for his or her job duties by the agency. This training shall, at a minimum, comply with guidelines that may be published by the Department.

D. All professional and clerical staff shall complete inservice training and continuing staff development annually, as approved by their supervisor. This training shall, at a minimum, comply with guidelines that may be published by the Department.

## Comprehensive Community Corrections Act and Pretrial Services Act: Local Community-Based Probation and Pretrial Services Program Guide for Continuation Funding Fy2005 - 2006

***Introduction***

The Department of Criminal Justice Services (DCJS) administers general appropriation funds designated for the purpose of supporting the Comprehensive Community Corrections Act for Local-Responsible Offenders (CCCA) and the Pretrial Services Act (PSA) as discretionary grants to local units of government.

Applications for continuation funding under this program category for Fiscal Year 2005 and 2006 are currently being solicited. Program briefs for the CCCA, the PSA, and optional Public Inebriate Centers (PIC) are provided in Section III of this Program Guide. These briefs describe the projects eligible for continuation funding. Please note that MOST changes made for FY2005 and FY2006 are marked "new" in the right margin.

Authority & Purpose

This grant program is intended specifically to support programs established under the authority of the CCCA, as specified in §§9.1-173 - 9.1-183 of the Code of Virginia, or the PSA as specified in §§19.2-152.2 - 19.2-152.7 of the Code of Virginia. Sentencing to local community-based probation programming authorized by the CCCA is to be done in accordance with §19.2-303.3 of the Code of Virginia.

Funds are to be used for purposes of continuing, improving, and/or expanding existing programs, services, and intermediate sanctions and punishments, and for the development of new and innovative ones.

This program may also continue public inebriate diversion programs authorized under §§9-173.1, 9-173.2, and 18.2-388 of the Code of Virginia, which were established as optional programs on or before July 1, 1997.

Eligibility Requirements

Only county or city governments are eligible to receive grants through this program. For multi-jurisdictional efforts, one of the participating localities must submit the grant application on behalf of all participating jurisdictions and shall assume responsibility for grant administrative and financial matters by serving as Administrator and Fiscal Agent. Private organizations may receive grant funds only through contracts with local governments.

The County Administrator or City Manager must serve as the Project Administrator. For multi-jurisdictional efforts, the County Administrator or City Manager of the locality serving as Fiscal Agent will serve as the Project Administrator. It will be the responsibility of the applicant locality to ensure that funds are spent in accordance with grant specifications and local and state procurement regulations.

Each applicant is to have a Community Criminal Justice Board (CCJB) to serve as an advisory body to the local governing body on matters pertaining to local criminal justice issues. The composition of the CCJB is specified in §9.1-178 of the Code of Virginia.

* The following sections were intentionally removed:

- Mandatory System Establishment
- Withdrawal from Program
- Funding Restrictions/Requirements

- Amount Available/Funding Limitations
- Grant Period
- How to Apply
- Review Process
- Technical Assistance
- Instructions for Completing the DCJS Grant Application

***Program Briefs***

* The following section was intentionally removed:

A. Local Community-based Probation

***B. Pretrial Services***

Discussion

The purpose of pretrial services is to provide defendant background information and recommendations that will assist judicial officers in determining or reconsidering bail decisions and conditions and to provide supervised release on bail in lieu of a secured bond. A pretrial services program also provides supervision and assurances that defendants will comply with other conditions when released to the custody of the program.

Judicial officers face a difficult situation in deciding whether to release an accused on bail or to commit to jail and in setting appropriate conditions of bail. The provision of a pretrial report containing defendant information by a pretrial services program is intended to assist judicial officers with this process, especially at initial appearance in General District Court and at subsequent bail hearings. The pretrial screening, interview, and background investigation provides the criminal history and community stability of a defendant including indications of a risk of flight or the potential for criminal activity if released pending trial.

Supervision services are primarily targeted for an accused arrested and admitted to bail but detained in jail in lieu of a secure bond. Pretrial services are intended to replace the use of secure bond as a condition of bail with release on recognizance and to the custody and supervision of a pretrial services agency with or without an unsecured bond. The intent is to increase the use of non-secure bond including pretrial supervision.

Except for defendants charged with an offense that is punishable by death and other defendants screened out in accordance with DCJS program and risk assessment requirements, no pretrial services agency shall withhold investigation of defendants charged with any other offense or deny supervision to any pretrial defendant placed by any judicial officer.

The authority for an accused to be released to the custody and supervision of a pretrial services agency is in Article 1(§19.2-121 et seq.) of chapter 9 of Title 19.2 and §§19.2-152.2 - 19.2-152.7 of the Code of Virginia.

Program Service Models

Pretrial supervision and services programs must be consistent with one of the two following models:

1. Pretrial Interview/Investigation for First Appearance/Arraignment in any district or circuit court with Pretrial Supervision and Services: This model is designed to provide defendant-based information and bail release recommendations. It is primarily designed to provide information to the judge(s) of the district court(s) at the initial appearance for defendants who have been admitted to bail, but not released due to

an inability to meet the requirements of a secure bond or have been denied bail. Supervision and services are provided for those released to the custody of the program.

2. Jail-Based Central Intake Services with Pretrial Supervision and Services: This is a jail-based program model which seeks to integrate and combine the process of investigating defendants for pretrial release with the jail admission/intake process. Defendant-based information, assessment of risk, and bail release recommendations are provided to assist judicial officers and can also be used as the initial inmate classification information for those not released on bail. Supervision and services are provided to those released to the custody of the program.

Program Services

1. Screen adult criminal cases detained awaiting trial in a jail, subsequent to the initial bail hearing in preparation for first appearance/arraignment in General District Court. These cases are primarily defendants who have either been a) denied bail or b) admitted to bail but committed to jail because of an inability to meet the requirements of a secure bond.

2. Provide reports to judicial officers that incorporate defendant information which includes, but is not limited to, the following: an interview; verified and self-reported information relating to criminal history, a risk assessment, financial status, community stability, health and other; national, federal, state, and local criminal history and DMV record; and a range of bail release recommendations.

3. Appear in court for presentation of the pretrial report recommendations and findings when feasible and applicable.

4. Review pretrial defendants who remain detained in jail after arraignment on a weekly basis.

5. Provide supervision including face-to-face visits, phone contacts, and other community collateral contacts and services.

6. Expedite the release of defendants admitted to jail awaiting trial through the use of direct placements by magistrates.

7. Reduce failures to appear and pretrial criminality by providing custody and supervision for pretrial defendants.

8. Assist courts by providing additional services including the preparation of indigency assessments as resources allow.

9. Assist courts, Commonwealth's Attorneys, and Public Defender pretrial defendant case management by providing pretrial investigation reports.

Program Targets

Programs shall develop annual program targets based on information from the monthly report and report on the Quarterly Progress Report. The intent of the targets is to improve efficiency and effectiveness of services. Please develop appropriate and reasonable numeric targets specific to your pretrial services program for each of the following minimum, mandatory program targets for both misdemeanant and felons on the Program Target form provided for both FY2005 and FY2006 (see Attachment A.2 &

A.4). Base your targets on the most current program data. The development of additional program targets is encouraged.

1. Total # of Supervision Days (this is from section I, #7 of the monthly report)
2. Average Daily Caseload ADC (this is from I, #8 of the monthly report)
3. Average Length of Supervision, ALOS, should be 60 days or less for misdemeanants and 120 days or less for felons (this is from I, #9 of the monthly report)
4. Total Placements on Supervision (this is from section I, #3 or III, #3 of the monthly report)
   - On Secure Bond & Supervision (from section III, #3C of the monthly report)
   - Direct Placement (from section III, #3D of the monthly report)
   - Placements with Recommendations (from section III, #3.E & F of the monthly report)
5. Total Successful Cases (this is from section III, #4A of the monthly report)
6. Total Unsuccessful Completions (this is from section III, #4B of the monthly report)
7. Rate of Successful Closure. This is calculated by taking the Total Successful Cases (#5) divided by the sum of the Total Successful Cases (#5) and the Total Unsuccessful Completions (#6)
8. Total # Defendants Investigated (this is from section IV, #4 of the monthly report)
9. Total # Defendants Recommended for supervised release (this is from section IV, #7B of the monthly report)
   - Accepted by Court (this is from section IV, #7B1 of the monthly report)
   - Rejected by Court (this is from section IV, #7B2 of the monthly report)

***Other Program Guidance***

Operating Requirements

1. All programs established and operated under the authority of the PSA must follow statutes, standards, regulations, and guidelines as prescribed by DCJS. This includes, but is not limited to, the Minimum Standards for Local Community Corrections and Pretrial Services (dated May 1, 1998 and any subsequent revisions or amendments).
2. Standard Operating Procedures (S.O.P.s): S.O.P.s shall be maintained which address and comply with all CURRENT statutes, regulations, standards, guidelines, protocols, and policies. Supervision contractors are also accountable to such statutes, regulations, standards, guidelines, protocols, and policies. (This includes the changes in Transfer and Training guidelines as well as the changes in the Code of Virginia for Duties and Responsibilities, seeking capiases and motions for a show cause.) S.O.P.s must be submitted for review and comment to DCJS prior to the implementation of a new program.
3. Workload must justify creating full-time positions. DCJS funding may be utilized for the provision of direct supervision only. DCJS will not fund case management staff (or functional equivalent)-to-offender average ratios of less than 1:25 for pretrial services. (This does not preclude smaller jurisdictions with lower populations from funding.

Staff requests should be in proportion to the population served.) Management and support staff should be in direct proportion to offender supervision staff. When contracting for supervision services (allowable only for programs currently approved), the contractor must adhere to staffing ratios.

4. Pretrial defendants on supervision may only be transferred between programs established and operated under the authority of the PSA. This includes locally operated programs and those contracted by an authorized Fiscal Agent.

5. The maximum program average length of supervision from arrest/citation to adjudication/ conclusion is 60 days for misdemeanor and 120 days for felony defendants.

6. Pretrial services programs may assist drug courts operating within their jurisdiction with the assessment and supervision of pretrial defendants.

7. Substance abuse screenings should be conducted and results recorded in accordance with the specifications of the Interagency Drug Offender Screening and Assessment Committee and DCJS guidelines and protocols. In order for Pretrial agencies to be exempt from conducting screenings, they must send DCJS a letter from the Chief General District Court Judge.

8. All pretrial programs approved to conduct the Virginia Pretrial Risk Assessment Instrument (VPRAI) must conduct a risk assessment as part of the pretrial investigation as identified in the VPRAI manual.

9. The PTCC case management software must be fully utilized. Any program that is not fully utilizing the PTCC system will risk termination of funding with 90 days notice. Full utilization is defined by:

   a) All new screenings and investigations are fully entered in the system (PT only),

   b) Setup module is completed for all pretrial investigations whether it results in a placement or not (PT only).

   c) All new supervision referrals, required intake and supervision activity are entered in the system,

   d) All required elements for active cases are entered into the system,

   e) All elements necessary to complete the DCJS monthly statistical report, master name index, and summary database are entered into the program, and

10. Hardcopies of the PTCC monthly report must be printed at the agency level and mailed to DCJS.

Restrictions

1. Except for currently approved programs, state funding may not be used to contract for pretrial services with a private provider. Service providers must be a local unit of government and have criminal justice agency status as defined by §9-169 of the Code of Virginia except for any program certified by the Commission on VASAP pursuant to §18.2-271.2.

2. Only those program service models listed in this guide are eligible for state funding.

3. The collection of intervention fees for pretrial supervision is prohibited.

4. Pretrial services programs funded by this initiative shall not accept referrals specifically for:

   a) the purpose of evaluating a defendant's performance on supervision or treatment,

   b) an extended period of time for an assessment or evaluation,

   c) a specified period of pretrial supervision established by court order,

   d) any period of supervision following trial as a condition of any case taken under advisement, deferred judgment, or a deferred proceeding where the court does not make a finding of guilt, and

   e) defendants appealing their conviction or sentence.

      Note: This does not include the court extending the period of supervision for a defendant already under supervision through the pre-sentence investigation period in lieu of bail revocation. Such "extended" supervision cases should not exceed the established standards for average length of supervision.

      1. Pretrial services programs shall not recommend defendants for supervised release with a secure bond.

      2. Except for defendants charged with an offense that is punishable by death and other defendants screened out in accordance with DCJS program and risk assessment requirements, no pretrial services agency shall withhold investigation of defendants charged with any other offense or deny supervision to any pretrial defendant placed by any judicial officer.

         * The following section was intentionally removed:

         C. PUBLIC INEBRIATE DIVERSION

## SUPERVISION CASE TRANSFER GUIDELINES

***Purpose***

To provide all local community-based probation and pretrial services agencies with a consistent and uniform procedure for transferring supervision cases from agency to agency. These guidelines are to be a part of the operating procedures regarding the transfer of cases. They do not replace the standards but simply establish a baseline standard operating procedure. Agencies must develop additional standard operating procedures (SOPs) for such things as designated agency contact and person responsible for approvals, etc.

***Related Standard***

Department of Criminal Justice Services Minimum Standards for Local Community Corrections and Pretrial Services, §5.1

***Definitions:***

- Sending Agency: The community-based probation or pretrial services agency that serves the court of origin and which is transferring or sending case supervision to a corresponding program in another jurisdiction

- Receiving Agency: The community-based probation or pretrial services agency that has agreed to supervise a case in their jurisdiction for the sending agency

- Appropriate Supervision Placement: For purposes of local probation, the proposed case should be an adult offender (or have been adjudicated as an adult) sentenced to twelve months or less for a Class I or II misdemeanor or nonviolent felony, and who has been placed on probation with a local -based probation agency following a sentence that has been suspended in whole or in part or who has been provided a deferred judgement and placed on probation for Class I or II misdemeanor offense authorized by state statute. For purposes of pretrial supervision, the proposed case should be an adult defendant (or have been charged as an adult), not charged with an offense punishable by death at the time of the bail hearing, and who has been released to the supervision or custody of a pretrial services agency.

***Policy***

Transferring a Case

1. Local community-based probation supervision cases may be transferred only to local community-based probation agencies and pretrial cases may be transferred only to pretrial services agencies. The defendant/offender must be a resident of the receiving agency's jurisdiction.

2. Agencies may not accept transfer of supervision from another state. Agencies, may, as a courtesy to the court, monitor cases that reside out of the Commonwealth of Virginia.

3. Prior to transferring a case, ensure that it meets the eligibility criteria for appropriate supervision placement in accordance with the Code of Virginia (COV). Conduct substance abuse screening, if required, in accordance with substance abuse screening and assessment guidelines. Denial of the transfer request by the receiving agency may occur only in cases where it is not an appropriate supervision placement or jurisdiction. Refer to Locality Cross-Reference page of Community-Based Probation and Pretrial Services Program Directory to determine if the proposed jurisdiction is covered by a community corrections or pretrial program. If a town or

place name is not listed, use www.mapquest.com or a similar online resource to locate the correct county/city.

4. When transferring a case, all sections of the Transfer Request form must be completed. If not, the acceptance may be delayed until the form is completed properly. If any section is not applicable (i.e. restitution, employment etc.), simply write "NA" in that space.

5. Within three (3) workdays of the decision to transfer a defendant/offender's relocation, the sending agency shall fax the Transfer Request form and required attachments (intake form, release of information form, conditions of supervision, court order/warrant) to the receiving agency. This must include an Intake with a completed Basic Demographics form from PTCC. This should also include the proposed mailing address as well as the physical address if the former is a post office box number. Incomplete information will not be accepted and may delay the transfer acceptance. It is the responsibility of the sending agency to forward the circuit court order immediately upon receipt.

6. The defendant/offender shall be directed to contact the receiving agency within three (3) workdays, follow their instructions, and return to the sending agency if the transfer is not accepted. The sending agency shall provide the defendant/offender with the name, address and telephone number of the receiving program. Transfer of supervision may be a two-step process: a) receipt of request and b) acceptance/denial of supervision.

7. The receiving agency must sign the Transfer Request form with transfer request "received" circled to acknowledge receipt of transfer request and fax it back to the sending agency within three (3) workdays. The receiving agency then has up to five (5) workdays to determine the appropriateness of the placement and fax back the Transfer Request form with "accepted" circled indicating the transfer has been completed. The case will remain active with the sending agency until the transfer is accepted by the receiving agency and the form is faxed back with "accepted" circled

8. If the sending agency does not receive the transfer request/acceptance fax within three (3) workdays, the sending agency is to call the receiving agency to verify that the fax was received and inquire as to the status of the pending transfer request.

9. If the defendant/offender does not make contact as directed within three (3) workdays, the receiving agency shall initiate contact with the defendant/offender instructing him to report to the receiving program within a period not to exceed five working days. This allows the receiving agency a maximum of eight (8) workdays to verify, accept and notify the sending agency.

10. If the receiving agency is unable to provide for the conditions set forth by the sending court because required services are not available in the receiving jurisdiction, they are to call the sending agency immediately in order that the sending agency may contact the court, if needed, to modify conditions. The sending agency shall forward revised documents reflecting authorized changes to the receiving agency.

11. The receiving agency will consider the case active on the date the Transfer Request form is signed as accepted and the sending agency will consider the case inactive on the day the request form is signed as accepted by the receiving agency.

12. Failure by the offender/defendant to make initial contact shall be handled in accordance with the established standard operating procedures of the receiving agency for failure to report for direct court placements.

Supervising Transferred Cases

1. Supervision of defendants or offenders shall be provided in accordance with the Minimum Standards and standard operating procedures of the receiving agency except for closures (see next section).

2. The receiving agency shall initiate contact with the defendant/offender within the time specified in the Minimum Standards for Supervision as for direct court placements. This contact may be via telephone or U.S. Mail. If contact cannot be established within five (5) workdays, the sending agency will be notified.

3. The receiving agency shall provide the sending agency with a monthly progress report on the transferred case using the Transfer Case Monthly Progress Report form. This report, describing the progress of the previous month in its entirety, shall be completed and mailed or faxed by the 10th day of the subsequent month except for the final progress report (see next section).

4. The receiving agency shall ensure the quality and accuracy of all information on each PTCC Transfer Case Monthly Progress Report. Information submitted to the sending agency shall be verified and not based only on defendant/offender self-report.

5. When the receiving agency becomes aware that the defendant or offender is jailed or arrested due to a new or previous charge, or is the subject of a serious incident report, the receiving agency is to notify the sending agency by phone, email or fax within one (1) workday of discovery for both pretrial defendants and local probation offenders.

6. Agencies shall comply with the Fee Collection Policy (3.6.G1-5) with regard to transfer cases.

Returning and Closing a Transferred Case

1. The procedures of the receiving agency generally apply to the supervision of transferred cases. However, when returning a transferred case to the sending agency, especially for technical violations, the receiving agency must be cognizant of the procedures of the sending agency since the court of the sending agency may not accept the practices and policies of the receiving agency governing case closures. This could be especially problematic if a receiving agency closes a case and the court of original jurisdiction will not accept the recommendation or if the receiving agency closes a case and does not provide the sending agency with immediate information so that appropriate action can be taken.

    a. Prior to closing interest in cases where the receiving agency wants to close a case as successful, the receiving agency shall contact the sending agency by telephone to discuss the case closure. If both agencies agree that a closing is in order, the receiving agency shall complete the final Transfer Case Monthly Progress Report and send it to the sending agency by fax or mail within three (3) work days. If the sending and receiving agencies do not agree, the sending agency's standard operating procedures shall determine successful case closure.

b. In cases where the receiving agency wants to close a case unsuccessfully, the receiving agency shall contact the sending agency by telephone to discuss the non-compliance prior to closing their interest. If both agencies agree that an unsuccessful closure is in order, the receiving agency shall complete the final Transfer Case Monthly Progress Report form and send it to the sending agency by fax or mail within three (3) workdays.

2. The receiving and sending agencies should discuss the case, the reasons for recommended closure, and what procedures the court of original jurisdiction follows.

3. When a show cause or capias is determined to be necessary, it is the responsibility of the sending agency to have it issued. However, when supervision is still needed for the case prior to the court rendering a decision, the receiving agency shall continue to provide it, unless the defendant or offender has returned to the sending jurisdiction. The determination of continued supervision is to be handled by the two involved agencies.

4. The receiving agency will consider the transferred case closed beginning the day the sending agency is notified by telephone, fax or mail and agrees to closure. The status of the case in the sending agency will depend upon standard operating procedures of the sending agency.

Mediating Disputes and Non-compliance

1. All effort to arrive at an agreement regarding the handling of a transfer case should be taken between the respective field officers of the sending and receiving agencies.

2. When a dispute is identified, the director of one agency shall attempt to directly resolve the conflict with the director of the other agency.

3. Should this fail to resolve the differences, the sending and/or receiving agency should set up a face-to-face meeting with a representative(s) of the DCJS Corrections Section by arrangement with the Section Chief. Representatives from both the sending and receiving agencies must attend. All documents and other supportive information shall be transmitted to DCJS at least three (3) workdays prior to the meeting. Anecdotal information that is not supported with written and dated documents will not be considered.

4. If the issue in dispute is a question of policy, DCJS will take it under advisement after hearing from both sides and take appropriate action within five (5) workdays. If the issue under dispute is clearly addressed in the guideline and one or both parties and are unwilling to accept DCJS resolution, the Department will notify the appropriate Project Administrators and will expect the situation to be rectified internally.

5. In the event of non-compliance with state standards, guidelines or policies, DCJS may withhold quarterly disbursements or suspend all or a portion of grant funding until compliance is achieved.

## TRAINING & STAFF DEVELOPMENT GUIDELINES

***Purpose***

To ensure that all local community corrections and pretrial program employees receive appropriate, timely, high quality training sufficient to equip them to perform the duties of their position.

***Related Standard***

Department of Criminal Justice Services Minimum Standards for Local Community Corrections and Pretrial Services, Part 7, §7.1

***Definitions***

**Professional employees**: full or part-time personnel such as directors, case managers, investigators, probation officers, pretrial officers or like designations

**Clerical Employees**: full or part-time personnel such as secretaries, administrative assistants or like designations

**The Department**: The Department of Criminal Justice Services

***Policy***

Orientation/OJT

In accordance with Code of Virginia §19.2-152.4:1 and 9.1-177, every local probation officer and pretrial officer shall take an oath of office before entering the duties of their office.

Further, all newly hired local community corrections and pretrial program professional employees will, within the first 90 days of hire, complete a structured orientation program to include, at a minimum, the following:

1. Review all written state/county/city policies and procedures pertinent to their job/agency.
2. Review DCJS-issued guidelines and Minimum Standards for Local Community Corrections & Pretrial Services.
3. Receive training on the office case management software.
4. Obtain an overview of the local criminal justice system including an organizational chart of the agency.
5. Become familiar with all pertinent office forms and reports.
6. Review written job description/duties and the criteria on which they will be evaluated.
7. Review agency or governmental unit's existing policies regarding benefits; work hours; procedures for requesting leave; procedure for knowing whereabouts of officer during work hours; use of agency car; telephone and internet practices; utilization of secretarial support; mail processing and filing system; safety rules and confidentiality policy; personal decorum and dress standards.
8. Participate in field visits, accompanied by a non-probationary staff, to courts, jail(s), treatment programs, state Probation & Parole district office(s) and/or other offices with which employee will have regular contact. This tour will include the geographic area in which the officer will work, noting reliable sources of information, locations of resources and contacts therein and/or places to avoid or in which to exercise extreme caution.
9. Review procedure for obtaining criminal record check. Receive explanation on use of VCIN terminal and any other criminal record database. Arrange for certification on VCIN if appropriate.

10. Assist colleagues or supervisor in doing the job tasks that the employee was hired to perform

    a. Conduct an official interview/intake if this will be part of employee's official duties.

    b. Prepare court correspondence regarding client's compliance or noncompliance if this will be part of employee's official duties.

    c. Perform a transfer of supervision in accordance with DCJS transfer guidelines.

11. Schedule training on SSI and ASI or other screening and assessment tool if appropriate.

12. Review policy and procedures for conducting drug tests if this will be part of employee's official duties

Basic Training for Professional Employees

All professional employees will successfully complete the Basic Skills for Local Community Corrections & Pretrial Programs as offered by the Department within the first six months of hire.

1. Successful completion means passing the test at the end of the week of training with a grade of 70% or better.

2. Failure to pass the test will require the employee to take another test provided by the Department at the employee's agency proctored by the agency director or his/her designee.

3. If the employee fails to pass the subsequent test with a grade of 70% or better, he/she will be required to return for another week of Basic Skills at the next offering.

4. If the employee fails the test following the 2nd week of training, a letter describing this occurrence will be forwarded to his/her agency director with a copy to the project administrator to develop a plan of action.

5. All local community corrections and pretrial professional employees who have not completed Basic Skills for good cause and have been employed in their capacity for over one year by August 1, 2001, shall be granted a waiver of this provision by the Department.

Inservice Training

1. All professional staff, including managerial positions, will complete 20 hours of job-related training per year offered either through local or national sources or through DCJS that has been previously approved by their supervisor. This training may be in the form of conference workshops, training academies, college or university classes or training in special topic areas, etc.

2. All volunteer professional and clerical staff shall receive such inservice training as is available and deemed appropriate by the agency.

Orientation/OJT for Clerical Employees

All clerical employees will complete, within the first 90 days of their hire, a structured orientation/OJT program appropriate to their job duties and other training as deemed suitable by their agency.

***Fee Collection Guidelines***

Section 3.6 Fees

A. Intervention fees collected by local community corrections (probation) programs shall be done in accordance with the statewide system of supervision and intervention fees established by the department pursuant to Article 9 (9.1-182) of Chapter 1 of Title 9.1 of the Code of Virginia. Fee collection will remain an option for local community corrections programs.

B. Local community corrections programs will be allowed to assess an intervention fee that does not exceed $100 for the first six (6) months of supervision. For each additional six (6) months of supervision the programs can assess an additional fee that does not exceed $25.

   1. The local community corrections programs will determine the fee amount that will be assessed on each offender (not to exceed $100).

   2. The intervention fee will be a one-time fee assessed to each offender placed on local community corrections supervision.

   3. Payments can be made in installments.

   4. Local community corrections programs may allow a waiver of payment, based on local program criteria.

   5. Community service work may be imposed in lieu of fee payment.

C. Any requests to implement an intervention fee collection process shall be submitted to DCJS for approval. Such requests will include at a minimum: the local program's Standard Operating Procedure for fee collection, the amount of the fee to be assessed, the collection process to be used, and any forms to be used in conjunction with the collection of fees.

D. Payment of intervention fees shall be made directly to the locality serving as the administrative and fiscal agent pursuant to Article 9 (9.1-182) of Chapter 1 of Title 9.1 of the Code of Virginia. Fees that are collected will be used for program improvement and enhancement in accordance with the Code.

E. Collection of Intervention fees should be strictly monitored and controlled by the local community corrections program imposing the fees. The recommended process is as follows:

   1. The local community corrections program will keep a master receipt book or provide staff with individual receipt books.

   2. The fee will be collected and a receipt provided to the offender. The receipt provided to the offender can be the original or a photocopy.

   3. A copy of the receipt will be placed in the offender's file.

   4. Collected fees will be kept in a secure location at the local community corrections program until such time as they are forwarded to the program's fiscal agent.

   5. The payment and a copy of the receipt will be sent to the program's fiscal agent for deposit in the program's budget.

6. The fiscal agent should provide the program with verification of the deposit in the program's budget.

7. In conjunction with any other financial audits, the program's collection process should also be audited.

8. Fees will be collected in the form of money orders or cashier checks. It will be a local option to accept personal checks as a form of fee payment. Cash will not be accepted for payment of fees.

F. Any funds generated as a direct result of department grant funded projects are deemed project income. Project income must be reported on forms provided by the department. Fees collected and budgeted must be included and identified in the program's Budget Narrative. The following are examples of project income: service fees, client fees, usage or rental fees, sales of materials, income received from sale of seized and forfeited assets (cash, personal or real property included). Intervention fees are to be reported.

G. Transfer Cases and Intervention Fee Collection

1. If both the transferring program and the receiving program collect an intervention fee, the transferring program can collect an intervention fee not to exceed $25. The receiving program can collect an intervention fee not to exceed $75. The receiving program will not be responsible for collecting the transferring program's fee (or any part of it). Collection of fees should occur before the case is transferred. The receiving program can charge a fee of up to $25 for each additional six (6) months of supervision.

2. If the transferring program does not collect an intervention fee, but the receiving program does; the receiving program cannot charge a fee.

3. If the transferring program collects an intervention fee, but the receiving program does not, the transferring program can assess a fee that is $25 (flat fee). The receiving program will not be responsible for collecting the fee (or any part of it) if not paid prior to transfer.

4. If both the transferring program and the receiving program do not collect an intervention fee; fees will not be assessed or collected from the offender being transferred.

5. Any issue regarding collection of an intervention fee, that arises between programs will be addressed by the Directors of the respective programs. If not resolved at that level, the issue may be forwarded to DCJS for review, comment, technical assistance, and possible resolution.

***Procedures For Capias/Motion For Show Cause***

**Definitions:**

**"Assault"** is an unlawful attempt or threat to injure another physically under such circumstances that, if not prevented and coupled with apparent present ability to execute, create a well-founded fear of imminent peril. One does not actually have to touch or strike another to be accused of assault.

**"Capias**" is a writ of arrest or attachment of the body requiring a law enforcement officer to take a defendant or offender into custody.

**"Commission of a New Offense**" means the act of committing or perpetrating a crime.

**"Commitment Order"** is the initial order prepared by a judicial officer committing an accused or defendant to jail awaiting trial. This is the DC- 352 form.

**"Complainant"** is one who files a charge against another. A local pretrial services or probation officer is a complainant when seeking a capias or warrant for arrest.

**"Custodian"** means the person or organization to which a defendant is released as a term or condition of bail.

**"Intractable behavior"** is behavior that indicates a defendant's unwillingness or inability to conform to that which is necessary for successful completion of the program or that is so disruptive as to threaten the successful completion of the program by other participants.

**"Judicial officer"** includes any magistrate, any clerk of any court and any judge of any court.

**"Probable cause"** means an apparent state of facts or apparent facts upon reasonable inquiry which would induce a person of reasonable intelligence and prudence to believe, in a criminal case, that a crime has been, is being, or is about to be committed as determined by a judicial officer.

**"Recognizance"** is a signed commitment by a person to appear in court as directed and to adhere to any other terms ordered by an appropriate judicial officer as a condition of bail. [§19.2-119 of the Code of Virginia] This is the DC- 330 form.

**"Show Cause"** is a criminal summons to appear in court on a specified date to answer charges why the defendant failed to meet or comply with any court imposed conditions. A show cause summons can be "posted" on the property of the defendant or respondent and does not require a personal service.

**"Warrant for Arrest"** includes the following District Court forms: DC- 312 Felony, DC- 314 Misdemeanor (State), DC- 315 Misdemeanor (Local Misdemeanor [Ordinance Violation])

***Intent***

It is not the intent of these laws to increase the number of defendants or offenders removed from program supervision for non-performance. The authority to seek a capias is a remedy to expedite the return to confinement for those defendants and offenders who have egregiously failed to meet their judicial officer or court ordered conditions of bail or probation or programmatic conditions of supervision. A judicial officer always has discretionary authority to issue a summons in lieu of a capias.

***Procedures For Seeking a Capias or Motion for Show Cause for Arrest of a Pretrial Defendant or Local Probationer***

***Pretrial***

Pursuant to §19.2-152.4:1, a capias may be sought when there is a failure to comply with any conditions of release imposed by a judicial officer, for failure to comply with conditions of pretrial supervision established by a pretrial services agency, or when there is reason to believe that the person will fail to appear, will leave, or has left the jurisdiction to avoid prosecution.

Pursuant to §19.2-152.4:3 A.5, a capias is required when continued liberty or non-compliance presents a risk of flight, a risk to public safety or to the defendant.

***Local community-based probation***

Pursuant to §19.2-303.3 C., a capias may be sought for removal from the program for intractable behavior, refusal to comply with the terms and conditions imposed by the court, refusal to comply with the requirements of local probation supervision established by the program or the commission of a new offense while on probation and under supervision.

Pursuant to 9.1-176.1 A. 6, a capias is required when intractable behavior presents a risk of flight, risk to public safety or to the offender

Pursuant to §9.1-176 A 7 and §19.2-152.4:3 A 6, an order for show cause should be sought when the desired outcome is for a defendant or offender to return to court on his/her own volition for a hearing on less serious failures to comply with conditions imposed.

***Procedures for Seeking a Capias***

1. All pretrial services and local probation officers shall meet the following requirements in order to seek a capias or warrant for arrest:

   a. have successfully completed Basic Skills training

   b. be sworn officers in accordance with the recommended requirements of the Oath of Office as outlined in the DCJS New Legislation memorandum dated June 23, 2000.

2. The program director or coordinator must approve each case for which a capias is being sought.

3. Before seeking a capias from any judicial officer the pretrial services or local probation officer should complete the "Petition for Capias", Form PTS/CBP 15. [This form was endorsed by the VCCJA]

   A. The first section of this form specifies the date, the conditions under which the defendant or probationer was released to the program and the judicial officer who signed the release or court order.

   B. Each officer should attach to the PTS/CBP 15 copies of the following, where applicable:

      1. original arrest warrant
      2. the initial bail release form
      3. any court continuance form
      4. court order for probation
      5. court order for alcohol or drug screening, assessment, evaluation, etc...
      6. any probation order developed by the program and approved by the courts
      7. signed acknowledgment of program conditions of supervision [pretrial or probation]
      8. the commitment to jail form (for pretrial cases)

   C. This will be used to complete the Motion for Show Cause Summons or Capias when the program officer appears before the judicial officer.

***Procedures for Seeking a Show Cause Summons***

Pretrial or local probation programs may, when continued liberty or non-compliance is not a serious problem, write a letter to a court seeking a show cause summons for cases in which the court should determine whether bail or probation should be revoked.

***Procedures for Seeking a Warrant for Arrest***

1. There may be instances when a program officer seeks a warrant for the arrest of a defendant or offender due to a crime committed in the presence of or observed by a program officer in addition to seeking a capias.

   A. These include, but are not limited to the following examples:

      1. assault on a pretrial services officer

         A pretrial officer conducting an investigation in jail *who is assaulted by a prisoner can charge an accused "with knowingly and willfully inflicting bodily injury" under:

         a. §18.2-55 A. 1., if they are an employee of the jail

         b. §18.2-55 A. 2., as a person lawfully admitted to the jail

         This offense is a Class 5 felony.

         * This would also apply to a local probation officer who interviews an offender in jail.

      1. assault on a local pretrial services or probation officer.

         This is not currently covered under §18.2-55.

         a. the defendant or probationer can be charged with assault under §18.2-57, Simple Assault, a Class 1 Misdemeanor

      2. assault of any other program staff

      3. assault on another defendant or offender

      4. assault on a victim [domestic case]

      5. possession or distribution of any controlled substance while in the office or its environs

      6. larceny from any program office or any vehicle in the program's parking lot

      7. tampering with a motor vehicle [in the parking lot of the program]

      8. destroying office property

      9. driving under the influence [appearing in the office, testing positive, and under the influence after having driven to the program]

      10. driving on a suspended operator's permit

   B. All instances where a warrant for arrest is being sought shall be approved by the program director or coordinator.

   Follow Procedures for Seeking a Capias and completing a complaint form.

# DRAFT NATIONAL ASSOCIATION OF PRETRIAL SERVICES AGENCIES RELEASE STANDARDS: 2003

## PART I. GENERAL PRINCIPLES GOVERNING THE PRETRIAL PROCESS

### *STANDARD 1.1 Purposes of the Pretrial Release Decision (ABA Standard 10-1.1)*

The purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, minimizing the unnecessary use of secure detention, and protecting victims, witnesses and the community from threat, danger or interference. The judge or judicial officer decides whether to release a defendant on personal recognizance or unsecured appearance bond, release a defendant on a condition or combination of conditions, temporarily detain a defendant, or detain a defendant according to procedures outlined in these Standards. The law favors the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support. These Standards limit the circumstances under which pretrial detention may be authorized and provide procedural safeguards to govern pretrial detention proceedings.

### *STANDARD 1.2 Presumption of Release Under Least Restrictive Conditions and Other Alternative Release Options (ABA Standard 10-1.2)*

In deciding pretrial release, a presumption in favor of pretrial release on a simple promise to appear (i.e., release on "personal recognizance") should apply to all persons arrested and charged with a crime. When release on personal recognizance is deemed inappropriate, the judicial officer should assign the least restrictive condition(s) of release that will reasonably ensure a defendant's attendance at court proceedings and protect the community, victims, witnesses or any other person. The court should have a wide array of programs or options available to promote pretrial release on conditions that ensure appearance and protect the safety of the community, victims and witnesses pending trial, and should have the capacity to develop release options appropriate to the risks and special needs posed by defendants who are released to the community. When no conditions of release are sufficient to accomplish the aims of pretrial release, defendants may be detained through specific procedures.

### *STANDARD 1.3 Pretrial Release Agency or Program*

Every jurisdiction should have the services of a pretrial services agency or program to help ensure equal, timely, and just administration of the laws governing pretrial release. The pretrial services agency or program should provide information to assist the court in making release/detention decisions, provide supervisory services in cases involving released defendants, and perform other functions as set forth in these standards.

### *STANDARD 1.4 Conditions of Release (ABA Standards 10-1.4)*

a) Consistent with these Standards, each jurisdiction should adopt procedures designed to promote the release of defendants on personal recognizance. Additional conditions should be imposed on release only when the need is demonstrated by the facts of the individual case to reasonably ensure appearance at court proceedings, to protect the community, victims, witnesses or any other person, and to maintain the integrity of the judicial process. Methods for providing the appropriate judicial officer with reliable information relevant to the release decision should be developed, preferably through a pretrial services agency or function as described in Standards 3.2 through 3.4.

b) When release on personal recognizance is not appropriate reasonably to ensure the defendant's appearance at court and prevent the commission of criminal offenses that threaten the safety of the community or any person, non-financial conditions of release should be employed consistent with Standard 2.4.

c) Release on financial conditions should be used only when no other conditions will reasonably ensure appearance, and should never be used in order to detain the defendant. Therefore, when financial conditions are imposed, the court should first consider releasing the defendant on an unsecured bond. If unsecured bond is not deemed a sufficient condition of release, and the court still seeks to impose monetary conditions, bail should be set at the lowest level necessary to ensure the defendant's appearance and with regard to a defendant's financial ability to post the bail. When financial bail is imposed, the defendant should be released on the deposit of cash or securities with the court of not more than ten percent of the amount of the bail, to be returned at the conclusion of the case.

d) Financial conditions should not be employed to respond to concerns for public safety.

e) The judicial officer should not impose a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant's inability to pay.

f) Consistent with the processes provided in these Standards, compensated sureties should be abolished.

***STANDARD 1.5 Detention as an Exception to Policy Favoring Release (ABA Standard 10-1.6)***

These Standards limit the circumstances under which pretrial detention may be authorized and provide procedural safeguards to govern pretrial detention proceedings. They establish specific criteria and procedures for effecting the pretrial detention of certain defendants after the court determines that these defendants pose a substantial risk of flight, or threat to the safety of the community, victims or witnesses or to the integrity of the justice process. The status of detained defendants should be monitored and their eligibility for release should be reviewed throughout the adjudication period. The cases of detained defendants should be given priority in scheduling for trial.

***STANDARD 1.6 Consideration of the Nature of the Charge in Determining Release Options (ABA Standard 10-1.7)***

Although the charge itself may be a predicate to pretrial detention proceedings, the judicial officer should exercise care not to give inordinate weight to the nature of the present charge in evaluating factors for the pretrial release decision except when, coupled with other specified factors, the charge itself may cause the initiation of a pretrial detention hearing pursuant to the provisions of Standard 2.9.

***STANDARD 1.7 Implication of Policy Favoring Release for Supervision in the Community (ABA Standard 10-1.9)***

The policy favoring pretrial release and selective use of pretrial detention is inextricably tied to explicit recognition of the need to safely supervise large numbers of defendants in the community pending adjudication of their cases. To be effective, these policies require sufficient informational and supervisory resources.

***STANDARD 1.8 Notice to Victims***

Consistent with these standards, each jurisdiction should provide procedures designed to ensure that victims of crime are kept informed of the case in a proper and timely manner. At a minimum, jurisdictions should seek to promptly inform victims of violent crime if a defendant who has been charged with the crime is to be released from custody. When release has been ordered in these circumstances, the jurisdiction should provide for victims to be advised of the conditions of release imposed on the defendant. The jurisdiction should ensure that victims are provided with information about persons to contact while the case is pending and with information about methods of seeking enforcement of release conditions.

***STANDARD 1.9 Delegated Authority to Release Defendants Prior to First Appearance***

The authority to release a defendant who has been arrested and charged with a crime resides with the court. The court should not delegate this authority to a pretrial services agency, program, or officer without specific guidelines, consistent with the laws and rules concerning judicial authority in the jurisdiction that govern the exercise of delegated authority. Such guidelines should at a minimum:

a) limit the delegated authority to cases involving relatively minor charges; and

b) require that the defendant produce satisfactory identification, have no outstanding warrants, have no pending cases, pose no obvious threat to the community or any person, and pose no obvious risk of failure to appear.

## PART II. NATURE OF FIRST APPEARANCE AND RELEASE/DETENTION DECISION

***STANDARD 2.1 Prompt First Appearance (ABA Standard 10-4.1)***

Unless the defendant is released on citation or in some other lawful manner, a defendant who has been arrested should be taken before a judicial officer as expeditiously as possible and should in no instance be held in custody longer than 24 hours without appearing before a judicial officer. Judicial officers should be readily available to conduct first appearances within the time limits established by this Standard. A defendant who is not promptly presented should be entitled to immediate release under appropriate conditions unless pretrial detention is ordered as provided in Standards 2.9 through 2.11.

***STANDARD 2.2 Nature of First Appearance (ABA Standard 10-4.3)***

(a) Prior to the first appearance, a pretrial investigation should be conducted by the pretrial services agency or program in accordance with Standards 3.2 through 3.4. A written report on the investigation should be provided to the court, the prosecutor, and counsel for the defendant prior to the first appearance.

(b) During the period between arrest and first appearance, the defendant should be provided an opportunity to communicate with family or friends for the purposes of facilitating pretrial release or obtaining counsel.

(c) The first appearance before a judicial officer should take place in such physical surroundings as are appropriate to the administration of justice. Each case should receive individual treatment, and decisions should be based on the particular facts of the case and information relevant to the purposes of the pretrial release decision as established by law and court procedure. The proceedings should be conducted in clear and easily understandable language calculated to advise defendants effectively of their rights and the actions to be taken against them. The first appearance should be conducted in such a way that other interested persons may attend or observe the proceedings.

(d) At the defendant's first appearance, he or she should be represented by counsel. If the defendant does not have his or her own counsel at this stage, the judicial officer should appoint counsel for purposes of the first appearance proceedings, and should ensure that counsel has adequate opportunity to consult with the defendant prior to the first appearance. The judicial officer should provide the defendant with a copy of the charging document and inform the defendant of the charge and the maximum possible penalty on conviction, including any mandatory minimum or enhanced sentence provision that may apply. The judicial officer should advise the defendant that the defendant:

(i) is not required to say anything, and that anything the defendant says may be used against him or her;

(ii) if represented by counsel who is present, may communicate with his or her attorney at the time of the hearing;

(iii) has a right to counsel in future proceedings, and that if the defendant cannot afford a lawyer, one will be appointed;

(iv) if not a citizen, may be adversely affected by collateral consequences of the current charge, such as deportation;

(v) if a juvenile being treated as an adult, has the right to the presence of a parent or guardian;

(vi) if necessary, has the right to an interpreter to be present at proceedings; and

(vii) where applicable, has a right to a preliminary examination or hearing.

(e) A record should be made of the proceedings at first appearance. The defendant also should be advised of the nature and schedule of all further proceedings to be taken in the case.

(f) The judicial officer should decide pretrial release or detention in accordance with these Standards.

***STANDARD 2.3 Release On Personal Recognizance (ABA Standard 10-5.1)***

(a) It should be presumed that every defendant is entitled to release on personal recognizance on condition that the defendant attend all required court proceedings and not commit any criminal offense. This presumption may be rebutted by evidence that there is a substantial risk of nonappearance or need for additional conditions as provided in Standard 2.4, or by evidence that the defendant should be detained under Standards 2.8, 2.9, and 2.10.

(b) In determining whether there is a substantial risk of nonappearance or threat to the community or any person or to the integrity of the judicial process if the defendant is released, the judicial officer should consider the pretrial services assessment of the defendant's risk of willful failure to appear in court or risk of threat to the safety of the community or any person, victim or witness. Factors to be considered may include:

(i) the defendant's character, physical and mental condition, family ties, employment status and history, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;

(ii) whether at the time of the current offense or arrest, the person was on probation, parole, or other release pending trial, sentencing, appeal, or completion of sentence for an offense;

(iii) availability of persons who agree to assist the defendant in attending court at the proper time and other information relevant to successful supervision in the community;

(iv) any facts justifying a concern that the defendant will violate the law if released without restrictions;

(v) the nature and circumstances of the offense in relation to the risk of the defendant's non-appearance or risk to public safety; and

(vi) whether there are specific factors that may make the defendant an appropriate subject for conditional release and supervision options, including participation in available medical, drug, mental health or other treatment, diversion or alternative adjudication release options.

(c) In the event the judicial officer determines that release on personal recognizance is unwarranted, the officer should include in the record a statement, written or oral, of the reasons for this decision.

***STANDARD 2.4 Setting Conditions of Release (ABA Standard 10-5.2)***

(a) If a defendant is not qualified for release on personal recognizance, the court should consider imposing conditions of release. The court should impose the least restrictive release conditions reasonably necessary to ensure the defendant's appearance in court, protect the safety of the community or any person, and safeguard the integrity of the judicial process. The court may:

(i) release the defendant on condition that the defendant report to or be supervised by a pretrial services agency or program;

(ii) release the defendant into the custody or care of some other qualified organization or person responsible for supervising the defendant and assisting the defendant in making all court appearances;

(iii) impose reasonable restrictions on the activities, movements, associations, and residences of the defendant, including curfew, "stay away" orders, or prohibitions against the defendant going to certain geographical areas or premises;

(iv) prohibit the defendant from possessing any dangerous weapons and order the defendant to immediately turn over all firearms and other dangerous weapons in defendant's possession or control to an agency or responsible third party designated by the court;

(v) prohibit the defendant from engaging in certain described activities relevant to the risks of non-appearance or criminal activity, including use of intoxicating liquors or certain drugs;

(vi) provide for the defendant to be released on electronic monitoring, be evaluated for substance abuse treatment, undergo regular drug testing, be screened for eligibility for drug court or other drug treatment program, undergo mental health or physical health screening for treatment, participate in appropriate treatment or supervision programs, be placed under house arrest or subject to other release options or conditions as may be necessary reasonably to ensure attendance in

court, prevent risk of crime and protect the community or any person during the pretrial period;

(vii) require the defendant to post financial conditions as outlined under

Standard 2.5, execute an agreement to forfeit, upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to ensure the appearance of the defendant, and order the defendant to provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial officer may require; and

(viii) impose any other reasonable restriction designed to ensure the defendant's appearance, to protect the safety of the community or any person, and to prevent intimidation of witnesses or interference with the orderly administration of justice.

(b) When conditions are imposed, the court should direct the pretrial services agency or program to monitor the defendant's compliance with the non-financial conditions and to make reports to the court concerning the defendant's compliance with the conditions, as set forth in Standard 3.5.

(c) After reasonable notice to the defendant and a hearing, the judicial officer may at any time amend the order to impose additional or different conditions of release.

***STANDARD 2.5 Release on Financial Conditions (ABA Standard 10-5.3)***

(a) Financial conditions should be imposed only when no other conditions of release will reasonably ensure the defendant's appearance in court.

(b) The judicial officer should not impose a financial condition that results in the pretrial detention of the defendant solely due to an inability to pay.

(c) Financial conditions of release should not be set to prevent future criminal conduct during the pretrial period or to protect the safety of the community or any person.

(d) On finding that a financial condition of release should be set, the judicial officer should require the first of the following alternatives thought sufficient to provide reasonable assurance of the defendant's reappearance:

(i) the execution of an unsecured bond in an amount specified by the judicial officer, either signed by other persons or not;

(ii) the execution of an unsecured bond in an amount specified by the judicial officer, accompanied by the deposit of cash or securities equal to ten percent of the face amount of the bond;

(iii) the execution of a bond secured by the deposit of the full amount in cash or other property or by the obligation of qualified, uncompensated sureties or

(iv) posting the full amount of the bail.

(e) When cash or securities are deposited with the court as provided in this Standard, defendants should be entitled to the return of the amount deposited at the conclusion of the case.

(f) Financial conditions should be the result of an individualized decision taking into account the special circumstances of each defendant, the defendant's ability to meet the financial conditions and the defendant's flight risk, and should never be set by reference to a predetermined schedule of amounts fixed according to the nature of the charge.

(g) Financial conditions should be distinguished from the practice of allowing a defendant charged with a traffic or other minor offense to post a sum of money to be forfeited in lieu of any court appearance.

(h) In appropriate circumstances when the judicial officer is satisfied that such an arrangement will ensure the appearance of the defendant, uncompensated third parties should be permitted to fulfill these financial conditions.

***STANDARD 2.6 Court Order Concerning Release (ABA Standard 10-5.4)***

Every judicial decision setting or modifying conditions should be in writing and should be provided to the defendant. The release order should:

(a) indicate the time, place, and event for which the defendant should next appear in court;

(b) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the defendant's conduct;

(c) set forth any authority that the pretrial services agency or program may have, consistent with the laws and rules governing the exercise of judicial authority in the jurisdiction, to modify the initially established conditions of release; and

(d) advise the person of:

(i) the consequences of violating a condition of release, including the immediate issuance of a warrant for the defendant's arrest and possible criminal penalties;

(ii) the prohibitions against threats, force, or intimidation of witnesses, jurors and officers of the court, obstruction of criminal investigations and retaliation against a witness, victim or informant; and

(iii) the prohibition against any criminal conduct during pretrial release.

***STANDARD 2.7 Basis for Temporary Pretrial Detention for Defendants on Release In Another Case (ABA Standard 10-5.7)***

(a) The judicial officer may order the temporary detention of a defendant released in another case upon a showing of probable cause that the defendant has committed a new offense as alleged in the charging document if the judicial officer determines that the defendant:

(i) is and was at the time the alleged offense was committed:

(A) on release pending trial for a serious offense;

(B) on release pending imposition or execution of sentence, appeal of sentence or conviction, for any offense; or

(C) on probation or parole for any offense; and

(ii) may flee or pose a danger to the community or to any person.

(b) Unless a continuance is requested by the defense attorney, the judicial officer may order the detention of the defendant for a period of not more than [three calendar days], and direct the attorney for the government to notify the appropriate court, probation or parole official, or Federal, State or local law enforcement official to determine whether revocation proceedings on the first offense should be initiated or a detainer lodged.

(c) At the end of the period of temporary detention, the defendant should have a hearing on the release or detention of the defendant on the new charged offense. If such a hearing is not conducted [within five calendar days], the defendant should be released on appropriate conditions pending trial.

***STANDARD 2.8 Grounds for Pretrial Detention (ABA Standard 10-5.8)***

If, at the first appearance, the prosecutor requests the pretrial detention of defendant under Standards 2.8 through 2.10, a judicial officer should be authorized, after a finding of probable cause to believe that a defendant has committed an offense as alleged in the charging document, to order temporary pretrial detention following procedures under Standard 2.7 or to conduct a pretrial detention hearing under Standard 2.10.

(a) If, in cases meeting the eligibility criteria specified in Standard 2.9 below, after a hearing and the presentment of an indictment or a showing of probable cause in the charged offense, the government proves by clear and convincing evidence that no condition or combination of conditions of release will reasonably ensure the defendant's appearance in court or protect the safety of the community or any person, the judicial officer should order the detention of the defendant before trial.

(b) In considering whether there are any conditions or combinations of conditions that would reasonably ensure the defendant's appearance in court and protect the safety of the community and of any person, the judicial officer should take into account such factors as:

(i) the nature and circumstances of the offense charged;

(ii) the nature and seriousness of the danger to any person or the community, if any, that would be posed by the defendant's release;

(iii) the weight of the evidence;

(iv) the person's character, physical and mental condition, family ties, employment status and history, financial resources, length of residence in the community, including the likelihood that the defendant would leave the jurisdiction, community ties, history relating to drug or alcohol abuse, criminal history, and record of appearance at court proceedings;

(v) whether at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense;

(vi) the availability of appropriate third party custodians who agree to assist the defendant in attending court at the proper time and other information relevant to successful supervision in the community;

(vii) any facts justifying a concern that a defendant will present a serious risk of flight or of obstructions, or of danger to the community or the safety of any person.

(c) In cases charging capital crimes or offenses punishable by life imprisonment without parole, where probable cause has been found, there should be a rebuttable presumption that the defendant should be detained on the ground that no condition of combination of conditions of release will reasonably ensure the safety of the community or any person or the defendant's appearance in court. In the event the defendant presents information by proffer or otherwise to rebut the presumption, the grounds for detention must be found to exist by clear and convincing evidence.

***STANDARD 2.9 Eligibility For Pretrial Detention and Initiation of the Detention Hearing (ABA Standard 10-5.9)***

(a) The judicial officer should hold a hearing to determine whether any condition or combination of conditions will reasonably ensure the defendant's appearance in court and protect the safety of the community or any person. The judicial officer may not order the detention of a defendant before trial except:

(i) upon motion of the prosecutor in a case that involves:

(A) a crime of violence or dangerous crime; or

(B) a defendant charged with a serious offense on release pending trial for a serious offense, or on release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence; or on probation or parole for a serious offense involving a crime of violence, a dangerous crime; or

(ii) upon motion of the prosecutor or the judicial officer's own initiative, in a case that involves:

(A) a substantial risk that a defendant charged with a serious offense will fail to appear in court or flee the jurisdiction; or

(B) a substantial risk that a defendant charged in any case will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate a prospective witness or juror.

(b) If the judicial officer finds that probable cause exists, except for a defendant held under temporary detention, the hearing should be held immediately upon the defendant's first appearance before the judicial officer unless the defendant or the prosecutor seeks a continuance. Except for good cause shown, a continuance on motion of the defendant or the prosecutor should not exceed [five working days]. Pending the hearing, the defendant may be detained.

(c) A motion to initiate pretrial detention proceedings may be filed at any time regardless of a defendant's pretrial release status.

***STANDARD 2.10 Procedures Governing Pretrial Detention Hearings: Judicial Orders For Detention And Appellate Review (ABA Standard 10-5.10)***

(a) At any pretrial detention hearing, defendants should have the right to:

(i) be present and be represented by counsel and, if financially unable to obtain counsel, to have counsel appointed;

(ii) testify and present witnesses on his or her own behalf;

(iii) confront and cross-examine prosecution witnesses; and,

(iv) present information by proffer or otherwise.

(b) The defendant may be detained pending completion of the pretrial detention hearing.

(c) The duty of the prosecution to release to the defense exculpatory evidence reasonably within its custody or control should apply at the pretrial detention hearing.

(d) At any pretrial detention hearing, the rules governing admissibility of evidence in criminal trials should not apply. The court should receive all relevant evidence. All evidence should be recorded. The testimony of a defendant should not be admissible in any other criminal proceedings against the defendant in the case in chief, other than a prosecution for perjury based upon that testimony or for the purpose of impeachment in any subsequent proceedings.

(e) In pretrial detention proceedings under Standard 2.9 or 2.10, where there is no indictment, the prosecutor should establish probable cause to believe that the defendant committed the predicate offense.

(f) In pretrial detention proceedings, the prosecutor should bear the burden of establishing by clear and convincing evidence that no condition or combination of conditions of release will reasonably ensure the defendant's appearance in court and protect the safety of the community or any person.

(g) A judicial order for pretrial detention should be subject to the following limitations and requirements:

(i) Unless the defendant consents, no order for pretrial detention should be entered by the court except on the conclusion of a full pretrial detention hearing as provided for within these Standards.

(ii) If, on conclusion of a pretrial detention hearing, the court determines by clear and convincing evidence that no condition or combination of conditions will reasonably ensure the appearance of the person as required, and the safety of any other person and the community pursuant to the criteria established within these Standards, the judicial officer should state the reasons for pretrial detention on the record at the conclusion of the hearing or in written findings of fact within [three days]. The order should be based solely upon evidence provided for the pretrial detention hearing. The court's statement on the record or in written findings of fact should include the reasons for concluding that the safety of the community or of any person, the integrity of the judicial process, and the presence of the defendant cannot be reasonably ensured by setting any conditions of release or by accelerating the date of trial.

(iii) The court's order for pretrial detention should include the date by which the detention must be considered de novo, in most cases not exceeding 60 days. A defendant may not be detained after that date without a pretrial detention hearing to consider extending pretrial detention an additional 30 days following procedures under Standards 2.8, 2.9, and this Standard. If a pretrial detention hearing to consider extending detention of the defendant is not held on or before that date, the defendant who is held beyond the time of the detention order

should be released immediately under reasonable conditions that best minimize the risk of flight and danger to the community.

(iv) Nothing in these Standards should be construed as modifying or limiting the presumption of innocence.

(h) A pretrial detention order should be immediately appealable by either the prosecution or the defense and should receive expedited appellate review. If the detention decision is made by a judicial officer other than a trial court judge, the appeals should be de novo. Appeals from decisions of trial court judges to appellate judges should be reviewed under an abuse of discretion standard.

(i) Release should not be denied solely because the defendant has refused the pretrial services interview.

## PART III. PURPOSES, ROLES, AND FUNCTIONS OF PRETRIAL SERVICES AGENCIES

### *STANDARD 3.1 Purposes of Pretrial Services Agencies and Programs*

Pretrial services agencies and programs perform functions that are critical to the effective operation of local criminal justice systems by assisting the court in making prompt, fair, and effective release/detention decisions, and by supervising released defendants to minimize risks of flight and risks to the safety of the community and to individual persons. In doing so, the agency or program also contributes to the fair and efficient use of detention facilities. In pursuit of these purposes, the agency or program collects and presents information needed for the court's release/detention decision prior to first appearance, makes assessments of risks posed by the defendant, develops strategies that can be used for supervision of released defendants, and provides actual supervision of released defendants in accordance with conditions set by the court. When released defendants fail to comply with conditions set by the court, the pretrial services agency or program takes prompt action to respond, including notifying the court of the nature of the noncompliance. In many instances, the information and services provided by the agency or program can also be used by the court in assessing the defendant's eligibility for diversion or other alternative disposition options.

### *STANDARD 3.2 Essential Functions to be Performed In Connection with the Defendant's First Court Appearance*

Prior to the first appearance in court of persons who have been arrested and charged with a crime, the pretrial services agency or program should:

(a) collect, verify, and document information pertinent to the court's decision concerning release or detention of the defendant;

(b) present written, accurate information to the judicial officer relating to the risk a defendant may pose of failing to appear in court or of threatening the safety of the community or any other person, and identify conditions that could be imposed to respond to the risk;

(c) assist in the identification of members of special populations that may be in need of additional screening and specialized services;

(d) provide staff representatives in court to answer questions concerning the pretrial services investigation report, to explain conditions of release and sanctions for non-compliance to the defendant, and to facilitate the speedy release of defendants whose release has been ordered by the court; and

(e) develop supervision strategies that respond appropriately to the risks and needs posed by released defendants.

***STANDARD 3.3 Interview of the Defendant Prior to First Appearance (ABA Standard 10-4.2)***

(a) In all cases in which a defendant is in custody and charged with a criminal offense, an investigation to provide information relating to pretrial release should be conducted by the pretrial services agency or program prior to a defendant's first appearance.

(b) The representative of the pretrial services agency or program who conducts the interview of the defendant should inform the defendant of his or her name and affiliation with the agency or program, and should advise the defendant:

(i) that the interview is voluntary;

(ii) that the pretrial services interview is intended to assist in determining an appropriate pretrial release decision for the defendant;

(iii) of any other purposes for which the information may be used;

(iv) that any responsive information provided by the defendant during the pretrial services interview will not be used in the current or a substantially-related case to adjudicate guilt, but may be used in prosecution for perjury or for purposes of impeachment; and

(v) that penalties may be imposed for providing false information.

(c) The pretrial services interview should seek to develop information about the defendant's background and current living and employment situation, including the identity of persons who could verify information provided by the defendant. It should focus on questions directly relevant to the judicial officer's decision concerning release or detention as set forth in Standards 2.3 and 3.4. The interview should not include questions relating to the details of the current charge.

(d) Following the interview of the defendant, the pretrial services agency or program should seek to verify essential information provided by the defendant.

***STANDARD 3.4 Organization and Presentation of Information Provided to the Judicial Officer for the Release or Detention Decision (ABA Standard 10-4.2)***

(a) The pretrial services agency or program should assemble reliable and objective information relevant to the court's determination concerning pretrial release or detention, drawing upon information obtained through the interview of the defendant and other information obtained through its investigation. It should prepare a written report that organizes the information and presents an assessment of risks posed by the defendant and of possible ways of responding to the risks through use of appropriate conditions of release. The assessment should be based on an explicit, objective, and consistent policy for evaluating risks and identifying appropriate release options. The information gathered in the pretrial services investigation should be demonstrably related to the purposes of the pretrial release decision and should include factors shown to be related to the risk of flight or of threat to the safety of any person or the community and to selection of appropriate release conditions. The report may include information on factors such as:

(i) the defendant's character, physical and mental condition, family ties, employment status and history, financial resources, length of residence in the community,

community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;

(ii) whether at the time of the current offense or arrest, the person was on probation, parole, or other release pending trial, sentencing, appeal, or completion of sentence for an offense;

(iii) availability of persons who could verify information and who agree to assist the defendant in attending court at the proper time;

(iv) other information relevant to successful supervision in the community;

(v) any facts justifying a concern that the defendant will violate the law if released without restrictions;

(vi) the nature and circumstances of the offense when relevant to determining release conditions; and

(vii) whether there are specific factors that may make the defendant an appropriate subject for conditional release and supervision options , including participation in available medical, drug, mental health or other treatment, diversion or alternative adjudication release options.

(b) The presentation of the pretrial services information to the judicial officer should link assessments of the risk of flight and of public safety to appropriate release options designed to respond to the specific risk and supervision needs identified. The identification of release options by pretrial services for the consideration of the judicial officer should be based on detailed agency or program policies developed in consultation with the judiciary to assist in pretrial release decisions. Suggested release options should be supported by objective, consistently applied criteria set forth in these policies. The results of the pretrial services investigation, including information relevant to alternative release options, conditional release treatment and supervision programs, or eligibility for pretrial detention, should be presented to relevant first appearance participants before the hearing so that appropriate actions may be taken in a timely fashion.

***STANDARD 3.5 Monitoring and Supervision of Released Defendants***

(a) Pretrial services agencies and programs should establish appropriate policies and procedures to enable the effective supervision of defendants who are released prior to trial under conditions set by the court. The agency or program should:

(i) monitor the compliance of released defendants with assigned release conditions;

(ii) promptly inform the court of all apparent violations of release conditions and of any arrest of a person released pending trial;

(iii) recommend modifications of release conditions, consistent with court policy, when appropriate;

(iv) maintain a record of the defendant's compliance with conditions of release;

(v) assist defendants released prior to trial in securing employment and in obtaining any necessary medical services, drug or mental health treatment, legal services, or other social services that would increase the chances of successful compliance with conditions of pretrial release;

(vi) notify released defendants of their court dates and when necessary assist them in attending court; and

(vii) facilitate the return to court of defendants who fail to appear for their scheduled court dates.

(b) In cases in which the court's release order has authorized the pretrial services agency or program to modify conditions initially set by the judicial officer pursuant to Standard 2.6, the agency or program may modify conditions within the range set by the court order and in accordance with the jurisdiction's laws and rules governing the exercise of judicial authority. The defendant should be notified promptly of any such modifications and of the reason(s) for them. A record should be kept of any such modifications, and the court should be informed of the modifications.

(c) The pretrial services agency or program should coordinate the services of other agencies, organizations, or individuals that serve as third party custodians for released defendants, and advise the court as to their appropriateness, availability, reliability, and capacity according to approved court policy relating to pretrial release conditions.

(d) The pretrial services agency or program should assist other jurisdictions by providing courtesy supervision for released defendants who reside in its jurisdiction.

***STANDARD 3.6 Responsibility for Ongoing Review of the Status of Detained Defendants***

The pretrial services agency or program should review the status of detained defendants on an ongoing basis to determine if there are any changes in eligibility for release options or other circumstances that might enable the conditional release of the defendants, and should take such actions as may be necessary to provide the court with needed information and to facilitate the release of defendants under appropriate conditions.

***STANDARD 3.7 Organization and Management of the Pretrial Services Agency or Program***

(a) The pretrial services agency or program should have a governance structure that provides for appropriate guidance and oversight of the agency's staff in the development of operational policies and procedures and for effective internal administration of the agency or program. The governance structure should enable effective interaction of the program with the court and with other criminal justice agencies, and with representatives of the community served by the program.

(b) The pretrial services agency or program should develop and implement appropriate policies and procedures for the recruitment and selection of staff, and for the compensation, management, and career advancement of staff members.

(c) The pretrial services program should have policies and procedures that enable it to function as an effective institution in its jurisdiction's criminal justice system. In particular, the program or agency should:

(i) establish goals for effectively assisting in pretrial release decision-making and supervision of defendants on pretrial release in the jurisdiction and for the operations of the pretrial services agency or program;

(ii) develop and regularly update strategic plans designed to enable accomplishment of the goals that are established;

(iii) develop and operate an accurate management information system to support the prompt identification of defendants, and the information collection and

presentation, risk assessment, identification of appropriate release conditions, compliance monitoring, and detention review functions essential to an effective pretrial release agency or program;

(iv) establish procedures for regularly measuring the performance of the jurisdiction and of the pretrial services agency or program in relation to the goals that have been set;

(v) have the means to assist persons who cannot communicate in written or spoken English;

(vi) meet regularly with community representatives to ensure that program practices meet the needs of the community served; and

(vii) develop, in collaboration with the court, other justice system entities, and community groups, appropriate policies for the delivery and management of services needed to respond to the risks posed by released defendants, including strategies for use of substance abuse treatment programs, health and mental health services, employment services, other social services, and half-way houses.

***STANDARD 3.8 Information About Individuals: Limits on Sharing of Information and Provisions for Protecting Confidentiality***

(a) The written investigation report prepared by a pretrial services agency or program prior to a defendant's first appearance in court, and any subsequent reports prepared for the purpose of assisting the court in making decisions concerning release or detention of a defendant, should be provided to the court. Copies of the report should be provided to the prosecutor and to the attorney for the defendant.

(b) Pretrial services agencies and programs should have written policy guidelines regarding access to information on defendants that is contained in their files. In general, the policy guidelines should provide for information obtained during the course of the pretrial investigation and during post-release monitoring and supervision of the defendant to remain confidential and not subject to disclosure except in limited circumstances set forth in the policy and in these standards. The policy guidelines should provide for disclosure as follows:

(i) to the court for the purposes of making decisions concerning release or detention, setting conditions of release, reviewing compliance with conditions in connection with possible modification, and making decisions concerning sentencing of the defendant;

(ii) to other agencies or programs to which the defendant has been referred by the court or by the pretrial services agency or program;

(iii) to law enforcement agencies upon a reasonable belief that such information is necessary to assist in apprehending an individual for whom a warrant has been issued for failure to appear or for commission of a crime;

(iv) to a probation department for use in a court-ordered probation investigation and report;

(v) to individuals or agencies designated by the defendant, upon specific written authorization of the defendant.

(c) The defendant or the attorney for the defendant should ordinarily have access to information in the file of the defendant upon request, but the pretrial services agency

or program may provide for appropriate exceptions to such disclosure including denial of access to information which has been secured upon a promise of confidentiality or information which, if disclosed, could endanger the life or safety of any person or would constitute an unwarranted invasion of privacy.

(d) The jurisdiction should provide by law, and the pretrial services agency or program should provide by policy guideline and by provisions in contractual agreements with agencies or individuals to whom information is disclosed, that information received from the pretrial services agency or program may not be re-disclosed except as is necessary to achieve the purpose for which such information was disclosed by the pretrial services agency or program.

(e) Information in the files of pretrial services agencies or programs may be made available for research purposes to qualified personnel pursuant to a written research agreement that sets forth the terms and conditions of the research and addresses at least the following matters:

(i) the purpose of the research;

(ii) the characteristics of the cases on which information is sought and the manner in which cases will be selected for inclusion in the research project;

(iii) the specific types of information that is sought to be extracted from the files; and

(iv) the procedures to be used by the researchers to protect the security and confidentiality of all personally identifiable research data.

(f) Any research agreement concerning access to information in the files of a pretrial services agency or program should assure that the identity of any defendant is not revealed in research publications, reports, or any materials distributed to anyone who is not a member of the research team. The agreement should describe the procedures to be used by the researchers to protect the security and confidentiality of all personally identifiable data.

***STANDARD 3.9 Resources***

Jurisdictions should provide adequate resources to the pretrial services agency or program, in order to enable the purposes of these standards to be achieved.

## PART IV. MANAGEMENT AND OVERSIGHT OF PRETRIAL PROCESSES FOLLOWING INITIAL DECISIONS CONCERNING RELEASE OR DETENTION

***STANDARD 4.1 Re-Examination of the Release or Detention Decision: Status Reports Regarding Pretrial Detainees (ABA Standard 10-5.12)***

(a) Upon motion by the defense or prosecution or by request of the pretrial services agency supervising released defendants alleging changed or additional circumstances, the court should promptly reexamine its release decision including any conditions placed upon release or its decision authorizing pretrial detention under Standards 2.8 through 2.10. The judicial officer may, after notice and hearing when appropriate, at any time add or remove restrictive conditions of release, short of ordering pretrial detention, to ensure court attendance and prevent criminal law violation by the defendant.

(b) The pretrial services agency, prosecutor, jail staff or other appropriate justice agency should be required to report to the court as to each defendant, other than one detained under Standards 2.8, 2.9 and 2.10, who has failed to obtain release within

[24 hours] after entry of a release order under Standard 2.6 and to advise the court of the status of the case and of the reasons why a defendant has not been released.

(c) For pretrial detainees subject to pretrial detention orders, the prosecutor, pretrial services agency, defender, jail staff, or other appropriate agency should file a report with the court regarding the status of the defendant's case and detention regarding the confinement of defendants who have been held more than [90 days] without a court order in violation of Standards 2.10(g)(iii) and 4.4.

### *STANDARD 4.2 Willful Failure to Appear or to Comply With Conditions (ABA Standard 10-5.5)*

The judicial officer may order a prosecution for contempt if the person has willfully failed to appear in court or otherwise willfully violated a condition of pretrial release. Willful failure to appear in court without just cause after pretrial release should be made a criminal offense.

### *STANDARD 4.3 Sanctions for Violations of Conditions of Release, Including Revocation of Release (ABA Standard 10-5.6)*

(a) A person who has been released on conditions and who has violated a condition of release, including willfully failing to appear in court, should be subject to a warrant for arrest, modification of release conditions, revocation of release, or an order of detention, or prosecution on available criminal charges. In considering what actions to recommend to the court in cases in which the defendant has apparently failed to comply with conditions of release, pretrial services programs and agencies should take account of the seriousness of the violation, whether it appears to have been willful, and the extent to which the defendant's actions resulted in impairing the effective administration of court operations or cause an increased risk to public safety.

(b) A proceeding for revocation of a release order may be initiated by a judicial officer, the prosecutor, or a representative of the pretrial services agency. A judicial officer may issue a warrant for the arrest of a person charged with violating a release condition. Once apprehended, the person should be brought before a judicial officer. To the extent practicable, a defendant charged with willfully violating the condition of release should be brought before the judicial officer whose order is alleged to have been violated. The judicial officer should review the conditions of release previously ordered and set new or additional conditions.

(c) The judicial officer may enter an order of revocation and detention, if, after notice and a hearing, the judicial officer finds that there is:

(i) probable cause to believe that the person has committed a new crime while on release; or

(ii) clear and convincing evidence that the person has violated any other conditions of release; and

(iii) clear and convincing evidence, under the factors set forth in Standard 2.9, that there is no condition or combinations of conditions that the defendant is likely to abide by that would reasonably ensure the defendant's appearance in court and protect the safety of the community or any person.

(d) When a defendant has been charged with a new offense or violations of any conditions of release, he may be temporarily detained pending hearing after notice of the charges for a period of not more than [five calendar days] under this Standard.

(e) In any court proceeding involving possible modification or revocation of conditions of release, the defendant should be represented by counsel.

***STANDARD 4.4 Requirement for Accelerated Trial for Detained Defendants (ABA Standard 10-5.11)***

Every jurisdiction should establish, by statute or court rule, accelerated time limitations within which detained defendants should be tried consistent with the sound administration of justice. These accelerated time limitations should be shorter than current speedy trial time limitations applicable to defendants on pretrial release. The failure to try a detained defendant within such accelerated time limitations should result in the defendant's immediate release from detention under reasonable conditions that best minimize the risk of flight and danger to the community pending trial, unless the delay is attributable to or agreed to by the defendant.

***STANDARD 4.5 Credit for Pre-Adjudication Detention (ABA Standard 10-5.14)***

Every convicted defendant should be given credit, against both a maximum and minimum term or a determinate sentence, for all the time spent in pretrial detention as a result of a criminal charge, which results in a conviction for which a sentence of imprisonment is imposed.

***STANDARD 4.6 Temporary Release of a Detained Defendant for Compelling Necessity (ABA Standard 10-5.15)***

Upon a showing by defense counsel of compelling necessity, including for matters related to preparation of the defendant's case, a judicial officer who entered an order of pretrial detention under Standards 2.8 through 2.10 may permit the temporary release of a pretrial detained person to the custody of a law enforcement or other court officer, subject to appropriate conditions of temporary release.

***STANDARD 4.7 Circumstances of Confinement of Defendants Detained Pending Adjudication (ABA Standard 10-5.16)***

The rights and privileges of defendants detained pending adjudication should not be more restricted than those of convicted defendants who are imprisoned. Detained defendants should be provided with adequate means to assist in their own defense. This requirement includes but is not limited to reasonable telephone rates and unmonitored telephone access to their attorneys, a law library, and a place where they can have unmonitored meetings with their attorneys and review discovery.

# AMERICAN BAR ASSOCIATION STANDARDS: 2002

## PART I - GENERAL PRINCIPLES

### *STANDARD 10-1.1 Purposes of the Pretrial Release Decision*

The purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference. The judge or judicial officer decides whether to release a defendant on personal recognizance or unsecured appearance bond, release a defendant on a condition or combination of conditions, temporarily detain a defendant, or detain a defendant according to procedures outlined in these Standards. The law favors the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support. These Standards limit the circumstances under which pretrial detention may be authorized and provide procedural safeguards to govern pretrial detention proceedings.

### *STANDARD 10-1.2 Release Under Least Restrictive Conditions; Diversion and Other Alternative Release Options*

In deciding pretrial release, the judicial officer should assign the least restrictive condition(s) of release that will reasonably ensure a defendant's attendance at court proceedings and protect the community, victims, witnesses or any other person. Such conditions may include participation in drug treatment, diversion programs or other pre-adjudication alternatives. The court should have a wide array of programs or options available to promote pretrial release on conditions that ensure appearance and protect the safety of the community, victims and witnesses pending trial and should have the capacity to develop release options appropriate to the risks and special needs posed by defendants, if released to the community. When no conditions of release are sufficient to accomplish the aims of pretrial release, defendants may be detained through specific procedures.

### *STANDARDS 10-1.3 Use of Citations and Summonses*

The principle of release under least restrictive conditions favors use of citations by police or summons by judicial officers in lieu of arrest at stages prior to first judicial appearance in cases involving minor offenses. In determining whether an offense is minor, consideration should be given to whether the alleged crime involved the use or threatened use of force or violence, possession of a weapon, or violation of a court order protecting the safety of persons or property.

### *STANDARD 10-1.4 Conditions of Release*

(a) Consistent with these Standards, each jurisdiction should adopt procedures designed to promote the release of defendants on their own recognizance or, when necessary, unsecured bond. Additional conditions should be imposed on release only when the need is demonstrated by the facts of the individual case reasonably to ensure appearance at court proceedings, to protect the community, victims, witnesses or any other person and to maintain the integrity of the judicial process. Whenever possible, methods for providing the appropriate judicial officer with reliable information relevant to the release decision should be developed, preferably through a pretrial services agency or function, as described in Standard 10-1.9.

(b) When release on personal recognizance is not appropriate reasonably to ensure the defendant's appearance at court and to prevent the commission of criminal offenses that threaten the safety of the community or any person, constitutionally permissible non-financial conditions of release should be employed consistent with Standard 10-5.2.

(c) Release on financial conditions should be used only when no other conditions will ensure appearance. When financial conditions are imposed, the court should first consider releasing the defendant on an unsecured bond. If unsecured bond is not deemed a sufficient condition of release, and the court still seeks to impose monetary conditions, bail should be set at the lowest level necessary to ensure the defendant's appearance and with regard to a defendant's financial ability to post bond.

(d) Financial conditions should not be employed to respond to concerns for public safety.

(e) The judicial officer should not impose a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant's inability to pay.

(f) Consistent with the processes provided in these Standards, compensated sureties should be abolished. When financial bail is imposed, the defendant should be released on the deposit of cash or securities with the court of not more than ten percent of the amount of the bail, to be returned at the conclusion of the case.

### *STANDARD 10-1.5 Pretrial Release Decision May Include Diversion and Other Adjudication Alternatives Supported by Treatment Programs*

In addition to employing release conditions outlined in Standard 10-1.4, jurisdictions should develop diversion and alternative adjudication options, including drug, mental health and other treatment courts or other approaches to monitoring defendants during pretrial release.

### *STANDARD 10-1.6 Detention as an Exception to Policy Favoring Release*

These Standards limit the circumstances under which pretrial detention may be authorized and provide procedural safeguards to govern pretrial detention proceedings. They establish specific criteria and procedures for effecting the pretrial detention of certain defendants after the court determines that these defendants pose a substantial risk of flight, or threat to the safety of the community, victims or witnesses or to the integrity of the justice process. The status of detained defendants should be monitored and their eligibility for release should be reviewed throughout the adjudication period. The cases of detained defendants should be given priority in scheduling for trial.

### *STANDARD 10-1.7 Consideration of the Nature of the Charge in Determining Release Options*

Although the charge itself may be a predicate to pretrial detention proceedings, the judicial officer should exercise care not to give inordinate weight to the nature of the present charge in evaluating factors for the pretrial release decision except when, coupled with other specified factors, the charge itself may cause the initiation of a pretrial detention hearing pursuant to the provisions of Standard 10-5.9.

### *STANDARD 10-1.8 Pretrial Release Decision Should not be Influenced by Publicity or Public Opinion*

The judicial officer should not be influenced by publicity surrounding a case or attempt to placate public opinion in making a pretrial release decision.

### *STANDARD 10-1.9 Implication of Policy Favoring Release for Supervision in the Community*

The policy favoring pretrial release and selective use of pretrial detention is inextricably tied to explicit recognition of the need to supervise safely large numbers of defendants in the community pending adjudication of their cases. To be effective, these policies require sufficient informational and supervisory resources.

### *STANDARD 10-1.10 The Role of the Pretrial Services Agency*

Every jurisdiction should establish a pretrial services agency or program to collect and present the necessary information, present risk assessments, and, consistent with court policy, make release recommendations required by the judicial officer in making release decisions, including the defendant's eligibility for diversion, treatment or other alternative adjudication programs, such as drug or other treatment courts. Pretrial services should also monitor, supervise, and assist defendants released prior to trial, and to review the status and release eligibility of detained defendants for the court on an ongoing basis.

The pretrial services agency should:

(a) conduct pre-first appearance inquiries;

(b) present accurate information to the judicial officer relating to the risk defendants may pose of failing to appear in court or of threatening the safety of the community or any other person and, consistent with court policy, develop release recommendations responding to risk;

(c) develop and provide appropriate and effective supervision for all persons released pending adjudication who are assigned supervision as a condition of release;

(d) develop clear policy for operating or contracting for the operation of appropriate facilities for the custody, care or supervision of persons released and manage a range of release options, including but not limited to, residential half-way houses, addict and alcoholic treatment centers, and counseling services, sufficient to respond to the risks and problems associated with released defendants in coordination with existing court, corrections and community resources;

(e) monitor the compliance of released defendants with the requirements of assigned release conditions and develop relationships with alternative programs such as drug and domestic violence courts or mental health support systems;

(f) promptly inform the court of all apparent violations of pretrial release conditions or arrests of persons released pending trial, including those directly supervised by pretrial services as well as those released under other forms of conditional release, and recommend appropriate modifications of release conditions according to approved court policy. The pretrial services agency should avoid supervising defendants who are government informants, when activities of these defendants may place them in conflict with conditions of release or compromise the safety and integrity of the pretrial services professional;

(g) supervise and coordinate the services of other agencies, individuals or organizations that serve as custodians for released defendants, and advise the court as to their appropriateness, availability, reliability and capacity according to approved court policy relating to pretrial release conditions;

(h) review the status of detained defendants on an ongoing basis for any changes in eligibility for release options and facilitate their release as soon as feasible and appropriate;

(i) develop and operate an accurate information management system to support prompt identification, information collection and presentation, risk assessment, release conditions selection, compliance monitoring and detention review functions essential to an effective pretrial services agency;

(j) assist persons released prior to trial in securing any necessary employment, medical, drug, mental or other health treatment, legal or other needed social services that would increase the chances of successful compliance with conditions of pretrial release;

(k) remind persons released before trial of their court dates and assist them in attending court; and

(l) have the means to assist persons who cannot communicate in written or spoken English.

* The following sections were intentionally removed:

Part II – VI

# PRETRIAL SERVICES PUBLICATIONS, RESOURCE AGENCIES, & ASSOCIATIONS

## PUBLICATIONS

***The Pretrial Reporter:*** A bi-monthly newsletter of the Pretrial Services Resource Center, providing the latest information on program developments, legislation, research and case law of relevance to the pretrial field.

***NAPSA News:*** A quarterly newsletter from the National Association of Pretrial Services Agencies that provides the most up to date information on pretrial release and diversion issues for criminal justice professionals.

***Assessing Risk Among Pretrial Defendants in Virginia - The Virginia Pretrial Risk Assessment Instrument - 2003 (DCJS publication):*** This publication details the research conducted to develop the Virginia Pretrial Risk Assessment Instrument (VPRAI) and provides instruction for instrument application.

***Pretrial Services Programming at the Start of the 21st Century: A Survey of Pretrial Services Programs - 2000 (NCJ 199773):*** This report presents the findings from the third survey of pretrial services programs, conducted in 2001, in which a total of 202 pretrial services programs participated. The results describe where pretrial services programs stand in relation to one another, where they stand in relation to where they were in 1979 and 1989, and where they stand in relation to the standards set by the American Bar Association and the National Association of Pretrial Services Agencies for services provided by pretrial programs.

***A Second Look at Alleviating Jail Crowding: A Systems Perspective - 2000:*** This document describes innovative approaches used by jurisdictions to alleviate jail crowding. It describes how several actors in the criminal justice system including judges, prosecutors, defense, pretrial services, probation, and jailers, can work together to address jail crowding.

***The Supervised Pretrial Release Primer - 1999:*** This document, presented in a question and answer format, addresses issues related to supervised pretrial release. It describes the different kinds of supervised release, how pretrial programs should provide supervision services, and how they should respond to violations of pretrial release conditions.

***Front-End Decision Making: A National Perspective - 1999:*** With sponsorship from the Bureau of Justice Assistance and the National Institute of Corrections, judges, prosecutors, public defenders, police, and pretrial program administrators met for one day to discuss issues relating to decision making at the front end of the criminal justice system, and to identify ways federal agencies might help local and state justice systems address these issues. This document summarizes the discussions from that meeting.

***The Pretrial Services Reference Book - 1999:*** This document is designed to assist administrators in starting a new pretrial services program or making enhancements to an existing program. It reviews the current challenges facing pretrial program administrators and provides examples of how other pretrial programs have addressed those issues. Examples of interview and risk assessment forms used by other programs appear in the appendix.

***Commercial Surety Bail: Assessing Its Role in the Pretrial Release and Detention Decision - 1997:*** This monograph analyzes arguments favoring commercial surety bail, including arguments that surety bail better protects public safety from national and local perspectives on pretrial release and detention. The analysis includes state and federal case law and statutes on bail, media reports, and research on pretrial release. Also highlighted are

the position on pretrial release and detention of organizations such as the American Bar Association, the National District Attorneys Association, and the U.S Department of Justice's Advisory Commission on Criminal Justice Standards.

***Felony Defendants in Large Urban Counties, 2000:*** This document presents a complete description of the processing of felony defendants based on data collected from a representative sample of felony cases filed in the Nation's 75 largest counties during May 2000. NCJ 202021

***Integrating Drug Testing Into A Pretrial Services System: 1999 Update (NCJ 176340),*** Bureau of Justice Assistance- 1999: This report describes how to integrate drug testing into a jurisdiction's pretrial services program, based on the experiences of Federal and local pilot and demonstration pretrial drug testing sites; the discussion focuses on operational, management, and legal issues.

***Pretrial Services Programs: Responsibilities and Potential - 2000 (NCJ 181939):*** The core of pretrial services program operations is the collection, verification, and analysis of information about newly arrested defendants and available supervisory options. Defendants are the primary source of information about themselves. Other sources can provide information about the defendant and can verify information provided in interviews with the defendant. Programs use varied monitoring and reminder techniques to anticipate and avoid possible nonappearance problems. Programs collect information that can be useful to other justice agencies, but much of this information is sensitive and personal. Therefore, programs need realistic policies that ensure appropriate confidentiality and prevent misuse of the information. Major issues for the future include how to bring effective pretrial services to jurisdictions that do not yet have them, handle pretrial release issues in cases involving juveniles charged as adults, and use new technology to enhance the quality of decision making and the supervision of released defendants. Additional issues include how to more effectively structure judicial decision making without making the process a mechanical one, develop a current base of useful knowledge, and develop a full range of education and training programs for pretrial practitioners and policymakers. Lists of national and State organizations and associations, potential Federal funding sources, and local and State pretrial services programs and practitioners; appended program materials from several jurisdictions; and 38 references.

## RESOURCE AGENCIES

**Department of Criminal Justice Services (DCJS)** www.dcjs.virginia.gov
805 East Broad Street, 10th floor (804) 786-4000
Richmond, VA 23219

***Mission Statement:*** The mission of the Department of Criminal Justice Services is to provide comprehensive planning and state of the art technical and support services for the criminal justice system to improve and promote public safety in the Commonwealth.

The Department of Criminal Justice Services is charged with planning and carrying out programs and initiatives to improve the functioning and effectiveness of the criminal justice system as a whole (§9.1-102 of the Code of Virginia).

***The Department:***

- provides forensic laboratory services for law enforcement agencies statewide;
- distributes federal and state funding to localities, state agencies and nonprofit organizations in the areas of law enforcement, prosecution, crime and delinquency prevention, juvenile justice, victims services, corrections, and information systems;
- establishes and enforces minimum training standards for law enforcement, criminal justice and private security personnel;
- licenses and regulates the private security industry in Virginia;
- provides training, technical assistance and program development services to all segments of the criminal justice system; and
- conducts research and evaluations.

The agency's primary constituents are local and state criminal justice agencies and practitioners, private agencies, private security practitioners and businesses, and the public-at-large. Other constituents include local governments and state agencies, the federal government and advocacy groups/associations.

The Department is unique in state government because of its systemwide perspective on criminal justice. While it directs programs and services to each component of the system, it has an overarching responsibility to view the system as a whole, to understand how changes in one part of criminal justice will affect other parts, and to work to assure that plans and programs are comprehensive.

**Pretrial Services Resource Center (PSRC)** www.pretrial.org
1010 Vermont Ave., NW, Suite 300 (202) 638-3080
Washington, DC 20005

***Mission Statement:*** The mission of the Pretrial Services Resource Center is to improve the quality, fairness, and efficiency of the criminal justice system at the pretrial stage by promoting systemic strategies that improve court appearance rates, reduce recidivism, provide appropriate and effective services, and enhance community safety.

The Pretrial Services Resource Center, an independent, non-profit clearinghouse for information on pretrial issues, provides technical assistance to pretrial practitioners, criminal

justice officials, academicians, and community leaders nationwide. Since its inception in 1977, the Resource Center has helped criminal justice professionals achieve the often conflicting goals of maintaining the rights of defendants, ensuring public safety, and maintaining the integrity of the criminal justice system by providing information, publications, training, and on-site assistance on decision-making at the front-end of the criminal justice system.

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***United States Department of Justice (DOJ)*** www.usdoj.gov
U.S. Department of Justice (202) 616-2777
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

***Mission Statement:*** To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide Federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; to administer and enforce the Nation's immigration laws fairly and effectively; and to ensure fair and impartial administration of justice for all Americans.

DOJ is headed by the Attorney General of the United States. The Department consists of 39 separate components including the United States Attorneys who prosecute offenders and represent the United States Government in court; the major investigative agencies, the Federal Bureau of Investigation and the Drug Enforcement Administration; the Immigration and Naturalization Service; the United States Marshals Service which protects the federal judiciary, apprehends fugitives and detains persons in federal custody; and the Bureau of Prisons which confines convicted offenders. The litigating divisions enforce federal criminal and civil laws, including civil rights, tax, antitrust, environmental, and civil justice statutes. The Office of Justice Programs and the Office of Community Oriented Policing Services provide leadership and assistance to state, tribal, and local governments. Other major departmental components include the National Drug Intelligence Center, the United States Trustees, the Justice Management Division, the Executive Office for Immigration Review, the Community Relations Service, and the Office of the Inspector General. Although headquartered in Washington, D.C., the Department conducts much of its work in offices located throughout the country and overseas.

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***Bureau of Justice Statistics (BJS)*** ***www.ojp.usdoj.gov/bjs***
810 Seventh Street, NW (202) 307-0765
Washington, DC 20531

***Mission Statement:*** To collect, analyze, publish, and disseminate information on crime, criminal offenders, victims of crime, and the operation of justice systems at all levels of government. These data are critical to Federal, State, and local policymakers in combating crime and ensuring that justice is both efficient and evenhanded.

The Bureau of Justice Statistics was first established on December 27, 1979 under the Justice Systems Improvement Act of 1979, Public Law 96-157 (the 1979 Amendment to the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90-351). BJS is a component of the Office of Justice Programs in the U.S. Department of Justice whose principal function is the compilation and analysis of data and the dissemination of information for statistical purposes.

***Bureau of Justice Assistance (BJA)*** ***www.ojp.usdoj.gov/bja***
810 Seventh Street NW (202) 616-6500
Fourth Floor
Washington, DC 20531

***Mission Statement:*** To provide leadership and assistance in support of local criminal justice strategies to achieve safe communities. BJA's overall goals are to (1) reduce and prevent crime, violence, and drug abuse and (2) improve the functioning of the criminal justice system. To achieve these goals, BJA programs emphasize enhanced coordination and cooperation of federal, state, and local efforts.

BJA has three primary components: Policy, Programs, and Planning. The Policy Office provides national leadership in criminal justice policy, training, and technical assistance to further the administration of justice. It also acts as a liaison to national organizations that partner with BJA to set policy and help disseminate information on best and promising practices. The Programs Office coordinates and administers all state and local grant programs and acts as BJA's direct line of communication to states, territories, and tribal governments by providing assistance and coordinating resources. The Planning Office coordinates the planning, communications, and budget formulation and execution; provides overall BJA-wide coordination; and supports streamlining efforts.

***National Criminal Justice Reference Service (NCJRS)*** ***www.ncjrs.org***
P.O. Box 6000 (800) 851-3420
Rockville, MD 20849-6000

NCJRS is a federally funded resource offering justice and substance abuse information to support research, policy, and program development worldwide.

NCJRS services and resources are available to anyone interested in crime and public safety including policymakers, practitioners, researchers, educators, community leaders, and the general public. NCJRS offers extensive reference and referral services to answer questions about crime and justice-related research, policy, and practice. Staff can offer statistics and referrals, discuss publications, compile information packages, search for additional resources, and provide other technical assistance tailored to your particular information needs.

***National Institute of Corrections (NIC)*** ***www.nicic.org***
National Institute of Corrections (800) 995-6423
320 First St., N.W.
Washington, D.C. 20534

NIC provides training, technical assistance, information services, and policy/program development assistance to federal, state, and local corrections agencies. Through cooperative agreements, NIC awards funds to support its program initiatives.

NIC also provides leadership to influence correctional policies, practices, and operations nationwide in areas of emerging interest and concern to correctional executives and practitioners as well as public policymakers.

***National Institute of Justice (NIJ)*** ***www.ojp.usdoj.gov/nij***
810 Seventh St., NW (202) 307-2942
Washington, DC 20531

***Mission Statement:*** Advance scientific research, development, and evaluation to enhance the administration of justice and public safety.

NIJ is the research, development, and evaluation agency of the U.S. Department of Justice and is dedicated to researching crime control and justice issues. NIJ provides objective, independent, evidence-based knowledge and tools to meet the challenges of crime and justice, particularly at the State and local levels. NIJ's principal authorities are derived from the Omnibus Crime Control and Safe Streets Act of 1968, as amended (see 42 USC §3721-3723).

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***State Justice Institute (SJI)*** ***www.statejustice.org***
1650 King Street, Suite 600 (703) 684-6100
Alexandria, VA 22314

The State Justice Institute (SJI) was established by Federal law in 1984 to award grants to improve the quality of justice in State courts, facilitate better coordination between State and Federal courts, and foster innovative, efficient solutions to common problems faced by all courts. Key areas of interest include responding to the needs of children and families in court, applications of technology in the court, access to the courts, judicial branch education, and the relationship between State and Federal courts.

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***Vera Institute of Justice (Vera)*** ***www.vera.org***
233 Broadway, 12th Floor (212) 334-1300
New York, NY 10279

The Vera Institute of Justice works closely with leaders in government and civil society to improve the services people rely on for safety and justice. Vera develops innovative, affordable programs that often grow into self-sustaining organizations, studies social problems and current responses, and provides practical advice and assistance to government officials in New York and around the world.

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***The Justice Management Institute (JMI)*** ***www.jmijustice.org***
JMI Denver Denver: (303) 831-7564
1900 Grant Street, Suite 630 San Francisco: (415) 816-3341
Denver, CO 80203

JMI San Francisco
821 Coventry Road
Kensington, CA 94707

The Justice Management Institute (JMI) provides services to courts and other justice system agencies throughout the United States and abroad. Their mission is to improve the overall administration of justice by helping courts and other justice system institutions and agencies achieve excellence- both individually and in their inter-relationships with each other and the public- in leadership, operations, management, and services.

***The RAND Corporation (RAND)*** ***www.rand.org***
The Rand Corporation (703) 413-1100
1200 South Hayes Street
Arlington VA 22202-5050

***Mission statement:*** The RAND Corporation is a nonprofit institution that helps improve policy and decision making through research and analysis.

RAND's Public Safety & Justice branch (formerly the Criminal Justice branch) employs 25 full-time-equivalent staff with training in sociology, criminology, economics, political science, policy studies, public health, medicine, and clinical, experimental, and social psychology.

The Criminal Justice Center of the Public Safety & Justice branch conducts evaluations of specific sentencing and corrections policy – drug courts, reentry services, and supervision for drug users leaving prison – and violence prevention programs. RAND researchers also work with intensive-supervision probation, alternatives to incarceration, and corrections policy and cost-effectiveness work in violence prevention. Local, state, and national criminal justice agencies are their primary collaborators.

## ASSOCIATIONS

***Virginia Community Criminal Justice Association (VCCJA)*** ***www.vccja.org***
4093 Ironbound Road, Suite B (757) 546-2311
Williamsburg, VA 23188

***Mission:*** The purpose of the Virginia Community Criminal Justice Association (VCCJA) is to enhance public safety through the development and expansion of pretrial, community corrections and other criminal justice programs in the Commonwealth of Virginia, by providing a forum for the discussion and communication of ideas. All members of the Association shall be committed to the standards of excellence, integrity, and professionalism in the delivery of pretrial and community corrections services.

***National Association of Pretrial Services Agencies (NAPSA)*** ***www.napsa.org***
229 E. Wisconsin Ave., #1250 (414) 347-1774
Milwaukee, WI 53202

***Mission:*** The National Association of Pretrial Services Agencies, NAPSA, is the national professional association for the pretrial release and pretrial diversion fields. Incorporated in 1973 in the District of Columbia as a not-for-profit corporation, the goals of the Association are expressed succinctly in Article II of its Articles of Incorporation:

- to serve as a national forum for ideas and issues in the area of pretrial services;
- to promote the establishment of agencies to provide such services;
- to encourage responsibility among its members;
- to promote research and development in the field;
- to establish a mechanism for exchange of information; and
- to increase professional competence through the development of professional standards and education.

NAPSA consists primarily of pretrial practitioners; however, others interested in pretrial issues such as judges, lawyers, researchers, and prosecutors, comprise its five-hundred plus membership from forty-four states, the District of Columbia, and Puerto Rico.

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***American Probation and Parole Association (APPA)*** ***www.appa-net.org***

American Probation & Parole Association (859) 244-8203
P. O. Box 11910
Lexington, KY 40578

***Mission statement:*** To serve, challenge and empower our members and constituents by educating, communicating and training; advocating and influencing; acting as a resource and conduit for information, ideas and support; developing standards and models; and collaborating with other disciplines.

The American Probation and Parole Association is an international association composed of individuals from the United States and Canada actively involved with probation, parole and community-based corrections, in both adult and juvenile sectors. All levels of government including local, state/provincial, legislative, executive, judicial, and federal agencies are counted among its constituents Educators, volunteers and concerned citizens with an interest in criminal and juvenile justice are also among APPA's members.

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***International Community Corrections Association (ICCA)*** ***www.iccaweb.org***

P. O. Box 1987 (608) 785-0200
La Crosse, WI 54602-1987

ICCA is a private, non-profit organization representing a continuum of community corrections programs. They provide information, training, and other services to enhance the quality of services and supervision for offenders and to promote effective management practices. ICCA is committed to promoting and enhancing community corrections as a vital component of the criminal justice system.

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***American Correctional Association (ACA)*** ***www.aca.org***

American Correctional Association (800) 222-5646
4380 Forbes Boulevard
Lanham, MD 20706-4322

***Mission statement:*** The American Correctional Association provides a professional organization for all individuals and groups, both public and private that share a common goal of improving the justice system.