Establishment of an Alternative to Incarceration Program for Persons in Pretrial Detention
Douglas and Sarpy Counties, Nebraska

TECHNICAL ASSISTANCE REPORT

Bureau of Justice Assistance
CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT
A Joint Program of the Bureau of Justice Assistance, U.S. Department of Justice, and
American University School of Public Affairs
Establishment of an Alternative to Incarceration Program for Persons in Pretrial Detention
Douglas and Sarpy Counties, Nebraska

January 1988

Consultant:
Dr. Alvin Cohn
ASSIGNMENT DATA SHEET

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<th>Technical Assistance No.:</th>
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<tr>
<td>Requesting Jurisdiction:</td>
<td>Douglas and Sarpy Counties, Nebraska</td>
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<td>Requesting Agency:</td>
<td>United Way of the Midlands</td>
</tr>
<tr>
<td>Requesting Official:</td>
<td>Fran Condon, Director Community Resources</td>
</tr>
<tr>
<td>Dates of On-site Study:</td>
<td>October 4,5,6, 1987 and November 10,11,12, 1987</td>
</tr>
<tr>
<td>Consultant Assigned:</td>
<td>Dr. Alvin W. Cohn, President Administration of Justice Services, Inc.</td>
</tr>
<tr>
<td>Central Focus of Study:</td>
<td>Establishment of an Alternatives to Incarceration Program for Persons in Pretrial Detention</td>
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This report was prepared in conjunction with the EMT Adjudication Technical Assistance Project, under a Cooperative Agreement with the Bureau of Justice Assistance of the U.S. Department of Justice.

Organizations undertaking such projects under Federal Government sponsorship are encouraged to express their own judgment freely. Therefore, points of view or opinions stated in this report do not necessarily represent the official position of the Department of Justice. EMT is solely responsible for the factual accuracy of all material presented in this publication.
TABLE OF CONTENTS

I. Introduction
   A. Technical Assistance Requested 1
   B. Program Description 1
   C. Focus of the Study 1
   D. Developments Subsequent to the Provision of Technical Assistance 2

II. Recommendations
   1. United Way staff should proceed immediately to work with Sarpy County Sheriff Officials to outline the goals, scope, and nature of the program. 3
   2. United Way staff should commence discussions with Douglas County officials to determine the likelihood of developing a pretrial release program in that county. 3
   3. An advisory council or board should be appointed in each of the counties. 3
   4. The United Way should move as expeditiously as possible to hire the program coordinator. 4
   5. As soon as practical, volunteers and/or paid interns should be utilized. 4
   6. Serious attention must be given to the processes for obtaining referrals and for reporting to the courts on recommendations. 4
   7. It is crucial that a screening device be created to ensure consistency in interviewing and decision-making. 4
   8. Negotiations with the judiciary should begin in order to determine the target population for the pre-release program. 4
II. Recommendations (continued)

9. The program coordinator will have to negotiate with the Sheriff, County Attorney, the Clerk of the Court and others to develop a system for information collection.  

10. Negotiations with the judiciary must be held in order to develop policies and procedures associated with violations.  

11. The program coordinator should develop a policy and procedure manual.  

12. A training program has to be designed for all staff involved in the program.  

13. An administrative service fee should be assessed each client receiving the service.  

14. A study should commence on the desirability of converting to automatic data processing as soon as appropriate equipment can be obtained.  

15. Attention should be given to the degree to which pre-release program staff will be involved in counseling, referral work, and follow-up services to defendants.  

16. Program staff must consider the kind and nature of evaluation desired and required.  

17. It is not possible for this consultant to advise the United Way staff on legal issues, especially those associated with liability.  

III. Summary  

8  

IV. Appendix  

A. Misdemeanor Pretrial Release Program Plan of Action  
Developed by United Way Staff in Follow-up to the Technical Assistance Recommendations  

- Attachment #1: Interview Form  
- Attachment #2: Point System  
- Attachment #3: Proposed Fee Schedule
TABLE OF CONTENTS
(continued)

IV. Appendix (continued) .......................................................... 5

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
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<tbody>
<tr>
<td>B. Bail Reform</td>
<td>18</td>
</tr>
<tr>
<td>C. Program Practices Relating to Pretrial Release Programs</td>
<td>20</td>
</tr>
<tr>
<td>D. Description of Release on Recognizance and Conditional Release Programs</td>
<td>22</td>
</tr>
<tr>
<td>E. Appropriate Follow-up Activities for Pretrial Release Programs</td>
<td>26</td>
</tr>
<tr>
<td>F. Pretrial Release Program Management Principles</td>
<td>28</td>
</tr>
<tr>
<td>V. References</td>
<td>31</td>
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I. INTRODUCTION

A. Technical Assistance Requested

In July, 1987, Ms. Nancy Wilson, Coordinator of Court Referred Community Services Programs of the United Way of the Midlands in Omaha, Nebraska, requested technical assistance from the EMT Group's Adjudication Technical Assistance Project, a Project of the Bureau of Justice Assistance. The request was for assistance in establishing an alternatives to incarceration program for persons in pretrial detention.

Technical assistance was requested in four main areas:

- Developing a detailed screening and assessment system for each potential client;
- Determine the appropriate interface of the program with the correctional centers of both Douglas and Sarpy Counties, as well as with judicial personnel;
- Identifying the liability factors as they pertain to the United Way; and,
- Determining how community service volunteer work can be utilized by clients while they await their arraignment or trial.

B. Program Description

Funded by a Bureau of Justice Assistance Justice Assistance Act Block Grant, the program is to serve Sarpy County, Nebraska, and, possibly, Douglas County as well. These counties are to contract with the United Way of the Midlands Court Referred Community Services Program, which will establish and maintain the program.

C. Focus of the Study

Mr. Alvin W. Cohn, President of the Administration of Justice Services, Inc., served as the consultant on this assignment. Mr. Cohn was selected because of his knowledge of pretrial release principles and programs and his familiarity with Sarpy County Sheriff's Office officials. Accordingly, Mr. Cohn visited the United Way in Omaha, Nebraska, on October 4-6, and November 10-12, 1987.

According to documents, the goal of this program is to reduce each of the counties jail populations by five percent per year through the release of those defendants unable to make bail, but who are deemed, through a detailed screening process, to pose no danger to society and who are likely to appear for hearings and trials. The program is to be administered by United Way personnel in cooperation with the Sarpy County Sheriff and Douglas County correctional personnel. It is scheduled to be operational as soon as
grant funds are available, a program specialist is hired, and program policies and procedures are developed. The program should be operational by January, 1988.

Records and documents, especially materials related to a proposal to establish an "alternative to incarceration for persons on pretrial detention program" were reviewed prior to the site visit as well as at the offices of the proposed program, which is to be established in the Douglas and Sarpy County jails. On-site discussions about program planning were conducted with United Way staff, including Fran Condon, Director of Community Services; Nancy Wilson, Coordinator of Court Referred Community Services Programs; Greg Smith, Court Referral Specialist; and, Kirsten Arrowsmith, Coordinator of the Volunteer Bureau.

Additionally, United Way staff arranged a meeting at which the basic program implementation issues were discussed with Douglas and Sarpy County Officials, including Pat Kelly, Sarpy County Attorney; Ron Staskewicz, Douglas County Attorney; Judge Joseph S. Troia, Presiding Judge of Douglas County Court; and, Captain Dan Williamson, Sarpy County Jail Administrator. Meetings were also held with Pat Thomas, Sarpy County Sheriff; Lee Polikov, Sarpy County Chief Deputy and Counsel; Judge Albert Walsh, Presiding Judge of Sarpy County; and Judge Jeffrey Campbell of Sarpy County.

D. Developments Subsequent to the Provision of Technical Assistance

In response to the provision of technical assistance, the United Way of the Midlands has developed a Misdemeanor Pretrial Release Program Plan of Action (Appendix A). This fifteen point plan includes an interview form (Attachment #1), a point system chart (Attachment #2), and a fee schedule (Attachment #3). This plan of action will serve as the basic document for expanding and refining program operations.

Appendices B through F present general principles relating to pretrial release programs. Appendix B reviews the history of bail reform in the United States; Appendix C discusses program practices of pretrial release programs; Appendix D gives a description of release on recognizance and conditional release programs, while Appendices E and F discuss appropriate follow-up activities for pretrial release programs and principles of program management for such programs, respectively.
II. RECOMMENDATIONS

At the outset, it should be indicated that it will not be possible in this report to detail all of the policies, procedures, and programs that need to be addressed in the development of a pretrial release program in Douglas and Sarpy Counties. Further, since Douglas County already has some services and programs in place, additional negotiation with officials there will have to ensue. Also, it must be remembered that no program can be established in Sarpy County without careful and deliberate negotiations with the Sheriff, jail administrator, and other county officials.

The recommendations which follow are not presented in any particular order of priority or importance. Further, it should be noted that some will require immediate attention, while others can be deferred until more resources and experiences are obtained. Also, some of the recommendations will imply the expenditure of funds that might not be available at the present time, but, at least, should be considered in terms of long-term planning.

1. United Way staff should proceed immediately to work with Sarpy County Sheriff officials to outline the goals, scope, and nature of the program, as well as negotiate for space to conduct the program. With these immediate issues negotiated, it will then be possible to develop the program itself, particularly operational policies and procedures. After agreements have been reached, a proposal should be submitted to the Sheriff and then to the Presiding Judge and the County Attorney for review and approval.

2. United Way staff should commence discussions with Douglas County officials to determine the likelihood of developing a pretrial release program in that county. Particular attention should be given to dealing with the staff at the Douglas County Corrections Department, and with the County Attorney and the Presiding Judge. Once these basic discussions have occurred, it may be possible to develop a proposal for their consideration.

3. In order to address the issue of community relations, program appropriateness, program acceptance and to obtain community support, it is recommended that an advisory council or board be appointed in each of the counties. Membership should be composed of responsible individuals who can advise on such issues as policies, procedures, and operations. The Sarpy County Sheriff, the Presiding Judge, and the County Attorney should be asked to recommend
persons for such appointment. The board should number approximately seven to nine persons. They should meet regularly and be staffed by the coordinator of the program. A Douglas County board will not be needed until and unless a program is established in that county. Minutes of meetings between the United Way officials and Sarpy County officials should be maintained as well as minutes of meetings between United Way officials and supervisory staff.

4. The United Way should move as expeditiously as possible to hire the coordinator for this program. Additionally, secretarial staff will be needed, as will supplies and equipment. The coordinator should assume primary responsibility for the development of the program, especially the proposals to be submitted to county officials. Thereafter, the coordinator should be responsible for the development of actual program operations, policies, and procedures, and for the supervision of line staff.

5. As soon as it is practical, volunteers and/or paid interns (especially law students) should be utilized in the program. This will be especially crucial if numbers of defendants to be interviewed and monitored are high. The coordinator, then, would move more into a supervisory role and provide the needed liaison work with the courts, County Attorney, and Sheriff.

6. In the development of a proposal for the program, serious attention must be given to the processes for obtaining referrals and for reporting to the courts on recommendations. Further, a very clear delineation of responsibility and accountability regarding decision-making must occur. In short, it must be clear whether or not program staff will be able to release a defendant with or without a judicial hearing and, if so, what kinds of offenders according to what kinds of offenses. The paperwork flow must also be determined, as well as its route.

7. It is crucial that a screening device be created to ensure consistency in interviewing and decision-making. If an objective system is to be developed, careful attention to a "point scale" will have to be developed. It is advisable to validate the instrument and the scoring process, but this is not an absolute requirement. (Sample screening devices will be forwarded to the United Way under separate cover.)

8. Related to the above is the absolute necessity of negotiating with the judiciary to determine the target population(s) for the pre-release program. Consideration must be given to the type of offender, type of offense, whether
misdemeanants and/or felons will be considered, and if the program will involve financial and/or non-financial types of programs. If indicated and appropriate, priorities of types should be developed so that the program can develop according to predetermined phases. Program staff should reserve the right to refuse an ROR recommendation in any case where it is believed that the defendant will not cooperate or comply with specified terms and conditions. Persons who are on a probation or parole hold/warrent should automatically be excluded. Unless they are to be excluded from consideration routinely, policies have to be developed for non-Sarpy County residents.

9. The program coordinator will have to negotiate with the Sheriff, County Attorney, the Clerk of Courts, and others to develop a system for obtaining crucial information about defendants, including information about current legal status, instant offense, and prior criminal history. These pieces of information will be critical for the screening process. Also, it must be determined whether the program coordinator will be the person responsible for notifying clients of the original court date and any subsequent changes.

10. It is also important to negotiate with the judiciary on the policies and procedures associated with violations. That is, the criteria for violations have to be determined, as well as the process to be utilized for bringing such information to the attention of the courts. This negotiation should also include the process for obtaining a warrant, for its service, and for the apprehension of violators.

11. Although discussed in part above, it will be necessary for the program coordinator to develop a policy and procedure manual, including all forms, which will apply in the program. It is important that these be in writing to ensure consistency of services, so that all concerned will know exactly what is expected, and to serve as a vehicle for training of new staff. This manual should be completed before the program commences operations.

12. A training program also has to be designed for all staff involved in the program. Additionally, back-up staff should be trained in order to provide coverage if the coordinator is absent. The training available for project staff should also be made available to selected jail staff, especially in such areas as interviewing, investigations, counseling, etc. Where indicated, jail staff should help to train program staff, especially in matters related to jail and court procedures. Also, there should be a training session for all jail staff to
acquaint them with the program, to review policies and procedures, and to introduce program staff.

13. Although a grant currently provides a considerable amount of the financial resources needed to mount and operationalize this pretrial program, it is recommended that an administrative service fee (perhaps $15.00) be assessed each client receiving the service. If indicated, a sliding scale can be developed, going down as far as zero dollars, for those who have minimal financial resources and/or who are indigent. The monies collected can be utilized to expand and enhance the program, including additional staff and/or paid interns. No defendant, however, should ever be denied services for lack of ability to pay. Any persons responsible for collections should be bonded.

14. Although the program undoubtedly will involve small numbers of defendants initially, it will grow in capacity and services, and, consequently, much of the paperwork and bookkeeping can be handled on a manual basis. However, a study should commence on the desirability of converting to automatic data processing as soon as appropriate equipment can be obtained. This also means that all aspects of the program's operations should be anticipated so that appropriate software can be obtained and/or developed.

15. Depending on the program to be developed, attention should be given to the degree to which pre-release program staff will be involved in counseling, referral work, and follow-up services to defendants. If the latter occurs, procedures will have to be worked out and the kinds of reports submitted to the court will have to be determined.

16. The issue of evaluation has been discussed earlier. Here it is important to note that program staff must consider the kind and nature of evaluation desired and required and program for such. This means that a process for data collection, analysis, and reporting will have to be developed. This should be done in cooperation with county officials, especially in terms of the data and information they would like - or need - to have on a routine basis. Certainly, if data processing equipment is available, this will simplify the process.

17. It is not possible for this consultant to advise the United Way staff on legal issues, especially those associated with liability. While federal law has some applicability in this area of concern, local and state laws apply significantly. Therefore, it is strongly recommended that this issue be examined by staff in
consultation with United Way counsel as well as with the two Counties Attorney in Douglas and Sarpy. In preparation for such discussions, staff should outline any and all legal concerns regarding liability they and the agency may have.
III. SUMMARY

The development of a pretrial release program for Sarpy and Douglas Counties is unquestionably desirable and technically possible. While considerable negotiation efforts will have to ensue in the immediate future, it is quite likely that the program can be operational by January, 1988. There is every indication that officials in Sarpy County are cooperative and recognize the value of the proposed program.

As long as community welfare and safety remain as important concerns, the staff, together with an advisory council, can develop a meaningful and responsive program that will meet the needs of an overcrowded jail, a heavily docketed court system, a concerned community, and selected defendants who might not otherwise have an opportunity to be released from confinement because of inadequate financial resources.

The United Way staff unquestionably appear concerned, qualified, and committed to the development of a sound and responsive pre-release program. With the cooperation and counsel of county officials, there is no doubt that the program can become a reality and be of substantial benefit to the community, courts, defendants, and jails.
APPENDIX "A"

MISDEMEANOR PRETRIAL RELEASE PROGRAM PLAN OF ACTION
DEVELOPED BY UNITED WAY IN
FOLLOW UP TO THE T.A. RECOMMENDATIONS

In order to implement the Pretrial Release Program, the Court Referral Program has developed the following plan of action.

1. The United Way Court Referred Community Service program will hire and train a Program Specialist. The Specialist will be trained in the areas of interviewing, data collection and verification, data analysis, client monitoring and tracking, and basic office procedures.

2. The Program Specialist will contact the Sarpy County Jail daily (Monday-Friday) to obtain the names of those individuals being held who qualify for a misdemeanor pretrial release interview. Individuals who fall into any of the following categories will NOT BE ELIGIBLE FOR CONSIDERATION:

   1. Fugitive from justice.
   4. Any offense involving the use of a weapon.
   5. Prostitution (male or female).
   6. Any violent offense.
   7. Any felony charge.

3. The Program Specialist will work in conjunction with the Sarpy County Sheriff's office to access the jail in order to interview pretrial detention clients. Jail personnel will designate the area and time for pretrial release interviews. Jail staff will bring clients to a specific area to meet with pretrial release staff.

4. Using the attached interview form (#1), the Program Specialist will interview misdemeanor pretrial release candidates. During the interview, the program specialist will explain the Pretrial Release Program to the client. The client will be told that pretrial staff will only gather, verify and assess information and then make a recommendation to the County Attorney's Office, who will then concur or deny the recommendation. If the recommendation for release is approved by the County Attorney's Office, it will then be forwarded by Pretrial Release staff to the judge for final approval. It will be stressed to the client that pretrial staff can only make recommendations and that final determination is made solely by the courts.

The interview will consist of staff asking a variety of questions to aid in assessing whether or not the client is likely to appear for court appearances. Questions, i.e., name, alias name, address, employment status, related job information, marital status, length of time in the community and at current employment, current and prior criminal charges, probation and parole history and names, address and phone numbers of landlord, supervisor, spouse, relative,
etc., will be asked in conformance with the interview form (#1) to aid in the investigation and verification of information obtained during the personal interview. (See attached form #1 for exact information to be obtained).

5. Upon completion of the interview, the Program Specialist will verify as much interview information as possible. Staff will contact spouse, relative, neighbor or landlord to verify current living arrangements, and prior address and length of time at each location. Employment status and length of employment will be verified by employer. If client is unemployed or a student, length of unemployment will be verified through the unemployment office, welfare department or school client is attending.

Criminal history, or lack thereof, will be obtained from the Sarpy County Sheriff’s Office. If applicable, probation and/or parole information will also be obtained from appropriate agency(s), i.e., Nebraska Adult Probation Office District #5, 11, 16, Nebraska Juvenile Probation District #18 and #19, Nebraska State Parole, and Federal Parole Office.

All information verified will be recorded on the interview form (#1), with contacted persons name, address and phone number.

6. The Program Specialist will then assess all information gathered utilizing the attached point system (#2). Points will be given for each of the following categories: residence, time in Sarpy County, family ties, employment, and prior record. A minimum of seven (7) points must be obtained in order for a client to be recommended for release. Each recommendation will contain an area in which the Program Specialist may, through a narrative, under-ride or override the point finding due to unusual circumstances unique to a particular case.

7. The Program Specialist will then present interview and point findings to the Sarpy County Attorney’s staff for review. Appropriate County Attorney staff will then concur or deny the recommendation made by Pretrial Release staff. County Attorney staff will sign the interview form in the appropriate place, designating approval or denial of release recommendation.

8. Pretrial release staff will then take the signed interview form and point finding to the appropriate judge for final disposition and signature. Pretrial staff will be available to answer any questions the judge may have.

9. Upon approval of release, pretrial release staff will notify, in person, the Sarpy County Jail that the individual has been approved for release.

At that time, jail personnel will again bring the client to an assigned area to meet with pretrial release staff. During this interview, staff will review with the client the conditions of release which have been set forth by the judge. These conditions may include the client calling the pretrial release office on a daily or weekly basis. The client will be informed that if calls are not received, the court will be notified and a capias may be issued for their arrest. It will also be stressed that if the client does not appear for scheduled court appearances a capias will be ordered for their arrest.
The client will be required to sign a written agreement stating they agree to make their scheduled call-ins as well as show for their scheduled court appearances.

The client will receive a card with the pretrial release address, phone number and office hours on it.

11. Pretrial release staff will monitor all individuals released through the Pretrial Release Program. Staff will record in the clients file the date and time of clients required check-in calls, and name of staff person receiving the call, as well as all other contact with the client. Court dates and appearances will also be recorded. Client files will remain active until final disposition of the case has been made by the courts, i.e., sentencing, charges dropped, acquittal.

12. Pretrial release staff will provide a weekly report to the judges and County Attorneys Office, showing active clients, next scheduled court appearance and which conditions, if any, the client has failed to comply with during that week. Serious noncompliance will obviously be brought to the judges attention immediately.

13. The Pretrial Release Program will evaluate all aspects of the program on a quarterly basis and will submit a written report to the Sarpy County Board of Commissioners, Nebraska Crime Commission, United Way Director of community Resources, Sarpy County Attorney, Sarpy County Jail Warden, and judges. A quarterly meeting will be held with pretrial release staff, Sarpy County Attorney, jail warden, and judges to discuss problems, concerns, suggestions and recommendations pertaining to the program.

14. Each pretrial release client will be required to pay a fee based on their ability to pay. No one will be denied release solely based on inability to pay.

A fifteen ($15.00) dollar fee will be charged to all released clients. This fee will be used to cover administrative expenses. A sliding fee will be assessed to those unable to pay the $15.00, according to their income and family size. Fee schedule is attached (#3).

15. A detailed bookkeeping system will be maintained for the Pretrial Release Program through the Administration/Finance Department of the United Way of the Midlands.
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<td>If Unemployed, How Supported:</td>
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<td>Prior Convictions</td>
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## VERIFICATION

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Which items have been verified?

- [ ] Current Address
- [ ] Length of Residence
- [ ] Person(s) Client Lives With
- [ ] Current Employment Status

**Interviewer:**

Comments - Over-Ride/Under-Ride:

---

**Denied**

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**Approval**

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<th>Judge</th>
<th>Date</th>
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Reason for Denial:
# ATTACHMENT #2

## Point System

### RESIDENCE

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<th>POINTS</th>
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<tr>
<td>3</td>
<td>A. Present residence ONE year or more.</td>
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<tr>
<td>3</td>
<td>B. Present and prior residence THREE years or more.</td>
</tr>
<tr>
<td>2</td>
<td>C. Present residence SIX MONTHS.</td>
</tr>
<tr>
<td>2</td>
<td>D. Present and prior residence ONE year.</td>
</tr>
<tr>
<td>1</td>
<td>E. Present residence FOUR MONTHS.</td>
</tr>
<tr>
<td>1</td>
<td>F. Present and prior residence SIX MONTHS.</td>
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### TIME IN SARPY COUNTY

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<tr>
<td>2</td>
<td>A. TEN years residence in Sarpy County.</td>
</tr>
<tr>
<td>1</td>
<td>B. FIVE years residence in Sarpy County.</td>
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### FAMILY TIES

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<tr>
<td>3</td>
<td>A. Lives with spouse and has contact with other family members (other than children).</td>
</tr>
<tr>
<td>3</td>
<td>B. Lives with minor children and has contact with other family members.</td>
</tr>
<tr>
<td>3</td>
<td>C. Lives with parents and is a minor.</td>
</tr>
<tr>
<td>2</td>
<td>D. Lives with parents and is not a minor.</td>
</tr>
<tr>
<td>2</td>
<td>E. Lives with other family member and is a minor.</td>
</tr>
<tr>
<td>1</td>
<td>F. Lives with minor children and has no contact with other family member.</td>
</tr>
</tbody>
</table>

A minor is 17 years of age and under, or a high school student.
EMPLOYMENT

POINTS

4

A. Present job TWO years or more.

3

B. Present and prior job TWO years or more.

3

C. Present and prior job SIX MONTHS.

2

D. Supported by parents and is a minor child living with parents.

2

E. Present job FOUR MONTHS.

1

F. Receiving Public Assistance for THREE or more months.

1

G. Full-Time Student.

? 

H. Present job ONE MONTH or less.

I. Supported by family but not a minor.

J. Self-employed.

Only employment in Sarpy County or within _____ miles of the Sarpy County line is to be considered for point assignment.

PRIOR RECORD

POINTS

4

A. NO convictions.

3

B. NO misdemeanor convictions in past ONE year.

2

C. No more than ONE misdemeanor conviction in past ONE year.

1

D. NO felony convictions within the past TEN years.

0

E. TWO or more misdemeanors in ONE year.

-1

F. ONE or more felony convictions within the past TEN years.

NOTES AND COMMENTS
ATTACHMENT #3

Proposed Fee Schedule

A $15.00 fee will be charged to all Sarpy County Pretrial Release clients. This fee will cover administrative services provided by the Pretrial Release Program.

The following sliding fee scale will be used for those individual(s) who, based on income and family size, are unable to pay the $15.00.

<table>
<thead>
<tr>
<th>Annual Income</th>
<th>Family Size</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
</tr>
<tr>
<td>0 - $10,000</td>
<td>$15</td>
</tr>
<tr>
<td>$10,000 - $22,000</td>
<td>15</td>
</tr>
<tr>
<td>$22,001 - above</td>
<td>15</td>
</tr>
</tbody>
</table>

Inability to Pay

Policy: No one will be denied services because of inability to pay.

Policy: Inability to pay shall mean that a client is incapable of meeting financial responsibility. Failure to pay shall mean that a client refuses to accept financial responsibility.

Policy: Redetermination of ability to pay can be made as often as needed in the judgement of the Pretrial Release Staff. The client may be required to furnish proof of inability to pay.

Policy: All clients shall be informed that income is based on the household to include husband and wife.
APPENDIX "B"

Bail Reform

Based on Common Law underpinnings, criminal defendants in the United States for the most part are entitled to be released from jail while they await hearings and trials provided they guarantee that they will indeed appear. To ensure such, bail is set, which amounts to a surety. In effect, if a defendant had property, it was assumed that he was likely to make such court appearances. Those who had no property, it was assumed, were less likely to appear in court.

Over the years, changes were made in the law which recognized those who were poor or indigent. Thus, some could be released from jail by purchasing a bond or by being released on their own recognizance. Consequently, provisions were being made to provide due process to those who had no property.

A quarter of a century ago, a number of persons and groups began to express some serious reservations about the commercial bail system and initiated some bail reform measures. In 1961, the Manhattan Bail Project was inaugurated in New York City as an experiment in the selection of defendants to be released on their own recognizance. As a consequence of the success of this project, bail reform was heightened across the country.

According to Hall (1984:vii), three other events had substantial impact on the growing bail reform movement. In 1964, the National Conference on Bail and Criminal Justice provided a forum for practitioners and policy-makers to debate the increased use of non-financial release and to advocate further bail reform. In 1966, Federal legislative efforts culminated in the Federal Bail Reform Act, which created a presumption in favor of release on personal recognizance, introduced the concept of pretrial conditional release, authorized 10 percent deposit bail with the court to be returned upon appearance, and emphasized the principle of release under the least restrictive method necessary to ensure court appearance.

Within five years of the passage of this federal law, at least a dozen states initiated bail law revisions. In 1968, as a result of these significant initiatives, the American Bar Association (ABA) published the first standards on pretrial release. In fact, in its report the ABA (1968:1-2) stated:
The bail system as it now generally exists is unsatisfactory from either the public's or the defendant's point of view. Its very nature requires the practically impossible task of translating risk of flight into dollars and cents and even its basic premise - that risk of financial loss is necessary to prevent defendants from fleeing prosecution - is itself of doubtful validity. The requirement that virtually every defendant must post bail causes discrimination against defendants who are poor, imposes personal hardship on them, their families and on the public which must bear the cost of their detention ... Recent experimental studies have demonstrated that if a quick but careful inquiry is made into the facts concerning the defendant's roots in the community a vastly more rational bail decision can be made. More dramatically, a systematic development of the facts will show that in a large number of cases defendants safely can be released without bail.

As the bail reform movement reached the 1970s, it was confronted by intense public concern over reports of significant increases in crime, particularly of a violent nature. Thus, programs struggled with the need to reconcile the goal of reducing inappropriate pretrial detention with the need to maintain public safety. Bail reform measures in the 1970s consequently consisted of efforts to improve program practices by expanding the use of non-financial release options and establishing national standards to guide localities in day-to-day practices.

Further, as Hall (1984:vii) reports, throughout the 1970s, pretrial release standards were developed by the National Advisory Commission on Criminal Justice Standards and Goals (1973), the National Conference of Commissioners on State Laws (1974), the National District Attorneys Association (1977), the National Association of Pretrial Service Agencies (1978), and the ABA (revised, 1979). While these standards differ somewhat, common elements institutionalized many of the bail reform movement's goals and practices.
APPENDIX "C"

PROGRAM PRACTICES
RELATING TO PRETRIAL RELEASE PROGRAMS

The legal authority for a pretrial release program is in part determined by:

1. Laws which define the circumstances under which some or all defendants may be released pending adjudication;
2. Laws which define the constitutional or statutory rights of the accused and which directly or indirectly have an impact on the pretrial release process;
3. Laws which specifically mandate or authorize pretrial release programs.

Program practices are determined not only by legal requirements, but by local system structure. Three court-related issues which affect pretrial release practices are the organizational placement, point of program intervention, and release options available.

Organizational placement refers to the position of the pretrial program with regard to administrative authority and accountability, the majority of which involve the prosecuting attorney and/or the judge. The timing for intervention is also very important. National standards urge that interviews be conducted as expeditiously as possible in order to make the information available at the first court appearance, where the initial release decision is usually made.

The range of release options available in a jurisdiction are usually distinguished in practice between financial and non-financial release, and, among non-financial release methods, the level of supervision provided. In fact, there are five ways in which defendants can secure release without appearing before a judicial officer: three forms of citation release (non-financial), through delegated release authority (financial or non-financial), and through a bail schedule (financial).

Arrestees who have not secured release through one of these methods appear at a hearing before a judicial officer, who can authorize a variety of non-financial and financial release options. These include four types of non-financial release options and six types of financial release options.

The four types of non-financial release are release on recognizance (or written promise to appear), conditional release, supervised release (which could also include house arrest and/or electronic surveillance), and third-party custody release.
The six types of financial conditions which the court may impose include unsecured bail, privately secured bail, property bail, deposit bail, surety bail, and cash bail.

Two other system features which may play a part in the release of defendants, and the practices of release programs, are the existence and extent of the surety bail industry in the jurisdiction and the level of community social services available to the court and other system actors. In many jurisdictions, the commercial bail bondsman almost has been eliminated; in others, he remains a viable force in the criminal courts. His presence and force depend on large measure on the alternatives available to the courts and the degree to which ROR programs have been established.

Community-based social service agencies increasingly have been called upon to provide services to the court so that more defendants can be released with supervision under non-financial release conditions. Pretrial release agencies may serve as catalysts in this process through development of relationships with the various agencies as well as their identification of defendants who can be assisted by such programs. Further, in some instances, it is these community agencies which actually operate the pre-release programs for the courts.
There are two types of non-financial release: release on recognizance (ROR) and conditional release. ROR is defined as release on one’s promise to appear in court without any requirement of money bond. Conditional release is concerned with the release of a defendant from confinement with appropriate conditions attached that are associated with behavior and activities. These two approaches will be described in greater detail.

A pretrial release program must identify the categories of defendants it will screen, then identify the population it will recommend for release. Obviously, the definition of target population has a tremendous impact on operations. Defining a target population is accomplished through the use of screening for eligibility. Exclusion from program consideration for ROR may occur through exclusion from the initial interview, or exclusion from program recommendations for ROR.

Screening procedures for determining defendant eligibility for ROR involve three steps: obtaining background information, verifying information, and determining the appropriate recommendation.

After background information on defendants has been collected and verified, program personnel must determine which defendants will be recommended for ROR. There are three assessment mechanisms available: objective schemes, subjective schemes, or a combination of both. Objective schemes use some type of "point scale" to determine eligibility for ROR. The advantages of an objective scheme are that it may provide some level of statistical predictability, it allows recommendations to be applied in a consistent manner, it ensures inter-rater reliability, and it may result in higher rates of non-financial release.

Difficulties with such schemes are that they may be too restrictive, they may discriminate through the use of invalid criteria, they are often borrowed from other jurisdictions without the necessary local validation, and they may lack needed flexibility.

Subjective schemes have the following advantages: they capitalize on the knowledge and experience of trained investigative staff, they allow interviewers to feel greater responsibility for release recommendations, and they provide more flexibility in changing release criteria to respond to individual defendants. Its disadvantages include: the
institutionalization of personal bias, the requirement of more experienced staff at the initial interview, and the lack of consistency in the application of recommendations.

Concerns over the weaknesses of the two recommendation approaches have led many programs to combine subjective judgment with objective point scales to determine release recommendations.

Following the recommendation determination, most programs prepare written reports (complete forms) which detail the release recommendation and the supportive background information, with copies provided the prosecutor, defense counsel, and the court. Some programs provide only ROR recommendations, while others present a variety of recommendations, including conditional release, supervised release, and money bail amounts.

These techniques differ from ROR in their specification that defendants fulfill some stated requirements which go beyond those associated with ROR. Within these techniques, the distinctions pertain to the level of restrictions placed on defendants, the level of supervision necessary to monitor compliance, and the locus of supervisory authority.

Conditional release techniques provide the judicial officer with a release option in those cases where he or she does not believe that the defendant is a good risk to appear in court, but, at the same time, does not believe that pretrial detention is warranted. Through the use of conditional release programs it is hoped that the number of defendants who are eligible for non-financial release is expanded without jeopardizing unnecessarily failure-to-appear or re-arrest rates.

Conditional release without supervision entails conditions which can be grouped into four categories:

1. "Status quo" conditions, where defendants are required to maintain residence, school, and/or employment status.
2. Restrictive conditions, where defendants must restrict their associations or movements, avoid contacts with victims, or maintain curfews.
3. Contact conditions, where defendants are required to report by telephone or in person to the release program at various intervals.
4. Problem-oriented conditions, where defendants are required to enroll in various social service programs.

Supervised release provides the monitoring component for court-ordered conditions. Monitoring offers several potential benefits to the court:
1. Adequately monitored conditions can provide an early warning signal of non-appearance.

2. The provision of information to the court on the pretrial performance of supervised defendants can assist the court in determining the appropriate sentence for convicted defendants.

3. The defendant's record of pretrial behavior can provide an indication of likely behavior if a non-incarcerative sentence is considered.

Pretrial release programs can use various forms of supervised release. Some programs use both contact supervision (e.g., requiring defendants to call or visit the release program on a regular schedule) and mandatory treatment programs, while others use one or the other. Frequency of required call-ins, visits, or treatment program attendance also varies widely. It should be noted, however, that research (Whitman, 1986) suggests that where conditional pretrial release is utilized, the most significant factors contributing to future court appearance include face-to-face and telephone contacts with program staff, not the provision of social or treatment services, as might be assumed.

Third-party custody release, another form of conditional release, is premised on the condition that some agency or individual, in addition to the defendant, assumes responsibility for assuring the defendant's appearance in court. The third-party custodian may be an individual, such as a relative, friend, or employer, or a social service agency. Traditionally, this form of release is a direct arrangement between the court and the designated individual or agency, without the involvement of the release program. However, in some jurisdictions, release program functions include recommending specific third-party custodians with court date information, establishing criteria for third-party release, and acting to coordinate the work responsibility of third-party custodians.

The pool of defendants eligible for consideration for conditional release depends on the jurisdiction's definition of "high risk" defendants. In general, conditional release techniques are used for felony defendants because many alleged felons are ineligible to receive a recommendation for ROR and are likely to have money bail set, and because felony defendants are less likely to secure release from custody since they tend to have higher bail amounts.
The population of defendants eligible for conditional release depends, in part, on the point of intervention selected by the program and the procedure for obtaining referrals. Screening before the initial court appearance may enable defendants to secure release more quickly and save both the system and the defendant money. However, determination of appropriate conditions of release may be difficult if outside agencies are used, due to time constraints unless, of course, the outside agency locates its program in the detention facility.

Some programs have responded to this concern by presenting a general recommendation for conditional release at the initial court appearance, with specific conditions to be determined later after a subsequent interview. Programs must be careful to guard against "widening the net." This can occur when judges assign conditions to defendants who may otherwise have obtained release without them.

In determining specific conditions of release, programs should strive to meet two conditions. First, conditions should be individualized to the particular circumstances of each defendant and must be reasonably related to minimizing risk of flight and re-arrest. Second, the least restrictive set of conditions should be imposed. This pertains not only to the number, but also the type of conditions. In the final analysis, it must be remembered that decision-making in this kind of release program is geared only toward future court appearance and re-arrest potential, not to the provision of services that ordinarily would be the concern of a probation department.

In presenting recommendations to the court for conditional release, it is imperative that the conditions for release be as specific as possible, clearly understood, feasible, manageable, and enforceable by program staff. Vague conditions such as "cooperative with the program" should be avoided. Further, conditional release conditions should bear some balance to the alleged offense, also taking into consideration, of course, the prior record of the defendant.
There are a number of follow-up activities that release programs may undertake after the accused has been arraigned. Though some of these services are not related to the pretrial release decision, they are often provided to other criminal justice agencies.

Among post-release services, many release programs interview defendants immediately following release in order to review court proceedings, court dates, attorney information, program requirements, make social service referrals, and to answer any questions. Release programs, working cooperatively with the prosecutor and defense counsel, may also act to notify defendants by phone or mail of some or all court dates. Recent research results on the impact of program notification show that this practice may reduce failure-to-appear (FTA) rates by as much as half in certain charge categories (Hall, 1984:xii).

Virtually all release programs need to establish case-tracking systems to derive information for monitoring and evaluating pretrial release program functions and for providing case information to judges. Associated with systematic data gathering on overall program operations is the preparation of reports on individual releasee performance, which may be used by courts in determining appropriate sentences for those who are convicted. Programs may prepare individual reports on persons released through the release agency, or only for particular defendant groups.

Response to violations of release conditions is an important part of pretrial program activity. However, reporting on every violation, especially if minor, may quickly swamp the agency in paperwork, even if computers are utilized. Professional standards suggest the need both for policies as well as some discretion in reporting non-compliance. Thus, it is important to work with the judiciary in establishing standards and in the procedures for reporting violations.

Three types of sanctions for non-compliance generally exist:
1. Remedial - requiring some program participation.
2. Restrictive - limiting travel or associations.
3. Punitive - fines, jail time, or other penalties.

In the event of failure-to-appear, especially in felony cases, many release agencies take action to return the defendant to court. Therefore, it is important that the agency establish appropriate relationships not only with the court to establish violation and
warrant procedures, but with the sheriff who will be responsible for serving the warrants and taking the defendants into custody.

Supplemental services may include services to the accused or to other system agencies such as information sharing. Program administrators may also be willing to provide extra services to speed case processing or make referrals to other programs as part of overall program goals. However, specific non-release supplemental services should be considered in light of the issue of confidentiality of defendant information (defendant release forms should be signed), and the possibility of jeopardizing more essential services.

Pretrial programs often provide social service referrals to defendants who need help in obtaining housing, medical services, employment, substance abuse treatment, or others services. Thus, at the very least, the maintenance of referral agency listings and enrollment/admission procedures have become an important part of the work of many programs.

Indigence screening to determine eligibility for free assignment of counsel is also performed by many release agencies for the benefit of the court. However, certain professional standards oppose release agency involvement in such screening, since inquiries pertaining to the amount of income, a fact not generally not regarded as relevant to the release issue, may lead to reduced credibility among defendants and with other system agencies, potentially jeopardizing essential services.

Some programs have both pretrial release and pretrial diversion screening. To the extent that the particular diversion program has strict eligibility requirements, the release program can make an early assessment as to whether a defendant meets minimum requirements. Separation of the two functions generally is recommended, even if the two programs are placed in the same agency.

Since it is valuable for the probation department, which complete presentence investigations to speed such investigations, pretrial services programs often are involved in supplying appropriate background data, an importance supplemental service in many jurisdictions. Cooperative relationships with probation and parole agencies also can be utilized to provide the program with needed information about defendants.
APPENDIX "F"

PRETRIAL RELEASE PROGRAM MANAGEMENT PRINCIPLES

In addition to the mechanics of program operations and procedures, administrators must deal with a number of important management issues, including staffing, training, fiscal responsibilities, public relations, management information system development, and impact evaluation.

The planning of staff levels, functions, and allocation is a complex process in which program administrators must consider budgetary constraints, workload, range of services offered, caseload fluctuations, court scheduling, jail procedures, and a variety of other characteristics. Staffing decisions are needed in three areas:

1. Administrative.
2. Investigative.

Administrative staff functions include supervision of all staff; budget preparation; research; preparing all reports on the program; dealing with key personnel such as judges, the sheriff, and county officials; training; ensuring that the goals of the program are clear to all persons involved; and that staff are held accountable for their performance.

Investigative staff functions include interviewing all defendants eligible for pretrial release screening, obtaining and verifying the information obtained, and presenting recommendations to the court.

Post-release staff functions include monitoring conditional release cases, notifying defendants of court dates, case tracking, making referrals, and completing arrangements for warrants/apprehension when there is a violation of release conditions.

Staff training and personnel appraisals are integral parts of a release program. Training should work to keep staff abreast of new developments in the field, as well as in the individual program, and to raise the level of skills available to the program. Such programs usually include interviewing and investigative techniques, defendant supervision procedures, report layouts, communications, decision-making, counseling, referral procedures, and basic management skills. Insofar as performance evaluation is concerned, it is axiomatic that staff be apprised of how well they are doing and how well they are meeting program expectations and goals.
A pretrial program administrator's fiscal responsibilities involve preparing annual budget and program proposals, detailing justifications for proposed increases and changes as they may become justified, and responding to audits from any official source. Additionally, the administrator must review program developments and serve as a liaison between the program and other agency officials with whom regular contact should be maintained.

Public relations is another important area for pretrial release programs. Programs should prepare materials which describe program goals and operations and how they benefit the public. The materials should be available for three audiences: (1) local criminal justice agencies, (2) community organizations/social service agencies, and (3) legislators, particularly at the city and county levels. If the program has an advisory council or board, this group can assist greatly in dealing with the press, overcoming resistance in the community, and otherwise providing support to the program and its staff.

A management information system (MIS) allows a program administrator to keep track not only of clients and budget, but assists in the identification of difficulties within the organization as a result of examination of statistics and periodic reports. With appropriate data processing equipment, it is possible to develop plans and procedures within an MIS. It is important, however, to define precise information requirements in order to avoid developing a system that compiles excessive data at high cost while leaving essential questions unanswered.

The planning process for an MIS should include: defining questions to be examined; describing data to be collected, and in what format; creating data forms; creating effective and responsive reports; and involving staff and users in planning. Topics to be examined may involve release and failure-to-appear rates, management questions such as recommendation rates of individual interviewers, background questions such as defendant characteristics, "housekeeping" information needed in contacts with the defendant, court/defense counselor/county attorney contacts, and disposition information such as form of release or sentencing information. If clients are to pay a service fee, collections and disbursements should also be included.

At minimum, a program should collect data on defendant demographics, program actions, defendant interventions/interactions, and process outcomes, so that questions concerning the program's effect on the criminal justice system can be answered. Data gathering forms must be designed to accommodate this information, allow for quick compilation, and for routine reporting.
A carefully devised MIS is also critical to the development of the program impact evaluation. Impact evaluations differ from management information systems in that they are designed to test certain research questions concerning program effects on the local criminal justice system. This tool can validate innovations, diagnose problems, allow management to make more informed decisions, and test program impact on defendants, courts, and jails. The level of complexity or sophistication involved in research evaluation depends on the program's needs, the research questions to be answered, adequacy of the budget, and skills of staff or consultants.
V. REFERENCES


Whitman, Christine, ALTERNATIVES TO INCARCERATION, Trenton, NJ: Governor's Task Force on Prison Overcrowding, Alternatives to Incarceration Subcommittee, 1986 (Mimeo.).