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United States Pretrial Services Supervision..... *Probation and Pretrial Services Division*

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MARCH 1995

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This Issue in Brief

Three Strikes and You're Out: The Political Sentencing Game.—Recent sentencing initiatives which mandate life sentences for three-time convicted felons may appeal to the public, but will they address the realities of crime? Authors Peter J. Benekos and Alida V. Merlo focus on the latest spin on sentencing: "three strikes and you're out." Their article reviews the ideological and political context of recent sentencing reforms, examines "get-tough" sentencing legislation in three states, and considers the consequences of increasing sentencing severity.

Electronic Monitoring in the Southern District of Mississippi.—Although many criminal justice agencies now use electronic monitoring as an alternative to prison, some still hesitate to use it in supervising higher risk offenders. Author Darren Gowen explains how the U.S. probation office in the Southern District of Mississippi began its electronic monitoring program with limited expectations but successfully expanded it for use with higher risk offenders. He describes the district's first year of experience with electronic monitoring and discusses the selection criteria, the types of cases, the supervision model, and offender demographics.

Helping Pretrial Services Clients Find Jobs.—Many pretrial services clients lose their jobs because they are involved in criminal matters; many have been either unemployed or underemployed for a long time. Some are released by the court with a condition to seek and maintain employment. Author Jacqueline M. Peoples describes how the U.S. pretrial services office in the Northern District of California addressed the issue of unemployment among its clients by launching a special project to identify employers willing to hire them. She also explains how the district developed an employment resource manual to help clients find jobs or training programs.

Specialist Foster Family Care for Delinquent Youth.—Authors Burt Galaway, Richard W. Nutter, Joe Hudson, and Malcolm Hill contend that the current focus on treatment-oriented or specialist foster family care as a resource for emotionally or psychiatrically impaired children and youths may disguise its

potential to serve delinquent youngsters. They report the results of a survey of 266 specialist foster family care programs in North America and the United Kingdom. Among their findings were that 43 percent of the programs admitted delinquent youths and that the delinquents were as likely to be successful in the programs as were nondelinquent youths.

United States Pretrial Services Supervision.—In June 1994 the Probation and Pretrial Services Division, Administrative Office of the United States

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United States Pretrial Services Supervision*

*Probation and Pretrial Services Division
Administrative Office of the United States Courts*

In June 1994 the Administrative Office of the United States Courts published national standards for the supervision of persons charged with criminal offenses who are released under supervision pending adjudication of the charges. The standards, set forth in *United States Pretrial Services Supervision*, Publication 111, guide officers in monitoring defendants' compliance with release conditions imposed by the court. The publication describes appropriate use of risk management activities. It also discusses interventions if the defendant does not comply with release conditions.

The standards, developed at the direction of the Criminal Law Committee of the Judicial Conference of the United States, are the product of a joint effort of the Criminal Law Committee, chief probation and pretrial services officers and their staffs, and personnel from the Federal Judicial Center and the Administrative Office of the United States Courts. This article, based on the standards, describes how officers providing pretrial services supervision should develop and execute supervision plans and how they should manage defendants' noncompliance with release conditions.

Introduction

The court is required under the Bail Reform Act of 1984, 18 U.S.C. § 3142(c)(1)(B), to release a person "subject to the least restrictive" condition or combination of conditions which "will reasonably assure the appearance of the person as required and the safety of any other person and the community." That is, the defendant will appear in court as directed and will not be a danger to society. A pretrial services function is to supervise defendants released to its custody until the defendant is acquitted, the charges are dismissed, or the defendant commences service of a sentence.

The officer performs risk management activities to monitor the defendant's compliance with release conditions set by the court to reasonably assure appearance and community safety. The officer's activities to manage risk must be goal-oriented. These activities include monitoring and verifying the defendant's compliance with conditions of release and intervening in a timely manner when the defendant does not comply.

*This article—which excerpts Publication 111, *United States Pretrial Services Supervision*—was prepared by Donald S. Miller, pretrial services administrator, Administrative Office of the United States Courts, and James R. Marsh, chief United States pretrial services officer, District of Nevada.

In supervising defendants, officers should remember that:

- defendants are innocent unless proven guilty;
- the court must impose the least restrictive conditions to reasonably assure defendants' appearance and the safety of the community;
- risk management activities monitor defendants' compliance with the conditions of release;
- officers should use the least restrictive means necessary to ensure defendants' compliance with conditions of release;
- effective supervision requires a "partnership" of officers, chiefs, supervisors, and specialists;
- defendants who are financially able should pay for services, e.g., drug treatment;
- public funds must be expended wisely (when providing services to defendants); and
- officers must inform the court and the United States attorney of all apparent violations of release conditions.

The foundation of supervision is established during the pretrial services investigation which is conducted before the defendant is brought before the court. The officer performs an important role in providing information to the judicial officer for the release decision. When the court decides whether a defendant should be released or detained, a judicial officer considers the information, assessment, and recommendation contained in the pretrial services report prepared by the officer.

Title 18 U.S.C. § 3142(c) provides that if a judicial officer determines that release on personal recognizance or an unsecured appearance bond will not reasonably assure the appearance of the defendant or will endanger another person or the community, the defendant may be released subject to the requirement that the defendant appear as directed and the mandatory condition that he not commit an offense while on release (18 U.S.C. § 3142(c)(1)(A)), and subject to the least restrictive further condition or combination of conditions set out in 18 U.S.C. § 3142(c)(1)(B)(i)-(xiv) that will provide such assurance.

Title 18 U.S.C. § 3142(b) and 3142(c)(1)(A) provide that each person released not commit a Federal, state, or local crime during the period of release. Addition-

ally, every release order requires that the defendant attend all hearings. The requirement to appear in court as directed, although not listed in 18 U.S.C. § 3142(c) as a condition, is the purpose of an order of release.

Title 18 U.S.C. § 3142(c)(1)(B) provides that the judicial officer may impose the least restrictive further conditions that will reasonably assure the appearance of the person as required and the safety of any other person and the community. Section 3142(c)(1)(B) lists 14 possible conditions including a general condition that the judicial officer may order any other condition that is reasonably necessary to assure the appearance of the person and the community's safety. (The conditions are listed later in this article.)

Developing the Supervision Plan

To manage risk and monitor the defendant's compliance with the conditions of release, the officer should develop and execute an effective supervision plan. The officer must identify supervision issues and select supervision strategies to address these issues. The officer does so during the "assessment period."

The Assessment Period

The assessment period gives an officer up to 10 business days after the defendant is released to complete the supervision planning process and ensure that the Initial Case Supervision Plan (ICSP) is based on complete and verified information. During this period an officer: gathers information on the defendant's (1) conditions of release and (2) risks of nonappearance and danger to the community; assesses risk; assesses supervision issues; selects appropriate supervision strategies; completes the ICSP; and submits the case for supervisory review.

During the assessment period, the officer must review written materials, conduct and record the Post Release Intake Interview (PRII), and investigate and verify information, including information that was unknown or unverified at the time of the release hearing. The PRII is an interview conducted by the officer at the time of the defendant's release where the role and responsibilities of both the officer and the defendant are clarified and additional information necessary for an informed assessment is obtained. During the PRII, the officer should:

- review with the defendant the requirements of each condition of release;
- explain the consequences of noncompliance with release conditions;
- identify circumstances of potential risk but not discuss the alleged offense;
- discuss any potential obstacles to the defendant's compliance;

- discuss the dates of all known scheduled court appearances;
- discuss employment, finances, and family and, when appropriate, provide necessary assistance;
- identify additional sources;
- execute conditions when possible, e.g., obtain (or give a date for surrender of) the passport, collect a urine specimen, or refer the defendant to treatment;
- complete the Pretrial Release Reporting Instructions (Form PS7), which provides the defendant a schedule for reporting to the officer, and give the defendant a copy;
- request that the defendant sign release of information forms; and
- take two photographs and place them in the case file. (One photograph will then be available if the case is referred for courtesy supervision, i.e., supervision in another district.)

Factors relevant to the risks of nonappearance and danger were already considered when the defendant was released on the least restrictive further conditions necessary to reasonably assure appearance and community safety. These include, but are not limited to, the nature and circumstances of the offense; the defendant's physical and mental condition; the defendant's arrest behavior; and the defendant's substance abuse history. Only when all factors are continually assessed throughout supervision can officers decide what risks a defendant poses and what supervision activities should address those risks. No single factor is a definitive indicator of risk.

The officer uses information that is in the pretrial services report or gathered during the assessment period to identify supervision issues. A supervision issue is any condition of release or risk-related case problem affecting compliance with the conditions that will require direct action by an officer during the period of supervision. A supervision issue can also be a case-related problem which presents a risk of nonappearance or danger. Every problem of the defendant should not be considered a supervision issue. Only risk-related problems affecting compliance with the conditions or presenting a risk of nonappearance or danger are considered supervision issues and must be addressed in the ICSP. The issues in the ICSP should only identify those supervision issues the officer intends to address during the period covered by the ICSP.

Supervision Strategies

For each identified supervision issue, an officer must choose a supervision strategy—an activity appropri-

ate to address the supervision issue. Before selecting a strategy, an officer should determine if there are obstacles that may interfere with implementing that strategy. Obstacles to supervision, such as a defendant's lack of motivation or geographic location, do not relieve the officer of the responsibility to develop and implement an effective ICSP.

Although the officer has the primary responsibility to perform pretrial services supervision, the officer's supervisor also must be involved. The supervisory review of the ICSP ensures that the officer identified all supervision issues and selected appropriate strategies to address these issues. The officer must submit the case file, including the ICSP, to the supervisor within 10 business days of the defendant's release. Within three business days of receiving the case file, the supervisor should review all written materials, approve the ICSP, and return it to the officer. A 3-day response by the supervisor may have to be extended in districts where supervisors review the work of officers in divisional offices.

Changed defendant circumstances, such as loss of employment or marital discord, may affect the risk assessment and may require a modification of supervision strategies. Although it is not necessary to change the ICSP during the period of supervision, the officer should record any interim changes in the chronological record and formally change the supervision plan at the time of the Supervision Plan Review (SPR). The SPR, a review which the officer conducts every 6 months after the defendant's release, requires the officer to assess supervision activities and modify the activities accordingly.

The officer should address the following issues in the SPR: conditions changed (added or removed); compliance (the officer should note if the defendant has been in compliance since the ICSP); conditions not met; comments; adjusted risk management activities (the officer should note changes in frequency and type of activity); and supervisor comments. If the defendant is in compliance with the conditions of release and no changes are necessary, the supervision plan will remain the same as the ICSP. If necessary, the officer should consult with the supervisor regarding difficulties in supervising a case.

Release Status Report

A Release Status Report is to assist the court in making a finding, according to 18 U.S.C. Section 3143, whether to detain a defendant pending imposition or execution of sentence. The officer submits a Release Status Report, along with a copy of the pretrial services report, to the judicial officer and defense and Government counsel at trial, plea, and sentencing.

The purpose of the Release Status Report is to: inform the court of the conditions under which the defendant was released; inform the court of a defendant's compliance with the conditions of release; identify risk-related case problems affecting compliance with release conditions; describe officer supervision activities to monitor conditions and case problems; assess the defendant's performance on release; recommend that the defendant's release conditions remain unchanged or be modified; and recommend whether the defendant should voluntarily surrender.

Disclosure of the report should be in accordance with district policy and should (1) protect the confidentiality of the report, (2) ensure the return of the report to the officer, and (3) not create an undue burden on the officer, i.e., require the officer to attend hearings not previously attended. If an officer is not attending a hearing, a process for disclosure of the report should be established that meets the three criteria. For example, a reliable court employee (courtroom deputy, court clerk, etc.) may disclose the report to defense and Government counsel at the appropriate time and then retrieve the report at the conclusion of the hearing or provide the judicial officer the report in a sealed envelope for the judicial officer to provide to counsel at the appropriate time.

Executing the Supervision Plan

Pretrial services is the primary manager of and service provider to defendants placed on pretrial supervision. Supervision is a dynamic process that is adjusted to meet changed circumstances. Officers should adjust supervision activities as needed to reasonably assure the appearance of the defendant and the community's safety, and such activities should be the least restrictive possible to accomplish this. Supervision contacts with the defendant and others should be purposeful to ensure that the defendant is in compliance with the conditions of release.

Risk Management Activities

The officer performs supervision activities to monitor the defendant's compliance with release conditions set by the court to reasonably assure the defendant's appearance and the community's safety. Supervision activities should effectively address the risk of nonappearance and danger without intruding unnecessarily into the defendant's life regardless of whether the defendant is innocent or under supervision pending sentencing, appeal, or commencement of sentence. Defendants are presumed to be innocent unless there is a finding of guilt.

Contacts with the defendant and others must be purposeful. Through personal, telephone, and correspondence contacts, the officer should gather suffi-

cient information to monitor the defendant's compliance with the condition(s) of release. Field contacts allow the officer to observe directly the activities of and circumstances surrounding the defendant. The officer, therefore, is better able to (1) manage risk by monitoring the defendant's compliance with release conditions and (2) identify the need for services.

When the release conditions specified in 18 U.S.C. § 3142(c)(1)(B) are imposed, officers must consider the following supervision issues and strategies in each supervision case:

Report to Pretrial Services. The officer must determine the frequency of contact with the defendant, keeping in mind the conditions imposed by the court. The defendant's contact with the officer should be frequent enough to enable the officer to monitor the defendant's compliance with the conditions of release. The officer also must determine the type of contact (personal, telephone, etc.), keeping in mind the conditions of release. The officer should also consider the defendant's situation, e.g., physically disabled, difficult for defendant to report in person. However, the frequency and type of contact must enable the officer to monitor the defendant's compliance with the conditions of release.

Residence Verification. An officer should verify a defendant's residence by a personal visit within 10 working days after the defendant is released on supervision. In remote locations, the officer may request that local law enforcement officers verify the defendant's residence, or the officer may review rent receipts, mortgage payments, and utility bills to verify residence. After the residence verification, an officer may periodically visit the defendant's residence if selected as a supervision strategy.

Criminal Record Check. Each record check should determine the offense charged, date of arrest, arrest location, and disposition. If a record check was not performed before the initial hearing, the officer should conduct a post release hearing record check. The officer should continue to determine the status of all cases for which dispositions are unknown. During the period of supervision, the officer should perform criminal record checks no less than once every 90 days and before submission of a Release Status Report and/or violation report to ensure that a defendant was not arrested. An officer also must perform a criminal record check when a defendant's case is terminated.

Third Party Risk. The officer must inform the court and the United States attorney of any danger that a person under pretrial release supervision may pose to any other person or the community (18 U.S.C. § 3154(5)). Third party risk is any harm, such as physical or financial, which a defendant may pose to any individual or the community. In its opinion of May

21, 1986, the Office of General Counsel of the Administrative Office of the United States Courts stated that "officers have a responsibility to react to a danger that a person on pretrial release may pose to an employer, a program administrator, other persons, or the community. The responsibility, however, is to advise the court and the United States attorney of such danger and to suggest to the court and the United States attorney any modification of release conditions that might reduce such danger."

The officer must make the following two assessments when presented with a situation that involves a potential third party risk: whether a "reasonably foreseeable" risk exists and, if so, what action should be recommended to the court and the Government. Reasonably foreseeable risk means the circumstances of the relationship between the person and the third party provide a temptation or an opportunity for the person to engage in criminal or antisocial conduct that the person's background suggests he or she may have a propensity for.

The officer should make the assessment of a reasonably foreseeable risk on a case-by-case basis. The officer should evaluate the defendant's criminal background and past conduct relative to his or her current activities, particularly employment, to assess current potential for risk. For example, a former bank teller charged with embezzlement now employed as a cashier may present a reasonably foreseeable risk.

If the officer assesses that there is a reasonably foreseeable third party risk, the officer first should personally contact the assistant United States attorney and the court and follow this notification with a letter. The letter should describe in detail the apparent risk factors and should include a recommendation for a course of action.

In determining what recommendation to make to reduce the risk to a third party, the officer should also consider the possible jeopardy to the defendant's employment or other interest that could result from a warning to a third party. Possible actions to address third party risk include: adjust supervision activities to minimize the risk; recommend that the judicial officer modify the release condition to preclude the individual from the employment or activity that results in the risk; give a confidential warning to the third party at risk or another party who can eliminate or reduce the risk; or permit the defendant to inform the third party of the factors that create the risk with the understanding that the officer will verify that the warning has been made. *Officers must obtain court approval before taking an action.*

Contact with Law Enforcement. The officer should maintain contact with law enforcement agencies to determine if a defendant was arrested while on

release and to monitor compliance with conditions of release. Except as provided in the confidentiality regulations, pretrial services information shall be used only for the purpose of a release determination and shall otherwise be confidential (see 18 U.S.C. § 3153(c)(1)).

Examples of appropriate interaction with law enforcement agencies are as follows:

- the officer may request from law enforcement agencies information that pertains to a defendant's criminal record;
- the officer should periodically perform criminal record checks on all defendants released to pretrial services supervision;
- the officer may contact law enforcement agencies if the officer has information that a defendant may have violated a condition of release, such as restricted association and/or travel;
- the officer may request law enforcement agencies to verify that a defendant lives or is at his or her residence in instances when the geography and/or distance, or other significant circumstance, prevents the officer from doing so; and
- the officer may request law enforcement agencies, in exceptional circumstances, to assist or accompany the officer on field contacts when the field visit is assessed to be potentially dangerous, e.g., to conduct searches and seizures or to visit a defendant with psychiatric problems.

Conditions of Release

The following are the release conditions listed in 18 U.S.C. § 3142(c)(1)(B)(i)-(xiv)¹:

- Condition (i) remain in the custody of a designated person who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community.
- Condition (ii) maintain employment or, if unemployed, actively seek employment.
- Condition (iii) maintain or commence an educational program.
- Condition (iv) abide by specified restrictions on personal associations, place of abode, or travel.
- Condition (v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense.
- Condition (vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency.

- Condition (vii) comply with a specified curfew.
- Condition (viii) refrain from possessing a firearm, destructive device, or other dangerous weapon.
- Condition (ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner.
- Condition (x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose.
- Condition (xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall 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.
- Condition (xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond.
- Condition (xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes.
- Condition (xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

The following are examples of other least restrictive further conditions: halfway house; home confinement; surrender passport or travel documents; obtain no passport; surrender certification; and search and seizure.

Service Activities

Pursuant to 18 U.S.C. § 3154(7), officers are authorized to assist defendants released by the court with or without a condition of pretrial services supervision to secure necessary employment, medical, legal, or social services. The officer may not require a defendant to

seek and obtain employment or social services without a specific condition of release. Pretrial social service funds may not be expended for these services unless these services are ordered as a condition of release, if funds are available and payment is authorized by statute; e.g., pretrial services cannot pay for medical treatment.

An officer may help a defendant obtain employment, medical, legal, or other social services, such as education, regardless of whether the service relates to appearance or community safety. An officer may assist any defendant who requests information about local trade schools, employment agencies, public health or mental health clinics, legal aid, or other community services. If the officer determines that these activities are needed to address a risk of nonappearance or danger to the community, the officer must advise the court and request that the court order these activities as conditions of release.

Courtesy Supervision

Supervision standards are the same whether the defendant is supervised in the district of jurisdiction or in another district, i.e., courtesy supervision. Because a defendant is supervised by one district for another, communication and cooperation between the two districts is imperative. To begin the supervision process, the officer in the district of jurisdiction should:

- before the defendant's travel, telephone the district of supervision to inform that office of the defendant and advise that a letter requesting supervision will follow;
- send a letter to the district of supervision to request courtesy supervision and, where appropriate, include instructions on supervision activities; and
- send a copy of the order of release, the pretrial services report (Form PS3), and other pertinent documents, e.g., Worksheet for the Pretrial Services Report (Form PS2), indictment information, or complaint, to the case officer in the district of supervision.

The officer in the district of jurisdiction should notify the district of supervision of the dates of all judicial proceedings and should contact the district of supervision as needed to monitor the defendant's compliance with the conditions of release.

The district of supervision should:

- prepare the Pretrial Release Reporting Instructions (Form PS7), review them with the defendant, and provide the defendant with a copy;

- develop the ICSP (Initial Case Supervision Plan);
- conduct a home visit and perform other risk management activities;
- monitor the defendant's compliance with the conditions of release; and
- notify the district of jurisdiction in writing of all apparent violations.

Both districts should regularly communicate with each other to ensure that each office is aware of case problems and changes and that appropriate action is taken to address those problems and changes.

Managing Noncompliance With Release Conditions

Title 18 U.S.C. § 3154(5) requires officers to inform the court and the United States attorney of all apparent violations of release conditions. There are two categories of release conditions: (1) mandatory conditions of release and (2) least restrictive further conditions of release.

Title 18 U.S.C. § 3142(b) and (c)(1)(A) requires that every order of release include a condition that the defendant not commit a Federal, state, or local crime during the period of release. An offense committed by the defendant while on release can result in a separate charge under 18 U.S.C. § 3147, "Penalty for an offense committed while on release." Additionally, every release order obligates the defendant to appear as required. This requirement, although not listed in 18 U.S.C. § 3142(c) as a condition, is the purpose of an order of release. Defendants who commit a crime while on release or who fail to appear are subject to sanctions under 18 U.S.C. § 3148, "Sanctions for violation of a release condition."

Title 18 U.S.C. § 3142(c)(B)(i)-(xiii) lists conditions the court can impose, and subsection (xiv) authorizes the court to impose "any other condition that is reasonably necessary" to assure appearance and community safety. Also, 18 U.S.C. § 3142(c)(3) authorizes the court to amend the release order at any time to impose "additional or different conditions of release." A defendant violating one or more of these conditions is subject to sanctions under 18 U.S.C. § 3148. These sanctions include a revocation of release, an order of detention, and a prosecution for contempt of court.

Officer's Response to Apparent Violations

Officers are required by law to respond to defendant noncompliance with release conditions. The statute does not specify timeframes for notifying the court and the United States attorney of apparent violations of release conditions or how such notice is made.

Prior to informing the court and the United States attorney of an apparent violation, the officer must determine if there was an apparent violation and respond to the apparent violation. An officer's response to an apparent violation should be:

- **Authorized.** There are circumstances in which an officer need not obtain court action before requiring the defendant to perform certain activities in response to an apparent violation. For example, if the condition of release requires the defendant to "submit to urinalysis and drug treatment as required by pretrial services," the officer may refer the defendant for outpatient treatment in response to the positive urinalysis without further direction from the court.
- **Appropriate.** The officer's activities should be the least restrictive relative to the nature and degree of the noncompliant conduct. Activities should reasonably assure community safety and the defendant's appearance and provide the defendant an opportunity to comply with the conditions of release.
- **Enforceable.** The officer must be able to monitor any conditions imposed. For example, an officer cannot monitor a curfew condition on a defendant who resides in a house located in a rural/isolated area with no telephone.
- **Timely.** The officer should respond as soon as possible.

Before recommending a modification or a revocation of the conditions of release, an officer should consider whether the following activities are sufficient to bring the defendant into compliance with the conditions of release. The officer should review the conditions with the defendant and defense counsel, when possible, to ensure that the defendant understands the requirements of the release conditions; and/or warn the defendant that further violation could result in the modification or revocation of release conditions and record all warnings in the chronological record. The officer may inform the assistant United States attorney and defense counsel of such warnings.

Modification of the Conditions of Release

The court may modify the conditions of release at any time. An officer may recommend that conditions of release be added if the officer believes the risk of nonappearance or danger requires additional conditions. An apparent violation need not occur first. Likewise, an officer may recommend the removal of conditions if the officer believes the risk posed by the defendant no longer warrants the conditions imposed.

Consensual modification of release orders generally occurs in response to two sets of circumstances. A defendant may acknowledge and consent to a modification of the conditions of release. The defendant and defense counsel must sign a statement which consents to the modification. The officer should submit to the court, with a copy to the United States attorney, the defendant's statement and a violation report outlining the reasons for the modification. For example, if a defendant tested positive for drugs, the defendant could, upon advice of counsel, agree to a modification of the release conditions to require drug treatment.

Also, circumstances or situations may occur during the course of supervision which exacerbate the defendant's potential risk of nonappearance or danger to the community. In response to these circumstances (not a violation of conditions of release) the defendant may initiate or request officer intervention. The officer may also initiate discussion with the defendant, suggesting a modification of release conditions. For these noncondition-based, risk-related issues, the defendant may consent to a modification of release conditions².

There is no statutory requirement that a hearing be held for modifications of conditions of release. The Office of General Counsel of the Administrative Office of the United States Courts, however, has suggested as a preferred practice that a hearing be conducted when conditions of release are requested that will reduce the defendant's liberty, e.g., halfway house placement or home confinement.

At times it may be justified to request that the court remove conditions of release. During the supervision period the officer gains more insight and information about the defendant which may justify less restrictive conditions. The officer may then determine that conditions are no longer required to reasonably address risk perceived at the time of the defendant's release. Before requesting, by memorandum, that the court remove conditions of release, the officer should discuss the proposed request with the assistant U.S. attorney.

The officer submits a violation report to the court and to the U.S. attorney to request modification of release conditions when the defendant is in noncompliance or to recommend revocation of release. The officer submits a violation report in the following situations: when an apparent violation of conditions of release occurs and the officer believes a modification of conditions is appropriate; or when an apparent violation of conditions of release occurs and the officer believes revocation of release is appropriate.

The Violation Report and memorandum to modify conditions submitted to the court and the United States attorney should contain the following information:

- the defendant's release status including the specific conditions imposed, the date the conditions were ordered, the name of the judicial officer who ordered them, and the type and date of the next scheduled court hearing;
- a complete description of the facts regarding the apparent violation(s) or changed circumstances;
- a summary of the defendant's compliance with release conditions including the results of a criminal record check;
- a summary of the officer's activities to address the defendant's noncompliant conduct; and
- a recommendation for action by the court, i.e., modification of release conditions or detention.

If the defendant is arrested or subject to new charges or poses an imminent risk of nonappearance or danger to the community, the officer shall immediately advise the court and the United States attorney after completing an investigation of the apparent violations and obtaining law enforcement reports.

Conclusion

Pretrial services supervision not only reasonably assures the defendant's compliance with release

conditions and the officer's timely response to changed defendant circumstances, but also provides a viable alternative to unnecessary pretrial detention. The officer performs risk management activities to monitor the defendant's compliance with release conditions set by the court to reasonably assure appearance and community safety. These activities include monitoring and verifying the defendant's compliance with conditions of release and intervening in a timely manner when the defendant does not comply.

Effective pretrial services supervision could influence courts to impose conditional pretrial release, while ineffective or unavailable pretrial services supervision could result in unnecessary pretrial detention.

NOTES

¹Publication 111 discusses for each condition the risk management activities performed by the officer to monitor compliance with release conditions set by the court to reasonably assure appearance and community safety.

²After Publication 111 was published, consensual modification procedures were modified to allow districts the option to request modification by memoranda to the court.